



New South Wales

Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005 No 55

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New South Wales

Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005 No 55

Act No 55, 2005

An Act to amend the *Transport Administration Act 1988*, the *Rail Safety Act 2002* and the *Passenger Transport Act 1990* with respect to implementing recommendations of the Waterfall Rail Inquiry and the safety of rail and other public transport services; and for other purposes. [Assented to 27 June 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005*.

2 Commencement

- (1) This Act commences on the date of assent except as provided by subsection (2).
- (2) The following provisions of this Act commence on a day or days to be appointed by proclamation:
 - (a) Schedule 1 [1]–[4], [6], [9] and [13]–[16],
 - (b) Schedule 2 [1], [3], [4], [30]–[44], [46], [47], [49]–[51] and [56]–[58],
 - (c) Schedule 2 [2] in so far as it inserts a definition of *Chief Investigator*,
 - (d) Schedule 3 [1], [4], [11], [12], [15], [17], [24], [29], [32], [36] and [37],
 - (e) Schedule 3 [2] in so far as it inserts a definition of *Chief Investigator*,
 - (f) Schedule 3 [3] in so far as it inserts a definition of *transport safety inquiry*,
 - (g) Schedule 4.1, 4.2 and 4.3.

3 Amendment of Acts and regulation

The Acts and regulation specified in Schedules 1–4 are amended as set out in those Schedules.

Schedule 1 Amendment of Transport Administration Act 1988 No 109

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Chief Investigator means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 45.

[2] Section 42A Definitions

Omit the definition of *Chief Investigator*.

[3] Section 42A, definitions of “rail safety inquiry” and “transport safety inquiry”

Omit the definitions. Insert instead:

rail safety inquiry has the same meaning that it has in the *Rail Safety Act 2002*.

transport safety inquiry has the same meaning that it has in the *Passenger Transport Act 1990*.

[4] Section 42E ITSRR may advise on and monitor safety and reliability

Omit section 42E (2) (c). Insert instead:

(c) the compliance by transport authorities with any recommendations relating to the safe operation of transport services contained in any report by the Chief Investigator under this or any other Act or in a report of a rail safety inquiry or a transport safety inquiry,

[5] Section 42H Referral of reports to Independent Transport Safety and Reliability Advisory Board

Omit the section.

[6] Part 4A, Division 5 Office of Transport Safety Investigations and Chief Investigator

Omit the Division.

[7] Section 42T Independent Transport Safety and Reliability Advisory Board

Insert after section 42T (4):

(4A) For the purposes of exercising its functions, the Board may arrange for the use of any staff or facilities of the ITSRR.

[8] Section 42U General functions of Board

Omit section 42U (2). Insert instead:

- (2) The principal function of the Board is to advise and make recommendations to the Minister or the ITSRR about any matter.

[9] Section 42V Functions of Chairperson of Board

Omit the section.

[10] Section 43 Constitution of Transport Advisory Group

Omit section 43 (2) (a). Insert instead:

- (a) a member of staff of the Ministry of Transport, nominated by the Director-General, who is to be the Chairperson of the Group,

[11] Section 43 (2) (c)

Omit the paragraph.

[12] Section 44 Functions of Transport Advisory Group

Omit “Independent Transport Safety and Reliability Advisory Board” wherever occurring in section 44 (1) and (3).

Insert instead “Director-General”.

[13] Part 5A

Insert after Part 5:

**Part 5A Chief Investigator of the Office of
Transport Safety Investigations**

45 Chief Investigator

- (1) The Governor, on the recommendation of the Minister, may appoint a Chief Investigator of the Office of Transport Safety Investigations.
- (2) The employment of a Chief Investigator 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.
- (3) The Chief Investigator may be removed from office under section 77 of the *Public Sector Employment and Management Act 2002* only for incapacity, incompetence or misbehaviour.

- (4) The office of the Chief Investigator may be known as the Office of Transport Safety Investigations.

45A General functions of Chief Investigator

- (1) The Chief Investigator has the functions conferred or imposed on the Chief Investigator by or under this or any other Act.
- (2) The principal functions of the Chief Investigator are:
- (a) to conduct investigations into rail and passenger transport accidents or incidents under the *Rail Safety Act 2002* and the *Passenger Transport Act 1990*, and
 - (b) to determine the causes of those accidents or incidents, and
 - (c) to report on the outcome of any investigation to the Minister, and
 - (d) to review investigation reports prepared by transport authorities and other transport operators.
- (3) The Chief Investigator may, to the extent necessary to carry out his or her functions in this State, exercise the Chief Investigator's functions within or outside this State.

45B No Ministerial control of Chief Investigator

- (1) The Chief Investigator is not subject to the direction and control of the Minister in the exercise of the Chief Investigator's investigative and reporting functions.
- (2) Despite subsection (1), the Chief Investigator is to investigate and report on a particular rail or passenger transport accident or incident when given a written direction to do so by the Minister.

45C Disclosure of information by Chief Investigator

- (1) The Chief Investigator may, if he or she thinks it necessary for the safe operation of a transport service, disclose information acquired by the Chief Investigator in the performance of the Chief Investigator's functions under this or any other Act to any other person.
- (2) The Chief Investigator may, if the Chief Investigator thinks it desirable for the promotion of the safe operation of a transport service, publish any information.
- (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 2002* do not apply to a disclosure permitted under this section.

45D Acting Chief Investigator

- (1) The Minister may, from time to time, appoint a person to act in the office of the Chief Investigator during the illness or absence of the Chief Investigator, and the person, while so acting, has all the functions of the Chief Investigator and is taken to be the Chief Investigator.
- (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 Investigator 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 Investigator is to be regarded as an absence from office of the Chief Investigator.

45DA Delegation of functions of Chief Investigator

- (1) The Chief Investigator may delegate to an authorised person any of the functions of the Chief Investigator 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 Chief Investigator, if the delegate is authorised to do so by the Chief Investigator.
- (3) In this section:
authorised person means:
 - (a) a person appointed by the Chief Investigator under section 65F (1), or
 - (b) a member of a class of persons prescribed by the regulations.

[14] Part 7, heading

Omit the heading to the Part. Insert instead:

Part 7 Staff of Authorities, ITSRR and Chief Investigator

[15] Part 7, Division 3B

Insert after Division 3A:

Division 3B Staff of Chief Investigator

65F Employment of staff

- (1) The Chief Investigator may appoint such staff as the Chief Investigator requires to exercise the Chief Investigator's functions.
- (2) Those members of staff are taken to be employed by the Government of New South Wales in the service of the Crown, except as provided by subsection (3).
- (3) The Chief Investigator is, for the purposes of any proceedings relating to those members of staff held before a competent tribunal having jurisdiction to deal with industrial matters, taken to be the employer of the staff.
- (4) The Chief Investigator may enter into an agreement with any association or organisation representing a group or class of those members of staff with respect to industrial matters.
- (5) Any such agreement binds all persons in the class or group affected by the agreement, and no such person (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.
- (6) An agreement under this section is not an enterprise agreement within the meaning of the *Industrial Relations Act 1996*. However, the Chief Investigator may enter into such an enterprise agreement as the employer of the members of staff concerned.

