
consultation draft



New South Wales

Rail Safety Bill 2007

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New South Wales

Rail Safety Bill 2007

No. , 2007

A Bill for

An Act to make provision for rail safety; to repeal the *Rail Safety Act 2002*; and for other purposes.

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Clause 1 Rail Safety Bill 2007

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Rail Safety Act 2007*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects

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

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

4 Interpretation

(1) In this Act:

accreditation means accreditation under Part 3.

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

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

approved means approved by the ITSRR.

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

Australian rail safety law means a rail safety law or a corresponding rail safety law.

Australian Rail Safety Regulator means the ITSRR or a corresponding Rail Safety Regulator.

Board of Inquiry means a Board of Inquiry constituted by the Minister under section 65.

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Rail Safety Bill 2007

Clause 4

Preliminary

Part 1

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

commercial benefits order means an order under section 139.

compliance code means a compliance code approved by the Minister under Part 9.

corresponding law means:

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

corresponding rail safety law means a rail safety law as defined in a corresponding law.

corresponding Rail Safety Regulator means a person or body exercising the functions of a Rail Safety Regulator under a corresponding law.

embargo notice means a notice under section 94.

employee means a person employed under a contract of employment or contract of training.

employer means a person who employs one or more other persons under contracts of employment or contracts of training.

exercise includes perform a duty.

function includes power, authority or duty.

guidelines means guidelines approved by the Minister under Part 9.

improvement notice means a notice under section 109.

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

jurisdiction means a State or Territory.

motor vehicle has the same meaning as in the *Road Transport (Safety and Traffic Management) Act 1999*.

notifiable occurrence means an accident or incident associated with railway operations:

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

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Clause 4 Rail Safety Bill 2007

Part 1 Preliminary

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

occupational health and safety legislation means the following Acts and any regulations made under those Acts:

- (a) the *Occupational Health and Safety Act 2000*,
- (b) the *Coal Mine Health and Safety Act 2002*.

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 any other offence of any kind against this Act.

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

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

prohibition notice means a notice under section 114.

public place means a place (whether or not covered by water), or a part of premises, that is open to the public, or is used by the public whether or not on payment of money or other consideration, whether or not the place or part is ordinarily so open or used and whether or not the public to whom it is open consists only of a limited class of persons.

rail infrastructure means the facilities that are necessary to enable a railway to operate safely (other than rolling stock and any facility, or facility of a class, that is prescribed by the regulations not to be rail infrastructure) and includes, but is not limited to, the following:

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

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Rail Safety Bill 2007

Clause 4

Preliminary

Part 1

rail infrastructure manager means the person who has effective management and control of the rail infrastructure of a railway, whether or not the person:

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

rail safety inquiry—see section 65.

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

rail safety officer means a person appointed by the ITSRR as a rail safety officer under Part 8.

rail safety work—see section 6.

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

rail transport operator means:

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

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

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

Note. See section 5 for railways to which this Act does not apply.

railway operations means any of the following:

- (a) the construction of a railway, railway tracks and associated track structures or rolling stock,

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Clause 4 Rail Safety Bill 2007

Part 1 Preliminary

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

railway premises means:

- (a) land (including any premises on land) on or in which is situated rail infrastructure or any part of rail infrastructure, or
- (b) freight centres or depots used in connection with the carrying out of railway operations, or
- (c) workshops or maintenance depots used in connection with the carrying out of railway operations, or
- (d) premises, including an office, building or housing used in connection with the carrying out of railway operations or rail safety work, or
- (e) rolling stock or other vehicles associated with railway operations.

railway tracks and associated track structures means:

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

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

rolling stock operator means a person who has effective management and control of the operation or movement of rolling stock on rail infrastructure for a particular railway but does not include a person merely because the person drives the rolling stock or controls the network or the network signals.

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Rail Safety Bill 2007

Clause 5

Preliminary

Part 1

running line means all railway tracks (other than sidings) that are used for the through movement of trains.

safety means the safety of people, including rail safety workers, passengers, other users of railways and the general public.

safety management plan means a document describing a safety management system.

safety management system—see section 16.

security management plan—see section 21.

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

supervisory intervention order means an order under section 140.

train means:

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

train safety recording—see section 71.

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

5 Railways to which this Act does not apply

This Act does not apply to the following:

- (a) a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations,
- (b) a slipway,
- (c) a railway used only to guide a crane,
- (d) an aerial cable operated system,
- (e) a railway that is operated solely within an amusement or theme park, is required to be registered as an amusement device under occupational health and safety legislation and does not operate on or across a road within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*,
- (f) a railway with a railway track gauge less than 600mm,
- (g) a railway, or class of railway, that the regulations prescribe to be a railway to which this Act does not apply.

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Clause 6 Rail Safety Bill 2007

Part 1 Preliminary

6 Rail safety work

- (1) Any of the following classes of work is rail safety work for the purposes of this Act:
- (a) driving or despatching rolling stock or any other activity which is capable of controlling or affecting the movement of rolling stock,
 - (b) signalling (and signalling operations), receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock,
 - (c) coupling or uncoupling rolling stock,
 - (d) maintaining, repairing, modifying, monitoring, inspecting or testing:
 - (i) rolling stock, including checking that the rolling stock is working properly before being used, or
 - (ii) rail infrastructure,
 - (e) installation of components in relation to rolling stock,
 - (f) work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of the rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used,
 - (g) installation or maintenance of:
 - (i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure, or
 - (ii) the means of supplying electricity directly to rail infrastructure or to any rolling stock using rail infrastructure or to a telecommunications system,
 - (h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock,
 - (i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock,
 - (j) work involving the development, management or monitoring of safe working systems for railways,
 - (k) work involving the management or monitoring of passenger safety on, in or at any railway,
 - (l) any other work that is prescribed by the regulations to be rail safety work.

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Rail Safety Bill 2007

Clause 6

Preliminary

Part 1

- (2) The regulations may exclude a class of work, or work included in a class of work, referred to in subsection (1) from being rail safety work for the purposes of this Act.

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Clause 7 Rail Safety Bill 2007

Part 2 Rail safety duties and requirements

Part 2 Rail safety duties and requirements

Division 1 General safety duties

7 Safety duties of rail transport operators

- (1) A rail transport operator must ensure the safety of the operator's railway operations.
Maximum penalty:
- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
 - (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
 - (d) in the case of an individual (not being a previous offender)—500 penalty units.
- (2) Without limiting subsection (1), a rail transport operator contravenes that subsection if the operator fails to do any of the following:
- (a) develop and implement safe systems for the carrying out of the operator's railway operations,
 - (b) ensure that each rail safety worker who is to perform rail safety work in relation to the operator's railway operations is of sufficient good health and fitness to carry out that work safely,
 - (c) ensure that rail safety workers do not carry out rail safety work in relation to the operator's railway operations, and are not on duty, while more than the prescribed concentration of alcohol is present in their blood or breath or while impaired by a drug,
 - (d) ensure that rail safety workers who perform rail safety work in relation to the operator's railway operations comply with the operator's fatigue management program in force under section 25,
 - (e) provide adequate facilities for the safety of persons at any railway premises under the control or management of the operator,
 - (f) provide:
 - (i) such information and instruction to, and training and supervision of, rail safety workers as is necessary to enable those workers to perform rail safety work in relation to the operator's railway operations in a way that is safe, and
 - (ii) such information to rail transport operators and other persons on railway premises under the control or

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Rail Safety Bill 2007

Clause 8

Rail safety duties and requirements

Part 2

management of the operator as is necessary to enable those persons to ensure their safety.

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

8 Duties of rail transport operators extend to contractors and other persons

- (1) The duties of a rail transport operator under section 7 extend to a person who, not being an employee employed to carry out railway operations, undertakes railway operations on or in relation to rail infrastructure or rolling stock of the operator, and any employees of the person, in relation to matters over which the operator has control or would have control if not for any agreement purporting to limit or remove that control.
- (2) A person to whom the duties under section 7 extend by reason of subsection (1) must comply with those duties in respect of railway operations referred to in that subsection undertaken by the person.
- Maximum penalty:

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Clause 9 Rail Safety Bill 2007

Part 2 Rail safety duties and requirements

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

9 Duties of designers, manufacturers, suppliers etc

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

Maximum penalty:

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Rail Safety Bill 2007

Clause 10

Rail safety duties and requirements

Part 2

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

10 Duties of rail safety workers

- (1) A rail safety worker, when carrying out rail safety work must:
 - (a) take reasonable care for his or her own safety, and
 - (b) take reasonable care for the safety of persons who may be affected by the rail safety worker's acts or omissions, and
 - (c) co-operate with the rail transport operator with respect to any action taken by the rail transport operator to comply with a requirement imposed by or under this Act or the regulations.
- (2) A rail safety worker, when carrying out rail safety work, must not intentionally or recklessly interfere with or misuse anything provided to the worker by the rail transport operator:
 - (a) in the interests of safety, or
 - (b) under this Act or the regulations.
- (3) A rail safety worker, when carrying out rail safety work, must not wilfully or recklessly place the safety of another person on or in the immediate vicinity of rail infrastructure work at risk.
- (4) For the purposes of subsection (1) (a) or (b), in determining whether a rail safety worker failed to take reasonable care, regard must be had to what the rail safety worker knew about the relevant circumstances.

Maximum penalty:

 - (a) in the case of a previous offender—45 penalty units, or
 - (b) in any other case—30 penalty units.

Note. It is a defence to an offence under this Division if it is not reasonably practicable to comply with the provision concerned or the offence was due to circumstances over which a person had no control and against the happening of which it was impracticable for the person to make provision (see section 132).

Division 2 Application of occupational health and safety legislation

Note. The *Occupational Health and Safety Act 2000* is the main Act that deals with the health, safety and welfare of people at work, including people at work in railway operations. This

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Clause 11	Rail Safety Bill 2007
Part 2	Rail safety duties and requirements

Division explains how this Act fits in with the occupational health and safety legislation. This Act creates additional protections, rights and obligations necessary because of the special risks associated with railway operations. This Act should be read as if it were part of the occupational health and safety legislation. This Division makes it clear that this Act provides for an increase in the standard of protection of people at work in railway operations, in addition to the protection that the occupational health and safety legislation provides.

11 Act adds to protection provided by the OH&S legislation

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

Note. For example, Part 2 of the *Occupational Health and Safety Act 2000* imposes duties relating to health, safety and welfare in railway operations. So does Division 1 of this Part. The provisions of this Act apply in addition to those of the occupational health and safety legislation and do not remove any protections, rights or obligations under that legislation.

12 OH&S legislation prevails

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

Note. For example, if a provision of this Act deals with a certain matter and a provision of the occupational health and safety legislation deals with the same matter and it is impossible to comply with both provisions, then a person must comply with the occupational health and safety legislation and not with this Act. If provisions of both the occupational health and safety legislation and this Act deal with the same matter but it is possible to comply with both provisions, then a person must comply with both that legislation and this Act.

13 Compliance with this Act is no defence to prosecution under OH&S legislation

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

Note. For example, a person may be guilty of an offence under the occupational health and safety legislation in respect of any act or omission that is expressly required or permitted to be done or omitted by or under this Act or the regulations made under this Act.

14 Admissibility of evidence under this Act and OH&S legislation

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

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15 No double jeopardy

Where an act or omission constitutes an offence:

- (a) under this Act or the regulations made under this Act, and
 - (b) under the occupational health and safety legislation,
- the offender is not liable to be punished twice in respect of the offence.

Division 3 Safety management

16 Safety management system

- (1) A rail transport operator must have a safety management system that complies with this section for railway operations for which the operator is required to be accredited.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

- (2) The safety management system must:

- (a) be in a form approved by the ITSRR, and
- (b) comply with the relevant requirements, and the risk management principles, methods and procedures, prescribed by the regulations, and
- (c) identify and assess any risks to safety that have arisen or may arise from the carrying out of railway operations, for which the rail transport operator is required to be accredited, on or in relation to the rail transport operator's rail infrastructure or rolling stock, and
- (d) specify the controls (including audits, expertise, resources and staff) that are to be used by the rail transport operator to manage risks to safety and to monitor safety in relation to those railway operations, and
- (e) include procedures for monitoring, reviewing and revising the adequacy of those controls, and
- (f) include the following:

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- (i) interface co-ordination plans (if any) in accordance with section 20,
 - (ii) a security management plan in accordance with section 21,
 - (iii) an emergency management plan in accordance with section 22,
 - (iv) a health and fitness management program in accordance with section 23,
 - (v) a drug and alcohol management program in accordance with section 24,
 - (vi) a fatigue management program in accordance with section 25.
- (3) A rail transport operator, before establishing a safety management system for railway operations for which the operator is required to be accredited, must consult, so far as is reasonably practicable, with:
- (a) persons likely to be affected by the safety management system or its review or variation, being persons who carry out those railway operations or work on or at the rail transport operator's railway premises or with the rail transport operator's rolling stock, and
 - (b) occupational health and safety representatives or any other person who may be consulted with under section 16 of the *Occupational Health and Safety Act 2000*, and
 - (c) any other rail transport operator with whom the first-mentioned operator has an interface co-ordination plan or agreement under section 20 relating to risks to safety of railway operations carried out by or on behalf of either of them, and
 - (d) the public, as appropriate.
- (4) If the safety management system of a rail transport operator and the safety management system of another rail transport operator who has an interface co-ordination plan under section 20 with the first mentioned rail transport operator, when taken as one system, comply with this Act, both safety management systems are taken to comply with this Act.
- (5) A safety management system must be evidenced in writing and:
- (a) must identify each person responsible for preparing any part of the safety management system, and
 - (b) must identify the person, or class of persons, responsible for implementing the system.
- (6) To avoid doubt, in this Part a reference to a safety management system includes a reference to a plan or program referred to in subsection (1) (f).

