

Rail Safety Act 2002 No 96

[2002-96]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Transport Legislation Amendment \(Safety and Reliability\) Act 2003 No 65](#) Sch 4 [1]-[115] and [117]-[121] (not commenced — to commence on 1.1.2004)

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New South Wales

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Rail Safety Act 2002 No 96



New South Wales

An Act to promote the safe construction, operation and maintenance of railways; to repeal the *Rail Safety Act 1993*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Rail Safety Act 2002*.

2 Commencement

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

3 Object of Act

The object of this Act is to promote the safe construction, operation and maintenance of railways.

4 Interpretation

(1) In this Act:

accreditation means accreditation under Division 1 of Part 2.

accredited person means a person accredited, or granted provisional accreditation, under Division 1 of Part 2.

approved means approved by the Director-General.

authorised officer means a person, or a member of a class of persons, appointed for the time being by the Director-General as an authorised officer or class of authorised officers for the purposes of the provision in which the expression is used, and includes an authorised officer appointed by the Director-General for the purposes of regulations made under Schedule 1.

certification means a certification of competency issued under Division 3 of Part 2.

Department means the Department of Transport.

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

exercise a function includes perform a duty.

function includes power, authority or duty.

improvement notice means a notice given under section 51.

infrastructure of a railway means those facilities that are necessary to enable a railway to operate safely and includes, but is not limited to, railway track, associated track structures, tunnels, bridges, stations, platforms, signalling systems, train control systems, communication systems, overhead electrical power supply systems, buildings (including buildings used for administrative purposes), workshops and associated plant, machinery and equipment.

notifiable occurrence means an occurrence specified in Schedule 3.

operator of a railway—see section 5 (1).

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 owned and maintained by a person who does not own, control or manage the running line with which the siding connects or to which it has access.

prohibition notice means a notice given under section 54.

rail investigation panel means a panel established under section 67.

rail safety inquiry means an inquiry conducted under section 67.

railway means a guided system designed to transport passengers or freight or both (whether or not passengers, freight or both are being transported) on a railway track, together with its infrastructure and associated sidings, and includes a heavy railway, light railway, inclined railway, monorail or tramway.

railway employee, in relation to a railway, means:

- (a) an employee or contractor of an operator of the railway who performs railway safety work, or
- (b) a person who, without remuneration or reward, voluntarily and without obligation performs railway safety work for an operator of the railway, or
- (c) an individual who is an operator of the railway and who performs railway safety work.

railway operation—see section 5 (3).

railway premises means:

- (a) land (including any premises on the land) on or in which is situated any item or part of an item of the infrastructure of a railway, or
- (b) land (including any premises on the land) on or in which is situated any over track structure or part of an over track structure, or
- (c) land (including any premises on the land) on or in which records required for, or relating to, the accreditation of an operator of a railway are kept.

railway safety work means any of the following classes of work carried out by a railway employee:

- (a) work involving the operation or movement of a train or trains,
- (b) work on or about railway infrastructure relating to the repair, maintenance, cleaning or upgrading of railway tracks or any rolling stock or associated works or equipment,
- (c) work involving certification as to the safety of infrastructure or rolling stock (or any item of infrastructure or rolling stock),
- (d) work involving the development, management or monitoring of safeworking systems for railways,
- (e) any other work that is prescribed by the regulations as railway safety work,

but does not include any work that involves the driving of a motor vehicle on a road or road related area within the meaning of the [Road Transport \(Safety and Traffic Management\) Act 1999](#).

rolling stock means any vehicle that operates on or uses a railway track, but does not include a vehicle designed to operate both on and off a railway track or tracks when the vehicle is not operating on a railway track or tracks.

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

safety interface agreement—see section 12 (1).

safeworking systems, in relation to a railway, means the systems and procedures for operating trains safely and for protecting railway employees, passengers, freight, rolling stock and motor vehicles on or in the proximity of railway tracks.

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 and

stabled.

train means one or more units of rolling stock operating on a railway (whether or not the units are in motion).

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

5 Railway operations

(1) In this Act, an **operator** of a railway is a person who is responsible (whether because of ownership, control, management or contractual obligations) for a railway operation in relation to the railway.

(2) An operator of a railway may be responsible for one or more railway operations.

(3) In this Act, **railway operation** means any one or more of the following:

(a) the construction and maintenance, or the construction or maintenance, of infrastructure of a railway,

(b) the operation or movement, or causing the operation or movement, by any means, of any rolling stock on a railway, including operating a railway service if the operator of the service operates or moves, or causes the operation or movement of, rolling stock,

(c) the construction and maintenance, or construction or maintenance, of rolling stock.

6 Railways to which Act applies

(1) This Act applies to:

(a) any railway within, or partly within, the State with a railway track gauge equal to or greater than 600 mm, and

(b) the Darling Harbour monorail transport system, and

(c) any other system designed to transport passengers or freight or both and declared by the regulations to be a railway for the purposes of this Act,

and to the operation of any such railway.

(2) This Act does not apply to:

(a) a railway in a mine that is underground or predominantly underground and to which the provisions of the [Coal Mines Regulation Act 1982](#) or the [Mines Inspection Act 1901](#) or regulations or rules made under those Acts apply, or

(b) a railway operated at an amusement park the operator of which holds a certificate of exemption from compliance with the requirements of this Act issued by the

Director-General, or

(c) an aerial, cable operated transportation system.

7 Act binds Crown

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.
- (2) If the Director-General is the operator of a railway, the functions of the Director-General under this Act with respect to the accreditation of the operator of the railway, and the operator of the railway, are to be exercised by the Minister or a person authorised by the Minister.

Part 2 Accreditation of operators and certification of railway employees

Division 1 Accreditation of railway operators

8 Operators of railways to be accredited

A person who is an operator of a railway is guilty of an offence unless the person is an accredited operator for the railway operations for which the person is responsible.

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.

9 Purpose of accreditation

- (1) The purpose of accreditation is to attest:
 - (a) that the accredited person is (or, in the case of an accredited corporation, the directors and managers of the corporation designated in accordance with section 17 are) considered to be of good repute and in all other respects fit and proper to be responsible for the safe carrying out of the railway operations for which the person is accredited, and
 - (b) that the systems submitted by the accredited person for the identification, management and control of the risks of carrying out those railway operations have been accepted by the Director-General (subject to Division 2), and

- (c) that the accredited person has demonstrated, to the degree and in the manner required by the Director-General, the competency and capacity to implement the systems submitted by the accredited person, and accepted by the Director-General, relating to the safe carrying out of those railway operations.
- (2) The systems submitted by a person seeking accreditation must relate to the following:
 - (a) the identification and analysis of risks associated with the design of the railway and the carrying out of the railway operations for which the person is accredited,
 - (b) the design and implementation of controls to manage those risks,
 - (c) the monitoring of the controls for managing risk,
 - (d) the modification of the systems in response to the monitoring of controls for managing risk.
 - (3) The Director-General may require a person seeking accreditation to submit additional information and standards in relation to any system submitted by the person under this section.

10 Applicant to give information

- (1) An applicant for accreditation must give to the Director-General any information that the Director-General reasonably requires in the circumstances to enable the Director-General to effectively determine the application for accreditation.
- (2) The regulations may prescribe information that an applicant for accreditation is required to give to the Director-General, in addition to information that the Director-General may require to be given under subsection (1) or that is required to be given under this Division.
- (3) An application for accreditation is to be in the approved form.

11 Safety management plans

- (1) An applicant for accreditation must give to the Director-General a comprehensive safety management plan that complies with the requirements of this section.
- (2) The safety management plan must:
 - (a) identify any significant risks that have arisen or may arise from the carrying out of railway operations by or on behalf of the applicant, and
 - (b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the applicant to manage the risks and to monitor safety outcomes in relation to those railway operations, and
 - (c) comply with any requirements prescribed by the regulations.

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

12 Safety interface agreements

- (1) An applicant for accreditation must:
 - (a) give to the Director-General information identifying safety interfaces between railway operations (and the railway to which they relate) for which the applicant seeks accreditation and other railways or railway operations for which other persons are responsible, and
 - (b) give to the Director-General particulars of agreements relating to the management of any such safety interfaces (**safety interface agreements**), and
 - (c) demonstrate to the satisfaction of the Director-General that appropriate safety interface agreements are or will be in force in relation to any such safety interfaces.
- (2) Without limiting subsection (1), particulars of safety interface agreements relating to private sidings that are connected with or have access to the railway in relation to which the applicant is seeking accreditation as operator are to be provided.
- (3) Safety interface agreements entered into by an accredited person must comply with any requirements prescribed by the regulations.
- (4) An accredited person must keep a register of current safety interface agreements

entered into by the accredited person.

