



New South Wales

# Transport Legislation Amendment (Safety and Reliability) Act 2003 No 65

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New South Wales

## **Transport Legislation Amendment (Safety and Reliability) Act 2003 No 65**

Act No 65, 2003

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An Act to amend the *Transport Administration Act 1988* to constitute the Independent Transport Safety and Reliability Regulator and to establish the Independent Transport Safety and Reliability Advisory Board, to amend other Acts with respect to their functions and to make other provision with respect to the safety and reliability of public transport services and the investigation of public transport accidents; and for other purposes. [Assented to 20 November 2003]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Transport Legislation Amendment (Safety and Reliability) Act 2003*.

**2 Commencement**

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedules 3 [31] and 4 [116] commence on the date of assent.

**3 Amendment of Acts**

The Acts specified in Schedules 1–9 are amended as set out in those Schedules.

**4 Repeal of Transport Administration Amendment (Rail Management) Act 2000 No 89**

The *Transport Administration Amendment (Rail Management) Act 2000* is repealed.

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## Schedule 1 Amendment of Transport Administration Act 1988 No 109

(Section 3)

**[1] Long title**

Insert “, the Independent Transport Safety and Reliability Regulator” after “State Transit Authority”.

**[2] Long title**

Omit “Public Transport Authority and a”.

**[3] Sections 3, 40, 100 and 104D**

Omit “Department of Transport” wherever occurring in the definition of *Director-General* in section 3 (1), section 40 (3) (b), section 100 (3) and section 104D (3).

Insert instead “Ministry of Transport”.

**[4] Section 3 (1)**

Omit the definition of *Public Transport Authority*.

**[5] Section 3 (1)**

Insert in alphabetical order:

*Independent Transport Safety and Reliability Advisory Board* means the Independent Transport Safety and Reliability Advisory Board established under this Act.

*Independent Transport Safety and Reliability Regulator* means the Independent Transport Safety and Reliability Regulator constituted under this Act.

*Transport Advisory Group* means the Transport Advisory Group constituted under this Act.

**[6] Section 19R Chief executive officer**

Omit “*Public Sector Management Act 1988* (Part 8 included)” from section 19R (5).

Insert instead “*Public Sector Employment and Management Act 2002* (Chapter 5 included)”.

**[7] Part 4, heading**

Omit “**Department of Transport**”.

Insert instead “**Ministry of Transport**”.

**[8] Section 36 References to functions of Director-General**

Omit “or 37A”.

**[9] Section 37A Functions relating to the licensing and regulation of railways**

Omit the section.

**[10] Part 4A**

Insert after Part 4:

**Part 4A Independent Transport Safety and Reliability Regulator**

**Division 1 Interpretation**

**42A Definitions**

In this Part:

*Board* means the Independent Transport Safety and Reliability Advisory Board.

*bus* has the same meaning as it has in the *Passenger Transport Act 1990*.

*Chief Executive* means the Chief Executive of the ITSRR.

*Chief Investigator* means the Chief Investigator appointed under section 42S.

*ferry* has the same meaning as it has in the *Passenger Transport Act 1990*.

*funded transport service* means a transport service owned or operated by a statutory authority (including a State owned corporation) or any other transport service that receives a Government subsidy or other Government funding.

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***ITSRR*** means the Independent Transport Safety and Reliability Regulator.

***rail safety inquiry*** means an inquiry under section 67 of the *Rail Safety Act 2002*.

***reliability***, in relation to a transport service, means the quality, effectiveness and efficiency of the service, having regard to the following matters:

- (a) management and administration of infrastructure, assets, resources and liabilities,
- (b) fulfilment of obligations under contracts and arrangements relating to the provision of services, including timeliness and quality of services,
- (c) any other matters prescribed by the regulations.

***transport authority*** means:

- (a) the State Rail Authority, or
- (b) the State Transit Authority, or
- (c) the Waterways Authority, or
- (d) the Rail Infrastructure Corporation, or
- (e) the Director-General, or
- (f) the Ministry of Transport, or
- (g) any other person or body prescribed as a transport authority by the regulations.

***transport safety inquiry*** means a transport safety inquiry under section 46B of the *Passenger Transport Act 1990*.

***transport service*** means:

- (a) a railway operation within the meaning of the *Rail Safety Act 2002*, or
- (b) a public passenger service, within the meaning of the *Passenger Transport Act 1990*, carried on by means of a bus or ferry, or
- (c) any other operation or service prescribed as a transport service by the regulations.

**Division 2 Constitution of Independent Transport Safety and Reliability Regulator**

**42B Constitution of Independent Transport Safety and Reliability Regulator**

- (1) There is constituted by this Act a corporation with the corporate name of the Independent Transport Safety and Reliability Regulator.
- (2) The ITSRR is, for the purposes of any Act, a statutory body representing the Crown.

**Division 3 Charter of Independent Transport Safety and Reliability Regulator**

**42C Objectives of ITSRR**

- (1) The principal objective of the ITSRR is to facilitate the safe operation of transport services in the State.
- (2) The ITSRR also has the following objectives:
  - (a) to exhibit independence, rigour and excellence in carrying out its regulatory and investigative functions,
  - (b) to promote safety and reliability as fundamental objectives in the delivery of transport services.

**42D General functions of ITSRR**

- (1) The ITSRR has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the ITSRR are as follows:
  - (a) to provide strategic co-ordination of safety regulation by transport authorities in relation to transport services and owners or operators of transport services,
  - (b) to review and evaluate any matter related to the safe operation of transport services and the functions of transport authorities in relation to the safe operation of transport services,
  - (c) to review and evaluate any matter related to the reliability of funded transport services and the functions of transport authorities in relation to the reliability of funded transport services,

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- (d) to advise the Minister, or make recommendations to the Minister, or both, about any matter related to the safe operation of transport services, including safety regulation by transport authorities in relation to transport services,
  - (e) to advise the Minister, or make recommendations to the Minister, or both, about any matter related to the reliability of funded transport services,
  - (f) to accredit operators of railways under the *Rail Safety Act 2002*,
  - (g) to investigate and report on accidents and incidents involving transport services,
  - (h) to disseminate information to the public relating to the safety of transport services or the reliability of funded transport services, as the ITSRR considers appropriate.
- (3) The ITSRR may, to the extent necessary to carry out its functions, or to achieve its objectives, in this State exercise its functions within or outside this State.

**42E ITSRR may advise on and monitor safety and reliability**

- (1) The ITSRR is to advise the Minister with respect to:
  - (a) the performance of transport authorities in connection with the exercise of their functions relating to the safe operation of transport services, and
  - (b) the performance of transport authorities in connection with the exercise of their functions relating to the reliability of funded transport services.
- (2) The ITSRR is to monitor the following matters relating to the safe operation of transport services:
  - (a) the performance of transport authorities in connection with the exercise of their functions relating to the safe operation of transport services,
  - (b) the performance of owners or operators of transport services in connection with the safe operation of those services,
  - (c) the compliance by transport authorities with any recommendations relating to the safe operation of transport services contained in any report by the ITSRR or the Chairperson of the Board under this or any other Act,



- (d) the compliance by transport authorities with any safety management systems required to be implemented by them under any other Act or law or conditions of accreditation or other contracts or arrangements.
- (3) The ITSRR is to monitor the following matters relating to the reliability of funded transport services:
  - (a) the performance of transport authorities in connection with the exercise of their functions relating to the reliability of funded transport services,
  - (b) the performance of owners or operators of funded transport services or other transport services in connection with the reliability of funded transport services.
- (4) In carrying out its functions under this section, the ITSRR is to have regard to any requirements applicable to transport authorities or owners or operators of transport services under this or any other Act or under any contractual or other arrangement entered into under this or any other Act or with the Minister or the Director-General.

**42F Auditing of transport authorities and owners and operators of transport services**

- (1) The ITSRR may conduct audits of the compliance of transport authorities and owners or operators of transport services with requirements applicable to them under this or any other Act or under any contractual or other arrangement entered into under this or any other Act or with the Minister or the Director-General.
- (2) Audits may be conducted on a periodic or other basis.

**42G Reports to Minister on performance**

- (1) The ITSRR must report to the Minister each year on the performance of transport authorities and owners and operators of transport services in connection with the exercise of their functions relating to the safe operation and reliability of those services.
- (2) A report under subsection (1) may be included in the annual report of the ITSRR under the *Annual Reports (Statutory Bodies) Act 1984*.

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- (3) The ITSRR is to report to the Minister on the result of any audit of compliance with requirements under section 42F.

**42H Referral of reports to Independent Transport Safety and Reliability Advisory Board**

- (1) This section applies to the following reports prepared by the ITSRR:
- (a) a report of a rail safety inquiry or a transport safety inquiry conducted by the ITSRR,
  - (b) a report on an accident or incident relating to a transport service,
  - (c) a report on a transport authority or the operation of a transport service,
  - (d) the annual report of the ITSRR.
- (2) Before publishing a report (whether under this or any other Act) or giving a report to the Minister, the ITSRR must refer the report to the Board and consider any advice of the Board relating to the report.
- (3) This section applies to a report despite the provisions of any other Act.

**42I Power of ITSRR to give directions relating to transport services**

- (1) The ITSRR may give directions to the Director-General or the Waterways Authority relating to the safe operation of transport services and associated matters.
- (2) If the Director-General or Waterways Authority considers that complying with any such direction may cause a significant variation in the funding required for the operation of the functions of the Ministry of Transport relating solely to the Ministry or for the operations of the Waterways Authority, the Director-General or Waterways Authority must request the ITSRR to review the decision.
- (3) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the ITSRR determines.

- (4) If the Director-General or the Waterways Authority requests a review in accordance with this section:
  - (a) the Director-General or Waterways Authority may request the ITSRR to provide a written record of the direction if it was not given in writing, and
  - (b) the Director-General or Waterways Authority is not to comply with the direction until notified of the ITSRR's decision following the review.
- (5) Following the review, the ITSRR may confirm or revoke the direction but the ITSRR is not to confirm the direction unless:
  - (a) the ITSRR has estimated the variation in the financial requirements from the information supplied by the Director-General or Waterways Authority, and
  - (b) the ITSRR has referred the matter to the Minister, and
  - (c) the Minister, after consultation with the Treasurer, has approved the direction.

**42J Duties of authorities and owners and operators to co-operate with ITSRR**

The Director-General, the board and chief executive officer of a transport authority and an owner or operator of a transport service must:

- (a) co-operate with the ITSRR in exercising their functions, and
- (b) notify the ITSRR of all matters of which they are aware that could reasonably be expected to affect the exercise of the ITSRR's functions under this or any other Act, and
- (c) provide the ITSRR or the Chairperson of the Board with any information relating to their activities or any documents or other things requested by the ITSRR or Chairperson in the exercise of functions under this or any other Act, and
- (d) in the case of the Director-General and the Waterways Authority, comply with any direction in force under section 42I.

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**42K ITSRR may settle certain rail access disputes**

- (1) The ITSRR may, if requested to do so by the parties to a rail access agreement, determine a dispute between the parties that relates to rail safety.
- (2) Nothing in this section confers power on the ITSRR to determine a dispute that is required by or under this or any other Act or under any other agreement or arrangement to be determined by any other person.

**42L Disclosure of information by ITSRR**

- (1) The ITSRR may, if the ITSRR thinks it necessary for the safe operation of a transport service, disclose information acquired by the ITSRR in the performance of the ITSRR's functions under this or any other Act to any other person.
- (2) The ITSRR may, if the ITSRR thinks it desirable for the promotion of the safe operation of a transport service, publish any information, including the report of a rail safety inquiry or a transport safety inquiry.
- (3) A publication under subsection (2) must not identify a person by name.
- (4) This section does not apply to the disclosure of the whole or part of a train safety record to the Commonwealth or an authority of the Commonwealth under the *Rail Safety Act 2002*.
- (5) This section does not permit the disclosure of information in contravention of section 65A of the *Rail Safety Act 2002* or section 46E of the *Passenger Transport Act 1990*.
- (6) Sections 72 and 73 of the *Rail Safety Act 2003* do not apply to a disclosure permitted under this section.

