South Australia

Rail Safety National Law (South Australia) Act 2012

An Act to make provision for a national system of rail safety; and for other purposes.

Contents

Part 1—Preliminary

1 Short title
3 Interpretation

Part 2—Application of Rail Safety National Law

4 Application of Rail Safety National Law
5 Interpretation of certain expressions
6 No double jeopardy
7 Exclusion of legislation of this jurisdiction

Part 3—National regulations

8 National regulations

Part 4—Provisions relating to drug and alcohol testing

Division 1—Preliminary

9 Interpretation
10 Approval of couriers
11 Approval of apparatus for purposes of breath analysis etc

Division 2—Procedures relating to testing and analyses

12 Conduct of preliminary breath test or breath analysis
13 Conduct of drug screening tests, oral fluid analyses and blood tests
14 Breath analysis where drinking occurs after rail safety work is carried out
15 Oral fluid analysis or blood test where consumption of alcohol or drug occurs after rail safety work is carried out
16 Compulsory blood testing following a prescribed notifiable occurrence
17 Processes relating to blood samples
18 Processes relating to oral fluid samples

Division 3—Miscellaneous

19 Concentration of alcohol in breath taken to indicate concentration of alcohol in blood
20 Evidence
21 Blood samples may be taken by nurses outside Metropolitan Adelaide
22 Protection of medical practitioners etc from liability

23 Regulations—drug and alcohol testing procedures

Part 5—Transitional provisions

Division 1—Interpretation

24 Interpretation

Division 3—Transitional provisions

26 Accreditation
27 Registration
28 Notifiable occurrences
29 Notices
30 Reviews and appeals
31 Provision of information and assistance by Rail Safety Regulator
32 Regulations—saving and transitional provisions

Schedule—Rail Safety National Law

Part 1—Preliminary

1 Short title
2 Commencement
3 Purpose, objects and guiding principles of Law
4 Interpretation
5 Interpretation generally
6 Declaration of substance to be drug
7 Railways to which this Law does not apply
8 Meaning of rail safety work
9 Single national entity
10 Extraterritorial operation of Law
11 Crown to be bound

Part 2—Office of the National Rail Safety Regulator

Division 1—Establishment, functions, objectives, etc

12 Establishment
13 Functions and objectives
14 Independence of ONRSR
15 Powers

Division 2—Office of the National Rail Safety Regulator

Subdivision 1—Constitution of ONRSR

16 Constitution of ONRSR

Subdivision 2—National Rail Safety Regulator

17 Appointment of Regulator
18 Acting National Rail Safety Regulator
19 Functions of Regulator
20 Power of Regulator to obtain information

Subdivision 3—Non-executive members

21 Appointment of non-executive members

Subdivision 4—Miscellaneous provisions relating to membership

22 Vacancy in or removal from office
23 Member to give responsible Ministers notice of certain events
24 Extension of term of office during vacancy in membership
25 Members to act in public interest
26 Disclosure of conflict of interest

Division 3—Procedures

27 Times and places of meetings
28 Conduct of meetings
29 Defects in appointment of members
30 Decisions without meetings
31 Common seal and execution of documents

Division 4—Finance

32 Establishment of Fund
33 Payments into Fund
34 Payments out of Fund
35 Investment of money in Fund
36 Financial management duties of ONRSR

Division 5—Staff

37 Chief executive
38 Staff
39 Secondments to ONRSR
40 Consultants and contractors

Division 6—Miscellaneous

41 Regulator may be directed to investigate rail safety matter
42 National Rail Safety Register
43 Annual report
44 Other reporting requirements
45 Delegation

Part 3—Regulation of rail safety

Division 1—Interpretation

46 Management of risks
47 Meaning of reasonably practicable

Division 2—Occupational health and safety and railway operations

48 Relationship between this Law and OHS legislation
49 No double jeopardy

Division 3—Rail safety duties

Subdivision 1—Principles

50 Principles of shared responsibility, accountability, integrated risk management, etc

51 Principles applying to rail safety duties

Subdivision 2—Duties

52 Duties of rail transport operators
53 Duties of designers, manufacturers, suppliers etc
54 Duties of persons loading or unloading freight
55 Duty of officers to exercise due diligence
56 Duties of rail safety workers

Subdivision 3—Offences and penalties

57 Meaning of ***safety duty***
58 Failure to comply with safety duty—reckless conduct—Category 1
59 Failure to comply with safety duty—Category 2
60 Failure to comply with safety duty—Category 3

Division 4—Accreditation

Subdivision 1—Purpose and requirement for accreditation

61 Purpose of accreditation
62 Accreditation required for railway operations
63 Purposes for which accreditation may be granted

Subdivision 2—Procedures for granting accreditation

64 Application for accreditation
65 What applicant must demonstrate
66 Regulator may direct applicants to coordinate applications
67 Determination of application

Subdivision 3—Variation of accreditation

68 Application for variation of accreditation
69 Determination of application for variation
70 Prescribed conditions and restrictions
71 Variation of conditions and restrictions
72 Regulator may make changes to conditions or restrictions

Subdivision 4—Cancellation, suspension or surrender of accreditation

73 Cancellation or suspension of accreditation
74 Immediate suspension of accreditation
75 Surrender of accreditation

Subdivision 5—Miscellaneous

76 Annual fees
77 Waiver of fees
78 Penalty for breach of condition or restriction
79 Accreditation cannot be transferred or assigned
80 Sale or transfer of railway operations by accredited person
81 Keeping and making available records for public inspection

Division 5—Registration of rail infrastructure managers of private sidings

Subdivision 1—Exemptions relating to certain private sidings

82 Exemption from accreditation in respect of certain private sidings

83 Requirement for managers of certain private sidings to be registered

Subdivision 2—Procedures for granting registration

84 Application for registration
85 What applicant must demonstrate
86 Determination of application

Subdivision 3—Variation of registration

87 Application for variation of registration
88 Determination of application for variation
89 Prescribed conditions and restrictions
90 Variation of conditions and restrictions
91 Regulator may make changes to conditions or restrictions

Subdivision 4—Cancellation, suspension or surrender of registration

92 Cancellation or suspension of registration
93 Immediate suspension of registration
94 Surrender of registration

Subdivision 5—Miscellaneous

95 Annual fees
96 Waiver of fees
96A Annual activity statements
97 Registration cannot be transferred or assigned
98 Offences relating to registration

Division 6—Safety management

Subdivision 1—Safety management systems

99 Safety management system
100 Conduct of assessments for identified risks
101 Compliance with safety management system
102 Review of safety management system
103 Safety performance reports
104 Regulator may direct amendment of safety management system

Subdivision 2—Interface agreements

105 Requirements for and scope of interface agreements
106 Interface coordination—rail transport operators
107 Interface coordination—rail infrastructure and public roads
108 Interface coordination—rail infrastructure and private roads
109 Identification and assessment of risks
110 Regulator may give directions
111 Register of interface agreements

Subdivision 3—Other safety plans and programs

112 Security management plan
113 Emergency management plan
114 Health and fitness management program
115 Drug and alcohol management program
116 Fatigue risk management program

Subdivision 4—Provisions relating to rail safety workers

117 Assessment of competence
118 Identification of rail safety workers

Subdivision 5—Other persons to comply with safety management system

119 Other persons to comply with safety management system

Division 7—Information about rail safety etc

120 Power of Regulator to obtain information from rail transport operators

Division 8—Investigating and reporting by rail transport operators

121 Notification of certain occurrences
122 Investigation of notifiable occurrences

Division 9—Drug and alcohol testing by Regulator

123 Testing for presence of drugs or alcohol
124 Appointment of authorised persons
125 Identity cards
126 Authorised person may require preliminary breath test or breath analysis
127 Authorised person may require drug screening test, oral fluid analysis and blood test
128 Offence relating to prescribed concentration of alcohol or prescribed drug
129 Oral fluid or blood sample or results of analysis etc not to be used for other purposes

Division 10—Train safety recordings

130 Interpretation
131 Disclosure of train safety recordings
132 Admissibility of evidence of train safety recordings in civil proceedings

Division 11—Audit of railway operations by Regulator

133 Audit of railway operations by Regulator

Part 4—Securing compliance

Division 1—Guiding principle

134 Guiding principle

Division 2—Rail safety officers

135 Appointment
136 Identity cards
137 Accountability of rail safety officers
138 Suspension and ending of appointment of rail safety officers

Division 3—Regulator has functions and powers of rail safety officers

139 Regulator has functions and powers of rail safety officers

Division 4—Functions and powers of rail safety officers

140 Functions and powers
141 Conditions on rail safety officers' powers
142 Rail safety officers subject to Regulator's directions

Division 5—Powers relating to entry

Subdivision 1—General powers of entry

143 Powers of entry
144 Notification of entry
145 General powers on entry
146 Persons assisting rail safety officers
147 Use of electronic equipment
148 Use of equipment to examine or process things
149 Securing a site or rolling stock

Subdivision 2—Search warrants

150 Search warrants
151 Announcement before entry on warrant
152 Copy of warrant to be given to person with control or management of place

Subdivision 3—Limitation on entry powers

153 Places used for residential purposes

Subdivision 4—Specific powers on entry

154 Power to require production of documents and answers to questions
155 Abrogation of privilege against self-incrimination
156 Warning to be given
157 Power to copy and retain documents

Subdivision 5—Powers to support seizure

158 Power to seize evidence etc
159 Directions relating to seizure
160 Rail safety officer may direct a thing's return
161 Receipt for seized things
162 Forfeiture of seized things
163 Return of seized things
164 Access to seized thing

Division 6—Damage and compensation

165 Damage etc to be minimised
166 Rail safety officer to give notice of damage
167 Compensation

Division 7—Other matters

168 Power to require name and address
168A Power to direct production of documents
169 Rail safety officer may take affidavits
170 Attendance of rail safety officer at inquiries
171 Directions may be given under more than 1 provision

Division 8—Offences in relation to rail safety officers

172 Offence to hinder or obstruct rail safety officer
173 Offence to impersonate rail safety officer
174 Offence to assault, threaten or intimidate rail safety officer

Part 5—Enforcement measures

Division 1—Improvement notices

175 Issue of improvement notices
176 Contents of improvement notices
177 Compliance with improvement notice
178 Extension of time for compliance with improvement notices

Division 2—Prohibition notices

179 Issue of prohibition notice
180 Contents of prohibition notice
181 Compliance with prohibition notice

Division 3—Non-disturbance notices

182 Issue of non-disturbance notice
183 Contents of non-disturbance notice
184 Compliance with non-disturbance notice
185 Issue of subsequent notices

Division 4—General requirements applying to notices

186 Application of Division
187 Notice to be in writing
188 Directions in notices
189 Recommendations in notice
190 Variation or cancellation of notice by rail safety officer
191 Formal irregularities or defects in notice
192 Serving notices

Division 5—Remedial action

193 When Regulator may carry out action
194 Power of Regulator to take other remedial action
195 Costs of remedial or other action

Division 6—Injunctions

196 Application of Division
197 Injunctions for non-compliance with notices

Division 7—Miscellaneous

198 Response to certain reports
199 Power to require works to stop
200 Temporary closing of railway crossings, bridges etc
201 Use of force
202 Power to use force against persons to be exercised only by police officers

Part 6—Exemptions

Division 1—Ministerial exemptions

203 Ministerial exemptions

Division 2—Exemptions granted by Regulator

Subdivision 1—Interpretation

204 Interpretation

Subdivision 2—Procedures for conferring exemptions

205 Application for exemption
206 What applicant must demonstrate
207 Determination of application

Subdivision 3—Variation of an exemption

208 Application for variation of an exemption
209 Determination of application for variation
210 Prescribed conditions and restrictions
211 Variation of conditions and restrictions
212 Regulator may make changes to conditions or restrictions

Subdivision 4—Cancellation or suspension of an exemption

213 Cancellation or suspension of an exemption

Subdivision 5—Penalty for breach of condition or restriction

214 Penalty for breach of condition or restriction

Subdivision 6—Waiver of fees

214A Waiver of fees

Part 7—Review of decisions

215 Reviewable decisions
216 Review by Regulator
217 Appeals

Part 8—General liability and evidentiary provisions

Division 1—Legal proceedings

Subdivision 1—General matters

218 Period within which proceedings for offences may be commenced
219 Multiple contraventions of rail safety duty provision
220 Authority to take proceedings

Subdivision 2—Imputing conduct to bodies corporate

221 Imputing conduct to bodies corporate

Subdivision 3—Records and evidence

222 Records and evidence from records
223 Certificate evidence
224 Proof of appointments and signatures unnecessary

Division 2—Discrimination against employees

225 Dismissal or other victimisation of employee

Division 3—Offences

226 Offence to give false or misleading information
227 Not to interfere with train, tram etc
228 Applying brake or emergency device
229 Stopping a train or tram

Division 4—Court-based sanctions

230 Commercial benefits order
231 Supervisory intervention order
232 Exclusion orders

Part 9—Infringement notices

233 Meaning of infringement penalty provision
234 Power to serve notice
235 Form of notice
236 Regulator cannot institute proceedings while infringement notice on foot
237 Late payment of penalty
238 Withdrawal of notice
239 Refund of infringement penalty
240 Payment expiates breach of infringement penalty provision
241 Payment not to have certain consequences
242 Conduct in breach of more than 1 infringement penalty provision

Part 10—General

Division 1—Delegation by Minister

243 Delegation by Minister

Division 2—Confidentiality of information

244 Confidentiality of information

Division 3—Law does not affect legal professional privilege

245 Law does not affect legal professional privilege

Division 4—Civil liability

246 Civil liability not affected by Part 3 Division 3 or Division 6
247 Protection from personal liability for persons exercising functions
248 Immunity for reporting unfit rail safety worker

Division 5—Codes of practice

249 Approved codes of practice
250 Use of codes of practice in proceedings

Division 6—Enforceable voluntary undertakings

251 Enforceable voluntary undertaking
252 Notice of decisions and reasons for decision
253 When a rail safety undertaking is enforceable
254 Compliance with rail safety undertaking
255 Contravention of rail safety undertaking
256 Withdrawal or variation of rail safety undertaking
257 Proceedings for alleged contravention

Division 7—Other matters

258 Service of documents
259 Recovery of certain costs
260 Recovery of amounts due
260A Payment of portion of fines to ONRSR
261 Compliance with conditions of accreditation or registration
262 Contracting out prohibited

Division 8—Application of certain South Australian Acts to this Law

263 Application of certain South Australian Acts to this Law

Division 9—National regulations

264 National regulations
265 Publication of national regulations

Schedule 1—National regulations

Schedule 2—Miscellaneous provisions relating to interpretation

Part 1—Preliminary

1 Displacement of Schedule by contrary intention

Part 2—General

2 Law to be construed not to exceed legislative power of Parliament
3 Every section to be a substantive enactment
4 Material that is, and is not, part of this Law
5 References to particular Acts and to enactments
6 References taken to be included in Law or Act citation etc
7 Interpretation best achieving Law's purpose or object
8 Use of extrinsic material in interpretation
9 Effect of change of drafting practice
10 Use of examples
11 Compliance with forms

Part 3—Terms and references

12 Definitions
13 Provisions relating to defined terms and gender and number
14 Meaning of ***may*** and ***must*** etc
15 Words and expressions used in statutory instruments
15A Provisions creating offences
16 Effect of express references to bodies corporate and individuals
17 Production of records kept in computers etc
18 References to this jurisdiction to be implied
19 References to officers and holders of offices
20 Reference to certain provisions of Law
21 Reference to provisions of this Law or an Act is inclusive

Part 4—Functions and powers

22 Exercise of statutory functions
23 Power to make instrument or decision includes power to amend or repeal

24 Matters for which statutory instruments may make provision
25 Presumption of validity and power to make
26 Appointments may be made by name or office
27 Acting appointments
28 Powers of appointment imply certain incidental powers
29 Delegation of functions
30 Exercise of powers between enactment and commencement

Part 5—Distance, time and age

31 Matters relating to distance, time and age

Part 6—Effect of repeal, amendment or expiration

32 Time of Law ceasing to have effect
33 Repealed provisions not revived
34 Saving of operation of repealed Law provisions
35 Continuance of repealed provisions
36 Law and amending Acts to be read as one

Part 7—Instruments under Law

37 Schedule applies to statutory instruments

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Rail Safety National Law (South Australia) Act 2012*.

3—Interpretation

(1) For the purposes of this Act, the ***local application provisions of this Act*** are the provisions of this Act other than the Rail Safety National Law set out in the Schedule.

(2) In the local application provisions of this Act—

Rail Safety National Law (South Australia) means the provisions in operation in this jurisdiction because of section 4 of this Act.

(3) Terms used in the local application provisions of this Act and also in the Rail Safety National Law set out in the Schedule to this Act have the same meanings in those provisions as they have in that Law.

(4) This section does not apply to the extent that the context or subject matter otherwise indicates or requires.

Part 2—Application of Rail Safety National Law

4—Application of Rail Safety National Law

The Rail Safety National Law, as amended from time to time, set out in the Schedule—

(a) applies as a law of this jurisdiction; and

(b) as so applying may be referred to as the *Rail Safety National Law (South Australia)*; and

(c) as so applying is part of this Act.

5—Interpretation of certain expressions

(1) In the *Rail Safety National Law (South Australia)*, unless the contrary intention appears—

court—a reference to a ***court*** in the Law—

(a) in Part 5 (*Enforcement measures*) and Part 7 (*Review of decisions*)—is a reference to the Administrative and Disciplinary Division of the District Court;

(b) in Part 10 Division 6 (*Enforceable voluntary undertakings*)—is a reference to the Magistrates Court;

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;

Gazette means the South Australian Government Gazette (including any supplement to that gazette) printed and published, or purporting to be printed and published, by the Government Printer of the State;

Health Practitioner Regulation National Law means—

(a) the *Health Practitioner Regulation National Law*—

(i) as in force from time to time, set out in the schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland; and

(ii) as it applies as a law of South Australia, another State or a Territory (with or without modification); or

(b) the law that substantially corresponds to the law referred to in paragraph (a);

magistrate means a person holding office as a magistrate under the *Magistrates Act 1983*;

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

Minister means the Minister to whom the *Rail Safety National Law (South Australia) Act 2012* is committed;

police officer means a member of South Australia Police under the *Police Act 1998*;

public sector auditor means the Auditor-General of South Australia;

Rail Safety National Law or ***this Law*** means the *Rail Safety National Law (South Australia)*;

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;

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

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

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

State entity means a public sector agency within the meaning of the *Public Sector Act 2009*;

the jurisdiction or ***this jurisdiction*** means South Australia.

(2) For the purposes of this Act and the *Rail Safety National Law (South Australia)* and any other Act or law—

(a) the Office of the National Rail Safety Regulator—

(i) is not a State entity (and therefore not a South Australian entity); and

(ii) is not an agency or instrumentality of the South Australian Crown; and

(b) an employee of the Office of the National Rail Safety Regulator is not a public sector employee employed by a public sector agency.

6—No double jeopardy

If—

(a) an act or omission is an offence against the *Rail Safety National Law (South Australia)* and is also an offence against a law of another participating jurisdiction; and

(b) the offender has been punished for the offence under the law of the other jurisdiction,

the offender is not liable to be punished for the offence against the *Rail Safety National Law (South Australia)*.

7—Exclusion of legislation of this jurisdiction

(1) The *Acts Interpretation Act 1915* does not apply to the *Rail Safety National Law (South Australia)* or to instruments made under that Law.

(2) Subject to subsection (3), the following Acts of this jurisdiction do not apply to this Act and the *Rail Safety National Law (South Australia)* or to instruments made under that Law (except as applied under the Law):

(a) the *Freedom of Information Act 1991*;

(b) the *Ombudsman Act 1972*;

(c) the *Public Finance and Audit Act 1987*;

(d) the *Public Sector Act 2009*;

(e) the *Public Sector (Honesty and Accountability) Act 1995*;

(f) the *State Procurement Act 2004*;

(g) the *State Records Act 1997*.

(3) The Acts referred to in subsection (2) apply to a State entity or an employee of a State entity exercising a function under the *Rail Safety National Law (South Australia)*.

Part 3—National regulations

8—National regulations

(1) Subject to this section, the *Subordinate Legislation Act 1978* does not apply to the national regulations.

(2) Sections 10, 10A and 11 of the *Subordinate Legislation Act 1978* apply to the national regulations.

(3) However, if a regulation made by the Governor for the purposes of the Rail Safety National Law is disallowed in this jurisdiction, the regulation does not cease to have effect in this jurisdiction unless the regulation is disallowed in a majority of the participating jurisdictions (and, in such a case, the regulation will cease to have effect on the date of its disallowance in the last of the jurisdictions forming the majority).

(4) In this section—

Rail Safety National Law means the Rail Safety National Law, as amended from time to time, set out in the Schedule.

Part 4—Provisions relating to drug and alcohol testing

Division 1—Preliminary

9—Interpretation

(1) In this Part—

alcotest means a test by means of an apparatus approved under the *Road Traffic Act 1961* or this Part 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 Part and Part 3 Division 9 (*Drug and alcohol testing by Regulator*) of the Rail Safety National Law; or

(c) a person holding an office of a class approved by the Minister for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law;

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

approved courier means a person approved by the Minister as a courier for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law;

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

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

Commissioner of Police means the Commissioner of Police appointed under the *Police Act 1998*;

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

preliminary breath test means an alcotest;

Rail Safety National Law or ***Law*** means the Rail Safety National Law, as amended from time to time, set out in the Schedule.

(2) In this Part, a reference to ***regulations*** is a reference to regulations made for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law.

(3) For the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law, 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.

10—Approval of couriers

The Minister may, by notice in the Gazette—

(a) approve a person as a courier for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law; or

(b) revoke an approval under paragraph (a).

11—Approval of apparatus for purposes of breath analysis etc

(1) The Governor may, by notice in the Gazette—

(a) approve apparatus of a specified kind as breath analysing instruments for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law; or

(b) approve apparatus of a specified kind for the purpose of conducting alcotests for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law; or

(c) approve apparatus of a specified kind for the purpose of conducting oral fluid analyses for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law; or

(d) approve apparatus of a specified kind for the purpose of conducting drug screening tests for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law; or

(e) declare a kit of a specified kind to be an approved blood test kit for the purposes of this Part and Part 3 Division 9 of the Rail Safety National Law.

(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* will be taken to have been approved under this Part for the purposes of this Part or Part 3 Division 9 of the Rail Safety National Law.

Division 2—Procedures relating to testing and analyses

12—Conduct of preliminary breath test or breath analysis

(1) This section applies when an authorised person requires a rail safety worker to submit to testing under section 126 (*Authorised person may require preliminary breath test or breath analysis*) of the Rail Safety National Law.

(2) A preliminary breath test or breath analysis to which a rail safety worker has been required to submit 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 notifiable occurrence (as the case may be).

(3) The performance of a preliminary breath test or breath analysis commences when a direction is first given by an authorised person that the rail safety worker concerned exhale into the preliminary breath test apparatus or breath analysing instrument to be used for the test or analysis.

(4) A rail safety worker required to submit to a preliminary breath test 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 preliminary breath test or breath analysis is conducted in accordance with the directions of the authorised person.

Maximum penalty: $10 000.

(5) It is a defence to a prosecution under subsection (4) that 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.

(6) If a rail safety worker refuses or fails to comply with a requirement or direction of an authorised person by reason of some physical or medical condition of the worker and immediately makes a request of the authorised person that a sample of his or her blood be taken by a medical practitioner, the authorised person must do all things reasonably necessary to facilitate the taking of a sample of the worker's blood for analysis by—

(a) a medical practitioner nominated by the worker; or

(b) a medical practitioner nominated by the authorised person at the request of the worker.

(7) A rail safety worker is not relieved from the obligation to submit to a breath analysis in accordance with this section or section 126 of the Rail Safety National Law by—

(a) the making of a request under subsection (6); or

(b) the taking of a sample of the worker's blood under subsection (6).

(8) A rail safety worker is not entitled to refuse or fail to comply with a requirement or direction under this section or section 126 of the Rail Safety National Law on the ground that—

(a) the worker would, or might, by complying with that requirement or direction, provide evidence that could be used against himself or herself; or

(b) the worker consumed alcohol after the worker last performed rail safety work or was involved in a prescribed notifiable occurrence (as the case may be), but before the requirement was made or the direction given.

(9) The taking of a blood sample under subsection (6) must be in the presence of an authorised person.

13—Conduct of drug screening tests, oral fluid analyses and blood tests

(1) This section applies when an authorised person requires a rail safety worker to submit to testing under section 127 (*Authorised person may require drug screening test, oral fluid analysis and blood test*) of the Rail Safety National Law.

(2) 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 a police 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.

(3) A drug screening test, oral fluid analysis or blood test to which a rail safety worker has been required to submit 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 notifiable occurrence (as the case may be).

(4) The performance of a drug screening test, oral fluid analysis or blood test commences when a direction is first given by an authorised person that the rail safety worker concerned provide a sample of oral fluid or blood to be used for the drug screening test, oral fluid analysis or blood test.

(5) A rail safety worker required by an authorised person to submit to a drug screening test, oral fluid analysis or blood 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 or blood to be taken in accordance with the directions of the authorised person.

Maximum penalty: $10 000.

(6) It is a defence to a prosecution under subsection (5) that 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.

(7) If a rail safety worker of whom a requirement is made or to whom a direction is given by an authorised person 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 worker and immediately makes a request of the authorised person that a sample of his or her blood be taken by a medical practitioner, the authorised person must do all things reasonably necessary to facilitate the taking of a sample of the worker's blood for analysis by—

(a) a medical practitioner nominated by the worker; or

(b) a medical practitioner nominated by the authorised person at the request of the worker.

(8) If a rail safety worker of whom a requirement is made or to whom a direction is given under this section relating to a blood test required in connection with—

(a) drug testing—refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the worker 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; or

(b) alcohol testing—refuses or fails to comply with the requirement or direction by reason of some physical or medical condition of the worker 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.

(9) A rail safety worker is not relieved from the obligation to submit to a drug screening test, oral fluid analysis or blood test in accordance with this section or section 127 of the Rail Safety National Law by—

(a) the making of a request under subsection (7) or (8); or

(b) the taking of a sample of—

(i) the worker's blood under subsection (7); or

(ii) the worker's oral fluid under subsection (8)(a); or

(c) the conduct of a breath analysis under subsection (8)(b).

(10) A rail safety worker is not entitled to refuse or fail to comply with a requirement or direction under this section or section 127 of the Rail Safety National Law on the ground that—

(a) the worker would, or might, by complying with that requirement or direction, provide evidence that could be used against himself or herself; or

(b) the worker consumed a drug or alcohol after the worker last performed rail safety work or was involved in a prescribed notifiable occurrence (as the case may be), but before the requirement was made or the direction given.

(11) The taking of a blood sample under this section must be in the presence of an authorised person.

14—Breath analysis where drinking occurs after rail safety work is carried out

(1) This section applies to proceedings for an offence in which the results of a breath analysis under this Part or Part 3 Division 9 of the Rail Safety National Law are relied on to establish the commission of the offence.

(2) If in proceedings to which this section 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 section 126 of the Rail Safety National Law 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 Part or the Rail Safety National Law, find the defendant not guilty of the offence charged.

(3) In subsection (2)—

relevant period means the period between—

(a) the prescribed notifiable occurrence or the conduct of the defendant giving rise to the making of the requirement under section 126 of the Rail Safety National Law that the defendant submit to the breath analysis; and

(b) the performance of the breath analysis.

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

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

(a) the presence of alcohol in which the results of a blood test under section 127 of the Rail Safety National Law 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 section 127 of the Rail Safety National Law are relied on to establish the commission of the offence.

(2) If in proceedings to which this section 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 section 127 of the Rail Safety National Law preliminary to the performance of the blood test or oral fluid analysis; and

(c) that, after taking into account the quantity of alcohol consumed, or drug consumed or used, by the defendant during the relevant period and its likely effect on the concentration of alcohol or drug indicated as being present in the defendant's blood or oral fluid by the test or analysis, the defendant should not be found guilty of the offence charged,

the court may, despite the other provisions of this Part or the Rail Safety National Law, find the defendant not guilty of the offence charged.

(3) In subsection (2)—

relevant period means the period between—

(a) the prescribed notifiable 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 section 127 of the Rail Safety National Law; and

(b) the performance of the oral fluid analysis or blood test (as the case may be).