13 Passenger security

- (1) An applicant for accreditation must, if the operation of the railway involves the carriage of passengers, give to the Director-General a passenger security policy and plan.
- (2) The passenger security policy and plan must comply with any requirements prescribed by the regulations.

14 Applicant to demonstrate capacity to safely carry out railway operations

An applicant for accreditation must demonstrate, to the satisfaction of the Director-General, by the submission of appropriate systems with which the applicant agrees to comply, that the applicant possesses the competency and capacity to safely carry out the railway operations for which the applicant is seeking accreditation.

15 Applicant to describe, and identify ownership of, infrastructure

- (1) An applicant for accreditation must, to the satisfaction of the Director-General, describe all elements that comprise the infrastructure of the railway specified in the application and must identify the owner of the infrastructure.
- (2) If the applicant is not the owner of the infrastructure, the applicant must show the basis of the entitlement of the applicant to control and manage the infrastructure.

16 Rolling stock to be identified

- (1) An applicant for accreditation must demonstrate, to the satisfaction of the Director-General, that the applicant possesses the competency and capacity to maintain the rolling stock used by the applicant in a safe condition.
- (2) The applicant must also describe the proposed ambit of operation, in terms of railway location, of rolling stock that the applicant intends to use. The applicant may for this purpose identify individual units of rolling stock or classes of rolling stock, as the applicant thinks fit.
- (3) An applicant for accreditation must cause all rolling stock specified in the application to be clearly marked, in an approved manner, to enable each unit to be individually identified.

17 Designated directors and managers

- (1) For the purpose of obtaining accreditation under this Division:
 - (a) a corporation must nominate, and the Director-General may accept the nomination of, any one or more of its directors and managers, and

- (b) further nominations, and withdrawals of nominations, may be made and accepted from time to time, and
- (c) a person so nominated becomes a director or manager designated for the purposes of section 9 (1) (a) only when the Director-General certifies acceptance of the nomination.

(2) If a director or manager of a corporation designated for the purposes of section 9 (1) (a) ceases to be a director or manager of the corporation, the corporation must, not later than 30 days after the person ceases to be a director or manager, by notice in writing to the Director-General:

- (a) withdraw the person's nomination, and
- (b) nominate another director or manager for the purposes of section 9 (1) (a).

Maximum penalty: 5,000 penalty units.

(3) A person who ceases to be a director or manager of a corporation for which the person is designated for the purposes of section 9 (1) (a) (other than because of death or incapacity) must, not later than 30 days after the person ceases to be a director or manager, notify the Director-General in writing that the person has ceased to be a director or manager of the corporation.

Maximum penalty: 100 penalty units.

18 Grant of accreditation

- (1) The Director-General may grant accreditation to a person duly applying for accreditation as an operator of a railway for specified railway operations.
- (2) The Director-General must notify the person in writing of the particulars of the accreditation.
- (3) An accreditation may be general or limited and may be subject to such conditions and restrictions (if any) as are specified by the Director-General in the accreditation.
- (4) Without limiting subsection (3), an accreditation may be:
 - (a) for the carrying on of railway operations for the whole of a railway, or
 - (b) only for the carrying on of railway operations for the part or parts of a railway designated in the accreditation, or for a part or parts having the scope or characteristics so designated, or
 - (c) only for the railway operations of the railway designated in the accreditation, or for a railway operation having the scope or characteristics so designated, or
 - (d) only for any service or aspect, or part of a service or aspect, of a railway operation

of the railway designated in the accreditation.

- (5) It is a condition of any accreditation that a third-party policy under the *Motor Accidents Compensation Act 1999* is in force in respect of each light rail vehicle designed only to operate on a railway track or tracks that is operated by the accredited person and is required to be insured under that Act.

19 Provisional accreditation

- (1) The Director-General may grant provisional accreditation to a person as the operator of a railway for specified railway operations if:
 - (a) the person is an applicant who has not satisfied all the requirements for a grant of accreditation and the Director-General is satisfied that the person is in the course of preparing to satisfy those requirements, or
 - (b) the Director-General cancels the accreditation of the person, or
 - (c) the Director-General is of the opinion that the person requires accreditation in relation only to a specified event or for a limited period or that, for any other reason, it is appropriate to do so.
- (2) A grant of provisional accreditation:
 - (a) may be subject to the same conditions and restrictions as a grant of accreditation under section 18, and
 - (b) may be subject to conditions relating to the carrying out of work or the meeting of other requirements relating to accreditation, and
 - (c) is to be for a specified period, not exceeding 12 months.
- (3) The Director-General may renew a grant of provisional accreditation to a person only once.
- (4) This Act applies to a person granted provisional accreditation in the same way that it applies to a person granted accreditation under section 18.

20 Notice of provisional accreditation

- (1) The Director-General must, by notice published in the Gazette, give notice of the cancellation of the accreditation of any person and the granting of provisional accreditation to the person.
- (2) The Director-General may require a person granted provisional accreditation to give notice of that accreditation to specified persons or classes of persons.

21 Exemptions from accreditation and accreditation requirements

- (1) The Director-General may, by written notice, exempt a person from compliance with all or any one or more of the requirements of this Division (including the requirement to be accredited), for the period specified in the notice.
- (2) An exemption may be subject to any conditions and restrictions that appear to the Director-General to be appropriate.
- (3) An exemption may be granted only if the person demonstrates, to the satisfaction of the Director-General, that the systems, expertise, resources and methods to be employed with respect to the carrying out of railway operations are likely to achieve a level of safety that, in the opinion of the Director-General, is appropriate for the railway operations concerned.
- (4) Without limiting subsection (2), a person may be exempted from a requirement to submit a system, or any matter related to a system, for the purposes of this Division if the person demonstrates, to the satisfaction of the Director-General, that the system or matter is covered, or is to be covered, by the provision of services to the person by another accredited person.
- (5) A person is not guilty of an offence of contravening a requirement of this Division in respect of which the person holds a current notice of exemption under this section.

22 Exemption of interstate railway operators

- (1) A person who is the holder of an equivalent accreditation (however described) under an Act of another State or Territory or the Commonwealth may apply to the Director-General for the granting of accreditation as the operator of a railway for specified railway operations.
- (2) The Director-General may grant accreditation to the person, without requiring the person to comply with any or all of the requirements of this Division, if the Director-General is satisfied that:
 - (a) the person is the holder of an equivalent accreditation (however described) under an Act of another State or Territory or the Commonwealth, and
 - (b) the requirements for that accreditation are of a satisfactory standard in relation to the safe carrying out of railway operations or that the carrying out of railway operations by the person is likely to achieve a level of safety that, in the opinion of the Director-General, is appropriate for the railway operations concerned.
- (3) An accredited person who is the holder of an equivalent accreditation (however described) under an Act of another State or Territory or the Commonwealth must notify the Director-General in writing, within 5 working days, of any cancellation, suspension, termination or variation or imposition of a condition affecting the person's

accreditation in that other State or Territory or the Commonwealth.

- (4) A person is not guilty of an offence of contravening a requirement of this Division if the person is, because of this section, not required to comply with that requirement.

23 Exemption of operators of private sidings

- (1) The owner of a private siding is not required to be accredited under this Act.
- (2) The owner of a private siding must, if the siding is connected with or has access to a railway or siding of a railway for which an accredited person is responsible:
- (a) enter into an agreement with the accredited person as to the management of the safety interface with the railway of the accredited person, and
 - (b) notify the accredited person in writing of any railway operations affecting or relating to the siding that may adversely affect the safety of the railway or siding of the accredited person.
- (3) The agreement must comply with any requirements prescribed by the regulations.
- (4) An owner of a private siding who contravenes this section is guilty of an offence.
Maximum penalty: 20 penalty units.
- (5) If the owner of a private siding does not comply with this section, the accredited operator of the railway or siding with which the private siding connects may apply to the Director-General for permission to remove the private siding's connection with the railway or siding.
- (6) If the Director-General grants permission under subsection (5), this section authorises the disconnection of the private siding from the railway or siding concerned.
- (7) A person incurs no liability to the owner of a private siding if the person disconnects a private siding in accordance with permission granted under this section.