65G Salary, wages and conditions of staff

The Chief Investigator may fix the salary, wages and conditions of employment of any staff appointed under section 65F (1) in so far as they are not fixed by or under any other Act or law.

65H Regulations relating to staff

- (1) The regulations may make provision for or with respect to the employment of staff appointed under section 65F (1), 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 Chief Investigator is a party, and
 - (b) have effect despite any determination of the Chief Investigator under section 65G, and
 - (c) have effect subject to Part 3.1 of the *Public Sector Employment and Management Act 2002*.

65I Application of Division 4

Division 4 (other than section 68) applies to the Chief Investigator in the same way as it applies to an Authority.

[16] Section 112 Personal liability of certain persons

Insert after paragraph (a2) of the definition of *transport authority* in section 112 (2):

- (a3) the Chief Investigator, and

[17] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005 (but only in relation to the amendments made to this Act)

[18] **Schedule 7, Part 13**

Insert after Part 12:

Part 13 Provisions consequent on enactment of Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005

148 Definition

In this Part:

the amending Act means the *Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005*.

149 Chief Investigator

- (1) The person holding office as the Chief Investigator under section 42S immediately before the repeal of that section by the amending Act is appointed as the Chief Investigator under section 45 as inserted by the amending Act.
- (2) The person appointed under subclause (1) holds office for the residue of the person's term of office as, and subject to the same conditions (including conditions as to remuneration and duration of employment) as, those of the person's appointment as Chief Investigator under section 42S.
- (3) Part 3.1 of the *Public Sector Employment and Management Act 2002* applies to and in respect of the employment of the Chief Investigator under this clause.

150 Staff of Office of Transport Safety Investigations

- (1) On the repeal of Division 5 of Part 4A by the amending Act, each member of staff of the Office of Transport Safety Investigations is transferred to the employment of the Government of New South Wales in the service of the Crown, subject to section 65F (3).
- (2) Each such member of staff is taken to have been appointed under section 65F (1) and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the Office of Transport Safety Investigations.
- (3) Neither the contract of employment nor the period of employment of each member of staff concerned is taken to have

been broken by the operation of this Act for the purposes of any law, award or agreement relating to the employment of that member of staff.

- (4) Without limiting this clause, this Act does not affect any accrued rights that the member of staff concerned had immediately before the transfer in relation to any kind of leave.
- (5) A member of staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the Office of Transport Safety Investigations.
- (6) A member of staff concerned is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service.

151 Transport safety investigators

- (1) A member of staff who is transferred under clause 150 and who, immediately before the transfer was an authorised officer within the meaning of the *Rail Safety Act 2002* or the *Passenger Transport Act 1990*, is taken to be a person to whom the Chief Investigator has delegated his functions under section 67A of the *Rail Safety Act 2002* or section 46BB of the *Passenger Transport Act 1990*.
- (2) This clause does not prevent the variation or revocation of any such delegation.

Schedule 2 Amendment of Rail Safety Act 2002 No 96

(Section 3)

[1] **Section 4 Definitions**

Omit the definition of *authorised officer* from section 4 (1). Insert instead:

assessor means an assessor appointed by the Minister under section 67D.

authorised officer means an authorised officer appointed by the ITSRR under section 111.

Board of Inquiry means a Board of Inquiry constituted by the Minister under section 67B.

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

Insert in alphabetical order:

Chief Investigator means the Chief Investigator of the Office of Transport Safety Investigations appointed under the *Transport Administration Act 1988*.

safety management system—see section 48A.

[3] **Section 4 (1), definition of “Independent Transport Safety and Reliability Advisory Board”**

Omit the definition.

[4] **Section 4 (1), definitions of “notifiable occurrence” and “rail safety inquiry”**

Omit the definitions. Insert instead:

notifiable occurrence means an occurrence that is required to be reported in accordance with section 64.

rail safety inquiry—see section 67B.

[5] **Section 9**

Omit the section. Insert instead:

9 Purpose of accreditation

The purpose of accreditation is to attest:

- (a) that the accredited person is (or, in the case of an accredited corporation, the directors and managers of the corporation designated in accordance with section 17 are) considered to be of good repute and in all other respects fit

and proper to be responsible for the safe carrying out of the railway operations for which the person is accredited, and

- (b) that the accredited person's safety management system has been accepted by the ITSRR, and
- (c) that the accredited person has demonstrated, to the degree and in the manner required by the ITSRR, the competency and capacity to implement that safety management system.

[6] Section 11 Safety management systems

Omit the section.

[7] Section 14

Omit the section. Insert instead:

14 Safety management systems and capacity to safely carry out railway operations

- (1) An applicant for accreditation must submit to the ITSRR documentation, in a form approved by the ITSRR, that describes the applicant's safety management system, being a safety management system that satisfies the requirements of section 48A.
- (2) An applicant for accreditation must demonstrate, to the satisfaction of the ITSRR, that the applicant possesses the competency and capacity to implement and comply with its safety management system and to otherwise safely carry out the railway operations for which the applicant is seeking accreditation.
- (3) The ITSRR may require an applicant for accreditation to submit additional information and standards in relation to the applicant's safety management system.

[8] Section 18 Grant of accreditation

Insert "prescribed by the regulations or" after "(if any) as are" in section 18 (3).

[9] Section 18 (3A)

Insert after section 18 (3):

- (3A) A condition or restriction of accreditation that is prescribed by the regulations cannot be varied or revoked by the ITSRR.

[10] Section 18 (6)

Insert after section 18 (5):

- (6) It is a condition of any accreditation that the accredited person comply with any applicable guidelines issued by the ITSRR under this Act.

**[11] Section 18A Referral to Independent Transport Safety and Reliability
Advisory Board**

Omit the section.

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

Omit section 21 (2). Insert instead:

- (2) An exemption may be subject to such conditions and restrictions (if any) as are prescribed by the regulations or specified by the ITSRR in the notice.

[13] Section 21 (4)

Omit the subsection. Insert instead:

- (4) Without limiting subsection (2), a person may be exempted from a requirement under section 14 to submit documentation describing the applicant's safety management system or to demonstrate the competency and capacity to implement and comply with a safety management system if the person demonstrates, to the satisfaction of the ITSRR, that those matters are covered, or are to be covered, by the provision of services to the person by another accredited person.