16—Compulsory blood testing following a prescribed notifiable occurrence

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

(2) If a rail safety worker suffers an injury as a result of a prescribed notifiable occurrence and the worker is dead on arrival at the hospital, or dies before a sample of blood has been taken in accordance with this section 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 section; 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 section.

(3) The State Coroner, on receiving a notification under subsection (2), may authorise and direct a pathologist to take a sample of blood from the body of the deceased in accordance with this section.

(4) A medical practitioner is not obliged to take a sample of blood under this section if a sample of blood has been taken in accordance with this section by another medical practitioner.

(5) Any person who, on being requested to submit to the taking of a sample of blood under this section, 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: $10 000.

(6) In this section—

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*.

17—Processes relating to blood samples

The following provisions apply where a sample of blood is taken under this Part or Part 3 Division 9 of the Rail Safety National Law:

(a) the medical practitioner by whom the sample of blood is taken 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 section 16) 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 section; 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 provided to any person to whom they should, but for this paragraph, have been sent.

18—Processes relating to oral fluid samples

The following provisions apply where a sample of oral fluid is taken under this Part or Part 3 Division 9 of the Rail Safety National Law:

(a) the 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 section 127 of the Rail Safety National Law; 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 provided to any person to whom they should, but for this paragraph, have been sent).

Division 3—Miscellaneous

19—Concentration of alcohol in breath taken to indicate concentration of alcohol in blood

If a person submits to a preliminary breath test or breath analysis and the preliminary breath test 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, the Rail Safety National Law and any other Act, be taken to be that number of grams of alcohol in 100 millilitres of the person's blood.

20—Evidence

(1) Without affecting the admissibility of evidence that might be given otherwise than pursuant to this section, 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 Part, Part 3 Division 9 of the Rail Safety National Law or prescribed by regulation, including subsections (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 subsection (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 Part, Part 3 Division 9 of the Rail Safety National Law 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 Part and Part 3 Division 9 of the Rail Safety National Law 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 Part; and

(ii) the breath analysing instrument was in proper order and was properly operated; and

(iii) the provisions of this Part, Part 3 Division 9 of the Rail Safety National Law 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 section 11 for the purpose of performing alcotests, 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 subsection (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 subsection (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 subsection (4) was delivered in accordance with that subsection,

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 subsection (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 subsection (5)(b),

is, in the absence of proof to the contrary, proof that the requirements of subsection (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 subsection (5)(b) and the presumption under subsection (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 subsection (2).

(13) Subject to subsection (21), an apparently genuine document purporting to be a certificate under this Part, or a copy of such a certificate, and purporting to be signed by an authorised person, medical practitioner or analyst under this Part 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 Part or Part 3 Division 9 of the Rail Safety National Law 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 Part or Part 3 Division 9 of the Rail Safety National Law, 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 Part or Part 3 Division 9 of the Rail Safety National Law 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 Part or Part 3 Division 9 of the Rail Safety National Law 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 Part or Part 3 Division 9 of the Rail Safety National Law, 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 for the purposes of this Part or Part 3 Division 9 of the Rail Safety National Law 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 subsection (9), (10) or (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.

21—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 Part and Part 3 Division 9 of the Rail Safety National Law 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 Part and the Rail Safety National Law.

(2) The provisions of this Part and Part 3 Division 9 of the Rail Safety National Law, and the regulations made under this Part, 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 section does not apply to a sample of blood taken under section 16 of this Part.

22—Protection of medical practitioners etc from liability

(1) No proceedings lie against a medical practitioner or 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 Part or Part 3 Division 9 of the Rail Safety National Law.

(2) A medical practitioner or registered nurse must not take a sample of the person's blood under this Part or Part 3 Division 9 of the Rail Safety National Law if, in his or her opinion, it would be injurious to the medical condition of the person to do so.

(3) A medical practitioner or registered nurse is not obliged to take a sample of a person's blood under this Part or Part 3 Division 9 of the Rail Safety National Law if the person objects to the taking of the sample of blood and persists in that objection after the medical practitioner or registered nurse (as the case requires) has informed the person, that unless the objection is made on genuine medical grounds, it may constitute an offence against this Part or the Rail Safety National Law.

23—Regulations—drug and alcohol testing procedures

(1) The Governor may make any regulations that are contemplated by this Part or Part 3 Division 9 of the Rail Safety National Law, or are necessary or expedient for the purposes of this Part or Part 3 Division 9 of the Rail Safety National Law.

(2) Without limiting subsection (1), the Governor may make regulations making provision for or in relation to any other matter associated with—

(a) the testing of persons 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 or blood taken under this Part or Part 3 Division 9 of the Rail Safety National Law (and any other forensic material taken incidentally during a drug screening test, oral fluid analysis or blood test).

Part 5—Transitional provisions

Division 1—Interpretation

24—Interpretation

In this Part—

Rail Safety National Law or ***Law*** means the Rail Safety National Law, as amended from time to time, set out in the Schedule;

relevant day means the day on which the *Rail Safety Act 2007* is repealed;

repealed Act means the *Rail Safety Act 2007*.

Division 3—Transitional provisions

26—Accreditation

(1) An application for accreditation, or variation of accreditation, made but not determined under the repealed Act immediately before the relevant day, will be taken to be an application for accreditation, or variation of accreditation, under the Rail Safety National Law and will, accordingly, be determined in accordance with the Law.

(2) A rail transport operator that, immediately before the relevant day, holds an accreditation under the repealed Act in respect of railway operations carried out by or on behalf of the operator will be taken, on the relevant day, to hold an accreditation in respect of those railway operations under the Rail Safety National Law subject to such conditions and restrictions as applied to the accreditation under the repealed Act.

(3) If, immediately before the relevant day, the accreditation, or part of the accreditation, of a rail transport operator has been suspended under the repealed Act, the accreditation under the Rail Safety National Law that the operator will be taken to have by virtue of subsection (2) will be subject to the same suspension as applied to the accreditation under the repealed Act.

27—Registration

(1) A rail infrastructure manager of a private siding that, immediately before the relevant day, is registered under the repealed Act will be taken, on the relevant day, to be registered under the Rail Safety National Law in respect of the private siding.

(2) A registration under subsection (1) will be subject to such conditions as applied to the registration under the repealed Act, subject to any variations, or new conditions, as the Regulator may, by notice in writing to the relevant rail infrastructure manager, determine.

(3) Notification under subsection (2)—

(a) must be in writing and given to the rail infrastructure manager; and

(b) if a condition or restriction has been imposed on the registration, must include—

(i) the reasons for imposing the condition or restriction; and

(ii) information about the right of review under Part 7 of the Law.

28—Notifiable occurrences

(1) A report of a notifiable occurrence made under Part 4 Division 6 of the repealed Act immediately before the relevant day will have effect as if it were a report of a notifiable occurrence made under Part 3 Division 8 of the Rail Safety National Law.

(2) A notifiable occurrence that is being investigated under Part 4 Division 6 of the repealed Act immediately before the relevant day will continue as if it were an investigation under Part 3 Division 8 of the Rail Safety National Law.

29—Notices

(1) An improvement notice in force under Part 5 Division 7 of the repealed Act immediately before the relevant day will continue to have force and effect as if it were an improvement notice under Part 5 Division 1 of the Rail Safety National Law.

(2) A prohibition notice in force under Part 5 Division 8 of the repealed Act immediately before the relevant day will continue to have force and effect as if it were a prohibition notice under Part 5 Division 2 of the Rail Safety National Law.

30—Reviews and appeals

(1) If an application for accreditation, or variation of accreditation, has been refused under the repealed Act and the period within which the applicant could have applied for a review of the decision had that Act not been repealed has not, immediately before the relevant day, expired, the applicant may, before the expiry of that period, apply for a review of the decision under the Rail Safety National Law as if the decision had been made under the Law.

(2) A person who is to be granted accreditation as the result of a review of, or appeal against, a decision made under the repealed Act who has not, immediately before the relevant day, been accredited, will be granted accreditation under the Rail Safety National Law subject to such conditions and restrictions as would have applied to the accreditation under the repealed Act.

31—Provision of information and assistance by Rail Safety Regulator

(1) Despite any other Act or law, the Rail Safety Regulator under the repealed Act is authorised, on his or her own initiative or at the request of ONRSR—

(a) to provide ONRSR with such information (including information given in confidence) in the possession or control of the Rail Safety Regulator that is reasonably required by ONRSR for the purposes of this Act or the Rail Safety National Law; and

(b) to provide ONRSR with such other assistance as is reasonably required by ONRSR to exercise a function or power under this Act or the Rail Safety National Law.

(2) Despite any other Act or law, the Rail Safety Regulator under the repealed Act may authorise ONRSR to disclose information provided under subsection (1) even if the information was given to the Rail Safety Regulator in confidence.

(3) Nothing done, or authorised to be done, by the Rail Safety Regulator in acting under subsection (1) or (2)—

(a) constitutes a breach of, or default under, an Act or other law; or

(b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or

(c) constitutes a breach of duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or

(d) constitutes a civil or criminal wrong; or

(e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or

(f) releases a surety or any other obligee wholly or in part from an obligation.

32—Regulations—saving and transitional provisions

(1) The Governor may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including any repeals and amendments made as a result of the enactment of this Act.

(2) Regulations made under this section may—

(a) have a retrospective effect to a day on or from a date not earlier than the day on which this Act receives Royal Assent; and

(b) be of limited or general application; and

(c) leave any matter or thing to be decided by a specified person or class of person.

(3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act) or in any statutory instrument.

Schedule—Rail Safety National Law

Part 1—Preliminary

1—Short title

This Law may be cited as the *Rail Safety National Law*.

2—Commencement

This Law commences in a participating jurisdiction as provided by the application Act of the jurisdiction.

3—Purpose, objects and guiding principles of Law

(1) The main purpose of this Law is to provide for safe railway operations in Australia.

(2) The objects of this Law are—

(a) to establish the Office of the National Rail Safety Regulator (the ***ONRSR***); and

(b) to make provision for the appointment, functions and powers of the National Rail Safety Regulator (the ***Regulator***); and

(c) to make provision for a national system of rail safety, including by providing a scheme for national accreditation of rail transport operators in respect of railway operations; and

(d) to provide for the effective management of safety risks associated with railway operations; and

(e) to provide for the safe carrying out of railway operations; and

(f) to provide for continuous improvement of the safe carrying out of railway operations; and

(g) to make special provision for the control of particular risks arising from railway operations; and

(h) to promote public confidence in the safety of transport of persons or freight by rail; and

(i) to promote the provision of advice, information, education and training for safe railway operations; and

(j) to promote the effective involvement of relevant stakeholders, through consultation and cooperation, in the provision of safe railway operations.

(3) The guiding principles under this Law are—

(a) to assist rail transport operators to achieve productivity by the provision of a national scheme for rail safety; and

(b) to operate the national scheme in a timely, transparent, accountable, efficient, effective, consistent and fair way; and

(c) that fees required to be paid for the provision of the national scheme are to be reasonable having regard to the efficient and effective operation of the scheme.

(4) The Parliament does not intend by this section to create in any person any legal right or give rise to any civil cause of action.

4—Interpretation

(1) In this Law, unless the contrary intention appears—

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

(a) has been surrendered or cancelled or has otherwise ceased to have effect under this Law; or

(b) is suspended under this Law;

Acting Regulator means an Acting National Rail Safety Regulator appointed under Part 2 Division 2;

amusement structure means a structure or device operated for hire or reward, or provided on hire or lease—

(a) that is used or designed to be used for amusement or entertainment and on which persons may be moved, carried, raised, lowered or supported by any part of the structure or device; and

(b) that is an arrangement of structural or mechanical elements (or both) that has as its prime function the provision of movement of a passenger or passengers in a controlled manner so that the passenger or passengers are not necessarily required to move themselves to obtain the desired effect;

application Act means the Act of a jurisdiction that applies the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia as a law of the jurisdiction;

approved code of practice means a code of practice approved under section 249;

associated railway track structures includes—

(a) associated works (such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works); and

(b) over-track structures and under-track structures (including tunnels under tracks);

Australian Accounting Standards means Accounting Standards issued by the Australian Accounting Standards Board;

Australian rail safety law means this Law or a corresponding previous enactment in a participating jurisdiction corresponding, or substantially corresponding, to this Law;

authorised person means—

(a) a police officer; or

(b) a person appointed under section 124;

Category 1 offence—see section 58;

Category 2 offence—see section 59;

Category 3 offence—see section 60;

commercial benefits order means an order under section 230;

designated provision of this Law—see section 204;

drug means—

(a) a substance declared by the national regulations to be a drug for the purposes of this Law; and

(b) a substance declared under section 6 to be a drug for the purposes of this Law; and

(c) any other substance (other than alcohol) that, when consumed or used by a person, deprives that person (temporarily or permanently) of any of his or her normal mental or physical faculties;

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, for a function, includes perform;

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

Fund means the National Rail Safety Regulator Fund established under Part 2 Division 4;

improvement notice means a notice under Part 5 Division 1;

infringement penalty provision has the meaning given by section 233;

interface agreement means an agreement made under Part 3 Division 6 Subdivision 2 about managing risks to safety identified and assessed in accordance with that Subdivision;

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;

member, of ONRSR, means the Regulator, an Acting Regulator or a non-executive member appointed under Part 2 Division 2;

national regulations means the regulations made under section 264;

non-disturbance notice means a notice under Part 5 Division 3;

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 national 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 national regulations not to be a notifiable occurrence;

occupational health and safety legislation means legislation relating to occupational health and safety prescribed by the national regulations for the purposes of this definition;

Office of the National Rail Safety Regulator or ***ONRSR*** means the Office of the National Rail Safety Regulator established under Part 2 Division 1;

officer—

(a) in relation to a body corporate, has the same meaning as officer has in relation to a corporation under section 9 of the *Corporations Act 2001* of the Commonwealth;

(b) in relation to any other person, means an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the person;

participating jurisdiction means a jurisdiction in which—

(a) this Law applies as a law of the jurisdiction; or

(b) a law that substantially corresponds to the provisions of this Law has been enacted; or

(c) a law prescribed by the national regulations for the purposes of this definition has been enacted;

prescribed drug—see section 128;

private siding means a siding that is owned, controlled or managed 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; or

(b) a crossing loop; or

(c) a passenger terminal; or

(d) a freight terminal; or

(e) a siding under the control and management of an accredited rail infrastructure manager; or

(f) a siding, or a siding of a class, prescribed by the national regulations not to be a private siding;

prohibition notice means a notice under Part 5 Division 2;

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;

public road means any road other than a private road;

public sector auditor means—

(a) the Auditor-General (however described) of a participating jurisdiction; or

(b) an auditor employed, appointed or otherwise engaged, by an Auditor-General of a participating jurisdiction;

rail infrastructure means the facilities that are necessary to enable a railway to operate and includes—

(a) railway tracks and associated railway track structures; and

(b) service roads, signalling systems, communications systems, rolling stock control systems, train control systems and data management systems; and

(c) notices and signs; and

(d) electrical power supply and electric traction systems; and

(e) associated buildings, workshops, depots and yards; and

(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 national regulations not to be rail infrastructure;

rail infrastructure manager, in relation to rail infrastructure of a railway, means the person who has effective control and management 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 officer means a person holding an appointment as a rail safety officer under Part 4 Division 2;

rail safety undertaking—see Part 10 Division 6;

rail safety work—see section 8;

rail safety worker means an individual 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;

rail workplace means a place where rail safety work is carried out, and includes any place where a rail safety worker goes, or is likely to be, while doing rail safety work;

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 millimetres or more, together with its rail infrastructure and rolling stock, and includes the following:

(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 national regulations to be a railway;

Note—

See section 7 for railways to which this Law does not apply.

railway crossing means—

(a) a level crossing; or

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

railway operations means any of the following:

(a) the construction of a railway, railway tracks and associated railway track structures;

(b) the construction of rolling stock;

(c) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure;

(d) the commissioning, use, modification, maintenance, repair or decommissioning of rolling stock;

(e) 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);

(f) the movement, or causing the movement, of rolling stock for the purposes of operating a railway service;

(g) the scheduling, control and monitoring of rolling stock being operated or moved on rail infrastructure;

railway premises means—

(a) land (including any premises on land) on or in which is situated rail infrastructure; or

(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; or

(c) freight centres or depots used in connection with the carrying out of railway operations; or

(d) workshops or maintenance depots used in connection with the carrying out of railway operations; or

(e) premises (including an office, building or housing) used in connection with the carrying out of railway operations; or

(f) rolling stock or other vehicles associated with railway operations; or

(g) any other rail workplace;

reasonably practicable—see section 47;

Register means the National Rail Safety Register established under section 42;

registered person means a rail infrastructure manager who is registered under this Law, but does not include a person whose registration under this Law—

(a) has been surrendered or cancelled or has otherwise ceased to have effect under this Law; or

(b) is suspended under this Law;

Regulator means the National Rail Safety Regulator or an Acting National Rail Safety Regulator appointed under Part 2 Division 2;

responsible Minister, for a participating jurisdiction, means the Minister of that jurisdiction nominated by that jurisdiction as its responsible Minister for the purposes of this Law;

road infrastructure includes—

(a) a road, including its surface or pavement; and

(b) anything under or supporting a road or its surface or pavement; and

(c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of a road system or supporting a road; and

(d) any bridge or other work or structure located above, in or on a road; and

(e) any traffic control devices, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything referred to in paragraphs (a) to (d); and

(f) anything prescribed by the national regulations to be road infrastructure,

but does not include rail infrastructure or anything that is prescribed by the national regulations not to be road infrastructure;

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; or

(b) in relation to a public road—means an authority, person or body responsible for the care, control or management of the road;

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 control and management of the operation or movement of rolling stock on rail infrastructure for a 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;

running line means a railway track used primarily for the through movement of trains;

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 duty—see section 57;

safety management system—see Part 3 Division 6;

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;

South Australian Minister means the responsible Minister for South Australia;

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

supervisory intervention order—see section 231;

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; or

(b) in relation to services—provide, grant or confer, whether as principal or agent;

Territory means the Australian Capital Territory or the Northern Territory;

this Law means—

(a) this Law as it applies as a law of a participating jurisdiction; or

(b) a law of a participating jurisdiction that—

(i) substantially corresponds to the provisions of this Law; or

(ii) is prescribed by the national regulations for the purposes of paragraph (c) of the definition of ***participating jurisdiction***;

train means—

(a) 2 or more units of rolling stock coupled together, at least 1 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;

train safety recording—see section 130;

union means—

(a) an employee organisation that is registered, or taken to be registered, under the *Fair Work (Registered Organisations) Act 2009* of the Commonwealth; or

(b) an association of employees or independent contractors (or both) that is registered or recognised as such an association (however described) under a State or Territory industrial law.

(2) In this Law—

(a) a reference to ***this Law*** extends to a statutory instrument made under this Law, or a provision of this Law or a statutory instrument made under this Law; and

(b) a reference to the ***responsible Ministers*** is a reference to a group of Ministers consisting of—

(i) the responsible Minister for each participating jurisdiction; and

(ii) a Commonwealth Minister nominated by the Commonwealth as the responsible Minister for the Commonwealth for the purposes of this Law (the ***Commonwealth Minister***).

(3) The Commonwealth Minister has complete discretion as to whether or not to exercise a function or power given to the responsible Ministers under this Law and so, for the purposes of this Law, a recommendation of the responsible Ministers that is required to be unanimous will be taken to be unanimous if the Commonwealth Minister declines to exercise the function or power and the responsible Minister for each participating jurisdiction agrees with the recommendation.

5—Interpretation generally

Schedule 2 to this Law applies in relation to this Law.

6—Declaration of substance to be drug

(1) The responsible Ministers may declare a substance to be a drug for the purposes of this Law.

(2) A declaration under subsection (1)—

(a) is to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales; and

(b) will commence on the day specified in the declaration for its commencement (being not earlier than the date it is published); and

(c) is to be published by ONRSR on its website.

7—Railways to which this Law does not apply

(1) This Law does not apply to or in relation 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; or

(b) a slipway; or

(c) a railway used only to guide a crane; or

(d) an aerial cable operated system; or

(e) a railway used only by a horse-drawn tram; or

(f) a railway used only for a static display; or

(g) any other railway, or class of railway, prescribed by the national regulations to be a railway, or railway of a class, to which this Law does not apply.

(2) This Law does not apply to or in relation to the following railways:

(a) a railway that—

(i) is privately owned and operated as a hobby; and

(ii) is operated only on private property; and

(iii) does not operate on or cross a public road; and

(iv) is not operated for hire or reward, or provided on hire or lease; and

(v) to which members of the public do not have access (whether by invitation or otherwise);

(b) a railway that—

(i) is used only for the purposes of an amusement structure; and

(ii) is operated only within an amusement park; and

(iii) does not operate on or cross a public road; and

(iv) is not connected with another railway in respect of which a rail transport operator is required to be accredited or registered under this Law.

(3) Despite subsection (2)(b), the national regulations may prescribe a specified railway of a class referred to in that paragraph to be a railway to which or in relation to which this Law applies.

8—Meaning of rail safety work

(1) Subject to subsection (2), any of the following classes of work is ***rail safety work*** for the purposes of this Law:

(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;

(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, any rolling stock using rail infrastructure or 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 national regulations to be rail safety work.

(2) For the purposes of this Law, ***rail safety work*** does not include any work, or any class of work, prescribed by the national regulations not to be rail safety work.

9—Single national entity

(1) It is the intention of the Parliament of this jurisdiction that this Law as applied by an Act of this jurisdiction, together with this Law as applied by Acts of the other participating jurisdictions, has the effect that an entity established by this Law is 1 single national entity, with functions conferred by this Law as so applied.

(2) An entity established by this Law has power to do acts in or in relation to this jurisdiction in the exercise of a function expressed to be conferred on it by this Law as applied by Acts of each participating jurisdiction.

(3) An entity established by this Law may exercise its functions in relation to—

(a) 1 participating jurisdiction; or

(b) 2 or more or all participating jurisdictions collectively.

(4) In this section, a reference to this Law as applied by an Act of a jurisdiction includes—

(a) a reference to a law that substantially corresponds to this Law enacted in a jurisdiction; and

(b) a law prescribed by the national regulations for the purposes of the definition of a ***participating jurisdiction***.

10—Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following:

(a) things situated in or outside the territorial limits of this jurisdiction;

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction;

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

11—Crown to be bound

(1) This Law binds the Crown, in right of this jurisdiction and, insofar as the legislative power of the Parliament of this jurisdiction permits, 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 Law.

Part 2—Office of the National Rail Safety Regulator

Division 1—Establishment, functions, objectives, etc

12—Establishment

(1) The Office of the National Rail Safety Regulator (***ONRSR***) is established.

(2) ONRSR—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

(3) ONRSR represents the Crown.

13—Functions and objectives

(1) In addition to any other function conferred on ONRSR by this Law or an Act, ONRSR has the following functions:

(a) to administer, audit and review the accreditation regime under this Law;

(b) to work with rail transport operators, rail safety workers, and others involved in railway operations, to improve rail safety nationally;

(c) to conduct research, collect and publish information relating to rail safety;

(d) to provide, or facilitate the provision of, advice, education and training in relation to rail safety;

(e) to monitor, investigate and enforce compliance with this Law;

(f) to engage in, promote and coordinate the sharing of information to achieve the objects of this Law, including the sharing of information with a prescribed authority;

(g) at the request of the Commonwealth or a jurisdiction—to carry out any other function as agreed between ONRSR and the jurisdiction.

(2) In exercising its functions, ONRSR must—

(a) facilitate the safe operations of rail transport in Australia; and

(b) exhibit independence, rigour and excellence in carrying out its regulatory functions; and

(c) promote safety and safety improvement as a fundamental objective in the delivery of rail transport in Australia.

(3) In this section—

prescribed authority means—

(a) the Australian Transport Safety Bureau established under the *Transport Safety Investigation Act 2003* of the Commonwealth; and

(b) any other relevant authority established under a law of a participating jurisdiction.

14—Independence of ONRSR

Except as provided under this Law or an Act, ONRSR is not subject to Ministerial direction in the exercise of its functions or powers.

15—Powers

(1) ONRSR has all the powers of an individual and, in particular, may—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, real and personal property; and

(c) do anything necessary or convenient to be done in the exercise of its functions.

(2) Without limiting subsection (1), ONRSR may enter into an agreement (a ***service agreement)*** with a State or Territory that makes provision for—

(a) the State or Territory to provide services to ONRSR that assist ONRSR in exercising its functions; or

(b) ONRSR to provide services to the State or Territory.

Division 2—Office of the National Rail Safety Regulator

Subdivision 1—Constitution of ONRSR

16—Constitution of ONRSR

(1) ONRSR consists of—

(a) a person appointed by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers as the National Rail Safety Regulator (the ***Regulator***); and

(b) 2 non-executive members (full-time or part-time) as are appointed by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers.

(2) The exercise of a function or power of ONRSR is not affected by a vacancy in the membership of ONRSR.

Subdivision 2—National Rail Safety Regulator

17—Appointment of Regulator

(1) A person may be appointed as the National Rail Safety Regulator who is qualified for appointment because the person has a high level of expertise in 1 or more areas relevant to ONRSR's functions.

(2) The Regulator will be appointed for a term not exceeding 5 years on terms and conditions determined by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers.

(3) The Regulator is entitled to be paid the remuneration and allowances decided by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers from time to time.

(4) In setting the remuneration and allowances for the Regulator, regard must be had to relevant rates (if any) published by the Remuneration Tribunal of the Commonwealth from time to time.

(5) At the expiration of a term of appointment, the Regulator will be eligible for reappointment.

(6) The conditions of appointment of the Regulator must not, without the consent of the Regulator, be varied while the Regulator is in office so as to become less favourable to the Regulator.

(7) The Regulator must not engage, without the written consent of the South Australian Minister acting on the unanimous recommendation of the responsible Ministers, in any other remunerated employment.

18—Acting National Rail Safety Regulator

(1) The South Australian Minister may appoint an Acting National Rail Safety Regulator (who may, or may not, be a non-executive member or a member of the staff of ONRSR) to act in the office of the Regulator and a person so appointed has, while so acting, all the functions and powers of the Regulator.

(2) An Acting Regulator may act in the office of the Regulator—

(a) during a vacancy in the office of the Regulator (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Regulator—

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to exercise the duties of the office; or

(c) if the Regulator is disqualified from acting in relation to a particular matter—in relation to that matter.

(3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) there is a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

19—Functions of Regulator

(1) The functions of the Regulator include—

(a) being the chief executive of ONRSR; and

(b) exercising the functions of ONRSR conferred on the Regulator under this Law or an Act; and

(c) otherwise acting on behalf of ONRSR in appropriate cases.

(2) An act of the Regulator will be taken to be an act of ONRSR.

(3) Except as provided under this Law or an Act of a participating jurisdiction, the Regulator is not subject to direction in the exercise of his or her functions or powers.

(4) The Regulator must act consistently with the policies determined by ONRSR.

20—Power of Regulator to obtain information

(1) This section applies if the Regulator has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Law or that will assist to monitor or enforce compliance with this Law.

(2) The Regulator may, by written notice served on the person, require the person to do 1 or more of the following:

(a) to give the Regulator in writing signed by the person (or in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, that information of which the person has knowledge;

(b) to produce to the Regulator, in accordance with the notice, those documents;

(c) to appear before a person appointed by the Regulator on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.

(3) The notice must—

(a) state that the requirement is made under this section; and

(b) contain a statement to the effect that a failure to comply with a requirement is an offence; and

(c) if the notice requires the person to provide information or documents or answer questions—

(i) contain a statement about the effect of sections 155 and 245; and

(ii) state that the person may attend with a legal practitioner.

(5) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(6) Subsection (5) places an evidential burden on the accused to show a reasonable excuse.

(7) Section 155 (with any necessary changes) applies to a requirement under this section.

Subdivision 3—Non-executive members

21—Appointment of non-executive members

(1) A person may be appointed as a non-executive member of ONRSR who is qualified for appointment because the person has a high level of expertise in 1 or more areas relevant to ONRSR's functions.

(2) A non-executive member will be appointed for a term not exceeding 4 years on terms and conditions determined by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers.

(3) A non-executive member is entitled to be paid the remuneration and allowances decided by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers from time to time.