24 Sale or transfer of railway by accredited person

- (1) If an accredited person proposes to sell or otherwise transfer a railway in relation to which the person is accredited, the Director-General may, on an application for accreditation under this Division being made by the proposed transferee, waive compliance by the proposed transferee with any one or more of the requirements of this Division.
- (2) The Director-General is not to waive compliance with any such requirement unless the proposed transferee demonstrates, to the satisfaction of the Director-General, that the proposed transferee has the 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 under this section may be given subject to such conditions and restrictions (if any) as appear to the Director-General to be appropriate.

Division 2 Variation, suspension or cancellation of accreditation

25 Variation of accreditations

Having regard to the purpose of accreditation, the Director-General may, at any time:

- (a) attach any conditions or restrictions to a person's accreditation after it has been granted, or
- (b) amend or remove any conditions or restrictions on the accreditation, or
- (c) otherwise vary the accreditation.

26 Declarations as to variation of accreditation

An accredited person must, at least 28 days before each anniversary of the person's accreditation:

- (a) provide the Director-General with a declaration stating that, so far as the person is presently aware, no circumstance exists that might require the person to apply for variation of the person's accreditation in the forthcoming year, or
- (b) if any such circumstance does exist, apply to the Director-General under this Division for variation of the accreditation.

27 Requests by accredited persons for variation or surrender of accreditations

- (1) An accredited person who proposes to carry out a railway operation in a manner, or a railway operation that is, not covered by the person's accreditation must apply to the Director-General for variation of the accreditation before commencing to carry out the railway operation concerned.

Maximum penalty: 20 penalty units.

- (2) An accredited person may apply at any time to the Director-General for variation of the person's accreditation or to surrender the person's accreditation.
- (3) Without limiting subsection (2), an accredited person may apply at any time to the Director-General for approval of a variation to a system, or matter relating to a system, submitted by the accredited person and accepted by the Director-General under section 9.
- (4) The Director-General must not grant a variation of a person's accreditation unless satisfied that the person meets the applicable accreditation requirements in respect of the varied accreditation.

- (5) An accredited person is not required to apply to the Director-General for variation of the person's accreditation if a change in carrying out a railway operation or to a railway operation is of a kind permitted under a condition of the person's accreditation.

28 Suspension or cancellation of accreditation

- (1) Having regard to the purpose of accreditation, the Director-General may suspend and cancel, or cancel, a person's accreditation.
- (2) Without limiting this section, the Director-General may suspend and cancel, or cancel, the accreditation of a person who contravenes the requirements of this Act, the regulations or any conditions or restrictions attached to the person's accreditation.
- (3) The accreditation of a person may be cancelled by the Director-General if no director or manager is designated for the purposes of section 9 (1) (a).

29 Suspension of accreditation in emergency

- (1) If the Director-General considers that there would be an immediate and significant threat to the safety of the public or to property or both unless the accreditation of a person is suspended immediately, the Director-General may, without complying with sections 31–34, suspend the accreditation immediately for a period (not exceeding 28 days) and on terms specified in the notice of suspension.
- (2) The Director-General must have regard to the purposes of the accreditation concerned and to the matters referred to in section 31 before suspending an accreditation.
- (3) A suspension under this section must not be extended or the accreditation concerned cancelled unless the Director-General has first complied with the requirements of sections 31–34 (as appropriately modified to meet the circumstances of the case).

30 Requirements for variation, suspension or cancellation

- (1) Before varying, suspending and cancelling or cancelling an accreditation of a railway operator, the Director-General must comply with sections 31–34.
- (2) This section does not apply to an application under section 27.

31 Systems to be considered before action taken

Before varying, suspending and cancelling or cancelling an accreditation, the Director-General must take into consideration the systems submitted by the accredited person that have been accepted by the Director-General for the purposes of the person's accreditation.

32 Notice of proposed action

- (1) Before varying, suspending and cancelling or cancelling an accreditation, the Director-

General must give notice to the person concerned of the proposed action.

- (2) The notice must contain the following matters:
 - (a) in the case of variation—the terms of the proposed variation,
 - (b) in the case of suspension—the terms and period of the proposed suspension and the steps that it is proposed should be taken by the person to have the suspension lifted and to avoid cancellation of the accreditation,
 - (c) a statement that the person may make representations to the Director-General as to why the accreditation should not be varied, suspended or cancelled or as to any of the other matters in the notice.
- (3) The notice may provide that the representations are to be made to the Director-General on or before a specified date, being a date that is reasonable in the circumstances of the case.

33 Representations to the Director-General

- (1) A person may, in accordance with a notice under section 32, make representations concerning the proposed variation, suspension and cancellation or cancellation.
- (2) The Director-General must consider any representations made.

34 Determination by Director-General

- (1) After considering any representations made about a proposed variation, suspension and cancellation or cancellation, the Director-General may determine:
 - (a) to vary, suspend or cancel the accreditation in accordance with the proposed variation, suspension and cancellation or cancellation, or
 - (b) to vary, suspend or cancel the accreditation in accordance with modifications made to the proposed variation, suspension and cancellation or cancellation, or
 - (c) not to vary, suspend or cancel the accreditation.
- (2) If the determination is to vary, suspend or cancel the accreditation in accordance with modifications made to the proposed variation, suspension and cancellation or cancellation, the Director-General is not required to give notice under this Division of the proposed variation, suspension and cancellation or cancellation.

35 Application to Administrative Decisions Tribunal for review of decision of Director-General

A person aggrieved by a decision of the Director-General under this Division may apply to the Administrative Decisions Tribunal for a review of the decision.

Division 3 Certification of and requirements relating to railway employees

36 Employees to be issued with certificates of competency

- (1) An operator of a railway may issue certificates of competency to employees or prospective employees of the operator who carry out, or intend to carry out, railway safety work.
- (2) A person other than an operator of a railway may, if authorised in writing to do so by the Director-General, issue certificates of competency to employees or prospective employees of an operator of a railway who carry out, or intend to carry out, railway safety work.
- (3) A person other than an operator of a railway must give to the Director-General any information that the Director-General reasonably requires in the circumstances to enable the Director-General to effectively determine the person's application for authorisation.
- (4) The regulations may prescribe information that an applicant for authorisation is required to give to the Director-General.
- (5) An application for authorisation is to be in the approved form.
- (6) In issuing certificates of competency, an operator of a railway or other person is to have regard to any guidelines issued by the Director-General for the purposes of this section and published in the Gazette.
- (7) An operator of a railway who employs, or enters into a contract with, a person to perform railway safety work is guilty of an offence unless the person is the holder of an appropriate certificate of competency issued under this section.

Maximum penalty: 25 penalty units.

Editorial note—

For guidelines under this section, see Gazettes No 134 of 29.8.2003, p 9077 and No 198 of 24.12.2003, p 11703.

37 Employee must hold certificate of competency

A railway employee must not carry out railway safety work unless the employee is the holder of an appropriate certificate of competency issued under section 36.

Maximum penalty: 25 penalty units.

38 Certificates of competency

The purpose of the issue of a certificate of competency is to attest that the person certified:

- (a) is considered to be of good health and fitness and in all other respects to be a fit and proper person to perform railway safety work, and
- (b) is considered to have sufficient knowledge, skills, responsibility and aptitude to perform the railway safety work to which the certification relates.

39 Register of certificates

An operator of a railway or other person who issues certificates of competency must:

- (a) keep a register, in an approved form, of current certificates of competency issued by the operator or person, or
- (b) ensure that particulars of certificates issued by the operator or person are kept by an approved person in a register, in an approved form.

Maximum penalty: 25 penalty units.

40 Training of railway employees engaged in railway safety work

It is a condition of accreditation that an accredited person must ensure that all railway employees employed, or contracted, by the person to perform railway safety work are adequately trained to perform the functions for which they are certified.

41 Health and fitness of railway employees

It is a condition of accreditation that an accredited person must ensure that all railway employees employed, or contracted, by the person to perform railway safety work are of sufficient good health and fitness to perform the functions for which they are certified.

42 Railway employees—alcohol or other drugs

- (1) It is a condition of accreditation that an accredited person must:
 - (a) prepare and implement a drug and alcohol program for its railway employees that complies with guidelines issued by the Director-General for the purposes of this section and published in the Gazette, and
 - (b) ensure that all railway employees employed, or contracted, by the person to perform railway safety work are not under the influence of alcohol or any other drug when about to carry out, or while on duty for the purpose of carrying out (whether or not carrying out), railway safety work.
- (2) The drug and alcohol program is to include any matters required to be included by the guidelines issued by the Director-General for the purposes of this section.
- (3) Without limiting subsection (1) (a), the guidelines are to include provisions for or with respect to the following:
 - (a) protocols for fair procedures,

(b) education and assistance of railway employees.

