

South Australia

## **Rail Safety Act 2007**

An Act to make provision for rail safety and other matters that form part of a system of nationally consistent rail safety laws; and for other purposes.

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## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Rail Safety Act 2007*.

### **3—Objects**

Having regard to the importance of rail safety and regulatory efficiency, the objects of this Act are—

- (a) to provide for improvement of the safe carrying out of railway operations; and
- (b) to provide for the management of risks associated with railway operations; and
- (c) to make special provision for the control of particular risks arising from railway operations; and
- (d) to promote public confidence in the safety of transport of persons or freight by rail.

### **4—Interpretation**

In this Act, unless the contrary intention appears—

***accredited person*** means a rail transport operator who is accredited under this Act but does not include a person whose accreditation under this Act—

- (a) has been surrendered or revoked or has otherwise ceased to have effect under this Act; or
- (b) is suspended under this Act;

***appointed person*** means a person appointed by the Minister for the purposes of Part 4 Division 4;

***Australian rail safety law*** means a rail safety law or a corresponding rail safety law;

***Australian Rail Safety Regulator*** means the Rail Safety Regulator or a corresponding Rail Safety Regulator;

***authorised officer*** means a person holding an appointment as an authorised officer under Part 3 Division 2 and includes a rail safety officer in the exercise of functions under this Act;

***business day*** means any day except a Saturday, Sunday or public holiday;

***commercial benefits order*** means an order under section 140;

***compliance code*** means a compliance code approved by the Minister under section 149;

***corresponding law*** means—

- (a) the law of another jurisdiction corresponding, or substantially corresponding, to this Act; or

- (b) a law of another jurisdiction that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;

**corresponding rail safety law** means a rail safety law as defined in a corresponding law;

**corresponding Rail Safety Regulator** means—

- (a) the Rail Safety Regulator within the meaning of a corresponding rail safety law (except in the case of a jurisdiction for which a person is prescribed under paragraph (b)); or
- (b) a person prescribed by the regulations as the corresponding Rail Safety Regulator for another jurisdiction for the purposes of this Act;

**domestic partner** means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

**drug** means—

- (a) a substance that is a drug for the purposes of this Act by virtue of a declaration under section 5; and
- (b) any other substance (other than alcohol) which, when consumed or used by a person, deprives that person (temporarily or permanently) of any of his or her normal mental or physical faculties;

**embargo notice** means a notice under section 91;

**employee** means a person employed under a contract of employment or contract of training;

**employer** means a person who employs 1 or more other persons under contracts of employment or contracts of training;

**exercise** includes perform;

**footpath** means an area open to the public that is designated for, or 1 of its main uses is, use by pedestrians;

**function** includes power, authority or duty;

**guidelines** means guidelines approved by the Minister under section 149;

**improvement notice** means a notice under section 101;

**interface agreement** means an agreement about managing risks to safety identified and assessed under Part 4 Division 4 that includes provisions for—

- (a) implementing and maintaining measures to manage those risks; and
- (b) the evaluation, testing and, where appropriate, revision, of those measures; and
- (c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and
- (d) procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
- (e) a process for keeping the agreement under review and its revision;



***jurisdiction*** means a State or Territory;

***level crossing*** means an area where a road and a railway meet at substantially the same level, whether or not there is a level crossing sign on the road at all or any of the entrances to the area;

***medical practitioner*** means a person registered under the *Health Practitioner Regulation National Law* to practise in the medical profession (other than as a student);

***notifiable occurrence*** means an accident or incident associated with railway operations—

- (a) that has, or could have, caused—
  - (i) significant property damage; or
  - (ii) serious injury; or
  - (iii) death; or
- (b) that is, or is of a class that is, prescribed by the regulations to be a notifiable occurrence or class of notifiable occurrence,

but does not include an accident or incident, or class of accident or incident, that is prescribed by the regulations not to be a notifiable occurrence;

***occupational health and safety legislation*** means the *Occupational Health, Safety and Welfare Act 1986*, or a law of the Commonwealth that relates to occupational health and safety prescribed by the regulations for the purposes of this definition;

***oral fluid*** includes saliva;

***prescribed concentration of alcohol*** means the concentration of alcohol present in the blood of a person that is prescribed by the regulations (being a specified amount, or any greater amount, of alcohol in 100 millilitres of blood);

***prescribed drug*** means a substance declared by the regulations to be a prescribed drug;

***private road*** means a road in private ownership;

***private siding*** means a siding that is managed, owned or controlled by a person, other than a person who manages the rail infrastructure with which the siding connects or to which it has access, but does not include—

- (a) a marshalling yard;
- (b) a crossing loop;
- (c) a passenger terminal;
- (d) a freight terminal;
- (e) a siding, or a siding of a class, prescribed by the regulations not to be a private siding;

***prohibition notice*** means a notice under section 106;

***public place*** means—

- (a) a place that—

- (i) the public is entitled to use; or
  - (ii) is open to members of the public; or
  - (iii) is used by the public,  
whether or not on payment of money; or
- (b) a place that the occupier allows members of the public to enter, whether or not on payment of money;

**rail infrastructure** means the facilities that are necessary to enable a railway to operate safely and includes, but is not limited to—

- (a) railway tracks and associated track structures;
- (b) service roads, signalling systems, communications systems, rolling stock control systems and data management systems;
- (c) notices and signs;
- (d) electrical power supply and electric traction systems;
- (e) associated buildings, workshops, depots and yards;
- (f) plant, machinery and equipment,

but does not include—

- (g) rolling stock; or
- (h) any facility, or facility of a class, that is prescribed by the regulations not to be rail infrastructure;

**rail infrastructure manager**, in relation to rail infrastructure of a railway, means the person who has effective management and control of the rail infrastructure, whether or not the person—

- (a) owns the rail infrastructure; or
- (b) has a statutory or contractual right to use the rail infrastructure or to control, or provide, access to it;

**rail or road crossing** includes a railway crossing, a bridge carrying a road over a railway and a bridge carrying a railway over a road;

**rail safety law** means this Act and the regulations or a provision of this Act or the regulations;

**rail safety officer** means a person who under the provisions of a corresponding rail safety law corresponds to an authorised officer under this Act;

**rail safety work**—see section 9;

**rail safety worker** means a natural person who has carried out, is carrying out or is about to carry out, rail safety work;

**rail transport operator** means—

- (a) a rail infrastructure manager; or
- (b) a rolling stock operator; or
- (c) a person who is both a rail infrastructure manager and a rolling stock operator;

**railway** means a guided system, or proposed guided system, designed for the movement of rolling stock having the capability of transporting passengers or freight, or both, on a railway track with a gauge of 600 mm or more, together with its rail infrastructure and rolling stock and includes—

- (a) a heavy railway;
- (b) a light railway;
- (c) a monorail;
- (d) an inclined railway;
- (e) a tramway;
- (f) a railway within a marshalling yard or a passenger or freight terminal;
- (g) a private siding;
- (h) a guided system, or guided system of a class, prescribed by the regulations to be a railway;

**Note—**

See section 6 for railways to which this Act does not apply.

**railway crossing** means—

- (a) a level crossing; or
- (b) any area where a footpath or shared path crosses a railway or tram tracks at substantially the same level;

**railway operations** means—

- (a) the construction of a railway, railway tracks and associated track structures or rolling stock;
- (b) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure;
- (c) the commissioning, maintenance, repair, modification or decommissioning of rolling stock;
- (d) the operation or movement, or causing the operation or movement by any means, of rolling stock on a railway (including for the purposes of construction or restoration of rail infrastructure);
- (e) the movement, or causing the movement, of rolling stock for the purposes of operating a railway service;

**railway premises** means—

- (a) land (including any premises on land) on or in which is situated rail infrastructure;
- (b) land (including any premises on land) on or in which is situated any over-track or under-track structure or part of an over-track or under-track structure;
- (c) freight centres or depots used in connection with the carrying out of railway operations;

- (d) workshops or maintenance depots used in connection with the carrying out of railway operations;
- (e) premises including an office, building or housing used in connection with the carrying out of railway operations;
- (f) rolling stock or other vehicles associated with railway operations;

**railway tracks and associated track structures** means—

- (a) railway tracks and associated track structures and works (such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works);
- (b) over-track structures and under-track structures (including tunnels under tracks);

**registered association** means—

- (a) an association registered under the *Fair Work Act 1994* or an organisation registered under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or
- (b) the United Trades and Labor Council;

**Regulator or Rail Safety Regulator**—see Part 3 Division 1;

**road** means a road within the meaning of the *Road Traffic Act 1961*;

**road infrastructure** has the same meaning as in the *Road Traffic Act 1961*;

**road manager**—

- (a) in relation to a private road—means the owner, or other person responsible for the care, control and management, of the road;
- (b) in relation to any other road—means an authority, person or body responsible for the care, control or management of the road;

**road vehicle** means a motor vehicle within the meaning of the *Motor Vehicles Act 1959*;

**rolling stock** means a vehicle that operates on or uses a railway and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, self propelled infrastructure maintenance vehicle, trolley, wagon or monorail vehicle, but does not include a vehicle designed to operate both on and off a railway when the vehicle is not operating on a railway;

**rolling stock operator** means a person who has effective management and control of the operation or movement of rolling stock on rail infrastructure for a particular railway but does not include a person by reason only that the person drives the rolling stock or controls the network or the network signals;

**safety** means the safety of people, including rail safety workers, passengers, other users of railways, users of rail or road crossings and the general public;

**safety management plan** means a document describing a safety management system;

**safety management system**—see section 58;

**security management plan**—see section 63;

*shared path* has the same meaning as in the *Australian Road Rules*;

*siding* means a portion of railway track, connected by points to a running line or another siding, on which rolling stock can be placed clear of the running line;

*spouse*—a person is the spouse of another if they are legally married;

*substance* means substance in any form (whether gaseous, liquid, solid or other) and includes material, preparation, extract and admixture;

*supervisory intervention order* means an order under section 141;

*supply* includes—

- (a) in relation to goods—supply or resupply by way of sale, exchange, lease, hire or hire purchase, whether as principal or agent;
- (b) in relation to services—provide, grant or confer, whether as principal or agent;

*this jurisdiction* means South Australia;

*train* means—

- (a) 2 or more units of rolling stock coupled together, at least one of which is a locomotive or other self propelled unit; or
- (b) a unit of rolling stock that is a locomotive or other self propelled unit.

## **5—Declaration of substance to be a drug**

The Minister, by notice published in the Gazette, may declare any substance to be a drug for the purposes of this Act.

## **6—Railways to which this Act does not apply**

This Act does not apply to—

- (a) a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations;
- (b) a slipway;
- (c) a railway used only to guide a crane;
- (d) an aerial cable operated system;
- (e) a railway that is operated solely within an amusement or theme park, is required to be registered as an amusement structure under occupational health and safety legislation and does not operate on or across a road within the meaning of the *Road Traffic Act 1961*;
- (f) a railway, or class of railway, that the regulations prescribe to be a railway to which this Act does not apply.

## **7—Ministerial exemptions**

- (1) The Minister may, by notice in the Gazette, confer exemptions from this Act or specified provisions of this Act—
  - (a) on a person, or persons of a class, specified by the Minister; or
  - (b) in relation to a railway, or railways of a class, specified by the Minister.

- (2) An exemption under subsection (1) may be granted by the Minister on conditions specified by the Minister.
- (3) The Minister may, at any time, by further notice in the Gazette—
  - (a) vary or revoke an exemption; or
  - (b) vary or revoke a condition of an exemption.
- (4) A person who contravenes or fails to comply with a condition imposed under this section is guilty of an offence.  
Maximum penalty: \$50 000.

## **8—Concept of ensuring safety**

- (1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety requires the person—
  - (a) to eliminate risks to safety so far as is reasonably practicable; and
  - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of this Act and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety:
  - (a) the likelihood of the risk concerned eventuating;
  - (b) the degree of harm that would result if the risk eventuated;
  - (c) what the person concerned knows or ought reasonably to know, about the risk and any ways of eliminating or reducing the risk;
  - (d) the availability and suitability of ways to eliminate or reduce the risk;
  - (e) the cost of eliminating or reducing the risk.

## **9—Rail safety work**

- (1) Subject to subsection (2), any of the following classes of work is rail safety work for the purposes of this Act:
  - (a) driving or despatching rolling stock or any other activity which is capable of controlling or affecting the movement of rolling stock;
  - (b) signalling (and signalling operations), receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
  - (c) coupling or uncoupling rolling stock;
  - (d) maintaining, repairing, modifying, monitoring, inspecting or testing—
    - (i) rolling stock, including checking that the rolling stock is working properly before being used; or
    - (ii) rail infrastructure;
  - (e) installation of components in relation to rolling stock;

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- (f) work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of the rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used;
  - (g) installation or maintenance of—
    - (i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure; or
    - (ii) the means of supplying electricity directly to rail infrastructure or to any rolling stock using rail infrastructure or to a telecommunications system;
  - (h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
  - (i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
  - (j) work involving the development, management or monitoring of safe working systems for railways;
  - (k) work involving the management or monitoring of passenger safety on, in or at any railway;
  - (l) any other work that is prescribed by the regulations to be rail safety work.
- (2) For the purposes of this Act, rail safety work does not include any work, or any class of work, prescribed by the regulations not to be rail safety work.

## **10—Crown to be bound**

- (1) This Act binds the Crown, in right of the State and also, so far as the legislative power of the State extends, the Crown in all its other capacities.
- (2) No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this Act.





## **Part 2—Occupational health and safety legislation**

### **11—Act adds to protection provided by OHS legislation**

If a provision of the occupational health and safety legislation applies to railway operations, that provision continues to apply, and must be observed, in addition to this Act and the regulations made under this Act.

### **12—OHS legislation prevails**

If a provision of this Act or the regulations made under this Act is inconsistent with a provision of the occupational health and safety legislation, the provision of the occupational health and safety legislation prevails to the extent of any inconsistency.

#### **Note—**

For example, if a provision of this Act deals with a certain matter and a provision of the *Occupational Health, Safety and Welfare Act 1986* deals with the same matter and it is impossible to comply with both provisions, then the person must comply with the *Occupational Health, Safety and Welfare Act 1986* and not with this Act. If provisions of both Acts deal with the same matter but it is possible to comply with both provisions, then a person must comply with both Acts.

### **13—Compliance with this Act is no defence to prosecution under OHS legislation.**

Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the occupational health and safety legislation.

### **14—Relationship between duties under this Act and OHS legislation**

Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the occupational health and safety legislation.

### **15—No double jeopardy**

Where an act or omission constitutes an offence—

- (a) under this Act or the regulations made under this Act; and
- (b) under the occupational health and safety legislation,

the offender is not liable to be punished twice in respect of the offence.



## **Part 3—Administration**

### **Division 1—Rail Safety Regulator**

#### **16—Rail Safety Regulator**

- (1) There is to be a *Rail Safety Regulator*.
- (2) The Regulator is to be appointed by the Minister.
- (3) The Minister may—
  - (a) appoint a specified person as the Regulator; or
  - (b) appoint the person for the time being holding or acting in a specified office or position as the Regulator.
- (4) An appointment under subsection (3) may be made in relation to a person, office or position in the Public Service of the State.
- (5) The Minister may assign a person to act as the Regulator—
  - (a) during a vacancy in the office of Regulator; or
  - (b) when a person appointed as Regulator is absent from, or unable to discharge, official duties.

#### **17—Functions**

- (1) In addition to any other functions conferred on the Regulator by this Act or the regulations, the Regulator has the following functions:
  - (a) to administer, audit and review the accreditation regime under this Act;
  - (b) to work with rail transport operators, rail safety workers, others involved in railway operations and corresponding Rail Safety Regulators to improve rail safety in this jurisdiction and nationally;
  - (c) to provide information to corresponding Rail Safety Regulators, including information about causal factors of rail incidents, accreditation processes, investigation methods and risk assessment methodologies;
  - (d) to collect and publish information relating to rail safety;
  - (e) to provide, or facilitate the provision of, advice, education and training in relation to rail safety;
  - (f) to monitor, investigate and enforce compliance with this Act.
- (2) The functions of the Regulator under this Act are in addition to any function that the Regulator has under any other Act or law.

#### **18—Annual report**

- (1) The Regulator must, on or before 31 October in each year, deliver to the Minister a report on the Regulator's activities under this Act for the year ending on the preceding 30 June.

- (2) The Regulator must include in the report—
  - (a) information on the development of rail safety including an aggregation of statistics of a prescribed class reported to the Regulator under this Act or the regulations in respect of the relevant financial year; and
  - (b) information on any improvements and important changes in relation to the regulation of rail safety; and
  - (c) other information required to be included in the report by another provision under this or any other Act, or by the Minister.
- (3) The report may be included as part of the annual report of an administrative unit responsible for assisting the Minister in the administration of this Act.
- (4) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 12 sitting days after the Minister receives the report.

## **19—Delegation**

- (1) The Regulator may delegate to a body or person (including a person for the time being holding or acting in a specified office or position) a function or power of the Regulator under this Act.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Regulator to act in any matter; and
  - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

## **20—Ministerial control**

- (1) The Regulator is subject to the general control and direction by the Minister in connection with administrative matters associated with the activities of the Regulator under this Act.
- (2) Without limiting subsection (1), no Ministerial direction can be given—
  - (a) in relation to the requirements for accreditation under this Act; or
  - (b) in relation to a particular rail transport operator or rail safety worker; or
  - (c) in relation to dealing with a particular circumstance, incident or event; or
  - (d) so as to suppress information or in relation to recommendations associated with reporting under this Act.
- (3) This section does not limit any power given to the Minister under another provision of this Act.

## **21—Regulator may exercise functions of authorised officers**

- (1) The Regulator may exercise any function conferred on an authorised officer by or under this Act or the regulations.

- (2) Accordingly, in this Act (except this Part) a reference to an authorised officer includes a reference to the Regulator.

## **Division 2—Authorised officers**

### **22—Appointment**

- (1) The Regulator may, by instrument in writing, appoint a person, to be an authorised officer for a term specified in the instrument.
- (2) In addition, a person of a class specified by the Regulator, by instrument published in the Gazette, will be taken to be a person appointed as an authorised officer.

**Note—**

- |   |   |
|---|---|
| 1 | A person appointed under subsection (1) or (2) need not be an employee of a government agency or instrumentality.   |
| 2 | A person appointed under subsection (1) or (2) may be a police officer of this jurisdiction or a rail safety officer under a corresponding rail safety law. |
- (3) An appointment under subsection (1) or (2) may be subject to conditions specified by the Regulator.
- (4) Without limiting the conditions to which the appointment of an authorised officer may be subject, a condition may specify 1 or more of the following:
- (a) functions under this Act or the regulations that may not be exercised by the authorised officer;
  - (b) the only functions under this Act or the regulations that may be exercised by the authorised officer;
  - (c) the circumstances or manner in which a function under this Act or the regulations may be performed by the authorised officer.
- (5) The Regulator may, by instrument in writing, revoke the appointment of a person as an authorised officer.
- (6) An instrument under subsection (5) may relate to a person who would otherwise be an authorised officer under subsection (2).
- (7) However, for an instrument to have effect under subsection (6), it must be published in the Gazette.

### **23—Reciprocal powers**

- (1) This section has effect in relation to another jurisdiction while there is in force a corresponding rail safety law that contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement with a Minister of another jurisdiction for the purposes of this section, including an agreement to amend or revoke any such agreement.
- (3) To the extent envisaged by such an agreement—
- (a) authorised officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise functions conferred on rail safety officers of the other jurisdiction by or under the corresponding rail safety law of that other jurisdiction; and

- (b) rail safety officers of that other jurisdiction may, in this jurisdiction or that other jurisdiction, exercise functions conferred on authorised officers by or under this Act.
- (4) Anything done or omitted to be done by an authorised officer of this jurisdiction under subsection (3) is taken to have been done under this Act as well as under the corresponding rail safety law.
- (5) The regulations may make provision for or with respect to the exercise of functions under this section.
- (6) Nothing in this section affects the appointment under section 22 of persons as authorised officers for the purposes of this Act.

## **24—Identification cards**

The Regulator must—

- (a) issue an authorised officer with an identification card; or
- (b) designate a card issued by a person, body or authority (whether or not of this jurisdiction) as an identification card for the purposes of this Act.

## **25—Possession of identification card**

An authorised officer must not exercise a function conferred by or under this Act unless an identification card has been issued to, or designated for, the officer by the Regulator.

## **26—Display and production of identification card**

- (1) This section applies to an authorised officer who is exercising, or about to exercise, a function under this Act.
- (2) An authorised officer must—
  - (a) display his or her identification card if the officer is not wearing an approved uniform or badge; or
  - (b) produce his or her identification card if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, the function.
- (3) If it is not practical for an authorised officer to produce his or her identification card on being requested to do so, the authorised officer must produce his or her identification card as soon as practicable after the request is made.

- (4) In this section—

*approved*, in relation to a uniform or badge worn by an authorised officer, means a uniform or badge approved by the Regulator.

## **27—Return of identification cards**

A person who has ceased to be an authorised officer must not, without reasonable excuse, refuse or fail to return to the Regulator, within such period as is specified by the Regulator in a request for return of the card, any identification card issued to the person by the Regulator.

Maximum penalty: \$750.