[14] Section 21 (6)

Insert after section 21 (5):

- (6) The ITSRR may at any time, by written notice, revoke an exemption under this section or revoke or vary a condition or restriction to which an exemption is subject.

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

Omit section 27 (3). Insert instead:

- (3) Without limiting subsection (2), an accredited person may apply at any time for approval of a variation to a safety management system in respect of railway operations for which the person is accredited.

- (3A) The regulations may, unconditionally or subject to conditions, specify variations, or classes of variation, that may be made to an accredited person's railway operations or safety management system without the need to apply to the ITSRR for a variation or an approval of a variation.

[16] Section 30 Requirements for variation, suspension or cancellation

Omit section 30 (2). Insert instead:

- (2) The ITSRR is not required to comply with sections 31–34 in relation to an application or variation under section 27 or 48A.

[17] Section 31

Omit the section. Insert instead:

31 Safety management system to be considered before action taken

Before varying, suspending and cancelling or cancelling an accreditation, the ITSRR must take into consideration the accredited person's safety management system.

[18] Section 31A Referral to Independent Transport Safety and Reliability Advisory Board

Omit the section.

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

Omit "and published in the Gazette" from section 36 (6).

[20] Section 41 Health and fitness of railway employees

Insert at the end of the section:

- (2) An accredited person must not employ a person as a railway employee unless:
- (a) the employee meets any standard contained in guidelines issued under this section that are applicable to the employee, and
 - (b) the accredited person complies with any standard contained in guidelines issued under this section that are applicable to the accredited person.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—50 penalty units.

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- (3) The ITSRR may issue guidelines containing standards for or with respect to the employment of railway employees, including, but not limited to, the health and fitness of those employees.

[21] Sections 42 (1) (a) and 43 (1)

Omit “and published in the Gazette” wherever occurring.

[22] Part 3 Safety measures

Omit the heading to Division 1. Insert instead:

**Division 1 Safety management systems and annual
safety reports**

48A Safety management systems

- (1) It is a condition of any accreditation that the accredited person:
- (a) has a system for identifying, managing and controlling the risks of carrying out the railway operations for which that person is accredited (a *safety management system*), and
 - (b) ensures that the safety management system complies with any requirements that may be prescribed by or under this Act, and
 - (c) ensures that the railway operations for which that person is accredited comply with the safety management system.
- (2) A safety management system must:
- (a) identify any significant risks that have arisen or may arise from the carrying out of railway operations by or on behalf of the accredited person, and
 - (b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the accredited person to manage the risks and to monitor safety outcomes in relation to those railway operations, and
 - (c) be documented in an approved form, subject to any requirements prescribed by or under this Act.
- (3) An accredited person must, if directed to do so in writing by the ITSRR and within any period required by the ITSRR, vary its safety management system and amend or resubmit the relevant documentation to the ITSRR.
- (4) The ITSRR may issue guidelines with respect to safety management systems and the documentation of any such system.

48B Annual safety report

- (1) An accredited person must, not later than 28 days before each anniversary of the person's accreditation or such other date as may be approved, give to the ITSRR an annual safety report.
- (2) The annual safety report must:
 - (a) describe and assess the safety performance of the railway operations for which the person was accredited during the preceding 12 months, and
 - (b) review any significant developments relating to the safety of those railway operations during that period, and
 - (c) set out any safety initiatives proposed to be undertaken in relation to the railway operations in the next 12 months, and
 - (d) comply with any requirements prescribed by the regulations or contained in guidelines issued by the ITSRR under this section.
- (3) An accredited person must, if directed to do so by the ITSRR and within any period required by the ITSRR, amend or resubmit an annual safety report given to the ITSRR.
- (4) The ITSRR may issue guidelines with respect to annual safety reports.

Division 1A Inspections

[23] Section 49 Safety inspections

Omit section 49 (1). Insert instead:

- (1) The ITSRR must cause inspections to be carried out to ensure that operators of railways:
 - (a) carry out railway operations safely, and
 - (b) comply with any applicable conditions or restrictions of accreditation or conditions or restrictions of exemptions from accreditation.

[24] Section 49 (2) (a)

Omit "for which the person is accredited".

[25] Section 49 (2) (b)

Omit "by the accredited person".

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- [26] **Section 49 (2) (e)**
Omit “in relation to which the person is accredited”.
- [27] **Section 49 (3) (b)**
Omit “in any other case”.
Insert instead “in the case of any other accredited person”.
- [28] **Section 49 (4)**
Omit “an accredited person”. Insert instead “an operator of a railway”.
- [29] **Section 50 Regulations**
Omit “accredited persons” from section 50 (b).
Insert instead “operators of railways”.
- [30] **Section 61 Definitions**
Insert “or an investigation under section 67” after “rail safety inquiry” in paragraph (a) of the definition of *train safety record*.
- [31] **Section 61, definition of “train safety record”**
Insert after paragraph (d):
(e) any information collected for the purposes of a rail safety inquiry or an investigation under section 67 that is prescribed by the regulations.
- [32] **Section 64**
Omit the section. Insert instead:
64 Accredited persons must report notifiable occurrences
(1) It is a condition of accreditation that an accredited person must report any occurrence, of a kind prescribed by the regulations as a notifiable occurrence, that occurs on railway premises relating to railway operations for which the person is accredited.
(2) A report under subsection (1) is to be made to the Chief Investigator, or such other person or persons as may be prescribed, within the time and manner prescribed.
(3) The regulations may prescribe different reporting requirements in respect of different occurrences.

[33] Section 65A Confidential reporting of safety information by railway employees

Omit section 65A (5).

[34] Sections 66–67F

Omit sections 66 and 67. Insert instead:

66 Investigation into railway accidents and incidents by railway operators

- (1) An operator of a railway must, if required to do so by the Chief Investigator, investigate, and report to the Chief Investigator on:
 - (a) any railway accident or incident that may affect the safe carrying out of railway operations for which the person is responsible, or
 - (b) any matter that may be prescribed by the regulations.
- (2) A requirement under this section is to be imposed by notice in writing.
- (3) An investigation is to be conducted in a manner approved, and within the time required, by the Chief Investigator.
- (4) A report of an investigation is to be provided to the Chief Investigator and the ITSRR in a form and within the time required by the Chief Investigator.
- (5) An operator of a railway must, if required to do so by the Chief Investigator, review and resubmit a report prepared under this section.
- (6) The Chief Investigator must, on the 15th day of each month, forward to the Minister a list of any reports provided to the Chief Investigator under this section in the preceding month.
- (7) An operator of a railway who contravenes this section is guilty of an offence.
Maximum penalty:
 - (a) in the case of a corporation (being a previous offender)—750 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
 - (c) in the case of an individual (being a previous offender)—375 penalty units, or
 - (d) in the case of an individual (not being a previous offender)—250 penalty units.