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17 Compliance with safety management system

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

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

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

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

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

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

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

18 Review of safety management system

A rail transport operator must review the rail transport operator's safety management system in accordance with the regulations:

- (a) at such times or within such periods as are prescribed by the regulations, or

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- (b) if no times or periods are so prescribed, at least once each year or at such other times or within such other periods as are agreed between the rail transport operator and the ITSRR.

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.

19 Safety performance reports

- (1) A rail transport operator must give the ITSRR a safety performance report in respect of each reporting period that:
 - (a) is in a form approved by the ITSRR, and
 - (b) complies with the requirements (if any) prescribed by the regulations for the purposes of this section, and
 - (c) contains the following:
 - (i) a description and assessment of the safety performance of the rail transport operator's railway operations,
 - (ii) comments on any deficiencies in, and any irregularities in, the railway operations that may be relevant to the safety of the railway,
 - (iii) a description of any safety initiatives in relation to the railway operations undertaken during the reporting period or proposed to be undertaken in the next reporting period,
 - (iv) any other information or performance indicators prescribed by the regulations for the purpose of this section.
- (2) A rail transport operator must submit a report in accordance with this section within 6 months after the end of each reporting period.
- (3) In this section, *reporting period* means a calendar year, or such other period as is agreed from time to time by the ITSRR and the rail transport operator.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or

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- (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.

20 Interface co-ordination

- (1) A rail transport operator:
 - (a) must identify, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out by or on behalf of the operator and that may be caused, wholly or in part, by railway operations carried out by or on behalf of any other rail transport operator, and
 - (b) must, in accordance with the regulations, develop and, where necessary implement, one or more interface co-ordination plans to minimise or eliminate those risks.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
 - (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
 - (d) in the case of an individual (not being a previous offender)—500 penalty units.
- (2) A rail transport operator must prepare and keep a register of current interface co-ordination plans and agreements.

Maximum penalty: 25 penalty units.

21 Security management plan

- (1) A rail transport operator must have a security management plan for railway operations carried out by or on behalf of the operator for which the operator is required to be accredited that:
 - (a) incorporates measures to protect people from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm, and
 - (b) complies with this Act and the regulations.

Note. It is an offence to fail to comply with this subsection (see section 16 which requires this section to be complied with as part of the safety management system).

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- (2) A rail transport operator must ensure that the appropriate response measures of the security management plan are implemented without delay if a security incident occurs.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

22 Emergency management plan

- (1) A rail transport operator must have an emergency management plan for railway operations carried out by or on behalf of the operator for which the operator is required to be accredited that:

- (a) addresses and includes the matters prescribed by the regulations, and
- (b) is prepared in conjunction with emergency services, and in accordance with the regulations, and
- (c) is tested, and kept and maintained, in accordance with the regulations.

Note. It is an offence to fail to comply with this subsection (see section 16 which requires this section to be complied with as part of the safety management system).

- (2) The rail transport operator must provide a copy of the emergency management plan to the emergency services and any other person prescribed by the regulations.

Maximum penalty: 25 penalty units.

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

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both,

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- (d) in the case of an individual (not being a previous offender)—500 penalty units.
- (4) In this section, *emergency service* includes any of the following:
 - (a) the Ambulance Service of New South Wales,
 - (b) New South Wales Fire Brigade,
 - (c) the NSW Rural Fire Service,
 - (d) the NSW Police Force,
 - (e) the State Emergency Service,
 - (f) the New South Wales Volunteer Rescue Association Incorporated,
 - (g) an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

23 Health and fitness management program

A rail transport operator must have a health and fitness program for rail safety workers who carry out rail safety work in connection with railway operations for which the operator is required to be accredited that complies with the requirements prescribed by the regulations relating to health and fitness programs.

Note. It is an offence to fail to comply with this section (see section 16 which requires this section to be complied with as part of the safety management system).

24 Drug and alcohol management program

- (1) A rail transport operator must prepare a drug and alcohol management program for rail safety workers who carry out, or are about to carry out, rail safety work in connection with railway operations for which the operator is required to be accredited.
- (2) The drug and alcohol program is to include any matters required to be included by the regulations.
- (3) Without limiting subsections (1) and (2), the regulations are to include requirements with respect to the following:
 - (a) protocols for fair procedures,
 - (b) education and assistance of rail safety workers.
- (4) The ITSRR may at any time arrange with a rail transport operator for the random testing of any person on duty for the purpose of carrying out, or who is about to carry out, rail safety work for the presence of alcohol or any other drug to ensure that the operator is complying with this section.

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- (5) Schedule 1 has effect.
- (6) For the purposes of this section, a rail safety worker is to be regarded as being about to carry out rail safety work if the worker:
 - (a) has left home or a temporary residence for work (being rail safety work), and
 - (b) has not commenced work after having so left home or the temporary residence.

Note. It is an offence to fail to comply with this section (see section 16 which requires this section to be complied with as part of the safety management system).

25 Fatigue management

- (1) A rail transport operator must prepare a program for the management of fatigue for rail safety workers who carry out rail safety work in connection with railway operations for which the operator is required to be accredited that complies with the requirements prescribed by the regulations relating to fatigue management.

Note. It is an offence to fail to comply with this subsection (see section 16 which requires this section to be complied with as part of the safety management system).

- (2) A rail transport operator must provide conditions of work for rail safety workers who carry out rail safety work in connection with railway operations for which the operator is required to be accredited in accordance with Schedule 2.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both,
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

Note. The regulations may exempt (either unconditionally or subject to conditions) a rail transport operator from an obligation under subsection (2), see section 172 (3).

26 Competence of rail safety workers

- (1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in connection with railway operations for which the operator is required to be accredited has the competence to carry out that work.

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Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
 - (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
 - (d) in the case of an individual (not being a previous offender)—500 penalty units.
- (2) For the purposes of subsection (1), the competence of a rail safety worker to carry out rail safety must be assessed:
- (a) by reference to:
 - (i) any qualification and units recognised under the Australian Quality Training Framework within the meaning of the *Skilling Australia's Workforce Act 2005* of the Commonwealth applicable to the work to be carried out, or
 - (ii) if subparagraph (i) does not apply, the prescribed provisions applicable to the rail safety work to be carried out, and
 - (b) by reference to the knowledge and skills of the rail safety worker that would enable the worker to carry out the rail safety work safely.
- (3) For the purposes of subsection (2), a certificate purporting to have been issued under the Australian Quality Training Framework to a rail safety worker certifying that the worker has certain qualifications or units of competence is evidence that the worker has those qualifications or units of competence.
- (4) Nothing in this section prevents a rail transport operator from requiring a rail safety worker to undertake further training before carrying out rail safety work.
- (5) A rail transport operator must maintain records in accordance with the regulations of the competence of rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock.

Maximum penalty (subsection (5)): 25 penalty units.

27 Identification for rail safety workers

- (1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's railway operations has a form of identification that is sufficient to

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enable the type of competence and training of the rail safety worker for that rail safety work to be checked by a rail safety officer.

- (2) A rail safety worker who is carrying out railway safety work must, when requested by a rail safety officer to do so, produce the identification provided in accordance with subsection (1) to the rail safety officer.

Maximum penalty: 25 penalty units.

28 Other persons to comply with safety management system

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

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

29 ITSRR may direct amendment of a safety management system

- (1) The ITSRR may direct a rail transport operator, by notice in writing, to amend the operator's safety management system within a specified period, being not less than 28 days after the giving of the direction.
- (2) A direction under this section must state the reasons why the ITSRR considers it is necessary for the rail transport operator to amend the safety management system.
- (3) The rail transport operator must not, without reasonable excuse, fail to comply with a direction under this section.

Maximum penalty: 750 penalty units.

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Division 1 Requirement for accreditation

30 Purpose of accreditation

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

31 Accreditation required for railway operations

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

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

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

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

32 Purpose for which accreditation may be granted

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

33 Accreditation offences

- (1) An accredited person must not:
- (a) fail to comply with a condition or restriction of the person's accreditation, or
 - (b) cause or permit another person to fail to comply with a condition or restriction of the accredited person's accreditation.
- (2) An accredited person must not carry out or cause or permit the carrying out of a railway operation that is not authorised by an accreditation or in a manner that is not authorised by an accreditation.
- Maximum penalty:
- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or

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- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

Division 2 Applications for accreditation

34 Application for accreditation

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

35 What applicant for accreditation must demonstrate

The ITSRR must not grant accreditation to an applicant unless satisfied, having regard to the guidelines (if any) applicable to this section, that the applicant has demonstrated the following:

- (a) that the applicant is or is to be a rail infrastructure manager or rolling stock operator in relation to the railway operations for which accreditation is sought,
- (b) that the applicant has the competence and capacity to manage risks to safety associated with the railway operations for which accreditation is sought,

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- (c) that the applicant has the competence and capacity to implement the proposed safety management system,
- (d) that the applicant has met the consultation requirements of this Act in relation to the applicant's safety management system,
- (e) that the applicant has the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the railway operations,
- (f) that the applicant has complied with the requirements prescribed by the regulations (if any) for the purposes of this section.

36 ITSRR may direct applicants to co-ordinate and co-operate in applications

- (1) If the ITSRR:
 - (a) receives applications from 2 or more rail transport operators for accreditation, and
 - (b) believes that co-ordinated preparation of the applications is necessary to ensure that the railway operations of the applicants are carried out safely,

the ITSRR may give a direction in writing to the rail transport operators to co-ordinate their applications.

- (2) A direction under this section may require each rail transport operator that is the subject of the direction to provide to each other rail transport operator that is the subject of the direction information concerning any circumstances in relation to the carrying out of railway operations by the first-mentioned rail transport operator that could constitute a risk to safety in relation to the carrying out of rail operations by another rail transport operator that is the subject of the direction.
- (3) A rail transport operator that is given a direction under subsection (1) must comply with the direction.
- (4) A rail transport operator that has co-ordinated the preparation of an application in accordance with this section must include in the application reference to information given by the rail transport operator to each other rail transport operator, and information given to the rail transport operator by each other rail transport operator, in accordance with a direction under this section.

Maximum penalty: 100 penalty units.

37 Co-ordination between ITSRR and other Rail Safety Regulators

- (1) This section applies if the ITSRR receives an application for accreditation, or for variation of accreditation or the conditions or restrictions of accreditation, that indicates that the applicant is

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accredited, or is seeking accreditation, under a corresponding law of one or more other jurisdictions (whether or not contiguous with this jurisdiction).

- (2) The ITSRR must, as soon as possible and before deciding whether or not to grant the application, consult with the relevant corresponding Rail Safety Regulator, or Regulators, in relation to the application with a view to the outcome of the application being consistent with the outcome of applications made in the other jurisdiction or jurisdictions.
- (3) The ITSRR, in complying with subsection (2), must take into account the guidelines (if any) applicable to this section.
- (4) If the ITSRR does not, in relation to an application, act consistently with the provisions of the guidelines, the ITSRR must give the applicant reasons for not so acting.
- (5) The ITSRR may grant accreditation to a person who is accredited under a corresponding law of one or more other jurisdictions, without requiring the person to comply with any or all of the requirements of this Division, if the ITSRR is satisfied that:
 - (a) the requirements for that accreditation are of a satisfactory standard in relation to the safe carrying out of railway operations, and
 - (b) the carrying out of railway operations is likely to achieve a level of safety that, in the opinion of the ITSRR, is appropriate for the railway operations concerned.

38 Determination of application

- (1) The ITSRR must, within the relevant period after an application for accreditation is made:
 - (a) if the ITSRR is satisfied as to the matters referred to in section 35 and, if applicable, section 36, grant accreditation to the applicant with or without any conditions or restrictions, or
 - (b) if the ITSRR is not so satisfied, refuse the application.
- (2) A notice granting accreditation must be in writing in the approved form and must specify:
 - (a) the prescribed details of the applicant, and
 - (b) the scope and nature of the railway operations in respect of which the accreditation is granted, and
 - (c) any conditions and restrictions imposed by the ITSRR on the grant of accreditation, and
 - (d) any other information prescribed by the regulations.

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- (3) A notice refusing an application for accreditation, or imposing a condition or restriction on an accreditation, must include:
 - (a) the reasons for the decision to refuse to grant the application or impose the condition or restriction, and
 - (b) information about the right of review under section 154.
- (4) A notice under subsection (5) (c) extending a period must include information about the right of review under section 154.
- (5) In this section, *relevant period*, in relation to an application, means:
 - (a) 6 months after the application was received by the ITSRR, or
 - (b) if the ITSRR requested further information, 6 months, or such other period, as is agreed between the ITSRR and the applicant, after the ITSRR receives the last information so requested, or
 - (c) if the ITSRR, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,whichever is the longer.

39 Prescribed conditions and restrictions

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

40 Accreditation cannot be transferred or assigned

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

41 Sale or transfer of railway operations by accredited person

- (1) If an accredited person proposes to sell or otherwise transfer any railway operations for which the person is accredited, the ITSRR may, on an application for accreditation under this Part being made by the

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proposed transferee, waive compliance by the proposed transferee with any one or more of the requirements of this Division.

- (2) The ITSRR is not to waive compliance with any such requirements unless the proposed transferee demonstrates, to the satisfaction of the ITSRR, that the proposed transferee has the competence and capacity to comply with the relevant requirements of this Division that apply to applicants for accreditation of the appropriate kind.
- (3) A waiver of compliance with requirements may be given subject to such conditions and restrictions (if any) as appear to the ITSRR to be necessary.