## Part 4—Rail safety

### Division 1—General safety duties

#### 28—Safety duties of rail transport operators

- (1) A rail transport operator must ensure, so far as is reasonably practicable, the safety of the operator's railway operations.  
Maximum penalty:
  - (a) where the offender is a body corporate—\$300 000;
  - (b) where the offender is a natural person—\$100 000.
- (2) Without limiting subsection (1), a rail transport operator contravenes that subsection if the operator fails to do any of the following:
  - (a) develop and implement, so far as is reasonably practicable, safe systems for the carrying out of the operator's railway operations;
  - (b) ensure, so far as is reasonably practicable, that each rail safety worker who is to perform rail safety work in relation to the operator's railway operations—
    - (i) is of sufficient good health and fitness to carry out that work safely; and
    - (ii) is competent to undertake that work;
  - (c) ensure, so far as is reasonably practicable, that rail safety workers do not carry out rail safety work in relation to the operator's railway operations, and are not on duty, while the prescribed concentration of alcohol is present in their blood or while impaired by alcohol or a drug;
  - (d) ensure, so far as is reasonably practicable, that rail safety workers who perform rail safety work in relation to the operator's railway operations comply with the operator's fatigue management program in force under section 68;
  - (e) provide, so far as is reasonably practicable, adequate facilities for the safety of persons at any railway premises under the control or management of the operator;
  - (f) provide, so far as is reasonably practicable—
    - (i) such information and instruction to, and training and supervision of, rail safety workers as is necessary to enable those workers to perform rail safety work in relation to the operator's railway operations in a way that is safe; and
    - (ii) such information to rail transport operators and other persons on railway premises under the control or management of the operator as is necessary to enable those persons to ensure their safety.

- (3) Without limiting subsection (1), a rail infrastructure manager contravenes that subsection if the manager fails to do any of the following:
- (a) ensure, so far as is reasonably practicable, that any design, construction, commissioning, use, installation, modification, maintenance, repair, cleaning or decommissioning of the manager's rail infrastructure is done or carried out in a way that ensures, so far as is reasonably practicable, the safety of railway operations;
  - (b) establish, so far as is reasonably practicable, such systems and procedures for the scheduling, control and monitoring of railway operations that ensure, so far as is reasonably practicable, the safety of the manager's railway operations.
- (4) Without limiting subsection (1), a rolling stock operator contravenes that subsection if the rolling stock operator fails to do any of the following:
- (a) provide or maintain rolling stock that, so far as is reasonably practicable, is safe;
  - (b) ensure, so far as is reasonably practicable, that any design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of rolling stock is done or carried out in a way that, so far as is reasonably practicable, ensures safety;
  - (c) comply, so far as is reasonably practicable, with such rules and procedures for the scheduling, control and monitoring of rolling stock that have been established by a rail infrastructure manager in relation to the use of the manager's rail infrastructure by the rolling stock operator;
  - (d) so far as is reasonably practicable, establish and maintain equipment, procedures and systems to minimise risks to the safety of the operator's railway operations;
  - (e) make arrangements for ensuring, so far as is reasonably practicable, safety in connection with the use, operation and maintenance of the operator's rolling stock.

## **29—Duties of rail transport operators extend to contractors**

- (1) The duties of a rail transport operator under section 28 extend to a person who, not being an employee employed to carry out railway operations, undertakes railway operations on or in relation to rail infrastructure or rolling stock of the operator, and any employees of the person, in relation to matters over which the operator has control or would have control if not for any agreement purporting to limit or remove that control.
- (2) A person to whom the duties under section 28 extend by reason of subsection (1) must comply with those duties in respect of railway operations referred to in that subsection undertaken by the person.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.



**30—Duties of designers, manufacturers, suppliers etc**

- (1) A person who—
- (a) designs, commissions, manufactures, supplies, installs or erects any thing; and
  - (b) knows, or ought reasonably to know, that the thing is to be used as or in connection with rail infrastructure or rolling stock,
- must—
- (c) ensure, so far as is reasonably practicable, that the thing is safe if it is used for a purpose for which it was designed, commissioned, manufactured, supplied, installed or erected; and
  - (d) carry out, or arrange the carrying out, of such testing and examination of the thing as may be necessary for compliance with this section; and
  - (e) take such action as is necessary to ensure, so far as is reasonably practicable, that there will be available in connection with the use of the thing adequate information about—
    - (i) the use for which the thing was designed, commissioned, manufactured, supplied, installed or erected; and
    - (ii) the results of any testing or examination referred to in paragraph (d); and
    - (iii) any conditions necessary to ensure, so far as is reasonably practicable, the thing is safe if it is used for a purpose for which it was designed, commissioned, manufactured, supplied, installed or erected.

## Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
  - (b) where the offender is a natural person—\$100 000.
- (2) A person who decommissions any rail infrastructure or rolling stock must—
- (a) ensure, so far as is reasonably practicable, that the decommissioning is carried out safely; and
  - (b) carry out, or arrange the carrying out, of such testing and examination as may be necessary for compliance with this section.

## Maximum penalty:

- (a) where the offender is a body corporate—\$60 000;
  - (b) where the offender is a natural person—\$20 000.
- (3) For the purposes of subsection (1), if the person who supplies the thing—
- (a) carries on the business of financing the acquisition of the thing by customers; and
  - (b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and

- (c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer,

the reference in subsection (1) to the person who supplies that thing is instead taken to be a reference to the third person.

## **Division 2—Accreditation**

### **31—Purpose of accreditation**

The purpose of accreditation of a rail transport operator in relation to railway operations is to attest that the rail transport operator has demonstrated to the Rail Safety Regulator the competence and capacity to manage risks to safety associated with those railway operations.

### **32—Accreditation required for railway operations**

- (1) A person must not carry out or cause or permit to be carried out, any railway operations unless the person—
  - (a) is a rail transport operator who—
    - (i) is accredited under this Part in relation to those operations; or
    - (ii) is exempt under this Act from compliance with this section in relation to those operations; or
  - (b) is carrying out those operations, or causing or permitting those operations to be carried out, for or on behalf of—
    - (i) a rail transport operator who is accredited under this Part in relation to those operations; or
    - (ii) a rail transport operator who is exempt under this Act from compliance with this section in relation to those operations; or
  - (c) is exempt under this Act from compliance with this section in relation to those operations.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

**Note—**

If a body corporate and related bodies corporate are involved, an exemption may be given so that only 1 of the bodies need be accredited (related body corporate meaning related by virtue of section 50 of the *Corporations Act 2001*).

- (2) Subsection (1) does not apply to a rail safety worker, not being a rail transport operator, carrying out rail safety work for or on behalf of a rail transport operator who—
  - (a) is accredited under this Part; or
  - (b) is exempt under this Act from compliance with this section,in relation to that rail safety work.

### **33—Purpose for which accreditation may be granted**

- (1) An accreditation may be granted to a rail transport operator for any 1 or more of the following purposes:
  - (a) for the carrying out of railway operations for the part or parts of a railway designated in the notice of accreditation, or for a part or parts having the scope or characteristics so designated;
  - (b) for any service or aspect, or part of a service or aspect, of railway operations designated in the notice of accreditation;
  - (c) for specified railway operations to permit any 1 or more of the following:
    - (i) site preparation;
    - (ii) construction of rail infrastructure;
    - (iii) restoration or repair work;
    - (iv) testing of railway track or other infrastructure;
    - (v) other activities relating to railway operations considered appropriate by the Regulator and designated in the notice of accreditation.
- (2) If the applicant so requests, accreditation may be granted for a specified period only.

### **34—Application for accreditation**

- (1) A rail transport operator may apply to the Regulator for accreditation in respect of specified railway operations carried out, or proposed to be carried out, by, or on behalf of, that operator.
- (2) An application must be made in the manner and form approved by the Regulator and—
  - (a) must specify the scope and nature of the railway operations in respect of which accreditation is sought; and
  - (b) must include a safety management plan relating to those railway operations; and
  - (c) must specify whether or not the applicant is accredited, or has applied for accreditation, under a corresponding law; and
  - (d) must contain the prescribed information; and
  - (e) must be accompanied by the prescribed application fee.
- (3) The Regulator may require a rail transport operator who has applied for accreditation—
  - (a) to supply further information requested by the Regulator;
  - (b) to verify by statutory declaration any information supplied to the Regulator.

### **35—What applicant for accreditation must demonstrate**

- (1) The Regulator must not grant accreditation to an applicant unless satisfied, having regard to the guidelines applicable to this section, that the applicant has demonstrated—
  - (a) that the applicant is or is to be a rail infrastructure manager or rolling stock operator in relation to the railway operations for which accreditation is sought; and
  - (b) that the applicant has the competence and capacity to manage risks to safety associated with the railway operations for which accreditation is sought; and
  - (c) that the applicant—
    - (i) has the competence and capacity to implement the proposed safety management system; and
    - (ii) has the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the railway operations; and
    - (iii) that the applicant has met the consultation requirements of this Act in relation to the applicant's safety management system; and
    - (iv) that the applicant has complied with the requirements prescribed by the regulations (if any) for the purposes of this section.
- (2) The Regulator may, in determining whether an applicant satisfies the requirements of subsection (1)(b) or (c)(i), take into account (and, if the Regulator thinks fit, rely on) the fact that the applicant holds an accreditation under a corresponding law.

### **36—Regulator may direct applicants to coordinate and cooperate in applications**

- (1) If the Regulator—
  - (a) receives applications from 2 or more rail transport operators for accreditation; and
  - (b) believes that coordinated preparation of the applications is necessary to ensure that the railway operations of the applicants are carried out safely,the Regulator may give a direction in writing to the rail transport operators to coordinate their applications.
- (2) A direction under this section may require each rail transport operator who is the subject of the direction to provide to each other rail transport operator who is the subject of the direction information concerning any circumstances in relation to the carrying out of railway operations by the first-mentioned rail transport operator that could constitute a risk to safety in relation to the carrying out of rail operations by another rail transport operator that is the subject of the direction.
- (3) A rail transport operator that is given a direction under subsection (1) must comply with the direction.

Maximum penalty: \$15 000.

- (4) A rail transport operator that has coordinated the preparation of an application in accordance with this section must include in the application reference to information given by the rail transport operator to each other rail transport operator, and information given to the rail transport operator by each other rail transport operator, in accordance with a direction under this section.

Maximum penalty: \$15 000.

### **37—Coordination between Regulators**

- (1) This section applies if the Regulator receives an application for accreditation, or for variation of accreditation or the conditions or restrictions of accreditation, that indicates that the applicant is accredited, or is seeking accreditation, under a corresponding law of 1 or more other jurisdictions (whether or not contiguous with this jurisdiction).
- (2) The Regulator must, as soon as possible and before deciding whether or not to grant the application, consult with the relevant corresponding Rail Safety Regulator, or Regulators, in relation to the application with a view to the outcome of the application being consistent with the outcome of applications made in the other jurisdiction or jurisdictions.
- (3) The Regulator, in complying with subsection (2), must take into account any guidelines applicable to this section.
- (4) If the Regulator does not, in relation to an application, act consistently with the provisions of the guidelines, the Regulator must give the applicant reasons for not so acting.

### **38—Determination of application**

- (1) Subject to this section, the Regulator must give to the applicant, within the relevant period—
  - (a) if the Regulator is satisfied as to the matters referred to in section 35 and, if applicable, section 36, notice in writing granting accreditation to the applicant with or without any conditions or restrictions; or
  - (b) if the Regulator is not so satisfied, notice in writing refusing the application.
- (2) A notice under subsection (1) granting an application must specify—
  - (a) the prescribed details of the applicant; and
  - (b) the scope and nature of the railway operations, and the manner in which they are to be carried out, in respect of which the accreditation is granted; and
  - (c) any conditions and restrictions imposed by the Regulator on the grant of accreditation; and
  - (d) any other prescribed information.
- (3) A notice—
  - (a) under subsection (1) refusing an application, or imposing a condition or restriction, must include—
    - (i) the reasons for the decision to refuse to grant the application or impose the condition or restriction; and

- (ii) information about the right of review under Part 6;
  - (b) under subsection (4)(c) extending a period, must include information about the right of review under Part 6.
- (4) In this section—

*relevant period*, in relation to an application, means—

- (a) 6 months after the application was received by the Regulator; or
- (b) if the Regulator requested further information, 6 months, or such other period, as is agreed between the Regulator and the applicant, after the Regulator receives the last information so requested; or
- (c) if the Regulator, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

### **39—Conditions and restrictions**

An accreditation granted under this Part is subject to any conditions or restrictions prescribed by the regulations for the purposes of this section and that are applicable to the accreditation.

### **40—Penalty for breach of condition or restriction**

An accredited person must not contravene or fail to comply with a condition or restriction of accreditation applying under this Part.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

### **41—Annual fees**

- (1) An accredited person must pay an annual fee fixed by the Minister and published in the Gazette.
- (2) The annual fee must be paid by an accredited person at the time of accreditation and thereafter on an annual basis on or before a date determined by the Minister.
- (3) The Regulator may accept payment of an annual fee in accordance with an agreement (that provides, for example, for the payment of fees by instalments) made with the person who is liable to pay the fee.
- (4) The Minister may fix different fees for different kinds of accreditations, fix various methods for the calculation of various fees, fix differential fees on a basis determined by the Minister, and impose additional fees for the late payment of fees under this section.

### **42—Late payment**

- (1) If an accredited person fails to pay an annual fee in accordance with this Part, the accreditation is, by force of this section, suspended until the fee is paid.

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- (2) However, the Regulator may exempt a person from the operation of subsection (1) if—
- (a) the fee is paid in accordance with a determination of the Regulator or an agreement made with the person who is liable to pay the fee; or
  - (b) the Regulator determines that there is some other reasonable cause that justifies an exemption under this subsection.

#### **43—Waiver of fees**

The Regulator may, after consultation with the Minister, waive, or refund, the whole or part of any fee payable under this Part.

#### **44—Surrender of accreditation**

An accredited person may, in accordance with the regulations, surrender the person's accreditation.

#### **45—Revocation or suspension of accreditation**

- (1) This section applies in respect of an accredited person if—
- (a) the Regulator considers that the accredited person—
    - (i) is no longer able to demonstrate to the satisfaction of the Regulator the matters referred to in section 35 or to satisfy the conditions, or to comply with the restrictions, of the accreditation; or
    - (ii) is not managing the rail infrastructure, or is not operating rolling stock in relation to any rail infrastructure, to which the accreditation relates and has not done so for at least the preceding 12 months; or
  - (b) the accredited person contravenes this Act or the regulations.
- (2) The Regulator—
- (a) may suspend the accreditation, or part of the accreditation, of the accredited person for a period determined by the Regulator; or
  - (b) may revoke the accreditation of the accredited person wholly or in part, or in respect of particular railway operations specified in the notice, with immediate effect or with effect from a specified future date; or
  - (c) may impose conditions or restrictions on the accreditation; or
  - (d) may vary conditions or restrictions to which the accreditation is subject,
- and, if the Regulator revokes the accreditation, the Regulator may declare that the accredited person is disqualified from applying for accreditation, or for accreditation in relation to specified railway operations, during a specified period.
- (3) Before making a decision under subsection (2), the Regulator—
- (a) must notify the person in writing—
    - (i) that the Regulator is considering making a decision under subsection (2) of the kind, and for the reasons, specified in the notice; and

- (ii) that the person may, within 28 days or such longer period as is specified in the notice, make written representations to the Regulator showing cause why the decision should not be made; and
  - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (4) If the Regulator suspends or revokes the accreditation of the accredited person wholly or in part, or in respect of specified railway operations, the Regulator must include in the notice of suspension or revocation the reasons for the suspension or revocation and information about the right of review under Part 6.
- (5) If the Regulator suspends or revokes the accreditation of a person who is accredited in another jurisdiction, the Regulator must give notice of the suspension or revocation to the relevant corresponding Regulator.
- (6) The Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.

#### **46—Immediate suspension of accreditation**

- (1) If the Regulator considers that there is, or would be, an immediate and serious risk to safety unless an accreditation is suspended immediately, the Regulator may, without complying with section 45(3) or (4), by written notice given to the accredited person, immediately suspend the accreditation of the person—
- (a) wholly or in part, or in respect of particular railway operations specified in the notice; and
  - (b) for a specified period, not exceeding 6 weeks.
- (2) The Regulator may, by notice in writing given to a person whose accreditation is suspended wholly or in part or in respect of particular railway operations—
- (a) reduce the period of suspension specified in a notice under subsection (1); or
  - (b) extend the period of suspension specified in a notice under subsection (1) but not so that the suspension continues for more than 6 weeks after the date of the notice under that subsection.
- (3) The Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.
- (4) Before making a decision under subsection (2)(b) to extend a period of suspension, the Regulator—
- (a) must notify the person in writing—
    - (i) that the Regulator is considering extending the period of suspension for the reasons specified in the notification; and
    - (ii) that the person may, within 7 days or such longer period as is specified in the notification, make written representations to the Regulator showing cause why the suspension should not be extended; and
  - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.



- (5) If the Regulator extends the suspension of the person, the Regulator must include in the notice extending the suspension the reasons for the extension and information about the right of review under Part 6.

#### **47—Keeping and making available documents for public inspection**

A rail transport operator must ensure that—

- (a) if the operator is an accredited person or has an exemption under this Part, the current notice of accreditation or exemption under this Part; and
- (b) if the operator is a rail infrastructure manager of a private siding registered with the Rail Safety Regulator, the notice of registration; and
- (c) any other document prescribed by the regulations for the purposes of this section,

are available for inspection—

- (d) if the operator is a body corporate, at the operator's registered office during ordinary business hours;
- (e) if the operator is not a body corporate, at the operator's principal place of business or, if the Regulator approves another place and time, at that place and time.

Maximum penalty: \$2 500.

#### **48—Application for variation of accreditation**

- (1) An accredited person may apply to the Regulator, in the manner and form approved by the Regulator, for a variation of the accreditation.
- (2) An application for variation—
  - (a) must specify the details of the variation being sought; and
  - (b) must contain the prescribed information; and
  - (c) must be accompanied by the prescribed application fee.
- (3) The Regulator may require an accredited person who has applied for a variation—
  - (a) to supply further information requested by the Regulator;
  - (b) to verify by statutory declaration any information supplied to the Regulator.

#### **49—Where application relates to co-operative railway operations or operations in another jurisdiction**

Sections 36 and 37 apply to an application for variation as if a reference in those sections to accreditation were a reference to variation of accreditation.

#### **50—Determination of application for variation**

- (1) Subject to this section, the Regulator must, within the relevant period, give to the applicant—
  - (a) if the Regulator is satisfied as to the matters referred to in sections 35 and 36 so far as they are applicable to the proposed variation, notice in writing varying the accreditation, with or without any conditions or restrictions; or

- (b) if the Regulator is not so satisfied, notice in writing refusing the application.
- (2) A notice under subsection (1) varying an accreditation must—
  - (a) specify the prescribed details of the applicant; and
  - (b) specify the variation to the accreditation so far as it applies to the scope and nature of the railway operations, or the manner in which they are to be carried out; and
  - (c) specify any conditions and restrictions imposed by the Regulator on the accreditation as varied; and
  - (d) specify any other prescribed information.
- (3) A notice—
  - (a) under subsection (1) refusing an application, or imposing a condition or restriction, must include—
    - (i) the reasons for the decision to refuse to grant the application for variation or imposing the condition or restriction; and
    - (ii) information about the right of review under Part 6;
  - (b) under subsection (4)(c) extending a period, must include information about the right of review under Part 6.
- (4) In this section—

***relevant period***, in relation to an application, means—

  - (a) 6 months after the application was received by the Regulator; or
  - (b) if the Regulator requested further information, 6 months, or such other period, as is agreed between the Regulator and the applicant, after the Regulator receives the last information so requested; or
  - (c) if the Regulator, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

## **51—Prescribed conditions and restrictions**

The accreditation of a person that is varied under this Part is subject to any conditions or restrictions prescribed by the regulations and that are applicable to the accreditation as varied.

## **52—Regulator may direct amendment of a safety management system**

- (1) The Regulator may direct a rail transport operator, by notice in writing, to amend the operator's safety management system within a specified period, being not less than 28 days after the giving of the direction.
- (2) A direction under subsection (1) must state the reasons why the Regulator considers it is necessary for the rail transport operator to amend the safety management system and include information about the right of review under Part 6.

- (3) The rail transport operator must not, without reasonable excuse, fail to comply with a direction under subsection (1).

Maximum penalty:

- (a) where the offender is a body corporate—\$120 000;
- (b) where the offender is a natural person—\$40 000.

### **53—Variation of conditions and restrictions**

- (1) An accredited person may apply to the Regulator for a variation of any condition or restriction to which the accreditation is subject and that was imposed by the Regulator.
- (2) An application for variation of a condition or restriction must be made as if it were an application for variation of accreditation and section 48 applies accordingly.
- (3) The Regulator must consider the application and, if satisfied as to the matters referred to in sections 35 and 36, so far as they are applicable to the proposed variation, may, by notice given to the accredited person and, so far as practicable, in accordance with the provisions of this Part applicable to a grant of accreditation, grant or refuse to grant the variation.
- (4) A notice under subsection (3) refusing to grant a variation of a condition or restriction must include the reasons for the decision to refuse to grant the variation and information about the right of review under Part 6.

### **54—Regulator may make changes to conditions or restrictions**

- (1) The Regulator may, subject to this section, at any time and in the discretion of the Regulator, vary or revoke a condition or restriction imposed by the Regulator to which the accreditation of an accredited person is subject or impose a new condition or restriction.
- (2) Before taking action under this section, the Regulator must—
  - (a) give the accredited person written notice of the action that the Regulator proposes to take; and
  - (b) allow the accredited person to make written representations about the intended action within 14 days (or any other period that the Regulator and the accredited rail operator agree upon); and
  - (c) consider any representations made under paragraph (b) and not withdrawn.
- (3) Subsection (2) does not apply if the Regulator considers it necessary to take immediate action in the interests of safety.
- (4) The Regulator must—
  - (a) give, in writing, to the accredited person—
    - (i) details of any action taken under subsection (1); and
    - (ii) a statement of reasons for any action taken under subsection (1); and
  - (b) notify, in writing, the accredited person that the person has a right of review of the decision under Part 6.