66A Information may not be used in certain proceedings

- (1) Information that the Chief Investigator or ITSRR obtains by way of a report under section 66 cannot be used in evidence in any criminal or civil proceedings against the operator of a railway that provided the report.
- (2) However, the information may be relied on in any administrative action under this or any other Act if the action is taken for the purpose of the safe carrying out of railway operations.
- (3) A court may direct, if it is of the opinion that it is in the public interest to do so, that information referred to in subsection (1) may be used in evidence in particular criminal or civil proceedings, subject to the rules of evidence.
- (4) In determining the public interest under this section, a court is to take into account the adverse impact that use of the information may have on future disclosures by operators of railways under section 66.
- (5) This section does not apply:
 - (a) to a train safety recording, or
 - (b) in relation to criminal proceedings for an offence under Division 3 of Part 5 of the *Crimes Act 1900*, or
Note. Division 3 of Part 5 of the *Crimes Act 1900* contains offences dealing with the provision of false or misleading information.
 - (c) to information, or in circumstances, that may be prescribed by the regulations.

67 Investigations by the Chief Investigator

- (1) The Chief Investigator may investigate any railway accident or incident that may affect the safe carrying out of railway operations.
- (2) The Chief Investigator must provide to the Minister a written report on an investigation under this section.
- (3) The Minister may require the Chief Investigator to investigate and report to the Minister on any railway accident or incident that may affect the safe carrying out of railway operations or the personal security of any railway employee or member of the public using a railway or in or on railway premises.

- (4) The Chief Investigator may recover the reasonable costs of conducting an investigation under this section 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 operators of railways responsible for the railway operations concerned.
- (5) An investigation under this section 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 (including any law of the Commonwealth) relating to the same matter, or
 - (b) the matter is or may be subject to any criminal or civil proceedings, or
 - (c) the matter is the subject of an inquest or inquiry under the *Coroners Act 1980*, or
 - (d) the matter is or may be the subject of a rail safety inquiry.

67A Chief Investigator and transport safety investigator's functions

- (1) The Chief Investigator may, by notice in writing, require either or both of the following:
 - (a) the attendance of any person at any place to answer questions in relation to an investigation under section 67,
 - (b) the production of any documents or other things required for the purposes of any such investigation.
- (2) The Chief Investigator may require a person to answer questions in relation to an investigation under section 67.
- (3) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.
Maximum penalty: 100 penalty units.
Note. Section 89 provides protection in relation to self-incriminating evidence.
- (4) A person attending at a place to answer questions is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (5) The Chief Investigator may appoint an authorised person (within the meaning of section 45DA of the *Transport Administration Act 1988*) as a transport safety investigator for the purposes of conducting an investigation under section 67.
Note. Section 45DA of the *Transport Administration Act 1988* permits the Chief Investigator to delegate any of his or her functions.

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- (6) The Chief Investigator and each transport safety investigator have, in respect of any investigation under section 67, all the functions and immunities of an authorised officer and in the exercise of those functions, any reference in Division 1 of Part 4 to the ITSRR is taken to be a reference to the Chief Investigator.

67B Rail safety inquiries

- (1) The Minister may constitute one or more persons as a Board of Inquiry to conduct an inquiry (a *rail safety inquiry*) into any railway accident or incident or any other event, occurrence, practice or matter that may affect the safe carrying out of railway operations.
- (2) A rail safety inquiry may be carried out and a report provided whether or not:
- (a) an investigation is being, or has been, conducted under any other Act or law (including a law of the Commonwealth) relating to the same matter, or
 - (b) the matter is or may be subject to any criminal or civil proceedings, or
 - (c) the matter is the subject of an inquest or inquiry under the *Coroners Act 1980*.
- (3) The Minister may not terminate a rail safety inquiry.
- (4) A Board of Inquiry may, at a rail safety inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, the person constituting the Board:
- (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (5) In conducting a rail safety inquiry, a Board of Inquiry:
- (a) is not bound to act in a formal manner, and
 - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (6) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at a rail safety inquiry.
- (7) A Board of Inquiry is to determine its own procedure, except as provided by this Act or the regulations.

67C Chief Investigator may request rail safety inquiry

- (1) The Chief Investigator may, if he or she considers it to be appropriate in the circumstances, give a written notice to the Minister requesting that any railway accident or incident or any other event, occurrence, practice or matter that may affect the safe carrying out of railway operations be the subject of a rail safety inquiry.
- (2) If the Minister receives a written notice under subsection (1) from the Chief Investigator, the Minister is to:
 - (a) constitute a Board of Inquiry to conduct a rail safety inquiry into the accident, incident, event, occurrence, practice or matter, or
 - (b) within one month after receiving the notice, provide the Chief Investigator with written reasons for not doing so and table the notice and the reasons in each House of Parliament.

67D Assessors

- (1) A Board of Inquiry, when conducting, and making a determination in respect of, a rail safety inquiry is to sit with any assessors that may be appointed by the Minister for the purposes of the inquiry.
- (2) An assessor sitting with a Board of Inquiry has the power to advise the Board of Inquiry but not to adjudicate on any matter before the Board of Inquiry.
- (3) A Board of Inquiry has the right to consult, either collectively or individually, and either in public or in private, with assessors sitting with it.

67E Witnesses and evidence at rail safety inquiries

- (1) A Board of Inquiry may summon a person to appear at a rail safety inquiry conducted by the Board to give evidence and to produce any documents that are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a rail safety inquiry to do any one or more of the following:
 - (a) be sworn or affirmed,
 - (b) produce a document,
 - (c) answer a question.

-
- (3) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (4) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.
- Maximum penalty:
- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
 - (c) in the case of an individual (being a previous offender)—375 penalty units, or
 - (d) in the case of an individual (not being a previous offender)—250 penalty units.

67F Report on rail safety inquiry

A Board of Inquiry must, within the period required by the Minister, prepare a report as to the causes of the accident or incident or prepare a report on the other event, occurrence, practice or matter the subject of the rail safety inquiry and provide a copy of the report to the Minister.

[35] Section 68 Tabling of reports

Omit “or 67” from section 68 (1). Insert instead “, 67 (2) or 67F”.

[36] Section 68 (1)

Omit “not later than 28 days”.

Insert instead “as soon as reasonably practicable, but not later than 7 days,”.

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

Omit the section.

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

Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 71 (1).

Insert instead “Chief Investigator, a member of a Board of Inquiry”.