Division 3 Accreditation fees and inspection of documents

42 Annual accreditation fees

An accredited person must pay the annual accreditation fee prescribed by the regulations.

43 Differential accreditation fees

The regulations may prescribe different fees for different classes of accredited persons or kinds of accreditation.

44 Payment of annual fees

The ITSRR may accept payment of an annual accreditation fee due and payable by a person in accordance with an agreement made with the person (for example, relating to the payment of fees by instalments).

45 Late payment fees

- (1) The regulations may impose additional fees for late payment of accreditation fees after the due date for payment.
- (2) A fee for late payment of accreditation fees may be, but is not required to be, calculated on a daily basis.

46 Waiver of fees

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

47 Keeping and making available documents for public inspection

A rail transport operator must ensure that:

- (a) if the operator is an accredited person or has an exemption under this Part, the current notice of accreditation or exemption under this Part, and

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- (b) if the operator is a rail infrastructure manager of a private siding registered with the ITSRR, the notice of registration, and
 - (c) any other document prescribed by the regulations for the purposes of this section,
- are available for inspection:
- (d) if the operator is a body corporate, at the operator's principal office in this State during ordinary business hours, or
 - (e) if the operator is not a body corporate, at the operator's principal place of business or, if the ITSRR approves another place and time, at that place and time.

Maximum penalty: 25 penalty units.

Division 4 Surrender, revocation and variation of accreditation

48 Revocation or suspension of accreditation

- (1) The ITSRR may take action under this section in respect of an accredited person if:
 - (a) the ITSRR considers that the person is no longer able to demonstrate to the satisfaction of the ITSRR the matters referred to in section 35 or to comply with the conditions or restrictions of accreditation, or
 - (b) the ITSRR considers that the person is not managing the rail infrastructure, or is not operating rolling stock in relation to any rail infrastructure, to which the person's accreditation relates and has not done so for the preceding 12 months, or
 - (c) the accredited person contravenes this Act or the regulations.
- (2) The ITSRR may take any of the following actions:
 - (a) suspend the accreditation (wholly or in part) for a period determined by the ITSRR,
 - (b) revoke the accreditation (wholly or in part) with immediate effect or with effect from a specified date,
 - (c) impose conditions or restrictions on the accreditation,
 - (d) vary the conditions or restrictions of the accreditation,
 - (e) if the accreditation is revoked, declare that the person is disqualified from applying for accreditation, or for accreditation in relation to specified railway operations, during a specified period.
- (3) Before making a decision to take action under subsection (2), the ITSRR must notify the accredited person in writing that:

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- (a) the ITSRR is considering making a decision of the kind specified in the notice, for the reasons specified in the notice, and
 - (b) the person may, within 28 days or any longer period that is specified in the notice, make written representations to the ITSRR showing cause why the decision should not be made.
- (4) The ITSRR must, before taking action under subsection (2), consider any written representations made within the period specified in the notice and not withdrawn.
 - (5) The ITSRR must include in any notice of suspension or revocation of the accreditation of an accredited person the reasons for the suspension or revocation and information about the right of review under section 154.
 - (6) If the ITSRR suspends or revokes the accreditation of a person who is accredited in another jurisdiction, the ITSRR must give notice of the suspension or revocation to the relevant corresponding Rail Safety Regulator.
 - (7) The ITSRR may withdraw suspension of the accreditation of a person by written notice given to the person.

49 Immediate suspension of accreditation

- (1) If the ITSRR considers that there is, or would be, an immediate and serious risk to safety unless an accreditation is suspended immediately, the ITSRR may, by written notice given to an accredited person, immediately suspend the accreditation of the person:
 - (a) wholly or in part, and
 - (b) for a specified period, not exceeding 6 weeks.
- (2) The ITSRR may, by notice in writing given to a person whose accreditation is suspended wholly or in part or in respect of particular railway operations:
 - (a) reduce the period of suspension specified in a notice under subsection (1), or
 - (b) extend the period of suspension specified in a notice under this section but not so that the suspension continues for more than 6 weeks after the date of the notice under subsection (1).
- (3) The ITSRR may withdraw a suspension of the accreditation of a person by written notice given to the person.
- (4) Before making a decision to extend a period of suspension, the ITSRR must notify the person in writing that:
 - (a) the ITSRR is considering extending the period of suspension for the reasons specified in the notification, and

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- (b) the person may, within 7 days or any longer period that is specified in the notice, make written representations to the ITSRR showing cause why the decision should not be made.
- (5) The ITSRR must, before taking action under subsection (2), consider any written representations made within the period specified in the notice and not withdrawn.
- (6) The ITSRR must include in the notice extending the suspension the reasons for the extension and information about the right of review under section 154.
- (7) Section 48 does not apply to the taking of action under this section.

50 Application for variation of accreditation

- (1) An accredited person may apply to the ITSRR for a variation of the person's accreditation.
- (2) An application for variation must be made in the approved manner and approved form and:
 - (a) must specify the details of the variation being sought, and
 - (b) must contain the information prescribed by the regulations, and
 - (c) must be accompanied by the prescribed application fee.
- (3) The ITSRR may require an accredited person who has applied for a variation:
 - (a) to supply further information requested by the ITSRR, and
 - (b) to verify by statutory declaration any information supplied to the ITSRR.
- (4) Section 35 applies to an application for variation of an accreditation as if a reference in that section to accreditation were a reference to variation of accreditation.

51 Determination of application for variation

- (1) The ITSRR must, within the relevant period after an application for variation of an accreditation is made:
 - (a) if the ITSRR is satisfied as to the matters referred to in sections 35 and 36, so far as they are applicable to the proposed variation, vary the accreditation, with or without any conditions or restrictions, or
 - (b) if the ITSRR is not so satisfied, refuse the application.
- (2) A notice varying an accreditation must be in writing in the approved form and must specify:

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- (a) the prescribed details of the applicant, and
 - (b) the variation to the accreditation so far as it applies to the scope and nature of the railway operations, and
 - (c) any conditions and restrictions imposed by the ITSRR on the accreditation as varied, and
 - (d) any other information prescribed by the regulations.
- (3) A notice refusing an application, or imposing a condition or restriction, must include:
- (a) the reasons for the decision to refuse to grant the application for variation or imposing the condition or restriction, and
 - (b) information about the right of review under section 154.
- (4) A notice under subsection (5) extending a period, must include information about the right of review under section 154.
- (5) In this section, *relevant period*, in relation to an application, means:
- (a) 6 months after the application was received by the ITSRR, or
 - (b) if the ITSRR requested further information, 6 months, or such other period, as is agreed between the ITSRR and the applicant, after the ITSRR receives the last information so requested, or
 - (c) if the ITSRR, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period,
- whichever is the longer.

52 Variation of conditions and restrictions

- (1) An accredited person may apply to the ITSRR for a variation of any condition or restriction to which the accreditation is subject and that was imposed by the ITSRR.
- (2) An application for variation of a condition or restriction must be made as if it were an application for variation of an accreditation and section 50 applies accordingly.
- (3) The ITSRR must consider the application and may, if satisfied as to the matters referred to in sections 35 and 36 so far as they are applicable to the proposed variation, by notice given to the accredited person and in accordance with the provisions of this Part applicable to a grant of accreditation, grant or refuse to grant the variation.
- (4) A notice under subsection (3) refusing to grant a variation of a condition or restriction must include the reasons for the decision to refuse to grant the variation and information about the right of review under section 154.

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Part 3 Accreditation of rail transport operators

53 ITSRR may make changes to conditions or restrictions

- (1) The ITSRR may, at any time and at the discretion of the ITSRR, vary or revoke a condition or restriction imposed by the ITSRR to which the accreditation of an accredited person is subject or impose a new condition or restriction.
- (2) Before making a decision to take action under this section, the ITSRR must:
 - (a) notify the person in writing that the ITSRR proposes to take the action specified in the notice, and
 - (b) notify the person in writing that the person may, within 14 days (or any other period that the ITSRR and the accredited rail operator agree on), make written representations to the ITSRR about the intended action, and
 - (c) consider any representations made under paragraph (b) and not withdrawn.
- (3) The ITSRR is not required to give notice under subsection (2) if the ITSRR considers it necessary to take immediate action in the interests of safety.
- (4) The ITSRR must:
 - (a) give notice in writing to an accredited person of any action taken under subsection (1), and
 - (b) include in any such notice a statement of reasons for any such action and that the person has a right of review of the decision under section 154.

54 Prescribed conditions and restrictions

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

Division 5 Private sidings

55 Exemption from accreditation

- (1) A rail infrastructure manager of a private siding is not required to be accredited under this Act, or to comply with Division 3 of Part 2 or Division 1 or 4 of Part 4, in respect of railway operations carried out in the private siding.
- (2) However, if the rail infrastructure manager wishes the private siding to be (or to continue to be) connected with, or to have access to, a railway of an accredited person or a siding, the rail infrastructure manager must:

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- (a) register the private siding with the ITSRR and pay the annual fee prescribed by the regulations, and
- (b) comply with conditions imposed by the ITSRR (from time to time) or prescribed by the regulations with respect to the safe construction, maintenance and operation of the private siding, and
- (c) comply with the provisions of section 20 in relation to the management of the interface with the railway of the accredited person, and
- (d) notify the accredited person in writing of any railway operations affecting or relating to the safety of the railway or siding of the accredited person.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
 - (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
 - (d) in the case of an individual (not being a previous offender)—500 penalty units.
- (3) A condition imposed or prescribed under subsection (2) (b) may require a rail infrastructure manager to comply with a provision of Division 3 of Part 2 or Division 1 or 4 of Part 4.
 - (4) The ITSRR must, on application by a rail infrastructure manager of a private siding, and on payment of the fee prescribed by the regulations, register the private siding and issue a registration notice to the rail infrastructure manager.
 - (5) The ITSRR is to keep a register of private sidings registered under this section and must, if the regulations so provide, make the register available for public inspection at the places prescribed by the regulations.

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Division 1 Safety reports

56 Rail transport operators to provide information

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

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

Maximum penalty:

 - (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.

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57 Industry safety reports

- (1) The ITSRR must, in each year, provide to the Minister an industry safety report relating to the carrying out of railway operations by accredited persons.
- (2) Without limiting subsection (1), a report under that subsection must include the following:
 - (a) information on the development of rail safety, including on aggregated statistics of a prescribed class reported to the ITSRR under a rail safety law, in respect of that year, and
 - (b) information on any improvements and important changes in relation to road safety.
- (3) The ITSRR must also report on the matters prescribed by the regulations for the purposes of this section and may report on such other matters as the ITSRR thinks fit.
- (4) A report under this section may be included in the annual report of the ITSRR under the *Annual Reports (Statutory Bodies) Act 1984*.

58 Notification of certain occurrences

- (1) A rail transport operator must report to the ITSRR or another authority specified by the ITSRR within the time, and in the manner, prescribed by the regulations, all notifiable occurrences that happen on, or in relation to, the rail transport operator's railway premises or railway operations.
Maximum penalty: 750 penalty units.
- (2) Two or more rail transport operators may make a joint report with respect to a notifiable occurrence affecting them.
- (3) In addition to the matters specified in subsection (1), the ITSRR may, by notice in writing, require a rail transport operator to report to the ITSRR or another authority specified by the ITSRR, any other occurrence or type of occurrence which endangers or could endanger the safe operation of any railway operations.
- (4) A rail transport operator must comply with a notice served under subsection (3).
Maximum penalty: 500 penalty units.
- (5) The ITSRR may require information in a report under this section to be verified by statutory declaration.

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Part 4 Safety reports and investigations

59 Confidential reporting of safety information by rail safety workers

- (1) The Chief Investigator may establish a system for the voluntary reporting by rail safety workers 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 a rail safety worker who provides information under any such voluntary reporting system unless:
 - (a) the worker 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.

Division 2 Investigations of accidents and incidents

60 Investigation of occurrences

- (1) The ITSRR may, by written notice to a rail transport operator, require the rail transport operator to investigate notifiable occurrences, or any other railway accidents or incidents that have endangered or that may endanger the safe operation of the railway operations carried out by the rail transport operator.
- (2) The level of investigation must be determined by the severity and potential consequences of the notifiable occurrence, accident or incident as well as by other similar occurrences, accidents or incidents and its focus should be to determine the cause and contributing factors, rather than to apportion blame.
- (3) The rail transport operator must ensure that the investigation is conducted in a manner approved by the ITSRR and within the period specified by the ITSRR.
Maximum penalty: 750 penalty units.
- (4) A rail transport operator who has carried out an investigation under this section must report to the ITSRR on the investigation within the period specified by the ITSRR.

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Maximum penalty: 100 penalty units.

61 Investigation into railway accidents and incidents by railway operators

- (1) The Chief Investigator may, by written notice to a rail transport operator, require the rail transport operator to investigate, and report to the Chief Investigator on:
 - (a) any railway accident or incident that has affected or 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) The rail transport operator must ensure that the investigation is conducted in a manner approved and within the period specified by the Chief Investigator.

Maximum penalty: 750 penalty units.
- (3) A rail transport operator who has carried out an investigation under this section must report to the Chief Investigator on the investigation within the period specified by the Chief Investigator.

Maximum penalty: 100 penalty units.
- (4) A rail transport operator must, if required to do so by the Chief Investigator, review and resubmit a report prepared under this section.

Maximum penalty: 100 penalty units.
- (5) 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.