### **55—Accreditation cannot be transferred or assigned**

- (1) An accreditation—
  - (a) is personal to the person who holds it; and
  - (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it; and
  - (c) does not vest by operation of law in any other person.
- (2) A purported transfer or assignment of an accreditation or any other purported dealing with an accreditation by the person who holds it is of no effect.
- (3) This section has effect despite anything in any Act or rule of law to the contrary.

### **56—Sale or transfer of railway operations by accredited person**

- (1) If an accredited person proposes to sell or otherwise transfer any railway operations for which the person is accredited, the Regulator may, on an application for accreditation under this Part being made by the proposed transferee, waive compliance by the proposed transferee with any 1 or more of the requirements of this Division.
- (2) The Regulator is not to waive compliance with any such requirements unless the proposed transferee demonstrates, to the satisfaction of the Regulator, that the proposed transferee has the competence and capacity to comply with the relevant requirements of this Division that apply to applicants for accreditation of the appropriate kind.
- (3) A waiver of compliance with requirements may be given subject to such conditions and restrictions (if any) as appear to the Regulator to be necessary.

## **Division 3—Private sidings**

### **57—Exemption from accreditation**

- (1) A rail infrastructure manager of a private siding is not required—
  - (a) to be accredited under this Part in respect of railway operations carried out in the private siding; or
  - (b) to comply with Division 4, Division 5 or Division 6 in relation to the private siding.
- (2) However, if the rail infrastructure manager wishes the private siding to be (or to continue to be) connected with, or to have access to, a railway or siding of an accredited person, the rail infrastructure manager must—
  - (a) register the private siding with the Regulator and pay the annual fee fixed by the Minister; and
  - (b) comply with conditions imposed by the Regulator (from time to time) or prescribed by the regulations with respect to the safe construction, maintenance and operation of the private siding (which may include conditions or regulations that are the same as, or similar to, any provisions of Division 4, 5 or 6); and
  - (c) comply with the provisions of section 62 in relation to the management of the interface with the railway of the accredited person; and

- (d) notify the accredited person in writing of any railway operations affecting or relating to the safety of the railway or siding of the accredited person.

Maximum penalty:

- (a) where the offender is a body corporate—\$60 000;
  - (b) where the offender is a natural person—\$20 000.
- (3) The Regulator must issue a notice of registration to a rail infrastructure manager who registers a private siding with the Regulator.
  - (4) If the regulations so prescribe, the Regulator must make the register kept for the purposes of subsection (2) available for public inspection at the Regulator's office or a prescribed place, during ordinary business hours.

## **Division 4—Safety management**

### **58—Safety management system**

- (1) A rail transport operator must have a safety management system for railway operations (other than railway operations in respect of which the operator is not required to be accredited) carried out on or in relation to the rail transport operator's rail infrastructure or rolling stock that—
  - (a) is in a form approved by the Regulator; and
  - (b) complies with the relevant prescribed requirements and the prescribed risk management principles, methods and procedures; and
  - (c) identifies and assesses any risks to safety that have arisen or may arise from the carrying out of railway operations on or in relation to the rail transport operator's rail infrastructure or rolling stock; and
  - (d) specifies the controls (including audits, expertise, resources and staff) that are to be used by the rail transport operator to manage risks that have been identified and to monitor safety in relation to those railway operations; and
  - (e) includes procedures for monitoring, reviewing and revising the adequacy of those controls; and
  - (f) includes—
    - (i) measures to manage risks to safety identified under section 62, 62A or 62B; and
    - (ii) a security management plan in accordance with section 63; and
    - (iii) an emergency management plan in accordance with section 64; and
    - (iv) a health and fitness management program in accordance with section 65; and
    - (v) an alcohol and drug management program in accordance with section 66; and
    - (vi) a fatigue management program in accordance with section 68.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

- (2) A rail transport operator, before establishing a safety management system in relation to railway operations in respect of which the operator is required to be accredited or reviewing or varying any such safety management system, must consult, so far as is reasonably practicable, with—
- (a) persons likely to be affected by the safety management system or its review or variation, being persons who carry out those railway operations or work on or at the rail transport operator's railway premises or with the rail transport operator's rolling stock; and
  - (b) health and safety representatives within the meaning of the occupational health and safety legislation representing any of the persons referred to in paragraph (a); and
  - (c) on the application of a person referred to in paragraph (a)—a registered association of which that person is a member; and
  - (d) any other rail transport operator with whom the first-mentioned operator has an interface agreement under section 62 relating to risks to safety of railway operations carried out by or on behalf of either of them; and
  - (e) the public, as appropriate.
- (3) If the safety management system of a rail transport operator and the safety management system of another rail transport operator who has an agreement referred to in subsection (2)(d) with the first mentioned rail transport operator, when taken as one system, comply with this Act, both safety management systems are taken to comply with this Act.
- (4) A safety management system must be evidenced in writing and—
- (a) must identify each person responsible for preparing any part of the safety management system; and
  - (b) must identify the person, or class of persons, responsible for implementing the system.
- (5) A rail transport operator—
- (a) may, in satisfying a requirement under this section, including a requirement arising in relation to a plan or program referred to in subsection (1)(f), incorporate (including by reference) a document or other material prepared for the purposes of another Act if the document or other material satisfies the relevant requirement under this Act; and
  - (b) may be taken to have complied with a requirement under this section, including a requirement arising in relation to a plan or program referred to in subsection (1)(f), to the extent that the relevant requirement has been satisfied by compliance with the provisions of another Act.
- (6) The Regulator may, in acting in relation to a safety management system, exercise a power under this Act as if any document or other material incorporated under subsection (5)(a), or any requirement under another Act that has effect for the purposes of subsection (5)(b), formed part of the safety management system.

## 59—Compliance with safety management system

- (1) A rail transport operator must implement the rail transport operator's safety management system.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

- (2) A rail transport operator must not, without reasonable excuse, fail to comply with the rail transport operator's safety management system for the rail transport operator's railway operations.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

- (3) It is a reasonable excuse if the rail transport operator—

- (a) complies with the safety management system to the extent practicable while complying with a condition or restriction of accreditation; or
- (b) demonstrates that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening.

- (4) Subsection (3) does not limit the excuses that may be reasonable excuses.

## 60—Review of safety management system

A rail transport operator must review the rail transport operator's safety management system in accordance with the regulations at such times or within such periods as are prescribed or, if no times or periods are prescribed, at least once each year or at such other time as is agreed between the rail transport operator and the Regulator.

Maximum penalty:

- (a) where the offender is a body corporate—\$75 000;
- (b) where the offender is a natural person—\$25 000.

## 61—Safety performance reports

- (1) A rail transport operator must give the Regulator a safety performance report in respect of each reporting period that—

- (a) is in a form approved by the Regulator; and
- (b) complies with the requirements (if any) prescribed by the regulations for the purposes of this section; and
- (c) contains—
  - (i) a description and assessment of the safety performance of the rail transport operator's railway operations; and
  - (ii) comments on any deficiencies in, and any irregularities in, the railway operations that may be relevant to the safety of the railway; and

- (iii) a description of any safety initiatives in relation to the railway operations undertaken during the reporting period or proposed to be undertaken in the next reporting period; and
  - (iv) any other information or performance indicators prescribed by the regulations for the purpose of this section.
- (2) A rail transport operator must submit a report in accordance with this section within 6 months after the end of each reporting period.

Maximum penalty:

- (a) where the offender is a body corporate—\$75 000;
  - (b) where the offender is a natural person—\$25 000.
- (3) In this section—

*reporting period* means a calendar year or such other period as is agreed from time to time by the Regulator and the rail transport operator.

## **62—Interface coordination—rail transport operators**

- (1) A rail transport operator must—
  - (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out by or on behalf of the operator because of, or partly because of, railway operations carried out by or on behalf of any other rail transport operator; and
  - (b) determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) for the purpose of managing those risks—seek to enter into an interface agreement with the other rail transport operator or rail transport operators.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
  - (b) where the offender is a natural person—\$100 000.
- (2) Except to the extent that the regulations otherwise provide, subsection (1)(c) does not apply if none of the rail transport operators is a rail infrastructure manager.

## **62A—Interface coordination—rail infrastructure and roads other than private roads**

- (1) A rail infrastructure manager must—
  - (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of a road other than a private road; and
  - (b) determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) for the purpose of managing those risks—seek to enter into an interface agreement with the road manager of that road.

Maximum penalty:



- (a) where the offender is a body corporate—\$300 000;
  - (b) where the offender is a natural person—\$100 000.
- (2) The road manager of a road other than a private road must—
- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of the road because of, or partly because of, railway operations carried out on or in relation to rail infrastructure; and
  - (b) determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) for the purpose of managing those risks—seek to enter into an interface agreement with the rail infrastructure manager of the rail infrastructure.
- (3) Nothing in this section authorises or requires a road manager to act inconsistently with, or without regard to, the functions, obligations or powers conferred on it by or under an Act other than this Act.

### **62B—Interface coordination—rail infrastructure and private roads**

- (1) A rail infrastructure manager must—
- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of a private road; and
  - (b) consider whether it is necessary to manage those risks in conjunction with the road manager of that road and—
    - (i) if the rail infrastructure manager is of the opinion that it is necessary that those risks be managed in conjunction with the road manager—give written notice of that opinion to the road manager and determine measures to manage, so far as is reasonably practicable, those risks; or
    - (ii) if the rail infrastructure manager is of the opinion that the management of those risks does not need to be carried out in conjunction with the road manager—keep a written record of that opinion; and
  - (c) unless paragraph (b)(ii) applies—for the purpose of managing those risks, seek to enter into an interface agreement with the road manager.

#### Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

- (2) If a rail infrastructure manager gives a road manager of a private road a written notice under subsection (1)(b)(i), the road manager must—
- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of the road because of, or partly because of, railway operations; and
  - (b) determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) for the purpose of managing those risks—seek to enter into an interface agreement with the rail infrastructure manager.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

### **62C—Identification and assessment of risks**

A rail transport operator, rail infrastructure manager or road manager that is required under section 62, 62A or 62B to identify and assess risks to safety that may arise from operations carried out by another person may do so—

- (a) by itself identifying and assessing those risks; or
- (b) by identifying and assessing those risks jointly with the other person; or
- (c) by adopting the identification and assessment of those risks carried out by the other person.

### **62D—Scope of interface agreements**

An interface agreement under this Division may—

- (a) be entered into by 2 or more rail transport operators or by 1 or more rail transport operators and 1 or more road managers; and
- (b) include measures to manage any number of risks to safety that may arise because of, or partly because of, any railway operations; and
- (c) include measures to manage any number of risks to safety that may arise from any railway operations because of, or partly because of, the existence or use of any road infrastructure; and
- (d) make provision for or in relation to any matter by applying, adopting or incorporating any matter contained in any document; and
- (e) consist of 2 or more documents.

### **62E—Appointed person may give directions**

- (1) This section applies if the appointed person is satisfied that a rail transport operator, rail infrastructure manager or road manager referred to in section 62, 62A or 62B—
- (a) is unreasonably refusing or failing to enter into an interface agreement with another person as required under this Division; or
  - (b) is unreasonably delaying the negotiation of such an agreement.

- (2) The appointed person may issue a written notice to the rail transport operator, rail infrastructure manager or road manager (as the case requires) and the other person that—
- (a) warns of the appointed person's powers under this section, including the power to issue a direction under subsection (3) at any time after a specified date; and
  - (b) includes a copy of this section; and
  - (c) may contain suggested terms for inclusion in an interface agreement.
- (3) If the appointed person issues a notice under subsection (2) to a rail transport operator, rail infrastructure manager or road manager, the appointed person may, in writing, require the operator or manager to provide such information as the appointed person reasonably requires for the purposes of making a direction under this section.
- (4) If a notice is issued under subsection (2) and an interface agreement has not been entered into by or on the date specified in the notice, the appointed person—
- (a) may determine the arrangements that are to apply in relation to the management of risks to safety referred to in section 62, 62A or 62B (as the case requires); and
  - (b) may direct either or both persons to whom the notice is issued to give effect to those arrangements; and
  - (c) must specify by when a direction must be complied with.
- (5) A direction under subsection (4)—
- (a) must be in writing; and
  - (b) must set out any arrangements determined by the appointed person under that subsection.
- (6) A person to whom a notice or direction is given under this section must comply with the notice or direction within the time specified in the notice or direction.
- Maximum penalty:
- (a) where the offender is a body corporate—\$120 000;
  - (b) where the offender is a natural person—\$40 000.

### **62F—Register of interface agreements**

- (1) A rail transport operator must maintain a register of—
- (a) interface agreements to which it is a party; and
  - (b) arrangements determined by the appointed person under section 62E,
- that are applicable to its railway operations.
- Maximum penalty: \$10 000.
- (2) A road manager must maintain a register of—
- (a) interface agreements to which it is a party; and
  - (b) arrangements determined by the appointed person under section 62E,

that are applicable to any road in relation to which it is the road manager.

Maximum penalty: \$10 000.

### **63—Security management plan**

A rail transport operator—

- (a) must have a security management plan for railway operations carried out by or on behalf of the operator on or in relation to the operator's rail infrastructure or rolling stock that—
  - (i) incorporates measures to protect people from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and
  - (ii) complies with this Act and any requirements prescribed by the regulations; and
- (b) must ensure that the security management plan is implemented; and
- (c) must ensure that the appropriate response measures of the security management plan are implemented without delay if an incident of a kind referred to in paragraph (a) occurs.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

### **64—Emergency management plan**

- (1) A rail transport operator must have an emergency management plan for railway operations carried out by or on behalf of the operator on or in relation to the operator's railway operations that complies with subsection (2).

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

- (2) The emergency management plan must—
  - (a) address and include the matters that are prescribed; and
  - (b) be prepared—
    - (i) in conjunction with any of the emergency services that would be expected to attend in the event of a significant incident involving the operator's railway operations, and any other person who is prescribed; and
    - (ii) in accordance with the regulations; and
  - (c) be kept and maintained in accordance with the regulations; and
  - (d) be provided to the relevant emergency services and any other person who is prescribed; and
  - (e) be tested in accordance with the regulations.

- (3) A rail transport operator must ensure that the appropriate response measures of the emergency management plan are implemented if an emergency occurs.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
  - (b) where the offender is a natural person—\$100 000.
- (4) In this section—

*emergency services* means each of the following:

- (a) South Australia Police;
- (b) South Australian Country Fire Service;
- (c) South Australian Metropolitan Fire Service;
- (d) SA Ambulance Service Inc;
- (e) any body prescribed by the regulations for the purposes of this definition.

### **65—Health and fitness management program**

A rail transport operator must have and implement a health and fitness program for rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock that complies with the prescribed requirements relating to health and fitness programs.

Maximum penalty: \$30 000.

### **66—Alcohol and drug management program**

A rail transport operator must prepare and implement an alcohol and drug management program for rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock that complies with this Act and the regulations.

Maximum penalty: \$30 000.

### **67—Testing for presence of alcohol or drugs**

- (1) The Regulator may require a rail transport operator or a person undertaking railway operations on or in relation to the rail transport operator's rail infrastructure or rolling stock to test (including on a random basis) for the presence of alcohol or a drug, in accordance with any procedures set out in Schedule 2 or the regulations, of any person on duty for the purpose of carrying out rail safety work.
- (2) Subsection (1) does not limit any power, procedure or requirement that may be provided by Schedule 2 or the regulations with respect to testing for the presence of alcohol or a drug.

### **68—Fatigue management program**

A rail transport operator must prepare and implement a program, in accordance with the prescribed requirements, for the management of fatigue of rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock.

Maximum penalty: \$30 000.

## **69—Assessment of competence**

- (1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's rail infrastructure or rolling stock has the competence to carry out that work.  
Maximum penalty: \$30 000.
- (2) For the purposes of subsection (1), the competence of a rail safety worker to carry out rail safety work must be assessed—
  - (a) by reference to any qualification or any units of competence recognised under the regulations applicable to the rail safety work to be carried out;
  - (b) by reference to the knowledge and skills of the rail safety worker that would enable the worker to carry out the rail safety work safely.
- (3) A certificate purporting to have been issued to a rail safety worker certifying that the worker has any qualifications or units of competence recognised under subsection (2)(a) is evidence that the worker has those qualifications or units of competence.
- (4) Nothing in this section prevents a rail transport operator from requiring a rail safety worker to undertake further training before carrying out rail safety work.
- (5) A rail transport operator must maintain records in accordance with the regulations of the competence of rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock.

Maximum penalty: \$10 000.

## **70—Identification for rail safety workers**

- (1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's railway operations has a form of identification that is sufficient to enable the type of competence and training of the rail safety worker for that rail safety work to be checked by an authorised officer.  
Maximum penalty: \$5 000.
- (2) A rail safety worker who is carrying out rail safety work must, when requested by an authorised officer to do so, produce the identification provided in accordance with subsection (1) to the authorised officer.

Maximum penalty: \$750.

## **71—Duties of rail safety workers**

- (1) A rail safety worker, when carrying out rail safety work must—
  - (a) take reasonable care for his or her own safety; and
  - (b) take reasonable care for the safety of persons who may be affected by the rail safety worker's acts or omissions; and
  - (c) cooperate with the rail transport operator with respect to any action taken by the rail transport operator to comply with a requirement imposed by or under this Act or the regulations.

Maximum penalty: \$10 000.

- (2) A rail safety worker, when carrying out rail safety work, must not intentionally or recklessly interfere with or misuse anything provided to the worker by the rail transport operator—

- (a) in the interests of safety; or
- (b) under this Act or the regulations.

Maximum penalty: \$10 000.

- (3) A rail safety worker, when carrying out rail safety work, must not wilfully or recklessly place the safety of another person on or in the immediate vicinity of rail infrastructure at risk.

Maximum penalty: \$10 000.

- (4) A rail safety worker must not carry out, or attempt to carry out, rail safety work—

- (a) while there is present in his or her blood the prescribed concentration of alcohol; or
- (b) while a prescribed drug is present in his or her oral fluid or blood; or
- (c) while so much under the influence of alcohol or a drug as to be incapable of effectively discharging a function or duty of a rail safety worker.

Maximum penalty: \$5 000.

- (5) For the purposes of subsection (1)(a) or (b), in determining whether a rail safety worker failed to take reasonable care, regard must be had to what the rail safety worker knew about the relevant circumstances.
- (6) Subject to subsection (7), it is a defence to a charge of an offence against subsection (4)(b) if the defendant proves that he or she did not knowingly consume the prescribed drug present in his or her oral fluid or blood.
- (7) Subsection (6) does not apply if the defendant consumed the prescribed drug believing that he or she was consuming a substance unlawfully but was mistaken as to, unaware of, or indifferent to the identity of the prescribed drug.
- (8) For the purposes of subsection (4)(c), a person is incapable of effectively discharging a function or duty of a rail safety worker if, owing to the influence of alcohol or a drug, the use of any mental or physical faculty of that person is lost or appreciably impaired (but this subsection does not restrict in any way the operation of subsection (4)(c)).

## 72—Contractors to comply with safety management system

A person, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator must comply with the safety management system of the rail transport operator to the extent that it applies to those railway operations.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

## **Division 5—Information about rail safety etc**

### **73—Rail transport operators to provide information**

- (1) The Regulator may, by notice in writing given to a rail transport operator, require the operator to provide to the Regulator on or before a specified date and in a manner and form approved by the Regulator, any or all of the following:
  - (a) information concerning measures taken by the rail transport operator to promote rail safety;
  - (b) information concerning matters, including matters relating to the financial capacity or insurance arrangements of the rail transport operator, relating to rail safety or the accreditation of the rail safety operator that the Regulator reasonably requires;
  - (c) the information prescribed for the purposes of this subsection.
- (2) A rail transport operator must comply with a notice given to the operator under subsection (1).

Maximum penalty: \$40 000.
- (3) A rail transport operator must provide to the Regulator, in a manner and form approved by the Regulator and at the prescribed times and in respect of the prescribed periods, information prescribed by the regulations for the purposes of this subsection relating to rail safety or accreditation.

Maximum penalty: \$40 000.

## **Division 6—Investigating and reporting by rail transport operators**

### **74—Notification of certain occurrences**

- (1) A rail transport operator must report to the Regulator or another authority specified by the Regulator within the time, and in the manner, prescribed by the regulations, all notifiable occurrences that happen on, or in relation to, the rail transport operator's railway premises or railway operations.

Maximum penalty: \$50 000.
- (2) Two or more rail transport operators may make a joint report with respect to a notifiable occurrence affecting them.
- (3) In addition to the matters specified in subsection (1), the Regulator may, by notice in writing, require a rail transport operator to report to the Regulator or another authority specified by the Regulator, any other occurrence or type of occurrence which endangers or could endanger the safe operation of any railway operations.
- (4) A rail transport operator to whom a requirement under subsection (3) applies must comply with the requirement.

Maximum penalty: \$40 000.
- (5) The Rail Safety Regulator may require information in a report under this section to be verified by statutory declaration.



