

# Rail Safety Act 1993 No 50

[1993-50]



New South Wales

## Status Information

### Currency of version

Repealed version for 22 February 2002 to 7 February 2003 (accessed 26 December 2024 at 19:10)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Does not include amendments by**

[Road Transport \(Safety and Traffic Management\) Amendment \(Blood Sampling\) Act 2000 No 78](#) (amended by [Rail Safety Act 2002 No 96](#)) (not commenced)

[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced)

[Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced)

[Coal Mine Health and Safety Act 2002 No 129](#) (not commenced)

- **Repeal**

The Act was repealed by the [Rail Safety Act 2002 No 96](#), sec 118 with effect from 8.2.2003.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 10 February 2003

# Rail Safety Act 1993 No 50



New South Wales

## Contents

<b>Long title</b> .....	7
<b>Part 1 Preliminary</b> .....	7
1 Name of Act .....	7
2 Commencement .....	7
3 Object of Act .....	7
4 What is a railway? .....	7
5 What is the infrastructure of a railway? .....	8
6 What is rolling stock? .....	8
7 Owners and operators of railways .....	8
8 Railways to which Act applies .....	8
9 Act binds Crown .....	9
10 Definitions .....	9
<b>Part 2 Credentials of owners, operators and railway employees</b> .....	9
<b>Division 1 Accreditation of owners and operators</b> .....	9
11 Owners and operators to be accredited .....	9
12 Purpose of accreditation .....	9
13 Applicant to furnish information .....	10
14 Applicant to submit safety management plan .....	10
15 Applicant to provide railway performance details .....	11
16 Applicant to demonstrate capacity for safe construction, operation and maintenance of railway ..	11
17 Applicant to possess right to operate on railway .....	12

18 Applicant to submit pressure vessel certificates for rolling stock .....	12
19 Applicant to describe, and identify ownership of, infrastructure .....	12
20 Rolling stock to be identified .....	12
21 Applications by corporations .....	13
22 Grant of accreditation.....	13
23 Grant of interim accreditation .....	13
24 Style of accreditation.....	13
25 Exemption from accreditation .....	14
26 Exemption of owners of private sidings from accreditation.....	14
27 Sale or transfer of railway by accredited person .....	15
<b>Division 2 Certificates of competency .....</b>	<b>15</b>
28 Certificates of competency.....	15
29 Purpose of certification.....	15
30 Criteria .....	16
31 Grant of certification .....	16
32 Authorised agent for purpose of grant of certification.....	16
33 Style of certification .....	16
<b>Division 3 Amendment, variation, suspension or cancellation of credentials</b>	
.....	16
34 Amendment or variation of credentials .....	16
35 Amendment or variation of accreditation if certain alterations or extensions to railway are proposed .....	17
36 Suspension or cancellation of credentials.....	17
37 Suspension of credentials in emergency .....	17
<b>Division 4 Procedures before amendment, variation, suspension or cancellation of credentials</b>	
.....	17
38 Circumstances in which compliance is required .....	18
39 Standards and criteria to be considered before action taken .....	18
40 Notice to be given of proposed action .....	18
41 Making of representations .....	18

42 Consideration of representations.....	18
43 Procedure after consideration of representations.....	19
<b>Division 5 Review of decisions</b> .....	19
44 Application to Administrative Decisions Tribunal for review of decision of Director-General or authorised agent .....	19
<b>Division 6 Fees</b> .....	19
45 Application and registration fees.....	19
46 Annual fees.....	19
47 Fixing of annual fees.....	19
48 Payment of annual fees.....	20
49 Differential, minimum and late payment fees .....	20
<b>Part 3 Safety compliance inspections, reporting of occurrences, inquiries and other safety measures</b> .....	20
50 Safety compliance inspections .....	21
51 Directions to undertake remedial safety work.....	21
52 Directions to provide program of remedial safety work.....	22
53 Declarations as to amendment or variation of accreditation.....	22
54 Supply of information .....	22
55 Safety reports.....	22
56 Accredited persons to report notifiable occurrences to Director-General .....	22
57 Amendment of Schedule 1 (notifiable occurrences) .....	24
58 Inquiries into railway accidents and incidents affecting the safe construction, operation or maintenance of railways .....	24
59 Training of railway employees engaged in railway safety work.....	24
60 Health and fitness of railway employees .....	24
61 Railway employees—alcohol or other drugs.....	24
62 Installation of protective or safety devices.....	25
63 Closure of level-crossings .....	25
<b>Part 4 Enforcement</b> .....	26