62 Information may not be used in certain proceedings

- (1) Information that the Chief Investigator or ITSRR obtains by way of a report under section 61 cannot be used in evidence in any criminal or civil proceedings against the rail transport operator 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 rail transport operators under section 61.

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- (5) This section does not apply:
- (a) to a train safety recording (other than material prescribed by the regulations for the purposes of this section), 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.

63 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 rail safety worker 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 rail transport operators 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.

64 Chief Investigator and transport safety investigator's functions

- (1) The Chief Investigator may, by notice in writing, require either or both of the following:

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- (a) the attendance of any person at any place to answer questions in relation to an investigation under section 63,
 - (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 63.
- (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 156 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 63.
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 63, all the functions and immunities of a rail safety officer.

65 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.

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- (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.

66 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.

67 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.

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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.

68 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.

69 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.

70 Tabling of reports

- (1) The Minister is to lay (or cause to be laid) a report under section 61, 63 (2) or 65 before both Houses of Parliament as soon as reasonably practicable, but not later than 7 days, after the Minister receives the report.

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- (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.

Division 3 Disclosure of train safety records

71 Definitions

In this Division:

train safety record means any or all of the following:

- (a) all statements (whether oral or in writing) taken from persons by a rail safety officer or other person for the purposes of a rail safety inquiry or an investigation under section 63, including any record of any such statement,
- (b) all communications (other than a train safety recording or a transcript of a train safety recording) between persons involved in the operation of a train,
- (c) medical or private information regarding persons (including deceased persons) involved in an accident or incident the subject of a rail safety inquiry,
- (d) train safety recordings and transcripts of train safety recordings,
- (e) any information collected for the purposes of a rail safety inquiry or an investigation under section 63.

train safety recording means a recording consisting of (or mainly of) sounds or images or data, or any combination of sounds, images or data, produced by a device installed in a train, a signal box, a train control complex or other railway premises for the purpose of recording

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operational activities carried out by railway employees operating a train and other persons.

72 Disclosure of train safety record to Commonwealth or Commonwealth authority

- (1) Despite any other provision of this Division, the ITSRR, Chief Investigator, a member of a Board of Inquiry or a person who is or was a rail safety officer or any other person may, with the consent of the Minister, disclose to the Commonwealth or a Commonwealth authority the whole or part of a train safety record.
- (2) The Minister may not consent to a disclosure under this section unless the Minister is of the opinion that it is in the public interest to do so.

73 Disclosure of train safety records (other than train safety recordings) to a court or person

- (1) The ITSRR, Chief Investigator, a member of a Board of Inquiry or a person who is or was a rail safety officer must not, except for the purposes of this Division, directly or indirectly:
 - (a) disclose to any person, or to a court, the whole or part of a train safety record, or
 - (b) produce to any person, or to a court, the whole or any part of a train safety record.Maximum penalty: 100 penalty units.
- (2) This section does not apply to or in respect of the following:
 - (a) a train safety record that is a train safety recording,
 - (b) criminal proceedings, investigations relating to a criminal offence, investigations by or proceedings before the coroner, or a proceeding relating to bail,
 - (c) disclosure of a train safety record that is permitted under this Act or the regulations,
 - (d) disclosure in accordance with an order of a court referred to in subsection (4).
- (3) A person may apply to the Supreme Court for an order that a train safety record must be disclosed to a court or produced to a court.
- (4) The Supreme Court must order the disclosure or production of the train safety record if it is satisfied that the public interest in the disclosure outweighs the adverse impact the disclosure or production may have on the inquiry or investigation to which the record relates or any future inquiries or investigations.

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- (5) If the Supreme Court makes an order under subsection (4), the Court must also make an order that restricts access to the train safety record to:
- (a) the person or persons constituting the court, and
 - (b) the parties to the proceedings (including any interveners), and
 - (c) the parties' legal representatives, and
 - (d) specified witnesses for the purposes of the proceedings,
- unless the Court is satisfied that such an order would not be in the interests of justice or would not be desirable in the interests of the court performing its functions.

74 Disclosure of train safety recordings

A person must not publish or communicate to any person:

- (a) a train safety recording or any part of a train safety recording, or
- (b) any information obtained from a train safety recording or any part of a train safety recording,

otherwise than in the course of an inquiry or an investigation into an accident or incident under this Part or for the purposes of, or in connection with:

- (c) criminal proceedings (not being criminal proceedings in which it is not admissible) or investigations by or proceedings before the coroner, or
- (d) civil proceedings in which an order is made under section 76, or
- (e) a disclosure or publication that is permitted under this Act or the regulations.

Maximum penalty: 100 penalty units.

75 Evidence of train safety recordings in criminal proceedings

A train safety recording is not admissible in evidence in any criminal proceedings against a railway employee.

76 Evidence of train safety recordings in civil proceedings

- (1) A train safety recording is not admissible in evidence in any civil proceedings against a railway employee.
- (2) A party to civil proceedings may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that a train safety recording, or part of a train safety recording, be admissible in evidence in the proceedings.
- (3) If an application is made to a court under subsection (2), the court must:
 - (a) examine the train safety recording, and

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- (b) if it is satisfied:
 - (i) that a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court, and
 - (ii) that the train safety recording, or a part of the train safety recording, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact, and
 - (iii) that, in the circumstances of the case, the public interest in the proper determination of that material question of fact outweighs the public interest in protecting the privacy of railway employees,the court may order that the train safety recording, or that part of the train safety recording, be admissible in evidence in the proceedings.
- (4) If the court makes an order referred to in subsection (3), the train safety recording is, despite subsection (1), admissible in evidence in the proceedings.

77 Examination by a court of train safety recording

- (1) This section applies if a court examines a train safety recording under section 76.
- (2) The only persons who may be present at the examination are:
 - (a) the person or persons constituting the court, other than the members of the jury (if any), and
 - (b) the legal representatives of the parties to the proceedings, and
 - (c) such other persons (if any) as the court directs.
- (3) The court may direct that the train safety recording or the part of the train safety recording, or any information obtained from the recording or part of the recording, must not:
 - (a) be published or communicated to any person, or
 - (b) be published or communicated except in such manner, and to such persons, as the court specifies.
- (4) The train safety recording, or that part of the train safety recording, is not evidence for the purpose of the determination of the liability in the proceedings of a railway employee the subject of a recording.
- (5) If there are 2 or more defendants in the proceedings of whom at least one is a railway employee the subject of a recording and the remaining defendant or defendants are not railway employees the subject of a recording, the train safety recording, or that part of the train safety

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recording, is evidence for the purpose of determining whether or not any railway employee has been negligent for the purposes only of determining the liability in the proceedings of any defendant who is not a railway employee the subject of a recording.

78 Compliance with subpoenas and other directions

- (1) The ITSRR, Chief Investigator, a member of a Board of Inquiry, an assessor or a person who is or was an authorised officer or an officer of the ITSRR or the Ministry of Transport is not obliged to comply with a subpoena or similar direction of a court in relation to civil proceedings to:
 - (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 63, or
 - (b) attend and produce any part of a train safety record relating to any such accident or incident,within 6 months after the day of the accident or incident.
- (2) A person who has obtained a subpoena or similar direction from a court that does not have to be complied with because of subsection (1) may apply to that court for an order that the subpoena or similar direction be complied with.
- (3) If the court is satisfied that, in the circumstances of the case, it is desirable, in either the interests of justice or the performance by the court of its functions, for the officer or person to attend and answer questions or to attend and produce train safety records within 6 months after the day of the accident or incident, the court must order that the officer or person comply with the subpoena or similar direction.

79 Admissibility of other evidence and liability

- (1) Nothing in this Division affects the admissibility in any proceedings of evidence of words spoken by a railway employee other than evidence constituted by a train safety recording or a transcript or summary of a train safety recording.
- (2) No liability is incurred by the State and no personal liability is incurred by, or by any person acting at the direction of, the Minister, the ITSRR, the Chief Investigator or a member of a Board of Inquiry in respect of anything done in good faith in connection with the preparation or making public of a report, or the disclosure or publication of information, under this Division.
- (3) No liability is incurred by a person for publishing in good faith:

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- (a) a report made public, or information published by the ITSRR, Chief Investigator or a member of a Board of Inquiry, under this Division, or
 - (b) a fair report or summary of any such report or information.
- (4) In this section:
liability includes liability for defamation.
the State includes the Crown in right of the State and the Government of the State.

Division 4 Audit by ITSRR

80 Audit of railway operations of rail transport operators

- (1) The ITSRR:
 - (a) may audit the railway operations of rail transport operators, and
 - (b) may prepare and implement a program (an *audit program*) for each year for inspecting the railway operations of rail transport operators, and
 - (c) may, for the purposes of the audit, inspect the railway operations of a rail transport operator or any such person whether or not under an audit program.
- (2) Without limiting subsection (1) (b), an audit program may focus on one or more of the following:
 - (a) particular rail transport operators,
 - (b) particular criteria relating to rail transport operators,
 - (c) particular aspects of rail safety,
 - (d) particular aspects of railway operations.
- (3) The regulations may establish procedures for the conduct of audits under this section, including procedures to ensure the confidentiality of records.
- (4) In this section, *rail transport operator* includes a person, not being an employee employed to carry out railway operations, who undertakes railway operations in relation to rail infrastructure or rolling stock of a rail transport operator.

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Division 1 Powers of entry

81 Power to enter places

- (1) A rail safety officer may, for compliance and investigative purposes or in an emergency, enter a place if:
 - (a) the place is a public place and the entry is made when the place is open to the public, or
 - (b) the occupier of the place consents to the entry, or
 - (c) the entry to the place is authorised by a warrant under section 90, or
 - (d) the place is railway premises and the entry is made:
 - (i) at a reasonable hour in the daytime, or
 - (ii) at any hour during which a railway operation or other related activity is in progress or is usually carried out in or on the railway premises, or
 - (iii) when the place is otherwise open for entry, or
 - (e) the place is railway premises and the entry is urgently required to investigate the circumstances of a notifiable occurrence at any time during which railway operations are being carried out or are usually carried out, or
 - (f) the place is railway premises, or adjoins railway premises, and the entry is urgently required for the purpose of dealing with a railway accident or incident.
- (2) A rail safety officer who enters railway premises under subsection (1) (d), (e) or (f) must not unnecessarily impede any activities being conducted at the premises.
- (3) In this Part:

compliance and investigative purposes includes the following purposes:

 - (a) purposes related to ascertaining whether a rail safety law has been or is being complied with, including whether an offence has been committed against a rail safety law,
 - (b) purposes related to ascertaining whether the terms of, or a condition or restriction of, an accreditation has been or is being complied with,
 - (c) purposes related to an audit, inspection, investigation, rail safety inquiry or other inquiry under this Act.

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82 Limitation on entry powers—places used for residential purposes

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

- (a) with the consent of the occupier of the place, or
- (b) under the authority conferred by a search warrant.

83 Notice of entry

Before a rail safety officer enters railway premises (not being a public place) under section 81, the rail safety officer must give the occupier of the railway premises reasonable notice of the intention to enter unless:

- (a) the giving of the notice would be reasonably likely to defeat the purpose for which it is intended to enter the premises, or
- (b) entry to the premises is made with the consent of the occupier of the premises, or
- (c) entry is required in circumstances where the rail safety officer reasonably believes there is an immediate risk to safety because of the carrying out of railway operations at the premises, or
- (d) entry is authorised by a search warrant.

Division 2 General enforcement powers of rail safety officers

84 General powers after entering a place

- (1) A rail safety officer who enters a place under this Part, may do any of the following:
 - (a) search and inspect any part of the place and any rail infrastructure, rolling stock or road vehicle or any other thing at the place,
 - (b) enter or open, using reasonable force, rail infrastructure, rolling stock, a road vehicle or other thing at the place to examine the structure, rolling stock, road vehicle or other thing,
 - (c) take measurements, make surveys and take levels, dig trenches, break up the soil and set up any posts, stakes or markers,
 - (d) test any part of rail infrastructure or rolling stock (for the purpose of identifying quality or faults),
 - (e) inspect, film, photograph, videotape or otherwise record an image of:
 - (i) rail infrastructure or rolling stock, or a road vehicle or other thing, at the place, or

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- (ii) a document at the place or in rolling stock or a road vehicle at the place,
 - (f) take, or authorise another person to take, for analysis a thing, or a sample of or from a thing, at the place,
 - (g) seize anything that the rail safety officer suspects on reasonable grounds is connected with an offence against a rail safety law or to secure any such thing against interference,
 - (h) seize anything if the rail safety officer suspects it is necessary to do so to prevent its use in the commission of an offence against a rail safety law,
 - (i) require any person at the place to answer questions or otherwise give information in relation to the matter the subject of the inspection, investigation or inquiry,
 - (j) mark, tag or otherwise identify rolling stock, a road vehicle or other thing at the place,
 - (k) take all necessary steps to allow a power under paragraphs (a) to (j) to be exercised.
- (2) A film, photograph, videotape or image taken under subsection (1) (e) of rail infrastructure, or of any part of rail infrastructure, is not inadmissible as evidence only because of the fact that it includes the likeness of one or more persons if the capturing of that likeness does not appear to have been the main reason for the taking of the film, photograph, videotape or image.

85 Functions of authorised officers in relation to relevant documents

- (1) A rail safety officer has the following powers in relation to relevant documents found by a rail safety officer in or on premises entered by the officer or produced to the officer pursuant to a requirement made under this Part:
- (a) power to take possession of the documents or secure them against interference,
 - (b) power to make 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.