## 75—Investigation of notifiable occurrences

- (1) The Regulator may, by written notice to a rail transport operator, require the rail transport operator to investigate notifiable occurrences, or any other occurrences that have endangered or that may endanger the safe operation of the railway operations carried out by the rail transport operator.
- (2) The level of investigation must be determined by the severity and potential consequences of the notifiable occurrence as well as by other similar occurrences and its focus should be to determine the cause and contributing factors, rather than to apportion blame.
- (3) The rail transport operator must ensure that the investigation is conducted in a manner approved by the Regulator and within the period specified by the Regulator.  
Maximum penalty: \$50 000.
- (4) A rail transport operator who has carried out an investigation under this section must report to the Regulator on the investigation in a manner specified by the Regulator within the period specified by the Regulator.  
Maximum penalty: \$50 000.
- (5) The Regulator may, on the receipt of a written report under subsection (4)—
  - (a) provide a copy of the report, or of any part of the report, to such persons as the Regulator thinks fit;
  - (b) publish a copy of the report, or of any part of the report, in such other manner as the Regulator thinks fit,(and in so doing the Regulator may, if the Regulator thinks fit, take steps to prevent the disclosure of specific information contained in the report).
- (6) No action lies against the Regulator in relation to the provision or publication of a report, or any part of a report, under subsection (5).
- (7) The contents of any part of a report under subsection (4) are not admissible in evidence against a person in proceedings for an offence or for the imposition of a penalty insofar as that part of the report discloses information provided by the person for the purposes of the relevant investigation.
- (8) The Regulator must, in acting under subsection (5), be satisfied that his or her actions in providing or publishing the report are—
  - (a) in the public interest, including on account of issues of public safety; or
  - (b) justifiable on some other reasonable ground.

## Division 7—Audit of railway operations by Regulator

### 76—Audit of railway operations by Regulator

- (1) The Regulator—
  - (a) may audit the railway operations of a rail transport operator; and
  - (b) may prepare and implement a program (an *audit program*) for each year for inspecting the railway operations of rail transport operators; and

- (c) may, for the purposes of an audit, inspect the railway operations of a rail transport operator whether or not under an audit program.
- (2) Without limiting subsection (1)(b), an audit program may focus on 1 or more of the following:
  - (a) particular rail transport operators;
  - (b) particular criteria relating to rail transport operators;
  - (c) particular aspects of rail safety;
  - (d) particular aspects of railway operations.
- (3) The Regulator must give not less than 24 hours notice in writing to a rail transport operator before inspecting the operator's railway operations under this section.
- (4) The regulations may establish procedures for the conduct of audits under this section, including procedures to ensure the confidentiality of records.
- (5) In this section—

***rail transport operator*** includes a person, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator.

## **Part 5—Enforcement**

### **Division 1—Entry to places by authorised officers**

#### **77—Power to enter places**

- (1) An authorised officer may, as may be reasonably required in connection with the administration, operation or enforcement of this Act, enter a place if—
  - (a) the place is a public place and the entry is made when the place is open to the public; or
  - (b) the occupier of the place consents to the entry; or
  - (c) the entry to the place is authorised by a warrant under this Part; or
  - (d) the place is railway premises and the entry is made when the place is—
    - (i) open for carrying on activities by reason of which the place is railway premises; or
    - (ii) otherwise open for entry; or
    - (iii) not open as mentioned in subparagraph (i) or (ii) but the entry is urgently required to investigate the circumstances of a notifiable occurrence at any time during which railway operations are being carried out or are usually carried out; or
  - (e) the authorised officer is responding to a situation that the authorised officer reasonably believes to be an emergency.
- (2) An authorised officer who enters railway premises under subsection (1)(d) must not unnecessarily impede any activities being conducted at the premises.

#### **78—Limitation on entry powers—places used for residential purposes**

Despite anything to the contrary in this Part, the powers of an authorised officer under this Part in relation to entering a place are not exercisable in respect of any place that is used only for residential purposes except—

- (a) with the consent of the occupier of the place; or
- (b) under the authority conferred by a warrant under this Part.

#### **79—Notice of entry**

Before an authorised officer enters railway premises (not being a public place) under section 77, the authorised officer must give the occupier of the railway premises reasonable notice of the intention to enter unless—

- (a) the giving of the notice would be reasonably likely to defeat the purpose for which it is intended to enter the premises; or
- (b) entry to the premises is made with the consent of the occupier of the premises; or
- (c) entry is authorised by a warrant under this Part; or

- (d) entry is required in circumstances where the authorised officer reasonably believes there to be an immediate risk to safety, or other form of emergency.

## **Division 2—General enforcement powers**

### **80—General powers**

- (1) An authorised officer may do any of the following in connection with the administration, operation or enforcement of this Act (subject to complying with any requirement under Division 1):
  - (a) search and inspect any part of a place and any rail infrastructure, rolling stock or road vehicle or any other thing;
  - (b) enter or open, using reasonable force, rail infrastructure, rolling stock, a road vehicle or other thing to examine the structure, rolling stock, road vehicle or other thing;
  - (c) give directions with respect to the stopping or movement of any rolling stock or road vehicle;
  - (d) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers;
  - (e) test any part of rail infrastructure or rolling stock, or cause any part of rail infrastructure or rolling stock to be tested;
  - (f) inspect, film, photograph, videotape or otherwise record an image of—
    - (i) rail infrastructure or rolling stock, or a road vehicle or other thing;
    - (ii) a document or record;
  - (g) take, or authorise another person to take, for analysis, a thing, or a sample of or from a thing;
  - (h) seize anything that the authorised officer suspects on reasonable grounds is connected with an offence against this Act or the regulations or to secure any such thing against interference;
  - (i) mark, tag or otherwise identify rolling stock, a road vehicle or other thing;
  - (j) require a person to produce specified documents or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;
  - (k) take a copy of the whole or any part of any document;
  - (l) require a person to answer questions;
  - (m) take all necessary steps to allow a power conferred above to be exercised;
  - (n) exercise other prescribed powers.
- (2) A film, photograph, videotape or image taken under subsection (1)(f) of rail infrastructure, or of any part of rail infrastructure, is not inadmissible as evidence by reason only of the fact that it includes the likeness of 1 or more persons if the capturing of that likeness does not appear to have been the main reason for the taking of the film, photograph, videotape or image.

**81—Use of assistants and equipment**

- (1) An authorised officer may exercise powers under this Part with the aid of such assistants and equipment as the authorised officer considers reasonably necessary in the circumstances.
- (2) Powers that may be exercised by an authorised officer under this Part may be exercised by an assistant authorised and supervised by the authorised officer, but only if the authorised officer considers that it is reasonably necessary in the circumstances that the powers be exercised by an assistant.

**82—Use of electronic equipment**

- (1) Without limiting section 80, if—
  - (a) a thing found in or on rolling stock or a road vehicle, or at a place, is, or includes, a disk, tape or other device for the storage of information; and
  - (b) the equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other device,the authorised officer, or a person assisting the authorised officer, may operate the equipment to access the information.
- (2) An authorised officer, or a person assisting an authorised officer, must not operate or seize equipment for the purpose mentioned in this section unless the authorised officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

**83—Use of equipment to examine or process things**

- (1) Without limiting section 81, an authorised officer exercising a power under this Part may bring to, onto, or into, rolling stock, a road vehicle or a place any equipment reasonably necessary for the examination or processing of things found at, on or in the rolling stock, road vehicle or place in order to determine whether they are things that may be seized.
- (2) The authorised officer, or a person assisting the authorised officer, may operate equipment already in or on the rolling stock or road vehicle, or at the place, to carry out the examination or processing of a thing found in or on the rolling stock or road vehicle, or at the place in order to determine whether it is a thing that may be seized, if the authorised officer or person assisting believes on reasonable grounds that—
  - (a) the equipment is suitable for the examination or the processing; and
  - (b) the examination or processing can be carried out without damage to the equipment.

**84—Securing a site**

- (1) For the purpose of protecting evidence that might be relevant for compliance or investigative purposes, an authorised person may secure the perimeter of any site at a place by whatever means the authorised person considers appropriate.
- (2) A person must not, without the permission of an authorised person, enter or remain at, a site the perimeter of which is secured under this section.

Maximum penalty: \$10 000.

- (3) Subsection (2) does not apply if the person enters the site, or remains at the site—
- (a) to ensure the safety of persons; or
  - (b) to remove deceased persons or animals from the site; or
  - (c) to move a road vehicle, or the wreckage of a road vehicle, to a safe place; or
  - (d) to protect the environment from significant damage or pollution.
- (4) An authorised person must not unreasonably withhold a permission referred to in subsection (2).
- (5) In this section—
- authorised person* means—
- (a) an authorised officer; or
  - (b) a police officer (whether or not holding an appointment as an authorised officer).

### **Division 3—Offence provision and search warrants**

#### **85—Offence provision**

A person who—

- (a) without reasonable excuse, hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by Division 1 or Division 2; or
- (b) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
- (c) assaults, directly or indirectly intimidates or threatens, or attempts to intimidate or threaten, an authorised officer, or a person assisting an authorised officer; or
- (d) without reasonable excuse, refuses or fails to comply with a requirement or direction of an authorised officer under Division 2; or
- (e) when required by an authorised officer under Division 2 to answer a question, refuses or fails without reasonable excuse to answer the question to the best of the person's knowledge, information and belief,

is guilty of an offence.

Maximum penalty: \$10 000.

#### **86—Search warrant**

- (1) An authorised officer may apply to a magistrate for the issue of a search warrant in relation to particular railway premises or residential premises if the authorised officer believes on reasonable grounds that there is, or may be within the next 72 hours, in, or on, railway premises or residential premises a thing or things of a kind that may be evidence of the commission of an offence against a relevant rail safety law.

- (2) If a magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, in, or on, the railway premises or residential premises evidence of the commission of an offence against a relevant rail safety law, the magistrate may issue a search warrant authorising an authorised officer named in the warrant and any assistants the authorised officer considers necessary—
  - (a) to enter the railway premises or residential premises named or described in the warrant; and
  - (b) to search for and seize any thing in accordance with the terms of the warrant.
- (3) An application for the issue of a warrant—
  - (a) may be made either personally or by telephone; and
  - (b) must be made in accordance with any procedures prescribed by the regulations.
- (4) A search warrant authorises the authorised officer executing the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—
  - (a) the authorised officer believes, on reasonable grounds, that the thing—
    - (i) is of a kind which could have been included in a warrant issued under this section; or
    - (ii) will afford evidence about the commission of an offence against a relevant rail safety law; and
  - (b) in the case of seizure, the authorised officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence against a relevant rail safety law.

## **Division 4—Powers to support seizure**

### **87—Directions relating to seizure**

- (1) To enable a thing to be seized under this Part, an authorised officer may direct the person in control of it—
  - (a) to take it to a specified place within a specified time; and
  - (b) if necessary, to remain in control of it at the specified place for a period specified in the direction.
- (2) A direction under subsection (1)—
  - (a) must be given by signed notice in writing given to the person; or
  - (b) if for any reason it is not practicable to give a signed notice in writing to the person—may be given orally and confirmed by signed notice in writing given to the person as soon as is practicable.
- (3) A further direction may be made under this section about the thing if it is necessary and reasonable to make the further direction.

**Example—**

A further direction may be that the thing be transported during stated off-peak hours, be transported along a particular route, or be transported in a particular way.

- (4) A person given a direction under subsection (1) or (3) must comply with that direction unless the person has a reasonable excuse.

Maximum penalty: \$10 000.

- (5) Without limiting what may otherwise be a reasonable excuse under subsection (4), it is a reasonable excuse for a person in control of a thing not to comply with a direction under subsection (1) or (3) if in all the circumstances, the direction was unreasonable.

- (6) In this section—

*in control*, in relation to a thing, means having, or reasonably appearing to an authorised officer as having, authority to exercise control over the thing.

### **88—Authorised officer may direct a thing's return**

- (1) If an authorised officer has directed a person to take a thing to a specified place within a specified time under section 87(1), an authorised officer may direct the person to return the thing to the place from which it was taken.

- (2) A person given a direction under subsection (1) must comply with that direction unless the person has a reasonable excuse.

Maximum penalty: \$10 000.

### **89—Receipt for seized things**

- (1) After an authorised officer seizes a thing under this Part, the authorised officer must give a receipt for it to the person from whom the thing was seized or the owner of the thing.

- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

- (3) The receipt must describe generally the thing seized and its condition.

- (4) This section does not apply if it would be impracticable or unreasonable to expect the officer to account for the thing, given its condition, nature and value.

### **90—Access to seized thing**

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.

- (2) Subsection (1) does not apply if it is impracticable or it would be unreasonable to allow the inspection or copying.

### **91—Embargo notices**

- (1) This section applies where—

(a) an authorised officer is authorised to seize any record, device or other thing under this Part; and

(b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.



- (2) An authorised officer may issue an embargo notice under this section.
- (3) An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of an authorised officer or the Regulator.
- (4) The embargo notice must—
  - (a) contain the particulars required by the regulations; and
  - (b) list the activities that it forbids; and
  - (c) set out a copy of subsection (9).
- (5) On issuing an embargo notice, an authorised officer must—
  - (a) cause a copy of the notice to be served on the owner of the record, device or other thing; or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, affix a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person must not knowingly do anything that is forbidden by an embargo notice.  
Maximum penalty: \$10 000.
- (7) A person must not instruct or request another person to do anything that the first mentioned person knows is forbidden by an embargo notice.  
Maximum penalty: \$10 000.
- (8) It is a defence to a prosecution for an offence against subsection (6) to establish that the person charged—
  - (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it; and
  - (b) notified the authorised officer who issued the embargo notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (9) A person on whom an embargo notice has been served must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.  
Maximum penalty: \$10 000.
- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

## **Division 5—Forfeiture**

### **92—Return of seized things**

- (1) As soon as possible after an authorised officer seizes any thing (including a document) under this Part, the authorised officer must return the thing to the owner unless—
  - (a) the authorised officer considers it necessary to retain the thing because it may afford evidence in proceedings, that have been or may be commenced, for an offence against this Act or the regulations; or

- (b) the thing is forfeited to the Crown under this Act; or
  - (c) the authorised officer is otherwise authorised (by law or an order of a court) to retain, destroy or dispose of the thing.
- (2) The thing may be returned either unconditionally or on such terms and conditions as the authorised officer considers appropriate to eliminate or reduce any risks to safety.
- (3) If the authorised officer imposes terms or conditions on the return of a thing, the owner must comply with each of those terms and conditions.
- Maximum penalty: \$10 000.

### **93—Forfeiture**

- (1) A sample or thing taken for analysis or a thing seized under this Part, is forfeited to the Crown if the authorised officer who took, or arranged the taking of, the sample or thing or who seized the thing—
- (a) after making reasonable efforts, cannot return it to its owner; or
  - (b) after making reasonable inquiries, cannot find its owner; or
  - (c) considers it necessary to retain the sample or thing to prevent the commission of an offence against this Act or the regulations.
- (2) For the purposes of subsection (1), the authorised officer is not required to—
- (a) make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or
  - (b) make inquiries if it would be unreasonable to make inquiries to find the owner.
- (3) In deciding whether—
- (a) it is reasonable to make efforts or inquiries; and
  - (b) if efforts or inquiries are made, what efforts or inquiries, including the period over which they are made, are reasonable,

regard must be had to the sample's or thing's condition, nature and value.

- (4) In this section—
- owner*, in relation to a sample or a thing taken for analysis, includes the person in charge of the thing or place from which the sample or thing was taken.

### **94—Forfeiture on conviction**

If proceedings for an offence against this Act involve a thing seized under this Part and the defendant in those proceedings is convicted or found guilty of the offence, the court may—

- (a) order that the thing be forfeited to the Crown; or
- (b) authorise a person to destroy or dispose of the thing.

### **95—Dealing with forfeited sample or thing**

- (1) On forfeiture of a sample or thing to the Crown, the sample or thing becomes the Crown's property and may be dealt with by the Minister in any way the Minister considers is appropriate.

- (2) Without limiting subsection (1), the Minister may cause to be destroyed, or may dispose of, the sample or thing.
- (3) If a thing is forfeited to the Crown under section 93(1)(c), the authorised officer must notify (in writing) the owner accordingly, setting out how the owner may seek review under Part 6 of the decision to forfeit the thing, unless the authorised officer cannot find the owner despite making reasonable enquiries.

## Division 6—Directions

### 96—Authorised officers may direct certain persons to give assistance

- (1) An authorised officer may direct a rail transport operator or a rail safety worker to give the authorised officer reasonable assistance to enable the authorised officer to exercise a power under this Part.

**Example—**

When inspecting rolling stock, an authorised officer may ask the driver of the rolling stock to accompany the authorised officer or to explain how a piece of equipment is used as part of the accredited person's approved safety management system for the railway or for the operation of rolling stock on the railway.

- (2) A person given a direction under subsection (1) must comply with the direction unless the person has a reasonable excuse.

Maximum penalty: \$10 000.

- (3) In this section—

*reasonable assistance* includes—

- (a) assistance to enable the authorised officer to find and gain access to electronically stored material and information;
- (b) unloading rolling stock;
- (c) running the engine of a locomotive;
- (d) driving a train;
- (e) giving the authorised officer assistance to enter any rail infrastructure or any part of rail infrastructure or open rolling stock or any part of rolling stock.

### 97—Power to direct name and address be given

- (1) An authorised officer may direct a person to state the person's name and residential or business address if the authorised officer—
  - (a) finds the person committing an offence against a rail safety law; or
  - (b) finds the person in circumstances that lead, or has information that leads, the authorised officer reasonably to suspect the person has committed an offence against a rail safety law; or
  - (c) finds the person at railway premises and—
    - (i) reasonably believes the person is carrying out railway operations for a rail transport operator; and

- (ii) reasonably considers that it is necessary for the purposes of this Act or the regulations to know the person's name and residential or business address.
- (2) The authorised officer may also direct the person to give evidence of the correctness of the stated name or required address if the authorised officer reasonably suspects the stated name or address is false.

### **98—Failure to give name or address**

A person given a direction under section 97 must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty: \$10 000.

### **99—Power to direct production of documents**

- (1) An authorised officer may direct a person to make available for inspection by the authorised officer, or produce to the authorised officer for inspection, at a specified time and place—
  - (a) a document that is required to be kept by the person under a rail safety law; or
  - (b) a document that is prepared by the person under a rail safety law for the management of rail infrastructure or the operation of rolling stock that the authorised officer reasonably believes is necessary for the authorised officer to consider to understand or verify a document that is required to be kept under a rail safety law; or
  - (c) a document held by, or under the control of, the person relating to the carrying out of railway operations.

#### **Example—**

A safety management system may require testing of equipment as part of a scheduled maintenance program and a record of the results of the test to be kept. If an item of equipment is tested in accordance with the safety management system, the document that states the results of the test is a document prepared under the safety management system.

- (2) The authorised officer may keep the document to copy it but must return the document to the person after copying it.

### **100—Failure to produce document**

A person given a direction to make available, or produce, for inspection a document under section 99 must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty: \$10 000.

## **Division 7—Improvement notices**

### **101—Improvement notices**

- (1) An authorised officer may serve an improvement notice on a person if the authorised officer believes on reasonable grounds that the person—
  - (a) is contravening a provision of a rail safety law; or

- (b) has contravened a provision of a rail safety law and it is likely that the contravention will continue or be repeated; or
  - (c) is carrying out or has carried out railway operations that threaten safety.
- (2) The authorised officer may serve on a person an improvement notice requiring the person, within the period specified in the notice—
  - (a) to undertake remedial rail safety work or do any other thing to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention; or
  - (b) to carry out railway operations so that safety is not threatened or likely to be threatened.
- (3) The period within which a person is required by the improvement notice to comply with the notice must be at least 7 days after service of the notice.
- (4) An improvement notice must—
  - (a) state the reasons for the service of the notice; and
  - (b) in the case of an improvement notice served in respect of a contravention or likely contravention of a rail safety law, specify the provision of the rail safety law in respect of which that belief is held; and
  - (c) in the case of an improvement notice served on a person who is carrying out or has carried out railway operations that threaten safety, specify the operations in respect of which that belief is held; and
  - (d) include information about the right to a review under Part 6 of the decision to serve the notice; and
  - (e) set out the penalty for contravening the notice; and
  - (f) include a statement of the effect of section 104 (proceedings for offences not affected by improvement notices); and
  - (g) state that it is served under this section.
- (5) An improvement notice served on a person on a ground stated in subsection (1)(a) or (b)—
  - (a) may specify a method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention are to be remedied; and
  - (b) may offer the person on whom the notice has been served a choice of ways by which an alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention may be remedied; and
  - (c) may specify that a person provide the Regulator with a program of rail safety work that the person proposes to carry out to remedy the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention.
- (6) An improvement notice served on a person on the ground stated in subsection (1)(c)—
  - (a) may specify a method by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and

- (b) may offer the person on whom the notice has been served a choice of ways by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and
  - (c) may specify that the person provide the Regulator with a program of railway operations that the person proposes to carry out to remedy the threat or likely threat to the safety.
- (7) A program referred to in subsection (5)(c) or (6)(c) may include a timetable for the completion of the program of rail safety work.

### **102—Contravention of improvement notice**

- (1) A person on whom an improvement notice has been served must comply with the notice unless the person has a reasonable excuse.
- Maximum penalty:
- (a) where the offender is a body corporate—\$120 000;
  - (b) where the offender is a natural person—\$40 000.
- (2) In proceedings against a person for an offence of engaging in conduct that results in a contravention of a requirement of an improvement notice served on a ground stated in section 101(1)(a) or (b), it is a defence if the person charged establishes that—
- (a) the alleged contravention or likely contravention; or
  - (b) the matters or activities occasioning the alleged contravention or likely contravention,
- were remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.
- (3) In proceedings for an offence against a person of engaging in conduct that results in a contravention of a requirement of an improvement notice on the ground stated in section 101(1)(c), it is a defence if the person charged establishes that the threat to safety was removed within the period specified in the notice, though by a method different from that specified in the improvement notice.

### **103—Withdrawal or amendment of improvement notices**

- (1) An improvement notice served by an authorised officer—
- (a) may be withdrawn by notice served by an authorised officer on the person affected by the notice;
  - (b) may be amended by any authorised officer by notice served on the person affected by the notice.
- (2) An amendment of an improvement notice is effected by service on the person affected of a notice stating the terms of the amendment.
- (3) An amendment of an improvement notice served on a person is ineffective if it purports to deal with a contravention of a different provision of a rail safety law from that dealt with in the improvement notice as first served.
- (4) A notice of an amendment of an improvement notice must—
- (a) state the reasons for the amendment; and

- (b) include information about obtaining a review under Part 6 of the decision to amend the notice; and
- (c) state that it is served under this section.

