

South Australia

# **Rail Safety National Law (South Australia) (Miscellaneous) Amendment Act 2015**

An Act to amend the *Rail Safety National Law (South Australia) Act 2012*.

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

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Rail Safety National Law (South Australia) (Miscellaneous) Amendment Act 2015*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

In this Act—

- (a) a provision in Part 2 amends the *Rail Safety National Law (South Australia) Act 2012*; and
- (b) a provision in Part 3 amends the *Rail Safety National Law* set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012*.

## **Part 2—Amendment of *Rail Safety National Law (South Australia) Act 2012***

### **4—Amendment of section 12—Conduct of preliminary breath test or breath analysis**

Section 12(1)—delete "by means of a preliminary breath test or breath analysis (or both)"

## **Part 3—Amendment of *Rail Safety National Law***

### **5—Amendment of section 4—Interpretation**

- (1) Section 4(1), definition of *accredited person*, (a)—delete "revoked" and substitute:  
cancelled
- (2) Section 4(1), definition of *registered person*, (a)—delete "revoked" and substitute:  
cancelled

### **6—Amendment of section 20—Power of Regulator to obtain information**

Section 20(4)—delete subsection (4)

### **7—Amendment of section 72—Regulator may make changes to conditions or restrictions**

Section 72(1)—delete "revoke" and substitute:  
cancel

## **8—Amendment of heading to Part 3, Division 4, Subdivision 4**

Heading to Part 3, Division 4, Subdivision 4—delete "**Revocation**" and substitute:

### **Cancellation**

## **9—Amendment of section 73—Cancellation or suspension of accreditation**

- (1) Section 73(2)(b)—delete "revoke" and substitute:  
cancel
- (2) Section 73(2)—delete "revokes" and substitute:  
cancels
- (3) Section 73(4)—delete "revokes" and substitute:  
cancels
- (4) Section 73(4)—delete "revocation" wherever occurring and substitute in each case:  
cancellation

## **10—Amendment of section 76—Annual fees**

Section 76—after subsection (3) insert:

- (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.

**11—Amendment of section 91—Regulator may make changes to conditions or restrictions**

Section 91(1)—delete "revoke" and substitute:

cancel

**12—Amendment of heading to Part 3, Division 5, Subdivision 4**

Heading to Part 3, Division 5, Subdivision 4—delete "**Revocation**" and substitute:

**Cancellation**

**13—Amendment of section 92—Cancellation or suspension of registration**

(1) Section 92(2)(b)—delete "revoke" and substitute:

cancel

(2) Section 92(4)—delete "revokes" and substitute:

cancels

(3) Section 92(4)—delete "revocation" wherever occurring and substitute in each case:

cancellation

**14—Insertion of section 96A**

After section 96 insert:

**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.

### **15—Amendment of section 128—Offence relating to prescribed concentration of alcohol or prescribed drug**

Section 128—at the foot of subsection (1) insert:

**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.

### **16—Amendment of section 145—General powers on entry**

Section 145(1)(d)—delete "structure" and substitute:

rail infrastructure

### **17—Insertion of section 168A**

After section 168 insert:

#### **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.

### **18—Amendment of section 203—Ministerial exemptions**

Section 203(3)—delete "revoke" wherever occurring and substitute in each case:

cancel

### **19—Amendment of section 212—Regulator may make changes to conditions or restrictions**

Section 212(1)—delete "revoke" and substitute:

cancel

### **20—Amendment of heading to Part 6, Division 2, Subdivision 4**

Heading to Part 6, Division 2, Subdivision 4—delete "**Revocation**" and substitute:

**Cancellation**

### **21—Amendment of section 213—Cancellation or suspension of an exemption**

- (1) Section 213(2)(b)—delete "revoke" and substitute:

cancel

- (2) Section 213(4)—delete "revokes" and substitute:

cancels

- (3) Section 213(4)—delete "revocation" wherever occurring and substitute in each case:

cancellation

### **22—Insertion of Part 6, Division 2, Subdivision 6**

After section 214 insert:

#### **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.

### **23—Amendment of section 215—Reviewable decisions**

- (1) Section 215—delete "revocation" wherever occurring and substitute in each case:

cancellation

- (2) Section 215—delete "revoked" wherever occurring and substitute in each case:

cancelled

- (3) Section 215—delete "revoking" wherever occurring and substitute in each case:  
cancelling

**24—Amendment of section 233—Meaning of infringement penalty provision**

Section 233, table—after item 4 insert:

4A	Section 96A(2) (Annual activity statement)	\$1 000
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**25—Amendment of section 249—Approved codes of practice**

- (1) Section 249—delete "revoke" wherever occurring and substitute in each case:  
cancel
- (2) Section 249—delete "revocation" wherever occurring and substitute in each case:  
cancellation