<b>Division 1 Power of entry</b> .....	26
64 Power of entry .....	26
65 Inspections and investigations .....	26
66 Functions of authorised officers in relation to relevant documents .....	26
67 Notice of entry .....	27
68 Use of force .....	27
69 Care to be taken .....	27
70 Recovery of cost of entry and inspection.....	28
71 Compensation .....	28
72 Authority to enter land .....	28
73 Premises used for residential purposes .....	28
74 Protection from incrimination .....	28
75 Search warrants .....	29
<b>Division 2 Offences and proceedings</b> .....	30
76 Offences involving credentials.....	30
77 Failure to maintain safety systems, devices or appliances .....	30
78 Tampering with railway equipment.....	30
79 Offences involving private sidings.....	31
79A Offence of failure to pay fares on railway.....	31
79B Offences relating to passengers or vehicles.....	32
80 Offenders to state name and address .....	33
81 Obstruction.....	34
82 Offences by directors or managers of corporations.....	34
83 Offences by corporations.....	34
84 Evidence of intention of corporation.....	35
85 Double jeopardy .....	35
86 Proceedings for offences .....	35
87 Authority to take proceedings .....	35
88 Penalty notices for certain offences.....	36
89 Recovery of amounts due.....	36
90 Records and evidence from records .....	37
<b>Part 5 General</b> .....	37

<b>Division 1 Administration</b> .....	37
91 Functions of Director-General .....	37
92 Use of staff of Authority .....	38
92A Consultants .....	38
93 Delegation by Minister and Director-General .....	38
94 Exclusion of personal liability .....	38
95 Exclusion of liability of the State .....	38
<b>Division 2 Miscellaneous</b> .....	39
96 Savings of other Acts etc .....	39
97 (Repealed) .....	39
98 Applications generally .....	39
99 Service of documents .....	39
100 Regulations .....	39
101 (Repealed) .....	40
102 Savings and transitional provisions .....	40
103 Review of Act .....	41
<b>Schedule 1 Notifiable occurrences</b> .....	41
<b>Schedule 2 Railway employees—alcohol or other drugs</b> .....	45
<b>Schedule 3 (Repealed)</b> .....	59
<b>Schedule 4 Savings and transitional provisions</b> .....	59
<b>Dictionary</b> .....	61

# Rail Safety Act 1993 No 50



New South Wales

An Act to promote the safe construction, operation and maintenance of railways; to make consequential amendments to other Acts; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *Rail Safety Act 1993*.

### 2 Commencement

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

### 3 Object of Act

- (1) The object of this Act is to promote the safe construction, operation and maintenance of railways.
- (2) To facilitate the achievement of this object, this Act provides for:
  - (a) the establishment of a scheme for the accreditation of owners and operators of railways and for the certification of the competency of railway employees performing railway safety work, and
  - (b) the development, and monitoring, of safety performance standards for and with respect to the safe construction, operation and maintenance of railways, and
  - (c) the carrying out of regular safety compliance inspections, the reporting of notifiable occurrences, the holding of inquiries into railway accidents and other incidents and the adoption of other measures aimed at securing rail safety.

### 4 What is a railway?

A **railway** is 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.

## 5 What is the infrastructure of a railway?

The **infrastructure of a railway** consists of those facilities that are necessary to enable a railway to operate safely and includes, but is not limited to, railway track, associated track structures, over track structures, tunnels, bridges, stations, platforms, signalling systems, train control systems, communication systems, overhead electrical power supply systems, buildings, workshops and associated plant, machinery and equipment.

## 6 What is rolling stock?

**Rolling stock** means any vehicle that operates on or uses a railway track, including a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, road/rail vehicle, trolley, wagon or monorail vehicle 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.