**Division 4 Management of Independent Transport Safety and Reliability Regulator**

**42M Chief Executive of ITSRR**

- (1) The Governor, on the recommendation of the Minister, may appoint a Chief Executive of the ITSRR.
- (2) The Minister is to consult with the Chairperson of the Board before making a recommendation under subsection (1).

- (3) The employment of a Chief Executive is subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*, but is not subject to Chapter 2 of that Act.
- (4) The Chief Executive may hold office for terms totalling not more than 10 years.
- (5) The Chief Executive may be removed from office under section 77 of the *Public Sector Employment and Management Act 2002* only for incapacity, incompetence or misbehaviour.

**42N Chief Executive to manage and control affairs of ITSRR**

- (1) The affairs of the ITSRR are to be managed and controlled by the Chief Executive.
- (2) Any act, matter or thing done in the name of, or on behalf of, the ITSRR by the Chief Executive is taken to have been done by the ITSRR.

**42O Acting Chief Executive**

- (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Executive during the illness or absence of the Chief Executive, and the person, while so acting, has all the functions of the Chief Executive and is taken to be the Chief Executive.
- (2) The Minister may, at any time, remove any person from an office to which the person was appointed under this section.
- (3) A person while acting in the office of the Chief Executive is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (4) For the purposes of this section, a vacancy in the office of the Chief Executive is to be regarded as an absence from office of the Chief Executive.

**42P Limitations on Ministerial control of ITSRR**

- (1) The ITSRR is subject to the direction and control of the Minister, except as provided by subsection (2).

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- (2) The ITSRR is not subject to the direction and control of the Minister in respect of the following matters:
- (a) the exercise of a function relating to the accreditation of a person under the *Rail Safety Act 2002* (including the variation, suspension or cancellation of an accreditation),
  - (b) any decision to take or not to take enforcement action under any Act,
  - (c) the exercise of a function relating to a rail safety inquiry or a transport safety inquiry or other inquiry under an Act into a transport accident or incident,
  - (d) the outcome of any monitoring or auditing of the safety or reliability of a transport service (and any decision to carry out or not to carry out any such monitoring or auditing),
  - (e) the contents of any report or recommendation of the ITSRR,
  - (f) the exercise of a function under section 42I (except as provided by section 42I (5)).

**42Q Delegation of functions of ITSRR**

- (1) The ITSRR may delegate to an authorised person any of the functions of the ITSRR under this or any other Act, other than this power of delegation.
- (2) A delegate may sub-delegate to an authorised person any function delegated by the ITSRR, if the delegate is authorised to do so by the ITSRR.
- (3) The ITSRR may not delegate a function delegated to the ITSRR by the Minister under the *Rail Safety Act 2002*.
- (4) In this section:  
*authorised person* means:
  - (a) an officer of the ITSRR, or
  - (b) a member of a class of persons prescribed by the regulations or approved by the ITSRR.

## **Division 5 Office of Transport Safety Investigations and Chief Investigator**

### **42R Establishment of Office of Transport Safety Investigations**

- (1) The ITSRR is to have a division called the Office of Transport Safety Investigations.
- (2) The staff of the Office of Transport Safety Investigations are to be employed under Division 3A of Part 7.

### **42S Chief Investigator**

- (1) The head of the Office of Transport Safety Investigations is to be the Chief Investigator.
- (2) The Chief Investigator is to be appointed by the ITSRR on the recommendation of the Chairperson of the Board.
- (3) The employment of the Chief Investigator may be terminated by the ITSRR only on the recommendation of the Chairperson of the Board.
- (4) The salary, wages and conditions of employment of the Chief Investigator are to be fixed by the ITSRR on the recommendation of the Chairperson of the Board.
- (5) Sections 65D and 68 apply to the employment of the Chief Investigator.
- (6) The Chief Investigator is not subject to the direction and control of the ITSRR in respect of the exercise of any of the following functions:
  - (a) functions relating to a rail safety inquiry,
  - (b) functions relating to a transport safety inquiry,
  - (c) any function delegated to the Chief Investigator by the Chairperson of the Board under this or any other Act.

**Note.** The Chairperson of the Board may delegate to the Chief Investigator the functions of carrying out a rail safety inquiry under section 67 of the *Rail Safety Act 2002* and of carrying out a transport safety inquiry under section 46B of the *Passenger Transport Act 1990*.

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**Division 6      Independent Transport Safety and Reliability  
Advisory Board**

**42T    Independent Transport Safety and Reliability Advisory Board**

- (1) There is established by this Act an Independent Transport Safety and Reliability Advisory Board.
- (2) The Board is to consist of the following 5 members:
  - (a) a Chairperson appointed by the Governor, on the recommendation of the Minister,
  - (b) 3 members appointed by the Minister,
  - (c) the Chief Executive.
- (3) The members appointed by the Minister must have experience in one or more of the following areas, as the Minister considers necessary to enable the Board's functions to be carried out:
  - (a) rail safety management systems,
  - (b) safety science,
  - (c) customer service,
  - (d) accident investigation,
  - (e) public administration.
- (4) The Chairperson of the Board must have experience in transport safety management systems (including rail safety management systems).
- (5) Schedule 2A has effect with respect to the members and procedure of the Board.

**42U    General functions of Board**

- (1) The Board has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the Board are as follows:
  - (a) to advise the ITSRR, or make recommendations to the ITSRR, or both, about any matter related to the objectives or functions of the ITSRR,
  - (b) without limiting paragraph (a), to advise the ITSRR about reports prepared by the ITSRR and about any other matter referred to the Board by the ITSRR.



- (3) The Board may also advise the Minister, or make recommendations to the Minister, or both, about any matter related to the safe operation of transport services (including safety regulation by transport authorities) or the reliability of funded transport services.

#### **42V Functions of Chairperson of Board**

- (1) The Chairperson of the Board has the functions conferred or imposed on the Chairperson by or under this or any other Act.
- (2) For the purposes of exercising functions relating to a rail safety inquiry or a transport safety inquiry, the Chairperson may arrange for the use of any staff or facilities of the ITSRR.
- (3) The Chairperson may delegate to an authorised person any of the functions of the Chairperson under this or any other Act, other than this power of delegation.
- (4) A delegate may sub-delegate to an authorised person any function delegated by the Chairperson, if the delegate is authorised in writing to do so by the Chairperson.
- (5) In this section:

*authorised person* means:

- (a) the Chief Investigator, or
- (b) a member of a class of persons prescribed by the regulations.

**Note.** The Chairperson may conduct rail safety inquiries relating to accidents or incidents involving railways under the *Rail Safety Act 2002* and transport safety inquiries relating to accidents or incidents involving buses and ferries under the *Passenger Transport Act 1990*. Such inquiries may be initiated by the Chairperson or may be requested by the Minister. The Chairperson may also be appointed to conduct an investigation into a marine accident or other matter under the *Marine Safety Act 1998*. These functions may be delegated to the Chief Investigator.

### **Division 7 Review**

#### **42W Review of amendments**

- (1) The Minister is to review the operation of the amendments made by the *Transport Legislation Amendment (Safety and Reliability) Act 2003* to determine whether the policy

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objectives of those amendments remain valid and whether the terms of the amendments remain appropriate for securing those objectives.

- (2) The review is to be undertaken as soon as possible after the period of 12 months from the date of assent to the *Transport Legislation Amendment (Safety and Reliability) Act 2003*.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 3 months after the end of the period of 12 months.

**[11] Part 5**

Omit Parts 5 and 5A. Insert instead:

**Part 5 Transport Advisory Group**

**43 Constitution of Transport Advisory Group**

- (1) The Minister is to establish a Transport Advisory Group.
- (2) The Group is to consist of the following part-time members:
  - (a) the Chairperson of the Independent Transport Safety and Reliability Advisory Board, who is to be Chairperson of the Group,
  - (b) a representative of the Independent Pricing and Regulatory Tribunal,
  - (c) the Director-General,
  - (d) 4 members appointed by the Minister, who are to be representatives of public transport stakeholders.
- (3) Schedule 3 has effect with respect to the constitution and procedure of the Group.

**44 Functions of Transport Advisory Group**

- (1) The Transport Advisory Group is to advise the Independent Transport Safety and Reliability Advisory Board on community expectations of the reliability of public transport services in this State.
- (2) The Transport Advisory Group may undertake public consultation for the purpose of exercising its functions.

- (3) The Transport Advisory Group may give advice either at the request of the Independent Transport Safety and Reliability Advisory Board or without any such request.
- (4) In this section, *reliability*, in relation to a transport service, has the same meaning as it has in Part 4A.

**[12] Part 7, heading**

Insert “**and the Independent Transport Safety and Reliability Regulator**” after “**Authorities**”.

**[13] Sections 62 and 65**

Omit “Part 2A of the *Public Sector Management Act 1988*” wherever occurring in sections 62 (2) (d) and 65 (2) (c).

Insert instead “Part 3.1 of the *Public Sector Employment and Management Act 2002*”.

**[14] Part 7, Division 3A**

Insert after Division 3:

**Division 3A Staff of Independent Transport Safety and Reliability Regulator**

**65A Definition of “ITSRR”**

In this Division:

*ITSRR* means the Independent Transport Safety and Reliability Regulator.

**65B Employment of staff**

The ITSRR may employ such staff as it requires to exercise its functions.

**65C Salary, wages and conditions of staff**

The ITSRR may fix the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

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**65D Regulations relating to staff**

- (1) The regulations may make provision for or with respect to the employment of the staff of the ITSRR, including the conditions of employment and the discipline of any such staff.
- (2) Any such regulations relating to the conditions of employment or the discipline of staff:
  - (a) have effect subject to any relevant award made by a competent industrial tribunal and to any industrial agreement to which the ITSRR is a party, and
  - (b) have effect despite any determination of the ITSRR under section 65C, and
  - (c) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

**65E Application of Division 4**

Division 4 applies to the ITSRR in the same way as it applies to an Authority.

**[15] Section 103 Inquiries into bus or ferry accidents**

Insert “or Independent Transport Safety and Reliability Regulator” after “Minister” wherever occurring in section 103 (1) and (2).

**[16] Section 104A Definition of “functions” of Director-General**

Omit “or 37A”.

**[17] Section 104E Power of Director-General to contract**

Omit “or the *Rail Safety Act 2002*” from section 104E (2).

**[18] Section 104J Annual reporting requirements**

Omit “Department of Transport”. Insert instead “Ministry of Transport”.

**[19] Section 104N Light rail system**

Omit “or road related area” wherever occurring in section 104N (2) and (3).

**[20] Section 104N (3)**

Omit “*Traffic Act 1909*”.

Insert instead “*Road Transport (General) Act 1999*”.

**[21] Section 104N (6)**

Omit the subsection. Insert instead:

(6) In this section:

*road* means a road or road related area within the meaning of the *Road Transport (General) Act 1999* (other than a road or road related area that is the subject of a declaration made under section 9 (1) (b) of that Act relating to all of the provisions of that Act).

**[22] Section 104T Exemption from duty**

Omit “stamp duty under the *Stamp Duties Act 1920*”.

Insert instead “duty under the *Duties Act 1997*”.

**[23] Section 104V Resolution of disputes concerning development of light rail**

Omit “Department of Transport” from section 104V (2).

Insert instead “Ministry of Transport”.

**[24] Section 105 Power to accept gifts, bequests or devises of property**

Omit “*Stamp Duties Act 1920*” from section 105 (3).

Insert instead “*Duties Act 1997*”.

**[25] Section 107 Definition of “transport authority”**

Insert after section 107 (a):

(a1) the Independent Transport Safety and Reliability Regulator, or

**[26] Section 109 Seal of Authority**

Insert “(including the ITSRR)” after “Authority” where firstly occurring.

**[27] Section 111 Disputes involving transport authorities**

Insert after section 111 (4):

(5) This section does not apply to a dispute between the Independent Transport Safety and Reliability Regulator and another transport authority relating to a matter referred to in section 42P (2).