(4) In setting the remuneration and allowances for a non-executive member regard must be had to relevant rates (if any) published by the Remuneration Tribunal of the Commonwealth from time to time.

(5) At the expiration of a term of appointment, a non-executive member will be eligible for reappointment.

(6) The conditions of appointment of a non-executive member must not, without the consent of the member, be varied while the member is in office so as to become less favourable to the member.

Subdivision 4—Miscellaneous provisions relating to membership

22—Vacancy in or removal from office

(1) The office of a member of ONRSR becomes vacant if the member—

(a) completes a term of office; or

(b) resigns by written notice given to the responsible Ministers; or

(c) has been found guilty of an offence, whether in a participating jurisdiction or elsewhere, that the responsible Ministers consider renders the member unfit to continue to hold the office of member; or

(d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit; or

(e) is absent, without leave first being granted by the relevant entity from 3 or more consecutive meetings of ONRSR of which reasonable notice has been given to the member personally or by post; or

(f) is removed from office by the South Australian Minister under this section; or

(g) dies.

(2) The South Australian Minister may remove a member of ONRSR from office if the responsible Ministers recommend the removal of the member on the basis that the member has engaged in misconduct or has failed to or is unable to properly exercise the member's functions as a member of ONRSR.

(3) In this section—

relevant entity means—

(a) for the Regulator—the responsible Ministers; or

(b) for a non-executive member—the Regulator.

23—Member to give responsible Ministers notice of certain events

A member of ONRSR must, within 7 days of either of the following events occurring, give the responsible Ministers notice of the event:

(a) the member is convicted of an offence;

(b) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit.

24—Extension of term of office during vacancy in membership

(1) If the office of a member of ONRSR becomes vacant because the member has completed the member's term of office, the member is taken to continue to be a member during that vacancy until the date on which the vacancy is filled, whether by reappointment of the member or appointment of a successor to the member.

(2) However, this section ceases to apply to the member if—

(a) the member resigns the member's office by signed notice given to the responsible Ministers; or

(b) the responsible Ministers decide the services of the member are no longer required.

(3) The maximum period for which a member of ONRSR is taken to continue to be a member under this section after completion of the member's term of office is 6 months.

25—Members to act in public interest

A member of ONRSR is to act impartially and in the public interest in the exercise of the member's functions as a member.

26—Disclosure of conflict of interest

(1) If a member of ONRSR has a direct or indirect pecuniary or other interest that conflicts or may conflict with the exercise of the member's functions as a member, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the member's interest and the conflict to—

(a) for the Regulator—the responsible Ministers; or

(b) for a non-executive member—the Regulator.

(2) If a disclosure is made under subsection (1), the entity to whom the disclosure is made must notify ONRSR of the disclosure.

(3) Particulars of any disclosure made under subsection (1) must be recorded by ONRSR in a register of interests kept for the purpose.

(4) After a member of ONRSR has disclosed the nature of an interest and conflict or potential conflict under subsection (1), the member must not be present during any deliberation of ONRSR with respect to any matter that is, or may be, affected by the conflict, or take part in any decision of ONRSR with respect to any matter that is, or may be, affected by the conflict, unless—

(a) for the Regulator, the responsible Ministers otherwise decide; or

(b) for a non-executive member, ONRSR otherwise decides.

(5) For the purposes of the making of a decision by ONRSR under subsection (4) in relation to a matter, a member of ONRSR who has a direct or indirect pecuniary or other interest that conflicts or may conflict with the exercise of the member's functions as a member with respect to the matter must not—

(a) be present during any deliberation of ONRSR for the purpose of making the decision; or

(b) take part in the making of the decision by ONRSR.

(6) A contravention of this section does not invalidate any decision of ONRSR but if ONRSR becomes aware a member of ONRSR contravened this section, ONRSR must reconsider any decision made by ONRSR in which the member took part in contravention of this section.

Division 3—Procedures

27—Times and places of meetings

(1) The Regulator must hold such meetings as he or she considers necessary for the efficient exercise of ONRSR's functions.

(2) Meetings are to be held at such times and places as the Regulator decides.

28—Conduct of meetings

(1) The Regulator is to preside at all meetings of ONRSR at which he or she is present.

(2) If the Regulator is not present at a meeting, a person appointed to act as the Regulator must be present and preside.

(3) A quorum of ONRSR consists of 2 members.

(4) A decision supported by a majority of the votes cast at a meeting of ONRSR at which a quorum is present is the decision of ONRSR.

(5) The person presiding at a meeting of ONRSR has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

(6) Subject to this Division, ONRSR may regulate its own procedures.

(7) ONRSR must ensure that minutes of its meetings are kept.

29—Defects in appointment of members

A decision of ONRSR is not invalidated by any defect or irregularity in the appointment of a member.

30—Decisions without meetings

(1) A decision is taken to have been made at a meeting of ONRSR if—

(a) without meeting, a majority of the members indicate agreement with the proposed decision in accordance with the method determined under this section; and

(b) all members were informed, or reasonable efforts were made to inform all members, of the proposed decision.

(2) Subsection (1) applies only if ONRSR—

(a) has determined that it applies; and

(b) has determined the method by which members are to indicate agreement with proposed decisions.

(3) ONRSR must keep a record of decisions made under this section.

31—Common seal and execution of documents

(1) The common seal of ONRSR must not be affixed to a document except in pursuance of a decision of ONRSR, and the affixing of the seal must be attested by the signature of the Regulator or Acting Regulator.

(2) ONRSR may, by instrument under ONRSR's common seal, authorise an employee of ONRSR (whether nominated by name or by office or title) or any other person to execute documents on behalf of ONRSR subject to conditions and limitations (if any) specified in the instrument of authority.

(3) Without limiting subsection (2), an authority may be given so as to authorise 2 or more persons to execute documents jointly on behalf of ONRSR.

(4) A document is duly executed by ONRSR if—

(a) the common seal of ONRSR is affixed to the document in accordance with this section; or

(b) the document is signed on behalf of ONRSR by a person or persons in accordance with an authority conferred under this section.

(5) Where an apparently genuine document purports to bear the common seal of ONRSR, it will be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of ONRSR has been duly affixed to that document.

Division 4—Finance

32—Establishment of Fund

(1) The National Rail Safety Regulator Fund is established.

(2) The Fund is to be administered by ONRSR.

(3) ONRSR may establish accounts with any financial institution for money in the Fund.

(4) The Fund does not form part of the consolidated fund or consolidated account of a participating jurisdiction or the Commonwealth.

33—Payments into Fund

There is payable into the Fund—

(a) all money appropriated by the Parliament of any participating jurisdiction or the Commonwealth for the purposes of the Fund; and

(b) all fees, charges, costs and expenses paid to or recovered by ONRSR under this Law; and

(ba) all infringement penalties paid to or recovered by ONRSR; and

(bb) all portions of fines paid to ONRSR by order of a court under section 260A; and

(c) the proceeds of the investment of money in the Fund; and

(d) all grants, gifts and donations made to ONRSR, but subject to any trusts declared in relation to the grants, gifts or donations; and

(e) all money directed or authorised to be paid into the Fund under this Law, any law of a participating jurisdiction or any law of the Commonwealth; and

(f) any other money or property received by ONRSR in connection with the exercise of its functions; and

(g) any money paid to ONRSR for the provision of services to a State or Territory under an agreement mentioned in section 15(2)(b).

34—Payments out of Fund

Payments may be made from the Fund for the purpose of—

(a) paying any costs or expenses, or discharging any liabilities, incurred in the administration or enforcement of this Law, including (for example) payments made to a State or Territory for the provision of services under an agreement mentioned in section 15(2)(a); and

(b) paying any money directed or authorised to be paid out of the Fund under this Law; and

(c) any other payments recommended by ONRSR and approved by the responsible Ministers.

35—Investment of money in Fund

(1) ONRSR must invest its funds in a way that is secure and provides a low risk so that ONRSR's exposure to the loss of funds is minimised.

(2) ONRSR must keep records that show it has invested in a way that complies with subsection (1).

36—Financial management duties of ONRSR

ONRSR must—

(a) ensure its operations are carried out efficiently, effectively and economically; and

(b) keep proper books and records in relation to the Fund and other money received by ONRSR; and

(c) ensure expenditure is made from the Fund for lawful purposes only and, as far as possible, reasonable value is obtained for money expended from the Fund; and

(d) ensure its procedures, including internal control procedures, afford adequate safeguards with respect to—

(i) the correctness, regularity and propriety of payments made from the Fund; and

(ii) receiving and accounting for payments made to the Fund; and

(iii) prevention of fraud or mistake; and

(e) take any action necessary to ensure the preparation of accurate financial statements in accordance with Australian Accounting Standards for inclusion in its annual report; and

(f) take any action necessary to facilitate the audit of those financial statements under this Law; and

(g) arrange for any further audit by a qualified person of the books and records kept by ONRSR in relation to the Fund, if directed to do so by the responsible Ministers.

Division 5—Staff

37—Chief executive

(1) The Regulator is the chief executive of ONRSR responsible for—

(a) the day to day management of ONRSR; and

(b) carrying out any other function conferred on the chief executive under this Law, an Act or by ONRSR.

(2) The chief executive must act consistently with the policies determined by ONRSR.

38—Staff

(1) ONRSR may, for the purpose of exercising its functions, employ staff.

(2) The staff of ONRSR are to be employed on the terms and conditions decided by ONRSR from time to time.

(3) Subsection (2) is subject to any relevant industrial award or agreement that applies to the staff.

39—Secondments to ONRSR

ONRSR may make arrangements for the services of a person who is a member of the staff of a government agency of a participating jurisdiction or the Commonwealth to be made available to ONRSR in connection with the exercise of its functions.

40—Consultants and contractors

(1) ONRSR may engage persons with suitable qualifications and experience as consultants or contractors.

(2) The terms and conditions of engagement of consultants or contractors are as decided by ONRSR from time to time.

Division 6—Miscellaneous

41—Regulator may be directed to investigate rail safety matter

(1) The responsible Minister for a participating jurisdiction may give a written direction to the Regulator to investigate, or provide advice or information about, a rail safety matter relating to the participating jurisdiction.

(2) A direction may not be given under this section—

(a) that directs the Regulator as to how to conduct an investigation into a rail safety matter; or

(b) that directs the Regulator as to which persons the Regulator may request or direct to provide assistance in investigating a rail safety matter; or

(c) about the outcome of any such investigation; or

(d) that directs the Regulator to stop any such investigation.

(3) The Regulator must cause a direction given under this section to be published in ONRSR's next annual report.

42—National Rail Safety Register

(1) The Regulator must establish and maintain the National Rail Safety Register for the purposes of this Law.

(2) The Regulator must ensure that the following matters are recorded in the Register:

(a) the accreditation of a rail transport operator under Part 3 Division 4;

(b) the variation, cancellation, suspension or expiry of the accreditation of a rail transport operator under Part 3 Division 4;

(c) the registration of a rail infrastructure manager of a private siding under Part 3 Division 5;

(d) the variation, cancellation, suspension or expiry of the registration of a rail infrastructure manager of a private siding under Part 3 Division 5;

(e) an exemption from this Law or specified provisions of this Law conferred on a person and details of the exemption;

(f) a decision to accept a rail safety undertaking and the reasons for that decision under Part 10 Division 6;

(g) a decision to withdraw or vary a rail safety undertaking under Part 10 Division 6;

(h) the issuing of an improvement notice to a person;

(i) the variation, cancellation or expiry of an improvement notice;

(j) the issuing of a prohibition notice to a person;

(k) the variation, cancellation or expiry of a prohibition notice;

(l) the issuing of a non-disturbance notice to a person;

(m) the variation, cancellation or expiry of a non-disturbance notice;

(n) any other matter that is prescribed in the national regulations to be included in the Register.

(3) The Register will be kept in the form of a computer record and published on ONRSR's website.

(4) The Register is to be available for inspection, without fee, during ordinary office hours at a public office, or public offices, determined by the Regulator.

43—Annual report

(1) The Regulator must, on or before 30 September in each year, deliver to the responsible Ministers a report on ONRSR's activities for the financial year ending on the preceding 30 June.

(2) The annual report must include—

(a) information on the development of rail safety (including an aggregation of statistics of a prescribed class reported to ONRSR under this Law for the relevant financial year); and

(b) information on any improvements and important changes in relation to the regulation of rail safety for the relevant financial year; and

(c) details of all rail safety issues brought to the attention of ONRSR during the relevant financial year and the action (if any) taken in relation to each such issue; and

(d) if, at the start of the relevant financial year, there are still outstanding any rail safety issues that previously had been brought to the attention of ONRSR—details of the action (if any) taken in respect of each such issue; and

(e) details about any significant activity undertaken in each participating jurisdiction during the relevant financial year by, or on behalf of, ONRSR; and

(f) the financial statement in respect of the relevant financial year; and

(g) the report on the financial statement made by the public sector auditor who conducted the audit; and

(h) any other information required to be included in the report by another provision under this Law or by the responsible Ministers.

(3) The financial statement must be—

(a) prepared in accordance with Australian Accounting Standards; and

(b) audited, and reported on, by a public sector auditor.

(4) The responsible Ministers must make arrangements for the tabling of ONRSR's annual report in the Parliament of each participating jurisdiction.

(5) The responsible Ministers may extend, or further extend, the period for submission of an annual report to the responsible Ministers by a total period of up to 3 months.

(6) As soon as practicable after the annual report has been tabled in at least 1 House of the Parliament of a participating jurisdiction, the Regulator must publish a copy of the report on ONRSR's website.

44—Other reporting requirements

The national regulations may require ONRSR to deliver to a prescribed body or person, at prescribed intervals, a report containing prescribed matters.

45—Delegation

(1) ONRSR 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 ONRSR under this Law or an Act.

(2) 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 Law or an Act.

(3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Part 3—Regulation of rail safety

Division 1—Interpretation

46—Management of risks

A duty imposed on a person under this Law 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 minimise those risks so far as is reasonably practicable.

47—Meaning of reasonably practicable

In this Part—

reasonably practicable, in relation to a duty to ensure safety, means that which is (or was at a particular time) reasonably able to be done in relation to ensuring safety, taking into account and weighing up all relevant matters, including—

(a) the likelihood of the hazard or the risk concerned occurring; and

(b) the degree of harm that might result from the hazard or the risk; and

(c) what the person concerned knows, or ought reasonably to know, about—

(i) the hazard or the risk; and

(ii) ways of eliminating or minimising the risk; and

(d) the availability and suitability of ways to eliminate or minimise the risk; and

(e) after assessing the extent of the risk and the available ways of eliminating or minimising the risk—the cost associated with available ways of eliminating or minimising the risk (including whether the cost is grossly disproportionate to the risk).

Division 2—Occupational health and safety and railway operations

48—Relationship between this Law and OHS legislation

(1) 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 Law.

(2) If a provision of this Law 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 Law deals with a certain matter and a provision of the occupational health and safety legislation deals with the same matter and it is impossible to comply with both provisions, a person must comply with the occupational health and safety legislation and not with this Law. If provisions of both this Law and the occupational health and safety legislation deal with the same matter but it is possible to comply with both provisions, a person must comply with both.

(3) Compliance with this Law or with any requirement imposed under this Law is not in itself a defence in any proceedings for an offence against the occupational health and safety legislation.

(4) Evidence of a relevant contravention of this Law is admissible in any proceedings for an offence against the occupational health and safety legislation.

49—No double jeopardy

Where an act or omission constitutes an offence—

(a) under this Law; and

(b) under the occupational health and safety legislation,

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

Division 3—Rail safety duties

Subdivision 1—Principles

50—Principles of shared responsibility, accountability, integrated risk management, etc

(1) Rail safety is the shared responsibility of—

(a) rail transport operators; and

(b) rail safety workers; and

(c) other persons who—

(i) design, commission, construct, manufacture, supply, install, erect, maintain, repair, modify or decommission rail infrastructure or rolling stock; or

(ii) supply rail infrastructure operations or rolling stock operations to rail operators; or

(iii) in relation to the transport of freight by railway—load or unload freight on or from rolling stock; and

(d) the Regulator; and

(e) ONRSR; and

(f) the public.

(2) The level and nature of responsibility that a person referred to in subsection (1), or falling within a class of person referred to in that subsection, has for rail safety is dependent on the nature of the risk to rail safety that the person creates from the carrying out of an activity (or the making of a decision) and the capacity that person has to control, eliminate or mitigate those risks.

(3) The persons and classes of persons referred to in subsection (1) should—

(a) participate in or be able to participate in; and

(b) be consulted on; and

(c) be involved in the formulation and implementation of,

measures to manage risks to safety associated with railway operations.

(4) Managing risks associated with the carrying out of rail infrastructure operations or rolling stock operations is the responsibility of the person best able to control those risks.

(5) If approaches to managing risks associated with any particular railway have potential impacts on any other railway or a railway network of which the railway is a part, the best practicable rail safety outcome should be sought.

51—Principles applying to rail safety duties

(1) A duty under this Law cannot be transferred to another person.

(2) A person can have more than 1 duty under this Law by virtue of being in more than 1 class of duty holder.

(3) More than 1 person can concurrently have the same duty under this Law and each duty holder must comply with that duty to the standard required by this Law even if another duty holder has the same duty.

(4) If more than 1 person has a duty for the same matter, each person—

(a) retains responsibility for the person's duty in relation to the matter; and

(b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter (or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity).

Subdivision 2—Duties

52—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.

(2) Without limiting subsection (1), a rail transport operator must ensure, so far as is reasonably practicable—

(a) that safe systems for the carrying out of the operator's railway operations are developed and implemented; and

(b) 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; and

(c) 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 impaired by alcohol or a drug; and

(d) that rail safety workers who perform rail safety work in relation to the operator's railway operations do not carry out rail safety work while impaired by fatigue or if they may become so impaired; and

(e) the provision of adequate facilities for the safety of persons at any railway premises under the control or management of the operator; and

(f) the provision of—

(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 must ensure, so far as is reasonably practicable—

(a) the provision or maintenance of rail infrastructure that is safe; and

(b) that any design, construction, commissioning, use, installation, modification, maintenance, repair or decommissioning of the manager's rail infrastructure is done or carried out in a way that ensures the safety of railway operations; and

(c) that systems and procedures for the scheduling, control and monitoring of railway operations are established and maintained so as to ensure the safety of the manager's railway operations; and

(d) that communications systems and procedures are established and maintained so as to ensure the safety of the manager's railway operations.

(4) Without limiting subsection (1), a rolling stock operator must ensure, so far as is reasonably practicable—

(a) the provision or maintenance of rolling stock that is safe; and

(b) that any design, construction, commissioning, use, modification, maintenance, repair or decommissioning of the operator's rolling stock is done or carried out in a way that ensures safety; and

(c) compliance with the 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; and

(d) that equipment, procedures and systems are established and maintained so as to minimise risks to the safety of the operator's railway operations; and

(e) that arrangements are made for ensuring safety in connection with the use, operation and maintenance of the operator's rolling stock; and

(f) that communications systems and procedures are established and maintained so as to ensure the safety of the operator's railway operations.

(5) This section applies to a person (other than a rail transport operator) who carries out railway operations in the same way as it applies to a rail transport operator, but does not apply if the person carries out those operations as a rail safety worker or an employee.

53—Duties of designers, manufacturers, suppliers etc

(1) A person—

(a) who designs, commissions, manufactures, supplies, installs or erects any thing; and

(b) who 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) ensure, so far as is reasonably practicable, that such testing and examination of the thing as may be necessary for compliance with this section is carried out; 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, that the thing is safe if it is used for a purpose for which it was designed, commissioned, manufactured, supplied, installed or erected.

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

(3) A person who decommissions any rail infrastructure or rolling stock must ensure, so far as is reasonably practicable—

(a) that the decommissioning is carried out safely; and

(b) such testing and examination as may be necessary for compliance with this section is carried out.

54—Duties of persons loading or unloading freight

A person who loads or unloads freight on or from rolling stock in relation to the transport of the freight by railway must ensure, so far as is reasonably practicable, that the loading or unloading is carried out safely and so as to ensure the safe operation of the rolling stock.

55—Duty of officers to exercise due diligence

(1) If a person has a duty or obligation under this Law, an officer of the person must exercise due diligence to ensure that the person complies with that duty or obligation.

(2) An officer of a person referred to in subsection (1) may be convicted or found guilty of an offence under this Law relating to a duty under this section whether or not the person has been convicted or found guilty of an offence under this Law relating to the duty or obligation.

(3) In this section—

due diligence includes taking reasonable steps—

(a) to acquire and keep up-to-date knowledge of rail safety matters; and

(b) to gain an understanding of the nature of the railway operations of the person and, generally, of the risks associated with those operations; and

(c) to ensure that the person has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to safety from the railway operations of the person; and

(d) to ensure that the person has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information; and

(e) to ensure that the person has, and implements, processes for complying with any duty or obligation of the person under this Law; and

(f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

56—Duties of rail safety workers

(1) A rail safety worker must, when carrying out rail safety work—

(a) take reasonable care for his or her own safety; and

(b) take reasonable care that his or her acts or omissions do not adversely affect the safety of other persons; and

(c) comply, so far as the worker is reasonably able, with any reasonable instruction given by the rail transport operator to allow the operator to comply with this Law.

(2) A rail safety worker must not, when carrying out rail safety work, 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 Law.

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

(4) 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 as to what the worker knew about the relevant circumstances.

Subdivision 3—Offences and penalties

57—Meaning of *safety duty*

In this Subdivision—

safety duty means a duty imposed under Subdivision 2.

58—Failure to comply with safety duty—reckless conduct—Category 1

(1) A person commits a Category 1 offence if—

(a) the person has a safety duty; and

(b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and

(c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Maximum penalty:

(a) in the case of an individual—$300 000 or imprisonment for 5 years, or both;

(b) in the case of a body corporate—$3 000 000.

(2) The prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

59—Failure to comply with safety duty—Category 2

A person commits a Category 2 offence if—

(a) the person has a safety duty; and

(b) the person fails to comply with that duty; and

(c) the failure exposes an individual to a risk of death or serious injury or illness.

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

60—Failure to comply with safety duty—Category 3

A person commits a Category 3 offence if—

(a) the person has a safety duty; and

(b) the person fails to comply with that duty.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

Division 4—Accreditation

Subdivision 1—Purpose and requirement for accreditation

61—Purpose of accreditation

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

62—Accreditation required for railway operations

(1) A person must not carry out any railway operations unless the person—

(a) is a rail transport operator who—

(i) is accredited under this Part in respect of those operations; or

(ii) is exempt under this Law from compliance with this section in respect of those operations; or

(b) is carrying out those operations for or on behalf of—

(i) a rail transport operator who is accredited under this Part in respect of those operations; or

(ii) a rail transport operator who is exempt under this Law from compliance with this section in respect of those operations; or

(c) is exempt under this Law from compliance with this section in respect of those operations.

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

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* of the Commonwealth).

(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 Law from compliance with this section,

in relation to that rail safety work.

63—Purposes for which accreditation may be granted

(1) 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 specified in the accreditation, or for a part or parts having the scope or characteristics so specified;

(b) for any service or aspect, or part of a service or aspect, of railway operations specified in the accreditation;

(c) for specified railway operations to permit any 1 or more of the following:

(i) construction of rail infrastructure;

(ii) restoration or repair work;

(iii) testing of railway tracks or other infrastructure;

(iv) other activities relating to railway operations considered appropriate by the Regulator and specified in the accreditation.

(2) Accreditation may be granted for railway operations carried out, or proposed to be carried out, in 1 or more jurisdictions by a rail transport operator.

(3) If the applicant so requests, accreditation may be granted for a specified period only.

Subdivision 2—Procedures for granting accreditation

64—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 description of the safety management system (including a description of the measures to be taken to manage identified risks) relating to those railway operations; and

(c) must contain the prescribed information; and

(d) 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; and

(b) to verify by statutory declaration any information supplied to the Regulator.

65—What applicant must demonstrate

The Regulator must not grant accreditation to an applicant unless satisfied that the applicant has demonstrated—

(a) that the applicant is, or is to be, a rail infrastructure manager or rolling stock operator in respect of 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) has met the consultation requirements set out in Division 6 in relation to the applicant's safety management system; and

(iv) has complied with the requirements prescribed by the national regulations (if any) for the purposes of this section.

66—Regulator may direct applicants to coordinate 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 railway operations of the applicants are carried out safely,

the Regulator may give a direction in writing to each of the applicants to coordinate their applications (a ***coordination direction***).

(2) A coordination direction—

(a) may be given to rail transport operators carrying out, or proposing to carry out, railway operations in different jurisdictions; and

(b) may require each rail transport operator subject to the direction to provide to each other rail transport operator subject to the direction information concerning any circumstances in relation to the carrying out of railway operations by the first mentioned operator that could constitute a risk to safety in relation to the carrying out of railway operations by another operator subject to the direction.

(3) A rail transport operator to whom a coordination direction has been given under this section must comply with the direction.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(4) A rail transport operator who has coordinated the preparation of an application with other rail transport operators in accordance with a coordination direction under this section must include in the application reference to—

(a) information given by the operator to each other operator subject to the direction; and

(b) information given to the operator by each other operator subject to the direction.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

67—Determination of application

(1) Subject to this section, the Regulator must, within the relevant period—

(a) if the Regulator is satisfied as to the matters referred to in section 65 and (if applicable) section 66—notify the applicant that accreditation has been granted, with or without conditions or restrictions; or

(b) if the Regulator is not so satisfied—notify the applicant that the application has been refused.

(2) Accreditation under this Law is subject to—

(a) any conditions or restrictions prescribed by the national regulations for the purposes of this section that are applicable to the accreditation; and

(b) any other condition or restriction imposed on the accreditation by the Regulator.

(3) Before imposing a condition or restriction on the accreditation of an applicant, the Regulator must, if the imposition of the intended condition or restriction is likely to result in significant costs or expenses to the applicant or any other person—

(a) conduct or cause to be conducted a cost-benefit analysis of the effect of imposing the intended condition or restriction on the accreditation; and

(b) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the imposition of the intended condition or restriction on the accreditation.

(4) Notification under this section—

(a) must be in writing and given to the applicant; and

(b) if accreditation has been granted, must specify—

(i) the prescribed details of the applicant; and

(ii) 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

(iii) any condition or restriction imposed by the Regulator under this section on the grant of accreditation; and

(iv) any other prescribed information; and

(c) if a condition or restriction has been imposed on the accreditation, must include—

(i) the reasons for imposing the condition or restriction, including (if applicable) the results of any cost-benefit analysis carried out under this section; and

(ii) information about the right of review under Part 7; and

(d) if the application has been refused, must include—

(i) the reasons for the decision to refuse to grant the application; and

(ii) information about the right of review under Part 7; and

(e) if the relevant period in relation to the application has been extended, must include information about the right of review under Part 7.

(5) 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 written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

Subdivision 3—Variation of accreditation

68—Application for variation of accreditation

(1) An accredited person may, at any time, apply to the Regulator for variation of the accreditation.

(2) An accredited person must apply to the Regulator for variation of the accreditation if—

(a) the applicant proposes to vary the scope and nature of the railway operations in respect of which the applicant is accredited; or

(b) the applicant no longer has the competence or capacity to manage risks to safety associated with the railway operations in respect of which the applicant is accredited; or

(c) any other variation is proposed in respect of the railway operations in respect of which the applicant is accredited that should be reflected in the accreditation.

(3) An application for variation must be made in the manner and form approved by the Regulator and—

(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.

(4) The Regulator may require an accredited person who has applied for a variation—

(a) to supply further information requested by the Regulator; and

(b) to verify by statutory declaration any information supplied to the Regulator.

(5) Section 66 applies to an application for variation as if a reference in that section to accreditation were a reference to variation of accreditation.

69—Determination of application for variation

(1) Subject to this section, the Regulator must, within the relevant period—

(a) if the Regulator is satisfied as to the matters referred to in sections 65 and 66 (so far as they are applicable to the proposed variation)—notify the applicant that the accreditation has been varied, with or without conditions or restrictions; or

(b) if the Regulator is not so satisfied—notify the applicant that the application has been refused.