- [39] Section 72 Disclosure of train safety records (other than train safety recordings) to a court or person**
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 72 (1).
Insert instead “Chief Investigator, a member of a Board of Inquiry”.
- [40] Section 72 (4)**
Omit “to which the record relates or on any future inquiries”.
Insert instead “or investigation to which the record relates or any future inquiries or investigations”.
- [41] Section 73 Disclosure of train safety recordings**
Omit “an inquiry”. Insert instead “an inquiry or an investigation”.
- [42] Section 77 Compliance with subpoenas and other directions**
Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 77 (1).
Insert instead “Chief Investigator, a member of a Board of Inquiry, an assessor”.
- [43] Section 77 (1) (a)**
Omit the paragraph. Insert instead:
(a) attend and answer questions relating to an accident or incident or other event, occurrence, practice or matter the subject of the rail safety inquiry or an investigation under section 67, or
- [44] Section 78 Admissibility of other evidence and liability**
Omit “or the Chairperson of the Independent Transport Safety and Reliability Advisory Board” wherever occurring in section 78 (2) and (3) (a).
Insert instead “, Chief Investigator or a member of a Board of Inquiry”.
- [45] Section 98 False or misleading information**
Omit the section.
- [46] Section 108 Functions of ITSRR**
Omit section 108 (i).

**[47] Section 108A Functions of Independent Transport Safety and Reliability
Advisory Board and Chairperson of Board**

Omit the section.

[48] Section 109

Insert after section 108:

109 Exchange of information

- (1) The ITSRR may enter into an arrangement (an *information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information held by the ITSRR and the agency.
- (2) The information to which an information sharing arrangement may relate is limited to the following:
 - (a) information concerning possible breaches of this Act or the regulations,
 - (b) information concerning the safe carrying out of railway operations,
 - (c) any other information that may be prescribed by the regulations.
- (3) Under an information sharing arrangement, the ITSRR and the relevant agency are, despite any other Act or other law of the State, authorised:
 - (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose information to the other party,
but only to the extent that the information is reasonably necessary to assist in the exercise of functions of the ITSRR under this Act (or any other Act administered by the Minister for Transport, whether solely or jointly with another Minister) or the functions of the relevant agency concerned.
- (4) This section does not limit the operation of any Act under which the ITSRR or a relevant agency is authorised or required to disclose information to another person or body.
- (5) This section does not permit the disclosure of information in contravention of section 65A.

- (6) In this section:
relevant agency means:
- (a) the WorkCover Authority constituted by the *Workplace Injury Management and Workers Compensation Act 1998*, or
 - (b) the Chief Investigator, or
 - (c) any other person or body prescribed by the regulations.

[49] Section 111

Omit the section. Insert instead:

111 Appointment of authorised officers

- (1) The ITSRR may appoint a member of staff of the ITSRR, or a person of a class prescribed by the regulations, to be an authorised officer for the purposes of this Act.
- (2) An authorised officer appointed by the ITSRR may exercise the functions of an authorised officer under this Act.
- (3) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (4) In addition to any other persons who may be appointed as authorised officers under this Act, the ITSRR may, for the purpose of the investigation or exercise of powers related to a specified railway accident or railway incident, appoint as an authorised officer a person exercising powers, or holding office under, a Commonwealth Act.

[50] Section 113 Exclusion of personal liability

Omit “Chairperson or other member of the Independent Transport Safety and Reliability Advisory Board”.

Insert instead “Chief Investigator, a member of, or an assessor for, a Board of Inquiry”.

[51] Section 113

Omit “the Chairperson” wherever occurring.

Insert instead “the Chief Investigator”.

[52] Section 114 Exclusion of liability of the State

Omit “Chairperson or member of the Independent Transport Safety and Reliability Advisory Board”.

Insert instead “Chief Investigator, a member of, or an assessor for, a Board of Inquiry”.

[53] Section 116A

Insert after section 116:

116A Guidelines

- (1) The ITSRR may issue guidelines for or with respect to any matter for which guidelines may be issued under this Act. The ITSRR may from time to time amend or replace the guidelines.
- (2) Guidelines issued by the ITSRR may apply, adopt or incorporate any publication as in force for the time being.
- (3) A guideline issued under this Act, or an amendment to or revocation of any such guideline, is to be published in the Gazette.
- (4) A guideline, or an amendment to, or revocation of, a guideline takes effect on the date of publication or any later date specified in the guideline.

[54] Section 117 Regulations

Insert “(including private sidings)” after “sidings” in section 117 (2) (b).

[55] Section 117 (2) (q)–(u)

Insert after section 117 (2) (p):

- (q) standards for railway operations, including standards for rolling stock, network control systems and any other infrastructure of a railway,
- (r) requirements for registers of information to be kept by operators of railways under this Act including, but not limited to, the information that is to be held on the register and access to the register,
- (s) passenger safety and security,
- (t) train safety recordings,
- (u) conditions of, or restrictions on, accreditation.

[56] Section 117 (3)

Omit the subsection. Insert instead:

- (3) Without limiting subsection (2), regulations made under that subsection may provide for the issue of guidelines by the ITSRR with respect to the matters referred to in that subsection.

[57] Schedule 1 Railway employees—alcohol or other drugs

Omit “the appointment of authorised officers and the authorisation of persons” from clause 2 (1) (a).

Insert instead “the authorisation of persons (including authorised officers)”.

[58] Schedule 3 Notifiable occurrences

Omit the Schedule.

[59] Schedule 4 Rail safety inquiries

Omit the Schedule.

[60] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005 (but only to the extent that it amends this Act)

[61] Schedule 5, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Transport Legislation Amendment
(Waterfall Rail Inquiry Recommendations)
Act 2005**

21 Definition

In this Part:

the amending Act means the *Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005*.

22 Exemptions from accreditation

Section 21 (6), as inserted by the amending Act, applies to an exemption granted before, on or after the commencement of that subsection.

23 Health and fitness of railway employees

Guidelines issued under clause 50 of the *Rail Safety (General) Regulation 2003* and in force on the commencement of section 41 (2), as inserted by the amending Act, are taken to have been issued under section 41.

24 Investigation of rail accidents or incidents

- (1) Section 67, as substituted by the amending Act, applies to an accident or incident that occurred before, on or after the commencement of that section.
- (2) Section 67B, as inserted by the amending Act, applies to an accident or incident or other event, occurrence, practice or matter that occurred before, on or after the commencement of that section.

25 Existing inquiries

- (1) Any inquiry being carried out by the ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board under section 67 immediately before the substitution of that section by the amending Act is to be completed by the Chief Investigator as an investigation under section 67 as substituted by the amending Act.
- (2) For any inquiry to which subclause (1) applies, the ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board is to provide all relevant information and documents to the Chief Investigator to permit the Chief Investigator to complete the investigation.