#### **104—Proceedings for offences not affected by improvement notices**

The service, amendment or withdrawal of an improvement notice does not affect any proceedings for an offence against a rail safety law in connection with any matter in respect of which the improvement notice was served.

#### **105—Regulator to arrange for rail safety work required by improvement notice to be carried out**

- (1) If a person fails to comply with an improvement notice served on the person that requires the person to carry out rail safety work to remedy—
  - (a) the alleged contravention or likely contravention; or
  - (b) the matters or activities occasioning the alleged contravention or likely contravention,

the Regulator may arrange for that rail safety work to be carried out.

- (2) The Regulator may recover from the person served with an improvement notice referred to in subsection (1) the reasonable costs and expenses incurred by the Regulator for rail safety work carried out.

### **Division 8—Prohibition notices**

#### **106—Prohibition notice**

- (1) This section applies if an activity—
  - (a) is occurring in relation to railway operations or railway premises that involves or will involve an immediate risk to safety; or
  - (b) may occur in relation to railway operations or railway premises that, if it occurs, will involve an immediate risk to safety; or
  - (c) may occur at, on, or in the immediate vicinity of, rail infrastructure or rolling stock that, if it occurs, will involve an immediate risk to safety.
- (2) If an authorised officer believes on reasonable grounds that an activity referred to in subsection (1) is occurring or may occur, the authorised officer may serve on a person who has or appears to have control over the activity a prohibition notice prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until the authorised officer has certified in writing that the matters that give or will give rise to the risk have been remedied.
- (3) A prohibition notice has effect upon being served or, if the notice specifies a later date, on that later date.
- (4) A prohibition notice must—
  - (a) state the basis for the authorised officer's belief on which the service of the notice is based; and

- (b) specify the activity which the authorised officer believes involves or will involve the risk and the matters which give or will give rise to the risk; and
  - (c) if the authorised officer believes that the activity involves a contravention or likely contravention of a provision of a rail safety law, specify that provision and state the basis for that belief; and
  - (d) include information about the right to a review under Part 6 of the decision to serve the notice; and
  - (e) set out the penalty for contravening the notice; and
  - (f) include a statement of the effect of section 110 (proceedings for offences not affected by prohibition notices); and
  - (g) state that it is served under this section.
- (5) A prohibition notice may include directions on the measures to be taken to minimise or eliminate the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (4)(c).
- (6) A direction in a prohibition notice may—
- (a) require that measures be taken in accordance with a compliance code; or
  - (b) offer the person on whom the notice has been served a choice of ways to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (4)(c).
- (7) A prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying 1 or more of the following:
- (a) a place, or part of a place, at which the activity is not to be carried out;
  - (b) any thing that is not to be used in connection with the activity;
  - (c) any procedure that is not to be followed in connection with the activity.

### **107—Contravention of prohibition notice**

A person on whom a prohibition notice is served must comply with the notice unless the person has a reasonable excuse.

Maximum penalty:

- (a) where the offender is a body corporate—\$300 000;
- (b) where the offender is a natural person—\$100 000.

### **108—Oral direction before prohibition notice served**

- (1) If an authorised officer—
- (a) believes on reasonable grounds that an activity referred to in section 106(1) is occurring or may occur; and
  - (b) that it is not possible or reasonable to serve a prohibition notice under that section immediately,

the authorised officer may direct a person who has or appears to have control over the activity to do or not to do a stated act by telling the person—

- (c) to do or not to do the stated act; and



- (d) the reason for the authorised officer giving the direction.
- (2) A person to whom a direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.
- Maximum penalty: \$20 000.
- (3) It is a reasonable excuse if the authorised officer did not tell the person that the person commits an offence if the person does not comply with the direction.
- (4) If an authorised officer gives a direction under subsection (1) in respect of an activity but does not, within 5 days of giving the direction, serve a prohibition notice in respect of the activity, the direction ceases to have effect.

### **109—Withdrawal or amendment of prohibition notice**

- (1) A prohibition notice served by an authorised officer—
- (a) may be withdrawn by notice served by an authorised officer on the person affected by the notice;
  - (b) may be amended by notice served by an authorised officer on the person affected by the notice.
- (2) An amendment of a prohibition notice is effected by service on the person affected of a notice stating the terms of the amendment.
- (3) An amendment of a prohibition notice is ineffective if it purports to deal with a contravention of a different provision of a rail safety law from that dealt with in the prohibition notice as first served.
- (4) A notice of an amendment of a prohibition notice must—
- (a) state the reasons for the amendment; and
  - (b) include information about obtaining a review of the decision to amend the notice under Part 6; and
  - (c) state that it is served under this section.

### **110—Proceedings for offences not affected by prohibition notices**

The service, amendment or withdrawal of a prohibition notice does not affect any proceedings for an offence against a rail safety law in connection with any matter in respect of which the prohibition notice was served.

## **Division 9—Miscellaneous**

### **111—Directions may be given under more than one provision**

- (1) An authorised officer may, on the same occasion, give directions under 1 or more provisions of this Part.
- (2) Without limiting subsection (1), an authorised officer may, in the course of exercising powers under a provision of this Part, give—
- (a) further directions under the provision; or
  - (b) directions under 1 or more other provisions of this Part,
- or both.

## **112—Temporary closing of railway crossings, bridges etc**

- (1) An authorised person may close temporarily or regulate a railway crossing, bridge, subway or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to safety.
- (2) If an authorised person decides to close temporarily or regulate a railway crossing, bridge, subway or other structure the authorised person must, as soon as practicable after its closure or regulation, notify the person or authority responsible for the railway crossing, bridge, subway or other structure of its closure or regulation.
- (3) In this section—

*authorised person* means—

- (a) a person who holds a specific authority from the Regulator for the purposes of this section; or
- (b) a person who holds a specific authority issued by an accredited person for the purposes of this section in accordance with guidelines issued by the Regulator.

## **113—Restoring rail infrastructure and rolling stock etc to original condition after action taken**

If—

- (a) an authorised officer, or a person assisting an authorised officer, takes any action in the exercise or purported exercise of any power under this Part in relation to rail infrastructure or rolling stock, railway premises or a road vehicle; and
- (b) damage was caused by the unreasonable exercise of the power or by the use of force that was not authorised under this Part,

the authorised officer must take reasonable steps to return the rail infrastructure or rolling stock, railway premises or road vehicle to the condition it or they were in immediately before the action was taken.

## **114—Use of force**

A power conferred by this Part to enter any railway premises, or to do anything in or on any railway premises, may not be exercised unless the authorised officer or a person assisting an officer proposing to exercise the power, uses no more force than is reasonably necessary to effect the entry or to do the thing for which the entry is effected.

## **115—Power to use force against persons to be exercised only by police officers**

A provision in this Part that authorises a person to use reasonable force does not authorise a person who is not a police officer to use force against another person.

## **116—Protection from incrimination**

- (1) A person is not excused from complying with a direction under Division 2 or Division 6—
  - (a) to answer a question; or

- (b) to produce a document; or
- (c) to give or provide information,

on the ground that compliance with the direction may result in information being provided that might tend to incriminate the person or may make the person liable to a penalty.

- (2) However, if compliance by a natural person with a direction under Division 2 or Division 6 might tend to incriminate the person or make the person liable to a penalty—

- (a) in the case of a person who is directed to produce a document or any other thing—the fact of the production (as distinct from the contents of the document); or

(b) in any other case—the information provided in compliance with the direction, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).



## Part 6—Review of decisions

### 117—Interpretation

In this Part—

*District Court* means the Administrative and Disciplinary Division of the District Court of South Australia.

### 118—Reviewable decisions

The following table sets out—

- (a) decisions made under this Act that are reviewable in accordance with this Part (*reviewable decisions*); and
- (b) who is eligible to apply for review of a reviewable decision (the *eligible person* in relation to the reviewable decision).

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 37(4) (Regulator not acting in accordance with guidelines)	A rail transport operator who has applied for accreditation.
2	Section 38(1) (refusal to accredit or imposing conditions or restrictions on accreditation)	A rail transport operator whose application for accreditation is refused or is subject to conditions or restrictions.
3	Section 38 (extending the period for determining an application)	A rail transport operator who has applied for accreditation.
4	Section 45 (revocation or suspension of accreditation)	A rail transport operator whose accreditation is revoked or suspended.
5	Section 46(1) (immediate suspension)	A rail transport operator whose accreditation is suspended.
6	Section 46 (extension of immediate suspension)	A rail transport operator whose accreditation is suspended.
7	Section 50(1) (refusal to grant variation of accreditation or imposing a condition or restriction)	A rail transport operator whose application for variation of accreditation is refused.
8	Section 50(2) (grant of variation of accreditation subject to conditions or restrictions)	A rail transport operator whose accreditation is varied subject to a condition or restriction.
9	Section 50 (extending the period for determining an application for variation)	A rail transport operator who has applied for variation of accreditation.
10	Section 52(1) (direction to amend safety management system)	A rail transport operator given a direction to amend a safety management system.
11	Section 53(3) (refusal to grant variation of condition or restriction of accreditation)	A rail transport operator whose application for variation of a condition or restriction is refused.
12	Section 54 (variation or revocation of a condition or restriction, or imposition of a new condition or restriction)	A rail transport operator whose conditions or restrictions of accreditation are changed.

<b>Item</b>	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
13	Section 93(1)(c) (retention of sample or seized thing to prevent commission of offence)	A person who is the owner within the meaning of section 93(4) of the sample or thing.
14	Section 101(1) (decision to serve an improvement notice)	A person on whom an improvement notice is served.
15	Section 103(1) (decision to amend improvement notice)	A person on whom a notice of amendment of an improvement notice is served.
16	Section 106(2) (decision to serve a prohibition notice)	A person on whom a prohibition notice is served.
17	Section 109(1) (decision to amend a prohibition notice)	A person on whom a notice of amendment of a prohibition notice is served.

### **119—Review by Regulator**

- (1) An eligible person—
  - (a) in relation to a reviewable decision made by the Regulator may, within 28 days after the decision was made, apply to the Regulator for a review of the decision;
  - (b) in relation to a reviewable decision, other than a decision made by the Regulator, may apply to the Regulator for review of the decision within—
    - (i) 28 days after the day on which the decision first came to the eligible person's notice; or
    - (ii) such longer period as the Regulator allows.
- (2) The application must be in the form approved (in writing) by the Regulator.
- (3) If an application is made to the Regulator in accordance with this section, the Regulator must make a decision—
  - (a) to affirm or vary the reviewable decision; or
  - (b) to set aside the reviewable decision and substitute another decision that the Regulator considers appropriate.
- (4) The Regulator must give a written notice to the applicant setting out—
  - (a) the Regulator's decision under subsection (3) and the reasons for the decision; and
  - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based,and must do so within 14 days after the application is made or, if the reviewable decision was made under section 101, 106 or 109, within 7 days after the application is made.
- (5) If the Regulator has not notified an applicant of a decision in accordance with subsection (4), the Regulator is taken to have made a decision to affirm the reviewable decision.

- (6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Regulator, on the Regulator's own initiative or on the application of the applicant for review, stays the operation of the decision (not being an immediate suspension of accreditation or a prohibition notice) pending the determination of the review.
- (7) The Regulator must make a decision on an application for a stay by the end of the next business day following the day on which the application is made.
- (8) If the Regulator has not made a decision in accordance with subsection (7), the Regulator is taken to have made a decision to grant a stay.
- (9) The Regulator may attach any conditions to a stay of the operation of a reviewable decision that the Regulator considers appropriate.

### **120—Application to District Court**

- (1) A person may appeal to the District Court against—
  - (a) a reviewable decision made by the Regulator; or
  - (b) a decision made, or taken to have been made, by the Regulator under section 119 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision),if the person is an eligible person in relation to the reviewable decision.
- (2) An appeal must be instituted within 28 days of the making of the decision appealed against.





## Part 7—Inquiries

### 121—Appointment of investigator

- (1) If an accident or other incident on, involving or associated with a railway causes or results in a person's death, serious personal injury, or major property damage, the Regulator may, on his or her own initiative or at the request of a rail transport operator, and must at the request of the Minister, appoint an independent investigator or investigators to inquire into and report on the accident or incident under this Part.
- (2) The Regulator may also appoint an independent investigator or investigators to inquire into and report on under this Part any other accident or incident.
- (3) The Regulator must, before making an appointment under subsection (1) or (2), consult with the Minister and any relevant rail transport operator about—
  - (a) the person to be appointed as the investigator; and
  - (b) the matter or matters to be inquired into by the investigator; and
  - (c) reporting arrangements once the inquiry is completed.
- (4) An investigator will be appointed on terms and conditions agreed between the Regulator and the investigator.

### 122—Procedures and powers of an investigator

- (1) In conducting an inquiry under this Part, an investigator—
  - (a) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues; and
  - (b) is not bound by the rules of evidence, but may inform himself or herself on a matter as the investigator thinks fit.
- (2) An investigator may, for the purposes of an inquiry under this Part—
  - (a) by summons signed by the investigator, require the attendance of any person, or require the production of any document, object or material; and
  - (b) require a person to answer relevant questions; and
  - (c) require a person to make an oath or affirmation to answer questions put by the investigator; and
  - (d) exercise any power of an authorised officer under this Act.
- (3) If a person—
  - (a) who has been served with a summons fails without reasonable excuse to attend in obedience to the summons; or
  - (b) who has been served with a summons to produce a document, object or material, fails without reasonable excuse to comply with the summons; or
  - (c) refuses to answer a relevant question when required to do so under this section; or
  - (d) refuses to be sworn or to affirm; or

- (e) without reasonable excuse, hinders or obstructs an investigator in the exercise of powers under this section, or fails to obey any other requirement or direction given by an investigator,
- the person is guilty of an offence.
- Maximum penalty: \$20 000.
- (4) It is not an excuse for a person to refuse or fail to answer a question or to produce, or provide a copy of, a document or information as required under this section on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.
- (5) However, if compliance by a person with a requirement to answer a question or to produce, or provide a copy of, a document or information might tend to incriminate the person or make the person liable to a penalty, then—
- (a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or
- (b) in any other case—the answer given in compliance with the requirement, is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).
- (6) A person is not obliged under this section to provide information that is privileged on the ground of legal professional privilege.
- (7) If a document, object or material is produced or found by an investigator, the investigator may—
- (a) inspect it;
- (b) make copies of, photograph or take extracts from, or test, it;
- (c) take possession of it, and keep it while it is necessary for the inquiry.
- (8) Except as provided by this section, an inquiry under this Part may be conducted in a manner determined by the investigator.
- (9) An investigator may appoint a person or persons to assist him or her in an inquiry under this Part.

### **123—Report**

- (1) An investigator must prepare a written report at the conclusion of an inquiry.
- (2) The report may contain recommendations, refer to safety actions and include or address such other matters as the investigator considers relevant.
- (3) The investigator must furnish copies of the report to the Regulator.
- (4) The Regulator must, on receipt of the report, forward a copy to the Minister (with such comments or advice as the Regulator thinks fit).
- (5) The Minister or the Regulator may—
- (a) provide a copy of the report, or of any part of the report, to such persons as the Minister or the Regulator thinks fit;

- (b) publish a copy of the report, or of any part of the report, in such manner as the Minister or the Regulator thinks fit.
- (6) Without limiting the operation of subsection (5), the Regulator must, within 28 days of receiving a report under subsection (3), ensure that a copy of the report is available for public inspection, without charge, during normal office hours at a place determined by the Regulator.
- (7) The Minister or the Regulator may, before providing or publishing a report under this section, take steps to prevent the disclosure of specific information contained in the report if he or she believes that it is necessary or appropriate to do so—
  - (a) in order to avoid prejudicing any proceedings before a court or tribunal constituted by law; or
  - (b) in the public interest; or
  - (c) on some other reasonable ground.

#### **124—Related matters**

- (1) An inquiry under this Part may start or continue, and a report may be prepared or given, despite proceedings before a court or tribunal constituted by law, unless a court or tribunal with the necessary jurisdiction orders otherwise.
- (2) No action lies against—
  - (a) the investigator; or
  - (b) the Minister, the Regulator or an authorised officer; or
  - (c) a person who has provided evidence, or any document, object or material, to the investigator for the purposes of an inquiry under this Part,

in relation to the provision or publication of a report, or any part of a report, under this Part.



## **Part 8—General liability and evidentiary provisions**

### **Division 1—General**

#### **125—Period within which proceedings for offences may be commenced**

- (1) This section applies to an offence against a rail safety law, other than—
  - (a) an offence prescribed by the regulations for the purposes of this section;
  - (b) an offence in respect of which proceedings may only be commenced within a period of less than 2 years after its alleged commission.
- (2) Despite anything to the contrary in any other Act, proceedings for an offence against a rail safety law to which this section applies may be commenced within—
  - (a) the period of 2 years after the commission of the alleged offence; or
  - (b) a further period of 1 year commencing on the day on which the Regulator, an authorised officer or a police officer first obtained evidence of the commission of the alleged offence considered reasonably sufficient by the Regulator or officer to warrant commencement proceedings.
- (3) For the purposes of subsection (2), a certificate purporting to have been issued by the Regulator, an authorised officer or a police officer as to the date when the Regulator or officer first obtained evidence considered reasonably sufficient by the Regulator or officer to warrant commencing proceedings is admissible in any proceedings and is evidence of the matters stated.

#### **126—Authority to take proceedings**

- (1) Any legal proceedings to recover any charge, fee or money due under this Act or the regulations may be taken only by the Minister or the Regulator, or by a person authorised by the Minister or the Regulator for the purpose, either generally or in any particular case.
- (2) Any legal proceedings for an offence against this Act or the regulations may be taken only by the Minister or the Regulator, or by a person authorised by the Minister or the Regulator for the purpose, either generally or in any particular case.
- (3) In any proceedings referred to in this section, the production of an authority or consent purporting to be signed by the Minister or the Regulator is to be evidence of the authority or consent without proof of the signature of the Minister or the Regulator.
- (4) The Minister or the Regulator may, for the purposes of this section, authorise any person who is a member of a specified class of persons to take the actions referred to in this section.

#### **127—Vicarious responsibility**

- (1) If, in any proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—
  - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

- (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence against a rail safety law, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a person other than the body corporate (the *employer*) in relation to particular conduct, it is sufficient to show—
- (a) that the conduct was engaged in by an employee or agent of the employer within the scope of his or her actual or apparent authority; and
- (b) that the employee or agent had the relevant state of mind.
- (4) For the purposes of a prosecution for an offence against a rail safety law, conduct engaged in on behalf of a person other than a body corporate (the *employer*) by an employee or agent of the employer within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) In this section—
- director* of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction;
- state of mind* of a person includes—
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

## **128—Records and evidence from records**

- (1) The Regulator must keep records of the grant, refusal, variation, suspension, surrender and revocation of accreditations, and of any conditions or restrictions of accreditations, and of improvement notices and prohibition notices, under this Act.
- (2) A certificate purporting to be signed by the Regulator and certifying that—
- (a) on a date specified in the certificate; or
- (b) during any period so specified,
- the particulars set out in the certificate as to any matter required to be recorded under this section did or did not appear on or from the records is, for the purposes of any legal proceedings, evidence of what it certifies.
- (3) Such a certificate is admissible in any proceedings—
- (a) without proof of the signature of the Regulator; and
- (b) without production of any record or document on which the certificate is founded.

### **129—Certificate evidence**

A statement in a certificate purporting to be issued by the Regulator, a corresponding Rail Safety Regulator, an authorised officer or a police officer as to any matter that appears in, or can be calculated from, records kept or accessed by the Regulator is admissible in any proceedings and is evidence of the matter.

### **130—Proof of appointments and signatures unnecessary**

- (1) For the purposes of this Act and the regulations, it is not necessary to prove the appointment of an office holder.
- (2) For the purposes of this Act, a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.
- (3) In this section—

*office holder* means—

- (a) the Regulator;
- (b) a corresponding Rail Safety Regulator;
- (c) the Commissioner of Police;
- (d) the head of the police force or police service of any other jurisdiction;
- (e) an authorised officer;
- (f) a rail safety officer of another jurisdiction;
- (g) a police officer;
- (h) a police officer of another jurisdiction.

### **131—Multiple offences**

Despite anything to the contrary in this or any other law, a person may be punished for more than 1 breach of a requirement of this Act or the regulations if the breaches relate to different parts of the same rail infrastructure, railway premises or rolling stock.

### **132—Offences by bodies corporate and employees**

- (1) If a body corporate is guilty of an offence against a rail safety law, each director of the body corporate, and each person concerned in the management of the body corporate, is guilty of an offence and liable to the same penalty as is prescribed for the principal offence where the offender is a natural person.
- (2) It is a defence to a charge for an offence arising under subsection (1) if the defendant establishes that the defendant took reasonable precautions and exercised due diligence to prevent the commission of an offence by the body corporate.
- (3) If an employee is guilty of an offence against a rail safety law, the employer is liable to the same penalty as is prescribed for the principal offence.
- (4) It is a defence to a charge for an offence arising under subsection (3) if the defendant establishes that—
  - (a) the defendant had no knowledge of the actual offence; or

- (b) the defendant took reasonable precautions and exercised due diligence to prevent the commission of an offence by the employee.
- (5) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.
- (6) In this section—  
*volunteer* means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

## **Division 2—Discrimination against employees**

### **133—Dismissal or other victimisation of employee**

- (1) This section applies to—
  - (a) an employer who dismisses an employee, injures an employee in the employment of the employer or alters the position of an employee to the employee's detriment; and
  - (b) an employer who threatens to do any of those things to an employee; and
  - (c) an employer or prospective employer who refuses or fails to offer employment to a prospective employee, or treats a prospective employee less favourably than another prospective employee would be treated in offering terms of employment.
- (2) The employer or prospective employer is guilty of an offence if the employer or prospective employer engaged in that conduct because the employee or prospective employee (as the case may be)—
  - (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian rail safety law; or
  - (b) has made a complaint about a breach or alleged breach of an Australian rail safety law to the employer, a fellow employee, a registered association or a public authority or official; or
  - (c) assists or has assisted, or gives or has given any information to, a public agency in respect of a breach or alleged breach of an Australian rail safety law; or
  - (d) has made a complaint about a breach or alleged breach of an Australian rail safety law to a former employer, a former fellow employee, a registered association or a public authority or official.