(2) Notification under this section—

(a) must be in writing and given to the applicant; and

(b) if the accreditation has been varied, must specify—

(i) the prescribed details of the applicant; and

(ii) 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

(iii) any conditions and restrictions imposed by the Regulator on the accreditation as varied; and

(iv) any other prescribed information; and

(c) if a condition or restriction has been imposed on the accreditation as varied, must include—

(i) the reasons for imposing the condition or restriction; and

(ii) information about the right of review under Part 7; and

(d) if the application to vary an accreditation has been refused, must include—

(i) the reasons for the decision to refuse to grant the application; and

(ii) information about the right of review under Part 7; and

(e) if the relevant period in relation to an application has been extended, must include information about the right of review under Part 7.

(3) 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 written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

70—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 national regulations that are applicable to the accreditation as varied.

71—Variation of conditions and restrictions

(1) An accredited person may, at any time, apply to the Regulator for a variation of a condition or restriction imposed by the Regulator to which the accreditation is subject.

(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 68 applies accordingly).

(3) The Regulator must consider the application and, if satisfied as to the matters referred to in sections 65 and 66 (so far as they are applicable to the proposed variation), notify the accredited person in accordance with the provisions of this Division applicable to a grant of accreditation (so far as is practicable) that the variation has been granted or refused.

(4) Notification under subsection (3) that a variation has been refused must include the reasons for the decision to refuse to grant the variation and information about the right of review under Part 7.

72—Regulator may make changes to conditions or restrictions

(1) The Regulator may, subject to this section, at any time, vary or cancel 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 28 days (or any other period that the Regulator and the accredited person agree on); and

(c) consider any representations made under paragraph (b) and not withdrawn; and

(d) if the intended action is likely to result in significant costs or expenses to the accredited person or any other person—

(i) conduct or cause to be conducted a cost-benefit analysis of the effect of the intended action; and

(ii) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the intended action.

(3) Subsection (2)(d) does not apply if the Regulator considers it necessary to take immediate action in the interests of safety but, if the action is likely to result in significant costs or expenses to the accredited person or any other person, the Regulator must, as soon as practicable after taking the action—

(a) conduct or cause to be conducted a cost-benefit analysis of the effect of the action; and

(b) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the action.

(4) The Regulator must, by written notice given to the accredited person, provide—

(a) details of any action taken under this section; and

(b) a statement of reasons for any action taken under this section, including (if applicable) the results of any cost-benefit analysis carried out; and

(c) information about the right of review under Part 7.

Subdivision 4—Cancellation, suspension or surrender of accreditation

73—Cancellation 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 65 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 Law.

(2) The Regulator may—

(a) suspend the accreditation, or part of the accreditation, of the accredited person for a period determined by the Regulator; or

(b) cancel 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) impose conditions or restrictions on the accreditation; or

(d) vary conditions or restrictions to which the accreditation is subject,

and, if the Regulator cancels the accreditation, the Regulator may declare that the accredited person is disqualified from applying for accreditation, or for accreditation in respect of 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 cancels 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 cancellation the reasons for the suspension or cancellation and information about the right of review under Part 7.

(5) The Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.

74—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 73(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 written notice 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 notice; 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 notify the person in writing that the suspension is being extended and include in the notice the reasons for the extension and information about the right of review under Part 7.

75—Surrender of accreditation

(1) Accreditation may only be surrendered in accordance with this section.

(2) If an accredited person intends to surrender accreditation, the accredited person must—

(a) give the Regulator written notice of the intention to surrender the accreditation; and

(b) provide the Regulator with details as to the arrangements proposed in relation to the cessation of the person's railway operations.

(3) If the Regulator is satisfied as to the arrangements proposed in relation to the cessation of the accredited person's railway operations, the Regulator must, as soon as reasonably practicable, by written notice given to the person, inform the person that the person's accreditation may be surrendered in accordance with the proposed arrangements on the date specified in the notice.

(4) If the Regulator is not satisfied as to the arrangements proposed in relation to the cessation of the accredited person's railway operations, the Regulator must, as soon as reasonably practicable, by written notice given to the person, inform the person—

(a) that the Regulator is not satisfied as to the proposed arrangements; and

(b) of the reasons for the Regulator's dissatisfaction; and

(c) that the person's accreditation may not be surrendered until the Regulator is satisfied as to the proposed arrangements.

Subdivision 5—Miscellaneous

76—Annual fees

(1) An accredited person must pay the annual fee prescribed by the national regulations.

(2) The annual fee must be paid by an accredited person at the time accreditation is granted and thereafter on an annual basis on or before the prescribed date.

(3) However, 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.

(3a) The Regulator may, by written notice given to an accredited person, suspend the accreditation of the person for failure to pay the annual fee on or before the prescribed date, or in accordance with an agreement under subsection (3), until the fee is paid.

(3b) Before making a decision under subsection (3a), the Regulator must notify the person in writing that the Regulator is considering suspending the person's accreditation for non-payment of the annual fee or for an instalment of the fee (as the case may be) if the person does not, within the period specified in the notice—

(a) where the person has been paying the whole of the annual fee in 1 instalment—

(i) pay the fee; or

(ii) negotiate an agreement with the Regulator in relation to payment of the fee and make a payment accordingly; or

(b) where the person has been paying the annual fee in accordance with an agreement under subsection (3)—

(i) make a payment in accordance with the agreement; or

(ii) re-negotiate the agreement relating to payment of the annual fee with the Regulator and make a payment accordingly.

(3c) The Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.

(4) The national regulations may—

(a) fix different fees for different kinds of accreditations; and

(b) fix various methods for the calculation of various fees; and

(c) fix fees which may be differential, varying according to any factor determined by the Regulator; and

(d) impose additional fees for the late payment of fees under this section.

77—Waiver of fees

The Regulator may waive, or refund, the whole or part of any fee payable under this Division.

78—Penalty for breach of condition or restriction

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

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

79—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 this Law, an Act or a rule of law to the contrary.

80—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 being made by the proposed transferee, waive compliance by the proposed transferee with any 1 or more of the requirements of this Part.

(2) However, the Regulator must not 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 Part 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.

81—Keeping and making available records for public inspection

(1) A person must ensure that—

(a) if the person is an accredited person or has an exemption under this Law—the current notice of accreditation or exemption; and

(b) any other document prescribed by the national regulations for the purposes of this section,

are available for inspection—

(c) if the person is a body corporate—at the person's registered office during ordinary business hours;

(d) if the person is not a body corporate—at the person's principal place of business during ordinary business hours (or, if the Regulator approves another place and time, at that place and time).

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(2) A person who is required under subsection (1) to make available documents for inspection must maintain a register of those documents for inspection.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

Division 5—Registration of rail infrastructure managers of private sidings

Subdivision 1—Exemptions relating to certain private sidings

82—Exemption from accreditation in respect of certain private sidings

(1) A rail infrastructure manager of a private siding is not required to be accredited under this Part in respect of railway operations (other than those involving the operation of rolling stock) carried out in the private siding.

(2) Subject to section 83(2), a rail infrastructure manager of a private siding is not required to comply with Division 6, Division 7 or Division 8 of this Part in relation to the private siding in respect of railway operations (other than those involving the operation of rolling stock) carried out in the private siding.

83—Requirement for managers of certain private sidings to be registered

(1) A rail infrastructure manager of a private siding that is to be (or continue to be) connected with, or to have access to, a railway of an accredited person or another private siding, must be registered in respect of the private siding in accordance with this Division.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(2) A rail infrastructure manager of a private siding that is to be (or continue to be) connected with, or to have access to, a railway of an accredited person or another private siding must—

(a) comply with the requirements of Division 6 Subdivision 2 of this Part insofar as they are relevant to the railway operations carried out in the private siding; and

(b) seek to enter into an interface agreement with the accredited person or rail infrastructure manager of the other private siding (as the case may be).

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

Subdivision 2—Procedures for granting registration

84—Application for registration

(1) A rail infrastructure manager of a private siding to which section 83 applies may apply to the Regulator for registration in respect of the private siding.

(2) An application must be made in the manner and form approved by the Regulator and—

(a) must contain—

(i) details about the scale and complexity of the private siding; and

(ii) details about the extent of the railway track layout and other rail infrastructure of the private siding; and

(iii) details about the railway operations to be carried out in the private siding; and

(iv) if the private siding is to be (or continue to be) connected with, or to have access to—

(A) a railway of an accredited person—the prescribed details about the railway and the accredited person; or

(B) another private siding—the prescribed details about that siding and the rail infrastructure manager of that siding; and

(v) any other prescribed information; and

(b) must be accompanied by the prescribed application fee.

(3) The Regulator may require an applicant for registration—

(a) to supply further information requested by the Regulator; and

(b) to verify by statutory declaration any information supplied to the Regulator.

85—What applicant must demonstrate

The Regulator must not grant registration to an applicant unless satisfied that the applicant has demonstrated—

(a) that the applicant is, or is to be, the rail infrastructure manager of the private siding; and

(b) that the railway operations to be carried out (or continue to be carried out) in the private siding are such that registration of the applicant (rather than accreditation of the applicant in respect of the railway operations) is, in the opinion of the Regulator, the appropriate action; and

(c) that the applicant has complied with the requirements prescribed by the national regulations (if any) for the purposes of this section.

86—Determination of application

(1) Subject to this section, the Regulator must, within the relevant period—

(a) if the Regulator is satisfied as to the matters referred to in section 85—notify the applicant that registration has been granted, with or without conditions or restrictions; or

(b) if the Regulator is not so satisfied—notify the applicant that the application has been refused.

(2) Registration under this Law is subject to—

(a) any conditions or restrictions prescribed by the national regulations for the purposes of this section; and

(b) any other condition or restriction imposed on the registration by the Regulator.

(3) Notification under this section—

(a) must be in writing and given to the applicant; and

(b) if registration has been granted, must specify—

(i) the prescribed details of the applicant; and

(ii) the prescribed details of the private siding; and

(iii) any conditions and restrictions imposed by the Regulator on the registration; and

(iv) any other prescribed information; and

(c) if a condition or restriction has been imposed on the registration, must include—

(i) the reasons for imposing the condition or restriction; and

(ii) information about the right of review under Part 7; and

(d) if the application has been refused, must include—

(i) the reasons for the decision to refuse to grant the application; and

(ii) information about the right of review under Part 7; and

(e) if the relevant period in relation to the application has been extended, must include information about the right of review under Part 7.

(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 written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

Subdivision 3—Variation of registration

87—Application for variation of registration

(1) A registered person may, at any time, apply to the Regulator for a variation of the registration.

(2) A registered person must apply to the Regulator for a variation of the registration if—

(a) the applicant proposes to vary the scale and complexity of the private siding in respect of which the applicant is registered; or

(b) the applicant proposes to vary the railway operations to be carried out in the private siding in respect of which the applicant is registered; or

(c) any other variation is proposed in relation to the private siding in respect of which the applicant is registered that should be reflected in the registration.

(3) An application for variation must be made in the manner and form approved by the Regulator and—

(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.

(4) The Regulator may require a registered person who has applied for a variation under this section—

(a) to supply further information requested by the Regulator; and

(b) to verify by statutory declaration any information supplied to the Regulator.

88—Determination of application for variation

(1) Subject to this section, the Regulator must, within the relevant period—

(a) if the Regulator is satisfied as to the matters referred to in section 85 (so far as they are applicable to the proposed variation), notify the applicant that registration has been varied, with or without conditions or restrictions; or

(b) if the Regulator is not so satisfied—notify the applicant that the application has been refused.

(2) Notification under this section—

(a) must be in writing and given to the applicant; and

(b) if registration has been varied, must specify—

(i) the prescribed details of the applicant; and

(ii) the variation to the registration; and

(iii) any conditions and restrictions imposed by the Regulator on the registration as varied; and

(iv) any other prescribed information; and

(c) if a condition or restriction has been imposed on the registration as varied, must include—

(i) the reasons for imposing the condition or restriction; and

(ii) information about the right of review under Part 7; and

(d) if the application has been refused, must include—

(i) the reasons for the decision to refuse to grant the application; and

(ii) information about the right of review under Part 7; and

(e) if the relevant period in relation to an application has been extended, must include information about the right of review under Part 7.

(3) 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 written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

89—Prescribed conditions and restrictions

The registration of a person that is varied under this Division is subject to any conditions or restrictions prescribed by the national regulations that are applicable to the registration as varied.

90—Variation of conditions and restrictions

(1) A registered person may, at any time, apply to the Regulator for a variation of a condition or restriction imposed by the Regulator to which the registration is subject.

(2) An application for variation of a condition or restriction must be made as if it were an application for variation of registration (and section 87 applies accordingly).

(3) The Regulator must consider the application and, if satisfied as to the matters referred to in section 86 (so far as they are applicable to the proposed variation), notify the registered person in accordance with the provisions of this Division applicable to a grant of registration (so far as is practicable), that the variation has been granted or refused.

(4) Notification under subsection (3) that a variation has been refused must include the reasons for the decision to refuse to grant the variation and information about the right of review under Part 7.

91—Regulator may make changes to conditions or restrictions

(1) The Regulator may, subject to this section, at any time, vary or cancel a condition or restriction imposed by the Regulator to which the registration of a registered person is subject or impose a new condition or restriction.

(2) Before taking action under this section, the Regulator must—

(a) give the registered person written notice of the action that the Regulator proposes to take; and

(b) allow the registered person to make written representations about the intended action within 28 days (or any other period that the Regulator and the registered person agree on); 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, by written notice given to the registered person, provide—

(a) details of any action taken under subsection (1); and

(b) a statement of reasons for any action taken under subsection (1); and

(c) information about the right of review under Part 7.

Subdivision 4—Cancellation, suspension or surrender of registration

92—Cancellation or suspension of registration

(1) This section applies in respect of a registered person if—

(a) the Regulator considers that the registered person—

(i) is no longer able to demonstrate to the satisfaction of the Regulator the matters referred to in section 85 or to satisfy the conditions, or to comply with the restrictions, of the registration; or

(ii) is not controlling or managing the private siding and has not done so for at least the preceding 12 months; or

(b) the registered person contravenes this Law.

(2) The Regulator may—

(a) suspend the registration of the registered person for a period determined by the Regulator; or

(b) cancel the registration of the registered person with immediate effect or with effect from a specified future date; or

(c) impose conditions or restrictions on the registration; or

(d) vary conditions or restrictions to which the registration is subject.

(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 cancels the registration of the registered person, the Regulator must include in the notice of suspension or cancellation the reasons for the suspension or cancellation and information about the right of review under Part 7.

(5) The Regulator may withdraw a suspension of the registration of a person by written notice given to the person.

93—Immediate suspension of registration

(1) If the Regulator considers that there is, or would be, an immediate and serious risk to safety unless a registration is suspended immediately, the Regulator may, without complying with section 92(3) or (4), by written notice given to the registered person, immediately suspend the registration of the person for a specified period, not exceeding 6 weeks.

(2) The Regulator may, by written notice given to a person whose registration is suspended—

(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 registration 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 notify the person in writing that the suspension is being extended and include in the notice the reasons for the extension and information about the right of review under Part 7.

94—Surrender of registration

(1) Registration may only be surrendered in accordance with this section.

(2) If a registered person intends to surrender registration, the registered person must—

(a) give the Regulator written notice of the intention to surrender the registration; and

(b) provide the Regulator with details as to the arrangements proposed in relation to the cessation of the person's railway operations in respect of the private siding.

(3) If the Regulator is satisfied as to the arrangements proposed in relation to the cessation of the registered person's railway operations, the Regulator must, as soon as reasonably practicable, by written notice given to the person, inform the person that the person's registration may be surrendered in accordance with the proposed arrangements on the date specified in the notice.

(4) If the Regulator is not satisfied as to the arrangements proposed in relation to the cessation of the registered person's railway operations, the Regulator must, as soon as reasonably practicable, by written notice given to the person, inform the person—

(a) that the Regulator is not satisfied as to the proposed arrangements; and

(b) of the reasons for the Regulator's dissatisfaction; and

(c) that the person's registration may not be surrendered until the Regulator is satisfied as to the proposed arrangements.

Subdivision 5—Miscellaneous

95—Annual fees

(1) A registered person must pay the annual fee prescribed by the national regulations.

(2) The annual fee must be paid by a registered person at the time registration is granted and thereafter on an annual basis on or before the prescribed date.

(3) However, 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 national regulations may—

(a) fix different fees for different kinds of registration; and

(b) fix various methods for the calculation of various fees; and

(c) fix fees which may be differential, varying according to any factor determined by the Regulator; and

(d) impose additional fees for the late payment of fees under this section.

96—Waiver of fees

The Regulator may waive, or refund, the whole or part of any fee payable under this Division.

96A—Annual activity statements

(1) A rail infrastructure manager must give the Regulator an annual activity statement about the manager's railway operations carried out in a private siding to which section 83 applies for each reporting period that—

(a) is in a form approved by the Regulator; and

(b) complies with the requirements (if any) prescribed by the national regulations for the purposes of this section; and

(c) contains—

(i) a description of the railway operations carried out in the private siding; and

(ii) details of any changes to the railway operations, rolling stock or rail infrastructure; and

(iii) a description of risk management processes applicable to the private siding.

(2) A rail infrastructure manager must submit a statement in accordance with this section within 7 days after the end of each reporting period or as otherwise agreed with the Regulator.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(3) In this section—

reporting period means a financial year or such other period as is agreed from time to time by the Regulator and the rail infrastructure manager.

97—Registration cannot be transferred or assigned

(1) Registration—

(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 a registration or any other purported dealing with a registration by the person who holds it is of no effect.

(3) This section has effect despite anything in this Law, an Act or a rule of law to the contrary.

98—Offences relating to registration

(1) A registered person must not contravene a condition or restriction of the registration.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

(2) A registered person must ensure that the notice of registration, and any other document prescribed by the national regulations for the purposes of this section, is available for inspection—

(a) if the person is a body corporate—at the person's registered office during ordinary business hours;

(b) if the person is not a body corporate—at the person's principal place of business during ordinary business hours (or, if the Regulator approves another place and time, at that place and time).

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(3) A person who is required under subsection (2) to make available documents for inspection must maintain a register of those documents for inspection.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

Division 6—Safety management

Subdivision 1—Safety management systems

99—Safety management system

(1) A rail transport operator must have a safety management system for railway operations in respect of which the operator is required to be accredited that—

(a) is in a form approved by the Regulator; and

(b) provides for systems and procedures for compliance with the risk management obligations under this Law; and

(c) identifies any risks to safety in relation to railway operations in respect of which the operator is required to be accredited; and

(d) provides for the comprehensive and systematic assessment of any identified risks; and

(e) specifies the controls (including audits, expertise, resources and staff) that are to be used by the operator to manage identified risks and to monitor safety in relation to those railway operations; and

(f) includes procedures for monitoring, reviewing and revising the adequacy of those controls; and

(g) addresses and includes any other matter prescribed by the national regulations that is relevant to the railway operations for which the rail transport operator is accredited.

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

(2) The safety management system for a rail transport operator must also include the following matters prepared in accordance with the requirements of this Division:

(a) measures to manage identified risks to safety for the purposes of interface agreements;

(b) a security management plan;

(c) an emergency management plan;

(d) a health and fitness management program;

(e) a drug and alcohol management program;

(f) a fatigue risk management program.

(3) Before establishing a safety management system in relation to railway operations in respect of which a rail transport operator is required to be accredited or reviewing or varying any such safety management system, the operator must, so far as is reasonably practicable—

(a) consult with—

(i) 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 operator's railway premises or with the operator's rolling stock; and

(ii) health and safety representatives (within the meaning of the occupational health and safety legislation) representing any of the persons referred to in subparagraph (i); and

(iii) any union representing any of the persons referred to in subparagraph (i); and

(iv) any other rail transport operator with whom the first mentioned operator is required to enter into an interface agreement relating to risks to safety of railway operations carried out by or on behalf of either of them; and

(v) the public, as appropriate; and

(b) provide the persons consulted with a reasonable opportunity to make submissions on the proposed safety management system; and

(c) advise those persons in a timely manner of the outcome of the consultation process.

(4) 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 (3)(a)(iv) with the first mentioned operator, when taken as 1 system, comply with this Law, both safety management systems are taken to comply with this Law.

(5) A safety management system must be evidenced in writing and must identify—

(a) each person responsible for preparing any part of the safety management system; and

(b) the person, or class of persons, responsible for implementing the system.

100—Conduct of assessments for identified risks

(1) In conducting an assessment for the purposes of section 99(1)(d), the rail transport operator must—

(a) examine and analyse each identified risk, including—

(i) the nature of the risk; and

(ii) the likelihood of the risk occurring; and

(iii) the magnitude and severity of the consequences should a risk be realised; and

(iv) the range of control measures available and considered to eliminate or minimise the risk; and

(b) consider risks cumulatively as well as individually; and

(c) use assessment methodologies that are appropriate to the risks under consideration.

(2) The rail transport operator must keep a detailed record of all aspects of the assessment process, including—

(a) the risks considered; and

(b) the likelihood, severity of consequences and control measures considered, including reasons for selecting certain control measures and rejecting others.

101—Compliance with safety management system

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

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

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

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

(3) Subsection (2) places an evidential burden on the accused to show a reasonable excuse.

102—Review of safety management system

A rail transport operator must review the operator's safety management system in accordance with the national 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 operator and the Regulator).

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

103—Safety performance reports

(1) A rail transport operator must give the Regulator a safety performance report about the operator's railway operations in respect of which the operator is required to be accredited for each reporting period that—

(a) is in a form approved by the Regulator; and

(b) complies with the requirements (if any) prescribed by the national regulations for the purposes of this section; and

(c) contains—

(i) a description and assessment of the safety performance of the operator's railway operations; and

(ii) comments on any deficiencies, 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 national regulations for the purposes 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) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(3) In this section—

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

104—Regulator may direct amendment of safety management system

(1) The Regulator may, by written notice given to an accredited person, direct the person to amend the person's safety management system in a specified manner within a specified period, being not less than 28 days after the giving of the direction.

(2) Before giving a direction to amend a safety management system under subsection (1), the Regulator must, if the intended amendment is likely to result in significant costs or expenses to the accredited person or any other person—

(a) conduct or cause to be conducted a cost-benefit analysis of the effect of the intended amendment; and

(b) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the intended amendment.

(3) A direction under subsection (1)—

(a) must state the reasons why the Regulator considers it necessary for the rail transport operator to amend the safety management system; and

(b) must include (if applicable) the results of any cost-benefit analysis carried out under this section; and

(c) must include information about the right of review under Part 7.

(4) An accredited person must not, without reasonable excuse, fail to comply with a direction under subsection (1).

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

(5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

Subdivision 2—Interface agreements

105—Requirements for and scope of interface agreements

(1) An interface agreement must include provisions for—

(a) implementing and maintaining measures to manage risks identified under section 99(1)(c) associated with the interface; and

(b) the evaluation, testing and (where appropriate) revision of measures in relation to identified risks and incidents considered; and

(c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and

(d) procedures by which the parties to the agreement will exchange information about, and monitor compliance with, their obligations under the agreement; and

(e) a process for keeping the agreement under review and its revision.

(2) An interface agreement 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.

106—Interface coordination—rail transport operators

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) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

107—Interface coordination—rail infrastructure and public 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—

(i) the existence of road infrastructure of a prescribed public road; or

(ii) the existence or use of any rail or road crossing that is part of the road infrastructure of a public 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) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

(2) The road manager of a public 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—

(i) the existence of road infrastructure of a prescribed public road; or

(ii) the existence or use of any rail or road crossing that is part of the road infrastructure of a public 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 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 or law.

108—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 the extent to which those risks are managed by any prescribed protocols; and

(c) 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

(d) unless paragraph (c)(ii) applies—for the purpose of managing those risks, seek to enter into an interface agreement with the road manager.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

(2) If a rail infrastructure manager gives a road manager of a private road a written notice under subsection (1)(c)(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) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

109—Identification and assessment of risks

A rail transport operator, rail infrastructure manager or road manager that is required under this Subdivision 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.

110—Regulator may give directions

(1) This section applies if the Regulator is satisfied that a rail transport operator, rail infrastructure manager or road manager referred to in this Subdivision—

(a) is unreasonably refusing or failing to enter into an interface agreement with another person as required under this Subdivision; or

(b) is unreasonably delaying the negotiation of such an agreement.

(2) The Regulator may give 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 Regulator'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 Regulator gives a notice under subsection (2) to a rail transport operator, rail infrastructure manager or road manager, the Regulator may, in writing, require the operator or manager to provide such information as the Regulator reasonably requires for the purposes of making a direction under this section.

(4) If a notice is given under subsection (2) and an interface agreement has not been entered into by or on the date specified in the notice, the Regulator—

(a) may determine the arrangements that are to apply in relation to the management of risks to safety referred to in section 106, 107 or 108 (as the case requires); and

(b) may direct any of the persons to whom the notice is issued to give effect to those arrangements; and

(c) must specify the time within which a direction is to be complied with.

(5) A direction under subsection (4)—

(a) must be in writing; and

(b) must set out any arrangements determined by the Regulator 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) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

111—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 Regulator under section 110,

that are applicable to the operator's railway operations.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(2) A road manager must maintain a register of—

(a) interface agreements to which it is a party; and

(b) arrangements determined by the Regulator under section 110,

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

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

Subdivision 3—Other safety plans and programs

112—Security management plan

(1) A rail transport operator must have a security management plan for railway operations in respect of which the operator is required to be accredited that—

(a) incorporates measures to protect people from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and

(b) complies with this Law and any requirements prescribed by the national regulations.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

(2) The rail transport operator must ensure—

(a) that the security management plan is implemented; and

(b) that appropriate response measures of the security management plan are implemented without delay if an incident of a kind referred to in subsection (1)(a) occurs.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

113—Emergency management plan

(1) A rail transport operator must have an emergency management plan that complies with subsection (2) for railway operations in respect of which the operator is required to be accredited.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

(2) The emergency management plan must—

(a) address and include the matters that are prescribed; and

(b) be prepared—

(i) so far as is reasonably practicable—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 national regulations; and

(c) be kept and maintained in accordance with the national 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 national 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) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

114—Health and fitness management program

A rail transport operator must prepare and implement a health and fitness program for rail safety workers who carry out rail safety work in relation to railway operations in respect of which the operator is required to be accredited that complies with the prescribed requirements relating to health and fitness programs.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

115—Drug and alcohol management program

A rail transport operator must prepare and implement a drug and alcohol management program for rail safety workers who carry out rail safety work in relation to railway operations in respect of which the operator is required to be accredited that complies with the prescribed requirements relating to drug and alcohol management programs.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

116—Fatigue risk 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 rail safety work in relation to railway operations in respect of which the operator is required to be accredited that complies with the prescribed requirements relating to fatigue risk management programs.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

Subdivision 4—Provisions relating to rail safety workers

117—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 railway operations in respect of which the operator is required to be accredited has the competence to carry out that work.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

(2) For the purposes of subsection (1), the competence of a rail safety worker to carry out rail safety work—

(a) must be assessed—

(i) in accordance with any qualification and units of competence recognised under the AQF applicable to that rail safety work; or

(ii) if subparagraph (i) does not apply—in accordance with any qualifications or competencies prescribed by the national regulations; and

(b) must be assessed by reference to the knowledge and skills of the worker that would enable the worker to carry out the rail safety work safely.

(3) A certificate purporting to have been issued under the AQF to a rail safety worker certifying that the worker has certain qualifications or units of competence is evidence that the worker has those qualifications or units of competence.

(4) Subsection (2) does not apply if—

(a) it is not reasonably practicable for a rail transport operator to assess the competence of a rail safety worker to carry out rail safety work in relation to the operator's rail infrastructure or rolling stock in accordance with that subsection; and

(b) the operator satisfies the Regulator that—

(i) the worker has otherwise acquired the necessary qualifications and competencies applicable to that rail safety work; and

(ii) the worker has the knowledge and skills that would enable the worker to carry out the rail safety work safely.

(5) 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.

(6) A rail transport operator must maintain records in accordance with the national regulations of the competence of rail safety workers who carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(7) In this section, a reference to the ***AQF*** is a reference to the Australian Qualifications Framework within the meaning of the *Higher Education Support Act 2003* of the Commonwealth as in force from time to time, and includes a reference to any national policy that may be made in substitution for the Australian Qualifications Framework as in force from time to time.