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**[28] Section 112 Personal liability of certain persons**

Insert “, the Independent Transport Safety and Reliability Regulator” after “State Transit Authority” in the definition of *member of a transport authority* in section 112 (2).

**[29] Section 112 (2), definition of “member of a transport authority”**

Insert “and the Chairperson of the Independent Transport Safety and Reliability Advisory Board” after “Roads and Traffic Authority”.

**[30] Section 112 (2), definition of “transport authority”**

Omit paragraph (a1). Insert instead:

- (a1) the Transport Advisory Group, and
- (a2) the Independent Transport Safety and Reliability Advisory Board, and

**[31] Section 118 Proceedings for offences**

Omit “constituted by a Magistrate sitting alone”.

**[32] Schedule 2A**

Insert after Schedule 2:

**Schedule 2A Constitution and procedure of  
Independent Transport Safety and  
Reliability Advisory Board**

(Section 42T (5))

**1 Definitions**

In this Schedule:

*appointed member* of the Board means a member of the Board other than the Chief Executive of the Independent Transport Safety and Reliability Regulator.

*Board* means the Independent Transport Safety and Reliability Advisory Board.

*Chairperson* means the Chairperson of the Board.

*member* means the Chief Executive of the Independent Transport Safety and Reliability Regulator or an appointed member.

## **2 Appointed members**

The Minister is to consult with the Chairperson before appointing any person to be an appointed member of the Board.

## **3 Terms of office of members**

- (1) Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not be an appointed member for consecutive terms totalling more than 10 years.

## **4 Chairperson**

The Chairperson may be appointed on a full-time basis or a part-time basis.

## **5 Remuneration**

An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **6 Deputies**

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may revoke any such appointment.
- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (3) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.
- (5) This clause does not operate to confer on the deputy of a member who is the Chairperson the member's functions as Chairperson.
- (6) An appointed member may appoint a deputy only with the approval of the Chairperson.

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- (7) A person appointed as a deputy under this clause must have experience in one or more of the areas listed in section 42T (3) (a)–(e).

#### **7 Vacancy in office of member**

- (1) The office of an appointed member (other than the Chairperson) becomes vacant if the member:
- (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the Board of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 6 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove an appointed member (other than the Chairperson) from office at any time.
- (3) The Chairperson may be removed from office only for incapacity, incompetence or misbehaviour.

#### **8 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.



## **9 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Board in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Board.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines:
  - (a) be present during any deliberation of the Board with respect to the matter, or
  - (b) take part in any decision of the Board with respect to the matter.

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- (5) For the purposes of the making of a determination by the Board under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
    - (a) be present during any deliberation of the Board for the purpose of making the determination, or
    - (b) take part in the making by the Board of the determination.
  - (6) A contravention of this clause does not invalidate any decision of the Board.
  - (7) This clause applies to a member of a committee of the Board and the committee in the same way as it applies to a member of the Board and the Board.

**10 Transaction of business outside meetings or by telephone**

- (1) The Board may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Board for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Board.
- (2) The Board may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Board.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Board.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

**11 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an appointed member or from accepting and retaining any remuneration payable to the person under this Act as a member.

**12 Personal liability**

A matter or thing done or omitted to be done by the Board, a member of the Board or a person acting under the direction of the Board does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

**13 General procedure**

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Board.

**14 Quorum**

The quorum for a meeting of the Board is a majority of its members for the time being, including the Chairperson or the Chairperson's deputy.

**15 Presiding member**

- (1) The Chairperson (or, in the absence of the Chairperson, a person elected by the members of the Board who are present at a meeting of the Board) is to preside at a meeting of the Board.

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- (2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**16 Voting**

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

**17 First meeting**

The Minister may call the first meeting of the Board in such manner as the Minister thinks fit.

**[33] Schedule 3**

Omit the heading and the section reference. Insert instead:

**Schedule 3 Provisions relating to Transport  
Advisory Group and Roads and Traffic  
Advisory Council**

(Sections 43 (3), 54 (3))

**[34] Schedule 3, clause 1 Definitions**

Omit “Public Transport Authority, the Public Transport Advisory Council” from the definition of *Advisory Council*.

Insert instead “Transport Advisory Group”.

**[35] Schedule 3, clause 7 Vacancy in office of member**

Omit “Part 8 of the *Public Sector Management Act 1988*” from clause 7 (1) (d).

Insert instead “Chapter 5 of the *Public Sector Employment and Management Act 2002*”.

**[36] Schedule 3, clause 9 Effect of certain other Acts**

Omit “*Public Sector Management Act 1988*” from clause 9 (1).

Insert instead “*Public Sector Employment and Management Act 2002*”.

**[37] Schedule 3, clause 9 (1)**

Omit “Part 8”. Insert instead “Chapter 5”.

**[38] Schedule 4, heading**

Omit “of SRA and its subsidiaries”.

**[39] Schedule 4, clause 2 Application and interpretation**

Insert after clause 2 (1) (e):

- (f) any other order under Schedule 7 transferring assets, rights or liabilities to a body specified or referred to in the order.

**[40] Schedule 4, clause 7 Duties**

Omit “Stamp duty”. Insert instead “Duty under the *Duties Act 1997*”.

**[41] Schedule 4, clause 7 (a)**

Omit the paragraph. Insert instead:

- (a) the transfer of assets, rights and liabilities to a person by an order to which this Schedule applies, or

**[42] Schedule 5, heading**

Insert “**and the Independent Transport Safety and Reliability Regulator**” after “**Authority**”.

**[43] Schedule 5, clause 2 Definitions**

Insert in alphabetical order:

*Authority* includes the Independent Transport Safety and Reliability Regulator.

**[44] Schedule 6 Transfer of certain staff**

Insert in alphabetical order in clause 1:

*former Ministry staff* means the members of staff of the Ministry of Transport who, after the commencement of clause 10A, are transferred to a transport authority by an order made under this Schedule.

*former OCG staff* means the members of staff of the Office of Co-ordinator General of Rail who, after the commencement of clause 10A, are transferred to a transport authority by an order made under this Schedule.

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*transport authority* means the Ministry of Transport, the Independent Transport Safety and Reliability Regulator, the State Rail Authority or Rail Infrastructure Corporation.

**[45] Schedule 6, clause 10A**

Insert after clause 10:

**10A Transfer of OCG staff and Ministry staff to transport authorities**

- (1) The Minister may, by order in writing, provide that such staff of the Office of Co-ordinator General of Rail or of the Ministry of Transport as are specified in the order are transferred to the transport authority specified in the order.
- (2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of the transport authority, in accordance with the terms of the order, on the day specified in the order.

**[46] Schedule 6, clause 12 Preservation of remuneration and other conditions of employment on transfer**

Omit “or former RIC staff” from clause 12 (1).

Insert instead “, former RIC staff, former OCG staff or former Ministry staff”.

**[47] Schedule 6, clause 12 (1)**

Omit “by the SRA or the RIC (as the case requires)”.

**[48] Schedule 6, clause 13 Preservation of leave and other entitlements for previous service and mobility entitlements for future service**

Omit clause 13 (1). Insert instead:

- (1) Continuous service of former SRA staff, former RIC staff, former OCG staff or former Ministry staff with any one or more transport authorities is taken, for all purposes, as service with whichever of them is the current employer.

**[49] Schedule 6, clause 13 (3)**

Omit the subclause. Insert instead:

- (3) In particular, former SRA staff, former RIC staff, former OCG staff and former Ministry staff retain, on transfer under this Schedule (or on subsequent transfer under this Schedule), any rights to annual leave, long service leave and sick leave accrued in their previous employment with an employer or employers from whose employ they are transferred under this Schedule.

**[50] Schedule 6, clause 14 Special provision relating to long service leave and sick leave for staff of RIC**

Insert “, former OCG staff or former Ministry staff” after “former SRA staff” in clause 14 (1).

**[51] Schedule 6, clause 15 No payment out on transfer or dual benefits**

Insert “or any other transport authority” after “SRA” in clause 15 (1).

**[52] Schedule 6, clause 15 (2)**

Omit “or the SRA”.

Insert instead “, the SRA, the Office of Co-ordinator General of Rail or the Ministry of Transport”.

**[53] Schedule 7 Savings, transitional and other provisions**

Insert at the end of clause 2 (1):

*Transport Legislation Amendment (Safety and Reliability)  
Act 2003*

**[54] Schedule 7, Part 7**

Omit Division 2.

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**[55] Schedule 7**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of  
Transport Legislation Amendment  
(Safety and Reliability) Act 2003**

**Definitions**

In this Part:

*ITSRR* means the Independent Transport Safety and Reliability Regulator.

*the amending Act* means the *Transport Legislation Amendment (Safety and Reliability) Act 2003*.

**Co-ordinator General of Rail and other executive officers  
cease to hold office**

- (1) The person who, immediately before the constitution of the ITSRR, held office as the Co-ordinator General of Rail ceases to hold that office.
- (2) A person who, immediately before the constitution of the ITSRR, held a senior executive position (within the meaning of the *Public Sector Employment and Management Act 2002*) within the Office of Co-ordinator General of Rail:
  - (a) ceases to hold that office, and
  - (b) is eligible (if otherwise qualified) to be appointed as a member of the staff of the ITSRR or the Ministry of Transport.
- (3) A person who ceases under this clause to hold office is not entitled to any remuneration or compensation because of the loss of that office, except as provided by subclause (4).
- (4) Part 3.1 of the *Public Sector Employment and Management Act 2002* applies to a person who ceases under this clause to hold office as if the person had ceased to be an executive officer as referred to in section 77 of that Act.

**Note.** Subclause (4) ensures that the person retains any rights to compensation or right of return that the person would have had if removed from office by the Governor instead of by operation of this clause.



### **Abolition of Office of Co-ordinator General of Rail**

The Office of Co-ordinator General of Rail is abolished.

### **References to Office of Co-ordinator General of Rail**

In any Act, or in any instrument made under any Act or in any other document of any kind, a reference to (or required immediately before the commencement of this clause to be read as a reference to) the Co-ordinator General of Rail or the Office of Co-ordinator General of Rail is to be read as a reference to the ITSRR, except as provided by the regulations.

### **Transfer of staff**

Schedule 6 has effect with respect to members of staff of the Office of Co-ordinator General of Rail and of the Ministry of Transport.

### **Advisory Councils**

- (1) A person who, immediately before the repeal of Parts 5 and 5A by the amending Act, held office as a member of the Public Transport Authority or the Public Transport Advisory Council ceases to hold that office.
- (2) A person who ceases under this clause to hold office is not entitled to any remuneration or compensation because of the loss of that office.

### **Transfer of assets, rights and liabilities to ITSRR**

- (1) The Minister may, by order in writing, direct that such assets, rights or liabilities of the Transport Administration Corporation or the Office of Co-ordinator General of Rail, or in respect of a contract or arrangement entered into by the Director-General, as are specified or referred to in the order be transferred to the ITSRR or any other body constituted under this Act.
- (2) An order under this clause may be made on such terms and conditions as are specified in the order.
- (3) Schedule 4 applies to an order made under this clause.

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## Schedule 2 Amendment of Marine Safety Act 1998 No 121

(Section 3)

### [1] Section 37 Regulations relating to licences

Insert “, good character” after “age” in section 37 (2) (d).

### [2] Section 94 Definitions

Insert in alphabetical order in section 94 (1):

*ferry* has the same meaning as it has in the *Passenger Transport Act 1990*.

*Independent Transport Safety and Reliability Advisory Board* means the Independent Transport Safety and Reliability Advisory Board established under the *Transport Administration Act 1988*.

*Independent Transport Safety and Reliability Regulator* means the Independent Transport Safety and Reliability Regulator constituted under the *Transport Administration Act 1988*.

*public passenger service* has the same meaning as it has in the *Passenger Transport Act 1990*.

### [3] Section 96 Appointment of authorised officers (other than harbour masters and police officers)

Insert “, the Independent Transport Safety and Reliability Regulator” after “Port Corporation” in section 96 (1).