Maximum penalty: \$20 000.

- (3) An employer or prospective employer may be guilty of an offence against subsection (2) only if the reason mentioned in subsection (2)(a), (b), (c) or (d) is the dominant reason why the employer or prospective employer engaged in the conduct.
- (4) In proceedings for an offence against subsection (2), if all the facts constituting the offence other than the reason for the defendant's conduct are proved, the defendant bears the onus of proving that the reason alleged in the charge was not the dominant reason why the defendant engaged in the conduct.



- (5) If an employer or prospective employer is convicted or found guilty of an offence against this section, the court may (in addition to imposing a penalty) make either or both of the following orders:
- (a) an order that the offender pay (within a specified period) such damages to the employee or prospective employee against whom the offender discriminated as the court considers appropriate to compensate him or her;
  - (b) an order that—
    - (i) the employee be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
    - (ii) the prospective employee be employed in the position for which he or she had applied or a similar position.
- (6) In this section—
- employee* includes a natural person who works under a contract for service;
- public authority* includes an Australian Rail Safety Regulator, or a rail safety officer or police officer and a police officer of another jurisdiction.

### **Division 3—False or misleading information**

#### **134—False or misleading information provided to Regulator or officials**

- (1) A person commits an offence if—
- (a) the person makes a statement to the Regulator or to an official who is exercising a power under a rail safety law; and
  - (b) the person knows that the statement is false or misleading in a material particular.
- (2) A person commits an offence if—
- (a) the person makes a statement to the Regulator or to an official who is exercising a power under a rail safety law; and
  - (b) the statement is false or misleading in a material particular; and
  - (c) the person is reckless as to whether the statement is false or misleading in a material particular.
- (3) A person commits an offence if—
- (a) the person gives a document to the Regulator or to an official who is exercising a power under a rail safety law; and
  - (b) the document is false or misleading in a material particular; and
  - (c) the person is reckless as to whether the document is false or misleading in a material particular.
- (4) The penalty for an offence under this section committed in relation to the Regulator or official exercising a power under a rail safety law is—
- (a) if there is 1 offence under the provision of the rail safety law under which the power is exercised—the penalty for that offence; or

- (b) if there is more than 1 offence under that provision—the penalties for those offences if the penalties are the same, or the lower or lowest of the penalties if they are different; or
  - (c) if there is no offence under that provision—a penalty of \$10 000.
- (5) In this section—  
*official* means an authorised officer or a person assisting an authorised officer.

## **Division 4—Other offences**

### **135—Offence to impersonate authorised officer**

A person who is not an authorised officer must not, in any way, hold himself or herself out to be an authorised officer.

Maximum penalty: \$5 000.

### **136—Not to interfere with train, tram etc**

- (1) A person must not, without either the permission of an authorised person or reasonable excuse—
- (a) move or attempt to move;
  - (b) interfere or attempt to interfere with;
  - (c) disable, or attempt to disable;
  - (d) operate or attempt to operate,

any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator.

Maximum penalty: \$20 000.

- (2) In this section—  
*authorised person* means the rail transport operator, an authorised officer or a police officer.

### **137—Applying brake or emergency device**

A person must not, without reasonable excuse—

- (a) apply any brake or make use of any emergency device fitted to a train or tram; or
- (b) make use of any emergency device on railway premises.

Maximum penalty: \$5 000.

#### **Example—**

Emergency devices include an emergency button on a station communication board or on an escalator.

### **138—Stopping a train or tram**

A person must not, without reasonable excuse, cause or attempt to cause a train or tram in motion to be stopped.

Maximum penalty: \$5 000.

## **Division 5—Court-based sanctions**

### **139—Daily penalty for continuing offences**

- (1) If an offence is committed by a person by reason of a contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) A person convicted of such an offence is liable, in addition to the penalty otherwise prescribed for the offence, to a daily penalty not exceeding one fifth of the maximum penalty prescribed for the offence for each day or part of a day during which the offence continues after conviction.

### **140—Commercial benefits order**

- (1) The court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Regulator, make an order under this section.
- (2) The court may make a commercial benefits order requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that—
  - (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and
  - (b) in the case of a journey that was interrupted or not commenced because of action taken by an authorised officer in connection with the commission of the offence, would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.
- (3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account—
  - (a) benefits of any kind, whether monetary or otherwise; and
  - (b) monetary savings or a reduction in any operating or capital expenditure of any kind achieved because of the commission of the offence; and
  - (c) any other matters that it considers relevant, including (for example)—
    - (i) the value per tonne or per kilometre of the carriage of the goods involved in the offence as freight; and
    - (ii) the distance over which any such goods were or were to be carried.
- (4) However, in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.
- (5) Nothing in this section prevents the court from ordering payment of an amount that is—
  - (a) less than 3 times the estimated gross commercial benefit; or

- (b) less than the estimated gross commercial benefit.
- (6) For the purposes of this section, a person is an associate of another if—
  - (a) 1 is a spouse, domestic partner, parent, brother, sister or child of the other; or
  - (b) they are members of the same household; or
  - (c) they are partners; or
  - (d) they are both trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
  - (e) 1 is a body corporate and the other is a director or member of the governing body of the body corporate; or
  - (f) 1 is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
  - (g) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth; or
  - (h) a chain of relationships can be traced between them under any 1 or more of the above paragraphs.
- (7) For the purposes of subsection (6), a beneficiary of a trust includes an object of a trust.

#### **141—Supervisory intervention order**

- (1) The court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Regulator, if the court considers the person to be a systematic or persistent offender against the Australian rail safety laws, make an order under this section.
- (2) The court may make a supervisory intervention order requiring the person (at the person's own expense and for a specified period not exceeding 1 year) to do all or any of the following:
  - (a) to do specified things that the court considers will improve the person's compliance with rail safety laws or specified aspects of rail safety laws, including (for example) the following:
    - (i) appointing or removing staff to or from particular activities or positions;
    - (ii) training and supervising staff;
    - (iii) obtaining expert advice as to maintaining appropriate compliance;
    - (iv) installing monitoring, compliance, managerial or operational equipment;
    - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
  - (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Regulator or a person nominated by the Regulator;
  - (c) to furnish compliance reports to the Regulator or the court or both as specified in the order;

- (d) to appoint a person to have responsibilities—
  - (i) to assist the person in improving compliance with rail safety laws or specified aspects of rail safety laws; and
  - (ii) to monitor the person's performance in complying with rail safety laws or specified aspects of rail safety laws and in complying with the requirements of the order; and
  - (iii) to furnish compliance reports to the Regulator or the court or both as specified in the order.
- (3) The court may specify matters that are to be dealt with in compliance reports and the form and manner in which, and frequency with which, compliance reports are to be prepared and furnished.
- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form and manner in which, and frequency with which, they are to be made public.
- (5) The court may only make a supervisory order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with the rail safety laws, having regard to—
  - (a) the offences against Australian rail safety laws of which the person has been previously found guilty; and
  - (b) the offences against Australian rail safety laws for which the person has been proceeded against by way of unwithdrawn expiation notices or infringement notices; and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.
- (6) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of—
  - (a) the Regulator; or
  - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
- (8) A person who is subject to a requirement of a supervisory intervention order must not engage in conduct that results in contravention of the requirement.  
Maximum penalty: \$40 000.
- (9) In this section—

**compliance report**, in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to—

- (a) the performance of the person in complying with—
  - (i) the rail safety laws or aspects of rail safety laws specified in the order; and

- (ii) the requirements of the order; and
- (b) without limiting the above—
  - (i) things done by the person to ensure that any failure by the person to comply with the rail safety laws or the specified aspects of the rail safety laws does not continue; and
  - (ii) the results of those things having been done.

## **142—Exclusion orders**

- (1) The court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Regulator, if the court considers the person to be a systematic or persistent offender against the Australian rail safety laws, make an order under this section.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences against Australian rail safety laws, the court may, if it considers it appropriate to do so, make an exclusion order prohibiting the person, for a specified period, from—
  - (a) managing rail infrastructure, or operating rolling stock, or managing or operating a particular type of rail infrastructure or rolling stock; or
  - (b) being a director, secretary or officer concerned in the management of a body corporate involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction; or
  - (c) being involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction except by driving a train or rolling stock.
- (3) The court may only make an order under this section if it is satisfied that the person should not continue the things the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to—
  - (a) the offences against the Australian rail safety laws of which the person has previously been found guilty; and
  - (b) the offences against the Australian rail safety laws for which the person has been proceeded against by way of unwithdrawn expiation notices or infringement notices; and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.
- (4) A court that has power to make an exclusion order may revoke or amend an exclusion order on the application of—
  - (a) the Regulator; or
  - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
- (5) A person who is subject to an exclusion order must not engage in conduct that results in a contravention of the order.

Maximum penalty: \$40 000.

## Part 9—Miscellaneous

### Division 1—Management of rail corridors, crossings and public works

#### 143—Installation of control devices

- (1) The following provisions apply in relation to level crossings:
  - (a) a rail transport operator may, with the consent of the Minister or must, at the direction of the Minister, install and operate traffic control devices in connection with the operation of a railway;
  - (b) a rail transport operator must, at the direction of the Minister, install and operate other devices or systems that control or prevent members of the public from gaining access to, or crossing, railway premises, while rolling stock is approaching or passing the relevant place;
  - (c) a rail transport operator must, at the direction of the Minister, remove or alter any device or system of a kind referred to in paragraph (a) or (b).
- (2) A rail transport operator who fails to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty:

- (a) where the offender is a body corporate—\$75 000;
  - (b) where the offender is a natural person—\$25 000.
- (3) This section—
    - (a) does not limit any requirement that may be imposed under Part 4 Division 2 or Division 4; and
    - (b) applies in addition to any requirement that may be imposed under Part 2 Division 2 of the *Road Traffic Act 1961*.

- (4) In this section—

*traffic control device* has the same meaning as in the *Road Traffic Act 1961*.

#### 144—Power to require works to stop

- (1) A person (other than a rail transport operator) must not, without the approval of the Regulator or the relevant rail infrastructure manager, carry out works near a railway if the works threaten, or are likely to threaten—
  - (a) the safety of the railway; or
  - (b) the operational integrity of the railway.

Maximum penalty: \$50 000.

- (2) If—
  - (a) a person is carrying out, or proposes to carry out, works near a railway; and
  - (b) the Regulator believes on reasonable grounds that the works threaten, or are likely to threaten—
    - (i) the safety of the railway; or

- (ii) the operational integrity of the railway,
- the Regulator may give the person a written direction to stop, alter or not to commence the work.
- (3) A person who is given a direction under subsection (2) must comply with the direction unless the person has a reasonable excuse.  
Maximum penalty: \$50 000.
- (4) If a person carries out work in contravention of subsection (1) or a direction under subsection (2), the Regulator may, by notice in writing, require a person who has the care, control or management of the land where the works are situated to alter, demolish or take away the works within a reasonable time specified in the notice.
- (5) A person who is given a notice under subsection (4) must comply with the requirement unless the person has a reasonable excuse.  
Maximum penalty: \$50 000.
- (6) If a person fails to comply with a notice under subsection (4), the Regulator may arrange for any act required by the notice to be carried out.
- (7) The Regulator may recover from a person served with a notice under subsection (4) the reasonable costs and expenses incurred by the Regulator in acting under subsection (6).
- (8) For the purposes of this section, an authorised officer, or a person who holds a specific authority from the Regulator, may enter land and inspect works, and carry out any works to be undertaken under subsection (6)—
- (a) after giving 3 days notice in writing to an owner or occupier of the land; or
  - (b) with the written agreement of an owner or occupier of the land; or
  - (c) without notice or agreement, if the Regulator reasonably believes there is an immediate and significant threat to—
    - (i) the safety of a railway; or
    - (ii) the operational integrity of a railway.

## **Division 2—Confidentiality**

### **145—Confidentiality**

- (1) This section applies to a person engaged or previously engaged in the administration of this Act and (without limiting the foregoing) to—
- (a) an authorised officer or a person assisting an authorised officer;
  - (b) a person authorised by the Regulator or an authorised officer under a provision of this Act to do the act or thing provided for in that provision;
  - (c) a person who is or was a delegate of the Regulator;
  - (d) a person who is or was employed by, or engaged to provide services to or on behalf of, the Regulator;
  - (e) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Regulator.



- (2) A person to whom this section applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of this Act except—
- (a) as required or authorised by or under this or any other Act; or
  - (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
  - (c) in connection with the administration of rail safety laws and corresponding rail safety laws; or
  - (d) for law enforcement purposes, rail safety inquiries or public safety; or
  - (e) to a court or in connection with any legal proceedings; or
  - (f) in accordance with the regulations.

Maximum penalty: \$10 000.

- (3) Nothing in this section prevents information being used to enable an Australian Rail Safety Regulator to accumulate aggregate data and to enable the Australian Rail Safety Regulator to authorise use of the aggregate data for the purposes of research or education.

### **Division 3—Civil liability**

#### **146—Civil liability not affected by Part 4 Division 1 or 4**

- (1) Nothing in Part 4 Division 1 or Division 4 is to be construed—
- (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provisions of that Division; or
  - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.
- (2) Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the regulations is actionable.

#### **147—Exclusion from liability**

- (1) No liability (including, for example, liability in negligence or for breach of statutory duty or defamation) attaches to the Minister, the Regulator, an investigator, an authorised officer or any other person acting in the administration of this Act for an honest act or omission in the performance or exercise, or purported performance or exercise, of a function or power under this Act.
- (2) No act or omission referred to in subsection (1) gives rise to a civil liability against the Crown or an agency of the Crown.

#### **148—Immunity for reporting unfit rail safety worker**

- (1) No action may be taken against a person to whom this section applies who, in good faith, reports to—
- (a) the Regulator; or
  - (b) a rail transport operator; or

- (c) any other person who is employed or engaged by the Regulator or a rail transport operator,
- any information which discloses that a person is unfit to carry out rail safety work or certain types of rail safety work or that it may be dangerous to allow that person to carry out rail safety work or certain types of rail safety work.
- (2) No action may be taken against a person to whom this section applies who, in good faith, reports—
- (a) the results of a test or examination carried out under this Act or the regulations; or
  - (b) an opinion formed by that person as a result of conducting such a test or examination,
- to a person referred to in subsection (1)(a), (b) or (c).
- (3) In this section—
- person to whom this section applies* means—
- (a) a medical practitioner; or
  - (b) a person registered under the *Health Practitioner Regulation National Law* to practise in the nursing and midwifery profession as a nurse (other than as a student); or
  - (c) a person registered under the *Health Practitioner Regulation National Law* to practise in the optometry profession (other than as a student); or
  - (d) a person registered under the *Health Practitioner Regulation National Law* to practise in the physiotherapy profession (other than as a student); or
  - (e) a person brought within the ambit of this definition by the regulations.

## **Division 4—Compliance codes and guidelines**

### **149—Compliance codes and guidelines**

- (1) For the purpose of providing practical guidance to persons who have duties or obligations under this Act or the regulations, the Minister may make an order—
- (a) approving a compliance code; or
  - (b) approving guidelines.
- (2) The Minister may make an order approving the variation of a compliance code or guidelines or revoking the approval of a compliance code or guidelines.
- (3) An order approving a compliance code or guidelines, or a variation or revocation order, takes effect when notice of it is published in the Gazette or on such later date as is specified in the order.
- (4) As soon as practicable after making an order approving a compliance code or guidelines, or a variation or revocation order, the Minister must ensure that notice of the making of the order is published in the Gazette.
- (5) The Minister must ensure that a copy of—
- (a) each compliance code that is currently approved; and

- (b) guidelines that are currently approved,  
is or are available for inspection by members of the public without charge at the office of the Regulator during normal business hours.
- (6) A failure to comply with a compliance code or guidelines does not give rise to any civil or criminal liability.
- (7) If—
- (a) a compliance code makes provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
  - (b) a person complies with the compliance code to the extent that it makes that provision,
- the person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.
- (8) A compliance code or variation of a compliance code must be laid before both Houses of Parliament within 14 days of notice of its approval is published in the Gazette if Parliament is in session or, if Parliament is not then in session, within 14 days after the commencement of the next session of Parliament.
- (9) If either House of Parliament passes a resolution disallowing an approved compliance code or the variation of a compliance code, then the compliance code or the variation ceases to have effect.
- (10) A resolution is not effective for the purposes of subsection (9) unless passed in pursuance of a notice of motion given within 14 sitting days (which need not fall in the same session of Parliament) after the day on which the compliance code or variation (as the case may be) was laid before the House.

## **Division 5—Other matters**

### **150—Recovery of certain costs**

The Regulator may recover as a debt from a rail transport operator the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an inspection of an accredited person under Part 4 Division 7.

### **151—Recovery of amounts due**

Every fee, charge or other amount of money payable under this Act or the regulations may be recovered by the Minister as a debt due to the Crown in a court of competent jurisdiction.

### **152—Compliance with conditions of accreditation**

If—

- (a) a condition or restriction to which the accreditation of a person is subject makes provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
- (b) the accredited person complies with the condition or restriction to the extent that it makes that provision,

the accredited person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

### 153—Prescribed persons

A person prescribed by the regulations for the purposes of this section must give notice in the prescribed form and within a prescribed period to a rail transport operator of the commencement, or discontinuation, or completion of prescribed operations or activities that may adversely affect the safety of any rail infrastructure or rolling stock of a rail transport operator.

Maximum penalty: \$10 000.

### 154—Powers of authorised persons

- (1) An authorised person may give directions to the drivers of motor vehicles and other persons that may be necessary or desirable—

- (a) for the safe operation of any rail infrastructure or rolling stock; or
- (b) to deal with an emergency.

- (2) A person who fails to comply with a direction under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

- (3) An authorised person acting under this section must comply with any guidelines issued by the Regulator and it will be a defence to a prosecution under subsection (2) to prove that the guidelines were not complied with in a particular case.

- (4) In this section—

*authorised person* means—

- (a) a person authorised by the Regulator to exercise the powers of an authorised person under this section; or
- (b) a person authorised by a rail transport operator, in accordance with any guidelines issued by the Regulator, to exercise the powers of an authorised person under this section.

### 155—Contracting out prohibited

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Act or of any provision of this Act is void to the extent that it would otherwise have effect.

### 156—Enforceable voluntary undertaking

- (1) The Regulator may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.

- (2) The person may withdraw or vary the undertaking at any time but only with the Regulator's written consent.

- (3) Neither the Regulator nor an authorised officer may bring proceedings for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which the undertaking relates.

- (4) If the Regulator considers that a person has contravened an undertaking accepted by the Regulator, the Regulator may apply to the Magistrates Court for enforcement of the undertaking.
- (5) If the Magistrates Court is satisfied that the person has contravened the undertaking, it may make—
  - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking; or
  - (b) any other order that it considers appropriate.
- (6) A person must not fail to comply with an order under subsection (5).  
Maximum penalty: \$20 000.

### **157—Classification of offences**

The offences constituted by this Act are summary offences.

### **158—Regulations**

- (1) The Governor may make regulations as contemplated by this Act, or as necessary or expedient for the purposes of this Act, including regulations that make provision for or in relation to any of the matters specified in Schedule 1.
- (2) The regulations may—
  - (a) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
  - (b) be of general or limited application; and
  - (c) make different provision according to the persons, things or circumstances to which they are expressed to apply; and
  - (d) provide that a specified provision of this Act does not apply, or applies with prescribed variations, in a circumstance or situation (or circumstance or situation of a prescribed class) specified by the regulations, subject to any condition to which the regulations are expressed to be subject; and
  - (e) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Regulator or another prescribed authority; and
  - (f) in relation to fees, prescribe differential fees or provide for fees to be determined according to prescribed factors.
- (3) Where the regulations refer to or incorporate a code, standard or other document prepared or published by a prescribed body—
  - (a) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations; and

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- (b) in legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document; and
- (c) the code, standard or other document has effect as if it were a regulation made under this Act.

## Schedule 1—Regulations

- 1 Accreditations under this Act, including—
  - (a) requirements, standards, qualifications or conditions that must be satisfied; and
  - (b) requirements as to the terms, conditions, restrictions or particulars applying under or with respect to them; and
  - (c) other matters relating to their award, refusal, variation, suspension, cancellation or surrender.
- 2 A scheme for certificates of competency (or provisional certificates of competency) for persons employed or engaged in railway safety work, and for the duration, variation, suspension or cancellation of those certificates.
- 3 The prohibition of the carrying on of railway safety work or other prescribed activity except by or under the supervision of a person—
  - (a) who holds an appropriate certificate of competency; or
  - (b) who has prescribed qualifications, training or experience.
- 4 Safety standards or other requirements that must be complied with—
  - (a) in connection with the construction, maintenance or operation of a railway; or
  - (b) in connection with the performance of any work or activity; or
  - (c) in relation to any rail infrastructure, rolling stock, trains, system, devices, appliance or equipment; or
  - (d) in relation to sidings.
- 5 The safeguarding, siting, installing, testing, altering, maintaining or removal of any rail infrastructure, rolling stock, system, device, appliance or equipment.
- 6 The records and documents to be kept by any person, the manner of keeping those records and documents, and their inspection.
- 7 The furnishing of returns and other information, verified as prescribed.
- 8 The registration of plans and other documents required under this Act.
- 9 The recording, investigation and reporting of accidents and incidents.
- 10 The health, fitness and functions of railway employees.
- 11 The regulation of the conduct of passengers and other persons on railways, or on land or premises associated with a railway.
- 12 Trespass on, or entry to, railways, or on land, premises, infrastructure or rolling stock associated with a railway.
- 13 The regulation or prohibition of the carriage of goods, freight or animals on railways.
- 14 The unauthorised use of railways or rolling stock.
- 15 The display of signs and notices.
- 16 The opening and closing of railway gates.
- 17 The regulation of vehicles, animals and pedestrians crossing railways.
- 18 The regulation of crossings.