118—Identification of 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 operator's railway operations has a form of identification that is sufficient to enable the type of competence and training of the worker for that rail safety work to be checked by a rail safety officer.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(2) A rail safety worker who is carrying out rail safety work must, when requested by a rail safety officer to do so, produce the identification provided in accordance with subsection (1) to the officer.

Maximum penalty: $2 500.

Subdivision 5—Other persons to comply with safety management system

119—Other persons 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) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

Division 7—Information about rail safety etc

120—Power of Regulator to obtain information from rail transport operators

(1) The Regulator may, by written notice 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, 1 or more 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 transport 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:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(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 national regulations for the purposes of this subsection relating to rail safety or accreditation.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

Division 8—Investigating and reporting by rail transport operators

121—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 national regulations, all notifiable occurrences that happen on, or in relation to, the operator's railway premises or railway operations.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(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 written notice given to a rail transport operator, require the 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:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(5) The Regulator may require information in a report under this section to be verified by statutory declaration.

122—Investigation of notifiable occurrences

(1) The Regulator may, by written notice given to a rail transport operator, require the operator to investigate notifiable occurrences, or any other occurrences that have endangered or may endanger the safe operation of the railway operations carried out by the 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:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(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:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(5) However, information or a document provided by a rail transport operator in a report under this section is not admissible as evidence against the operator in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the information or document.

Division 9—Drug and alcohol testing by Regulator

123—Testing for presence of drugs or alcohol

A rail safety worker may be required to undertake a test for the presence of a drug or alcohol in accordance with this Law and the application Act.

124—Appointment of authorised persons

(1) The Regulator may, by instrument in writing, appoint—

(a) a rail safety officer; or

(b) a person with qualifications or experience considered by the Regulator to be appropriate for the performance of relevant functions under this Law and the application Act,

to be an authorised person for a term, and subject to the conditions, specified in the instrument.

Note—

A person appointed under subsection (1)(b) need not be an employee of a government agency or instrumentality.

(2) The authority of an authorised person may be limited by the relevant instrument of appointment to a particular part of a participating jurisdiction, to a particular railway or to particular rail safety workers, or otherwise.

125—Identity cards

(1) The Regulator must give each authorised person appointed under section 124 an identity card that states the person's name and appointment as an authorised person and includes any other matter prescribed by the national regulations.

(2) An authorised person to whom an identity card has been issued must produce his or her identity card for inspection on request to a person required by the authorised person to submit to a test or to do any other thing under this Law or the application Act.

(3) If a person to whom an identity card has been issued ceases to be an authorised person, the person must return the identity card to the Regulator as soon as practicable.

Maximum penalty: $5 000.

126—Authorised person may require preliminary breath test or breath analysis

(1) Subject to this section, 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) is still on railway premises after carrying out rail safety work; or

(e) without limiting a preceding paragraph—is involved in a prescribed notifiable occurrence,

to submit to testing by means of a preliminary breath test or breath analysis (or both).

(2) For the purposes of making a requirement that a rail safety worker submit to a preliminary breath test or breath analysis, an authorised person may—

(a) require the worker to provide the worker's name and residential address; and

(b) give any other reasonable direction to the worker.

Example—

An authorised person may (for example) direct the rail safety worker to accompany the authorised person and attend at a specified place for the purposes of carrying out the preliminary breath test or breath analysis.

(3) A rail safety worker must immediately comply with a direction given by an authorised person (whether under this section or the application Act) for the purpose of requiring the worker to submit to a preliminary breath test or breath analysis.

Maximum penalty: $10 000.

(4) The application Act and regulations made under the application Act may prescribe the manner in which a preliminary breath test 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 preliminary breath test or breath analysis for the purposes of this Law, the application Act or any other Act).

127—Authorised person may require drug screening test, oral fluid analysis and blood test

(1) Subject to this section, 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) is still on railway premises after carrying out rail safety work; or

(e) without limiting a preceding paragraph—is involved in a prescribed notifiable occurrence,

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

(2) For the purposes of making a requirement that a rail safety worker submit to a drug screening test, oral fluid analysis or blood test, an authorised person may—

(a) require the worker to provide the worker's name and residential address; and

(b) give any other reasonable direction to the worker.

Example—

An authorised person may (for example) direct the rail safety worker to accompany the authorised person and attend at a specified place for the purposes of carrying out the drug screening test, oral fluid analysis or blood test.

(3) A rail safety worker must immediately comply with a direction given by an authorised person (whether under this section or the application Act) for the purpose of requiring the worker to submit to a drug screening test, oral fluid analysis or blood test (or any combination of these).

Maximum penalty: $10 000.

(4) The application Act and regulations made under the application Act may prescribe the manner in which a drug screening test, oral fluid analysis or blood test is to be conducted.

128—Offence relating to prescribed concentration of alcohol or prescribed drug

(1) 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: $10 000.

Note—

In some participating jurisdictions, provision is made that, for the purposes of this Law, a concentration of alcohol in a sample of a person's breath will be taken to indicate a concentration of alcohol in the person's blood.

(2) For the purposes of subsection (1)(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 (1)(c)).

(3) Subject to subsection (4), it is a defence to a charge of an offence against subsection (1)(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.

(4) Subsection (3) 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.

(5) For the purposes of this section—

prescribed concentration of alcohol, in relation to a rail safety worker, means—

(a) any concentration of alcohol in the blood; or

(b) if some other concentration of alcohol is prescribed in the national regulations (being a specified amount of alcohol in 100 millilitres of blood) for the purposes of this definition—that concentration;

prescribed drug means—

(a) any of the following substances:

(i) *delta*-9-tetrahydrocannabinol;

(ii) Methylamphetamine (Methamphetamine);

(iii) 3,4-Methylenedioxymethylamphetamine (MDMA); and

(b) any other substance declared by the national regulations to be a prescribed drug for the purposes of this section.

129—Oral fluid or blood sample or results of analysis etc not to be used for other purposes

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

Division 10—Train safety recordings

130—Interpretation

In this Division—

train safety recording means a recording consisting of (or mainly of) sounds or images or data, or any combination of sounds, images or data, produced by a device installed in a train, signal box, train control complex or other railway premises for the purpose of recording activities carried out by rail safety workers in relation to the operation of a train.

131—Disclosure of train safety recordings

A person must not publish or communicate to any person—

(a) a train safety recording or any part of a train safety recording; or

(b) any information obtained from a train safety recording or any part of a train safety recording,

otherwise than in the course of an inquiry or an investigation into an accident or incident under this Part or for the purposes of, or in connection with—

(c) criminal proceedings (not being criminal proceedings in which it is not admissible), investigations relating to any such criminal proceedings or investigations by or proceedings before a coroner; or

(d) civil proceedings in which an order is made under section 132; or

(e) a disclosure or publication that is otherwise permitted under this Law or an Act.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

132—Admissibility of evidence of train safety recordings in civil proceedings

(1) A train safety recording is not admissible in evidence in any civil proceedings against a rail safety worker.

(2) A party to civil proceedings may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that a train safety recording, or part of a train safety recording, be admissible in evidence in the proceedings.

(3) If an application is made to a court under subsection (2), the court must—

(a) examine the train safety recording; and

(b) if satisfied that—

(i) a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court; and

(ii) the train safety recording, or a part of the train safety recording, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact; and

(iii) in the circumstances of the case, the public interest in the proper determination of that material question of fact outweighs the public interest in protecting the privacy of rail safety workers,

the court may order that the train safety recording, or that part of the train safety recording, be admissible in evidence in the proceedings.

(4) If the court makes an order referred to in subsection (3), the train safety recording is (despite subsection (1)) admissible in evidence in the proceedings.

Note—

Part 6 of the *Transport Safety Investigation Act 2003* of the Commonwealth provides for limitations on the disclosure and use of train safety recordings in court proceedings.

Division 11—Audit of railway operations by Regulator

133—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 written notice to a rail transport operator before inspecting the operator's railway operations under this section.

(4) The national 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, engaged 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 4—Securing compliance

Division 1—Guiding principle

134—Guiding principle

Enforcement of this Law should be undertaken for the purpose of—

(a) protecting public safety; and

(b) promoting improvement in rail safety; and

(c) removing incentive for any unfair commercial advantage that might be derived from contravening the rail safety requirements under this Law; and

(d) influencing the attitude and behaviour of persons whose actions may have adverse impacts on rail safety; and

(e) securing compliance with this Law through effective and appropriate compliance and enforcement measures.

Division 2—Rail safety officers

135—Appointment

(1) The Regulator may, by instrument in writing, appoint a person, or a person of a prescribed class, to be a rail safety officer for a term, and subject to the conditions, specified in the instrument.

Notes—

1 A person appointed under subsection (1) need not be an employee of a government agency or instrumentality.

2 A person appointed under subsection (1) may be a police officer of a participating jurisdiction.

(2) Without limiting the conditions to which the appointment of a rail safety officer may be subject, a condition may specify 1 or more of the following:

(a) functions under this Law that may not be exercised by the officer;

(b) the only functions under this Law that may be exercised by the officer;

(c) the circumstances or manner in which a function under this Law may be performed by the officer.

136—Identity cards

(1) The Regulator must give each rail safety officer an identity card that states the person's name and appointment as a rail safety officer and includes any other matter prescribed by the national regulations.

(2) A rail safety officer must produce his or her identity card for inspection on request when exercising a function under this Law.

(3) If a person to whom an identity card has been issued ceases to be a rail safety officer, the person must return the identity card to the Regulator as soon as practicable.

Maximum penalty: $5 000.

137—Accountability of rail safety officers

(1) A rail safety officer must give written notice to the Regulator of all interests, pecuniary or otherwise, that the officer has, or acquires, and that conflict or could conflict with the proper exercise of the officer's functions.

(2) The Regulator must give a direction to a rail safety officer not to deal, or to no longer deal, with a matter if the Regulator becomes aware that the officer has a potential conflict of interest in relation to a matter and the Regulator considers that the officer should not deal, or should no longer deal, with the matter.

138—Suspension and ending of appointment of rail safety officers

(1) The Regulator may suspend or end the appointment of a rail safety officer.

(2) A person's appointment as a rail safety officer ends when the person ceases to be eligible for appointment as a rail safety officer.

Division 3—Regulator has functions and powers of rail safety officers

139—Regulator has functions and powers of rail safety officers

(1) The Regulator has all the functions and powers that a rail safety officer has under this Law.

(2) Accordingly, a reference in this Law to a ***rail safety officer*** includes a reference to the Regulator.

Division 4—Functions and powers of rail safety officers

140—Functions and powers

A rail safety officer has the following functions and powers under this Law:

(a) to provide information and advice about compliance with this Law;

(b) to require compliance with this Law through the issuing of notices;

(c) to investigate contraventions of this Law and assist in the prosecution of offences;

(d) other functions or powers conferred by the national regulations.

141—Conditions on rail safety officers' powers

A rail safety officer's powers under this Law are subject to any conditions specified in the instrument of the officer's appointment.

142—Rail safety officers subject to Regulator's directions

(1) A rail safety officer is subject to the directions of the Regulator in the exercise of his or her powers under this Law.

(2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

Division 5—Powers relating to entry

Subdivision 1—General powers of entry

143—Powers of entry

(1) A rail safety officer may at any time enter a place that is, or that the officer reasonably suspects is, railway premises.

(2) If a rail safety officer enters a place under subsection (1) and it is not railway premises, the officer must leave the place immediately.

(3) A rail safety officer may enter a place that adjoins railway premises if the entry is urgently required for the purpose of dealing with a railway accident or incident.

(4) An entry may be made under subsection (1) or (3) with or without the consent of the person with control or management of the place.

(5) A rail safety officer may enter any place if the entry is authorised by a search warrant.

Note—

A rail safety officer may enter residential premises to gain access to railway premises—see section 153(c).

144—Notification of entry

(1) A rail safety officer may enter a place under section 143 without prior notice to any person.

(2) A rail safety officer must, as soon as practicable after entry to a place that is, or that the officer reasonably suspects is, railway premises, take all reasonable steps to notify the person with control or management of the place.

(3) However, a rail safety officer is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.

145—General powers on entry

(1) A rail safety officer who enters a place under section 143 may do any of the following:

(a) inspect, examine and make inquiries at the place;

(b) inspect and examine any thing (including a document) at the place;

(c) bring to the place and use any equipment or materials that may be required;

(d) enter or open, using reasonable force, rail infrastructure, rolling stock, a road vehicle or other thing to examine the rail infrastructure, rolling stock, road vehicle or other thing;

(e) give directions with respect to the stopping or movement of any rolling stock or road vehicle;

(f) 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;

(g) conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);

(h) mark, tag or otherwise identify rolling stock, a road vehicle or other thing;

(i) seize any thing (including a document) at the place if the officer reasonably believes the thing is evidence of an offence against this Law;

(j) take and remove for analysis, testing or examination a sample of any substance or thing without paying for it;

(k) require a person at the place to give the officer reasonable help to exercise the officer's powers under paragraphs (a) to (j);

(l) exercise any power that is reasonably necessary to be exercised by the officer for the purposes of this Law.

(2) A film, photograph, video or digital recording, or other image, taken under subsection (1)(g) 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 is incidental to the taking of the film, photograph, video or digital recording, or other image.

(3) A person required to give reasonable help under subsection (1)(k) must not, without reasonable excuse, fail to comply with the requirement.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(4) Subsection (3) places an evidential burden on the accused to show a reasonable excuse.

(5) In this section—

reasonable help includes—

(a) assistance to enable the rail safety officer to find and gain access to electronically stored material and information; and

(b) unloading rolling stock; and

(c) running the engine of a locomotive; and

(d) driving a train; and

(e) giving the rail safety officer assistance to enter any rail infrastructure or any part of rail infrastructure, or open rolling stock or any part of rolling stock.

146—Persons assisting rail safety officers

(1) A person (the ***assistant***), including an interpreter, may accompany a rail safety officer entering a place under this Part to assist the officer if the officer considers the assistance necessary.

(2) The assistant—

(a) may do such things at the place and in such manner as the rail safety officer reasonably requires to assist the officer in the exercise of his or her powers under this Law; but

(b) must not do anything that the officer does not have power to do, except as permitted under a search warrant.

(3) Anything done lawfully by the assistant is taken for all purposes to have been done by the rail safety officer.

147—Use of electronic equipment

(1) Without limiting section 145, 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 rail safety officer, or a person assisting the officer, may operate the equipment to access the information.

(2) A rail safety officer, or a person assisting a rail safety officer, must not operate or seize equipment for the purpose mentioned in this section unless the 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.

148—Use of equipment to examine or process things

(1) Without limiting section 145, a rail safety 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 rail safety officer, or a person assisting the 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 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.

149—Securing a site or rolling stock

(1) For the purpose of protecting evidence that might be relevant for compliance or investigative purposes, an authorised officer may secure rolling stock or the perimeter of any site at a place by whatever means the authorised officer considers appropriate.

(2) A person must not, without the permission of an authorised officer—

(a) enter or remain near rolling stock that is secured under this section; or

(b) 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 rolling stock or site, or remains near or at the rolling stock or site—

(a) to ensure the safety of persons; or

(b) to remove deceased persons or animals from the rolling stock or 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 officer must not unreasonably withhold a permission referred to in subsection (2).

(5) In this section—

authorised officer means a rail safety officer or a police officer.

Note—

See also Part 5 Division 3 which provides for the issue of a non-disturbance notice.

Subdivision 2—Search warrants

150—Search warrants

(1) A rail safety officer may apply to a magistrate for a search warrant for a place.

(2) Subject to subsection (6), the application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the rail safety officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a search warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the ***evidence***) that may provide evidence of an offence against this Law; and

(b) the evidence is, or may be within the next 72 hours, at the place.

(5) Subject to subsection (6), the search warrant must state—

(a) that a stated rail safety officer may, with necessary and reasonable help and force, enter the place and exercise the powers of the officer; and

(b) the offence for which the search warrant is sought; and

(c) the evidence that may be seized under the search warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 7 days after the search warrant's issue, the search warrant ends.

(6) A rail safety officer may apply to a magistrate for a search warrant by telephone, fax or other prescribed means if the officer considers the urgency of the situation requires it and, in such a case, the following provisions will apply:

(a) the magistrate may complete and sign the warrant without the provision of sworn evidence and without a written application that states the grounds on which the warrant is sought if the magistrate is satisfied that there are reasonable grounds for issuing the warrant urgently;

(b) if the magistrate completes and signs a warrant under paragraph (a), the magistrate must then tell the officer—

(i) the terms of the warrant (as contemplated by subsection (5)); and

(ii) the date on which, and the time at which, the warrant was signed;

(c) if steps are taken under paragraph (b), the officer must then—

(i) complete a form of warrant in the same terms as the warrant signed by the magistrate and write on the form—

(A) the name of the magistrate; and

(B) the date on which, and the time at which, the warrant was signed; and

(ii) send the magistrate the completed form of warrant not later than the day after the warrant is executed or comes to an end;

(d) a form of warrant completed by an officer under paragraph (c) has the same force and effect as a warrant signed by the magistrate under subsections (4) and (5).

151—Announcement before entry on warrant

(1) Before executing a search warrant, the rail safety officer named in the warrant or an assistant to the officer must—

(a) announce that he or she is authorised by the warrant to enter the place; and

(b) give any person at the place an opportunity to allow that entry.

(2) However, the rail safety officer or an assistant to the officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place is needed to ensure—

(a) the safety of any person; or

(b) that the effective execution of the warrant is not frustrated.

152—Copy of warrant to be given to person with control or management of place

If the person who has or appears to have control or management of a place is present at the place when a search warrant is being executed, the rail safety officer must—

(a) identify himself or herself to that person by producing his or her identity card for inspection; and

(b) give that person a copy of the warrant.

Subdivision 3—Limitation on entry powers

153—Places used for residential purposes

Despite anything else in this Division, the powers of a rail safety officer under this Part in relation to entering a place are not exercisable in respect of any part of a place that is used only for residential purposes except—

(a) with the consent of the person with control or management of the place; or

(b) under the authority conferred by a search warrant; or

(c) for the sole purpose of gaining access to suspected railway premises, but only—

(i) if the officer reasonably believes that no reasonable alternative access is available; and

(ii) at a reasonable time, having regard to the times at which the officer believes rail safety work is being carried out at the place to which access is sought.

Subdivision 4—Specific powers on entry

154—Power to require production of documents and answers to questions

(1) A rail safety officer who enters a place under this Division may—

(a) require a person to tell the officer who has custody of, or access to, a document; or

(b) require a person who has custody of, or access to, a document to produce that document to the officer while the officer is at the place, or within a specified period; or

(c) require a person at the place to answer any questions put by the officer.

(2) A requirement under subsection (1)(b) must be made by written notice unless the circumstances require the rail safety officer to have immediate access to the document.

(3) An interview conducted by a rail safety officer under subsection (1)(c) must be conducted in private if—

(a) the rail safety officer considers it appropriate; or

(b) the person being interviewed so requests.

(4) Subsection (3) does not limit the operation of section 146 or prevent a representative of the person being interviewed from being present at the interview.

(5) Subsection (3) may be invoked during an interview by—

(a) the rail safety officer; or

(b) the person being interviewed,

in which case the subsection applies to the remainder of the interview.

(6) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

155—Abrogation of privilege against self-incrimination

(1) A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

(2) However, the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

156—Warning to be given

(1) Before requiring a person to answer a question or provide information or a document under this Part, a rail safety officer must—

(a) identify himself or herself to the person as a rail safety officer by producing the officer's identity card or in some other way; and

(b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and

(c) warn the person about the effect of section 155; and

(d) advise the person about the effect of section 245.

(2) It is not an offence for an individual to refuse to answer a question put by a rail safety officer or provide information or a document to a rail safety officer under this Part on the ground that the question, information or document might tend to incriminate him or her, unless he or she was first given the warning in subsection (1)(c).

(3) Nothing in this section prevents a rail safety officer from obtaining and using evidence given to the officer voluntarily by any person.

157—Power to copy and retain documents

(1) A rail safety officer may—

(a) make copies of, or take extracts from, a document given to the officer in accordance with a requirement under this Law; and

(b) keep that document for the period that the officer considers necessary.

(2) While a rail safety officer retains custody of a document, the officer must permit the following persons to inspect or make copies of the document at all reasonable times:

(a) the person who produced the document;

(b) the owner of the document;

(c) a person authorised by a person referred to in paragraph (a) or (b).

Subdivision 5—Powers to support seizure

158—Power to seize evidence etc

(1) A rail safety officer who enters railway premises under section 143 may seize anything (including a document) at the premises if the officer reasonably believes the thing is evidence of an offence against this Law.

(2) A rail safety officer who enters a place with a search warrant may seize the evidence for which the warrant was issued.

(3) A rail safety officer may also seize anything else at the place if the officer reasonably believes—

(a) the thing is evidence of an offence against this Law; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

159—Directions relating to seizure

(1) To enable a thing to be seized under this Part, a rail safety 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 written notice given to the person; or

(b) if for any reason it is not practicable to give a signed written notice to the person—may be given orally and confirmed by signed written notice 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 (for example) 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: $5 000.

(5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

(6) 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.

(7) In this section—

in control, in relation to a thing, means having, or reasonably appearing to a rail safety officer as having, authority to exercise control over the thing.

160—Rail safety officer may direct a thing's return

(1) If a rail safety officer has directed a person to take a thing to a specified place within a specified time under section 159(1), a rail safety 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: $5 000.

(3) Subsection (2) places an evidential burden on the accused to show a reasonable excuse.

161—Receipt for seized things

(1) After a rail safety officer seizes a thing under this Part, the 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 rail safety 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 rail safety officer to account for the thing, given its condition, nature and value.

162—Forfeiture of seized things

(1) A seized thing is forfeited to the Regulator if the Regulator—

(a) cannot find the person entitled to the thing after making reasonable inquiries; or

(b) cannot return it to the person entitled to it, after making reasonable efforts; or

(c) reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Law.

(2) Subsection (1)(a) does not require the Regulator to make inquiries if it would be unreasonable to make inquiries to find the person entitled to the thing.

(3) Subsection (1)(b) does not require the Regulator to make efforts if it would be unreasonable to make efforts to return the thing to the person entitled to it.

(4) If the Regulator decides to forfeit the thing under subsection (1)(c), the Regulator must tell the person entitled to the thing of the decision by written notice.

(5) Subsection (4) does not apply if—

(a) the Regulator cannot find the person entitled to the thing, after making reasonable inquiries; or

(b) it is impracticable or would be unreasonable to give the notice.

(6) The notice must state—

(a) the reasons for the decision; and

(b) information about the right of review under Part 7.

(7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.

(8) Any costs reasonably incurred by the Regulator in storing or disposing of a thing forfeited under subsection (1)(c) may be recovered in a court of competent jurisdiction as a debt due to the Regulator from that person.

(9) In this section—

person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

163—Return of seized things

(1) If a seized thing has not been forfeited under this Part, the person entitled to the thing may apply to the Regulator for the return of the thing after the end of 6 months after it was seized.

(2) The Regulator must return the thing to the applicant under subsection (1) unless the Regulator has reasonable grounds to retain the thing.

(3) The Regulator may impose any conditions on the return of the thing under this section that the Regulator considers appropriate to eliminate or minimise any risk to rail safety related to the thing.

(4) In this section—

person entitled to a thing means the person entitled to possess the thing or the owner of the thing.

164—Access to seized thing

(1) Until a seized thing is forfeited or returned under this Part, a rail safety 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.

Division 6—Damage and compensation

165—Damage etc to be minimised

In the exercise, or purported exercise, of a power under this Law, a rail safety officer must take all reasonable steps to ensure that the officer, and any assistant to the officer, cause as little inconvenience, detriment and damage as is practicable.

166—Rail safety officer to give notice of damage

(1) This section applies if a rail safety officer or an assistant to a rail safety officer damages a thing when exercising or purporting to exercise a power under this Law.

(2) The rail safety officer must, as soon as practicable, give written notice of the damage to the person whom the officer believes on reasonable grounds is the person in control of the thing.

(3) If the rail safety officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's or assistant's control, the officer may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the rail safety officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the rail safety officer reasonably believes is trivial.

167—Compensation

(1) A person may claim compensation from the Regulator if the person incurs loss or expense because of the exercise or purported exercise of a power under Division 5.

(2) Compensation may be claimed and ordered in a proceeding—

(a) brought in a court of competent jurisdiction; or

(b) for an offence against this Law brought against the person claiming compensation.

(3) The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(4) The national regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Division 7—Other matters

168—Power to require name and address

(1) A rail safety officer may require a person to provide the person's name and residential address if—

(a) the officer finds the person committing an offence against this Law; or

(b) the officer finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has committed an offence against this Law; or

(c) the officer reasonably believes that the person may be able to assist in the investigation of an offence against this Law.

(2) When asking a person to provide the person's name and residential address, the rail safety officer must—

(a) tell the person the reason for the requirement to provide the person's name and residential address; and

(b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.

(3) If the rail safety officer reasonably believes that the name or residential address is false, the officer may require the person to give evidence of its correctness.

(4) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1) or (3).

Maximum penalty: $5 000.

(5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

168A—Power to direct production of documents

(1) A rail safety officer may direct a person to make available for inspection by the officer, or produce to the officer for inspection, at a specified time and place—

(a) a document that is required to be kept by the person under this Law; or

(b) a document that is prepared by the person under this Law for the management of rail infrastructure or the operation of rolling stock that the officer reasonably believes is necessary for the officer to consider to understand or verify a document that is required to be kept under this 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) When giving a direction under subsection (1), the rail safety officer must warn the person it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.

(3) The rail safety officer may keep the document to copy it but must return the document to the person after copying it.

(4) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1).

Maximum penalty: $5 000.

(5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

169—Rail safety officer may take affidavits

A rail safety officer is authorised to take affidavits for any purpose relating or incidental to the exercise of his or her powers under this Law.

170—Attendance of rail safety officer at inquiries

A rail safety officer may participate in any inquiry into the cause of any death or injury of a rail safety worker while carrying out rail safety work, or into any other incident or event relevant to safety at railway premises.

171—Directions may be given under more than 1 provision

(1) A rail safety officer may, on the same occasion, give directions under 1 or more provisions of this Law.

(2) Without limiting subsection (1), a rail safety officer may, in the course of exercising powers under a provision of this Law, give—

(a) further directions under the provision; or

(b) directions under 1 or more other provisions of this Law,

or both.

Division 8—Offences in relation to rail safety officers

172—Offence to hinder or obstruct rail safety officer

A person must not intentionally hinder or obstruct a rail safety officer in exercising his or her powers under this Law, or induce or attempt to induce any other person to do so.

Maximum penalty: $10 000.

173—Offence to impersonate rail safety officer

A person who is not a rail safety officer must not, in any way, hold himself or herself out to be a rail safety officer.

Maximum penalty: $10 000.

174—Offence to assault, threaten or intimidate rail safety officer

A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, a rail safety officer or a person assisting a rail safety officer.

Maximum penalty:

(a) in the case of an individual—$50 000 or imprisonment for 2 years, or both;

(b) in the case of a body corporate—$250 000.

Part 5—Enforcement measures

Division 1—Improvement notices

175—Issue of improvement notices

(1) This section applies if a rail safety officer reasonably believes that a person—

(a) is contravening a provision of this Law; or

(b) has contravened a provision of this Law in circumstances that make it likely that the contravention will continue or be repeated; or

(c) is carrying out or has carried out—

(i) railway operations that threaten safety; or

(ii) other operations that threaten rail safety.

(2) Subject to this section, the rail safety officer may issue an improvement notice requiring the person—

(a) to remedy the contravention; or

(b) to prevent a likely contravention from occurring; or

(c) to remedy the things or operations causing the contravention or likely contravention; or

(d) to carry out railway operations or other operations so that safety is not threatened or likely to be threatened.

(3) Before serving an improvement notice issued to a person on a ground stated in subsection (1)(a) or (b) that includes a direction that the person take specified action to remedy the contravention or prevent the likely contravention, or to remedy the things or operations causing the contravention or likely contravention, the Regulator must, if of the opinion that the action is likely to result in significant costs or expenses to the person or any other person—

(a) conduct or cause to be conducted a cost-benefit analysis of the effect of the action; and

(b) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the action.

(4) Before serving an improvement notice issued to a person on a ground stated in subsection (1)(c) that includes a direction that the person take specified action by which railway operations or other operations may be carried out so that safety is not threatened or likely to be threatened, the Regulator must, if of the opinion that the action is likely to result in significant costs or expenses to the person or any other person—

(a) conduct or cause to be conducted a cost-benefit analysis of the effect of the action; and

(b) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the action.