## 7 Owners and operators of railways

- (1) An **owner**, in relation to a railway, is a person who is responsible (whether by reason of ownership, control or management) for the construction and maintenance, or the construction or maintenance, of infrastructure of a railway.
- (2) An **operator**, in relation to a railway, is a person who is responsible for the operation of a railway.
- (3) In this Act, **operate**, in relation to a railway, means:
  - (a) operate or move, or cause the operation or moving, by any means, of any rolling stock on a railway, and includes operate a railway service if the operator of the service operates or moves, or causes the operation or moving of, rolling stock, or
  - (b) construct and maintain, or construct or maintain, rolling stock.

## 8 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
    - (a1) the Darling Harbour monorail transport system, and
  - (b) 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 which 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.

## **9 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) In particular, this Act, in so far as it applies to the safe construction, operation and maintenance of railways, applies to any such construction, operation and maintenance carried on by Australian National Railways, the National Rail Corporation Limited, the State Rail Authority, Rail Infrastructure Corporation or otherwise carried on by the State, the Commonwealth or another State or a Territory.
- (3) If the Director-General is the owner or operator of a railway, the functions of the Director-General under this Act in relation to the ownership or operation of the railway are to be exercised by the Minister or a person authorised by the Minister.

## **10 Definitions**

Words and expressions used in this Act (or in a particular provision of this Act) which are defined in the dictionary at the end of this Act have the meanings set out in the dictionary.

# **Part 2 Credentials of owners, operators and railway employees**

## **Division 1 Accreditation of owners and operators**

### **11 Owners and operators to be accredited**

- (1) A person who is the owner of a railway is guilty of an offence unless the person is an accredited owner for that railway.
- (2) A person who operates a railway is guilty of an offence unless the person is an accredited operator for that railway.

Maximum penalty: 2,500 penalty units in the case of a corporation or, in any other case, 1,000 penalty units or imprisonment for 12 months, or both.

### **12 Purpose of accreditation**

- (1) The purpose of accreditation under this Division 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 21 are) considered to be of good repute and in all other respects fit and proper to be responsible for the safe construction and maintenance, or construction or maintenance, of a railway (in the case of an owner) or the safe operation of a railway and the safe construction and maintenance, or construction or maintenance, of rolling stock (in the case of an operator) or both (in the case of an owner and operator), and

(b) that the standards proposed by the accredited person for the construction and maintenance, or construction or maintenance, of a railway (in the case of an owner) or the operation of a railway and the construction and maintenance, or construction or maintenance, of rolling stock (in the case of an operator) or both (in the case of an owner and operator) have been accepted by the Director-General (subject to Division 3).

(2) In particular, accreditation under this Division attests that the accredited person has demonstrated the competency and capacity to meet the standards submitted by the accredited person, and accepted by the Director-General (subject to Division 3), for the purposes of the safe construction, operation and maintenance of a railway, relating to the following:

(a) financial viability,

(b) managerial and technical competency,

(c) suitability of rolling stock,

(d) appropriateness of safeworking systems,

(e) availability and competency of railway employees,

(f) availability and adequacy of infrastructure generally and, in particular, railway track, associated track structures, signalling systems and other relevant facilities,

(g) public risk insurance,

to the degree and in the manner required by the Director-General in respect of a railway of the kind specified in the accreditation.

### **13 Applicant to furnish information**

An applicant for accreditation must furnish the Director-General with such information as the Director-General reasonably requires in the circumstances to enable the Director-General to effectively determine the application for accreditation.

### **14 Applicant to submit safety management plan**

(1) An applicant for accreditation must submit to the Director-General a comprehensive

safety management plan that:

- (a) identifies any significant potential risks that may arise from the construction and maintenance, or construction or maintenance, of the railway specified in the application (in the case of an owner) or from the operation of the railway and the construction and maintenance, or construction or maintenance, of the rolling stock specified in the application (in the case of an operator) or both (in the case of an owner and operator), and
  - (b) specifies the systems, audits, expertise and resources that are to be employed by the applicant to address these risks.
- (2) If a person is accredited under this Division, the person's safety management plan must be revised annually and the revised plan submitted to the Director-General at least 28 days before each anniversary of the accreditation.