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- (2) While a rail safety officer retains possession of a document, the officer must permit a person who would be entitled to inspect the document were it not in the possession of the officer to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.
- (3) If a rail safety officer takes possession of or secures against interference any relevant document on which a person has a lien, the officer's actions do not prejudice the lien.
- (4) This section does not limit section 84.

86 Use of assistants and equipment

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

87 Use of electronic equipment

- (1) Without limiting section 84, if:
 - (a) a thing found in or on rolling stock or a road vehicle, or at a place, is, or includes, a disk, tape or other device for the storage of information, and
 - (b) the equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other device,the rail safety officer, or a person assisting the officer, may operate the equipment to access the information.
- (2) A rail safety officer, or a person assisting an officer, must not operate or seize equipment for the purpose mentioned in this section unless the officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

88 Use of equipment to examine or process things

- (1) Without limiting section 84, a rail safety officer exercising a power under this Part may bring to, onto, or into, rolling stock, a road vehicle or a place any equipment reasonably necessary for the examination or processing of things found at, on or in the rolling stock, road vehicle or place in order to determine whether they are things that may be seized.

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- (2) The rail safety officer, or a person assisting the officer, may operate equipment already in or on the rolling stock or road vehicle, or at the place, to carry out the examination or processing of a thing found in or on the rolling stock or road vehicle, or at the place in order to determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that:
- (a) the equipment is suitable for the examination or the processing, and
 - (b) the examination or processing can be carried out without damage to the equipment.

89 Securing a site

- (1) For the purpose of protecting evidence that might be relevant for compliance or investigative purposes or ensuring safety, a rail safety officer may secure the perimeter of any site at a place by whatever means the rail safety officer considers appropriate.
- (2) A person must not, without the permission of a rail safety officer, enter or remain at, a site the perimeter of which is secured under this section. Maximum penalty: 1,000 penalty units.
- (3) Subsection (2) does not apply if the person enters the site, or remains at the site:
- (a) to ensure the safety of persons, or
 - (b) to remove deceased persons or animals from the site, or
 - (c) to move a road vehicle, or the wreckage of a road vehicle, to a safe place, or
 - (d) to protect the environment from significant damage or pollution.
- (4) A rail safety officer must not unreasonably withhold a permission referred to in subsection (2).

Division 3 Search warrants

90 Search warrants

- (1) A rail safety officer may apply to an authorised officer (within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*) for a search warrant if the rail safety officer has reasonable grounds for believing that the provisions of this Act, the regulations or the terms of an accreditation or certification have been or are being contravened in or on any railway premises.

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- (2) An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a rail safety officer named in the warrant:
 - (a) to enter the railway premises, and
 - (b) to search the railway premises for evidence of a contravention of a rail safety law or the terms of an accreditation.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
 - (a) may accompany a rail safety officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist the rail safety officer in the exercise of the person's functions under this section.

Division 4 Powers to support seizure

91 Directions relating to seizure

- (1) To enable a thing to be seized under this Part, a rail safety officer may direct the person in control of it:
 - (a) to take it to a specified place within a specified time, and
 - (b) if necessary, to remain in control of it at the specified place for a period specified in the direction.
- (2) A direction under subsection (1):
 - (a) must be given by signed notice in writing given to the person, or
 - (b) if for any reason it is not practicable to give a signed notice in writing to the person, may be given orally and confirmed by signed notice in writing given to the person as soon as is practicable.
- (3) A further direction may be made under this section about the thing if it is necessary and reasonable to make the further direction.
- (4) If a rail safety officer has directed a person to take a thing to a specified place within a specified time under subsection (1), a rail safety officer may direct the person to return the thing to the place from which it was taken.
- (5) A person given a direction under this section must comply with that direction unless the person has a reasonable excuse.
Maximum penalty: 100 penalty units.

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- (6) Without limiting what may otherwise be a reasonable excuse, it is a reasonable excuse for a person in control of a thing not to comply with a direction under this section if, in all the circumstances, the direction was unreasonable.
- (7) In this section:
in control of a thing means having, or reasonably appearing to a rail safety officer as having, authority to exercise control over the thing.

92 Receipt for seized things

- (1) After a rail safety officer seizes a thing under this Part, the officer must give a receipt for it to the person from whom the thing was seized or the owner of the thing.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the thing seized and its condition.
- (4) This section does not apply if it would be impracticable or unreasonable to expect the officer to account for the thing, given its condition, nature or value.

93 Access to seized thing

- (1) Until a seized thing is forfeited or returned, a rail safety officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or it would be unreasonable to allow the inspection or copying.

94 Embargo notices

- (1) This section applies where:
- (a) a rail safety officer is authorised to seize any record, device or other thing under this Part, and
 - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
- (2) A rail safety officer may issue an embargo notice under this section.
- (3) An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of a rail safety officer or the ITSRR.
- (4) The embargo notice must:
- (a) contain the particulars required by the regulations, and

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- (b) list the activities that it forbids, and
 - (c) set out a copy of subsection (9).
- (5) On issuing an embargo notice, a rail safety officer must:
- (a) cause a copy of the notice to be served on the owner of the record, device or other thing, or
 - (b) if that person cannot be located after all reasonable steps have been taken to do so, affix a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person must not do anything that the person knows is forbidden by an embargo notice.
Maximum penalty: 750 penalty units.
- (7) A person must not instruct or request another person to do anything that the person making the instruction or request knows is forbidden by an embargo notice.
Maximum penalty: 750 penalty units.
- (8) It is a defence to a prosecution for an offence against subsection (6) to establish that the defendant:
- (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it, and
 - (b) notified the rail safety officer who issued the embargo notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (9) A person on whom an embargo notice has been served must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.
Maximum penalty: 750 penalty units.
- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

Division 5 Dealings with seized items

95 Return of seized things

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

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- (b) the thing is forfeited to the Crown under section 96, or
 - (c) the rail safety officer is otherwise authorised (by law or an order of a court) to retain, destroy or dispose of the thing.
- (2) The thing may be returned either unconditionally or on such terms and conditions as the rail safety officer considers appropriate to eliminate or reduce any risks to safety.
- (3) If the rail safety officer imposes terms or conditions on the return of a thing, the owner must comply with each of those terms and conditions.
Maximum penalty: 100 penalty units.

96 Forfeiture

- (1) A sample or thing taken for analysis or a thing seized under this Part, is forfeited to the Crown if the rail safety officer who took, or arranged the taking of, the sample or thing or who seized the thing:
- (a) after making reasonable efforts, cannot return it to its owner, or
 - (b) after making reasonable inquiries, cannot find its owner, or
 - (c) considers it necessary to retain the sample or thing to prevent the commission of an offence against a rail safety law.
- (2) For the purposes of subsection (1), the officer is not required to:
- (a) make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner, or
 - (b) make inquiries if it would be unreasonable to make inquiries to find the owner.
- (3) Regard must be had to the sample's or thing's condition, nature and value in deciding whether:
- (a) it is reasonable to make efforts or inquiries, and
 - (b) if efforts or inquiries are made, what efforts or inquiries, including the period over which they are made, are reasonable.
- (4) In this section:
owner, in relation to a sample or a thing taken for analysis, includes the person in charge of the thing or place from which the sample or thing was taken.

97 Dealing with forfeited sample or thing

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

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- (2) Without limiting subsection (1), the ITSRR may destroy or dispose of the sample or thing.

98 Application of Law Enforcement (Powers and Responsibilities) Act 2002

Division 2 of Part 17 (other than sections 218 and 221–227) of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to property in the custody of a rail safety officer under this Part in the same way as it applies to property in the custody of a police officer.

Division 6 Directions

99 Rail safety officers may direct certain persons to give assistance

- (1) A rail safety officer may direct a rail transport operator or a rail safety worker to give the rail safety officer reasonable assistance to enable the officer to exercise a function under this Part.
- (2) When giving a direction to a person under subsection (1), the rail safety officer must warn the person that it is an offence to fail to comply with the direction unless the person has a reasonable excuse.
- (3) A person given a direction under subsection (1) must comply with the direction unless the person has a reasonable excuse.
Maximum penalty: 500 penalty units.
- (4) In this section:
reasonable assistance includes any of the following kinds of assistance:
- (a) assistance to enable the rail safety officer to find and gain access to electronically stored material and information,
 - (b) unloading rolling stock,
 - (c) running the engine of a locomotive,
 - (d) driving a train,
 - (e) giving the rail safety officer assistance to enter any rail infrastructure or any part of rail infrastructure or open rolling stock or any part of rolling stock.

100 Power to direct name and address be given

- (1) A rail safety officer may direct a person to state the person's name and residential or business address if the officer:
- (a) finds the person committing an offence against a rail safety law, or
 - (b) finds the person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has committed an offence against a rail safety law, or

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- (c) finds the person at railway premises and:
 - (i) reasonably believes the person is carrying out railway operations for a rail transport operator, and
 - (ii) reasonably considers that it is necessary for the purposes of this Act or the regulations to know the person's name and residential or business address.
- (2) When giving a direction under subsection (1), the officer must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse.
- (3) The officer may also request the person to provide evidence of the correctness of the stated name or required address if the officer reasonably suspects the stated name or address is false.

101 Failure to give name or address

A person given a direction under section 100 (1) must comply with the direction unless the person has a reasonable excuse.

Maximum penalty: 15 penalty units.

102 Power to obtain information, documents and evidence

- (1) A rail safety officer may, by notice in writing served on a person, require the person to do any one or more of the following things if the officer has reasonable grounds to believe that the person is capable of giving information, producing documents or giving evidence in relation to a possible contravention of a rail safety law:
 - (a) to give a rail safety officer, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any such information of which the person has knowledge,
 - (b) to produce to a rail safety officer in accordance with the notice, any such documents,
 - (c) to appear before a rail safety officer at a time and place specified in the notice and give either orally or in writing any such evidence and produce any such documents.
- (2) A notice under this section must contain a warning that a failure to comply with the notice is an offence.
- (3) A rail safety officer may inspect a document produced in response to a notice under this section and may make copies of, or take extracts from, the document.
- (4) A rail safety officer may take possession, and retain possession for as long as is necessary for the purposes of this Act, of a document produced in response to a notice under this section if the person

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otherwise entitled to possession of the document is supplied, as soon as practicable, with a copy certified by a rail safety officer to be a true copy.

- (5) A certified copy provided under subsection (4) is receivable in all courts as if it were the original.
- (6) Until a certified copy of a document is provided under subsection (4), the rail safety officer who has possession of the document must, at such times and places as the officer thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect the document and make copies of, or take extracts from, the document.

103 Failure to comply with notice

A person given a notice under section 102 must comply with the direction unless the person has a reasonable excuse.

Maximum penalty: 1,000 penalty units and, in the case of a continuing offence, a further penalty of 500 penalty units for each day the offence continues.

Division 7 Miscellaneous

104 Directions may be given under more than one provision

- (1) A rail safety officer may, on the same occasion, give directions under one or more provisions of this Part
- (2) Without limiting subsection (1), a rail safety officer may, in the course of exercising powers under a provision of this Part, take any of the following actions:
 - (a) give further directions under the provision,
 - (b) give directions under one or more other provisions of this Part.

105 Temporary closing of railway crossings, bridges etc

- (1) An authorised person may close temporarily, or regulate, a railway crossing, bridge or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to safety.
- (2) If an authorised person decides to close temporarily, or regulate, a railway crossing, bridge or other structure the authorised person must, before its closure or regulation:
 - (a) cause a notice of the proposed closure or regulation to be published in a local newspaper circulating in the area in which the railway crossing, bridge or other structure is situated, and

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(b) notify the Roads and Traffic Authority and the council of the area concerned of the proposed closure or regulation.

(3) In this section:

authorised person means a person who holds a specific authority from the ITSRR for the purposes of this section.

railway crossing means a level crossing, bridge or another structure used to cross over or under a railway.

106 Restoring rail infrastructure and rolling stock etc to original condition after action taken

If:

(a) a rail safety officer, or a person assisting the officer, takes any action in the exercise or purported exercise of any power under this Part in relation to rail infrastructure or rolling stock, railway premises or a road vehicle, and

(b) damage was caused by the unreasonable exercise of the power or by the use of force that was not authorised under this Part,

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

107 Use of force

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

108 Power to use force against persons to be exercised only by police officers

A provision in this Part that authorises a rail safety officer, or a person assisting an officer, to use reasonable force does not authorise a rail safety officer, or a person, who is not a police officer to use force against another person.

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Improvement and prohibition notices

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Part 6 Improvement and prohibition notices

Division 1 Improvement notices

109 Improvement notices

- (1) A rail safety officer may serve an improvement notice on a person if the officer believes on reasonable grounds that the person:
 - (a) is contravening a provision of a rail safety law, or
 - (b) has contravened a provision of a rail safety law and it is likely that the contravention will continue or be repeated, or
 - (c) is carrying out or has carried out railway operations that threaten safety.
- (2) An improvement notice may require the person, within the period specified in the notice:
 - (a) to undertake remedial rail safety work or do any other thing to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention, or
 - (b) to carry out railway operations so that safety is not threatened or likely to be threatened.
- (3) The period within which a person is required by the improvement notice to comply with the notice must be at least 7 days after service of the notice.
- (4) An improvement notice must:
 - (a) state the reasons for the service of the notice, and
 - (b) in the case of an improvement notice served in respect of a contravention or likely contravention of a rail safety law, specify the provision of the rail safety law in respect of which that belief is held, and
 - (c) in the case of an improvement notice served on a person who is carrying out or has carried out railway operations that threaten safety, specify the operations in respect of which that belief is held, and
 - (d) include information about the right to a review under Division 3 of the decision to serve the notice, and
 - (e) set out the penalty for contravening the notice, and
 - (f) include a statement of the effect of section 112 (Proceedings for offences not affected by improvement notices), and
 - (g) state that it is served under this section.