### [4] Section 103 Ordering of investigation

Insert at the end of the section:

- (2) An inquiry may be carried out and a report provided under this section whether or not:
  - (a) an investigation is being, or has been, conducted under the *Passenger Transport Act 1990* or any other Act or law relating to the same matter, or
  - (b) the matter is or may be subject to any criminal or civil proceedings.

**[5] Section 105 Appointment of investigator**

Insert after section 105 (1):

- (1A) If an investigation concerns or is related to a public passenger service provided by a ferry, the Minister may appoint the Chairperson of the Independent Transport Safety and Reliability Advisory Board as the investigator or any person of a kind referred to in subsection (1).

**[6] Section 111 Action by Minister following report of investigation**

Insert after section 111 (2) (g):

- (h) in the case of an investigation concerning or related to a public passenger service provided by a ferry, inform the Director-General of the Ministry of Transport, the Independent Transport Safety and Reliability Regulator or the Independent Transport Safety and Reliability Advisory Board of the report and the action taken by the Minister on the report.

**[7] Part 8, Division 5**

Insert after Division 4:

**Division 5 Prohibition and improvement notices relating to public ferry wharves**

**125A Public ferry wharves**

In this Division:

*public ferry wharf* means a wharf or any associated facilities used for the purposes of public passenger services provided by ferries.

**125B Inspections of public ferry wharves**

- (1) The Minister may cause inspections to be carried out of public ferry wharves.
- (2) The Minister may appoint a person who may be appointed as an investigator under Division 3 to carry out any such inspection.

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- (3) For the purposes of an inspection under this section, a person carrying out an inspection has all the powers and other functions of an authorised officer under this Part.
  - (4) The regulations may make provision for or with respect to the following matters:
    - (a) the methodology or standards with which inspections must comply,
    - (b) provision of inspection reports to persons,
    - (c) procedures with respect to responses to inspection reports.
  - (5) Nothing in this section limits any functions of the Minister under Division 3.
  - (6) Section 97 applies to a person appointed under this section.

**125C Improvement notices**

- (1) The Minister may give an improvement notice to the owner of a public ferry wharf, or a person responsible for the maintenance of any such wharf, if the Minister is of the opinion that it is necessary to do so to ensure the safety of persons using, or operating, public passenger services provided by ferries.
- (2) An improvement notice may require the person to undertake remedial safety work with respect to the public ferry wharf.
- (3) The period within which a person is required by an improvement notice to undertake remedial safety work must be at least 7 days after the notice is given.
- (4) However, the Minister may specify a period that is less than 7 days after the improvement notice is given if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of the period.
- (5) An improvement notice must:
  - (a) state that the Minister is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) include information about obtaining a review of the notice under this Division.

**125D Failure to comply with improvement notice**

A person who, without reasonable excuse, fails to comply with a requirement imposed on the person by an improvement notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—250 penalty units.

**125E Prohibition notices**

- (1) If an authorised officer is of the opinion that, at any public ferry wharf, there is occurring or is about to occur any activity that involves or will involve an immediate risk to the health or safety of persons using, or operating, public passenger services provided by ferries, the authorised officer may give to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters that give or will give rise to the risk are remedied.
- (2) A prohibition notice must:
  - (a) state that the authorised officer is of the opinion referred to in subsection (1), and
  - (b) state the reasons for that opinion, and
  - (c) specify the activity in respect of which that opinion is held, and
  - (d) include information about obtaining a review of the notice under this Division.
- (3) A person who is given a prohibition notice who, without reasonable excuse, fails to comply with a requirement imposed by the notice is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—500 penalty units, or
- (b) in the case of an individual—250 penalty units.

**125F Notices may include directions**

- (1) An improvement notice or a prohibition notice may include directions as to the measures to be taken to comply with the notice.

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- (2) Any such direction may:
    - (a) adopt, by reference, the requirements of any industry or other code of practice or standard, and
    - (b) offer the person to whom it is issued a choice of ways in which to comply with the notice.

**125G Review of notices by Minister**

- (1) A person who is given a notice under this Division may apply in writing to the Minister for a review of the notice.
- (2) The application for review must be made within 7 days after the notice is given, or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice.
- (4) The Minister is to review a notice that is the subject of a duly made application for review.
- (5) The notice is stayed (unless it is a prohibition notice) from when the application for review is received by the Minister until the Minister gives notice to the applicant of the result of the review.
- (6) The Minister may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.
- (7) Regulations may be made with respect to reviews under this section.

**125H Application to Administrative Decisions Tribunal for stay of prohibition notice**

- (1) A person who applies for a review of a prohibition notice under section 125G may apply to the Administrative Decisions Tribunal for a stay of the notice.
- (2) A stay may be granted for the period considered appropriate by the Tribunal, but not so as to extend past the time when notice of the result of the review is given to the applicant by the Minister.

- (3) A stay may be granted on such conditions as the Tribunal thinks appropriate and may be revoked or amended by the Tribunal.

**125I Appeal to Administrative Decisions Tribunal**

A person who is aggrieved by a decision of the Minister under section 125G may apply to the Administrative Decisions Tribunal for a review of the decision.

**125J Withdrawal of notices**

- (1) An improvement notice or a prohibition notice may be withdrawn at any time by the Minister or the authorised officer who gave the notice, if satisfied that the notice was given in error or is incorrect in some respect.
- (2) The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was given.
- (3) The withdrawal or revocation of an improvement notice or a prohibition notice does not prevent the giving of any other improvement notice or prohibition notice.

**125K Proceedings for offences not affected by notices**

The giving, variation, revocation or withdrawal of an improvement notice or a prohibition notice does not affect any proceedings for an offence against this Act or the regulations or any other Act or law in connection with any matter in respect of which the notice was issued.

**[8] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Transport Legislation Amendment (Safety and Reliability) Act 2003* (but only to the extent that it amends this Act)

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## Schedule 3 Amendment of Passenger Transport Act 1990 No 39

(Section 3)

### [1] Section 3 Definitions

Omit the definition of *authorised officer*. Insert instead:

*authorised officer* means a person, or a member of a class of persons, appointed for the time being by the Director-General or ITSRR as an authorised officer or class of authorised officers for the purposes of the provision in which the expression is used, and includes an authorised officer appointed by the Director-General or ITSRR for the purposes of regulations made under Schedule 5.

### [2] Section 3, definition of “Director-General”

Omit the definition. Insert instead:

*Director-General* means the Director-General of the Ministry of Transport.

### [3] Section 3

Insert in alphabetical order:

*Independent Transport Safety and Reliability Advisory Board* means the Independent Transport Safety and Reliability Advisory Board established under the *Transport Administration Act 1988*.

*ITSRR* means the Independent Transport Safety and Reliability Regulator constituted under the *Transport Administration Act 1988*.

*transport safety inquiry* means an inquiry held under section 46B.

### [4] Section 4 Objects

Insert “(other than ferry services)” after “services” in section 4 (a).



**[5] Section 7 Accreditation**

Omit section 7 (1). Insert instead:

- (1) A person who carries on a public passenger service by means of a bus or other vehicle (other than a vessel), being a service operating within, or partly within, New South Wales, is guilty of an offence unless the person is an accredited service operator for that service.

Maximum penalty: 1,000 penalty units.

**[6] Section 9B Conditions of accreditation**

Insert after section 9B (2):

- (2A) Without limiting subsection (1) (a), the regulations may prescribe conditions of accreditation relating to the reporting of occurrences of a specified kind to the Director-General.

**[7] Section 9C Accreditation conditions relating to drug and alcohol programs and testing**

Omit “or a regular passenger service by means of a ferry” from section 9C (1).

**[8] Section 9C (8)**

Omit the definition of *transport safety work*. Insert instead:

*transport safety work* means any of the following classes of work:

- (a) work relating to the driving or other operation of a bus, the loading or disembarking of passengers from a bus or the movement of buses,
- (b) work relating to the repair, maintenance or upgrading of buses, bus terminals or bus maintenance facilities,
- (c) work involving the development, management or monitoring of safeworking systems for public passenger services carried on by means of buses,
- (d) any other work that is prescribed by the regulations as transport safety work.

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**[9] Section 9D**

Insert after section 9C:

**9D Safety management systems for bus services**

- (1) Without limiting section 9B, it is a condition of an accreditation of an accredited service operator that carries on a public passenger service by means of a bus that the operator has, and implements, a safety management system that complies with the requirements of this section.
- (2) The safety management system must be documented and must:
  - (a) identify any significant risks that have arisen or may arise from providing the service, including carrying out any associated transport safety work, and
  - (b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the operator to manage the risks and to monitor safety outcomes in relation to the provision of the service, and
  - (c) comply with any requirements prescribed by the regulations or set out in any guidelines issued by the ITSRR under this section and published in the Gazette.
- (3) The ITSRR may issue guidelines with respect to policy objectives and safety initiatives to be adopted by accredited service operators in safety management systems.
- (4) An accredited service operator must, if directed to do so by the ITSRR, vary a safety management system.
- (5) An accredited service operator who fails to comply with the condition of accreditation referred to in subsection (1) is guilty of an offence.  
Maximum penalty: 1,000 penalty units.
- (6) In this section, *transport safety work* has the same meaning as it has in section 9C.

**[10] Section 11 Authorities**

Insert “(other than a ferry)” after “public passenger vehicle” in section 11 (1).

**[11] Section 16 Service contracts**

Omit “accredited operator” from section 16 (1).

Insert instead “accredited service operator or, in the case of a ferry service, the operator”.

**[12] Section 17 Service contracts for services other than ferry services**

Insert “(other than a contract relating to a ferry service)” after “service contract” wherever occurring in section 17 (1) and (2).

**[13] Section 17A**

Insert after section 17:

**17A Service contracts for ferry services**

- (1) A service contract relating to a ferry service must make provision with respect to:
  - (a) the period for which it operates, and
  - (b) the manner in which it may be terminated, and
  - (c) standards of safety for passengers and the public, and of maintenance, and
  - (d) requirements relating to the financial viability of the operator, and
  - (e) requirements relating to the fitness of the operator to be an operator and the character of the operator or of any directors and managers of the operator, and
  - (f) any other matters required by this Act or the regulations to be specified in it.
- (2) A service contract relating to a ferry service may make provision for or with respect to:
  - (a) monetary or other penalties for breaches of the contract and the recovery of any such penalties, and
  - (b) bonds for the performance of any or any specified obligations under the contract, and
  - (c) such other matters as the parties think fit to include in the circumstances of the case.

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- (3) The contract may provide for the periodic review, in a manner and at such periods as the contract may specify, of any matter for the time being determined by or under it.
  - (4) It is the duty of the Director-General to ensure that any regular passenger service contract is not inconsistent with:
    - (a) the government's standards of safety for passengers and the public and maintenance, and
    - (b) standards for, or any other requirements relating to, ferries, the operator of the service or employees of the operator under this or any other Act or any regulation, and
    - (c) the terms and conditions of any certificate or other authority issued to an employee of the operator of the service under any other Act or regulation.
  - (5) However, in the event of any inconsistency between any such standards or requirements or terms or conditions and the provisions of the contract, the provisions of the contract prevail to the extent of the inconsistency.

**[14] Section 23 Performance assessment and renewal of commercial contracts**

Omit "Public Transport Authority, the Public Transport Advisory Council" from section 23 (2).

Insert instead "Transport Advisory Group constituted under the *Transport Administration Act 1988*".

**[15] Section 25 Assignment of benefit of service contracts**

Insert "in the case of a contract relating to a service other than a ferry service," before "that" in section 25 (2) (a).

**[16] Section 25 (2) (b)**

Omit the paragraph. Insert instead:

- (b) in any case, that adequate provision will be made by the assignee for the conduct of the service concerned,

**[17] Section 26 Variation, suspension or cancellation of service contracts**

Insert “relating to a service other than a ferry service” after “service contract” in section 26 (2).