#### **15 Applicant to provide railway performance details**

- (1) An applicant for accreditation must provide the Director-General with a statutory declaration (of the applicant or an agent of the applicant acceptable to the Director-General) setting out details of the quantity of freight or number of passengers (or both) hauled by the railway specified in the application in the period of 3 years immediately before the date of the application.
- (2) If the information referred to in subsection (1) cannot be provided because the railway has not been constructed or has not operated previously or for that period of 3 years, the applicant must provide the Director-General with an assessment of the projected performance of the railway concerned.
- (3) If a person is accredited under this Division, the person must provide the Director-General with a statutory declaration (of the person or an agent of the person acceptable to the Director-General) at least 28 days before each anniversary of the accreditation setting out the details referred to in subsection (1) for such period as the Director-General nominates from time to time by written notice to the accredited person for the purposes of this section.

#### **16 Applicant to demonstrate capacity for safe construction, operation and maintenance of railway**

- (1) An applicant for accreditation as an owner must demonstrate by the submission of appropriate standards with which the applicant agrees to comply, to the satisfaction of the Director-General, that the applicant possesses the competency and capacity to safely construct and maintain, or construct or maintain, the railway specified in the application.
- (2) An applicant for accreditation as an operator must demonstrate by the submission of appropriate standards with which the applicant agrees to comply, to the satisfaction of

the Director-General, that the applicant possesses the competency and capacity to safely operate, and construct and maintain, or construct or maintain, the rolling stock of, the railway specified in the application.

- (3) An applicant for accreditation as an owner and operator must comply with subsections (1) and (2).

#### **17 Applicant to possess right to operate on railway**

An applicant for accreditation as an operator who does not own the railway on which the applicant proposes to operate must demonstrate, to the satisfaction of the Director-General, that the applicant possesses appropriate rights to operate a railway on the railway specified in the application.

#### **18 Applicant to submit pressure vessel certificates for rolling stock**

An applicant for accreditation whose application specifies the use of a steam locomotive or a unit or units of rolling stock that utilise pressure vessels as a means of transporting, loading or discharging goods under pressure must submit to the Director-General an appropriate, current pressure vessel certificate, issued by the WorkCover Authority or its authorised agent, for the locomotive or other rolling stock concerned.

#### **19 Applicant to describe, and identify ownership of, infrastructure**

- (1) An applicant for accreditation as an owner (or as an owner and operator) must, to the satisfaction of the Director-General, describe all elements that comprise the infrastructure 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.

#### **20 Rolling stock to be identified**

- (1) An applicant for accreditation as an operator (or as an owner and operator) must identify the owner of the rolling stock specified in the application and, if the applicant is not the owner of the rolling stock, must show the basis of the entitlement of the applicant to control and manage the rolling stock.
- (2) The applicant must also describe the proposed ambit of operation, in terms of railway location, of the particular units of rolling stock, or the particular class or classes of rolling stock, that the applicant intends to use.
- (3) An applicant for accreditation as an operator must cause all rolling stock specified in the application to be clearly marked, in an approved manner:
  - (a) to show the name of the operator of the rolling stock, and

(b) to enable each unit to be individually identified.

(4) Despite subsection (3), the Director-General may accept instead an inventory of individually identified units of rolling stock.

## **21 Applications by corporations**

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 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 12 (1) (a) only when the Director-General certifies acceptance of the nomination.

## **22 Grant of accreditation**

Having regard to the purposes of accreditation, the Director-General may accredit a person duly applying for accreditation as an owner or operator of a railway or as both an owner and operator of a railway.

## **23 Grant of interim accreditation**

- (1) The Director-General may grant interim accreditation to an applicant to permit the carrying out of activities such as the following:
  - (a) site preparation of a disused railway,
  - (b) restoration or repair of rolling stock,
  - (c) testing of railway track or other infrastructure,or for any other purpose considered to be appropriate by the Director-General.
- (2) Procedures for the purposes of this section are as prescribed by the regulations or, if no procedures are so prescribed, are as determined by the Director-General.

## **24 Style of accreditation**

- (1) Particulars of accreditation are to be given in writing by the Director-General to the accredited person.
- (2) An accreditation may be given so as to be general or limited including, for example:
  - (a) appropriate for the whole of a railway, or
  - (b) appropriate only 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) appropriate for all public or private passenger or freight services or both, or
  - (d) appropriate only for the service or services designated in the accreditation, or for a service or services having the scope or characteristics so designated.
- (3) An accreditation may be given subject to such conditions and restrictions (if any) as are specified by the Director-General in the accreditation.
- (4) 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 owned by the accredited person that is required to be insured under that Act.