- 19 The loading, unloading or transportation of freight.
- 20 The identification of rolling stock, rail infrastructure, devices, appliances, equipment or freight.
- 21 Causing damage to, or interfering with or removing, rolling stock, rail infrastructure, devices, appliances, equipment or freight.
- 22 Procedures associated with inspections, examinations or tests under this Act.
- 23 The form and service of notices and other documents under this Act.
- 24 Empowering the Regulator to prohibit a person from acting (or from continuing to act) as a rail safety worker for a specified period, or until further order of the Regulator.
- 25 Fixing fees and charges for the purposes of this Act or in respect of any matter arising under this Act, including a fee that the Regulator may recover from an accredited person as a debt if the accredited person fails to comply with a requirement of this Act within a specified time.
- 26 Generally, evidence in proceedings for an offence against the regulations.
- 27 Fixing expiation fees, not exceeding \$750, for alleged offences against this Act or the regulations.
- 28 The imposition of penalties, not exceeding \$10 000 for a contravention of, or failure to comply with, a regulation.

## **Schedule 2—Provisions relating to alcohol and other drug testing**

### **Part 1—Preliminary**

#### **1—Preliminary**

- (1) In this Schedule—

***alcotest*** means a test by means of apparatus approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting alcotests;

***analyst*** means—

- (a) a person who is an analyst for the purposes of the *Road Traffic Act 1961*; or
- (b) a person appointed as an analyst by the Minister specifically for the purposes of this Schedule; or
- (c) a person holding an office of a class approved by the Minister for the purposes of this Schedule;

***approved blood test kit*** means a kit of a kind declared under the *Road Traffic Act 1961* or this Schedule to be an approved blood test kit;

***approved courier*** means a person approved by the Minister as a courier for the purposes of this Schedule;

***authorised person*** means—

- (a) a person appointed under clause 2; or
- (b) a police officer;



***breath analysing instrument*** means an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule as a breath analysing instrument;

***breath analysis*** means an analysis of breath by a breath analysing instrument;

***Department*** means the department of the Minister to whom the administration of the Act is committed;

***drug screening test*** means a test by means of an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting drug screening tests;

***forensic material*** means any human material from which the person from whom the material was taken could be identified;

***Metropolitan Adelaide*** has the same meaning as in the *Development Act 1993*;

***oral fluid analysis*** means an analysis of oral fluid by means of an apparatus of a kind approved under the *Road Traffic Act 1961* or this Schedule for the purpose of conducting oral fluid analyses;

***registered nurse*** means a person registered under the *Health Practitioner Regulation National Law*—

- (a) to practise in the nursing and midwifery profession as a nurse (other than as a student); and
  - (b) in the registered nurses division of that profession.
- (2) For the purposes of this Schedule, a thing is to be regarded as having been done by a medical practitioner, registered nurse or analyst if it is done by a person acting under the supervision or direction of the medical practitioner, registered nurse or analyst.

### **1A—Approval of couriers**

The Minister may, by notice in the Gazette—

- (a) approve a person as a courier for the purposes of this Schedule; or
- (b) revoke an approval under paragraph (a).

### **2—Authorised persons**

- (1) The Regulator may, by instrument in writing, appoint—
  - (a) an authorised officer; or
  - (b) an officer of the Department, or any other person holding office in the Public Service of the State; or
  - (c) a person with qualifications or experience considered by the Regulator to be appropriate for the performance of relevant functions under this Schedule; or
  - (d) a person nominated by an accredited person,to be an authorised person for the purposes of this Schedule.
- (2) The authority of an authorised person may be limited by the relevant instrument of appointment to a particular part of the State, to a particular railway or to particular rail safety workers, or otherwise.

- (3) The Regulator must furnish an authorised person appointed under this clause with a certificate of appointment as an authorised person.
- (4) An authorised person appointed under this clause must, if requested to do so, produce the certificate of appointment to a person required by the authorised person to submit to a test or to do any other thing under this Schedule.

### **3—Urine testing**

- (1) The results of a urine test carried out on a rail safety worker under this Act may only be used for the purposes of disciplinary proceedings against the rail safety worker and are not admissible in proceedings for an offence.
- (2) If a rail safety worker is required to submit to a urine test under this Act, the test must be conducted in accordance with the procedures and requirements prescribed by the regulations.

## **Part 2—Testing**

### **4—Authorised person may require alcotest or breath analysis**

- (1) Subject to this clause, an authorised person may at any time require a rail safety worker who—
  - (a) is about to carry out rail safety work; or
  - (b) is carrying out rail safety work; or
  - (c) is attempting to carry out rail safety work; or
  - (d) has carried out rail safety work; or
  - (e) without limiting a preceding paragraph, is involved in a prescribed occurrence,

to submit to testing by alcotest or breath analysis (or both).

- (2) An authorised person may give reasonable directions to a rail safety worker for the purposes of making a requirement under this clause that a rail safety worker submit to an alcotest or a breath analysis.
- (3) A rail safety worker must immediately comply with a direction under subclause (2).
- (4) An alcotest or breath analysis to which a rail safety worker has been required to submit under subclause (1) may not be commenced more than 8 hours after the worker has ceased to carry out rail safety work or more than 8 hours following a prescribed occurrence (as the case may be).
- (5) The performance of an alcotest or breath analysis commences when a direction is first given by an authorised person that the rail safety worker concerned exhale into the alcotest apparatus or breath analysing instrument to be used for the alcotest or breath analysis.
- (6) The regulations may prescribe the manner in which an alcotest or breath analysis is to be conducted and may, for example, require that more than 1 sample of breath is to be provided for testing or analysis and, in such a case, specify which reading of the apparatus or instrument will be taken to be the result of the alcotest or breath analysis for the purposes of this Schedule or any other Act.

- (7) A person required under this clause to submit to an alcotest or breath analysis must not refuse or fail to comply with all reasonable directions of an authorised person in relation to the requirement, and in particular, must not refuse or fail to exhale into the apparatus by which the alcotest or breath analysis is conducted in accordance with the directions of the authorised person.
- Maximum penalty: \$5 000.
- (8) It is a defence to a prosecution under subclause (7) that—
- (a) the requirement or direction to which the prosecution relates was not lawfully made; or
  - (b) the person was not allowed the opportunity to comply with the requirement or direction after having been given the prescribed oral advice in relation to—
    - (i) the consequences of refusing or failing to comply with the requirement or direction; and
    - (ii) the person's right to request the taking of a blood sample under subclause (9); or
  - (c) there was, in the circumstances of the case, good reason for the refusal or failure of the defendant to comply with the requirement or direction.
- (9) If a person refuses or fails to comply with the requirement or direction under this clause by reason of some physical or medical condition of the person and immediately makes a request of the authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person must do all things reasonably necessary to facilitate the taking of a sample of the person's blood—
- (a) by a medical practitioner nominated by the person; or
  - (b) if—
    - (i) it becomes apparent to the authorised person that there is no reasonable likelihood that a medical practitioner nominated by the person will be available to take the sample within 1 hour of the time of the request at some place not more than 10 kilometres distant from the place of the request; or
    - (ii) the person does not nominate a particular medical practitioner, by any medical practitioner who is available to take the sample.
- (10) A person is not entitled to refuse or fail to comply with a requirement or direction under this clause on the ground that—
- (a) the person would, or might, by complying with that requirement or direction, furnish evidence that could be used against himself or herself; or
  - (b) the person consumed alcohol after the person last performed rail safety work or was involved in a prescribed occurrence (as the case may be), but before the requirement was made or the direction given.
- (11) A person may not raise a defence that the person had good cause for a refusal or failure to comply with a requirement or a direction under this clause by reason of some physical or medical condition of the person unless—
- (a) a sample of the person's blood was taken in accordance with subclause (9); or

- (b) the person made a request as referred to in subclause (9), but—
  - (i) the authorised person failed to facilitate the taking of a sample of the person's blood as required by that subclause; or
  - (ii) a medical practitioner was not reasonably available for the purpose of taking such a sample; or
- (c) the taking of a sample of the person's blood in accordance with subclause (9) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.

**5—Authorised person may require drug screening test, oral fluid analysis, blood test and urine test**

- (1) Subject to this clause, an authorised person may at any time require a rail safety worker who—
  - (a) is about to carry out rail safety work; or
  - (b) is carrying out rail safety work; or
  - (c) is attempting to carry out rail safety work; or
  - (d) has carried out rail safety work; or
  - (e) without limiting a preceding paragraph, is involved in a prescribed occurrence,

to submit to a drug screening test, oral fluid analysis, blood test or urine test (or any combination of these).

- (2) An authorised person may give reasonable directions to a rail safety worker for the purposes of making a requirement under this clause that a rail safety worker submit to a drug screening test, oral fluid analysis, blood test or urine test.
- (3) A rail safety worker must immediately comply with a direction under subclause (2).
- (4) A drug screening test, oral fluid analysis, blood test or urine test to which a rail safety worker has been required to submit under subclause (1) may not be commenced more than 8 hours after the worker ceased to carry out rail safety work or more than 8 hours following a prescribed occurrence (as the case may be).
- (5) The performance of a drug screening test, oral fluid analysis, blood test or urine test that has been required under this clause commences when a direction is first given by an authorised person that the rail safety worker concerned provide a sample of oral fluid, blood, or urine (as the case may be) to be used for the drug screening test, oral fluid analysis, blood test or urine test.
- (6) A drug screening test or an oral fluid analysis may only be conducted—
  - (a) in the case of an authorised person who is a police officer—by an officer authorised by the Commissioner of Police to conduct such tests and analyses under section 47EAA(7) of the *Road Traffic Act 1961*; or
  - (b) in any other case—by an authorised person authorised by the Regulator to conduct such tests or analyses.

- (7) A person required under this clause to submit to a drug screening test, oral fluid analysis, blood test or urine test must not refuse or fail to comply with all reasonable directions of an authorised person in relation to the requirement, and in particular, must not refuse or fail to allow a sample of oral fluid, blood or urine to be taken in accordance with the directions of the authorised person.
- Maximum penalty: \$5 000.
- (8) It is a defence to a prosecution under subclause (7) that—
- (a) the requirement or direction to which the prosecution relates was not lawfully made; or
  - (b) the person was not allowed the opportunity to comply with the requirement or direction after having been given the prescribed oral advice in relation to—
    - (i) the consequences of refusing or failing to comply with the requirement or direction; and
    - (ii) in the case of—
      - (A) a drug screening test or oral fluid analysis—the person's right to request the taking of a blood sample under subclause (9); or
      - (B) a blood test required in connection with drug testing—the person's right to request an oral fluid analysis under subclause (10); or
      - (C) a blood test required in connection with alcohol testing—the person's right to request breath analysis under subclause (11); or
  - (c) there was, in the circumstances of the case, good reason for the refusal or failure of the defendant to comply with the requirement or direction.
- (9) If a person of whom a requirement is made or a direction is given under this clause relating to a drug screening test or oral fluid analysis, refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the person and immediately makes a request of an authorised person that a sample of his or her blood be taken by a medical practitioner, an authorised person must do all things reasonably necessary to facilitate the taking of a sample of the person's blood—
- (a) by a medical practitioner nominated by the person; or
  - (b) if—
    - (i) it becomes apparent to the authorised person that there is no reasonable likelihood that a medical practitioner nominated by the person will be available to take the sample within 1 hour of the time of the request at some place not more than 10 kilometres distant from the place of the request; or
    - (ii) the person does not nominate a particular medical practitioner,  
by any medical practitioner who is available to take the sample.

- (10) If a person of whom a requirement is made or to whom a direction is given under this clause relating to a blood test required in connection with drug testing, refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the person and immediately makes a request of an authorised person that an oral fluid analysis be conducted, an authorised person must do all things reasonably necessary to facilitate the conduct of an oral fluid analysis unless—
- (a) a requirement or direction under this clause relating to a drug screening test or oral fluid analysis has been made of, or been given to, the person; and
  - (b) —
    - (i) the person refused or failed to comply with that requirement or direction on the ground of some physical or medical condition of the person and made a request under subclause (9) for a sample of his or her blood to be taken in accordance with that subclause; or
    - (ii) the person was unable to produce sufficient oral fluid for a sample to be taken.
- (11) If a person of whom a requirement is made or to whom a direction is given under this clause relating to a blood test required in connection with alcohol testing, refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the person and immediately makes a request of an authorised person that a breath analysis be conducted, an authorised person must do all things reasonably necessary to facilitate the conduct of a breath analysis.
- (12) A person is not entitled to refuse or fail to comply with a requirement or direction under this clause on the ground that—
- (a) the person would, or might, by complying with that requirement or direction, furnish evidence that could be used against himself or herself; or
  - (b) the person consumed alcohol or a drug after the person last performed rail safety work or was involved in a prescribed occurrence (as the case may be), but before the requirement was made or the direction given.
- (13) A person may not raise a defence that the person had good cause for a refusal or failure to comply with a requirement or a direction under this clause relating to a drug screening test or fluid analysis by reason of some physical or medical condition of the person unless—
- (a) a sample of the person's blood was taken in accordance with subclause (9); or
  - (b) the person made a request as referred to in subclause (9), but—
    - (i) an authorised person failed to facilitate the taking of a sample of the person's blood as required by that subclause; or
    - (ii) a medical practitioner was not reasonably available for the purpose of taking such a sample; or
  - (c) the taking of a sample of the person's blood in accordance with subclause (9) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.

- (14) A person may not raise a defence that the person had good cause for a refusal or failure to comply with a requirement or a direction under this clause relating to a blood test by reason of some physical or medical condition of the person unless—
- (a) in the case of a blood test required in connection with drug testing—an oral fluid analysis was conducted in accordance with subclause (10); or
  - (b) in the case of a blood test required in connection with alcohol testing—a breath analysis was conducted in accordance with subclause (11); or
  - (c) the person made a request as referred to in subclause (10) or subclause (11), but an authorised person failed to facilitate the conduct of an oral fluid analysis or breath analysis as required by either of these subsections (as the case may be); or
  - (d) the taking of a sample of the person's oral fluid in accordance with subclause (10) or a sample of the person's breath in accordance with subclause (11) (as the case may be) was not possible or reasonably advisable or practicable in the circumstances by reason of some physical or medical condition of the person.
- (15) The regulations may prescribe the manner in which a drug screening test, oral fluid analysis, blood test or urine test is to be conducted.

## **6—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood**

If a person submits to an alcotest or a breath analysis and the alcotest apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person's breath, the reading will, for the purposes of this Act and any other Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

## **7—Breath analysis where drinking occurs after rail safety work is carried out**

- (1) This clause applies to proceedings for an offence in which the results of a breath analysis under this Schedule are relied on to establish the commission of the offence.
- (2) If in proceedings to which this clause applies the defendant satisfies the court—
- (a) that the defendant consumed alcohol during the relevant period; and
  - (b) that the alcohol was not consumed by the defendant after an authorised person first exercised powers under clause 4 preliminary to the performance of the breath analysis; and
  - (c) that, after taking into account the quantity of alcohol consumed by the defendant during the relevant period and its likely effect on the concentration of alcohol indicated as being present in the defendant's blood by the breath analysis, the defendant should not be found guilty of the offence charged,
- the court may, despite the other provisions of this Act, find the defendant not guilty of the offence charged.

- (3) In subclause (2)—

*relevant period* means the period between—

- (a) the prescribed occurrence or the conduct of the defendant giving rise to the making of the requirement under clause 4 that the defendant submit to the breath analysis; and
- (b) the performance of the breath analysis.

### **8—Oral fluid analysis or blood test where consumption of alcohol or drug occurs after rail safety work is carried out**

- (1) This clause applies to proceedings for an offence relating to—

- (a) the presence of alcohol in which the results of a blood test under clause 5 are relied on to establish the commission of the offence; or
- (b) the presence of a drug in which the results of an oral fluid analysis or blood test under clause 5 are relied on to establish the commission of the offence.

- (2) If in proceedings to which this clause applies the defendant satisfies the court—

- (a) that the defendant consumed alcohol or consumed or used the drug (as the case may be) during the relevant period; and
- (b) that the alcohol was not consumed or the drug was not consumed or used by the defendant (as the case may be) after an authorised person first exercised powers under clause 5(1) preliminary to the performance of the oral fluid analysis or blood test,

the court may, despite the other provisions of this Act, find the defendant not guilty of the offence charged.

- (3) In subclause (2)—

*relevant period* means the period between—

- (a) the prescribed occurrence or the conduct of the defendant giving rise to the making of the requirement that the defendant submit to the oral fluid analysis or blood test under clause 5; and
- (b) the performance of the oral fluid analysis or blood test (as the case may be).

### **9—Compulsory blood testing following a notifiable occurrence**

- (1) If a rail safety worker suffers an injury as a result of a notifiable occurrence and, within 8 hours after the notifiable occurrence, the rail safety worker attends at, or is admitted into, a hospital for the purposes of receiving treatment for that injury, it is, subject to this clause, the duty of the legally qualified medical practitioner who attends the worker to take, as soon as practicable, a sample of that worker's blood (notwithstanding that the worker may be unconscious) in accordance with this clause.



- (2) If a rail safety worker suffers an injury as a result of a notifiable occurrence and the rail safety worker is dead on arrival at the hospital, or dies before a sample of blood has been taken in accordance with this clause and within 8 hours after admission to the hospital, it is the duty of the medical practitioner who, pursuant to Part 5 of the *Coroners Act 2003*, notifies the State Coroner or a police officer of the death—
- (a) to take a sample of blood from the body of the deceased in accordance with this clause; or
  - (b) to notify the State Coroner as soon as practicable that, in view of the circumstances in which the death of the deceased occurred, a sample of blood should be taken from the body under this clause.
- (3) The State Coroner, on receiving a notification under subclause (2), may authorise and direct a pathologist to take a sample of blood from the body of the deceased in accordance with this clause.
- (4) A medical practitioner is not obliged to take a sample of blood under this clause if a sample of blood has been taken in accordance with this clause by any other medical practitioner.
- (5) Any person who, on being requested to submit to the taking of a sample of blood under this clause, refuses or fails to comply with that request and who—
- (a) fails to assign any reason based on genuine medical grounds for that refusal or failure; or
  - (b) assigns a reason for that refusal or failure that is false or misleading; or
  - (c) makes any other false or misleading statement in response to the request,
- is guilty of an offence.

Maximum penalty: \$5 000.

- (6) In this clause—

*hospital* means an institution at which medical care or attention is provided for injured persons that is declared to be a hospital for the purposes of section 47I of the *Road Traffic Act 1961*.

## 10—Processes relating to blood samples

The following provisions apply where a sample of blood is taken under this Act:

- (a) a medical practitioner by whom a sample of blood is taken under this Act must—
  - (i) place the sample of blood in approximately equal proportions, in 2 separate containers marked with an identification number distinguishing the sample from other samples of blood and seal the containers; and
  - (ii) give to the person from whom the sample was taken or (in the case of a sample taken under clause 9) leave with the person's personal effects at the hospital, a notice in writing—
    - (A) advising that the sample has been taken under the relevant clause; and

- (B) advising that a container containing part of the sample and marked with the identification number specified in the notice will be available for collection by or on behalf of the person at a specified place; and
  - (C) containing any other information prescribed by the regulations; and
- (iii) complete and sign a certificate containing the information required under paragraph (d); and
- (iv) make the containers and the certificate available to an authorised person;
- (b) each container must contain a sufficient quantity of blood to enable an analysis to be made of the concentration of alcohol present in the blood or of the presence of a drug in the blood;
- (c) it is the duty of the medical practitioner by whom the sample is taken to take such measures as are reasonably practicable in the circumstances to ensure that the blood is not adulterated and does not deteriorate so as to prevent a proper analysis of the concentration of alcohol present in the blood, or the presence of a drug in the blood;
- (d) the certificate referred to in paragraph (a) must state—
  - (i) the identification number of the sample marked on the containers referred to in that paragraph; and
  - (ii) the name and address of the person from whom the sample was taken; and
  - (iii) the name of the medical practitioner by whom the sample was taken; and
  - (iv) the date, time and place at which the sample was taken; and
  - (v) that the medical practitioner gave the notice referred to in that paragraph to the person from whom the sample was taken, or, as the case may be, left the notice with the person's personal effects;
- (e) 1 of the containers containing the sample must—
  - (i) as soon as reasonably practicable be taken by an authorised person or approved courier to the place specified in the notice given to the person or left with the person's personal effects under paragraph (a); and
  - (ii) be kept available at that place for collection by or on behalf of the person for the period prescribed by the regulations;
- (f) after analysis of the sample in a container made available to an authorised person in accordance with paragraph (a), the analyst who performed or supervised the analysis must sign a certificate containing the following information:
  - (i) the identification number of the sample marked on the container;
  - (ii) the name and professional qualifications of the analyst;

- (iii) the date the sample was received in the laboratory in which the analysis was performed;
  - (iv) the concentration of alcohol, prescribed drug or other drug found to be present in the sample;
  - (v) any factors relating to the sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
  - (vi) any other information relating to the sample or analysis that the analyst thinks fit to include;
- (g) on completion of an analysis of a sample, the certificate of the medical practitioner by whom the sample was taken and the certificate of the analyst who performed or supervised the analysis must be sent to the Regulator and copies of the certificates must be sent—
- (i) if the sample was taken as a result of testing required by a police officer—to the Commissioner of Police; and
  - (ii) to the medical practitioner by whom the sample was taken; and
  - (iii) to the person from whom the sample was taken or, if the person is dead, a relative or personal representative of the deceased;
- (h) if the whereabouts of the person from whom the sample is taken, or the identity or whereabouts of a relative or personal representative of the deceased (as the case may be), is unknown, there is no obligation to comply with paragraph (g)(iii) but copies of the certificates must, on application made within 3 years after the completion of the analysis, be furnished to any person to whom they should, but for this paragraph, have been sent.