**[18] Part 4C**

Insert after Part 4B:

**Part 4C Investigations and enforcement**

**Division 1 Investigations**

**46A Provision of information relating to safety to ITSRR**

- (1) A person who carries on a public passenger service by means of a bus or ferry must provide to the ITSRR the information concerning measures taken by the person to promote safety or concerning other matters relating to safety that the ITSRR reasonably requires.
- (2) A person who carries on a public passenger service by means of a bus or ferry must, if required by notice in writing given to the person by the ITSRR, submit a safety report to the ITSRR.
- (3) The person must provide the information or report in the form and manner approved by the ITSRR.

Maximum penalty: 500 penalty units.

**46B Investigation of certain accidents and incidents**

- (1) The ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board may inquire into any transport accident or incident that may affect the safe provision of public passenger services carried on by means of buses or ferries.
- (2) The ITSRR or Chairperson of the Independent Transport Safety and Reliability Advisory Board must provide to the Minister a report on an inquiry conducted by the ITSRR or Chairperson under subsection (1).

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- (3) The Minister may require the Chairperson of the Independent Transport Safety and Reliability Advisory Board to inquire into and report to the Minister on any transport accident or incident that may affect the safe provision of public passenger services carried on by means of buses or ferries.
  - (4) The Minister may not require the Chairperson of the Independent Transport Safety and Reliability Advisory Board to terminate a transport safety inquiry.
  - (5) The ITSRR or Chairperson of the Independent Transport Safety and Reliability Advisory Board may recover the reasonable costs of conducting a transport safety inquiry as a debt due to the Crown in a court of competent jurisdiction. The costs are recoverable jointly or severally from any one or more service operators in respect of the service concerned.
  - (6) An inquiry may be carried out and a report provided under this section whether or not:
    - (a) an investigation is being, or has been, conducted under the *Marine Safety Act 1998* or any other Act or law relating to the same matter, or
    - (b) the matter is or may be subject to any criminal or civil proceedings.
  - (7) Schedule 6 has effect with respect to a transport safety inquiry.

**46C Power to require persons to attend to answer questions or produce documents or other things**

- (1) The ITSRR or Chairperson of the Independent Transport Safety and Reliability Advisory Board may, by notice in writing, require either or both of the following:
  - (a) the attendance of any person at any place to answer questions at a transport safety inquiry,
  - (b) the production of any documents or other things required for the purposes of any such inquiry.
- (2) At a transport safety inquiry, the person conducting the inquiry:
  - (a) is not bound by the rules of evidence, and
  - (b) may conduct the inquiry without regard to legal forms, and

- (c) may inform himself or herself in such manner as the person thinks fit.
- (3) At any such inquiry, the person conducting the inquiry may administer an oath or require any statement to be verified by statutory declaration.
- (4) A person is not required under this section to travel more than 16 kilometres from the person's place of residence at the time of receiving the notice, unless a reasonable allowance for expenses incidental to attendance to give evidence is tendered to the person on the scale allowed for a witness attending on a subpoena to give evidence before the District Court.
- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this section.

Maximum penalty: 100 penalty units.

#### **46D Tabling of reports**

- (1) The Minister is to lay (or cause to be laid) a report under section 46B before both Houses of Parliament not later than 28 days after the Minister receives the report.
- (2) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (3) The report:
  - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

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**46E Confidential reporting of safety information by transport safety employees**

- (1) The Chief Investigator may establish a system for the voluntary reporting by transport safety employees of matters that may affect the safe carrying out of a public passenger service by means of a bus or ferry.
- (2) The Chief Investigator must not disclose to any other person, or to any court, any information that may identify an employee who provides information under any such voluntary reporting system unless:
  - (a) the employee consents to the disclosure, or
  - (b) the Chief Investigator or a court is of the opinion that it is necessary in the public interest that the information be disclosed.
- (3) Nothing in this section prevents the Chief Investigator from disclosing information obtained under this section to the Chief Executive or any member of staff of the ITSRR.
- (4) Regulations may be made for or with respect to the following matters:
  - (a) the form and manner in which reports may be made,
  - (b) the manner in which reports are to be dealt with and the purposes for which information reported under this section may be used,
  - (c) other requirements for a system established under this section.

- (5) In this section:

***Chief Investigator*** means the Chief Investigator appointed under section 42S of the *Transport Administration Act 1988*.

***transport safety employee*** has the same meaning as it has in Division 2.



## **Division 2 Inspection powers**

### **46F Definitions**

In this Division:

*transport safety employee* means:

- (a) an employee or a contractor of an operator of a public passenger service, or an operator of a public passenger service, who performs transport safety work, or
- (b) a person who, without remuneration or reward, voluntarily and without obligation performs transport safety work for an operator.

*transport safety work* means any of the following classes of work:

- (a) work relating to the driving or other operation of a bus, the loading or disembarking of passengers from a bus or the movement of buses,
- (b) work relating to the driving or other operation of a ferry (including, but not limited to, the course, propulsion or berthing of a ferry), the loading or disembarking of passengers from a ferry or the movement of ferries,
- (c) work relating to the repair, maintenance or upgrading of buses, ferries, bus or ferry terminals, ferry wharves or bus or ferry maintenance facilities,
- (d) work involving the development, management or monitoring of safeworking systems for public passenger services carried on by means of buses or ferries,
- (e) any other work that is prescribed by the regulations as transport safety work.

### **46G Use of powers by authorised officers**

An authorised officer may exercise the powers conferred by this Division for the purposes of this Act, including the following purposes:

- (a) the purposes of an inspection, investigation, transport safety inquiry or other inquiry under this Act,

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- (b) the purpose of determining whether there has been a contravention of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act.

**46H Inspections by Director-General or ITSRR of bus and ferry services**

- (1) The Director-General or ITSRR may cause inspections to be carried out to ensure that a person who carries on a public passenger service by means of a bus or ferry is complying with the terms of the person's accreditation or service contract under this Act or with the requirements of this Act relating to a safety management system.
- (2) Inspections under this section may be carried out at such intervals as the Director-General or ITSRR thinks fit.
- (3) For the purposes of this section, the Director-General or ITSRR may cause the following to be inspected:
  - (a) the performance of transport safety employees,
  - (b) any bus or ferry used for the purposes of a public passenger service and any equipment, furnishings or fittings in or about the bus or ferry,
  - (c) the carrying out of a public passenger service by means of a bus or ferry,
  - (d) any other thing the Director-General or ITSRR considers to be relevant to the safe carrying on of a public passenger service by means of a bus or ferry.

**46I Power of entry**

- (1) An authorised officer may enter premises (other than any premises, or a part of any premises, that are used as a dwelling) that the officer reasonably suspects are being used for the purposes of a public passenger service, a taxi-cab network (as defined in section 29A) or for the keeping of records for any such purposes.
- (2) Entry may be made only at a reasonable hour in the daytime or at any hour during which a public passenger service is in operation or other related activity is in progress or is usually carried out in or on the premises.

#### **46J Powers on entry**

An authorised officer has the following powers in or on premises that the officer is authorised to enter under this Act:

- (a) power to inspect any vehicle that the officer reasonably suspects is being used for the purposes of a public passenger service and inspect or test any taxi-meter, radio receiver or other equipment, or inspect any furnishings or fittings, in or on or about the vehicle,
- (b) power, by notice in writing, to require the owner or person in charge of any such vehicle or equipment specified in the notice to have the vehicle or equipment inspected or tested within a time limit specified by the notice,
- (c) power to inspect any maintenance facilities, equipment or apparatus used for the purposes of or in connection with a public passenger service,
- (d) power to inquire into any transport accident or other incident affecting the safe carrying out of a public passenger service or the personal security of members of the public using a public passenger service or transport safety employees that has happened in or on the premises,
- (e) power to take samples and photographs in connection with any inspection or inquiry,
- (f) power to search for evidence of any contravention of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act,
- (g) power to search for and inspect relevant documents and require any person in or on the premises to produce to the authorised officer any relevant documents in the person's custody or under the person's control,
- (h) power to require any person in or on the premises to answer questions or otherwise give information in relation to the matter the subject of the inspection, investigation or inquiry,
- (i) power to exercise functions under section 46L in relation to any relevant documents found in or on the premises or produced to an authorised officer,

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- (j) power to seize anything that the authorised officer suspects on reasonable grounds is connected with an offence against this Act or the regulations and to secure any such thing against interference,
  - (k) power to secure the perimeter of the site of any transport accident or other incident concerning a public passenger service by whatever means, and for such period, as the authorised officer considers appropriate or the Director-General or ITSRR specifies.

**Note.** For the purposes of this Act, **vehicle** is defined to include a vessel (see section 3 (1)).

#### **46K Inspection and testing of vehicles**

- (1) An authorised officer may, for the purposes of an inspection of a vehicle that the officer is authorised to inspect under this Act:
  - (a) enter and remain in or on the vehicle, and
  - (b) enter and remain in any workshop or other premises where the vehicle is located, and
  - (c) operate the vehicle and any operable equipment in, on or about the vehicle.
- (2) The driver or person in charge of a vehicle that is being driven or used on a road or road related area or in any other place must, for the purpose of enabling an authorised officer to inspect or test the vehicle or equipment under this Division, comply with any reasonable direction by an authorised officer to stop, stand, park or manoeuvre the vehicle, or to do any other thing, for the purpose of facilitating the inspection or testing of the vehicle.
- (3) A direction to stop the vehicle may be given by the authorised officer by displaying a sign or by any other reasonable method.
- (4) If a vehicle has been stopped in compliance with a direction under this section, any inspection and testing of the vehicle or equipment under this Division must be carried out:
  - (a) at or as near as practicable to the place where the direction to stop the vehicle is given, and
  - (b) as soon as practicable, and in any case within one hour, after the vehicle is stopped in accordance with the direction.

- (5) A notice under this Division requiring a vehicle or equipment to be tested may require the vehicle or equipment:
  - (a) to be inspected or tested at a specified place (being a place within 80 kilometres of the owner's or person's place of residence or place of business), or
  - (b) to be tested by or in the presence of an authorised officer.

**46L Functions of authorised officers in relation to relevant documents**

- (1) An authorised officer has the following powers in relation to relevant documents found by an authorised officer in or on premises or a vehicle entered by the authorised officer or produced to the authorised officer pursuant to a requirement made under this Division:
  - (a) power to take possession of the documents or secure them against interference,
  - (b) power to take copies of, or take extracts from, the documents,
  - (c) power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate,
  - (d) power to retain possession of the documents for such period as is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.
- (2) While an authorised officer retains possession of a document, the authorised officer must permit a person who would be entitled to inspect the document were it not in the possession of the authorised officer to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.
- (3) If an authorised officer takes possession of or secures against interference any relevant document on which a person has a lien, the authorised officer's actions do not prejudice the lien.

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**46M Other powers related to documents**

- (1) An authorised officer may, by notice in writing, require a person to furnish records or information.
- (2) The notice must specify the manner in which records or information are required to be furnished and a reasonable time by or at which they must be furnished.
- (3) The authorised officer may take copies of, or extracts from, records furnished in response to a notice.
- (4) If any record required by the notice to be furnished is in electronic form or a form other than writing, the notice requires the record to be furnished in writing, unless the notice otherwise provides.

**46N Notice of entry**

Before an authorised officer enters premises or a vehicle under this Act, the authorised officer must give the owner or occupier of the premises, or the owner or person in charge of the vehicle, reasonable notice of the intention to enter the premises or vehicle unless:

- (a) the giving of notice would defeat the purpose for which it is intended to enter the premises or vehicle, or
- (b) entry to the premises or vehicle is made with the consent of the owner or occupier of the premises or the owner or person in charge of the vehicle, or
- (c) entry is required in an emergency.

**46O Use of force**

A power conferred by this Act to enter any premises or vehicle, or to do anything in or on any premises or vehicle, may not be exercised unless the authorised 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 entry is effected.

**46P Care to be taken**

In the exercise of a function under this Division, an authorised officer must do as little damage as possible.