26 Authorised officers

- (1) A person who was an authorised officer immediately before section 111 was substituted by the amending Act is taken to have been:
 - (a) appointed as an authorised officer by the ITSRR under that section as substituted and subject to the limitations specified in the person's instrument of appointment, and
 - (b) authorised under clause 2 (1) (a) of Schedule 1, as amended by the amending Act.
- (2) This clause does not prevent the variation or revocation of any limitations specified in the person's instrument of appointment.

27 Exclusion of liability

Sections 113 and 114 continue to apply to the Chairperson and other members of the Independent Transport Safety and Reliability Advisory Board in relation to any act or omission occurring before those sections were amended by the amending Act.

28 Private sidings

Section 117 (2) (b), as amended by the amending Act, applies to a regulation made before, on or after the amendment of that paragraph by the amending Act.

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 an authorised officer appointed under section 46W.

Board of Inquiry means a Board of Inquiry constituted by the Minister under section 46BC.

[2] Section 3

Insert in alphabetical order:

bus 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 safe working systems for public passenger services carried on by means of buses,
- (d) any other work that is prescribed by the regulations as bus safety work.

Chief Investigator means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 45 of the *Transport Administration Act 1988*.

Department means the Ministry of Transport.

ferry safety work means any of the following classes of work:

- (a) 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,
- (b) work relating to the repair, maintenance or upgrading of ferries, ferry terminals, ferry wharves or ferry maintenance facilities,
- (c) work involving the development, management or monitoring of safe working systems for public passenger services carried on by means of ferries,

- (d) any other work that is prescribed by the regulations as ferry safety work.

previous offender, in relation to the maximum penalty for an offence, means a person who has, at any time before being sentenced for that offence, been convicted of an offence of any kind against this Act or the regulations.

regulator means:

- (a) in relation to a public passenger service carried on by means of a bus—the Director-General, and
- (b) in relation to a public passenger service carried on by means of a ferry—the Waterways Authority.

transport safety employee means:

- (a) an employee or a contractor of an accredited service operator, or of an operator of a public passenger service carried on by means of a ferry, who performs transport safety work, or
- (b) a person who, without remuneration or reward, voluntarily and without obligation performs transport safety work for an accredited service operator, or an operator of a public passenger service carried on by means of a ferry, or
- (c) an individual who is an accredited service operator, or an operator of a public passenger service carried on by means of a ferry, and who performs transport safety work.

transport safety work means bus safety work or ferry safety work, as the case requires.

Waterways Authority means the Waterways Authority constituted under Part 4 of the *Ports Corporatisation and Waterways Management Act 1995*.

[3] Section 3, definitions of “Director-General” and “transport safety inquiry”

Omit the definitions. Insert instead:

Director-General means the Director-General of the Department.

transport safety inquiry has the same meaning that it has in section 46BC.

[4] Section 3, definitions of “Independent Transport Safety and Reliability Advisory Board” and “ITSRR”

Omit the definitions.

[5] Section 3 (2)

Insert at the end of section 3:

- (2) Notes in the text of this Act do not form part of this Act.

[6] Section 6A Notes

Omit the section.

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

Omit section 9C (8).

[8] Section 9D Safety management systems for bus services

Omit “ITSRR” wherever occurring in section 9D (2) (c), (3) and (4).

Insert instead “Director-General”.

[9] Section 9D (6)

Omit the subsection.

[10] Section 46A Provision of information relating to safety to regulator

Omit “the ITSRR” wherever occurring. Insert instead “the regulator”.

[11] Sections 46AA, 46B and 46BA–46BG

Omit sections 46B and 46C. Insert instead:

46AA Provision of information to Chief Investigator

A regulator is to make available to the Chief Investigator all information that is provided to the regulator under section 46A that relates to a transport accident or incident that may affect the safe provision of a public passenger service carried on by means of a bus or ferry.

46B Persons must report notifiable occurrences

- (1) A person who carries on a public passenger service by means of a bus or ferry must report any occurrence, of a kind prescribed by the regulations as a notifiable occurrence, affecting the public passenger service.
Maximum penalty: 100 penalty units.
- (2) A report under subsection (1) is to be made to the regulator, or such other person or persons as may be prescribed, in the time and manner prescribed.

- (3) The regulations may prescribe different reporting requirements in respect of different occurrences.

46BA Investigations by the Chief Investigator

- (1) The Chief Investigator may investigate 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 Chief Investigator must provide to the Minister a written report on an investigation under this section.
- (3) The Minister may require the Chief Investigator to investigate 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 Chief Investigator may recover the reasonable costs of conducting an investigation under this section 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 services concerned.
- (5) An investigation under this section 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 (including a law of the Commonwealth) relating to the same matter, or
 - (b) the matter is or may be subject to any criminal or civil proceedings, or
 - (c) the matter is the subject of an inquest or inquiry under the *Coroners Act 1980*, or
 - (d) the matter is or may be the subject of a transport safety inquiry.

46BB Chief Investigator and transport safety investigator's functions

- (1) The Chief Investigator may, by notice in writing, require either or both of the following:
- (a) the attendance of any person at any place to answer questions in relation to an investigation under section 46BA,
 - (b) the production of any documents or other things required for the purposes of any such investigation.
- (2) The Chief Investigator may require a person to answer questions in relation to an investigation under section 46BA.

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- (3) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.
Maximum penalty: 100 penalty units.
Note. Section 46U provides protection in relation to self-incriminating evidence.
 - (4) A person attending at a place to answer questions is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
 - (5) The Chief Investigator may appoint an authorised person (within the meaning of section 45DA of the *Transport Administration Act 1988*) as a transport safety investigator for the purposes of conducting an investigation under section 46BA.
Note. Section 45DA of the *Transport Administration Act 1988* permits the Chief Investigator to delegate any of his or her functions.
 - (6) The Chief Investigator and each transport safety investigator have, in respect of any investigation under section 46BA, all the functions and immunities of an authorised officer and in the exercise of those functions, any reference in Division 2 of Part 4C to the regulator is taken to be a reference to the Chief Investigator.

46BC Transport safety inquiries

- (1) The Minister may constitute one or more persons as a Board of Inquiry to conduct an inquiry (a ***transport safety inquiry***) into any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of a public passenger service carried on by means of a bus or ferry.
- (2) An transport safety inquiry may be carried out and a report provided whether or not:
 - (a) an investigation is being, or has been, conducted under any other Act or law (including a law of the Commonwealth) relating to the same matter, or
 - (b) the matter is or may be subject to any criminal or civil proceedings, or
 - (c) the matter is the subject of an inquest or inquiry under the *Coroners Act 1980*.
- (3) The Minister may not terminate a transport safety inquiry.
- (4) A Board of Inquiry may, at a transport safety inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, the person constituting the Board:

- (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (5) In conducting a transport safety inquiry, a Board of Inquiry:
- (a) is not bound to act in a formal manner, and
 - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (6) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at a transport safety inquiry.
- (7) A Board of Inquiry is to determine its own procedure, except as provided by this Act or the regulations.