(4) The Director-General may at any time arrange with an accredited person for the random testing of any person on duty for the purpose of carrying out railway safety work for the presence of alcohol or any other drug to ensure that the accredited person is complying with the terms of the person's accreditation.

(5) Schedule 1 has effect.

(6) For the purposes of this section, a railway employee is to be regarded as being about to carry out railway safety work if the employee:

(a) has left home or a temporary residence for work (being railway safety work), and

(b) has not commenced work after having so left home or the temporary residence.

Editorial note—

For guidelines under this section, see Gazettes No 134 of 29.8.2003, p 9088 and No 198 of 24.12.2003, p 11719.

43 Fatigue management

(1) It is a condition of accreditation that an accredited person must prepare and implement a program for the management of fatigue, safe hours of work and periods between work for its railway employees that complies with the regulations and guidelines issued by the Director-General for the purposes of this section and published in the Gazette.

(2) The program for the management of fatigue, safe hours of work and periods between work is to include any matters required to be included by the regulations and guidelines issued by the Director-General for the purposes of this section.

(3) It is a condition of accreditation that an accredited person must provide conditions of work in accordance with Schedule 2.

(4) The regulations may exempt (either unconditionally or subject to conditions) an accredited person from a condition referred to in subsection (3).

Editorial note—

For guidelines under this section, see Gazettes No 134 of 29.8.2003, p 9094 and No 198 of 24.12.2003, p 11728.

Division 4 Fees

44 Annual accreditation fees

An accredited person must pay the annual accreditation fee fixed by the Director-General and published in the Gazette.

45 Fixing of annual accreditation fees

- (1) The Director-General is to fix annual accreditation fees on the basis determined by the Director-General and approved by the Minister.
- (2) The Director-General may fix different fees for different classes of accredited persons or kinds of accreditations.
- (3) In determining the basis for fixing annual accreditation fees and in determining the fees, the Director-General:
 - (a) must have regard to any requirements relating to the basis on which fees are to be determined set out in the regulations, and
 - (b) may use any information given to the Director-General by an accredited person or an applicant for accreditation.
- (4) An accredited person must give to the Director-General any information relating to the performance of a railway that the Director-General considers necessary for the purposes of fixing annual accreditation fees under this section.

46 Payment of annual fees

- (1) An annual accreditation fee must be paid by a person who has applied for accreditation on or before accreditation and, by an accredited person, at least 28 days before each anniversary of the person's accreditation.
- (2) The Director-General 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).
- (3) The Director-General may reduce or waive an annual accreditation fee having regard to the capacity of an accredited person to pay the fees.

47 Additional time for payment

- (1) If an annual accreditation fee is not paid by the due date, the accreditation of the person failing to pay the fee lapses and a fresh application for accreditation may be required if the person concerned wishes to continue to be accredited.
- (2) However, if the fee is paid by the date determined and notified to the person by the Director-General, the accreditation is taken not to have lapsed.

48 Minimum and late payment fees

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

basis.

- (3) The Director-General may, at the Director-General's discretion, waive payment of the whole or any part of a fee for late payment of a fee.

Part 3 Safety measures

Division 1 Inspections

49 Safety inspections

- (1) The Director-General must cause inspections to be carried out to ensure that an accredited person is complying with the terms of the person's accreditation.
- (2) For the purposes of this section, the Director-General may cause the following to be inspected:
 - (a) the railway track, other infrastructure and rolling stock relating to the railway operations for which the person is accredited,
 - (b) the carrying out of railway operations by the accredited person,
 - (c) the performance of railway employees,
 - (d) the arrangements for the security of members of the public using railways or in or on railway infrastructure,
 - (e) any other thing the Director-General considers to be relevant to the safe carrying out of railway operations in relation to which the person is accredited.
- (3) The inspections are to be carried out at such intervals as the Director-General thinks fit and:
 - (a) in the case of an accredited person who carries out railway operations principally relating to the carriage of passengers, must be carried out at least once every 12 months, and
 - (b) in any other case, must be carried out at least once every 3 years.
- (4) The Director-General must, if requested to do so by the Minister and in accordance with any directions of the Minister, cause an inspection to be carried out under this section in respect of an accredited person.

50 Regulations

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

- (a) the methodology or standards with which inspections carried out under this Division must comply,

- (b) provision of inspection reports to accredited persons,
- (c) procedures with respect to responses to inspection reports.

Division 2 Improvement and prohibition notices and other requirements

51 Improvement notices

- (1) An authorised officer may give an improvement notice to an accredited person or other person if the officer is of the opinion that:
 - (a) the person is contravening any provision of this Act or the regulations or, in the case of an accredited person, any condition or restriction attached to the person's accreditation, or
 - (b) the person has contravened any such provision or condition or restriction in circumstances that make it likely that the contravention will continue or be repeated, or
 - (c) in the case of an accredited person, that any railway operations for which the person is accredited are carried out in contravention of any applicable safety interface agreements, or
 - (d) it is necessary to do so to ensure the safety of members of the public or other persons.
- (2) An improvement notice may require the person, within the period specified in the notice, to do any one or both of the following:
 - (a) to remedy the contravention or the matters occasioning it,
 - (b) to undertake remedial safety work.
- (3) The period within which a person is required by an improvement notice to remedy a contravention or the matters occasioning the contravention or to undertake remedial safety work must be at least 7 days after the notice is given.
- (4) However, an authorised officer may specify a period that is less than 7 days after the improvement notice is given if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of that period.
- (5) An improvement notice must:
 - (a) state that the authorised officer is of the opinion referred to in subsection (1), and
 - (b) state the reasons for that opinion, and
 - (c) if in the authorised officer's opinion there is a contravention of a provision of this

Act or the regulations or a condition or restriction attached to an accreditation, specify the provision, condition or restriction, and

(d) include information about obtaining a review of the notice under this Division.

52 Closure of level-crossings or other structures

- (1) Without limiting section 51 (1), an improvement notice may direct an accredited person to close any level-crossing, bridge or other structure for crossing over or passing over or under a railway.
- (2) An accredited person given a direction must, before closing the level-crossing, bridge or other structure:
 - (a) cause a notice of the proposed closure to be published in a local newspaper circulating in the area in which the level-crossing, bridge or other structure is situated, and
 - (b) notify the Roads and Traffic Authority and the council of the area concerned of the proposed closure.
- (3) On the closure of the level-crossing, bridge or other structure, all rights, easements and privileges in relation to that crossing, bridge or other structure are extinguished.

53 Failure to comply with improvement notice

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

Maximum penalty:

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

54 Prohibition notices

- (1) If an authorised officer is of the opinion that at any railway premises there is occurring

or is about to occur any activity that involves or will involve an immediate risk to the health or safety of any person, the authorised officer may give to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters that give or will give rise to the risk are remedied.

(2) A prohibition notice must:

- (a) state that the authorised officer is of the opinion referred to in subsection (1), and
- (b) state the reasons for that opinion, and
- (c) specify the activity in respect of which that opinion is held, and
- (d) if in the authorised officer's opinion the activity involves a contravention or likely contravention of any provision of this Act or the regulations or of a condition or restriction attached to an accreditation—specify that provision, condition or restriction and state the reasons for that opinion, and
- (e) include information about obtaining a review of the notice under this Division.

(3) A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence.

Maximum penalty:

- (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.

55 Notices may include directions

(1) An authorised officer may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.

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

56 Review of notices by Director-General

- (1) A person who is given a notice under this Division may apply in writing to the Director-General for a review of the notice.
- (2) The application for review must be made within 7 days after the notice is given or, if the regulations prescribe a different period, within the period so prescribed.
- (3) An application for review may be made only once in respect of any particular notice.
- (4) The Director-General 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 Director-General until the Director-General gives notice to the applicant of the result of the review.
- (6) The Director-General 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.

57 Application to Administrative Decisions Tribunal for stay of prohibition notice

- (1) A person who applies for a review of a prohibition notice under section 56 may apply to the Administrative Decisions Tribunal for a stay of the notice.
- (2) A stay may be granted for the period considered appropriate by the Tribunal, but not so as to extend past the time when notice of the result of the review is given to the applicant by the Director-General.
- (3) A stay may be granted on such conditions as the Tribunal thinks appropriate and may be revoked or amended by the Tribunal.

58 Appeal to Administrative Decisions Tribunal

A person who is aggrieved by a decision of the Director-General on an application for a review under section 56 may apply to the Administrative Decisions Tribunal for a review of the decision.

59 Withdrawal of notices

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

60 Proceedings for offences not affected by notices

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

Division 3 Safety reports and investigations

61 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 an authorised officer or other person for the purposes of a rail safety inquiry, 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.