**46Q Compensation**

- (1) The Director-General must pay compensation for any damage caused by any authorised officer in the exercise of a power to enter premises or a vehicle under this Division, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this Act or any other Act or law.
- (2) Section 66 does not apply to a liability under this section.

**46R Authority to enter**

- (1) A power conferred by this Division to enter premises or a vehicle, or to make an inspection or take other action in or on premises or a vehicle, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority, if required to do so by the owner or occupier of the premises or the driver or person in charge of the vehicle.
- (2) The authority must be a written authority that is issued by the Director-General or ITSRR and that:
  - (a) states that it is issued under this Act, and
  - (b) states an identifying number or other means of identifying the person to whom it is issued, and
  - (c) describes the nature of the powers conferred, and
  - (d) states the date (if any) on which it expires, and
  - (e) describes the premises or vehicles to which it extends, and
  - (f) bears the signature of the Director-General or the Chief Executive of the ITSRR or a person approved by the Director-General or Chief Executive.
- (3) This section does not apply to a power conferred by a search warrant.

**46S Assistance to be given to authorised officers**

- (1) This section applies for the purpose of enabling an authorised officer to exercise any of the powers of an authorised officer under this Division.

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- (2) The Director-General or ITSRR may, by notice in writing served on the occupier of premises referred to in section 46I, require the person to provide such reasonable assistance and facilities as are specified in the notice within a specified time and in a specified manner.
  - (3) A person who fails to comply with a requirement under this section is taken to have obstructed the authorised officer in the exercise of the authorised officer's functions under this Division.

**46T Premises used for residential purposes**

The powers of entry and inspection conferred by this Division are not exercisable in relation to any premises or part of premises that are being used for residential purposes except:

- (a) with the permission of the occupier of the premises or part of the premises, or
- (b) under the authority conferred by a search warrant.

**46U Protection from incrimination**

- (1) A person is not excused from any of the following requirements made under this Act on the ground that the statement might tend to incriminate him or her:
  - (a) a requirement to answer a question or produce a thing,
  - (b) a requirement to make a statement.
- (2) However, the answer to the question, production of the thing, any information obtained as a direct result of the answer or production, or the statement, is not admissible in evidence against the person in criminal proceedings:
  - (a) if the person claims before giving the answer, producing the thing or making the statement that it might tend to incriminate the person, or
  - (b) unless the person's entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person's attention before the answer was given, the thing was produced or the statement was made.
- (3) Except as provided by subsection (2), an answer to a question, production of a thing, any information obtained as a direct result of any such answer or production, or a statement made



by a person, in compliance with a requirement under this Act, may be used in evidence in any criminal or civil proceedings against the person.

**46V Search warrants**

- (1) An authorised officer may apply to an authorised justice for a search warrant if the authorised officer has reasonable grounds for believing that the provisions of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act have been or are being contravened in or on any premises.
- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant:
  - (a) to enter the premises, and
  - (b) to search the premises for evidence of a contravention of this Act, the regulations or the terms of an accreditation, licence, authority, authorisation, service contract, requirement or exemption under this Act.
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 18 of the *Search Warrants Act 1985*, a police officer:
  - (a) may accompany an authorised officer executing a search warrant issued under this section, and
  - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.
- (5) In this section, *authorised justice* has the same meaning as it has in the *Search Warrants Act 1985*.

**46W Other authorised officers**

In addition to other persons who may be appointed as authorised officers under this Act, the Director-General, the Chairperson of the Independent Transport Safety and Reliability Advisory Board or the ITSRR may, for the purpose of the investigation of a specified bus or ferry

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accident or incident, appoint as an authorised officer a person exercising powers, or holding office under, a Commonwealth Act.

**[19] Section 49 Review panels**

Omit “Department of Transport”. Insert instead “Ministry of Transport”.

**[20] Section 53C Drug and alcohol programs and testing relating to ferry services**

Omit “charter service, a long-distance service or a tourist service” from section 53C (1).

Insert instead “public passenger service”.

**[21] Section 53D**

Insert after section 53C:

**53D Ferry operators to have approved safety management systems**

- (1) A person who carries on a public passenger service by means of a ferry, being a service operating within, or partly within, New South Wales, is guilty of an offence unless the person has, and implements, a safety management system that complies with this section.

Maximum penalty: 1,000 penalty units.

- (2) The safety management system must be documented and must:
- (a) identify any significant risks that have arisen or may arise from providing the service, including carrying out any associated transport safety work, and
  - (b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the operator to manage the risks and to monitor safety outcomes in relation to the provision of the service, and
  - (c) comply with any requirements prescribed by the regulations or set out in guidelines issued by the Waterways Authority under this section and published in the Gazette.

- (3) The Waterways Authority may issue guidelines with respect to policy objectives and safety initiatives to be adopted in safety management systems by persons who carry on public passenger services by means of a ferry.
- (4) A person who carries on a public passenger service by means of a ferry must, if directed to do so by the Waterways Authority, vary a safety management system.
- (5) In this section, *transport safety work* has the same meaning as it has in section 53C.

**[22] Sections 56 and 57**

Omit sections 55A–57. Insert instead:

**56 Obstruction**

A person must not:

- (a) hinder or obstruct an authorised officer in a manner that interferes with the performance by the officer of his or her functions under this Act or the regulations, or
- (b) being the occupier or person in charge of any place or land entered by the authorised officer under a power conferred by this Act, fail to provide the officer with all reasonable facilities and assistance for the effective exercise of the officer's functions under this Act, or
- (c) fail, without reasonable excuse, to answer questions or provide information when required to do so by an authorised officer in the exercise of his or her functions as an authorised officer, or
- (d) fail to produce for inspection any documents when required to do so by an authorised officer in the exercise of his or her functions as an authorised officer.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
- (b) in the case of an individual—500 penalty units.

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**57 False or misleading information**

A person must not:

- (a) provide to an authorised officer (whether in answer to a question asked by the authorised officer or otherwise) information (which may include or consist of a document) that the person knows is false or misleading in a material particular, or
- (b) provide to the ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board, or to any other person on behalf of the ITSRR or Chairperson, for the purposes of a transport safety inquiry information (which may include or consist of a document) that the person knows is false or misleading in a material particular, or
- (c) provide in relation to an application for accreditation, or for variation of accreditation, information (which may include or consist of a document) that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—150 penalty units, or
- (b) in the case of an individual—100 penalty units.

**[23] Section 60 Proceedings for offences**

Omit “constituted by a Magistrate sitting alone” from section 60 (1).

**[24] Section 60 (2)**

Omit “100”. Insert instead “500”.

**[25] Section 60 (3)**

Omit “*Justices Act 1902*”. Insert instead “*Criminal Procedure Act 1986*”.

**[26] Section 66**

Insert after section 65:

**66 Exclusion of liability of the State**

No act or omission of the Minister, the Director-General, the ITSRR, the Chairperson or other member of the Independent Transport Safety and Reliability Advisory Board, the Chief

Executive of the Waterways Authority or an officer of the Ministry of Transport, the ITSRR or the Waterways Authority in the course of exercising functions under this Act gives rise to any civil liability (including, for example, liability in negligence or for breach of statutory duty) against the State or any authority of the State.

**[27] Schedule 1 Provisions relating to powers of authorised officers**

Omit the Schedule.

**[28] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*Transport Legislation Amendment (Safety and Reliability) Act 2003* (but only to the extent that it amends this Act)

**[29] Schedule 3**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of Transport Legislation Amendment (Safety and Reliability) Act 2003**

**Definition**

In this Part:

*the amending Act* means the *Transport Legislation Amendment (Safety and Reliability) Act 2003*.

**Safety management systems**

- (1) An accredited service operator is not required to comply with section 9D until 12 months after the commencement of that section.
- (2) A person who carries on a public passenger service by means of a ferry is not required to comply with section 53D until 12 months after the commencement of that section.
- (3) The regulations may extend the period under this clause for which a person, or a class of persons, is not required to comply with section 9D or 53D.

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**Service contracts for ferry services**

- (1) A service contract relating to a service provided by a ferry immediately before the commencement of this clause is required to comply with section 17A not later than 12 months after the commencement of that section.
- (2) The regulations may extend the period under this clause within which a contract, or a class of contracts, is required to comply with section 17A.

**Investigation of bus or ferry accidents or incidents**

Section 46B, as inserted by the amending Act, applies to an accident or incident that occurred before, on or after the commencement of that section.

**Authorised officers**

Nothing in the amending Act:

- (a) affects the appointment of a person as an authorised officer if the person was an authorised officer immediately before the commencement of this clause, or
- (b) affects a function exercised by an authorised officer before the commencement of this clause.

**[30] Schedule 5 Transport safety employees—alcohol or other drugs**

Omit “charter service, a long-distance service or a tourist service” wherever occurring in the definition of *transport safety employee* in clause 1.

Insert instead “public passenger service carried on”.

**[31] Schedule 5, clause 3 Regulations**

Insert “the carrying out of transport safety work by a transport safety employee while under the influence of alcohol or any other drug or while the prescribed concentration of alcohol or prescribed concentration or amount of another drug is present in the employee’s blood or urine,” after “relating to” in clause 3 (2).

**[32] Schedule 6**

Insert after Schedule 5:

**Schedule 6 Transport safety inquiries**

(Section 46B (7))

**1 Definitions**

In this Schedule:

*Chairperson* means the Chairperson of the Independent Transport Safety and Reliability Advisory Board.

*ITSRR* means the Independent Transport Safety and Reliability Regulator.

**2 Conduct of transport safety inquiries**

- (1) If the ITSRR or the Chairperson conducts a transport safety inquiry, the ITSRR or Chairperson may appoint such persons as the ITSRR or Chairperson thinks fit to assist the ITSRR or Chairperson in conducting the inquiry.
- (2) Without limiting subclause (1), the ITSRR or Chairperson may appoint a person exercising powers, or holding office under, an Act of the Commonwealth to assist the ITSRR or Chairperson.
- (3) A person appointed to assist a person conducting a transport safety inquiry is, while so acting, entitled to be paid at the rate determined by the Chairperson.

**3 Procedure at transport safety inquiries**

- (1) The procedure for the meetings of a transport safety inquiry is, subject to this Act and the regulations, to be as determined by the person conducting the inquiry.
- (2) The person conducting a transport safety inquiry may, but is not required to, hold the inquiry in public.
- (3) Without limiting subclause (1), the regulations may make provision for or with respect to the provision of assistance to, or representation of, persons attending a transport safety inquiry.

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#### **4 Protection of informants**

Civil proceedings may not be brought against a person who has supplied information to a transport safety inquiry in respect of any matter contained in that information that is or is alleged to be defamatory or a breach of confidence.

#### **5 Purpose of transport safety inquiries**

To avoid doubt, it is not part of the purpose of a transport safety inquiry, or the function of a person conducting a transport safety inquiry:

- (a) to provide evidence for the purposes of proceedings against any person, or
- (b) to determine the liability or otherwise of any person with respect to any matter the subject of the transport safety inquiry.

#### **6 Effect of certain other Acts**

If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify that person from holding that office and also being appointed to assist a person conducting a transport safety inquiry or from accepting and retaining any remuneration payable to the person under this Act for doing so.



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**Schedule 4 Amendment of Rail Safety Act 2002 No 96**  
(Section 3)

**[1] Section 4 Interpretation**

Omit “Director-General” from the definition of *approved* in section 4 (1).  
Insert instead “ITSRR”.

**[2] Section 4 (1), definition of “authorised officer”**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[3] Section 4 (1), definition of “Department”**

Omit the definition.

**[4] Section 4 (1), definition of “Director-General”**

Omit “Department”. Insert instead “Ministry of Transport”.

**[5] Section 4 (1)**

Insert in alphabetical order:

*Independent Transport Safety and Reliability Advisory Board* means the Independent Transport Safety and Reliability Advisory Board established under the *Transport Administration Act 1988*.

*ITSRR* means the Independent Transport Safety and Reliability Regulator constituted under the *Transport Administration Act 1988*.

**[6] Section 4 (1), definition of “rail investigation panel”**

Omit the definition.