(5) Subsections (3) and (4) do not apply if the Regulator considers it necessary to take immediate action in the interests of safety but, if the action is likely to result in significant costs or expenses to the person or any other person, the Regulator must, as soon as practicable after taking the action—

(a) conduct or cause to be conducted a cost-benefit analysis of the effect of the action; and

(b) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the action.

176—Contents of improvement notices

(1) An improvement notice must—

(a) if the notice relates to a contravention or likely contravention of this Law—

(i) state that the rail safety officer believes the person—

(A) is contravening a provision of this Law; or

(B) has contravened a provision of this Law in circumstances that make it likely that the contravention will continue or be repeated; and

(ii) state the provision the officer believes is being, or has been, contravened; and

(iii) briefly, state how the provision is being, or has been, contravened; and

(iv) state the day before which the person is required to remedy the contravention or likely contravention; and

(b) in any other case—

(i) state that the rail safety officer believes the person is carrying out or has carried out—

(A) railway operations that threaten safety; or

(B) other operations that threaten rail safety; and

(ii) briefly, state how—

(A) the railway operations are threatening, or have threatened, safety; or

(B) the other operations are threatening, or have threatened, rail safety; and

(iii) state the day before which the person is required to carry out railway operations or other operations so that safety is not threatened or likely to be threatened; and

(c) if a cost-benefit analysis has been carried out under section 175, set out the results of that analysis; and

(d) set out the penalty for non-compliance with the notice; and

(e) include information about the right to a review under Part 7 of the decision to serve the notice; and

(f) state that the notice is served under this section.

(2) An improvement notice served on a person on a ground stated in section 175(1)(a) or (b) may include directions concerning the action to be taken to remedy the contravention or prevent the likely contravention, or the things or operations causing the contravention or likely contravention, to which the notice relates.

(3) An improvement notice served on a person on the ground stated in section 175(1)(c) may include directions concerning the action to be taken by which railway operations or other operations to which the notice relates may be carried out so that safety is not threatened or likely to be threatened.

(4) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

177—Compliance with improvement notice

The person to whom an improvement notice is issued must comply with the notice within the period specified in the notice.

Maximum penalty:

(a) in the case of an individual—$50 000;

(b) in the case of a body corporate—$500 000.

178—Extension of time for compliance with improvement notices

(1) This section applies if a person has been issued with an improvement notice.

(2) A rail safety officer may, by written notice given to the person, extend the compliance period for the improvement notice.

(3) However, the rail safety officer may only extend the compliance period if the period has not ended.

(4) In this section—

compliance period means the period stated in the improvement notice under section 176, and includes that period as extended under this section.

Division 2—Prohibition notices

179—Issue of prohibition notice

(1) This section applies if a rail safety officer reasonably believes that—

(a) an activity is occurring in relation to railway operations or railway premises that involves or will involve an immediate risk to safety; or

(b) an activity may occur in relation to railway operations or railway premises that, if it occurs, will involve an immediate risk to safety; or

(c) an activity 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) The rail safety officer may issue a prohibition notice to a person who has, or appears to have, control over the activity prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until a rail safety officer is satisfied that the matters that give or will give rise to the risk have been remedied.

(3) A prohibition notice may be issued orally, but must be confirmed by written notice given to the person as soon as practicable.

180—Contents of prohibition notice

(1) A prohibition notice must—

(a) state that the rail safety officer believes that grounds for the issue of the prohibition notice exist and the basis for that belief; and

(b) briefly, state the activity that the officer believes involves or will involve the risk and the matters that give or will give rise to the risk; and

(c) state the provision (if any) of this Law that the officer believes is being, or is likely to be, contravened by that activity; and

(d) set out the penalty for contravening the notice; and

(e) include information about the right to a review under Part 7 of the decision to serve the notice; and

(f) state that the notice is served under this section.

(2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (1)(c).

(3) A direction in a prohibition notice may 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 (1)(c).

(4) Without limiting section 179, 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.

181—Compliance with prohibition notice

The person to whom a direction is given under this Division or a prohibition notice is issued must comply with the direction or notice.

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

Division 3—Non-disturbance notices

182—Issue of non-disturbance notice

A rail safety officer may issue a non-disturbance notice to the person with control or management of railway premises if the officer reasonably believes that it is necessary to do so to facilitate the exercise of his or her powers under this Law.

183—Contents of non-disturbance notice

(1) A non-disturbance notice may require the person to—

(a) preserve the site at which a notifiable occurrence has occurred for a specified period; or

(b) prevent the disturbance of a particular site (including the operation of plant or rolling stock) in other circumstances for a specified period that is reasonable in the circumstances.

(2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out—

(a) the obligations of the person to whom the notice is issued; and

(b) the measures to be taken to preserve a site or prevent disturbance of a site; and

(c) information about the right to a review under Part 7 of the decision to serve the notice; and

(d) the penalty for contravening the notice.

(3) In subsection (1), a reference to a site includes any rail infrastructure, rolling stock, substance or other thing associated with the site.

(4) A non-disturbance notice does not prevent any action—

(a) to assist an injured person; or

(b) to remove a deceased person; or

(c) that is essential to make the site safe or prevent a further incident; or

(d) that is associated with a police investigation; or

(e) in respect of which a rail safety officer has given permission.

184—Compliance with non-disturbance notice

(1) A person must not, without reasonable excuse, fail to comply with a non-disturbance notice issued to the person.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

185—Issue of subsequent notices

If a rail safety officer considers it necessary to do so, he or she may issue 1 or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which must comply with section 183.

Division 4—General requirements applying to notices

186—Application of Division

In this Division—

notice means an improvement notice, or a prohibition notice or non-disturbance notice.

187—Notice to be in writing

(1) Subject to subsection (2), a notice must be in writing.

(2) A prohibition notice may be issued orally, but must be confirmed by written notice as soon as practicable.

188—Directions in notices

A direction included in an improvement notice or prohibition notice may—

(a) refer to an approved code of practice; and

(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

189—Recommendations in notice

(1) An improvement notice or prohibition notice may include recommendations.

(2) It is not an offence to fail to comply with recommendations in an improvement notice or a prohibition notice.

190—Variation or cancellation of notice by rail safety officer

(1) A rail safety officer may make minor changes to a notice—

(a) for clarification; or

(b) to correct errors or references; or

(c) to reflect changes of address or other circumstances.

(2) A rail safety officer may extend the compliance period for an improvement notice in accordance with section 178.

(3) A rail safety officer may cancel a notice.

191—Formal irregularities or defects in notice

A notice is not invalid merely because of—

(a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or

(b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person in accordance with section 192.

192—Serving notices

(1) A notice may be served on a person—

(a) in accordance with section 258; or

(b) by leaving it for the person at the railway premises to which the notice relates with a person who is or appears to be the person with control or management of the premises; or

(c) in a prescribed manner.

(2) The national regulations may prescribe—

(a) the manner of serving a notice; and

(b) the steps a person on whom a notice is served must take to bring it to the attention of other persons.

Division 5—Remedial action

193—When Regulator may carry out action

(1) This section applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.

(2) The Regulator may take any remedial action the Regulator believes reasonable to make the railway premises or situation safe after giving written notice to the person to whom the prohibition notice was issued of—

(a) the Regulator's intention to take that action; and

(b) the owner's or person's liability for the costs of that action.

194—Power of Regulator to take other remedial action

(1) This section applies if the Regulator reasonably believes that—

(a) circumstances in which a prohibition notice can be issued exist; and

(b) a prohibition notice cannot be issued at railway premises because, after taking reasonable steps, the person with control or management of the premises cannot be found.

(2) The Regulator may take any remedial action necessary to make the railway premises safe.

195—Costs of remedial or other action

The Regulator may recover the reasonable costs of any remedial action taken under—

(a) section 193 from the person to whom the notice is issued; or

(b) section 194 from any person to whom the prohibition notice could have been issued in respect of the matter,

as a debt due to the Regulator.

Division 6—Injunctions

196—Application of Division

In this Division—

notice means an improvement notice, or a prohibition notice or non-disturbance notice.

197—Injunctions for non-compliance with notices

(1) The Regulator may apply to the court for an injunction—

(a) compelling a person to comply with a notice; or

(b) restraining a person from contravening a notice.

(2) The Regulator may do so—

(a) whether or not proceedings have been brought for an offence against this Law in connection with any matter in respect of which the notice was issued; and

(b) whether any period for compliance with the notice has expired.

Division 7—Miscellaneous

198—Response to certain reports

(1) The Regulator may, if of the opinion as a result of a report to which this section applies that action is necessary for the purpose of the safe construction or operation of a railway, direct a rail transport operator, by written notice, to install on or with respect to the infrastructure of the railway, or on or with respect to rolling stock, within the time specified in the notice, safety or protective systems, devices, equipment or appliances specified in the notice.

(2) A direction under this section must state the reasons why the Regulator considers it is necessary for the rail transport operator to take the action specified in the direction and include information about the right of review under Part 7.

(3) If the action specified to be taken in a direction is, in the opinion of the Regulator, likely to result in significant costs or expenses to the rail transport operator, the Regulator must, before giving the direction—

(a) conduct or cause to be conducted a cost-benefit analysis of the effect of taking the action; and

(b) consult with the Premier or Chief Minister, the Treasurer, and any other Minister, of a participating jurisdiction whose area of responsibility is likely to be affected by the action.

(4) A rail transport operator must not, without reasonable excuse, fail to comply with a direction under this section.

Maximum penalty:

(a) in the case of an individual—$150 000;

(b) in the case of a body corporate—$1 500 000.

(5) Subsection (4) places an evidential burden on the accused to show a reasonable excuse.

(6) A ***report to which this section applies*** is—

(a) a report (including any recommendations) following an inquest held by a coroner under an Act of a participating jurisdiction; or

(b) a report of an investigation held under the *Transport Safety Investigation Act 2003* of the Commonwealth; or

(c) any other report of an investigation into a matter relating to rail safety.

199—Power to require works to stop

(1) A person (other than a rail transport operator) must, before carrying out any works near a railway that threaten, or are likely to threaten—

(a) the safety of the railway; or

(b) the operational integrity of the railway,

notify the relevant rail infrastructure manager of the intention to carry out those works.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(1a) If a rail infrastructure manager believes on reasonable grounds that proposed works of which the manager has been notified under subsection (1) threaten, or are likely to threaten—

(a) the safety of the manager's railway; or

(b) the operational integrity of the manager's railway,

the manager may, by written notice, give the person advice in connection with the proposed work.

(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, by written notice, give the person a direction to stop, alter or not to commence the work.

(3) If—

(a) a rail transport operator is carrying out, or proposes to carry out, railway operations on or near land on which there is infrastructure, or works, of a utility; and

(b) the Regulator believes on reasonable grounds that the railway operations threaten, or are likely to threaten—

(i) the safety of the utility infrastructure or works; or

(ii) the safe provision by the utility of water, gas or electricity or other like services,

the Regulator may, by written notice, give the operator a direction to stop, alter or not to commence the railway operations.

(4) A person who is given a notice under subsection (2) or (3) must comply with the direction set out in the notice unless the person has a reasonable excuse.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(5) If a person carries out work in contravention of subsection (1) or a direction given under subsection (2) or (3), the Regulator may, by written notice, direct a person who has the care, control or management of the land where the infrastructure or works are situated to alter, demolish or take away the work within a reasonable time specified in the notice.

(6) A person who is given a notice under subsection (5) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(7) Subsections (4) and (6) place an evidential burden on the accused to show a reasonable excuse.

(8) Subject to subsection (9), a notice under this section must—

(a) include information about the right to a review under Part 7 of the decision to serve the notice; and

(b) state that the notice is served under this section.

(9) Subsection (8)(a) does not apply to a notice under subsection (1a).

200—Temporary closing of railway crossings, bridges etc

(1) An authorised officer 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 officer decides to close temporarily or regulate a railway crossing, bridge, subway or other structure, the authorised officer 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 officer 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.

201—Use of force

A power conferred by this Law to enter railway premises, or to do anything in or on railway premises, may not be exercised unless the rail safety officer or a person assisting a rail safety 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.

202—Power to use force against persons to be exercised only by police officers

A provision in this Law 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.

Part 6—Exemptions

Division 1—Ministerial exemptions

203—Ministerial exemptions

(1) The Minister may, after consultation with the Regulator, by notice in the Gazette, grant exemptions from this Law or specified provisions of this Law in respect of railway operations carried out, or proposed to be carried out, in this jurisdiction—

(a) to a person specified by the Minister; or

(b) in relation to a railway specified by the Minister.

(2) The Minister may grant an exemption under subsection (1)—

(a) on conditions specified in the notice; and

(b) for a period (not exceeding 3 months) specified in the notice.

(3) The Minister may, at any time, by further notice in the Gazette—

(a) vary or cancel an exemption; or

(b) vary or cancel a condition of an exemption.

(4) A person who has been granted an exemption under this section who contravenes a condition imposed on the exemption is guilty of an offence.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

Division 2—Exemptions granted by Regulator

Subdivision 1—Interpretation

204—Interpretation

In this Division—

designated provision of this Law means a provision of—

(a) Part 3 Division 4; or

(b) Part 3 Division 5; or

(c) Part 3 Division 6 Subdivision 3.

Subdivision 2—Procedures for conferring exemptions

205—Application for exemption

(1) A rail transport operator may apply to the Regulator for an exemption from a designated provision of this Law in respect of specified railway operations carried out, or proposed to be carried out, by or on behalf of the 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 an exemption is sought; and

(b) if the railway operations include the operation or movement of rolling stock on a railway—must include details about the operation or movement of rolling stock; and

(c) must contain the prescribed information; and

(d) must be accompanied by the prescribed application fee.

(3) The Regulator may require a rail transport operator who has applied for an exemption—

(a) to supply further information requested by the Regulator; and

(b) to verify by statutory declaration any information supplied to the Regulator.

206—What applicant must demonstrate

The Regulator must not grant an exemption to an applicant unless satisfied 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 in respect of which the exemption is sought; and

(b) that the applicant—

(i) has the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the railway operations; and

(ii) has complied with the requirements prescribed by the national regulations (if any) for the purposes of this section.

207—Determination of application

(1) Subject to this section, the Regulator must, within the relevant period—

(a) if the Regulator is satisfied as to the matters referred to in section 206—notify the applicant that an exemption from a designated provision of this Law has been granted, with or without conditions or restrictions; or

(b) if the Regulator is not so satisfied—notify the applicant that the application has been refused.

(2) An exemption under this Division is subject to—

(a) any conditions or restrictions prescribed by the national regulations for the purposes of this section that are applicable to the exemption; and

(b) any other condition or restriction imposed on the exemption by the Regulator.

(3) Notification under this section—

(a) must be in writing and given to the applicant; and

(b) if the exemption has been granted, must specify—

(i) the prescribed details of the applicant; and

(ii) the scope and nature of the railway operations, and the manner in which they are to be carried out, in respect of which the exemption is granted; and

(iii) any condition or restriction imposed by the Regulator under this section on the exemption; and

(iv) any other prescribed information; and

(c) if a condition or restriction has been imposed on the exemption, must include—

(i) the reasons for imposing the condition or restriction; and

(ii) information about the right of review under Part 7; and

(d) if the application has been refused must include—

(i) the reasons for the decision to refuse to grant the application; and

(ii) information about the right of review under Part 7; and

(e) if the relevant period in relation to an application has been extended, must include information about the right of review under Part 7.

(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 written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

Subdivision 3—Variation of an exemption

208—Application for variation of an exemption

(1) A rail transport operator who has been granted an exemption under this Division may, at any time, apply to the Regulator for a variation of the exemption.

(2) A rail transport operator who has been granted an exemption under this Division must apply to the Regulator for a variation of the exemption if—

(a) the applicant proposes to vary the scope and nature of the railway operations in respect of which the exemption has been granted; or

(b) any other variation is proposed in respect of the railway operations in respect of which the exemption has been granted that should be reflected in the exemption.

(3) An application for variation must be made in the manner and form approved by the Regulator and—

(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.

(4) The Regulator may require an applicant for a variation—

(a) to supply further information requested by the Regulator; and

(b) to verify by statutory declaration any information supplied to the Regulator.

209—Determination of application for variation

(1) Subject to this section, the Regulator must, within the relevant period—

(a) if the Regulator is satisfied as to the matters referred to in section 206 (so far as they are applicable to the proposed variation)—notify the applicant that the exemption has been varied, with or without conditions or restrictions; or

(b) if the Regulator is not so satisfied—notify the applicant that the application has been refused.

(2) Notification under this section—

(a) must be in writing and given to the applicant; and

(b) if the exemption has been varied, must specify—

(i) the prescribed details of the applicant; and

(ii) the variation to the exemption 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

(iii) any conditions and restrictions imposed by the Regulator on the exemption as varied; and

(iv) any other prescribed information; and

(c) if a condition or restriction has been imposed on the exemption as varied, must include—

(i) the reasons for imposing the condition or restriction; and

(ii) information about the right of review under Part 7; and

(d) if the application has been refused, must include—

(i) the reasons for the decision to refuse to grant the application; and

(ii) information about the right of review under Part 7; and

(e) if the relevant period in relation to an application has been extended, must include information about the right of review under Part 7.

(3) 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 written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,

whichever is the longer.

210—Prescribed conditions and restrictions

An exemption granted to a rail transport operator that is varied under this Division is subject to any conditions or restrictions prescribed by the national regulations that are applicable to the exemption as varied.

211—Variation of conditions and restrictions

(1) A rail transport operator who has been granted an exemption under this Division may, at any time, apply to the Regulator for a variation of a condition or restriction imposed by the Regulator to which the exemption is subject.

(2) An application for variation of a condition or restriction must be made as if it were an application for variation of an exemption (and section 208 applies accordingly).

(3) The Regulator must consider the application and, if satisfied as to the matters referred to in sections 206 and 207 (so far as they are applicable to the proposed variation), notify the applicant in accordance with the provisions of this Division applicable to the granting of an exemption (so far as is practicable) that the variation has been granted or refused.

(4) Notification under subsection (3) that a variation has been refused must include the reasons for the decision to refuse to grant the variation and information about the right of review under Part 7.

212—Regulator may make changes to conditions or restrictions

(1) The Regulator may, subject to this section, at any time, vary or cancel a condition or restriction imposed by the Regulator on an exemption granted to a rail transport operator under this Division or impose a new condition or restriction.

(2) Before taking action under this section, the Regulator must—

(a) give the rail transport operator written notice of the action that the Regulator proposes to take; and

(b) allow the operator to make written representations about the intended action within 28 days (or any other period that the Regulator and the operator agree on); and

(c) consider any representations made under paragraph (b) and not withdrawn.

(3) The Regulator must, by written notice given to the rail transport operator, provide—

(a) details of any action taken under this section; and

(b) a statement of reasons for any action taken under this section; and

(c) information about the right of review under Part 7.

Subdivision 4—Cancellation or suspension of an exemption

213—Cancellation or suspension of an exemption

(1) This section applies in respect of a rail transport operator who has been granted an exemption under this Division if—

(a) the Regulator considers that the operator—

(i) is no longer able to demonstrate to the satisfaction of the Regulator the matters referred to in section 206 or to satisfy the conditions, or to comply with the restrictions, of the exemption; or

(ii) is not managing the rail infrastructure, or is not operating rolling stock in relation to any rail infrastructure, to which the exemption relates and has not done so for at least the preceding 12 months; or

(b) the operator contravenes this Law.

(2) The Regulator may—

(a) suspend the exemption for a period determined by the Regulator; or

(b) cancel the exemption with immediate effect or with effect from a specified future date; or

(c) impose conditions or restrictions on the exemption; or

(d) vary conditions or restrictions to which the exemption is subject.

(3) Before making a decision under subsection (2), the Regulator—

(a) must notify the rail transport operator 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 cancels the exemption, the Regulator must include in the notice of suspension or cancellation the reasons for the suspension or cancellation and information about the right of review under Part 7.

(5) The Regulator may withdraw a suspension of the exemption by written notice given to the rail transport operator.

Subdivision 5—Penalty for breach of condition or restriction

214—Penalty for breach of condition or restriction

A rail transport operator who has been granted an exemption under this Division must not contravene a condition or restriction of the exemption applying under this Division.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

Subdivision 6—Waiver of fees

214A—Waiver of fees

The Regulator may waive, or refund, the whole or part of any fee payable under this Division.

Part 7—Review of decisions

215—Reviewable decisions

(1) The following table sets out—

(a) decisions made under this Law 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 67 (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
2	Section 67 (extending the period for determining an application)	A rail transport operator who has applied for accreditation
3	Section 69 (refusal to grant variation of accreditation or imposing a condition or restriction)	A rail transport operator whose application for variation of accreditation is refused

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
4	Section 69 (grant of variation of accreditation subject to conditions or restrictions)	A rail transport operator whose accreditation is varied subject to a condition or restriction
5	Section 69 (extending the period for determining an application for variation)	A rail transport operator who has applied for variation of accreditation
6	Section 71 (refusal to grant variation of a condition or restriction of accreditation)	A rail transport operator whose application for variation of a condition or restriction is refused
7	Section 72 (variation or cancellation 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
8	Section 73 (cancellation or suspension of accreditation)	A rail transport operator whose accreditation is cancelled or suspended
9	Section 74 (immediate suspension)	A rail transport operator whose accreditation is suspended
10	Section 74 (extension of immediate suspension)	A rail transport operator whose accreditation is suspended
11	Section 75 (surrender of accreditation)	An accredited person whose application for surrender of accreditation has been refused
12	Section 86 (refusal to register or imposing conditions or restrictions on registration)	A rail infrastructure manager whose application for registration is refused or is subject to conditions or restrictions
13	Section 86 (extending the period for determining an application)	A rail infrastructure manager who has applied for registration
14	Section 88 (refusal to grant variation of registration or imposing a condition or restriction)	A rail infrastructure manager whose application for variation of registration is refused
15	Section 88 (grant of variation of registration subject to conditions or restrictions)	A rail infrastructure manager whose registration is varied subject to a condition or restriction
16	Section 88 (extending the period for determining an application for variation)	A rail infrastructure manager who has applied for variation of registration
17	Section 90 (refusal to grant variation of a condition or restriction of registration)	A rail infrastructure manager whose application for variation of a condition or restriction is refused
18	Section 91 (variation or cancellation of a condition or restriction, or imposition of a new condition or restriction)	A rail infrastructure manager whose conditions or restrictions of registration are changed
19	Section 92 (cancellation or suspension of registration)	A rail infrastructure manager whose registration is cancelled or suspended
20	Section 93 (immediate suspension)	A rail infrastructure manager whose registration is suspended
21	Section 93 (extension of immediate suspension)	A rail infrastructure manager whose registration is suspended

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
22	Section 94 (surrender of registration)	A registered person whose application for surrender of registration has been refused
23	Section 104 (direction to amend safety management system)	A rail transport operator given a direction to amend a safety management system
24	Section 162 (forfeiture of seized thing)	A person who is entitled to the thing
25	Section 175 (decision to serve an improvement notice)	A person on whom an improvement notice is served
		A rail transport operator whose interests are affected by the decision
26	Section 178 (extension of time for compliance with improvement notice)	A person on whom an improvement notice is served
		A rail transport operator whose interests are affected by the decision
27	Section 179 (decision to serve a prohibition notice)	A person on whom a prohibition notice is served
		A rail transport operator whose interests are affected by the decision
28	Section 182 (decision to serve a non-disturbance notice)	A person on whom a non-disturbance notice is served
		A rail transport operator whose interests are affected by the decision
29	Section 185 (decision to issue subsequent non-disturbance notice)	A person on whom a subsequent non-disturbance notice is served
		A rail transport operator whose interests are affected by the decision
30	Section 198 (direction to take specified action following report)	A rail transport operator given a direction to take specified action
31	Section 199 (decision to serve notice giving a direction)	A person given a direction to stop, alter or not to commence works on or near a railway
		A rail transport operator given a direction to stop, alter or not to commence railway operations
		A person given a direction to alter, demolish or take away work
32	Section 205 (refusal to exempt or imposing conditions or restrictions on exemption)	A rail transport operator whose application for exemption is refused or is subject to conditions or restrictions
33	Section 205 (extending the period for determining an application)	A rail transport operator who has applied for an exemption
34	Section 209 (refusal to grant variation of exemption or imposing a condition or restriction)	A rail transport operator whose application for variation of an exemption is refused

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
35	Section 209 (grant of variation of exemption subject to conditions or restrictions)	A rail transport operator whose exemption is varied subject to a condition or restriction
36	Section 209 (extending the period for determining an application for variation)	A rail transport operator who has applied for variation of an exemption
37	Section 211 (refusal to grant variation of a condition or restriction of exemption)	A rail transport operator whose application for variation of a condition or restriction is refused
38	Section 212 (variation or cancellation of a condition or restriction, or imposition of a new condition or restriction)	A rail transport operator whose conditions or restrictions of an exemption are changed
39	Section 213 (cancellation or suspension of exemption)	A rail transport operator whose exemption is cancelled or suspended

(2) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to—

(a) include information about the right to a review under Part 7 of the decision to serve the notice; or

(b) state that the notice is served under this section; or

(c) making, suspending, cancelling or refusing to make a determination or decision; or

(d) giving, suspending, cancelling or refusing to give a direction, approval, consent or permission; or

(e) issuing, suspending, cancelling or refusing to issue an accreditation or a registration, or to grant an exemption; or

(f) imposing a condition; or

(g) making a declaration, demand or requirement; or

(h) retaining, or refusing to deliver up, an article; or

(i) doing or refusing to do any other act or thing.

(3) In this section—

person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

216—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 Regulator may appoint a person to review decisions on applications under subsection (1)(a) (who must not be the person who made the decision the subject of the review).

(3) An application for a review must be in the form approved (in writing) by the Regulator.

(4) If an application is made to the Regulator in accordance with this section, the Regulator may 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.

(5) The Regulator must give a written notice to the applicant setting out—

(a) the Regulator's decision under subsection (4) 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 Division 1, Division 2 or Division 3 of Part 5, within 7 days after the application is made.

(6) If the Regulator has not notified an applicant of a decision in accordance with subsection (5), the Regulator is taken to have made a decision to affirm the reviewable decision.

(7) 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 registration, or a prohibition notice) pending the determination of the review.

(8) 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.

(9) If the Regulator has not made a decision in accordance with subsection (8), the Regulator is taken to have made a decision to grant a stay.

(10) The Regulator may attach any conditions to a stay of the operation of a reviewable decision that the Regulator considers appropriate.

217—Appeals

(1) A person may appeal to the 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 216 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 8—General liability and evidentiary provisions

Division 1—Legal proceedings

Subdivision 1—General matters

218—Period within which proceedings for offences may be commenced

(1) This section applies to an offence against this Law, other than—

(a) an offence prescribed by the national regulations for the purposes of this section; or

(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 an Act, proceedings for an offence against this Law to which this section applies may be commenced within the latest of the following periods to occur:

(a) the period of 2 years after commission of the alleged offence;

(b) if evidence of an alleged offence comes to light as a result of an inquiry by a prescribed authority—within 1 year after the report of the inquiry is published;

(c) if a rail safety undertaking has been given in relation to the offence—within 6 months after—

(i) the undertaking is contravened; or

(ii) it comes to the notice of the Regulator that the undertaking has been contravened; or

(iii) the Regulator has agreed under section 256 to the withdrawal of the undertaking.

(3) A proceeding for a Category 1 offence may be brought after the end of the applicable limitation period in subsection (2) if fresh evidence relevant to the offence is discovered and the court is satisfied that the evidence could not reasonably have been discovered within the relevant limitation period.

(4) In this section—

prescribed authority means—

(a) a coroner of a participating jurisdiction; or

(b) a commission of inquiry (by whatever name) established under a law of a participating jurisdiction; or

(c) any other relevant authority established under a law of a participating jurisdiction.

219—Multiple contraventions of rail safety duty provision

(1) Two or more contraventions of a rail safety duty provision by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.

(2) This section does not authorise contraventions of 2 or more rail safety duty provisions to be charged as a single offence.

(3) A single penalty only may be imposed in respect of 2 or more contraventions of a rail safety duty provision that are charged as a single offence.