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

62 Industry safety reports

- (1) The Director-General must, not later than 1 July in each year, provide to the Minister an industry safety report relating to the carrying out of railway operations by

accredited persons.

- (2) The Director-General must report on the matters prescribed by the regulations for the purposes of this section and may report on such other matters as the Director-General thinks fit.
- (3) The Minister must table the report in each House of Parliament.

63 Provision of information relating to safety to Director-General

- (1) An accredited person must provide to the Director-General the information concerning measures taken by the person to promote rail safety or concerning other matters relating to rail safety that the Director-General reasonably requires.
- (2) An accredited person must submit a safety report to the Director-General at such times as the Director-General specifies by written notice given to the person.
- (3) The information or report must be provided in the approved form and manner.

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.

64 Accredited persons must report notifiable occurrences to Director-General

- (1) An accredited person must report to the Director-General any notifiable occurrence of a kind specified in Schedule 3 that occurs on railway premises relating to a railway in respect of which the person is accredited.
- (2) A report of a notifiable occurrence must:
 - (a) be made to the Director-General within the time prescribed by the regulations or, if no time is prescribed, within the time specified by written notice given by the Director-General to accredited persons, and
 - (b) be made in the approved form and manner, and
 - (c) if required by the Director-General, be verified by statutory declaration.
- (3) Two or more accredited persons may make a joint report with respect to a notifiable occurrence.
- (4) In addition to the matters specified in Schedule 3, the Director-General may, by written notice that expires 12 months after it is given, require an accredited person to

report to the Director-General any incident of any other kind that endangers or could endanger the safe carrying on of railway operations.

- (5) A person who contravenes this section, or a requirement made under this section, is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
 - (c) in the case of an individual (being a previous offender)—375 penalty units, or
 - (d) in the case of an individual (not being a previous offender)—250 penalty units.
- (6) The Governor may, by proclamation published in the Gazette, amend or substitute Schedule 3 at any time.

65 Reports of other matters

In addition to any other requirements of this Division, a condition may be imposed on an accredited person's accreditation requiring the person to report specified incidents or kinds of incidents to the Director-General.

66 Inquiries into railway accidents and incidents by accredited persons

- (1) An accredited person must inquire into, and report to the Director-General on, any railway accident or incident that may affect the safe carrying out of railway operations for which the person is accredited.
- (2) An accredited person must, if required to do so by the Director-General, review and resubmit a report prepared under this section.
- (3) Inquiries by accredited persons are to be conducted in an approved manner and within the time specified by the Director-General.
- (4) The Director-General must, on the 15th day of each month, forward to the Minister a list of any reports of inquiries conducted by accredited persons under this section and received by the Director-General in the preceding month.
- (5) An accredited person who contravenes this section is guilty of an offence.

Maximum penalty:

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

(d) in the case of an individual (not being a previous offender)—250 penalty units.

67 Inquiries by Director-General or rail investigation panels or at direction of Minister

- (1) The Director-General or, at the request of the Director-General, a rail investigation panel may inquire into any railway accident or incident that may affect the safe carrying out of railway operations.
- (2) The Director-General or Chairperson of rail investigation panels must provide to the Minister a report on an inquiry conducted by the Director-General or a rail investigation panel under subsection (1).
- (3) The Minister may require the Director-General or a rail investigation panel to inquire into and report to the Minister on any railway accident or incident that may affect the safe carrying out of railway operations or the personal security of any railway employee or member of the public using a railway or in or on railway premises.
- (4) The Chairperson of rail investigation panels may, on the Chairperson's own motion, refer a major railway accident to a rail investigation panel to inquire into and report to the Minister on the accident.
- (5) The Governor is to appoint a person as Chairperson of rail investigation panels, who is to be a permanent member of the panels.
- (6) The Director-General may recover the reasonable costs of conducting an inquiry 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 accredited persons in respect of the railway concerned.
- (7) Schedule 4 has effect with respect to a rail investigation panel and the Chairperson of rail investigation panels.
- (8) In this section:

major railway accident means a railway accident involving extensive property damage or one or more deaths (not being death resulting from suicide or of a trespasser).

68 Tabling of reports

- (1) The Minister is to lay (or cause to be laid) a report under section 62 or 67 before both Houses of Parliament not later than 28 days after the Minister receives the report.
- (2) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned.
- (3) The report:
 - (a) is, on presentation and for all purposes, taken to have been laid before the House,

and

- (b) may be printed by authority of the Clerk of the House, and
- (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
- (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

69 Power to require persons to attend to answer questions or produce documents or other things

- (1) The Director-General or Chairperson of rail investigation panels may, by notice in writing, require either or both of the following:
 - (a) the attendance of any person at any place to answer questions at a rail safety inquiry,
 - (b) the production of any documents or other things required for the purposes of any such inquiry.
- (2) At a rail safety inquiry, the Director-General or rail investigation panel conducting the inquiry:
 - (a) is not bound by the rules of evidence, and
 - (b) may conduct the inquiry without regard to legal forms, and
 - (c) may inform himself or herself or itself in such manner as the person or panel thinks fit.
- (3) At any such inquiry, the Director-General or Chairperson of the rail investigation panel conducting the inquiry may administer an oath or require any statement to be verified by statutory declaration.
- (4) A person is not required under this section to travel more than 16 kilometres from the person's residence at the time of receiving the notice, unless a reasonable allowance for expenses incidental to attendance to give evidence is tendered to the person on the scale allowed for a witness attending on subpoena to give evidence before the District Court.

- (5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this section.

Maximum penalty: 100 penalty units.

Note—

Section 89 provides protection in relation to self-incriminating evidence.

70 Disclosure of information by Director-General

- (1) The Director-General may, if the Director-General thinks it necessary for rail safety, disclose information acquired by the Director-General in the performance of his or her functions under this Act to any other person.
- (2) The Director-General may, if the Director-General thinks it desirable for the promotion of rail safety, publish any information, including a report made under section 67.
- (3) A publication under subsection (2) must not identify a person by name.
- (4) This section does not apply to the disclosure of the whole or part of a train safety record to the Commonwealth or a Commonwealth authority.

71 Disclosure of train safety record to Commonwealth or Commonwealth authority

- (1) Despite any other provision of this Division, the Director-General, a person who is or was an authorised officer or a member of a rail investigation panel 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.

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

- (1) The Director-General, a person who is or was an authorised officer or a member of a rail investigation panel 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 to which the record relates or on any future inquiries.
- (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.

73 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 into an accident or incident under this Division 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 75, or
- (e) a disclosure or publication that is permitted under this Act or the regulations.

Maximum penalty: 100 penalty units.

74 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.

75 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
 - (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.

76 Examination by a court of train safety recording

- (1) This section applies if a court examines a train safety recording under section 75.
- (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 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.

77 Compliance with subpoenas and other directions

- (1) The Director-General, an authorised officer or a member of a rail investigation panel 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 that is the subject of a rail safety inquiry, 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.

78 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 or the Director-General 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:
 - (a) a report made public, or information published by the Director-General, 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.

Part 4 Enforcement

Division 1 Power of entry

79 Power of entry

- (1) An authorised officer may enter any railway premises for the purposes of this Act, including the following purposes:
 - (a) the purposes of an inspection, investigation, rail safety inquiry or other inquiry under this Act,
 - (b) the purpose of determining whether there has been a contravention of the Act, the regulations or the terms of an accreditation.
- (2) Entry may only be made at a reasonable hour in the daytime or 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.

80 Inspections and investigations

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

- (a) power to inspect any infrastructure, over track structures or rolling stock or any part of the infrastructure, over track structures or rolling stock of a railway in or on the premises,
- (b) power to inquire into any notifiable occurrence, railway accident or other incident

affecting the safe carrying out of railway operations or the personal security of members of the public or railway employees that has happened in or on the premises,

- (c) power to take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers,
- (d) power to examine and test any part of the railway or rolling stock,
- (e) power to take samples or photographs in connection with any inspection or inquiry,
- (f) power to search for evidence of any contravention of this Act, the regulations or the terms of accreditations,
- (g) power to search for and inspect relevant documents and require any person in or on the premises to produce to the authorised officer any relevant documents in the person's custody or under the person's control,
- (h) power to require any person in or on the premises to answer questions or otherwise give information in relation to the matter the subject of the inspection, investigation or inquiry,
- (i) power to exercise functions under section 81 in relation to any relevant documents found in or on the premises or produced to an authorised officer,
- (j) power to secure the perimeter of the site of any notifiable occurrence, railway accident or other incident by whatever means the authorised officer considers appropriate or the Director-General specifies.