## **25 Exemption from accreditation**

- (1) The Director-General may, by written notice, exempt an owner or operator who applies to the Director-General under this section from compliance with all or any one or more of the requirements of this Division, for the period specified in the notice, subject to such conditions and restrictions (if any) as appear to the Director-General to be appropriate.
- (2) An exemption may be granted only if the owner or operator demonstrates, to the satisfaction of the Director-General, that the systems, expertise, resources and methods to be employed by the owner or operator for safe construction, operation and maintenance (or for safe construction, operation or maintenance) of the railway or rolling stock concerned are likely to achieve a level of safety that, in the opinion of the Director-General, is appropriate for the railway concerned.
- (3) A person is not guilty of an offence of contravening or failing to comply with a requirement of this Act in respect of which the person holds a current notice of exemption under this section.

## **26 Exemption of owners of private sidings from accreditation**

- (1) A person who owns a private siding is not required to be accredited under this Act.
- (2) However, if a person wishes a private siding to continue to be, or to be, connected with, or to have access to, a railway or siding owned by an accredited owner, the person must register the private siding with the Director-General and comply with the provisions of any regulations made under this Act with respect to the safe construction, operation and maintenance of sidings.
- (3) If a private siding is not registered, the accredited owner 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.
- (4) If the Director-General grants permission under subsection (3), this section authorises the disconnection of the private siding from the railway or siding concerned.

- (5) 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.

## **27 Sale or transfer of railway by accredited person**

- (1) If an accredited person proposes to sell or otherwise transfer a railway in respect of 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 relating to the safe construction, operation and maintenance of the railway.
- (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 personal 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 Certificates of competency**

### **28 Certificates of competency**

An owner or 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 under this Division.

Maximum penalty: 200 penalty units.

### **29 Purpose of certification**

- (1) The purpose of certification under this Division is to attest:
  - (a) that the person certified 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) that the person certified is considered to have sufficient responsibility and aptitude to perform the railway safety work to which the certification relates in accordance with the standards submitted by the accredited owner or operator of the railway on which the railway safety work is to be performed, and accepted by the Director-General (subject to Division 3).
- (2) The regulations may prescribe categories or grades of certification.

### **30 Criteria**

Applicants for certification must meet any criteria set out in the regulations and must satisfy the Director-General as to any matter concerning their fitness and suitability for certification that the Director-General considers relevant.

### **31 Grant of certification**

- (1) Having regard to the purpose of certification, the Director-General or an authorised agent of the Director-General appointed under this Division may grant certification to a person applying for it for the period considered to be appropriate by the Director-General for the category or grade of certification concerned, or generally.
- (2) Procedures for the purposes of this section are as prescribed by the regulations or, if no procedures are so prescribed, are as determined by the Director-General.

### **32 Authorised agent for purpose of grant of certification**

- (1) The Director-General may appoint an authorised agent for the purpose of granting certification under this Division.
- (2) The Director-General is not to appoint a person as an agent under this section unless the person demonstrates, to the satisfaction of the Director-General, that the person possesses sufficient experience and expertise concerning safeworking systems and railway safety work to justify the appointment.

### **33 Style of certification**

- (1) Certification is to be given in writing by the Director-General or authorised agent to the person certified to be competent.
- (2) The certificate of competency must specify the functions that the person is certified as being capable of performing.

## **Division 3 Amendment, variation, suspension or cancellation of credentials**

### **34 Amendment or variation of credentials**

- (1) Having regard to the purpose of accreditation or certification, the Director-General or, in the case of certification, an authorised agent, may, at any time:
  - (a) attach any conditions or restrictions to a person's accreditation or certification after it has been granted, or
  - (b) vary or remove any conditions or restrictions attached to the accreditation or certification or otherwise vary the accreditation or certification.
- (2) If an accredited person or person certified under this Part applies to the Director-



General for amendment or variation of the person's credentials under this section, the requirements of Division 4 do not apply to the processing of the request.

**35 Amendment or variation of accreditation if certain alterations or extensions to railway are proposed**

- (1) An accredited person who proposes to construct new railway track, install new infrastructure other than track, use new or additional rolling stock or in any other way alter the railway specified in the person's application for accreditation in a manner that is not covered by the accreditation must apply to the Director-General for amendment or variation of the person's accreditation before taking the action proposed.
- (2) The requirements of Division 4 do not apply to an application under this section.