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- (5) An improvement notice served on a person on a ground stated in subsection (1) (a) or (b):
- (a) may specify a method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention are to be remedied, and
 - (b) may offer the person on whom the notice has been served a choice of ways by which an alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, may be remedied, and
 - (c) may specify that the person provide the ITSRR with a program of rail safety work that the person proposes to carry out to remedy the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, and
 - (d) may include a timetable for the completion of the program of rail safety work.
- (6) An improvement notice served on a person on the ground stated in subsection (1) (c):
- (a) may specify a method by which railway operations may be carried out so that safety is not threatened or likely to be threatened, and
 - (b) may offer the person on whom the notice has been served a choice of ways by which operations may be carried out so that safety is not threatened or likely to be threatened, and
 - (c) may specify that the person provide the ITSRR with a program of operations that the person proposes to carry out to remedy the threat or likely threat to safety, and
 - (d) may include a timetable for the completion of the program of operations.

110 Contravention of improvement notice

- (1) A person on whom an improvement notice has been served must comply with the notice unless the person has a reasonable excuse.
- Maximum penalty:
- (a) 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 not acting in the capacity of an employee (being a previous offender)—375 penalty units, or

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- (d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—250 penalty units, or
 - (e) in the case of an individual acting in the capacity of an employee (being a previous offender)—22.5 penalty units, or
 - (f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—15 penalty units.
- (2) In proceedings against a person for an offence of engaging in conduct that results in a contravention of a requirement of an improvement notice served on a ground stated in section 109 (1) (a) or (b), it is a defence if the defendant establishes that:
- (a) the alleged contravention or likely contravention, or
 - (b) the matters or activities occasioning the alleged contravention or likely contravention,
- were remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.
- (3) In proceedings for an offence against a person of engaging in conduct that results in a contravention of a requirement of an improvement notice on the ground stated in section 109 (1) (c), it is a defence if the defendant establishes that the threat to safety was removed within the period specified in the notice, though by a method different from that specified in the improvement notice.

111 Withdrawal or amendment of improvement notices

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

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Clause 112 Rail Safety Bill 2007

Part 6 Improvement and prohibition notices

112 Proceedings for offences not affected by improvement notices

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

113 ITSRR to arrange for rail safety work required by improvement notice to be carried out

- (1) If a person fails to comply with an improvement notice served on the person that requires the person to carry out rail safety work to remedy:
 - (a) the alleged contravention or likely contravention, or
 - (b) the matters or activities occasioning the alleged contravention or likely contravention,the ITSRR may arrange for that rail safety work to be carried out.
- (2) The ITSRR may recover from the person served with an improvement notice referred to in subsection (1) the reasonable costs and expenses incurred by the ITSRR for any such rail safety work.

Division 2 Prohibition notices

114 Prohibition notice

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

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- (a) state the basis for the rail safety officer's belief on which the service of the notice is based, and
 - (b) specify the activity which the rail safety officer believes involves or will involve the risk and the matters which give or will give rise to the risk, and
 - (c) if the rail safety officer believes that the activity involves a contravention or likely contravention of a provision of a rail safety law, specify that provision and state the basis for that belief, and
 - (d) include information about the right to a review under Division 3 of the decision to serve the notice, and
 - (e) set out the penalty for contravening the notice, and
 - (f) include a statement of the effect of section 118 (Proceedings for offences not affected by prohibition notices), and
 - (g) state that it is served under this section.
- (5) A prohibition notice may include directions on the measures to be taken to minimise or eliminate the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (4) (c).
- (6) A direction in a prohibition notice may:
- (a) require that measures be taken in accordance with a compliance code, or
 - (b) offer the person on whom the notice has been served a choice of ways to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (4) (c).
- (7) A prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following:
- (a) a place, or part of a place, at which the activity is not to be carried out,
 - (b) any thing that is not to be used in connection with the activity,
 - (c) any procedure that is not to be followed in connection with the activity.

115 Contravention of prohibition notice

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

Maximum penalty:

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- (a) in the case of a corporation (being a previous offender)—1,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—1,000 penalty units, or
- (c) in the case of an individual not acting in the capacity of an employee (being a previous offender)—750 penalty units, or
- (d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—500 penalty units, or
- (e) in the case of an individual acting in the capacity of an employee (being a previous offender)—45 penalty units, or
- (f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—30 penalty units.

116 Oral direction before prohibition notice served

- (1) If a rail safety officer:
 - (a) believes on reasonable grounds that an activity referred to in section 114 (1) is occurring or may occur, and
 - (b) that it is not possible or reasonable to serve a prohibition notice under that section immediately,
the officer may direct a person who has or appears to have control over the activity to do or not to do a stated act by telling the person:
 - (c) to do or not to do the stated act, and
 - (d) the reason the direction is being given.
- (2) A person to whom a direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.
Maximum penalty:
 - (a) in the case of a corporation—1,500 penalty units, or
 - (b) in the case of an individual—750 penalty units.
- (3) It is a reasonable excuse if the rail safety officer did not tell the person that the person commits an offence if the person does not comply with the direction.
- (4) A direction given under this section ceases to have effect if a rail safety officer does not, within 5 days of giving the direction, serve a prohibition notice in respect of the activity.

117 Withdrawal or amendment of prohibition notice

- (1) A prohibition notice served by a rail safety officer:
 - (a) may be withdrawn by notice served by a rail safety officer on the person affected by the notice, and

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

118 Proceedings for offences not affected by prohibition notices

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

Division 3 General provisions relating to notices

119 Review of notices by ITSRR

- (1) A person who is given a notice under this Part may apply in writing to the ITSRR for a review of the notice.
- (2) The application for review must be made within 28 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 ITSRR 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 ITSRR until the ITSRR gives notice to the applicant of the result of the review.
- (6) The ITSRR 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.

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120 Appeal to Industrial Magistrate following review

- (1) An applicant who is not satisfied with the result of a review by the ITSRR of a notice under this Part may appeal against the notice to a Local Court constituted by an Industrial Magistrate.
- (2) An appeal to a Local Court under this section does not operate to stay the notice the subject of the appeal except as otherwise ordered by the Court.
- (3) The Local Court may, on the appeal, confirm the notice, vary it or revoke it.
- (4) Regulations may be made with respect to appeals under this section, including the time and manner in which such an appeal is to be made.

121 Application to Industrial Magistrate for stay of prohibition notice

- (1) If a person duly applies under this Part for review of a prohibition notice, the person may apply to a Local Court constituted by an Industrial Magistrate for a stay of the notice.
- (2) A stay may be granted for such period as the Local Court considers appropriate, but not so as to extend past the time when notice of the result of the review is given to the applicant by the ITSRR.
- (3) A stay may be granted on such conditions as the Local Court considers appropriate and may be revoked or amended by the Local Court.

122 Revocation or withdrawal of notice does not prevent issue of another notice

The revocation or withdrawal of a notice under this Part does not prevent the issue of any other notice.

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Division 1 Offences

123 Obstructing or hindering rail safety officers

A person must not:

- (a) intentionally hinder or obstruct the ITSRR, a rail safety officer or a person assisting the ITSRR or a rail safety officer in the exercise of his or her functions under this Act or the regulations, or induce or attempt to induce any other person to do so, or
- (b) intentionally conceal from the ITSRR, a rail safety officer or a person assisting the ITSRR or a rail safety officer, the location or existence of, or fail to comply with a request to produce, a record, document or any other thing.

Maximum penalty: 1,500 penalty units.

124 Offence to impersonate rail safety officer

A person who is not a rail safety officer must not impersonate, or falsely represent that the person is, a rail safety officer.

Maximum penalty: 100 penalty units.

125 Offences involving accreditation

A person who:

- (a) by any false statement or misrepresentation, obtains or attempts to obtain any accreditation under this Act, or
- (b) forges or fraudulently alters or uses or purports to use any accreditation, or
- (c) fraudulently allows any such accreditation to be used by any other person,

is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

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Part 7 Offences, penalties and other sanctions

126 Notice to be given of certain matters

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

Maximum penalty: 100 penalty units.

127 Tampering with railway equipment

- (1) A person who tampers with or disables:
- (a) the emergency or safety equipment of a railway or of a unit or units of rolling stock, or
 - (b) the interlocking system of a railway,

is guilty of an offence.

Maximum penalty: 1,000 penalty units or 3 years imprisonment, or both.

- (2) In this section:

emergency or safety equipment includes track and communication systems, closed circuit television cameras, emergency help points for passengers, safety signage, emergency breakdown equipment and alarms.

interlocking system means any lever or collection of levers, or electrical, electronic or mechanical device or devices, that operate or control points and signals, or signals, and that are interlocked to prevent conflicting movements of trains.

128 Railway offences

The regulations may make provision for or with respect to the following:

- (a) the regulation or prohibition of persons travelling or attempting to travel on a train without paying a fare or without paying the correct fare,
- (b) the regulation or prohibition of persons who travel or attempt to travel on a train for which they do not have the correct, or a valid, ticket or pass,
- (c) the regulation or prohibition of persons who fail to pay a fare on demand,
- (d) trespass on railways,

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- (e) the regulation or prohibition of eating, drinking or smoking in trains or in other public areas of a railway,
- (f) the conduct of passengers and drivers on trains or in other parts of a railway,
- (g) the powers and duties of drivers of trains and of rail safety officers,
- (h) the exclusion of persons, animals or freight from railways,
- (i) the authority of drivers of trains, and of rail safety officers, to eject persons guilty of any contravention of a regulation,
- (j) the taking up or setting down of passengers or other matters incidental to the transport of passengers,
- (k) the carriage of passengers' luggage or other goods, and animals, on trains,
- (l) the regulation or prohibition of the carriage of passengers standing in or on any part of the train,
- (m) the custody and return of property left in trains or in other parts of a railway, the payment of compensation for any such property and the disposal or sale of any such property not claimed and the time of any such disposal or sale,
- (n) the exhibition in or on any train or other part of a railway of such notices in the public interest as the ITSRR considers necessary,
- (o) the erection and display of signs and notices for the guidance of drivers of trains and the public,
- (p) the sale of tickets and the conditions under which tickets must be sold,
- (q) generally as to the regulation and control of trains, of their drivers and passengers, and of other parts of a railway.

Division 2 Proceedings for offences

129 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
 - (a) summarily before a Local Court, or
 - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) The penalty that may be imposed by a Local Court in proceedings for an offence against this Act or the regulations (including any daily penalty) is 500 penalty units or imprisonment for 12 months, or both.

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- (3) In any proceedings for an offence under this Act, the onus of proving that a person had a reasonable excuse is on the defendant.

130 Period within which proceedings for offences may be commenced

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

131 Authority to take proceedings

- (1) Subject to this section, any legal proceedings for an offence against, or to recover any charge, fee or money due under, this Act or the regulations may be taken only by the ITSRR or by a person authorised by the ITSRR for the purpose, either generally or in any particular case.
- (2) Proceedings for an offence against this Act are not to be instituted in the Supreme Court in its summary jurisdiction without the written consent of the ITSRR or of an officer of the ITSRR authorised by the ITSRR for the purposes of this section.
- (3) Proceedings against the Crown or a statutory body representing the Crown for an offence against this Act or the regulations are not to be instituted without the written consent of the Minister.
- (4) In any proceedings referred to in this section, the production of an authority or consent purporting to be signed by the ITSRR or the

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Minister is to be evidence of the authority or consent without proof of the signature of the ITSRR or the Minister.

- (5) The ITSRR may, for the purposes of subsection (1), authorise any person who is a member of a specified class of persons to take the actions referred to in that subsection.

132 Defence

It is a defence to any proceedings against a person for an offence against a provision of Division 1 of Part 2 or section 26 (1) if the person proves that:

- (a) it was not reasonably practicable for the person to comply with the provision, or
- (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

133 Multiple offences

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

134 Offences by corporations—liability of directors and managers

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation, and each person concerned in the management of the corporation, is taken to have contravened the same provision unless the director or person satisfies the court that:
 - (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against the provision is actually committed.
- (4) In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a member) is not to be regarded

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as a director or person concerned in the management of the council for the purposes of this section.

135 Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

136 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations as a penalty notice offence.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person can pay, within the time and to the person specified in the notice, the amount of the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of, the same occurrence.
- (6) The regulations may:

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- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (7) The amount of a penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, *authorised officer* means a person authorised in writing by the ITSRR as an authorised officer for the purposes of this section.

Division 3 Enforceable voluntary undertakings

137 ITSRR may accept undertakings

- (1) The ITSRR may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.
- (2) The person may withdraw or vary the undertaking at any time but only with the ITSRR's written consent.
- (3) Neither the ITSRR nor a rail safety officer may bring proceedings for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which an undertaking that is in force relates.

138 Enforcement of undertakings

- (1) If the ITSRR considers that a person has contravened an undertaking accepted by the ITSRR, the ITSRR may apply to a Local Court constituted by an Industrial Magistrate for enforcement of the undertaking.
- (2) If a Local Court is satisfied that the person has contravened the undertaking, it may make:
 - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking, or
 - (b) any other order that it considers appropriate.

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Division 4 Court-based sanctions

139 Commercial benefits order

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

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- (b) they are members of the same household, or
 - (c) they are partners, or
 - (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust, or
 - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate, or
 - (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate, or
 - (g) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (7) For the purposes of subsection (6), a beneficiary of a trust includes an object of a trust.