## **11—Processes relating to oral fluid samples**

The following provisions apply where a sample of oral fluid is taken under this Act:

- (a) an authorised person who conducts the oral fluid analysis must—
  - (i) place the sample of oral fluid (and any other reagent or other substance required by the regulations to be added to the sample) in approximately equal proportions, in 2 separate containers marked with an identification number distinguishing the sample from other samples of oral fluid and seal the containers; and
  - (ii) give to the person from whom the sample was taken a notice in writing—
    - (A) advising that the sample has been taken under clause 5(1); and
    - (B) advising that a container containing part of the sample and marked with the identification number specified in the notice will be available for collection by or on behalf of the person at a specified place; and
    - (C) containing any other information prescribed by the regulations; and

- (iii) complete and sign a certificate containing the information required under paragraph (d);
- (b) each container must contain a sufficient quantity of oral fluid to enable an analysis to be made of the presence of a prescribed drug in the oral fluid;
- (c) it is the duty of the authorised person who conducts the oral fluid analysis to take such measures as are reasonably practicable in the circumstances to ensure that the sample is not adulterated (other than as required under paragraph (a)) and does not deteriorate so as to prevent a proper analysis of the presence of a prescribed drug in the oral fluid;
- (d) the certificate referred to in paragraph (a) must state—
  - (i) the identification number of the sample marked on the containers referred to in that paragraph; and
  - (ii) the name and address of the person from whom the sample was taken; and
  - (iii) the identification number of the authorised person by whom the sample was taken; and
  - (iv) the date, time and place at which the sample was taken; and
  - (v) that the authorised person gave the notice referred to in that paragraph to the person from whom the sample was taken;
- (e) 1 of the containers containing the sample must—
  - (i) as soon as reasonably practicable be taken by an authorised person or approved courier to the place specified in the notice given to the person under paragraph (a); and
  - (ii) be kept available at that place for collection by or on behalf of the person for the period prescribed by the regulations;
- (f) after analysis of the sample in a container referred to in paragraph (a), the analyst who performed or supervised the analysis must sign a certificate containing the following information:
  - (i) the identification number of the sample marked on the container;
  - (ii) the name and professional qualifications of the analyst;
  - (iii) the date the sample was received in the laboratory in which the analysis was performed;
  - (iv) the information required by the regulations in relation to any prescribed drug or other drug found to be present in the sample;
  - (v) any factors relating to the sample or the analysis that might, in the opinion of the analyst, adversely affect the accuracy or validity of the analysis;
  - (vi) any other information relating to the sample or analysis that the analyst thinks fit to include;
- (g) on completion of an analysis of a sample, the certificate of the analyst who performed or supervised the analysis must be sent—

- (i) to the Regulator; and
  - (ii) if the sample was taken as a result of testing required by a police officer—to the Commissioner of Police; and
  - (iii) to the person from whom the sample was taken, or if the person is dead, a relative or personal representative of the deceased;
- (h) if the whereabouts of the person from whom the sample is taken, or (that person being dead) the identity or whereabouts of a relative or personal representative of the deceased is unknown, there is no obligation to comply with paragraph (g)(iii) but copies of the certificates must, on application made within 3 years after completion of the analysis, be furnished to any person to whom they should, but for this paragraph, have been sent.

## **12—Processes relating to urine samples**

The provisions prescribed by the regulations will apply where a sample of urine is taken under this Act.

## **13—Authorised person to be present when sample taken**

The taking of a blood sample under clause 4(9), clause 5(1) or clause 5(9) must be in the presence of an authorised person.

## **14—Cost of blood tests and urine tests under certain clauses**

The cost of taking a sample of blood or urine under clause 4(9), clause 5(1), clause 5(9) or clause 9, and the subsequent analysis of the sample, will be payable by a person determined in accordance with a scheme prescribed by the regulations.

# **Part 3—Evidence**

## **15—Evidence**

- (1) Without affecting the admissibility of evidence that might be given otherwise than in pursuance of this clause, evidence may be given, in any proceedings for an offence, of the concentration of alcohol indicated as being present in the blood of the defendant by a breath analysing instrument operated by an authorised person and, if the requirements and procedures in relation to breath analysing instruments and breath analysis under this Schedule or prescribed by regulation, including subclauses (4) and (5), have been complied with, it must be presumed, in the absence of proof to the contrary, that the concentration of alcohol so indicated was present in the blood of the defendant at the time of the analysis, and throughout the preceding period of 2 hours.
- (2) No evidence can be adduced in rebuttal of the presumption created by subclause (1) except—
  - (a) evidence of the concentration of alcohol in the blood of the defendant as indicated by analysis of a sample of blood taken and dealt with in accordance with this Schedule or in accordance with the regulations; and
  - (b) evidence as to whether the results of analysis of the sample of blood demonstrate that the breath analysing instrument gave an exaggerated reading of the concentration of alcohol present in the blood of the defendant.

- (3) No evidence can be adduced as to a breath or blood alcohol reading obtained from a coin-operated breath testing or breath analysing machine installed in a hotel or other licensed premises.
- (4) As soon as practicable after a person has submitted to an analysis of breath by means of a breath analysing instrument, the person operating the instrument must deliver to the person whose breath has been analysed a statement in writing specifying—
  - (a) the reading produced by the breath analysing instrument; and
  - (b) the date and time of the analysis.
- (5) If a person has submitted to an analysis of breath by means of a breath analysing instrument and the concentration of alcohol indicated as being present in the blood of that person by the instrument is the prescribed concentration of alcohol, the person operating the breath analysing instrument must immediately—
  - (a) give the person the prescribed oral advice and deliver to the person the prescribed written notice as to the operation of this Act in relation to the results of the breath analysis and as to the procedures prescribed for the taking and analysis of a sample of the person's blood; and
  - (b) at the request of the person made in accordance with the regulations, deliver an approved blood test kit to the person.
- (6) A certificate—
  - (a) purporting to be signed by the Regulator and to certify that a person named in the certificate is an authorised person; or
  - (b) purporting to be signed by the Commissioner of Police and to certify that a person named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments; or
  - (c) purporting to be signed by an authorised person and to certify that—
    - (i) the apparatus used by the authorised person was a breath analysing instrument within the meaning of this Schedule; and
    - (ii) the breath analysing instrument was in proper order and was properly operated; and
    - (iii) the provisions of this Schedule and the regulations with respect to breath analysing instruments and the manner in which an analysis of breath by means of a breath analysing instrument is to be conducted were complied with,is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.
- (7) A certificate purporting to be signed by an authorised person and to certify that an apparatus referred to in the certificate is or was of a kind approved under this Schedule for the purpose of performing alcoltests, a drug screening test or an oral fluid analysis is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matter so certified.

- (8) A certificate purporting to be signed by an authorised person and to certify that a person named in the certificate submitted to an alcotest on a specified day and at a specified time and that the alcotest indicated that the prescribed concentration of alcohol may then have been present in the blood of that person is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.
- (9) Subject to subclause (21) a certificate purporting to be signed by an analyst, certifying as to the concentration of alcohol, or any drug, found in a specimen of blood identified in the certificate expressed in grams in 100 millilitres of blood is, in the absence of proof to the contrary, proof of the matters so certified.
- (10) Subject to subclause (21), a certificate purporting to be signed by an authorised person and to certify that—
- (a) a person named in the certificate submitted to an analysis of breath by means of a breath analysing instrument on a day and at a time specified in the certificate; and
  - (b) the breath analysing instrument produced a reading specified in the certificate; and
  - (c) a statement in writing required by subclause (4) was delivered in accordance with that subclause,
- is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.
- (11) A certificate purporting to be signed by an authorised person and to certify—
- (a) that on a date and at a time stated in the certificate, a person named in the certificate submitted to a breath analysis; and
  - (b) that the prescribed oral advice and the prescribed written notice were given and delivered to the person in accordance with subclause (5)(a); and
  - (c) that—
    - (i) the person did not make a request for an approved blood test kit in accordance with the regulations; or
    - (ii) at the request of the person, a kit that, from an examination of its markings, appeared to the person signing the certificate to be an approved blood test kit was delivered to the person in accordance with subclause (5)(b),
- is, in the absence of proof to the contrary, proof that the requirements of subclause (5) were complied with in relation to the person.
- (12) A prosecution for an offence will not fail because of a deficiency of a kit delivered to the defendant in purported compliance with subclause (5)(b) and the presumption under subclause (1) will apply despite such a deficiency unless it is proved—
- (a) that the defendant delivered the kit unopened to a medical practitioner for use in taking a sample of the defendant's blood; and

- (b) by evidence of the medical practitioner, that the medical practitioner was, because of a deficiency of the kit, unable to comply with the prescribed procedures governing the manner in which a sample of a person's blood must be taken and dealt with for the purposes of subclause (2).
- (13) Subject to subclause (21), an apparently genuine document purporting to be a certificate under this Schedule, or a copy of such a certificate, and purporting to be signed by an authorised person, medical practitioner or analyst under this Schedule is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters stated in the certificate.
- (14) If a certificate of an analyst relating to a sample of blood taken under this Schedule is received in evidence in proceedings before a court and states that the prescribed concentration of alcohol has been found to be present in the sample of blood to which the certificate relates, it will be presumed, in the absence of proof to the contrary, that the concentration of alcohol stated in the certificate was present in the sample when the sample was taken.
- (15) If it is proved by the prosecution in the proceedings for an offence that a concentration of alcohol was present in the defendant's blood at the time at which a sample of blood was taken under this Schedule, it will be conclusively presumed that that concentration of alcohol was present in the defendant's blood throughout the period of 2 hours immediately preceding the taking of the sample.
- (16) If certificates of an authorised person and analyst, or a medical practitioner and analyst under this Schedule are received as evidence in proceedings before a court and contain the same identification number for the samples of oral fluid or blood to which they relate, the certificates will be presumed, in the absence of proof to the contrary, to relate to the same sample of oral fluid or blood.
- (17) If a certificate of an analyst relating to a sample of oral fluid or blood taken under this Schedule is received as evidence in proceedings before a court and states that a drug has been found to be present in the sample of oral fluid or blood to which the certificate relates, it will be presumed, in the absence of proof to the contrary, that the drug stated in the certificate was present in the sample when the sample was taken.
- (18) If it is proved by the prosecution in proceedings for an offence that a drug was present in the defendant's oral fluid or blood at the time at which a sample of oral fluid or blood was taken under this Schedule, it will be conclusively presumed that the drug was present in the defendant's oral fluid or blood (as the case may require) throughout the period of 3 hours immediately preceding the taking of the sample.
- (19) A certificate purporting to be signed by an authorised person and to certify that a person named in the certificate submitted to a drug screening test on a specified day and at a specified time and that the drug screening test indicated that a prescribed drug may then have been present in the oral fluid of the person is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.
- (20) A certificate—
- (a) purporting to be signed by the Regulator or the Commissioner of Police and to certify that a person named in the certificate is authorised by the Regulator or the Commissioner of Police (as the case may be) to conduct oral fluid analyses or drug screening tests; or



- (b) purporting to be signed by an authorised person authorised to conduct oral fluid analyses or drug screening tests under clause 5(6) of this Schedule and to certify that the apparatus used to conduct an oral fluid analysis or a drug screening test was in proper order and the oral fluid analysis or drug screening test was properly conducted,

is admissible in proceedings before a court and is, in the absence of proof to the contrary, proof of the matters so certified.

- (21) A certificate referred to in subclause (9), subclause (10) or subclause (13) cannot be received as evidence in proceedings for an offence—
  - (a) unless a copy of the certificate proposed to be put in evidence at the trial of a person for the offence has, not less than 7 days before the commencement of the trial, been served on that person; or
  - (b) if the person on whom a copy of the certificate has been served has, not less than 2 days before the commencement of the trial, served written notice on the complainant or informant requiring the attendance at the trial of the person by whom the certificate was signed; or
  - (c) if the court, in its discretion, requires the person by whom the certificate was signed to attend at the trial.

## **Part 4—Miscellaneous**

### **16—Blood samples may be taken by nurses outside Metropolitan Adelaide**

- (1) If a person is to provide a sample of blood in accordance with the requirements of this Schedule and the place at which the person attends for that purpose is outside Metropolitan Adelaide, a sample of the person's blood may be taken by a registered nurse instead of a medical practitioner for the purposes of this Schedule.
- (2) The provisions of this Schedule and the regulations under this Act apply in relation to the taking of the sample by a registered nurse, and the subsequent dealing with the sample, as if a reference in those provisions to a medical practitioner included a reference to a registered nurse.
- (3) This clause does not apply to a sample of blood taken under clause 9 of this Schedule.

### **17—Protection of medical practitioners etc from liability**

- (1) No proceedings lie against a medical practitioner or a registered nurse, or a person acting under the supervision or direction of a medical practitioner or registered nurse, in respect of anything done in good faith and in compliance, or purported compliance, with the provisions of this Schedule.
- (2) A medical practitioner must not take a sample of the person's blood under this Schedule if, in his or her opinion, it would be injurious to the medical condition of the person to do so.
- (3) A medical practitioner is not obliged to take a sample of a person's blood under this Schedule if the person objects to the taking of the sample of blood and persists in that objection after the medical practitioner has informed the person, that unless the objection is made on genuine medical grounds, it may constitute an offence against this Act.

## **18—Approval of apparatus for the purposes of breath analysis etc**

- (1) The Governor may, by notice published in the Gazette—
  - (a) approve apparatus of a specified kind as breath analysing instruments for the purposes of this Schedule; or
  - (b) approve apparatus of a specified kind for the purpose of conducting alcotests for the purposes of this Schedule; or
  - (c) approve apparatus of a specified kind for the purpose of conducting oral fluid analyses for the purposes of this Schedule; or
  - (d) approve apparatus of a specified kind for the purpose of conducting drug screening tests for the purposes of this Schedule; or
  - (e) declare a kit of a specified kind to be an approved blood test kit for the purposes of this Schedule.
- (2) The Governor may, by subsequent notice, vary or revoke any such notice.
- (3) An approved blood test kit or an apparatus approved as a breath analysing instrument, or for the purpose of conducting alcotests, oral fluid analyses or drug screening tests under the *Road Traffic Act 1961* does not require further approval for the purposes of this Schedule.

## **19—Oral fluid, blood sample or urine sample or results of analysis etc not to be used for other purposes**

A sample of oral fluid, blood or urine taken under this Schedule (and any other forensic material taken incidentally during a drug screening test, oral fluid analysis, blood test or urine test) must not be used for a purpose other than that contemplated by this Act, in connection with the management or control of any work or activity associated with railway operations, or for the purpose of disciplinary proceedings against a rail safety worker.

## **20—Regulations**

Without limiting any other provision, the regulations may make provision for or in relation to any other matter associated with—

- (a) the testing of persons under this Act for the presence of alcohol or a drug, the analysis of test results, the use of results from any testing or analysis, or the steps that may be taken on account of any testing or any evidence or information produced as a result of testing; or
- (b) the destruction of a sample of oral fluid, blood, or urine taken under this Act (and any other forensic material taken incidentally during a drug screening test, oral fluid analysis, blood test or urine test).

## **Schedule 3—Transitional provisions**

### **Part 4—Transitional provisions**

#### **5—Interpretation**

In this Part—

*1996 Act* means the *Rail Safety Act 1996*.

#### **6—Existing accreditations**

- (1) A rail transport operator who, immediately before the commencement of this clause, holds an accreditation under the 1996 Act will be taken, on that commencement, to hold an accreditation under this Act appropriate to the rail transport operator's circumstances (unless there is no requirement to hold such an accreditation under this Act).
- (2) An accreditation under subclause (1)—
  - (a) will be in a form, and contain such provisions, including provisions which vary from the provisions of the accreditation under the 1996 Act, as the Regulator may determine; and
  - (b) will be subject to such conditions and restrictions as applied to the accreditation under the 1996 Act, subject to any variations, or new conditions or restrictions, as the Regulator may, by notice in writing to the rail transport operator, determine.
- (3) If a person, immediately before the commencement of this clause, holds an accreditation under the 1996 Act but is not, on the commencement of this Act, required to hold an accreditation under this Act with respect to the same operations, the Minister may, in his or her absolute discretion, refund the whole or any part of a fee paid by the person with respect to the accreditation under the 1996 Act.

#### **7—Private sidings**

- (1) A private siding that, immediately before the commencement of this clause, was registered under the 1996 Act will be taken, on that commencement, to be registered under this Act.
- (2) A registration under subclause (1) will be subject to such conditions as applied to the registration under the 1996 Act, subject to any variations, or new conditions, as the Regulator may, by notice in writing to the relevant rail infrastructure manager, determine.

#### **8—Other provisions**

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation made under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from a later day.

- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
- (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment or repeal effected by this Schedule.

## Legislative history

### Notes

- This version is comprised of the following:

Part 1	28.7.2011
Part 2	1.1.2010
Part 3	1.1.2010
Part 4	28.7.2011
Part 5	28.7.2011
Part 6	1.1.2010
Part 7	1.1.2010
Part 8	1.1.2010
Part 9	1.7.2010
Schedules	1.7.2010
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Repeal of Act

The *Rail Safety Act 2007* was repealed by s 25 of the *Rail Safety National Law (South Australia) Act 2012* on 20.1.2013.

### Legislation repealed by principal Act

The *Rail Safety Act 2007* repealed the following:

*Rail Safety Act 1996*

### Legislation amended by principal Act

The *Rail Safety Act 2007* amended the following:

*Railways (Operations and Access) Act 1997*

### Principal Act and amendments

Year	No	Title	Assent	Commencement
2007	46	<i>Rail Safety Act 2007</i>	8.11.2007	29.9.2008 ( <i>Gazette</i> 25.9.2008 p4575)
2009	8	<i>Statutes Amendment (Transport Portfolio—Alcohol and Drugs) Act 2009</i>	12.3.2009	Pt 4 (s 27)—1.2.2010 ( <i>Gazette</i> 10.12.2009 p6169)

**Rail Safety Act 2007—28.7.2011 to 19.1.2013—repealed**

## Legislative history

2009	58	<i>Statutes Amendment (National Industrial Relations System) Act 2009</i>	26.11.2009	Pt 12 (s 40)—1.1.2010 ( <i>Gazette 17.12.2009 p6351</i> )
2010	5	<i>Health Practitioner Regulation National Law (South Australia) Act 2010</i>	1.7.2010	Sch 1 (cll 23—25)—1.7.2010 ( <i>Gazette 1.7.2010 p3338</i> )
2011	12	<i>Rail Safety (Safety Coordination) Amendment Act 2011</i>	12.5.2011	28.7.2011 ( <i>Gazette 21.7.2011 p3117</i> )

**Provisions amended**

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.1.2010
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2010</i>
s 4		
appointed person	inserted by 12/2011 s 4(1)	28.7.2011
footpath	inserted by 12/2011 s 4(2)	28.7.2011
level crossing	inserted by 12/2011 s 4(3)	28.7.2011
medical practitioner	substituted by 5/2010 Sch 1 cl 23	1.7.2010
private road	inserted by 12/2011 s 4(4)	28.7.2011
rail or road crossing	inserted by 12/2011 s 4(5)	28.7.2011
railway crossing	substituted by 12/2011 s 4(6)	28.7.2011
registered association	amended by 58/2009 s 40	1.1.2010
road infrastructure	inserted by 12/2011 s 4(7)	28.7.2011
road manager	inserted by 12/2011 s 4(7)	28.7.2011
safety	amended by 12/2011 s 4(8)	28.7.2011
shared path	inserted by 12/2011 s 4(9)	28.7.2011
Pt 4		
s 57		
s 57(2)	amended by 12/2011 s 5	28.7.2011
s 58		
s 58(1)	amended by 12/2011 s 6(1)	28.7.2011
s 58(3)	amended by 12/2011 s 6(2)	28.7.2011
s 62	substituted by 12/2011 s 7	28.7.2011
ss 62A—62F	inserted by 12/2011 s 7	28.7.2011
Pt 5		
s 112		
s 112(1) and (2)	amended by 12/2011 s 8	28.7.2011
Pt 9		

s 148		
s 148(3)	substituted by 5/2010 Sch 1 cl 24	1.7.2010
Sch 2		
cl 1		
cl 1(1)		
approved courier	inserted by 8/2009 s 27(1)	1.2.2010
registered nurse	substituted by 5/2010 Sch 1 cl 25	1.7.2010
cl 1A	inserted by 8/2009 s 27(2)	1.2.2010
cl 5		
cl 5(10)	amended by 8/2009 s 27(3)	1.2.2010
cl 10	amended by 8/2009 s 27(4)	1.2.2010
cl 11	amended by 8/2009 s 27(5)	1.2.2010
Sch 3		
<i>Pts 1—3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.1.2010</i>

## Historical versions

1.1.2010  
1.2.2010  
1.7.2010