(4) In this section—

rail safety duty provision means a provision of Part 3 Division 3.

220—Authority to take proceedings

(1) Any legal proceedings to recover any charge, fee or money due under this Law or the national regulations in this jurisdiction 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 Law or the national regulations in this jurisdiction 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.

Subdivision 2—Imputing conduct to bodies corporate

221—Imputing conduct to bodies corporate

(1) For the purposes of this Law, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

(2) If an offence under this Law requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.

(3) If for an offence against this Law mistake of fact is relevant to determining liability, it is sufficient in proceedings against a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

Subdivision 3—Records and evidence

222—Records and evidence from records

(1) 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 in the National Rail Safety Register under section 42 did or did not appear on or from the Register is, for the purposes of any legal proceedings, evidence of what it certifies.

(2) 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.

223—Certificate evidence

A statement in a certificate purporting to be issued by the Regulator, a rail safety 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.

224—Proof of appointments and signatures unnecessary

(1) For the purposes of this Law and the national regulations, it is not necessary to prove the appointment of an office holder.

(2) For the purposes of this Law, 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) a member of ONRSR; or

(b) the head of the police force or police service of any participating jurisdiction; or

(c) a rail safety officer; or

(d) an authorised person; or

(e) a police officer of a participating jurisdiction.

Division 2—Discrimination against employees

225—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, union, public authority or public 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, former fellow employee, union, public authority or public official.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(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 an individual who works under a contract for service;

public authority includes ONRSR, the Regulator, a rail safety officer or police officer, and a police officer of another jurisdiction.

Division 3—Offences

226—Offence to give false or misleading information

(1) A person must not give information in complying or purportedly complying with this Law that the person knows—

(a) to be false or misleading in a material particular; or

(b) omits any matter or thing without which the information is misleading.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(2) A person must not produce a document in complying or purportedly complying with this Law that the person knows to be false or misleading in a material particular without—

(a) indicating the respect in which it is false or misleading and, if practicable, providing correct information; or

(b) accompanying the document with a written certificate—

(i) stating that the document is, to the knowledge of the first-mentioned person, false or misleading in a material particular; and

(ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the first-mentioned person, false or misleading.

Maximum penalty:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

(3) Subsection (2) places an evidential burden on the accused to show that the accused had indicated the extent to which the document was false or misleading or that the accompanying document sufficiently explained the extent to which the document was false or misleading.

227—Not to interfere with train, tram etc

(1) A person must not, without either the permission of an authorised officer or reasonable excuse—

(a) move or attempt to move; or

(b) interfere or attempt to interfere with; or

(c) disable, or attempt to disable; or

(d) operate or attempt to operate,

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

Maximum penalty: $10 000.

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

(3) In this section—

authorised officer means the rail transport operator, a rail safety officer or a police officer.

228—Applying brake or emergency device

(1) 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: $10 000.

Example—

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

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

229—Stopping a train or tram

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

Maximum penalty: $10 000.

(2) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

Division 4—Court-based sanctions

230—Commercial benefits order

(1) The court that finds a person guilty of an offence against this 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 commission of the offence; and

(b) in the case of a journey that was interrupted or not commenced because of action taken by a rail safety officer in connection with commission of the offence, would have been received or receivable, by the person or by an associate of the person—from 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 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 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 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, de facto 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.

231—Supervisory intervention order

(1) The court that finds a person guilty of an offence against this 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 this Law or specified aspects of this Law, 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 this Law or specified aspects of this Law; and

(ii) to monitor the person's performance in complying with this Law or specified aspects of this Law 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 intervention order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with this Law, 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 a contravention of the requirement.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(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.

232—Exclusion orders

(1) The court that finds a person guilty of an offence against this 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 an Australian rail safety law, make an order under this section.

(2) For the purpose of restricting opportunities for the person to commit or be involved in commission of further offences against this Law, 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 an Australian rail safety law of which the person has previously been found guilty; and

(b) the offences against an Australian rail safety law 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:

(a) in the case of an individual—$20 000;

(b) in the case of a body corporate—$100 000.

Part 9—Infringement notices

233—Meaning of infringement penalty provision

For the purposes of this Law, an ***infringement penalty provision*** is—

(a) a provision of this Law specified in an item in the Table at the foot of this section; or

(b) a provision of this Law (other than an offence provision) or the national regulations that is prescribed by the national regulations to be an infringement penalty provision.

Item	Infringement penalty provision	Infringement penalty
1	Section 66(3) (Regulator may direct applicants to coordinate in applications)	$1 000
2	Section 66(4) (Regulator may direct applicants to coordinate in applications)	$1 000
3	Section 81(1) (Keeping and making available records for public inspection)	$1 000
4	Section 81(2) (Keeping and making available records for public inspection)	$1 000
4A	Section 96A(2) (Annual activity statement)	$1 000
5	Section 98(2) (Offences relating to registration)	$1 000
6	Section 98(3) (Offences relating to registration)	$1 000

Item	Infringement penalty provision	Infringement penalty
7	Section 102 (Review of safety management system)	$2 000
8	Section 103 (Safety performance reports)	$1 000
9	Section 111(1) (Register of interface agreements)	$1 000
10	Section 111(2) (Register of interface agreements)	$1 000
11	Section 117(6) (Assessment of competence)	$2 000
12	Section 118(1) (Identification of rail safety workers)	$2 000
13	Section 118(2) (Identification of rail safety workers)	$500
14	Section 120(2) (Power of Regulator to obtain information from rail transport operators)	$2 000
15	Section 120(3) (Power of Regulator to obtain information from rail transport operators)	$2 000
16	Section 131 (Disclosure of train safety recordings)	$2 000
17	Section 136(3) (Identity cards)	$1 000
18	Section 149(2) (Securing a site)	$2 000
19	Section 231(8) (Supervisory intervention order)	$2 000
20	Section 254 (Compliance with rail safety undertaking)	$2 000

234—Power to serve notice

(1) The Regulator may serve an infringement notice on a person that the Regulator has reason to believe has breached an infringement penalty provision.

(2) The Regulator must, however, serve an infringement notice not later than 12 months after the date on which the Regulator forms a belief that there has been a breach of an infringement penalty provision.

(3) An infringement notice may be served on an individual—

(a) by delivering it personally to the individual; or

(b) by sending it by post addressed to the individual to his or her usual or last known place of residence or business.

(4) An infringement notice may be served on a person that is a body corporate—

(a) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or

(b) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

235—Form of notice

An infringement notice must state—

(a) the date of the notice; and

(b) that the alleged breach is a breach of the infringement penalty provision; and

(c) the nature, and a brief description, of the alleged breach; and

(d) the date, time and place of the alleged breach; and

(e) the infringement penalty for the alleged breach; and

(f) the manner in which the infringement penalty may be paid; and

(g) the time (being not less than 28 days after the date on which the notice is served) within which the infringement penalty must be paid; and

(h) that, if the amount of the infringement penalty is paid before the end of the time specified in the notice, proceedings will not be instituted in respect of the alleged breach by the Regulator unless the notice is withdrawn before the end of that time in accordance with section 238; and

(i) that the person is entitled to disregard the notice and defend any proceedings in respect of the infringement penalty provision; and

(j) any other particulars prescribed by the national regulations.

236—Regulator cannot institute proceedings while infringement notice on foot

On serving an infringement notice under this Part, the Regulator must not institute a proceeding in respect of the breach for which the infringement notice was served if—

(a) the time for payment stated in the infringement notice has not expired; and

(b) the infringement notice has not been withdrawn by the Regulator in accordance with section 238.

237—Late payment of penalty

The Regulator may accept payment of the infringement penalty even after the expiration of the time for payment stated in the infringement notice if—

(a) a proceeding has not been instituted in respect of the breach to which the infringement penalty relates; and

(b) the infringement notice has not been withdrawn by the Regulator in accordance with section 238.

238—Withdrawal of notice

(1) The Regulator may withdraw an infringement notice at any time before the end of the time for payment specified in the notice by serving a withdrawal notice on the person served with the infringement notice.

(2) A withdrawal notice may be served on an individual—

(a) by delivering it personally to the individual; or

(b) by sending it by post addressed to the individual to his or her usual or last known place of residence or business.

(3) A withdrawal notice may be served on a person that is a body corporate—

(a) by delivering it personally to the registered office or usual or last known place of business of the body corporate; or

(b) by sending it by post addressed to the body corporate to its registered office or usual or last known place of business.

(4) An infringement notice may be withdrawn even if the infringement penalty has been paid.

239—Refund of infringement penalty

If an infringement notice is withdrawn in accordance with section 238, the amount of any infringement penalty paid must be refunded by the Regulator.

240—Payment expiates breach of infringement penalty provision

No proceedings may be taken by the Regulator against a person on whom an infringement notice was served in respect of an alleged breach of an infringement penalty provision if—

(a) the infringement penalty is—

(i) paid within the time for payment stated in the notice; and

(ii) not withdrawn by the Regulator within the time for payment stated in the notice in accordance with section 238; or

(b) the infringement penalty is accepted in accordance with section 237.

241—Payment not to have certain consequences

The payment of an infringement penalty under this Part is not and must not be taken to be an admission of a breach of an infringement penalty provision or an admission of liability for the purpose of any proceeding instituted in respect of the breach.

242—Conduct in breach of more than 1 infringement penalty provision

(1) If the conduct of a person constitutes a breach of 2 or more infringement penalty provisions, an infringement notice may be served on the person under this Part in relation to the breach of any 1 or more of those provisions.

(2) However, the person is not liable to pay more than 1 infringement penalty in respect of the same conduct.

Part 10—General

Division 1—Delegation by Minister

243—Delegation by Minister

(1) The Minister 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 Minister under this Law.

(2) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Division 2—Confidentiality of information

244—Confidentiality of information

(1) This section applies if a person obtains information or gains access to a document in exercising any power or function under this Law.

(2) The person must not do any of the following:

(a) disclose to anyone else—

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else;

(c) use the information or document for any purpose.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document or the use of information or a document—

(a) about a person, with the person's consent; or

(b) that is necessary for the exercise of a function or power under this Law; or

(c) that is made or given by ONRSR, a member of ONRSR, or a person authorised by ONRSR, if ONRSR reasonably believes the disclosure, access or use—

(i) is necessary for administering, or monitoring or enforcing compliance with, this Law; or

(ii) is necessary for the administration or enforcement of an Act prescribed by the national regulations; or

(iii) is necessary for the administration or enforcement of an Act or other law, if the disclosure, access or use is necessary to lessen or prevent a serious risk to public health or safety; or

(d) that is required by any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions; or

(e) that is required or authorised under a law; or

(f) to a Minister of a participating jurisdiction.

(4) A person must not intentionally disclose to another person the name of an individual who has made a complaint in relation to that other person unless—

(a) the disclosure is made with the consent of the complainant; or

(b) the disclosure is required under a law.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

(5) Nothing in this section prevents information being used to enable ONRSR to accumulate aggregate data and to enable ONRSR to authorise use of the aggregate data for the purposes of research or education.

Division 3—Law does not affect legal professional privilege

245—Law does not affect legal professional privilege

Nothing in this Law requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

Division 4—Civil liability

246—Civil liability not affected by Part 3 Division 3 or Division 6

Nothing in Part 3 Division 3 or Part 3 Division 6 is to be construed—

(a) as conferring a right of action in civil proceedings in respect of a contravention (whether by act or omission) of any provisions of those Divisions; or

(b) as conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or

(c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be taken, with respect to breaches of duties or obligations imposed by the national regulations.

247—Protection from personal liability for persons exercising functions

(1) A person who is or was a protected person is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a function under this Law; or

(b) in the reasonable belief that the act or omission was the exercise of a function under this Law.

(2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a protected person attaches instead to ONRSR.

(3) In this section—

protected person means any of the following:

(a) a member of ONRSR;

(b) a member of a committee of ONRSR;

(c) a member of the staff of ONRSR;

(d) a rail safety officer;

(e) an authorised person;

(f) a person to whom ONRSR has delegated any of its functions;

(g) a person to whom an entity, or the chief executive of an entity or department of government, of a participating jurisdiction has subdelegated a function delegated to the chief executive by ONRSR;

(h) a member of the staff of an entity or department referred to in paragraph (g);

(i) a person acting under the authority or direction of a person referred to in paragraphs (a) to (h).

248—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) ONRSR; or

(b) a member of ONRSR; or

(c) a rail transport operator; or

(d) any other person who is employed or engaged by ONRSR 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 Law or the national 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), (c) or (d).

(3) In this section—

person to whom this section applies means—

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

Division 5—Codes of practice

249—Approved codes of practice

(1) The responsible Ministers may approve a code of practice for the purposes of this Law and may vary or cancel an approved code of practice.

(2) The responsible Ministers may only approve, vary or cancel a code of practice under subsection (1) if that code of practice, variation or cancellation was developed by a process that involved consultation among—

(a) each participating jurisdiction; and

(b) rail transport operators and any relevant employer organisation; and

(c) rail safety workers and any relevant union.

(3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether—

(a) with or without modification; or

(b) as in force at a particular time or from time to time.

(4) An approval of a code of practice, or a variation or cancellation of an approved code of practice—

(a) is to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales; and

(b) will commence on the day or days specified in the approval, variation or cancellation for its commencement (being not earlier than the date it is published); and

(c) is to be published by the Regulator on ONRSR's website.

(5) The Regulator must ensure that a copy of—

(a) each code of practice that is currently approved; and

(b) each document applied, adopted or incorporated (to any extent) by an approved code of practice,

is available for inspection by members of the public without charge at ONRSR's office during normal business hours.

250—Use of codes of practice in proceedings

(1) This section applies in a proceeding for an offence against this Law.

(2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Law has been complied with.

(3) The court may—

(a) have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and

(b) rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

Note—

See section 47 for the meaning of ***reasonably practicable***.

(4) Nothing in this section prevents a person from introducing evidence of compliance with this Law in a manner that is different from the code but provides a standard of rail work safety that is equivalent to or higher than the standard required in the code.

Division 6—Enforceable voluntary undertakings

251—Enforceable voluntary undertaking

(1) The Regulator may accept (by written notice) a written undertaking (a ***rail safety undertaking***) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Law.

(2) A rail safety undertaking cannot be accepted for a contravention or alleged contravention that is a Category 1 offence.

(3) The giving of a rail safety undertaking does not constitute an admission of guilt by the person giving it in respect of the contravention or alleged contravention to which the undertaking relates.

252—Notice of decisions and reasons for decision

(1) The Regulator must give the person seeking to make a rail safety undertaking written notice of the Regulator's decision to accept or reject the undertaking and of the reasons for the decision.

(2) The Regulator must publish, on the Register, notice of a decision to accept a rail safety undertaking and the reasons for that decision.

253—When a rail safety undertaking is enforceable

A rail safety undertaking takes effect and becomes enforceable when the Regulator's decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the Regulator.

254—Compliance with rail safety undertaking

A person must not contravene a rail safety undertaking made by that person that is in effect.

Maximum penalty:

(a) in the case of an individual—$10 000;

(b) in the case of a body corporate—$50 000.

255—Contravention of rail safety undertaking

(1) If the Regulator considers that a person has contravened an undertaking accepted by the Regulator, the Regulator may apply to the court for enforcement of the undertaking.

(2) If the court is satisfied that the person has contravened the undertaking, the court, in addition to the imposition of any penalty, may make any of the following orders:

(a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;

(b) an order discharging the undertaking;

(c) an order directing the person to pay to the Regulator—

(i) the costs of the proceedings; and

(ii) the reasonable costs of the Regulator in monitoring compliance with the rail safety undertaking in the future;

(d) any other order that it considers appropriate in the circumstances.

(3) A person must not fail to comply with an order under this section.

Maximum penalty:

(a) in the case of an individual—$5 000;

(b) in the case of a body corporate—$25 000.

(4) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Law to which the rail safety undertaking relates.

256—Withdrawal or variation of rail safety undertaking

(1) A person who has made a rail safety undertaking may, at any time, with the written agreement of the Regulator—

(a) withdraw the undertaking; or

(b) vary the undertaking.

(2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Law.

(3) The Regulator must publish, on the Register, notice of the withdrawal or variation of a rail safety undertaking.

257—Proceedings for alleged contravention

(1) Subject to this section, no proceedings for a contravention or alleged contravention of this Law may be brought against a person if a rail safety undertaking is in effect in relation to that contravention.

(2) No proceedings may be brought for a contravention or alleged contravention of this Law against a person who has made a rail safety undertaking in respect of that contravention and has completely discharged the rail safety undertaking.

(3) The Regulator may accept a rail safety undertaking in respect of a contravention or alleged contravention before proceedings in respect of that contravention have been finalised.

(4) If the Regulator accepts a rail safety undertaking before the proceedings are finalised, the Regulator must take all reasonable steps to have the proceedings discontinued as soon as possible.

Division 7—Other matters

258—Service of documents

(1) A notice or document required or authorised by or under this Law to be given or served on a person may be served on the person—

(a) by delivering it personally to the person; or

(b) by sending it by post addressed to the person to the person's last known address; or

(c) if the person holds an accreditation or registration, or has been granted an exemption, under this Law—

(i) by sending it by post addressed to the person to that person's address for service; or

(ii) be left for the person at the person's address for service with someone apparently over the age of 16 years; or

(d) be transmitted by fax or email to a fax number or email address provided by the person for that purpose (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) The ***address for service*** of a person is the address last provided by the person in writing to the Regulator as the address for service.

259—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 3 Division 11.

260—Recovery of amounts due

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

260A—Payment of portion of fines to ONRSR

A court by which a person is convicted of an offence against this Law may make an order directing that a portion (not exceeding one-half) of any fine imposed as a penalty against the offender by the court be paid to ONRSR.

261—Compliance with conditions of accreditation or registration

(1) 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 Law; 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 Law, taken to have complied with this Law in relation to that duty or obligation.

(2) If—

(a) a condition or restriction to which the registration of a person is subject makes provision for or with respect to a duty or obligation imposed by this Law; and

(b) the registered person complies with the condition or restriction to the extent that it makes that provision,

the registered person is, for the purposes of this Law, taken to have complied with this Law in relation to that duty or obligation.

262—Contracting out prohibited

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Law or any duty under this Law or to transfer to another person any duty owed under this Law is void.

Division 8—Application of certain South Australian Acts to this Law

263—Application of certain South Australian Acts to this Law

(1) The following Acts (as in force from time to time) apply as laws of a participating jurisdiction for the purposes of this Law:

(a) the *Freedom of Information Act 1991* of South Australia;

(b) the *Ombudsman Act 1972* of South Australia;

(c) the *Public Finance and Audit Act 1987* of South Australia;

(d) the *State Records Act 1997* of South Australia.

(2) However, subject to subsection (4), the Acts referred to in subsection (1) do not apply for the purposes of this Law to the extent that functions are being exercised under this Law by a State or Territory entity, other than a South Australian entity.

(3) The national regulations may modify any such Act for the purposes of this Law.

(4) Without limiting subsection (3), the national regulations may—

(a) provide that the Act applies as if a provision of the Act specified in the national regulations were omitted; or

(b) provide that the Act applies as if an amendment to the Act made by a law of South Australia, and specified in the national regulations, had not taken effect; or

(c) confer a function on a State or Territory entity; or

(d) confer jurisdiction on a tribunal or court of a participating jurisdiction.

(5) An Act referred to in subsection (1) applies for the purposes of this Law as if the Minister responsible for a government agency were the Minister in relation to a body established by this Law.

Division 9—National regulations

264—National regulations

(1) For the purposes of this section, the designated authority is the Governor of the State of South Australia, or other officer for the time being administering the Government of that State, acting with the advice and consent of the Executive Council of that State.

(2) The designated authority, on the unanimous recommendation of the responsible Ministers, may make regulations (***national regulations***) as contemplated by this Law, or as necessary or expedient for the purposes of this Law, including regulations that make provision for or in relation to any of the matters specified in Schedule 1 to this Law.

(3) Where the national 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 the office or offices specified in the regulations; and

(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 Regulator 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 Law.

265—Publication of national regulations

(1) The national regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

(2) A regulation commences on the day or days specified in the regulation for its commencement (being not earlier than the date it is published).

Schedule 1—National regulations

1 Accreditations under this Law, 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 granting, refusal, variation, suspension, cancellation or surrender.

2 Registrations under this Law, 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 granting, refusal, variation, suspension, cancellation or surrender.

3 A scheme for certificates of competency (or provisional certificates of competency) for persons employed or engaged in rail safety work, and for the duration, variation, suspension or cancellation of those certificates.

4 The prohibition of the carrying on of rail 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.

5 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.

6 Procedures (including consultation) for the making, adoption and amendment of rules and procedures relating to rail network operations made or adopted for the purposes of Part 3 Division 3 by the rail infrastructure manager responsible for the management of that part of the rail network.

7 The safeguarding, siting, installing, testing, altering, maintaining or removal of any rail infrastructure, rolling stock, system, device, appliance or equipment.

8 The records and documents to be kept by any person, the manner of keeping those records and documents, and their inspection.

9 The providing of returns and other information, verified as prescribed.

10 The registration of plans and other documents required under this Law.

11 The recording, investigation and reporting of accidents and incidents.

12 The health, fitness and functions of rail safety workers.

13 Drug and alcohol management of rail safety workers, including—

(a) the allowed concentration of alcohol; and

(b) procedures for drug and alcohol testing, including compulsory testing; and

(c) providing for the authorisation of persons to conduct drug and alcohol testing and operate equipment for that purpose; and

(d) regulating the collection of biological samples from rail safety workers for the purposes of drug and alcohol testing; and

(e) providing for the analysis of test results, including the accreditation of persons conducting the analysis; and

(f) providing for the approval of devices used in carrying out drug and alcohol testing and analysis; and

(g) providing for 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; and

(h) prescribing the circumstances that amount to a defence to a breach of the regulations, including where the consumption of alcohol or drugs occurs after rail safety work has been carried out; and

(i) providing for the confidentiality of test results; and

(j) regulating the destruction of biological samples collected for testing; and

(k) providing for the protection of persons involved in taking or conducting testing from liability for acts or omissions done in good faith and in accordance with the regulations.

14 Fatigue management of rail safety workers, including work hours and rest periods.

15 The regulation of the conduct of passengers and other persons on railways, or on land or premises associated with a railway.

16 Trespass on, or entry to, railways, or on land, premises, infrastructure or rolling stock associated with a railway.

17 The regulation or prohibition of the carriage of goods, freight or animals on railways.

18 The unauthorised use of railways or rolling stock.

19 The display of signs and notices.

20 The opening and closing of railway gates.

21 The regulation of vehicles, animals and pedestrians crossing railways.

22 The regulation of crossings.

23 The loading, unloading or transportation of freight.

24 The identification of rolling stock, rail infrastructure, devices, appliances, equipment or freight.

25 Causing damage to, or interfering with or removing, rolling stock, rail infrastructure, devices, appliances, equipment or freight.

26 Procedures associated with inspections, examinations or tests under this Law.

27 The form and service of notices and other documents under this Law.

28 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.

29 Fixing fees and charges for the purposes of this Law or in respect of any matter arising under this Law, 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 Law within a specified time.

30 Generally, evidence in proceedings for an offence against the regulations.

31 Infringement penalty provisions, including requirements for infringement notices and the fixing of infringement penalties, not exceeding $1 500, for contravention of an alleged offence against this Law or the regulations.

32 The imposition of penalties, not exceeding $10 000 for a contravention of, or failure to comply with, a regulation.

Schedule 2—Miscellaneous provisions relating to interpretation

Part 1—Preliminary

1—Displacement of Schedule by contrary intention

The application of this Schedule may be displaced, wholly or partly, by a contrary intention appearing in this Law.

Part 2—General

2—Law to be construed not to exceed legislative power of Parliament

(1) This Law is to be construed as operating to the full extent of, but so as not to exceed, the legislative power of the Parliament of this jurisdiction.

(2) If a provision of this Law, or the application of a provision of this Law to a person, subject matter or circumstance, would, but for this clause, be construed as being in excess of the legislative power of the Parliament of this jurisdiction—

(a) it is a valid provision to the extent to which it is not in excess of the power; and

(b) the remainder of this Law, and the application of the provision to other persons, subject matters or circumstances, is not affected.

(3) This clause applies to this Law in addition to, and without limiting the effect of, any provision of this Law.

3—Every section to be a substantive enactment

Every section of this Law has effect as a substantive enactment without introductory words.

4—Material that is, and is not, part of this Law

(1) The heading to a Part, Division or Subdivision into which this Law is divided is part of this Law.

(2) A Schedule to this Law is part of this Law.

(3) Punctuation in this Law is part of this Law.

(4) A heading to a section or subsection of this Law does not form part of this Law.

5—References to particular Acts and to enactments

In this Law—

(a) an Act of this jurisdiction may be cited—

(i) by its short title; or

(ii) by reference to the year in which it was passed and its number; and

(b) a Commonwealth Act may be cited—

(i) by its short title; or

(ii) in another way sufficient in a Commonwealth Act for the citation of such an Act,

together with a reference to the Commonwealth; and

(c) an Act of another jurisdiction may be cited—

(i) by its short title; or

(ii) in another way sufficient in an Act of the jurisdiction for the citation of such an Act,

together with a reference to the jurisdiction.

6—References taken to be included in Law or Act citation etc

(1) A reference in this Law to this Law or an Act includes a reference to—

(a) this Law or the Act as originally enacted, and as amended from time to time since its original enactment; and

(b) if this Law or the Act has been repealed and re-enacted (with or without modification) since the enactment of the reference—this Law or the Act as re-enacted, and as amended from time to time since its re-enactment.

(2) A reference in this Law to a provision of this Law or of an Act includes a reference to—

(a) the provision as originally enacted, and as amended from time to time since its original enactment; and

(b) if the provision has been omitted and re-enacted (with or without modification) since the enactment of the reference—the provision as re-enacted, and as amended from time to time since its re-enactment.

(3) Subclauses (1) and (2) apply to a reference in this Law to a law of the Commonwealth or another jurisdiction as they apply to a reference in this Law to an Act and to a provision of an Act.

7—Interpretation best achieving Law's purpose or object

(1) In the interpretation of a provision of this Law, the interpretation that will best achieve the purpose or object of this Law is to be preferred to any other interpretation.

(2) Subclause (1) applies whether or not the purpose is expressly stated in this Law.

8—Use of extrinsic material in interpretation

(1) In this clause—

extrinsic material means relevant material not forming part of this Law, including (for example)—

(a) material that is set out in the document containing the text of this Law as printed by the Government Printer; and

(b) a relevant report of a Royal Commission, Law Reform Commission, commission or committee of inquiry, or a similar body, that was laid before the Parliament of this jurisdiction before the provision concerned was enacted; and

(c) a relevant report of a committee of the Parliament of this jurisdiction that was made to the Parliament before the provision was enacted; and

(d) a treaty or other international agreement that is mentioned in this Law; and

(e) an explanatory note or memorandum relating to the Bill that contained the provision, or any relevant document, that was laid before, or given to the members of, the Parliament of this jurisdiction by the member bringing in the Bill before the provision was enacted; and

(f) the speech made to the Parliament of this jurisdiction by the member in moving a motion that the Bill be read a second time; and

(g) material in the Votes and Proceedings of the Parliament of this jurisdiction or in any official record of debates in the Parliament of this jurisdiction; and

(h) a document that is declared by this Law to be a relevant document for the purposes of this clause;

ordinary meaning means the ordinary meaning conveyed by a provision having regard to its context in this Law and to the purpose of this Law.

(2) Subject to subclause (3), in the interpretation of a provision of this Law, consideration may be given to extrinsic material capable of assisting in the interpretation—

(a) if the provision is ambiguous or obscure—to provide an interpretation of it; or

(b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable—to provide an interpretation that avoids such a result; or

(c) in any other case—to confirm the interpretation conveyed by the ordinary meaning of the provision.

(3) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be had to—

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging proceedings without compensating advantage; and

(c) other relevant matters.

9—Effect of change of drafting practice

If—

(a) a provision of this Law expresses an idea in particular words; and

(b) a provision enacted later appears to express the same idea in different words for the purpose of implementing a different legislative drafting practice, including (for example)—

(i) the use of a clearer or simpler style; or

(ii) the use of gender-neutral language,

the ideas must not be taken to be different merely because different words are used.