**36 Suspension or cancellation of credentials**

- (1) Having regard to the purpose of accreditation or certification, the Director-General may suspend and cancel, or cancel, a person's accreditation or certification.
- (2) Without limiting this section, the Director-General may suspend and cancel, or cancel, the credentials of a person who contravenes the requirements of this Act, the regulations or the conditions or restrictions attached to the person's credentials.
- (3) The accreditation of a corporation may be cancelled by the Director-General if no director or manager is designated for the purposes of section 12 (1) (a).

**37 Suspension of credentials 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 credentials of a person are suspended immediately, the Director-General may, without complying with sections 40–43, suspend the credentials 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 or certification concerned and to the matters referred to in section 39 before suspending credentials under this section.
- (3) A suspension under this section must not be extended or the credentials concerned cancelled unless the Director-General has firstly complied with the requirements of Division 4 (as appropriately modified to meet the circumstances of the case).

**Division 4 Procedures before amendment, variation, suspension or**

## **cancellation of credentials**

### **38 Circumstances in which compliance is required**

Before amending, varying, suspending or cancelling credentials under Division 3, the Director-General, or an authorised agent in the case of an amendment or variation of certification, must, subject to that Division, comply with this Division.

### **39 Standards and criteria to be considered before action taken**

Standards submitted by an accredited person which have been accepted by the Director-General for the purposes of the person's accreditation and criteria fixed for the purposes of a person's certification must be taken into consideration by the Director-General or authorised agent before credentials are amended, varied, suspended or cancelled.

### **40 Notice to be given of proposed action**

- (1) Before amending, varying, suspending or cancelling a person's credentials, the Director-General or authorised agent must give notice to the person concerned of the intention to amend, vary, suspend or cancel the person's credentials and:
  - (a) in the case of amendment or variation—of the terms of the proposed amendment or variation, and
  - (b) in the case of suspension—of the terms and period of the proposed suspension and the steps which it is proposed should be taken by the person concerned to have the suspension lifted and to avoid cancellation of the credentials.
- (2) The notice must also indicate that the person concerned may make representations to the Director-General or authorised agent as to why the credentials should not be amended, varied, suspended and cancelled or cancelled or as to the matters referred to in subsection (1) (a) and (b).
- (3) The notice may provide that the representations are to be made to the Director-General or an authorised agent on or before a specified date, being a date that is reasonable in the circumstances of the case.

### **41 Making of representations**

A person may, in accordance with a notice under section 40, make representations concerning the proposed amendment, variation, suspension and cancellation or cancellation.

### **42 Consideration of representations**

The Director-General or authorised agent is required to consider any representations made under section 41.

### **43 Procedure after consideration of representations**

- (1) After considering any representations made concerning the proposed amendment, variation, suspension and cancellation or cancellation, the Director-General or an authorised agent may determine:
  - (a) to amend, vary, suspend or cancel the credentials in accordance with the proposed amendment, variation, suspension and cancellation or cancellation, or
  - (b) to amend, vary, suspend or cancel the credentials in accordance with modifications made to the proposed amendment, variation, suspension and cancellation or cancellation, or
  - (c) not to amend, vary, suspend or cancel the credentials.
- (2) If the determination is to amend, vary, suspend or cancel the credentials in accordance with modifications made to the proposed amendment, variation, suspension and cancellation or cancellation, the Director-General or authorised agent is not required to give notice under this Division of the proposed amendment, variation, suspension and cancellation or cancellation as so modified.

## **Division 5 Review of decisions**

### **44 Application to Administrative Decisions Tribunal for review of decision of Director-General or authorised agent**

A person aggrieved by a decision of the Director-General or an authorised agent under Division 3 or 4 may apply to the Administrative Decisions Tribunal for a review of the decision.

## **Division 6 Fees**

### **45 Application and registration fees**

An applicant for accreditation or certification, or amendment or variation of accreditation or certification, or registration of a private siding under this Part must pay the fee fixed by the Minister and published in the Gazette for consideration of the application.