**[7] Section 6 Railways to which Act applies**

Omit “Director-General” from section 6 (2) (b).

Insert instead “ITSRR”.

**[8] Section 7 Act binds Crown**

Omit section 7 (2).

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**[9] Section 9 Purpose of accreditation**

Omit “Director-General” wherever occurring in section 9 (1) and (3).

Insert instead “ITSRR”.

**[10] Section 10 Applicant to give information**

Omit “Director-General” wherever occurring in section 10 (1) and (2).

Insert instead “ITSRR”.

**[11] Section 11 Safety management systems**

Omit section 11 (1). Insert instead:

- (1) An applicant for accreditation must give to the ITSRR a document describing its safety management system, being a comprehensive system that complies with the requirements of this section.

**[12] Section 11 (3), (4), (5) and (6)**

Omit “Director-General” wherever occurring.

Insert instead “ITSRR”.

**[13] Section 11 (2) and (5)**

Omit “safety management plan” wherever occurring.

Insert instead “safety management system”.

**[14] Section 11 (6)**

Omit “safety management plans”.

Insert instead “safety management systems”.

**[15] Section 11 (7)**

Insert after section 11 (6):

- (7) A guideline issued by the ITSRR under this section must be published in the Gazette.

**[16] Section 12 Safety interface agreements**

Omit “Director-General” wherever occurring in section 12 (1).

Insert instead “ITSRR”.

**[17] Section 13 Passenger security**

Omit “Director-General” from section 13 (1). Insert instead “ITSRR”.

**[18] Section 14 Applicant to demonstrate capacity to safely carry out railway operations**

Omit “Director-General”. Insert instead “ITSRR”.

**[19] Section 15 Applicant to describe, and identify ownership of, infrastructure**

Omit “Director-General” from section 15 (1). Insert instead “ITSRR”.

**[20] Section 16 Rolling stock to be identified**

Omit “Director-General” from section 16 (1). Insert instead “ITSRR”.

**[21] Section 17 Designated directors and managers**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[22] Section 18 Grant of accreditation**

Omit “Director-General” wherever occurring in section 18 (1), (2) and (3).

Insert instead “ITSRR”.

**[23] Section 18 (1)**

Insert “or refuse” after “grant”.

**[24] Section 18 (2)**

Insert “or of the refusal” after “accreditation”.

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**[25] Section 18A**

Insert after section 18:

**18A Referral to Independent Transport Safety and Reliability Advisory Board**

Before granting or refusing an accreditation (including a provisional accreditation) or granting an exemption under section 21, the ITSRR must refer the matter to the Independent Transport Safety and Reliability Advisory Board and consider any advice given by the Board.

**[26] Section 19 Provisional accreditation**

Omit “Director-General” wherever occurring in section 19 (1) and (3).

Insert instead “ITSRR”.

**[27] Section 20 Notice of provisional accreditation**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[28] Section 20A**

Insert after section 20:

**20A Application to Administrative Decisions Tribunal for review of decision of ITSRR**

A person aggrieved by a decision of the ITSRR under this Division to refuse accreditation or to grant a provisional accreditation may apply to the Administrative Decisions Tribunal for a review of the decision.

**[29] Section 21 Exemptions from accreditation and accreditation requirements**

Omit “Director-General” wherever occurring in section 21 (1), (2), (3) and (4).

Insert instead “ITSRR”.

**[30] Section 22 Exemption of interstate railway operators**

Omit “Director-General” wherever occurring in section 22 (1), (2) and (3).

Insert instead “ITSRR”.

**[31] Section 23 Exemption of operators of private sidings**

Omit “Director-General” wherever occurring in section 23 (5) and (6).  
Insert instead “ITSRR”.

**[32] Section 24 Sale or transfer of railway by accredited person**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[33] Section 25 Variation of accreditations**

Omit “Director-General”. Insert instead “ITSRR”.

**[34] Section 26 Declarations as to variation of accreditation**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[35] Section 27 Requests by accredited persons for variation or surrender of accreditations**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[36] Section 28 Suspension or cancellation of accreditation**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[37] Section 29 Suspension of accreditation in emergency**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[38] Section 30 Requirements for variation, suspension or cancellation**

Omit “Director-General” from section 30 (1). Insert instead “ITSRR”.

**[39] Section 31 Systems to be considered before action taken**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[40] Section 31A**

Insert after section 31:

**31A Referral to Independent Transport Safety and Reliability  
Advisory Board**

Before varying, suspending and cancelling or cancelling an accreditation, the ITSRR must refer the matter to the

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Independent Transport Safety and Reliability Advisory Board  
and consider any advice given by the Board.

**[41] Section 32 Notice of proposed action**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[42] Section 33 Representations to ITSRR**

Omit “Director-General” from section 33 (2). Insert instead “ITSRR”.

**[43] Section 34 Determination by ITSRR**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[44] Section 35 Application to Administrative Decisions Tribunal for review of decision of ITSRR**

Omit “Director-General”. Insert instead “ITSRR”.

**[45] Section 36 Employees to be issued with certificates of competency**

Omit “other than an operator of a railway” from section 36 (2).

Insert instead “other than the operator of the railway concerned”.

**[46] Section 36 (2), (3), (4) and (6)**

Omit “Director-General” wherever occurring.

Insert instead “ITSRR”.

**[47] Section 37A**

Insert after section 37:

**37A Production of certificate of competency**

A railway employee who is carrying out railway safety work must, when requested by an authorised officer to do so, produce to the authorised officer proof that the employee is the holder of an appropriate certificate of competency issued under section 36.

Maximum penalty: 5 penalty units.

**[48] Section 39 Register of certificates**

Insert at the end of the section:

- (2) An operator of a railway or other person who keeps a register under this section may provide information obtained from the register to the ITSRR, another operator of a railway or any person who keeps a register under this section.

**[49] Section 42 Railway employees—alcohol or other drugs**

Omit “Director-General” wherever occurring in section 42 (1), (2) and (4).

Insert instead “ITSRR”.

**[50] Section 43 Fatigue management**

Omit “Director-General” wherever occurring in section 43 (1) and (2).

Insert instead “ITSRR”.

**[51] Section 44 Annual accreditation fees**

Omit “Director-General”. Insert instead “ITSRR”.

**[52] Section 45 Fixing of annual accreditation fees**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[53] Section 46 Payment of annual fees**

Omit “Director-General” wherever occurring in section 46 (2) and (3).

Insert instead “ITSRR”.

**[54] Section 47 Additional time for payment**

Omit “Director-General” from section 47 (2). Insert instead “ITSRR”.

**[55] Section 48 Minimum and late payment fees**

Omit “Director-General” wherever occurring in section 48 (1) and (3).

Insert instead “ITSRR”.

**[56] Section 48 (3)**

Omit “Director-General’s”. Insert instead “ITSRR’s”.

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**[57] Section 49 Safety inspections**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[58] Section 56 Review of notices by ITSRR**

Omit “Director-General” wherever occurring in section 56 (1), (4), (5) and (6).

Insert instead “ITSRR”.

**[59] Section 57 Application to Administrative Decisions Tribunal for stay of prohibition notice**

Omit “Director-General” from section 57 (2). Insert instead “ITSRR”.

**[60] Section 58 Appeal to Administrative Decisions Tribunal**

Omit “Director-General”. Insert instead “ITSRR”.

**[61] Section 59 Withdrawal of notices**

Omit “Director-General” from section 59 (1). Insert instead “ITSRR”.

**[62] Section 62 Industry safety reports**

Omit “Director-General must, not later than 1 July” from section 62 (1).

Insert instead “ITSRR must,”.

**[63] Section 62 (2)**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[64] Section 62 (3)**

Omit the subsection. Insert instead:

- (3) A report under this section may be included in the annual report of the ITSRR under the *Annual Reports (Statutory Bodies) Act 1984*.

**[65] Section 63 Provision of information relating to safety to ITSRR**

Omit “Director-General” wherever occurring in section 63 (1) and (2).

Insert instead “ITSRR”.



**[66] Section 64 Accredited persons must report notifiable occurrences to ITSRR**

Omit “Director-General” wherever occurring in section 64 (1), (2) and (4).

Insert instead “ITSRR”.

**[67] Section 65 Reports of other matters**

Omit “Director-General”. Insert instead “ITSRR”.

**[68] Section 65A**

Insert after section 65:

**65A Confidential reporting of safety information by railway employees**

- (1) The Chief Investigator may establish a system for the voluntary reporting by railway employees of matters that may affect the safe carrying out of railway operations.
- (2) The Chief Investigator must not disclose to any other person, or to any court, any information that may identify an employee who provides information under any such voluntary reporting system unless:
  - (a) the employee consents to the disclosure, or
  - (b) the Chief Investigator or a court is of the opinion that it is necessary in the public interest that the information be disclosed.
- (3) Nothing in this section prevents the Chief Investigator from disclosing information obtained under this section to the Chief Executive or any member of staff of the ITSRR.
- (4) Regulations may be made for or with respect to the following matters:
  - (a) the form and manner in which reports may be made,
  - (b) the manner in which reports are to be dealt with and the purposes for which information reported under this section may be used,
  - (c) other requirements for a system established under this section.

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(5) In this section:

*Chief Investigator* means the Chief Investigator appointed under section 42S of the *Transport Administration Act 1988*.

**[69] Section 66 Inquiries into railway accidents and incidents by accredited persons**

Omit “Director-General” wherever occurring in section 66 (1), (2), (3) and (4).

Insert instead “ITSRR”.

**[70] Section 66 (6)**

Insert after section 66 (5):

(6) The ITSRR may waive the requirement to comply with subsection (1) in relation to a railway accident or incident if the accident or incident is the subject of a rail safety inquiry.

**[71] Section 67 Inquiries by ITSRR or Chairperson of Independent Transport Safety and Reliability Advisory Board**

Omit “Director-General or, at the request of the Director-General, a rail investigation panel” from section 67 (1).

Insert instead “ITSRR or the Chairperson”.

**[72] Section 67 (2)**

Omit “Director-General or Chairperson of rail investigation panels”.

Insert instead “ITSRR or Chairperson”.

**[73] Section 67 (2)**

Omit “Director-General or a rail investigation panel”.

Insert instead “ITSRR or Chairperson”.

**[74] Section 67 (3)**

Omit “Director-General or a rail investigation panel”.

Insert instead “Chairperson”.

**[75] Section 67 (4)**

Omit section 67 (4) and (5). Insert instead:

- (4) The Minister may not require the Chairperson to terminate a rail safety inquiry.

**[76] Section 67 (6)**

Omit “Director-General”. Insert instead “ITSRR or Chairperson”.

**[77] Section 67 (7)–(9)**

Omit section 67 (7) and (8). Insert instead:

- (7) An inquiry may be carried out and a report provided under this section whether or not:
  - (a) an investigation is being, or has been, conducted under any other Act or law relating to the same matter, or
  - (b) the matter is or may be subject to any criminal or civil proceedings.
- (8) Schedule 4 has effect with respect to rail safety inquiries.
- (9) In this section:

*Chairperson* means the Chairperson of the Independent Transport Safety and Reliability Advisory Board.

**[78] Section 69 Power to require persons to attend to answer questions or produce documents or other things**

Omit “Director-General or Chairperson of rail investigation panels” from section 69 (1).

Insert instead “ITSRR or Chairperson of the Independent Transport Safety and Reliability Advisory Board”.

**[79] Section 69 (2)**

Omit “Director-General or rail investigation panel”.

Insert instead “person”.

**[80] Section 69 (2) (c)**

Omit “or itself”.

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**[81] Section 69 (2) (c)**

Omit “or panel”.

**[82] Section 69 (3)**

Omit “Director-General or Chairperson of the rail investigation panel”.

Insert instead “person”.

**[83] Section 70**

Omit the section.

**[84] Section 71 Disclosure of train safety record to Commonwealth or Commonwealth authority**

Omit “Director-General, a person who is or was an authorised officer or a member of a rail investigation panel” from section 71 (1).