140 Supervisory intervention order

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

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- (c) to furnish compliance reports to the ITSRR or the court or both as specified in the order,
- (d) to appoint a person to have responsibilities:
 - (i) to assist the person in improving compliance with rail safety laws or specified aspects of rail safety laws, and
 - (ii) to monitor the person's performance in complying with rail safety laws or specified aspects of rail safety laws and in complying with the requirements of the order, and
 - (iii) to furnish compliance reports to the ITSRR or the court or both as specified in the order.
- (3) The court may specify matters that are to be dealt with in compliance reports and the form and manner in which, and frequency with which, compliance reports are to be prepared and furnished.
- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form and manner in which, and frequency with which, they are to be made public.
- (5) The court may make a supervisory order only if it is satisfied that the order is capable of improving the person's ability or willingness to comply with the rail safety laws, having regard to:
 - (a) the offences against Australian rail safety laws of which the person has been previously found guilty, and
 - (b) the offences against Australian rail safety laws for which the person has been proceeded against by way of unwithdrawn penalty notices, and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.
- (6) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of:
 - (a) the ITSRR, or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
- (8) In this section, ***compliance report***, in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to:

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

141 Contravention of supervisory intervention order

A person who is subject to a requirement of a supervisory intervention order must not engage in conduct that results in contravention of the requirement.

Maximum penalty: 400 penalty units.

142 Exclusion orders

- (1) The court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the ITSRR, if the court considers the person to be a systematic or persistent offender against the Australian rail safety laws, make an order under this section.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences against Australian rail safety laws, the court may, if it considers it appropriate to do so, make an exclusion order prohibiting the person, for a specified period, from:
 - (a) carrying out specified railway operations or any railway operations, or
 - (b) being a director, secretary or officer concerned in the management of a body corporate involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction, or
 - (c) being involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction except by driving a train or rolling stock.
- (3) The court may only make an order under this section if it is satisfied that the person should not continue the things the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to:
 - (a) the offences against the Australian rail safety laws of which the person has previously been found guilty, and

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- (b) the offences against the Australian rail safety laws for which the person has been proceeded against by way of unwithdrawn penalty notices, and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.
- (4) A court that has power to make an exclusion order may revoke or amend an exclusion order on the application of:
- (a) the ITSRR, or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

143 Contravention of exclusion order

A person who is subject to an exclusion order must not engage in conduct that results in a contravention of the order.

Maximum penalty: 400 penalty units.

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Administration

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144 Delegation by Minister

- (1) The Minister may delegate any function under this Act (except this power of delegation) to any member of staff of the ITSRR.
- (2) A reference in this section to a function under this Act includes a reference to a function under a condition of an accreditation.

145 Appointment of rail safety 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 a rail safety officer for the purposes of this Act.
- (2) The authority of a rail safety officer may be limited by the relevant instrument of appointment to the functions specified in the instrument of appointment.
- (3) In addition to any other persons who may be appointed as rail safety 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 a rail safety officer a person exercising powers, or holding office, under a Commonwealth Act.

146 Reciprocal powers of rail safety officers

- (1) This section has effect in relation to another jurisdiction while there is in force a corresponding rail safety law that contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement with a Minister of another jurisdiction for the purposes of this section, including an agreement to amend or revoke any such agreement.
- (3) To the extent envisaged by such an agreement:
 - (a) rail safety officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise functions conferred on rail safety officers of the other jurisdiction by or under the corresponding rail safety law of that other jurisdiction, and
 - (b) rail safety officers of that other jurisdiction may, in this jurisdiction or that other jurisdiction, exercise functions conferred on rail safety officers by or under this Act.
- (4) Anything done or omitted to be done by a rail safety officer of this jurisdiction under subsection (3) is taken to have been done under this Act as well as under the corresponding rail safety law.

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- (5) The regulations may make provision for or with respect to the exercise of functions under this section.
- (6) Nothing in this section affects the appointment under section 145 of persons as rail safety officers for the purposes of this Act.

147 Identification cards for rail safety officers

The ITSRR must:

- (a) issue a rail safety officer with an identification card, or
- (b) designate a card issued to a rail safety officer by a corresponding Rail Safety Regulator or by a person, body or authority (whether or not of this jurisdiction) as an identification card for the purposes of this Act.

148 Rail safety officer must not exercise functions without identification card

A rail safety officer must not exercise a function conferred by or under this Act unless an identification card has been issued to, or designated for, the officer by the ITSRR.

149 Display and production of identification card

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

150 Return of identification cards

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

Maximum penalty: 15 penalty units.

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Administration

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151 ITSRR may exercise functions of rail safety officers

- (1) The ITSRR may exercise any function conferred on a rail safety officer by or under this Act or the regulations.
- (2) Accordingly, in this Act (except this Part) a reference to a rail safety officer includes a reference to the ITSRR.

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152 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

153 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, 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 59.
- (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.

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154 Reviewable decisions

- (1) An eligible person aggrieved by a reviewable decision may appeal to the Administrative Decisions Tribunal against the decision.
- (2) The following table sets out:
 - (a) decisions made under this Act that are reviewable in accordance with this Part (*reviewable decisions*), and
 - (b) who is eligible to apply for review of a reviewable decision (the *eligible person* in relation to the reviewable decision).

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 29 (1) (direction to amend safety management system)	A rail transport operator given a direction to amend a safety management system.
2	Section 38 (1) (refusal to accredit or imposing conditions or restrictions on accreditation)	A rail transport operator whose application for accreditation is refused or is subject to conditions or restrictions.
3	Section 38 (extending the period for determining an application)	A rail transport operator who has applied for accreditation.
4	Section 48 (revocation or suspension of accreditation)	A rail transport operator whose accreditation is revoked or suspended.
5	Section 49 (1) (immediate suspension)	A rail transport operator whose accreditation is suspended.
6	Section 49 (extension of immediate suspension)	A rail transport operator whose accreditation is suspended.
7	Section 51 (1) (refusal to grant variation of accreditation)	A rail transport operator whose application for variation of accreditation is refused.
8	Section 51 (1) (grant of variation of accreditation subject to conditions or restrictions)	A rail transport operator whose accreditation is varied subject to a condition or restriction.
9	Section 51 (extending the period for determining an application for variation)	A rail transport operator who has applied for variation of accreditation.
10	Section 52 (3) (refusal to grant variation of condition or restriction of accreditation)	A rail transport operator whose application for variation of a condition or restriction is refused.

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Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
11	Section 53 (variation or revocation of a condition or restriction, or imposition of a new condition or restriction)	A rail transport operator whose conditions or restrictions of accreditation are changed.
12	Section 96 (1) (c) (retention of sample or seized thing to prevent commission of offence)	A person who is in an owner within the meaning of section 96 (4) of the sample or thing.

155 Review by the ITSRR

- (1) An eligible person:
 - (a) in relation to a reviewable decision made by the ITSRR may apply to the ITSRR for a review of the decision within 28 days after the decision was made, or
 - (b) in relation to a reviewable decision, other than a decision made by the ITSRR, may apply to the ITSRR for review of the decision within:
 - (i) 28 days after the day on which the decision first came to the eligible person's notice, or
 - (ii) such longer period as the ITSRR allows.
- (2) The application must be in the approved form.
- (3) If an application is made to the ITSRR in accordance with this section, the ITSRR must make a decision:
 - (a) to affirm or vary the reviewable decision, or
 - (b) to set aside the reviewable decision and substitute another decision that the ITSRR considers appropriate.
- (4) The ITSRR must give a written notice to the applicant setting out:
 - (a) the ITSRR's decision under subsection (3) and the reasons for the decision, and
 - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based,and must do so within 14 days after the application is made or, if the reviewable decision was made under section 91, within 7 days after the application is made.
- (5) If the ITSRR has not notified an applicant of a decision in accordance with subsection (4), the ITSRR is taken to have made a decision to affirm the reviewable decision.

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- (6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the ITSRR, on the ITSRR's own initiative or on the application of the applicant for review, stays the operation of the decision (not being a prohibition notice) pending the determination of the review.
- (7) The ITSRR must make a decision on an application for a stay within 24 hours after the making of the application.
- (8) If the ITSRR has not made a decision in accordance with subsection (7), the ITSRR is taken to have made a decision to grant a stay.
- (9) The ITSRR may attach any conditions to a stay of the operation of a reviewable decision that the ITSRR considers appropriate.
- (10) Section 53 of the *Administrative Decisions Tribunal Act 1997* does not apply to a reviewable decision.

156 Protection from incrimination

(1) Self incrimination not an excuse

A person is not excused from a requirement under Division 2 of Part 4 or Part 5 to make a statement, to give or furnish information, to answer a question or to produce a document on the ground that the statement, information, answer or document might incriminate the person or make the person liable to a penalty.

(2) Statement, information or answer not admissible if objection made

However, any statement made or any information or answer given or furnished by a natural person in compliance with a requirement under this Act is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this Part or in respect of false information) if:

- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned at an appropriate time that the person may object to making the statement or giving or furnishing the information or answer on the ground that it might incriminate the person.

(3) Appropriate time for giving warning about incrimination

An *appropriate time* for warning a person as referred to in subsection (2) (b) is any of the following times:

- (a) the time when the requirement to make the statement or to give or furnish the answer or information is made,

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- (b) in the case of evidence required to be given when appearing before a rail safety officer or other person, any time after the start of the appearance before the rail safety officer or person,
- (c) at or about the time immediately before the person makes the statement or gives or furnishes the answer or information.

(4) **Documents admissible**

Any document produced by a person in compliance with a requirement under Division 2 of Part 4 or Part 5 is not inadmissible in evidence against the person in criminal proceedings on the ground that the document might incriminate the person.

(5) **Further information**

Further information obtained as a result of a document produced, a statement made or information or an answer given or furnished in compliance with a requirement under Division 2 of Part 4 or Part 5 is not inadmissible on the ground:

- (a) that the document, statement, information or answer had to be produced, made, given or furnished, or
- (b) that the document, statement, information or answer might incriminate the person.

157 Records and evidence from records

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

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158 Certificate evidence

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

159 Confidentiality

- (1) This section applies to a person engaged or previously engaged in the administration of this Act and (without limiting the foregoing) to the following persons:
 - (a) a rail safety officer or a person assisting a rail safety officer,
 - (b) a person authorised by the ITSRR or a rail safety officer under a provision of this Act to do the act or thing provided for in that provision,
 - (c) a person who is or was a delegate of the ITSRR,
 - (d) a person who is or was employed by, or engaged to provide services to or on behalf of, the ITSRR,
 - (e) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the ITSRR.
- (2) A person to whom this section applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of this Act except:
 - (a) as required or authorised by or under this or any other Act, or
 - (b) with the consent of the person from whom the information was obtained or to whom the information relates, or
 - (c) in connection with the administration of rail safety laws and corresponding rail safety laws, or
 - (d) for law enforcement purposes, rail safety inquiries or public safety, or
 - (e) to a court or in connection with any legal proceedings, or
 - (f) in accordance with the regulations.Maximum penalty: 500 penalty units.
- (3) Nothing in this section prevents information being used to enable an Australian Rail Safety Regulator to accumulate aggregate data and to enable the Australian Rail Safety Regulator to authorise use of the aggregate data for the purposes of research or education.

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160 Civil liability not affected by Division 1 or 3 of Part 2

- (1) Nothing in Division 1 or 3 of Part 2 is to be construed:
 - (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provisions of that Division, or
 - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.
- (2) Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the regulations is actionable.

161 Exclusion of personal liability

No matter or thing done, or omitted to be done, by the Minister, the ITSRR, the Chief Investigator, a member of, or an assessor for, a Board of Inquiry, an officer of the ITSRR, a rail safety officer or a person acting under the direction of the Minister, the ITSRR, the Chief Investigator, a member or any such officer subjects the Minister, the ITSRR, the Chief Investigator, a member, authority or any such officer or person personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purposes of this or any other Act.

162 Exclusion of liability of the State

No act or omission of the Minister, the ITSRR, the Chief Investigator, a member of, or an assessor for, a Board of Inquiry, a rail safety officer or an officer of the ITSRR in the course of exercising functions (or failing to exercise 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.

163 Immunity for reporting unfit rail safety worker

- (1) No action may be taken against a person to whom this section applies who, in good faith, reports to:
 - (a) the ITSRR, or
 - (b) a rail transport operator, or
 - (c) any other person to whom this section applies who is employed or engaged by the ITSRR or a rail transport operator,any information which discloses that a person is unfit to carry out rail safety work or certain types of rail safety work or that it may be dangerous to allow that person to carry out rail safety work or certain types of rail safety work.

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- (2) No action may be taken against a person to whom this section applies who, in good faith, reports:
 - (a) the results of a test or examination carried out under this Act or the regulations, or
 - (b) an opinion formed by that person as a result of conducting such a test or examination,to a person referred to in subsection (1) (a), (b) or (c).
- (3) This section applies to the following persons:
 - (a) a registered medical practitioner,
 - (b) a registered optometrist,
 - (c) a registered physiotherapist.

164 Approval of compliance codes and guidelines

- (1) For the purpose of providing practical guidance to persons who have duties or obligations under this Act or the regulations, the Minister may make an order:
 - (a) approving a compliance code, or
 - (b) approving guidelines.
- (2) The Minister may make an order approving the variation of a compliance code or guidelines or revoking the approval of a compliance code or guidelines.
- (3) An order approving a compliance code or guidelines, or a variation or revocation order, takes effect when notice of it is published in the Gazette or on such later date as is specified in the order.
- (4) As soon as practicable after making an order approving a compliance code or guidelines, or a variation or revocation order, the Minister must ensure that notice of the making of the order is published in the Gazette.
- (5) The Minister must ensure that a copy of:
 - (a) each compliance code that is currently approved, and
 - (b) guidelines that are currently approved, andis or are available for inspection by members of the public without charge at the office of the ITSRR during normal business hours.
- (6) Sections 40 and 41 of the *Interpretation Act 1987* apply to compliance codes in the same way that they apply to statutory instruments.