81 Functions of authorised officers in relation to relevant documents

- (1) An authorised officer has the following powers in relation to relevant documents found by an authorised officer in or on railway premises entered by the authorised officer or produced to the authorised 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.
- (2) While an authorised officer retains possession of a document, the authorised officer

must permit a person who would be entitled to inspect the document were it not in the possession of the authorised officer to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.

- (3) If an authorised officer takes possession of or secures against interference any relevant document on which a person has a lien, the authorised officer's actions do not prejudice the lien.

82 Notice of entry

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

- (a) the giving of notice would 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 owner or occupier of the premises, or
- (c) entry is required in an emergency.

83 Use of force

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

84 Care to be taken

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

85 Recovery of cost of entry and inspection

The Director-General may recover from an accredited person the reasonable costs of the entry and inspection of railway premises in respect of which the person is accredited (other than the costs of a routine safety inspection under Part 3).

86 Compensation

The Director-General must pay compensation for any damage caused by any authorised officer in the exercise of a power to enter railway premises under this Division, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this or any other Act or law.

87 Authority to enter railway premises

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

88 Premises used for residential purposes

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

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

89 Protection from incrimination

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

paragraph (a) was drawn to the person's attention before the statement was made.

- (3) Except as provided by subsection (2), an answer to a question, production of a thing, any information obtained as a direct result of any such answer or production, or a statement made by a person, in compliance with a requirement under this Act, may be used in evidence in any criminal or civil proceedings against the person.

90 Search warrants

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

Division 2 Offences and proceedings

91 Offences involving accreditation, certification and authorisation

- (1) A person who:
 - (a) by any false statement or misrepresentation, obtains or attempts to obtain any accreditation, certification or authorisation under this Act, or
 - (b) forges or fraudulently alters or uses or purports to use any accreditation,

certification or authorisation, or

(c) fraudulently allows any such accreditation, certification or authorisation to be used by any other person,

is guilty of an offence.

(2) A person who:

(a) contravenes a condition or restriction attached to an accreditation, or

(b) knowingly permits another person to contravene a condition or restriction attached to an accreditation, or

(c) knowingly carries out, or permits 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,

is guilty of an offence.

(3) In this section:

authorisation means an authorisation under section 36.

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.

92 Failure to maintain safety systems, devices or appliances

(1) An accredited person who fails to install and maintain, or maintain, a system, device or appliance on a railway or rolling stock in accordance with the terms of the person's accreditation is guilty of an offence.

(2) An accredited person who fails to carry out a railway operation in accordance with any terms of the person's accreditation related to the person's safety management systems is guilty of an offence.

(3) It is a defence to an offence under this section if the defendant proves that the failure concerned did not, and was not likely to, affect the safe carrying out of railway operations.

(4) In this section:

safety management system includes, but is not limited to, a safety management plan.

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 2 years imprisonment, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

93 Tampering with railway equipment

(1) A person who tampers with or disables:

- (a) the safety equipment (including track and communication systems) 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.

(2) In this section:

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.

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

94 Private sidings

A person must not move a train to or from a private siding unless the person is an accredited person who is accredited to do so.

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 2 years imprisonment, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

95 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) the regulation or prohibition of eating, drinking or smoking in trains or in other public areas of a railway,
- (e) the conduct of passengers and drivers on trains or in other parts of a railway,
- (f) the powers and duties of drivers of trains and of authorised officers,
- (g) the authority of drivers of trains, and of authorised officers, to eject persons guilty of any contravention of a regulation,
- (h) the taking up or setting down of passengers or other matters incidental to the transport of passengers,
- (i) the carriage of passengers' luggage or other goods, and animals, on trains,
- (j) the regulation or prohibition of the carriage of passengers standing in or on any part of the train,
- (k) 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,
- (l) the exhibition in or on any train or other part of a railway of such notices in the public interest as the Director-General considers necessary,
- (m) the erection and display of signs and notices for the guidance of drivers of trains and the public,
- (n) the sale of tickets and the conditions under which tickets must be sold,
- (o) generally as to the regulation and control of trains, of their drivers and passengers, and of other parts of a railway.

96 Offenders to state name and address

- (1) A person reasonably suspected by a police officer or an authorised officer to be committing or to have committed an offence against this Act or the regulations may be required to state his or her full name and residential address.

- (2) A person who, without reasonable excuse:
- (a) fails or refuses to comply with the requirements of a police officer or authorised officer made under subsection (1), or
 - (b) in purported compliance with such a requirement, states a name that is not his or her name or an address that is not his or her residential address,
- is guilty of an offence.
- Maximum penalty: 15 penalty units.
- (3) The police officer or authorised officer may request the person to provide reasonable proof of the person's identity.
- (4) A person is not guilty of an offence under this section unless it is established that the police officer or authorised officer:
- (a) warned the person that a failure or refusal to comply with the requirement is an offence, and
 - (b) identified himself or herself as a police officer or as an authorised officer.
- (5) In this section, **authorised officer** includes, in the case of a railway specified in an accreditation under this Act, a person nominated by a person accredited in respect of that railway and appointed by the Director-General to be an authorised officer for the purposes of this section.
- (6) The authority of a person appointed under subsection (5):
- (a) is limited to the railway specified in the accreditation of the person who nominates the person to the Director-General for appointment, and
 - (b) may be limited by the instrument of appointment to matters specified in the instrument.
- (7) The Director-General must provide a person authorised under subsection (5) with a certificate of appointment as an authorised officer and the officer must, if requested to do so, produce the certificate to any person requested by the officer to comply with this section.
- (8) Information obtained under this section by a person appointed under subsection (5) must be forwarded to the Director-General for consideration and, if appropriate, the taking of action in accordance with this Division.

97 Obstruction

A person must not:

- (a) hinder or obstruct an authorised officer in a manner that interferes with the

performance by the officer of his or her functions under this Act or the regulations, or

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

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further penalty of 500 penalty units for each day the offence continues, or
- (b) in the case of an individual—500 penalty units and, in the case of a continuing offence, a further penalty of 250 penalty units for each day the offence continues.

98 False or misleading information

A person must not:

- (a) provide to an authorised officer (whether in answer to a question asked by the authorised officer or otherwise) information (including a document) that the person knows is false or misleading in a material particular, or
- (b) provide to the Director-General or to any other person on behalf of the Director-General for the purposes of an inquiry held under Division 3 of Part 3 information (including a document) that the person knows is false or misleading in a material particular, or
- (c) provide in relation to an application for accreditation, or for variation of accreditation, information (including a document) that the person knows is false or misleading in a material particular, or
- (d) provide in relation to an application for an authorisation under section 36, information (including a document) that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a previous offender—150 penalty units,
- (b) in any other case—100 penalty units.

99 Offence of impersonating an authorised officer

A person must not impersonate, or falsely represent that the person is, an authorised officer.

Maximum penalty: 100 penalty units.

100 Offences by directors or managers of corporations

- (1) If a person knowingly contravenes, whether by act or omission, any provision of this Act or the regulations:
 - (a) while acting in the capacity of a director, a person concerned in the management, or an employee or an agent, of a corporation, or
 - (b) at the direction or with the consent or agreement (whether express or implied) of such a director, person, employee or agent,the corporation is taken to have contravened the same provision.
- (2) A corporation may be proceeded against and convicted under a provision pursuant to subsection (1), whether or not the director, person, employee or agent has been proceeded against or convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a person for an offence committed by the person against this Act or the regulations.

101 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:
 - (a) the corporation contravened the provision without the actual, imputed or constructive knowledge of the person, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, if 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 this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.

102 Double jeopardy

If an act or omission constitutes an offence under this Act or the regulations and:

- (a) under the *Occupational Health and Safety Act 2000* or the regulations made under that Act, or
- (b) under associated occupational health and safety legislation within the meaning of that Act, or
- (c) under the *Road and Rail Transport (Dangerous Goods) Act 1997* or the regulations made under that Act,

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

103 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be disposed of in a summary manner before:
 - (a) a Local Court, or
 - (b) the Supreme Court in its summary jurisdiction.
- (2) The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence against this Act or the regulations is 500 penalty units.
- (3) Proceedings for an offence against this Act or the regulations may be taken within 2 years after the offence was committed despite anything in any other Act.
- (4) In any proceedings for an offence under this Act, the onus of proving that a person had a reasonable excuse is on the defendant.