Insert instead “ITSRR, Chairperson of the Independent Transport Safety and Reliability Advisory Board or a person who is or was an authorised officer”.

**[85] Section 72 Disclosure of train safety records (other than train safety recordings) to a court or person**

Omit “Director-General, a person who is or was an authorised officer or a member of a rail investigation panel” from section 72 (1).

Insert instead “ITSRR, Chairperson of the Independent Transport Safety and Reliability Advisory Board or a person who is or was an authorised officer”.

**[86] Section 77 Compliance with subpoenas and other directions**

Omit “Director-General, an authorised officer or a member of a rail investigation panel” from section 77 (1).

Insert instead “ITSRR, Chairperson of the Independent Transport Safety and Reliability Advisory Board or a person who is or was an authorised officer or an officer of the ITSRR or the Ministry of Transport”.

**[87] Section 78 Admissibility of other evidence and liability**

Omit “or the Director-General” from section 78 (2).

Insert instead “, the ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board”.

**[88] Section 78 (3) (a)**

Omit “Director-General”.

Insert instead “ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board”.

**[89] Section 80 Inspections and investigations**

Insert after section 80 (i):

- (ia) power to seize anything that the authorised officer suspects on reasonable grounds is connected with an offence against this Act or the regulations or to secure any such thing against interference,

**[90] Section 80 (j)**

Insert “, and for such period, as” after “means”.

**[91] Section 80 (j)**

Omit “Director-General”. Insert instead “ITSRR”.

**[92] Section 85 Recovery of cost of entry and inspection**

Omit “Director-General”. Insert instead “ITSRR”.

**[93] Section 86 Compensation**

Omit “Director-General”. Insert instead “ITSRR”.

**[94] Section 87 Authority to enter railway premises**

Omit “Director-General” wherever occurring in section 87 (2).

Insert instead “ITSRR”.

**[95] Section 92 Failure to maintain safety systems, devices or appliances**

Omit section 92 (4).

**[96] Section 95 Railway offences**

Omit “Director-General” from section 95 (1).

Insert instead “ITSRR”.

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**[97] Section 96 Offenders to state name and address**

Omit “Director-General” wherever occurring in section 96 (5), (6), (7) and (8).

Insert instead “ITSRR”.

**[98] Section 98 False or misleading information**

Omit “Director-General” wherever occurring in section 98 (b).

Insert instead “ITSRR”.

**[99] Section 104 Authority to take proceedings**

Omit “Director-General” wherever occurring in section 104 (1), (2), (4) and (5).

Insert instead “ITSRR”.

**[100] Section 104 (2)**

Omit “Department”. Insert instead “ITSRR”.

**[101] Section 106 Recovery of amounts due**

Omit “Director-General”. Insert instead “ITSRR”.

**[102] Section 107 Records and evidence from records**

Omit “Director-General” wherever occurring. Insert instead “ITSRR”.

**[103] Section 108 Functions of ITSRR**

Omit “Director-General”. Insert instead “ITSRR”.

**[104] Section 108A**

Insert after section 108:

**108A Functions of Independent Transport Safety and Reliability Advisory Board and Chairperson of Board**

- (1) The functions of the Independent Transport Safety and Reliability Advisory Board under this Act include the following:
  - (a) advising the ITSRR on matters relating to the accreditation or authorisation of persons under this Act,

- (b) advising the ITSRR on reports issued by the ITSRR under this Act and other matters under this Act,
  - (c) making recommendations to the ITSRR and the Minister concerning rail safety generally.
- (2) The functions of the Chairperson of the Independent Transport Safety and Reliability Advisory Board under this Act are to conduct rail safety inquiries and to report on those inquiries.

**[105] Section 109 Use of staff of Authority or Corporations**

Omit the section.

**[106] Section 110 Consultants**

Omit the section.

**[107] Section 111 Authorised officers**

Omit "Director-General".

Insert instead "ITSRR or Chairperson of the Independent Transport Safety and Reliability Advisory Board".

**[108] Section 112 Delegation by Minister**

Omit "Department" from section 112 (1). Insert instead "ITSRR".

**[109] Section 112 (2)**

Omit the subsection.

**[110] Section 113 Exclusion of personal liability**

Omit "Director-General, an officer of the Department".

Insert instead "ITSRR, Chairperson or other member of the Independent Transport Safety and Reliability Advisory Board, an officer of the ITSRR".

**[111] Section 113**

Omit "Director-General" where secondly and thirdly occurring.

Insert instead "ITSRR, the Chairperson, the member".

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**[112] Section 114 Exclusion of liability of the State**

Omit “Director-General or any other officer of the Department”.

Insert instead “ITSRR, Chairperson or member of the Independent Transport Safety and Reliability Advisory Board or an officer of the ITSRR”.

**[113] Section 117 Regulations**

Insert after section 117 (2) (n):

- (n1) certificates of competency, including cancellation and suspension of certificates and monitoring of procedures relating to certificates of competency,

**[114] Section 117 (3)**

Insert “, (n1)” after “(n)”.

**[115] Section 117 (3)**

Omit “Director-General”. Insert instead “ITSRR”.

**[116] Schedule 1 Railway employees—alcohol or other drugs**

Insert “the carrying out of railway safety work by a railway employee while under the influence of alcohol or any other drug or while the prescribed concentration of alcohol or prescribed concentration or amount of another drug is present in the employee’s blood or urine,” after “relating to” in clause 2 (2).

**[117] Schedule 2 Fatigue management**

Omit “intercity or interurban” from clause 2 (1) (a).

Insert instead “interurban or long distance passenger”.

**[118] Schedule 2, clause 3 (b)**

Omit “Director-General”. Insert instead “ITSRR”.



**[119] Schedule 4**

Omit the Schedule. Insert instead:

**Schedule 4 Rail safety inquiries**

(Section 67 (8))

**1 Definition**

In this Schedule:

*Chairperson* means the Chairperson of the Independent Transport Safety and Reliability Advisory Board.

**2 Conduct of rail safety inquiries**

- (1) If the ITSRR or the Chairperson conducts a rail safety inquiry, the ITSRR or Chairperson may appoint such persons as the ITSRR or Chairperson thinks fit to assist the ITSRR or Chairperson in conducting the inquiry.
- (2) Without limiting subclause (1), the ITSRR or Chairperson may appoint a person exercising powers, or holding office under, an Act of the Commonwealth to assist the ITSRR or Chairperson.
- (3) A person appointed to assist a person conducting a rail safety inquiry is, while so acting, entitled to be paid at the rate determined by the Chairperson.

**3 Procedure at rail safety inquiries**

- (1) The procedure for the meetings of a rail safety inquiry is, subject to this Act and the regulations, to be as determined by the person conducting the inquiry.
- (2) The person conducting a rail safety inquiry may, but is not required to, hold the inquiry in public.
- (3) Without limiting subclause (1), the regulations may make provision for or with respect to the provision of assistance to, or representation of, persons attending a rail safety inquiry.

**4 Protection of informants**

Civil proceedings may not be brought against a person who has supplied information to a person conducting a rail safety inquiry in respect of any matter contained in that information that is or is alleged to be defamatory or a breach of confidence.

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## **5 Purpose of rail safety inquiries**

To avoid doubt, it is not part of the purpose of a rail safety inquiry, or the function of a person conducting a rail safety inquiry:

- (a) to provide evidence for the purposes of proceedings against any person, or
- (b) to determine the liability or otherwise of any person with respect to any matter the subject of the rail safety inquiry.

## **6 Effect of certain other Acts**

If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify that person from holding that office and also being appointed to assist a person conducting a rail safety inquiry or from accepting and retaining any remuneration payable to the person under this Act for doing so.

## **[120] Schedule 5 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Transport Legislation Amendment (Safety and Reliability) Act 2003* (but only to the extent that it amends this Act)

**[121] Schedule 5**

Insert at the end of the Schedule with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of  
Transport Legislation Amendment  
(Safety and Reliability) Act 2003**

**Definitions**

In this Part:

*the amending Act* means the *Transport Legislation Amendment (Safety and Reliability) Act 2003*.

**Previous acts, matters and things done by Director-General**

- (1) Any act, matter or thing done by or in respect of the Director-General before the commencement of this clause in accordance with a provision of this Act or the regulations continues to have effect after that commencement as if the act, matter or thing were done by or in respect of the ITSRR.
- (2) The ITSRR may vary or revoke (if otherwise permitted under this Act or the regulations) any act, matter or thing that continues to have effect under this clause.

**Applications to Administrative Decisions Tribunal**

Nothing in the amending Act affects an application for a review made to the Administrative Decisions Tribunal under this Act before the commencement of this clause.

**Inquiries and investigations**

- (1) An inquiry or investigation commenced under this Act by the Director-General before the commencement of this clause is to be completed by the ITSRR.
- (2) It is the duty of the Director-General to provide the ITSRR with any information and assistance requested by the ITSRR for the purposes of subclause (1).
- (3) The ITSRR or the Chairperson of the Board may exercise a function under this Act relating to a rail accident or incident that occurred before, on or after the commencement of this clause.

### **Accreditations**

An application made to the Director-General for accreditation under this Act before the commencement of this clause, and not determined before that commencement, is taken to have been made to the ITSRR and is to be determined by the ITSRR.

### **Safety management systems**

For the purposes of section 11, as amended by the amending Act, a safety management plan provided to the Director-General before the commencement of this clause, and complying with that section, is taken to be a safety management system.

### **Validation**

- (1) Clauses 5 and 6 of the *Rail Safety (Drug and Alcohol Testing) Regulation 2003* are taken to be, and to always have been, valid.
- (2) Subclause (1) does not extend to the imposition of a sentence of imprisonment on a person under those clauses before the date of assent to the amending Act.

## **Schedule 5 Amendment of Freedom of Information Act 1989 No 5**

(Section 3)

### **[1] Schedule 1 Exempt documents**

Insert at the end of clause 20 (1) (f):

, or

- (g) matter relating to an inquiry into a transport accident or incident under section 46B of the *Passenger Transport Act 1990*.

### **[2] Schedule 1, clause 20 (3)**

Insert after clause 20 (2):

- (3) Despite subclause (1) (g), a document containing matter referred to in that paragraph ceases to be an exempt document when the report into the inquiry is tabled before both Houses of Parliament.

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## **Schedule 6 Amendment of Industrial Relations Act 1996 No 17**

(Section 3)

### **Section 210 Freedom from victimisation**

Insert after section 210 (1) (ia):

- (ib) reports a matter relating to the safety or reliability of railway, bus or ferry operations to the Chief Investigator of the Independent Transport Safety and Reliability Regulator or an officer of the Ministry of Transport, or

**Schedule 7 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103**  
(Section 3)

**[1] Schedule 2 Search warrants under other Acts**

Insert in alphabetical order:

*Passenger Transport Act 1990*, section 46V

**[2] Schedule 4 Amendment of other Acts and instrument**

Insert after Schedule 4.63:

**4.63A Passenger Transport Act 1990**

**[1] Section 46V Search warrants**

Omit “Part 3 of the *Search Warrants Act 1985*” from section 46V (3).

Insert instead “Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

**[2] Section 46V (4)**

Omit “section 18 of the *Search Warrants Act 1985*”.

Insert instead “section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*”.

**[3] Section 46V (5)**

Omit the subsection. Insert instead:

(5) In this section:

***authorised justice*** means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

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**Schedule 8 Amendment of Public Finance and Audit  
Act 1983 No 152**

(Section 3)

**[1] Schedule 2 Statutory bodies**

Insert in alphabetical order:

Independent Transport Safety and Reliability Regulator

**[2] Schedule 3 Departments**

Omit the matter relating to the Office of the Co-ordinator General of Rail.



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**Schedule 9 Amendment of Search Warrants Act 1985  
No 37**

(Section 3)

**Section 10 Definitions**

Insert in appropriate order in the definition of *search warrant* in section 10:

section 46V of the *Passenger Transport Act 1990*

[Second reading speech made in—

Legislative Council on 29 October 2003

Legislative Assembly on 13 November 2003]

BY AUTHORITY