46BD Chief Investigator may request transport safety inquiry

- (1) The Chief Investigator may, if he or she considers it to be appropriate in the circumstances, give a written notice to the Minister requesting that any transport accident or incident or any other event, occurrence, practice or matter that may affect the safe provision of a public passenger service carried on by means of a bus or ferry be the subject of a transport safety inquiry.
- (2) If the Minister receives a written notice under subsection (1) from the Chief Investigator, the Minister is to:
- (a) constitute a Board of Inquiry to conduct a transport safety inquiry into the accident, incident, event, occurrence, practice or matter, or
 - (b) within one month after receiving the notice, provide the Chief Investigator with written reasons for not doing so and table the notice and the reasons in each House of Parliament.

46BE Assessors

- (1) A Board of Inquiry, when conducting, and making a determination in respect of, a transport safety inquiry is to sit with any assessors that may be appointed by the Minister for the purposes of the inquiry.
- (2) An assessor sitting with a Board of Inquiry has the power to advise the Board of Inquiry but not to adjudicate on any matter before the Board of Inquiry.

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- (3) A Board of Inquiry has the right to consult, either collectively or individually, and either in public or in private, with assessors sitting with it.

46BF Witnesses and evidence at transport safety inquiries

- (1) A Board of Inquiry may summon a person to appear at a transport safety inquiry conducted by the Board to give evidence and to produce any documents that are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a transport safety inquiry to do any one or more of the following:
- (a) be sworn or affirmed,
 - (b) produce a document,
 - (c) answer a question.
- (3) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (4) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

46BG Report on transport safety inquiry

A Board of Inquiry must, within the period required by the Minister, prepare a report as to the causes of the accident or incident or prepare a report on the other event, occurrence, practice or matter into which it was to inquire and provide a copy of the report to the Minister.

[12] Section 46D Tabling of reports

Omit “section 46B” from section 46D (1).

Insert instead “section 46BA (2) or 46BG”.

[13] Section 46D (1)

Omit “not later than 28 days”.

Insert instead “as soon as reasonably practicable, but not later than 7 days,”.

[14] Section 46E Confidential reporting of safety information by transport safety employees

Omit section 46E (3). Insert instead:

- (3) Nothing in this section prevents the Chief Investigator from disclosing information obtained under this section to the regulator.

[15] Section 46E (5)

Omit the subsection.

[16] Section 46F Definitions

Omit the section.

[17] Section 46G Use of powers by authorised officers

Omit “An authorised officer”.

Insert instead “Subject to section 46W, an authorised officer”.

[18] Section 46H Inspections by regulator of bus and ferry services

Omit “Director-General or ITSRR” wherever occurring in section 46H (1), (2) and (3).

Insert instead “regulator”.

[19] Section 46J Powers on entry

Omit “Director-General or ITSRR” from section 46J (k).

Insert instead “regulator”.

[20] Section 46Q Compensation

Omit “Director-General” from section 46Q (1). Insert instead “regulator”.

[21] Section 46R Authority to enter

Omit “Director-General or ITSRR” from section 46R (2).

Insert instead “regulator”.

[22] Section 46R (2) (f)

Omit the paragraph. Insert instead:

- (f) bears the signature of:
 - (i) the Director-General or a person approved by the Director-General—if the Director-General is the regulator, or
 - (ii) the Chief Executive of the Waterways Authority or a person approved by the Chief Executive—if the Waterways Authority is the regulator.

[23] Section 46S Assistance to be given to authorised officers

Omit “Director-General or ITSRR” from section 46S (2).

Insert instead “regulator”.

[24] Section 46W

Omit the section. Insert instead:

46W Appointment of authorised officers

- (1) A regulator may appoint a member of staff of the regulator (or if the regulator is the Director-General, a member of staff of the Department) or a person of a class prescribed by the regulations, to be an authorised officer for the purposes of this Act.
- (2) An authorised officer appointed by the Waterways Authority may exercise the functions of an authorised officer under this Act only in so far as those functions relate to any one or more of the following:
 - (a) a public passenger service carried on by means of a ferry,
 - (b) a person who carries on a public passenger service by means of a ferry,
 - (c) the employees of a person who carries on a public passenger service by means of a ferry.
- (3) An authorised officer appointed by the Director-General may exercise the functions of an authorised officer under this Act except in so far as those functions relate to any of the matters set out in subsection (2).
- (4) The authority of an authorised officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (5) In addition to other persons who may be appointed as authorised officers under this Act, a regulator may, for the purposes of a

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

[25] Section 53

Insert before section 53A:

53 Exchange of information

- (1) The regulator may enter into an arrangement (an *information sharing arrangement*) with a relevant agency for the purposes of sharing or exchanging information held by the regulator and the agency.
- (2) The information to which an information sharing arrangement may relate is limited to the following:
 - (a) information concerning possible breaches of this Act or the regulations,
 - (b) information concerning the safe provision of a public passenger service carried on by means of a bus or ferry,
 - (c) any other information that may be prescribed by the regulations.
- (3) Under an information sharing arrangement, the regulator and the relevant agency are, despite any other Act or law of the State, authorised:
 - (a) to request and receive information held by the other party to the arrangement, and
 - (b) to disclose information to the other party,
but only to the extent that the information is reasonably necessary to assist in the exercise of functions of the regulator under this Act (or any other Act administered by the Minister for Transport, whether solely or jointly with another Minister) or the functions of the relevant agency concerned.
- (4) This section does not limit the operation of any Act under which the regulator or a relevant agency is authorised or required to disclose information to another person or body.
- (5) This section does not permit the disclosure of information in contravention of section 46E.

(6) In this section:

relevant agency means:

- (a) the WorkCover Authority constituted by the *Workplace Injury Management and Workers Compensation Act 1998*,
or
- (b) the Chief Investigator, or
- (c) any other person or body prescribed by the regulations.

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

Omit “Director-General” wherever occurring in section 53C (2) (a) and (c), (3) and (5).

Insert instead “Waterways Authority”.

[27] Section 53C (7)

Omit the subsection.

[28] Section 53D Ferry operators to have approved safety management systems

Omit section 53D (5).

[29] Section 53E

Insert after section 53D:

53E Recommendations arising from investigations

- (1) The Minister, in consultation with the Waterways Authority, may, by order in writing, direct a person who carries on a public passenger service by means of a ferry to comply with a recommendation contained in a report provided to the Minister under section 46BA (2) or 46BG.
- (2) A person who, without reasonable excuse, fails to comply with an order of the Minister under this section is guilty of an offence.
Maximum penalty: 1,000 penalty units.