104 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 Director-General or by a person authorised by the Director-General 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 Director-General or of any other officer of the Department authorised by the Director-General 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 Director-General or the Minister is to be evidence of the authority or consent without proof of the signature of the Director-General or the Minister.
- (5) The Director-General 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.

105 Penalty notices for certain offences

- (1) An authorised officer may serve a penalty notice on a person who appears to the officer to have committed a penalty notice offence.
- (2) The amount of the penalty to be specified in a penalty notice is the amount prescribed by the regulations for the alleged offence concerned, being an amount not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed by the regulations for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment of a penalty under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) This section does not limit the operation of any other provision of this or any other Act or any statutory rule.
- (7) In this section:

penalty notice means a notice to the effect that, if the person served with the notice does not wish to have an alleged offence dealt with by a court, the person may pay, in accordance with the notice, the penalty specified in the notice.

penalty notice offence means an offence against this Act or the regulations declared by the regulations to be a penalty notice offence.

106 Recovery of amounts due

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

107 Records and evidence from records

- (1) The Director-General must keep records of the grant, refusal, variation, suspension and cancellation of accreditations under this Act.
- (2) A certificate purporting to be signed by the Director-General 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, prima facie evidence of what it certifies.
- (3) Such a certificate is admissible in any proceedings:
 - (a) without proof of the signature of the Director-General, and
 - (b) without production of any record or document on which the certificate is founded.

Part 5 General

Division 1 Administration

108 Functions of Director-General

The functions of the Director-General under this Act include the following:

- (a) accreditation of operators of railways under Part 2 and the variation, suspension and cancellation or cancellation of accreditation granted under that Part,
- (b) development of safety performance systems for the safe carrying on of railway operations,
- (c) development of safety performance systems for the personal security of members of the public and railway employees using railways or in or on railway premises,
- (d) monitoring the effectiveness of safety performance systems and revising, replacing or repealing those systems and developing new systems, as necessary,
- (e) arranging for the conduct of inspections to monitor compliance of operators and railway employees with the requirements of this Act, the regulations and accreditations,
- (f) issuing directions for the purposes of Part 3,
- (g) considering and acting on reports of notifiable occurrences under Part 3,
- (h) arranging for the investigation of possible breaches of this Act and the regulations,

- (i) arranging for the conduct of inquiries into railway accidents and incidents affecting the safe carrying out of railway operations,
- (j) arranging for the provision of advice to intending applicants for accreditation on such matters as safety performance systems and the criteria for the grant of accreditations and certifications and concerning railway safety generally,
- (k) making recommendations to the Minister concerning railway safety generally,
- (l) issuing guidelines as required or permitted by or under this Act.

109 Use of staff of Authority or Corporations

The Director-General may, for the purposes of this Act, on such terms and conditions as may be arranged with the Authority or Corporation concerned, make use of the services of any person employed by an Authority or the Rail Infrastructure Corporation under the [Transport Administration Act 1988](#).

110 Consultants

The Director-General may engage such consultants as the Director-General requires for the exercise of functions under this Act.

111 Authorised officers

In addition to any other persons who may be appointed as authorised officers under this Act, the Director-General may, for the purpose of the investigation or exercise of powers related to a specified railway accident or railway incident, appoint as an authorised officer a person exercising powers, or holding office under, a Commonwealth Act.

112 Delegation by Minister and Director-General

- (1) The Minister may delegate any function under this Act (except this power of delegation) to any officer of the Department.
- (2) The Director-General may delegate any function under this Act (except this power of delegation or any function delegated to the Director-General by the Minister) to any officer of the Department or any person prescribed by the regulations.
- (3) A reference in this section to a function under this Act includes a reference to a function under a condition of an accreditation or certification.

113 Exclusion of personal liability

No matter or thing done, or omitted to be done, by the Minister, the Director-General, an officer of the Department, an authorised officer or a person acting under the direction of the Minister, the Director-General or any such officer subjects the Minister, the Director-General 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.

114 Exclusion of liability of the State

No act or omission of the Minister, the Director-General or any other officer of the Department in the course of exercising functions under this Act gives rise to any civil liability (including, for example, liability in negligence or for breach of statutory duty) against the State or any authority of the State.

Division 2 Miscellaneous

115 Savings of other Acts etc

This Act does not affect the operation of the following:

- (a) the *Road and Rail Transport (Dangerous Goods) Act 1997* or regulations made under that Act,
- (b) the *Occupational Health and Safety Act 2000*, associated occupational health and safety legislation within the meaning of that Act or regulations made under that Act or legislation,
- (c) the functions of the WorkCover Authority under the *Occupational Health and Safety Act 2000* or associated occupational health and safety legislation within the meaning of that Act.

116 Service of documents

- (1) A document that is authorised or required under this Act to be given to or served on any person may be served:
 - (a) personally or by post, or
 - (b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.
- (2) If a person on whom a document is authorised or required under this Act to be served is absent from the State or cannot, after diligent inquiry, be found, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land on which the railway of which the person is the operator is located.
- (3) If, under this Act, a document is authorised or required to be served on the holder of an accreditation and there is more than one holder, service on any one holder of the document, together with copies of the document addressed to the other holders, is taken to be service on all of the holders.
- (4) If a person has more than one place of business, service may be effected under this

section at any of those places.

- (5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a document exchange, but the burden of establishing that service has been so effected is on the person asserting that fact.

117 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) the safe operation and maintenance of historic or preserved rolling stock,
 - (b) the safe construction, operation and maintenance of sidings,
 - (c) the functions, training, health and fitness of railway employees,
 - (d) the regulation of the conduct of passengers and other persons on railways,
 - (e) the exclusion of persons, animals or freight from railways,
 - (f) tampering with, or damaging, railways,
 - (g) the unauthorised use of railways and rolling stock,
 - (h) trespass on railways,
 - (i) the opening and closing of railway gates,
 - (j) the regulation of vehicles, animals and pedestrians crossing railway tracks,
 - (k) the regulation of level-crossings,
 - (l) the loading and unloading of freight on railways,
 - (m) the publication of statistics relating to rail safety,
 - (n) standards (including age restrictions and physical requirements) for the employment of railway employees and for the issue of certificates of competency,
 - (o) the management of fatigue, including safe hours of work and periods between work for railway employees,
 - (p) rules relating to railway network operations and operations of specified operators and the making of any such rules.

- (3) Without limiting subsection (2), regulations made under subsection (2) (n) or (p) may provide for the issue of guidelines by the Director-General with respect to the matters referred to in those paragraphs.
- (4) The regulations may exempt, or provide for the exemption of, either absolutely or subject to conditions, any person, railway, part of a railway or operation from all or any of the provisions of this Act.
- (5) 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.
- (6) 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.
- (7) The regulations may create offences punishable by a penalty not exceeding 250 penalty units.

118 Repeal

The *Rail Safety Act 1993* is repealed.

119 Savings and transitional provisions

Schedule 5 has effect.

120 (Repealed)

121 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 of 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.

Schedule 1 Railway employees—alcohol or other drugs

(Section 42 (5))

1 Application of Schedule

This Schedule applies to the testing of railway employees 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 appointment of authorised officers and the authorisation of persons:
 - (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 employees 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 railway safety work while under the influence of alcohol or any other drug,
 - (i) offences relating to the carrying out of railway safety work while the prescribed concentration of alcohol is present in the employee's blood,
 - (j) offences relating to the carrying out of railway safety work while a drug (other than alcohol), or a prescribed concentration or amount of any such drug, is present in the employee'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 railway safety work by a railway employee while under the influence of alcohol or any other drug or while the prescribed concentration of alcohol or prescribed concentration or amount of another drug is present in the employee's blood or urine, a refusal or failure by a railway employee to undergo tests or otherwise comply with test procedures or to interference by a railway employee with test results, may, in addition to the penalty provided for by section 117 for offences under the regulations, be punishable by a period of imprisonment not exceeding 9 months.

Schedule 2 Fatigue management

(Section 43 (3))

1 Working hours for railway employees driving freight trains

The following conditions of work apply to railway employees 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 railway employee where the employee 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 railway employee where the employee 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 railway employees driving single manning passenger trains

(1) The following conditions of work apply to railway employees 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 intercity or interurban 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 railway employee where the employee 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 railway employee where the employee 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.
- (2) The conditions of work set out in clause 1 (a) and (d)–(f) apply to railway employees 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 Director-General,
- 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 railway employees for the purposes of fatigue management or regulating safe hours of work and periods between work.