10—Use of examples

If this Law includes an example of the operation of a provision—

(a) the example is not exhaustive; and

(b) the example does not limit, but may extend, the meaning of the provision; and

(c) the example and the provision are to be read in the context of each other and the other provisions of this Law, but, if the example and the provision so read are inconsistent, the provision prevails.

11—Compliance with forms

(1) If a form is prescribed or approved by or for the purpose of this Law, strict compliance with the form is not necessary and substantial compliance is sufficient.

(2) If a form prescribed or approved by or for the purpose of this Law requires—

(a) the form to be completed in a specified way; or

(b) specified information or documents to be included in, attached to or given with the form; or

(c) the form, or information or documents included in, attached to or given with the form, to be verified in a specified way,

the form is not properly completed unless the requirement is complied with.

Part 3—Terms and references

12—Definitions

(1) In this Law—

Act means an Act of the Parliament of this jurisdiction;

adult means an individual who is 18 or more;

affidavit, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration and promise;

amend includes—

(a) omit or omit and substitute; or

(b) alter or vary; or

(c) amend by implication;

appoint includes reappoint;

Australia means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

business day means a day that is not—

(a) a Saturday or Sunday; or

(b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done;

calendar month means a period starting at the beginning of any day of 1 of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month;

calendar year means a period of 12 months beginning on 1 January;

commencement, in relation to this Law or an Act or a provision of this Law or an Act, means the time at which this Law, the Act or provision comes into operation;

Commonwealth means the Commonwealth of Australia but, when used in a geographical sense, does not include an external Territory;

confer, in relation to a function, includes impose;

contravene includes fail to comply with;

country includes—

(a) a federation; or

(b) a state, province or other part of a federation;

date of assent, in relation to an Act, means the day on which the Act receives the Royal Assent;

definition means a provision of this Law (however expressed) that—

(a) gives a meaning to a word or expression; or

(b) limits or extends the meaning of a word or expression;

document means any record of information and includes—

(a) any paper or other material on which there is writing; or

(b) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for a person qualified to interpret them; or

(c) any computer, disc, tape or other article or any material from which sounds, images, writings or messages are capable of being reproduced (with or without the aid of another article or device); or

(d) a map, plan, drawing or photograph;

electronic communication means—

(a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system;

estate includes easement, charge, right, title, claim, demand, lien or encumbrance, whether at law or in equity;

expire includes lapse or otherwise cease to have effect;

external Territory means a Territory, other than an internal Territory, for the government of which as a Territory provision is made by a Commonwealth Act;

fail includes refuse;

financial year means a period of 12 months beginning on 1 July;

function includes a power or duty;

Government Printer means the Government Printer of this jurisdiction, and includes any other person authorised by the Government of this jurisdiction to print an Act or instrument;

individual means a natural person;

information system means a system for generating, sending, receiving, storing or otherwise processing electronic communications;

insert, in relation to a provision of this Law, includes substitute;

instrument includes a statutory instrument;

interest, in relation to land or other property, means—

(a) a legal or equitable estate in the land or other property; or

(b) a right, power or privilege over, or in relation to, the land or other property;

internal Territory means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

Jervis Bay Territory means the Territory mentioned in the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth;

make includes issue or grant;

minor means an individual who is under 18;

modification includes addition, omission or substitution;

month means a calendar month;

named month means 1 of the 12 months of the year;

Northern Territory means the Northern Territory of Australia;

number means—

(a) a number expressed in figures or words; or

(b) a letter; or

(c) a combination of a number so expressed and a letter;

oath, in relation to a person allowed by law to affirm, declare or promise, includes affirmation, declaration or promise;

office includes position;

omit, in relation to a provision of this Law or an Act, includes repeal;

party includes an individual or a body politic or corporate;

penalty includes forfeiture or punishment;

person includes an individual or a body politic or corporate;

power includes authority;

prescribed means prescribed by, or by regulations made or in force for the purposes of or under, this Law;

printed includes typewritten, lithographed or reproduced by any mechanical means;

proceeding means a legal or other action or proceeding;

property means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action;

provision, in relation to this Law or an Act, means words or other matter that form or forms part of this Law or the Act, and includes—

(a) a Chapter, Part, Division, Subdivision, section, subsection, paragraph, subparagraph, subsubparagraph or Schedule of or to this Law or the Act; or

(b) a clause, section, subsection, item, column, table or form of or in a Schedule to this Law or the Act; or

(c) the long title and any preamble to the Act;

repeal includes—

(a) revoke or rescind; or

(b) repeal by implication; or

(c) abrogate or limit the effect of this Law or instrument concerned; or

(d) exclude from, or include in, the application of this Law or instrument concerned, any person, subject matter or circumstance;

sign includes the affixing of a seal or the making of a mark;

statutory declaration means a declaration made under an Act of this jurisdiction, or under a Commonwealth Act or an Act of another jurisdiction, that authorises a declaration to be made otherwise than in the course of a judicial proceeding;

statutory instrument means an instrument (including a regulation) made or in force under or for the purposes of this Law, and includes an instrument made or in force under any such instrument;

swear, in relation to a person allowed by law to affirm, declare or promise, includes affirm, declare or promise;

word includes any symbol, figure or drawing;

writing includes any mode of representing or reproducing words in a visible form;

year, without specifying the type of year, means calendar year.

(2) In a statutory instrument—

the Law means this Law.

13—Provisions relating to defined terms and gender and number

(1) If this Law defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings.

(2) Definitions in or applicable to this Law apply except so far as the context or subject matter otherwise indicates or requires.

(3) In this Law, words indicating a gender include each other gender.

(4) In this Law—

(a) words in the singular include the plural; and

(b) words in the plural include the singular.

14—Meaning of *may* and *must* etc

(1) In this Law, the word "may", or a similar word or expression, used in relation to a power indicates that the power may be exercised or not exercised, at discretion.

(2) In this Law, the word "must", or a similar word or expression, used in relation to a power indicates that the power is required to be exercised.

(3) This clause has effect despite any rule of construction to the contrary.

15—Words and expressions used in statutory instruments

(1) Words and expressions used in a statutory instrument have the same meanings as they have, from time to time, in this Law, or relevant provisions of this Law, under or for the purposes of which the instrument is made or in force.

(2) This clause has effect in relation to an instrument except so far as the contrary intention appears in the instrument.

15A—Provisions creating offences

(1) In this Law, a penalty set out at the foot of a provision indicates that contravention of the provision (whether by act or omission) constitutes an offence punishable on conviction by a penalty not exceeding the penalty so set out.

(2) Subclause (1) applies whether or not the provision expressly creates an offence.

16—Effect of express references to bodies corporate and individuals

In this Law, a reference to a person generally (whether the expression "person", "party", "someone", "anyone", "no-one", "one", "another" or "whoever" or another expression is used)—

(a) does not exclude a reference to a body corporate or an individual merely because elsewhere in this Law there is particular reference to a body corporate (however expressed); and

(b) does not exclude a reference to an individual or a body corporate merely because elsewhere in this Law there is particular reference to an individual (however expressed).

17—Production of records kept in computers etc

If a person who keeps a record of information by means of a mechanical, electronic or other device is required by or under this Law—

(a) to produce the information or a document containing the information to a court, tribunal or person; or

(b) to make a document containing the information available for inspection by a court, tribunal or person,

then, unless the court, tribunal or person otherwise directs—

(c) the requirement obliges the person to produce or make available for inspection (as the case may be) a document that reproduces the information in a form capable of being understood by the court, tribunal or person; and

(d) the production to the court, tribunal or person of the document in that form complies with the requirement.

18—References to this jurisdiction to be implied

In this Law—

(a) a reference to an officer, office or statutory body is a reference to such an officer, office or statutory body in and for this jurisdiction; and

(b) a reference to a locality or other matter or thing is a reference to such a locality or other matter or thing in and of this jurisdiction.

19—References to officers and holders of offices

In this Law, a reference to a particular officer, or to the holder of a particular office, includes a reference to the person for the time being occupying or acting in the office concerned.

20—Reference to certain provisions of Law

If a provision of this Law refers—

(a) to a Part, section or Schedule by a number and without reference to this Law—the reference is a reference to the Part, section or Schedule, designated by the number, of or to this Law; or

(b) to a Schedule without reference to it by a number and without reference to this Law—the reference, if there is only 1 Schedule to this Law, is a reference to the Schedule; or

(c) to a Division, Subdivision, subsection, paragraph, subparagraph, subsubparagraph, clause, subclause, item, column, table or form by a number and without reference to this Law—the reference is a reference to—

(i) the Division, designated by the number, of the Part in which the reference occurs; and

(ii) the Subdivision, designated by the number, of the Division in which the reference occurs; and

(iii) the subsection, designated by the number, of the section in which the reference occurs; and

(iv) the paragraph, designated by the number, of the section, subsection, Schedule or other provision in which the reference occurs; and

(v) the paragraph, designated by the number, of the section, subsection, item, column, table or form of or in the Schedule in which the reference occurs; and

(vi) the subparagraph, designated by the number, of the paragraph in which the reference occurs; and

(vii) the subsubparagraph, designated by the number, of the subparagraph in which the reference occurs; and

(viii) the clause, section, subsection, item, column, table or form, designated by the number, of or in the Schedule in which the reference occurs,

as the case requires.

21—Reference to provisions of this Law or an Act is inclusive

In this Law, a reference to a portion of this Law or an Act includes—

(a) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the beginning of the portion; and

(b) a reference to the Chapter, Part, Division, Subdivision, section, subsection or other provision of this Law or the Act referred to that forms the end of the portion.

Example—

A reference to "sections 5 to 9" includes both section 5 and section 9. It is not necessary to refer to "sections 5 to 9 (both inclusive)" to ensure that the reference is given an inclusive interpretation.

Part 4—Functions and powers

22—Exercise of statutory functions

(1) If this Law confers a function on a person or body, the function may be exercised from time to time as occasion requires.

(2) If this Law confers a function on a particular officer or the holder of a particular office, the function may be exercised by the person for the time being occupying or acting in the office concerned.

(3) If this Law confers a function on a body (whether or not incorporated), the exercise of the function is not affected merely because of vacancies in the membership of the body.

23—Power to make instrument or decision includes power to amend or repeal

If this Law authorises or requires the making of an instrument or decision—

(a) the power includes power to amend or repeal the instrument or decision; and

(b) the power to amend or repeal the instrument or decision is exercisable in the same way, and subject to the same conditions, as the power to make the instrument or decision.

24—Matters for which statutory instruments may make provision

(1) If this Law authorises or requires the making of a statutory instrument in relation to a matter, a statutory instrument made under this Law may make provision for the matter by applying, adopting or incorporating (with or without modification) the provisions of—

(a) an Act or statutory instrument; or

(b) another document (whether of the same or a different kind), as in force at a particular time or as in force from time to time.

(2) If a statutory instrument applies, adopts or incorporates the provisions of a document, the statutory instrument applies, adopts or incorporates the provisions as in force from time to time, unless the statutory instrument otherwise expressly provides.

(3) A statutory instrument may—

(a) apply generally throughout this jurisdiction or be limited in its application to a particular part of this jurisdiction; or

(b) apply generally to all persons, matters or things or be limited in its application to—

(i) particular persons, matters or things; or

(ii) particular classes of persons, matters or things; or

(c) otherwise apply generally or be limited in its application by reference to specified exceptions or factors.

(4) A statutory instrument may—

(a) apply differently according to different specified factors; or

(b) otherwise make different provision in relation to—

(i) different persons, matters or things; or

(ii) different classes of persons, matters or things.

(5) A statutory instrument may authorise a matter or thing to be from time to time determined, applied or regulated by a specified person or body.

(6) If this Law authorises or requires a matter to be regulated by statutory instrument, the power may be exercised by prohibiting by statutory instrument the matter or any aspect of the matter.

(7) If this Law authorises or requires provision to be made with respect to a matter by statutory instrument, a statutory instrument made under this Law may make provision with respect to a particular aspect of the matter despite the fact that provision is made by this Law in relation to another aspect of the matter or in relation to another matter.

(8) A statutory instrument may provide for the review of, or a right of appeal against, a decision made under the statutory instrument, or this Law, and may, for that purpose, confer jurisdiction on any court, tribunal, person or body.

(9) A statutory instrument may require a form prescribed by or under the statutory instrument, or information or documents included in, attached to or given with the form, to be verified by statutory declaration.

25—Presumption of validity and power to make

(1) All conditions and preliminary steps required for the making of a statutory instrument are presumed to have been satisfied and performed in the absence of evidence to the contrary.

(2) A statutory instrument is taken to be made under all powers under which it may be made, even though it purports to be made under this Law or a particular provision of this Law.

26—Appointments may be made by name or office

(1) If this Law authorises or requires a person or body—

(a) to appoint a person to an office; or

(b) to appoint a person or body to exercise a power; or

(c) to appoint a person or body to do another thing,

the person or body may make the appointment by—

(d) appointing a person or body by name; or

(e) appointing a particular officer, or the holder of a particular office, by reference to the title of the office concerned.

(2) An appointment of a particular officer, or the holder of a particular office, is taken to be the appointment of the person for the time being occupying or acting in the office concerned.

27—Acting appointments

(1) If this Law authorises a person or body to appoint a person to act in an office, the person or body may, in accordance with this Law, appoint—

(a) a person by name; or

(b) a particular officer, or the holder of a particular office, by reference to the title of the office concerned,

to act in the office.

(2) The appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment.

(3) The appointer may—

(a) determine the terms and conditions of the appointment, including remuneration and allowances; and

(b) terminate the appointment at any time.

(4) The appointment, or the termination of the appointment, must be in, or evidenced by, writing signed by the appointer.

(5) The appointee must not act for more than 1 year during a vacancy in the office.

(6) If the appointee is acting in the office otherwise than because of a vacancy in the office and the office becomes vacant, then, subject to subclause (2), the appointee may continue to act until—

(a) the appointer otherwise directs; or

(b) the vacancy is filled; or

(c) the end of a year from the day of the vacancy,

whichever happens first.

(7) The appointment ceases to have effect if the appointee resigns by writing signed and delivered to the appointer.

(8) While the appointee is acting in the office—

(a) the appointee has all the powers and functions of the holder of the office; and

(b) this Law and other laws apply to the appointee as if the appointee were the holder of the office.

(9) Anything done by or in relation to a person purporting to act in the office is not invalid merely because—

(a) the occasion for the appointment had not arisen; or

(b) the appointment had ceased to have effect; or

(c) the occasion for the person to act had not arisen or had ceased.

(10) If this Law authorises the appointer to appoint a person to act during a vacancy in the office, an appointment to act in the office may be made by the appointer whether or not an appointment has previously been made to the office.

28—Powers of appointment imply certain incidental powers

(1) If this Law authorises or requires a person or body to appoint a person to an office—

(a) the power may be exercised from time to time as occasion requires; and

(b) the power includes—

(i) power to remove or suspend, at any time, a person appointed to the office; and

(ii) power to appoint another person to act in the office if a person appointed to the office is removed or suspended; and

(iii) power to reinstate or reappoint a person removed or suspended; and

(iv) power to appoint a person to act in the office if it is vacant (whether or not the office has ever been filled); and

(v) power to appoint a person to act in the office if the person appointed to the office is absent or is unable to discharge the functions of the office (whether because of illness or otherwise).

(2) The power to remove or suspend a person under subclause (1)(b) may be exercised even if this Law provides that the holder of the office to which the person was appointed is to hold office for a specified period.

(3) The power to make an appointment under subclause (1)(b) may be exercised from time to time as occasion requires.

(4) An appointment under subclause (1)(b) may be expressed to have effect only in the circumstances specified in the instrument of appointment.

29—Delegation of functions

(1) If this Law authorises a person or body to delegate a function, the person or body may, in accordance with this Law and any other applicable law, delegate the function to—

(a) a person or body by name; or

(b) a specified officer, or the holder of a specified office, by reference to the title of the office concerned.

(2) The delegation may—

(a) be general or limited; and

(b) be made from time to time; and

(c) be revoked, wholly or partly, by the delegator.

(3) The delegation, or a revocation of the delegation, must be in, or evidenced by, writing signed by the delegator or, if the delegator is a body, by a person authorised by the body for the purpose.

(4) A delegated function may be exercised only in accordance with any conditions to which the delegation is subject.

(5) The delegate may, in the exercise of a delegated function, do anything that is incidental to the delegated function.

(6) A delegated function that purports to have been exercised by the delegate is taken to have been properly exercised by the delegate unless the contrary is proved.

(7) A delegated function that is properly exercised by the delegate is taken to have been exercised by the delegator.

(8) If, when exercised by the delegator, a function is dependent on the delegator's opinion, belief or state of mind, then, when exercised by the delegate, the function is dependent on the delegate's opinion, belief or state of mind.

(9) If—

(a) the delegator is a specified officer or the holder of a specified office; and

(b) the person who was the specified officer or holder of the specified office when the delegation was made ceases to be the holder of the office,

then—

(c) the delegation continues in force; and

(d) the person for the time being occupying or acting in the office concerned is taken to be the delegator for the purposes of this clause.

(10) If—

(a) the delegator is a body; and

(b) there is a change in the membership of the body,

then—

(c) the delegation continues in force; and

(d) the body as constituted for the time being is taken to be delegator for the purposes of this clause.

(11) If a function is delegated to a specified officer or the holder of a specified office—

(a) the delegation does not cease to have effect merely because the person who was the specified officer or the holder of the specified office when the function was delegated ceases to be the officer or the holder of the office; and

(b) the function may be exercised by the person for the time being occupying or acting in the office concerned.

(12) A function that has been delegated may, despite the delegation, be exercised by the delegator.

(13) The delegation of a function does not relieve the delegator of the delegator's obligation to ensure that the function is properly exercised.

(14) Subject to subclause (15), this clause applies to a subdelegation of a function in the same way as it applies to a delegation of a function.

(15) If this Law authorises the delegation of a function, the function may be subdelegated only if this Law expressly authorises the function to be subdelegated.

30—Exercise of powers between enactment and commencement

(1) If a provision of this Law (the ***empowering provision***) that does not commence on its enactment would, had it commenced, confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(2) If a provision of a South Australian Act (the ***empowering provision***) that does not commence on its enactment would, had it commenced, amend a provision of this Law so that it would confer a power—

(a) to make an appointment; or

(b) to make a statutory instrument of a legislative or administrative character; or

(c) to do another thing,

then—

(d) the power may be exercised; and

(e) anything may be done for the purpose of enabling the exercise of the power or of bringing the appointment, instrument or other thing into effect,

before the empowering provision commences.

(3) If—

(a) this Law has commenced and confers a power to make a statutory instrument (the ***basic instrument-making power***); and

(b) a provision of a South Australian Act that does not commence on its enactment would, had it commenced, amend this Law so as to confer additional power to make a statutory instrument (the ***additional instrument-making power***),

then—

(c) the basic instrument-making power and the additional instrument-making power may be exercised by making a single instrument; and

(d) any provision of the instrument that required an exercise of the additional instrument-making power is to be treated as made under subclause (2).

(4) If an instrument, or a provision of an instrument, is made under subclause (1) or (2) that is necessary for the purpose of—

(a) enabling the exercise of a power mentioned in the subclause; or

(b) bringing an appointment, instrument or other thing made or done under such a power into effect,

the instrument or provision takes effect—

(c) on the making of the instrument; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the instrument or provision is expressed to take effect.

(5) If—

(a) an appointment is made under subclause (1) or (2); or

(b) an instrument, or a provision of an instrument, made under subclause (1) or (2) is not necessary for a purpose mentioned in subclause (4),

the appointment, instrument or provision takes effect—

(c) on the commencement of the relevant empowering provision; or

(d) on such later day (if any) on which, or at such later time (if any) at which, the appointment, instrument or provision is expressed to take effect.

(6) Anything done under subclause (1) or (2) does not confer a right, or impose a liability, on a person before the relevant empowering provision commences.

(7) After the enactment of a provision mentioned in subclause (1) but before the provision's commencement, this clause applies as if the references in subclauses (2) and (5) to the commencement of the empowering provision were references to the commencement of the provision mentioned in subclause (2) as amended by the empowering provision.

(8) In the application of this clause to a statutory instrument, a reference to the enactment of the instrument is a reference to the making of the instrument.

Part 5—Distance, time and age

31—Matters relating to distance, time and age

(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and—

(a) if the period is expressed to be a specified number of clear days or at least a specified number of days—by excluding the day on which the purpose is to be fulfilled; and

(b) in any other case—by including the day on which the purpose is to be fulfilled.

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

Part 6—Effect of repeal, amendment or expiration

32—Time of Law ceasing to have effect

If a provision of this Law is expressed—

(a) to expire on a specified day; or

(b) to remain or continue in force, or otherwise have effect, until a specified day,

this provision has effect until the last moment of the specified day.

33—Repealed provisions not revived

If a provision of this Law is repealed or amended by a South Australian Act, or a provision of a South Australian Act, the provision is not revived merely because the South Australian Act or the provision of the South Australian Act—

(a) is later repealed or amended; or

(b) later expires.

34—Saving of operation of repealed Law provisions

(1) The repeal, amendment or expiry of a provision of this Law does not—

(a) revive anything not in force or existing at the time the repeal, amendment or expiry takes effect; or

(b) affect the previous operation of the provision or anything suffered, done or begun under the provision; or

(c) affect a right, privilege or liability acquired, accrued or incurred under the provision; or

(d) affect a penalty incurred in relation to an offence arising under the provision; or

(e) affect an investigation, proceeding or remedy in relation to such a right, privilege, liability or penalty.

(2) Any such penalty may be imposed and enforced, and any such investigation, proceeding or remedy may be begun, continued or enforced, as if the provision had not been repealed or amended or had not expired.

35—Continuance of repealed provisions

If a South Australian Act repeals some provisions of this Law and enacts new provisions in substitution for the repealed provisions, the repealed provisions continue in force until the new provisions commence.

36—Law and amending Acts to be read as one

This Law and all South Australian Acts amending this Law are to be read as one.

Part 7—Instruments under Law

37—Schedule applies to statutory instruments

(1) This Schedule applies to a statutory instrument, and to things that may be done or are required to be done under a statutory instrument, in the same way as it applies to this Law, and things that may be done or are required to be done under this Law, except so far as the context or subject matter otherwise indicates or requires.

(2) The fact that a provision of this Schedule refers to this Law and not also to a statutory instrument does not, by itself, indicate that the provision is intended to apply only to this Law.

Legislative history

Notes

- 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.

Legislation repealed by principal Act

The *Rail Safety National Law (South Australia) Act 2012* repealed the following:

Rail Safety Act 2007

Legislation amended by principal Act

The *Rail Safety National Law (South Australia) Act 2012* amended the following:

Rail Commissioner Act 2009

Railways (Operations and Access) Act 1997

Terrorism (Surface Transport Security) Act 2011

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2012	14	*Rail Safety National Law (South Australia) Act 2012*	10.5.2012	7.6.2012 (*Gazette 7.6.2012 p2707*) except ss 6, 7, Pts 3—5 and ss 3, 6, 8, 41—44, Pts 3—10 & Sch 1 to the Law—20.1.2013 (*Gazette 13.12.2012 p5534*)
2015	5	*Rail Safety National Law (South Australia) (Miscellaneous) Amendment Act 2015*	21.5.2015	1.7.2015 (*Gazette 18.6.2015 p2971*)
2016	**31**	***Rail Safety National Law (South Australia) (Miscellaneous No 2) Amendment Act 2016***	**30.6.2016**	**1.8.2016 (*Gazette 21.7.2016 p2989*)**

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended under *Legislation Revision and Publication Act 2002*	1.7.2015
Pt 1		
s 2	*omitted under Legislation Revision and Publication Act 2002*	*1.7.2015*
Pt 4		
s 12		
s 12(1)	amended by 5/2015 s 4	1.7.2015
Pt 5		
Pt 5 Div 2	*omitted under Legislation Revision and Publication Act 2002*	*1.7.2015*
Pt 5 Div 4	*expired: s 37—omitted under Rail Safety National Law (South Australia) Act 2012*	*(20.1.2013)*
Rail Safety National Law		
Pt 1		
s 4		
s 4(1)		
accredited person	amended by 5/2015 s 5(1)	1.7.2015
AQF	***deleted by 31/2016 s 4***	***1.8.2016***
AQTF	***deleted by 31/2016 s 4***	***1.8.2016***
registered person	amended by 5/2015 s 5(2)	1.7.2015
Pt 2		
s 20		
s 20(4)	*deleted by 5/2015 s 6*	*1.7.2015*
s 33	**amended by 31/2016 s 5**	**1.8.2016**
Pt 3		
Pt 3 Div 4		
Pt 3 Div 4 Subdiv 3		
s 72		
s 72(1)	amended by 5/2015 s 7	1.7.2015
Pt 3 Div 4 Subdiv 4		
heading	amended by 5/2015 s 8	1.7.2015
s 73		
s 73(2)	amended by 5/2015 s 9(1), (2)	1.7.2015
s 73(4)	amended by 5/2015 s 9(3), (4)	1.7.2015
Pt 3 Div 4 Subdiv 5		
s 76		
s 76(3a)—(3c)	inserted by 5/2015 s 10	1.7.2015
Pt 3 Div 5 Subdiv 3		

s 91		
s 91(1)	amended by 5/2015 s 11	1.7.2015
Pt 3 Div 5 Subdiv 4		
heading	amended by 5/2015 s 12	1.7.2015
s 92		
s 92(2)	amended by 5/2015 s 13(1)	1.7.2015
s 92(4)	amended by 5/2015 s 13(2), (3)	1.7.2015
Pt 3 Div 5 Subdiv 5		
s 96A	inserted by 5/2015 s 14	1.7.2015
Pt 3 Div 6		
s 117		
s 117(2)	**amended by 31/2016 s 6(1)**	**1.8.2016**
s 117(7)	**inserted by 31/2016 s 6(2)**	**1.8.2016**
Pt 3 Div 9		
s 128		
s 128(1)	amended by 5/2015 s 15	1.7.2015
Pt 4		
s 145		
s 145(1)	amended by 5/2015 s 16	1.7.2015
s 149		
s 149(1)	**amended by 31/2016 s 7(1)**	**1.8.2016**
s 149(2)	**substituted by 31/2016 s 7(2)**	**1.8.2016**
s 149(3)	**amended by 31/2016 s 7(3), (4)**	**1.8.2016**
s 168A	inserted by 5/2015 s 17	1.7.2015
Pt 5		
s 183		
s 183(1)	**amended by 31/2016 s 8(1)**	**1.8.2016**
s 183(3)	**amended by 31/2016 s 8(2)**	**1.8.2016**
s 199		
s 199(1a)	**inserted by 31/2016 s 9(1)**	**1.8.2016**
s 199(8)	**amended by 31/2016 s 9(2)**	**1.8.2016**
s 199(9)	**inserted by 31/2016 s 9(3)**	**1.8.2016**
Pt 6		
Pt 6 Div 1		
s 203		
s 203(3)	amended by 5/2015 s 18	1.7.2015
Pt 6 Div 2		
Pt 6 Div 2 Subdiv 3		
s 212		
s 212(1)	amended by 5/2015 s 19	1.7.2015
Pt 6 Div 2 Subdiv 4		
heading	amended by 5/2015 s 20	1.7.2015
s 213		

s 213(2)	amended by 5/2015 s 21(1)	1.7.2015
s 213(4)	amended by 5/2015 s 21(2), (3)	1.7.2015
Pt 6 Div 2 Subdiv 6	inserted by 5/2015 s 22	1.7.2015
Pt 7		
s 215		
s 215(1)	amended by 5/2015 s 23(1), (2)	1.7.2015
s 215(2)	amended by 5/2015 s 23(3)	1.7.2015
Pt 8		
s 218		
s 281(2)	**substituted by 31/2016 s 10**	**1.8.2016**
Pt 9		
s 233	amended by 5/2015 s 24	1.7.2015
Pt 10		
s 249		
s 249(1)	amended by 5/2015 s 25(1)	1.7.2015
s 249(2)	amended by 5/2015 s 25(1), (2)	1.7.2015
s 249(4)	amended by 5/2015 s 25(2)	1.7.2015
s 260A	**inserted by 31/2016 s 11**	**1.8.2016**
Sch 2		
cl 15A	**inserted by 31/2016 s 12**	**1.8.2016**

Historical versions

1.7.2015