[30] Section 55 Offenders to state name and address

Omit “member of the Police Force” wherever occurring from section 55 (1), (2) (a) and (3).

Insert instead “police officer”.

[31] Section 57 False or misleading information

Omit the section.

[32] Section 66 Exclusion of liability of the State

Omit “ITSRR, the Chairperson or other member of the Independent Transport Safety and Reliability Advisory Board”.

Insert instead “Chief Investigator, a member of a Board of Inquiry, an assessor appointed in relation to a transport safety inquiry”.

[33] Section 66

Omit “ITSRR” where secondly occurring. Insert instead “Chief Investigator”.

[34] Schedule 3 Savings and transitional provisions

Insert at the end of clause 2 (1):

Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005 (but only to the extent that it amends this Act)

[35] Schedule 3, Part 8

Insert after Part 7:

Part 8 Provisions consequent on enactment of Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005

40 Definitions

In this Part:

Independent Transport Safety and Reliability Advisory Board has the same meaning that it has in the *Transport Administration Act 1988*.

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

the amending Act means the *Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005*.

41 Guidelines and directions by ITSRR

- (1) Any guidelines issued by the ITSRR under section 9D, and in force immediately before that section was amended by the

amending Act, are, after that amendment, taken to have been issued in accordance with that section by the Director-General.

- (2) Any direction given by the ITSRR to an accredited service operator under section 9D that has not been complied with before that section was amended by the amending Act is taken to have been given in accordance with that section by the Director-General.

42 Investigation of bus or ferry accidents or incidents

Sections 46BA and 46BC, as inserted by the amending Act, apply to an accident or incident that occurred before, on or after the commencement of those sections.

43 Existing inquiries

- (1) Any inquiry being carried out by the ITSRR or the Chairperson of the Independent Transport Safety and Reliability Advisory Board (*the Chairperson*) under section 46B immediately before the substitution of that section by the amending Act is to be completed by the Chief Investigator as an investigation under section 46BA as inserted by the amending Act.
- (2) For any inquiry to which subclause (1) applies, the ITSRR or the Chairperson is to provide all relevant information and documents to the Chief Investigator to permit the Chief Investigator to complete the investigation.

44 Provision of information to regulator

Section 46E (3), as substituted by the amending Act, applies to information provided to the Chief Investigator before, on or after the substitution of that subsection.

45 Authorised officers

- (1) A person who was an authorised officer immediately before section 46W was substituted by the amending Act is taken to have been:
- (a) appointed as an authorised officer by the regulator under that section as substituted and subject to the limitations specified in the person's instrument of appointment, and
 - (b) authorised under clause 3 (1) (a) of Schedule 5, as amended by the amending Act.
- (2) This clause does not prevent the variation or revocation of any limitations specified in the person's instrument of appointment.

46 Authority to enter

An authority issued by the ITSRR under section 46R and in force immediately before that section was amended by the amending Act is taken to have been issued on the same terms by the regulator under that section as amended.

47 Assistance to authorised officers

A notice in writing served by the ITSRR on the occupier of premises under section 46S, and in force immediately before that section was amended by the amending Act, is taken to have been served on the same terms by the regulator under that section as amended.

48 Guidelines

Guidelines issued by the Director-General under section 53C and in force immediately before that section was amended by the amending Act are, after that amendment, taken, for the purposes of that section, to have been issued in accordance with that section by the Waterways Authority.

49 Exclusion of liability

Section 66 continues to apply to the ITSRR, the Chairperson and other members of the Independent Transport Safety and Reliability Advisory Board in relation to any act or omission occurring before that section was amended by the amending Act.

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

Omit clause 1.

[37] Schedule 5, clause 3 (1) (a)

Omit “appointment of authorised officers and the authorisation of persons”.

Insert instead “authorisation of persons (including authorised officers)”.

[38] Schedule 6 Transport safety inquiries

Omit the Schedule.

Schedule 4 Amendment of other Acts and regulation

(Section 3)

4.1 Freedom of Information Act 1989 No 5

[1] Schedule 1 Exempt documents

Omit clause 20 (1) (f) and (g). Insert instead:

- (f) matter relating to an investigation or inquiry into a railway accident or incident under section 66, 67 or 67B of the *Rail Safety Act 2002*, or
- (g) matter relating to an investigation or inquiry into a transport accident or incident under section 46BA or 46BC of the *Passenger Transport Act 1990*.

[2] Schedule 1, clause 20 (2) and (3)

Omit the subclauses. Insert instead:

- (2) Despite subclause (1) (f), a document containing matter referred to in that paragraph ceases to be an exempt document:
 - (a) in the case of a document containing matter relating to an inquiry under section 66 into an accident or incident that is not also the subject of an investigation under section 67 or an inquiry under section 67B, if the inquiry under section 66 is included in a list forwarded to the Minister under that section, or
 - (b) in the case of a document containing matter relating to an investigation under section 67 or an inquiry under section 67B, when the report into the investigation or inquiry is tabled before both Houses of Parliament.
- (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 investigation or inquiry is tabled before both Houses of Parliament.

4.2 Marine Safety Act 1998 No 121

[1] Section 94 Definitions

Insert in alphabetical order in section 94 (1):

Chief Investigator means the Chief Investigator of the Office of Transport Safety Investigations appointed under section 45 of the *Transport Administration Act 1988*.

[2] Section 94 (1), definitions of “Independent Transport Safety and Reliability Advisory Board” and “Independent Transport Safety and Reliability Regulator”

Omit the definitions.

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

Omit “the Independent Transport Safety and Reliability Regulator,” from section 96 (1).

[4] Section 96 (1)

Insert “or the Chief Investigator or a person appointed under section 65 (1) of the *Transport Administration Act 1988*” after “local authority”.

[5] Section 105 Appointment of investigator

Omit “Chairperson of the Independent Transport Safety and Reliability Advisory Board” from section 105 (1A).

Insert instead “Chief Investigator”.

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

Omit “the Director-General of the Ministry of Transport, the Independent Transport Safety and Reliability Regulator or the Independent Transport Safety and Reliability Advisory Board” from section 111 (2) (h).

Insert instead “the Waterways Authority or the Chief Investigator”.

[7] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Act 2005 (but only to the extent that it amends this Act)

4.3 Public Finance and Audit Act 1983 No 152

Schedule 2 Statutory bodies

Insert in alphabetical order:

Chief Investigator of the Office of Transport Safety Investigations

4.4 Rail Safety (General) Regulation 2003

Clause 50 Health and fitness of railway employees

Omit the clause.

[Second reading speech made in—
Legislative Assembly on 25 May 2005
Legislative Council on 22 June 2005]

BY AUTHORITY