Schedule 3 Notifiable occurrences

(Section 64)

1 Notifiable occurrences

An occurrence is a **notifiable occurrence** if it:

- (a) occurs in or on railway premises or with respect to a railway or the infrastructure of a

railway, and

- (b) results in or may potentially result in a derailment, a collision, a fatality, permanent or temporary incapacitating injury to any person, substantial damage to railway premises or any other property in or on railway premises or substantial damage to other property, and
- (c) arises out of any of the following circumstances:
 - (i) an act or omission of a railway employee,
 - (ii) an act or omission by any other person,
 - (iii) a failure, defect or design fault in equipment on rolling stock,
 - (iv) a failure, defect or design fault in the infrastructure of a railway,
 - (v) a failure to comply with safe working procedures,
 - (vi) a fire or explosion,
 - (vii) inadequacy or failure of systems for the safe operation, construction or maintenance of a railway,
 - (viii) environmental conditions.

2 Definitions

In this Schedule:

permanent incapacitating injury includes loss of sight or of a limb.

temporary incapacitating injury means an injury that necessitates absence from work for longer than 7 days.

Schedule 4 Rail investigation panels

(Section 67 (7))

1 Definition

In this Schedule:

Chairperson means the Chairperson of rail investigation panels appointed under section 67.

2 Rail investigation panels

- (1) There are to be rail investigation panels for the purposes of this Act.
- (2) A rail investigation panel has and may exercise the jurisdiction and functions

conferred or imposed on it by or under this or any other Act.

3 Constitution of panels

- (1) If the Director-General or Minister, or the Chairperson under section 67 (4), decides to refer a matter to a rail investigation panel, the Minister must, in consultation with the Chairperson, appoint a rail investigation panel for the purpose of conducting a rail safety inquiry.
- (2) The Chairperson is to be a member of each rail investigation panel.
- (3) In the case of a rail safety inquiry into a railway accident or incident that resulted in the death of any person, the rail investigation panel must consist of not fewer than 3 members.
- (4) Subclause (3) does not apply if the death concerned:
 - (a) is a suspected suicide, or
 - (b) is a death of a person who died while trespassing, or
 - (c) arose out of a level-crossing accident subject to investigation by the coroner, or
 - (d) is the subject of a criminal investigation.
- (5) The Minister may, subject to subclauses (1) and (2) and the regulations, appoint such persons as the Minister thinks fit as members of a rail investigation panel.
- (6) Without limiting subclause (5), the Minister may appoint a person exercising powers, or holding office under, an Act of the Commonwealth as a member of a rail investigation panel.
- (7) The regulations may make provision for or with respect to the qualifications and appointment of members of rail investigation panels.
- (8) A member of a rail investigation panel (other than the Chairperson), while sitting on the panel, is entitled to be paid at the rate determined by the Minister.

4 Chairperson of rail investigation panels

- (1) Subject to this Schedule, the Chairperson holds office for such period (not exceeding 3 years) as is specified in the Chairperson's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) The Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Chairperson.
- (3) The Minister may, from time to time, appoint a person to be the deputy of the

Chairperson, and the Minister may revoke any such appointment.

- (4) In the absence of the Chairperson, the Chairperson's deputy may, if available, act in the place of the Chairperson.
- (5) While acting in the place of the Chairperson, a person:
 - (a) has all the functions of the Chairperson and is taken to be the Chairperson, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.
- (6) For the purposes of this clause, a vacancy in the office of the Chairperson is taken to be an absence of the Chairperson.
- (7) For the purposes of exercising his or her functions under this Act, the Chairperson is taken to be an authorised officer.

5 Vacancy in office of Chairperson

- (1) The office of Chairperson becomes vacant if the Chairperson:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Governor under this clause, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may at any time remove the Chairperson from office.
- (3) If the office of Chairperson becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

6 Procedure of panels

- (1) The procedure for the meetings of a rail investigation panel is, subject to this Act and the regulations, to be as determined by the panel.

- (2) Without limiting subclause (1), the regulations may make provision for or with respect to the provision of assistance to, or representation of, persons attending a rail safety inquiry, whether conducted by the Director-General or a rail investigation panel.

7 Decisions of panel

- (1) A decision supported by a majority of members of a rail investigation panel is the decision of the panel.
- (2) The panel's report to the Minister on any rail safety inquiry is to include any minority decision.

8 Effect of certain other Acts

If by or under any Act provision is made:

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

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

Schedule 5 Savings and transitional provisions

(Section 119)

Part 1 Preliminary

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 as 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.

Part 2 Provisions consequent on the enactment of this Act

2 Definitions

In this Schedule:

continuing operator means a person taken to be an accredited person under clause 3.

the commencement day means the day on which Part 2 of this Act commences.

the former Act means the *Rail Safety Act 1993*.

3 Certain owners taken to be accredited

- (1) A person who, immediately before the commencement day, was an accredited person under the former Act is taken to be an accredited person for the purposes of this Act and the provisions of this Act and the regulations apply accordingly.
- (2) The accreditation of the continuing operator continues in force, subject to the same terms as in force immediately before that commencement, until it is varied or suspended or cancelled under this Act.
- (3) Except as provided by this Schedule, or by a condition imposed on the accreditation of the continuing operator by the Director-General, the operator is not required to comply with any provision of this Act relating to applications for accreditation under this Act.
- (4) For the purposes of section 11, the continuing operator must give to the Director-General an annual safety report under section 11 not later than 12 months after the commencement of this clause and on each anniversary of that commencement while the operator remains an accredited person.
- (5) The Director-General may, not later than 6 months after the commencement day, require a continuing operator to submit or provide to the Director-General any system, information, plan or other particulars that the person would be required to submit or provide if the person were seeking accreditation for the first time.
- (6) It is a condition of a continuing operator's accreditation that the operator comply with a requirement made by the Director-General under this clause.
- (7) For the purposes of this Act, the date of the anniversary of a continuing operator's accreditation is taken to be the anniversary of the operator's accreditation under the former Act.

4 Authorised officers—alcohol or other drugs

- (1) On the commencement of this subclause, a person who was an authorised officer under the former Act immediately before that commencement is taken to be an authorised officer for the same purposes under this Act for a period of 12 months after that commencement.
- (2) On the commencement of regulations made under Schedule 1, a person authorised for the purposes of Schedule 2 of, or who was an authorised officer under, the former Act immediately before that day is taken to be authorised for the purposes of those regulations for a period of 12 months after the commencement day.

5 Private sidings

Section 26 of the former Act continues to apply in respect of a person who owns a private siding until 6 months after the commencement day or until the person complies with the requirements of section 23 of this Act, whichever occurs first.

6 Certificates of competency

- (1) A person who holds a certificate of competency in force immediately before the repeal of Division 2 of Part 2 of the former Act is taken to be the holder of a certificate of competency, in respect of the same railway safety work, issued under Division 3 of Part 2 of this Act.
- (2) This clause ceases to have effect 6 months after the commencement day.

7 Applications to Administrative Decisions Tribunal

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

8 Drug and alcohol programs

A continuing operator is not required to comply with section 42, in so far as it requires the preparation and implementation of a drug and alcohol program, until 6 months after the commencement of that section.

9 Drug and alcohol testing

- (1) Schedule 2 to the *Rail Safety Act 1993* continues to have effect pending the commencement of regulations made under Schedule 1.
- (2) Subclause (1) is subject to any regulations made under this Schedule.

10 Fatigue management

A continuing operator is not required to comply with section 43 (1) and (2) until 6 months after the commencement of those subsections.

11 Annual fees

The repeal of the former Act does not affect the liability of an accredited person in respect of a fee fixed under Division 6 of Part 2 of the former Act.

12 Inquiries

The repeal of the former Act does not affect the obligation of an accredited person or any other person to inquire into, and report on, any railway accident or incident that occurred before the commencement of this clause and the provisions of the former Act continue to apply accordingly.

13 Regulations

- (1) A regulation made for the purposes of section 79B of the former Act, and in force immediately before the repeal of that section by this Act, continues in force and is taken to have been made under this Act, pending the commencement of regulations made under section 95.
- (2) Subclause (1) is subject to any regulations made under this Schedule.
- (3) For the purposes of section 6 of the *Subordinate Legislation Act 1989*, that section applies in respect of any principal regulation made under this Act within 6 months of the commencement of this clause as if the responsible Minister within the meaning of that Act had issued a certificate under section (6) (1) (b) of that Act.

Note—

The effect of subclause (3) is to postpone the requirement for a regulatory impact statement for a period of 4 months after the regulation is made (see section 6 (2) of the *Subordinate Legislation Act 1989*).

Schedules 6, 7 (Repealed)