165 Effect of compliance code

A failure to comply with a compliance code does not give rise to any civil or criminal liability.

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Note. A person who complies with a compliance code may, however, be taken to have complied with this Act (see section 166).

166 Effect of complying with a compliance code

If:

- (a) a compliance code makes provision for or with respect to a duty or obligation imposed by this Act or the regulations, and
- (b) a person complies with the compliance code to the extent that it makes that provision,

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

167 Effect of compliance with conditions of accreditation

If:

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

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

168 Recovery of certain costs

The ITSRR may recover from a rail transport operator the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an inspection of an accredited person under section 80.

169 Recovery of amounts due

Any fees, charges or other money payable under this Act or the regulations may be recovered by the ITSRR as a debt in any court of competent jurisdiction.

170 Contracting out prohibited

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

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171 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

172 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to the following:
 - (a) fees for the purposes of this Act or the regulations and the refund or waiver of such fees,
 - (b) the safe operation and maintenance of historic or preserved rolling stock,
 - (c) the safe construction, operation and maintenance of sidings (including private sidings),
 - (d) the functions, training, health and fitness of rail safety workers,
 - (e) tampering with, or damaging, railways,
 - (f) the unauthorised use of railways and rolling stock,

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- (g) the opening and closing of railway gates,
 - (h) the regulation of vehicles, animals and pedestrians crossing railway tracks,
 - (i) the regulation of level-crossings,
 - (j) the loading and unloading of freight on railways,
 - (k) the publication of statistics relating to rail safety,
 - (l) the management of fatigue, including safe hours of work and periods between work for railway employees,
 - (m) rules relating to railway network operations and operations of specified operators and the making of any such rules,
 - (n) standards for railway operations, including standards for rolling stock, network control systems and any other infrastructure of a railway,
 - (o) 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,
 - (p) train safety recordings,
 - (q) conditions of, or restrictions on, accreditation.
- (3) The regulations may exempt, or provide for the exemption of, either absolutely or subject to conditions, any person, siding, railway, part of a railway or operation from all or any of the provisions of this Act.
- (4) In the event of an inconsistency between a by-law or regulation made, or taken to be made, under the *Transport Administration Act 1988* and a regulation made under this Act, the regulation made under this Act prevails to the extent of the inconsistency.
- (5) A regulation made under this Act does not limit the operation of a by-law or regulation made, or taken to be made, under the *Transport Administration Act 1988* so far as it can operate concurrently with a regulation made under this Act.
- (6) The regulations may create offences punishable by a penalty not exceeding 250 penalty units.

173 Repeal

The *Rail Safety Act 2002* is repealed.

174 Savings, transitional and other provisions

Schedule 3 has effect.

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175 Amendment of other Acts

The Acts specified in Schedule 4 are amended as set out in that Schedule.

176 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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Rail Safety Bill 2007

Schedule 1 Rail safety workers—alcohol or other drugs

Schedule 1 Rail safety workers—alcohol or other drugs

(Section 24 (5))

1 Application of Schedule

This Schedule applies to the testing of rail safety workers for the presence of alcohol or drugs.

2 Regulations relating to alcohol and drug testing

- (1) The regulations may make provision for or with respect to the following:
 - (a) the authorisation of persons (including rail safety officers):
 - (i) to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or drugs, and
 - (ii) to operate equipment for that purpose,
 - (b) the circumstances when tests for detecting the presence of alcohol or drugs may be conducted, including (but not limited to) random testing and testing of rail safety workers when about to carry out, or while on duty for the purpose of carrying out, railway safety work,
 - (c) the conduct of testing, which may include the taking of blood or urine samples or other body tissues or fluids,
 - (d) the taking of samples of blood or urine or other body fluids or tissues,
 - (e) the devices used in carrying out breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,
 - (f) the accreditation of persons conducting analyses for the presence of drugs,
 - (g) the procedure for the handling and analysis of samples of blood or urine or other body tissues or fluids,
 - (h) offences relating to the carrying out of rail safety work while under the influence of alcohol or any other drug,
 - (i) offences relating to the carrying out of rail safety work while the prescribed concentration of alcohol is present in the rail safety worker's blood,
 - (j) offences relating to the carrying out of rail safety work while a drug (other than alcohol), or a prescribed concentration or

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Rail Safety Bill 2007

Rail safety workers—alcohol or other drugs

Schedule 1

- amount of any such drug, is present in the rail safety worker's blood or urine or other body tissues or fluids,
- (k) offences relating to refusal or failure to undergo tests or otherwise comply with test procedures or interference with test results,
 - (l) offences relating to refusal or failure to administer tests or take samples or to do so in accordance with required procedures,
 - (m) evidence in proceedings as to matters relating to drug and alcohol testing,
 - (n) without limiting paragraph (m), the use of certificates as to concentration of alcohol or presence of drugs as evidence of the matters stated in the certificate in proceedings for offences,
 - (o) confidentiality of test results,
 - (p) protection against liability for persons administering tests or taking samples of blood or urine or other body tissues or fluids,
 - (q) disciplinary action that may be taken consequent on a breach of regulations made under this clause.
- (2) An offence under a regulation made under this clause relating to the carrying out of rail safety work by a rail safety worker 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 rail safety worker's blood or urine, a refusal or failure by a rail safety worker to undergo tests or otherwise comply with test procedures or to interference by a rail safety worker with test results, may, in addition to the penalty provided for by section 172 for offences under the regulations, be punishable by a period of imprisonment not exceeding 9 months.

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Rail Safety Bill 2007

Schedule 2 Fatigue management

Schedule 2 Fatigue management

(Section 25 (2))

1 Working hours for rail safety workers driving freight trains

The following conditions of work apply to rail safety workers who drive freight trains:

- (a) In the case of a 2 person operation, the maximum shift length to be worked is 12 hours.
- (b) In the case of a one person operation, the maximum shift length to be worked is 9 hours.
- (c) In the case of a one person operation, there is to be a minimum break of not less than 30 minutes taken at some time between the third and fifth hour of each shift.
- (d) There is to be a break of at least 11 continuous hours between each shift worked by a rail safety worker where the worker ends a shift at the home depot.
- (e) There is to be a break of at least 7 continuous hours between each shift worked by a rail safety worker where the worker ends a shift away from the home depot and the break is taken away from the home depot.
- (f) A maximum number of 12 shifts is to be worked in any 14-day period.

2 Working hours for rail safety workers driving single manning passenger trains

(1) The following conditions of work apply to rail safety workers who drive passenger trains in a one person operation:

- (a) The maximum shift length to be worked is 10 hours for the driver of an interurban or long distance passenger train or 9 hours for the driver of a suburban train.
- (b) There is to be a break of at least 11 continuous hours between each shift worked by a rail safety worker where the worker ends a shift at the home depot.
- (c) There is to be a break of at least 7 continuous hours between each shift worked by a rail safety worker where the worker ends a shift away from the home depot and the break is taken away from the home depot.
- (d) A maximum number of 12 shifts is to be worked in any 14-day period.

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Rail Safety Bill 2007

Fatigue management

Schedule 2

- (2) The conditions of work set out in clause 1 (a) and (d)–(f) apply to rail safety workers who drive passenger trains in a 2 person operation.

3 Emergencies and accidents

The requirements of this Schedule do not apply in the event of:

- (a) an accident or emergency, or
- (b) any urgent circumstances approved by the ITSRR,

if the driver or drivers concerned indicate their fitness to work the extended hours.

4 Relationship with State industrial instruments

Except as provided by the regulations, this Schedule prevails over any inconsistent State industrial instrument (whether made before or after the commencement of this clause) to the extent that this Schedule provides for shorter hours of work or additional or longer breaks from work than are provided for by the State industrial instrument.

5 Regulations

The regulations may amend this Schedule (other than this clause) for or with respect to the following matters:

- (a) modifying conditions of work set out in this Schedule,
- (b) prescribing other conditions of work for rail safety workers for the purposes of fatigue management or regulating safe hours of work and periods between work.

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Rail Safety Bill 2007

Schedule 3 Savings, transitional and other provisions

Schedule 3 Savings, transitional and other provisions

(Section 174)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

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Rail Safety Bill 2007

Amendment of other Acts

Schedule 4

Schedule 4 Amendment of other Acts

(Section 175)

4.1 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit “*Rail Safety Act 2002*, section 105”

Insert instead “*Rail Safety Act 2007*, section 136”.

4.2 Freedom of Information Act 1989 No 5

Schedule 1 Exempt documents

Omit “section 66, 67 or 67B of the *Rail Safety Act 2002*” from clause 20 (1) (f).

Insert instead “section 61, 63 or 65 of the *Rail Safety Act 2007*”.

4.3 Industrial Relations Act 1996 No 17

Section 210 Freedom from victimisation

Omit section 210 (1) (ia). Insert instead:

- (ia) informs any person or body of, or gives evidence in relation to, a notifiable occurrence within the meaning of the *Rail Safety Act 2007*, or

4.4 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Omit “*Rail Safety Act 1993*, section 75”.

Insert instead “*Rail Safety Act 2007*, section 90”.

4.5 Transport Administration Act 1988 No 109

[1] Section 17D Payments to RailCorp

Omit “section 95 of the *Rail Safety Act 2002*”.

Insert instead “section 128 of the *Rail Safety Act 2007*”.

[2] Section 42A Definitions

Omit “*Rail Safety Act 2002*” from the definition of *rail safety inquiry*.

Insert instead “*Rail Safety Act 2007*”.

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Rail Safety Bill 2007

Schedule 4 Amendment of other Acts

- [3] Section 42A, definition of “transport service”**
Omit “*Rail Safety Act 2002*” from paragraph (a).
Insert instead “*Rail Safety Act 2007*”.
- [4] Section 42D General functions of ITSRR**
Omit “operators of railways under the *Rail Safety Act 2002*” from section 42D (2) (f).
Insert instead “rail transport operators under the *Rail Safety Act 2007*”.
- [5] Section 42L Disclosure of information by ITSRR**
Omit “*Rail Safety Act 2002*” from section 42L (4).
Insert instead “*Rail Safety Act 2007*”.
- [6] Section 42L (5)**
Omit “section 65A of the *Rail Safety Act 2002*”.
Insert instead “section 59 of the *Rail Safety Act 2007*”.
- [7] Section 42L (6)**
Omit “Sections 72 and 73 of the *Rail Safety Act 2002*”.
Insert instead “Sections 73 and 74 of the *Rail Safety Act 2007*”.
- [8] Section 42P Limitations on Ministerial control of ITSRR**
Omit “*Rail Safety Act 2002*” from section 42P (2) (a).
Insert instead “*Rail Safety Act 2007*”.
- [9] Section 42Q Delegation of functions of ITSRR**
Omit “*Rail Safety Act 2002*” from section 42Q (3).
Insert instead “*Rail Safety Act 2007*”.
- [10] Section 45A General functions of Chief Investigator**
Omit “*Rail Safety Act 2002*” from section 45A (2) (a).
Insert instead “*Rail Safety Act 2007*”.
- [11] Section 45C Disclosure of information by Chief Investigator**
Omit “*Rail Safety Act 2002*” from section 45C (4).
Insert instead “*Rail Safety Act 2007*”.

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Rail Safety Bill 2007

Amendment of other Acts

Schedule 4

- [12] Section 45C (5)**
Omit “section 65A of the *Rail Safety Act 2002*”.
Insert instead “section 59 of the *Rail Safety Act 2007*”.
- [13] Section 45C (6)**
Omit “Sections 72 and 73 of the *Rail Safety Act 2002*”.
Insert instead “Sections 73 and 74 of the *Rail Safety Act 2007*”.
- [14] Section 88N Obligations and rights under Rail Safety Act 2006**
Omit “*Rail Safety Act 2002*” from section 88N (1).
Insert instead “*Rail Safety Act 2007*”.
- [15] Section 88X Obligations and rights under Rail Safety Act 2006 relating to members of staff**
Omit “railway safety work” from section 88X (1) and (2) wherever occurring.
Insert instead “rail safety work”.
- [16] Section 88X (1) and (2)**
Omit “*Rail Safety Act 2002*” wherever occurring.
Insert instead “*Rail Safety Act 2007*”.
- [17] Schedule 6A Powers relating to rail infrastructure facilities and land**
Omit “*Rail Safety Act 2002*” from clause 11 (2) (c).
Insert instead “*Rail Safety Act 2007*”.
- [18] Schedule 6AA Access undertakings**
Omit “*Rail Safety Act 2002*” from clause 8 wherever occurring.
Insert instead “*Rail Safety Act 2007*”.
- [19] Schedule 7 Savings, transitional and other provisions**
Insert at the end of clause 2 (1):
Rail Safety Act 2007, but only to the extent that it amends this Act

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Rail Safety Bill 2007

Schedule 4 Amendment of other Acts

4.6 Transport Administration Amendment (Rail Agencies) Act 2003 No 96

Schedule 2 Amendments relating to dissolution of Rail Infrastructure Corporation

Omit “*Rail Safety Act 2002*” from clause 7 of Schedule 9 to the *Transport Administration Act 1988*, as inserted by Schedule 2 [14] to this Act.

Insert instead “*Rail Safety Act 2007*”.