### **46 Annual fees**

An accredited person and an owner of a private siding registered under this Part must also pay the annual fee fixed by the Minister and published in the Gazette.

### **47 Fixing of annual fees**

- (1) The Minister may use information provided to the Director-General under section 15 for the purpose of fixing fees under this section.
- (2) Without limiting this section, annual fees may be fixed on one or more of the following

bases:

- (a) on the basis of a rate fixed by the Minister for the quantity of freight or number of passengers (or both) hauled by the railway concerned,
- (b) on the basis of a rate fixed by the Minister for each kilometre (or part of a kilometre) of railway track in respect of which the owner is accredited,
- (c) on the basis of a rate fixed by the Minister for each unit of rolling stock in respect of which the operator is accredited.

#### **48 Payment of annual fees**

- (1) Annual fees must be paid by an accredited person or the owner of a private siding registered under this Part at least 28 days before each anniversary of the person's accreditation or the registration of the private siding.
- (2) The Director-General may accept payment of annual fees 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 Minister may reduce or waive annual fees having regard to the capacity of an accredited person to pay the fees.
- (4) If an annual fee is fixed on the basis of projected performance figures furnished under section 15 which the actual performance figures for the following year show to have been underestimated, the Director-General may require the accredited person to pay an additional fee in respect of the year for which the projected performance figures were employed for fixing the annual fee.
- (5) If the projected performance figures were overestimated, the Director-General may allow the accredited person a credit, in an amount determined by the Director-General, in respect of the annual fee payable by the person for the next ensuing year.
- (6) If the annual 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 under this Part. However, if the fee is paid by such date as the Director-General determines and notifies to the person, the accreditation is taken not to have lapsed.

#### **49 Differential, minimum and late payment fees**

The Minister may fix different fees for different kinds of accreditations or for different categories or grades of certifications and may fix minimum fees and impose additional fees for late payment of fees after the due date for payment.

### **Part 3 Safety compliance inspections, reporting of occurrences,**

## **inquiries and other safety measures**

### **50 Safety compliance inspections**

- (1) The Director-General must, at intervals that the Director-General considers to be appropriate (but no less frequently than once every 12 months), cause to be inspected:
  - (a) the railway track, other infrastructure and rolling stock of accredited persons, and
  - (b) the construction, operation and maintenance of railways by such persons, and
  - (c) the performance of railway employees,to ensure that accredited persons are complying with the terms of their accreditations.
- (2) The Director-General may, if and when the Director-General considers it to be appropriate, inspect any documents that are held by, or that are under the control of, accredited persons relating to:
  - (a) the construction, operation or maintenance of railways by the accredited persons,  
or
  - (b) the acquisition, disposal, renovation or repair of track, other infrastructure or rolling stock, or
  - (c) the preparation and implementation of the safeworking systems of a railway, or
  - (d) any other matters the Director-General considers to be relevant to the safe construction, operation or maintenance of railways by accredited persons.

### **51 Directions to undertake remedial safety work**

- (1) The Director-General may, as a result of a safety compliance inspection or otherwise, direct an accredited person to undertake remedial safety work to secure compliance with the terms of the person's accreditation.
- (2) The direction is to be given by written notice that sets out details of the work to be undertaken and the period within which it is to be undertaken.
- (3) If an accredited person fails to comply with the direction, the Director-General may, subject to this section, arrange for the work to be undertaken on behalf of the person and may recover from the person all costs and expenses of and associated with the undertaking of the work.
- (4) The Director-General may only arrange for the work to be undertaken if the cost of the work is likely to be less than \$100,000 or such other amount as is specified for the purpose as a condition of the person's accreditation.

## **52 Directions to provide program of remedial safety work**

- (1) The Director-General may, as a result of a safety compliance inspection or otherwise, direct an accredited person who has failed to comply with the requirements of this Act or the terms of the person's accreditation that relate to the safe construction, operation and maintenance, or the safe construction, operation or maintenance, of a railway to provide the Director-General with a program for, and a timetable for completion of, the remedial safety work that the person proposes to undertake to remedy that failure.
- (2) The direction is to be given by written notice and is to state the date by which the program is to be provided.
- (3) A person must not fail to comply with a direction given under this section.

Maximum penalty: 5 penalty units.

## **53 Declarations as to amendment or 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 amendment or variation of the person's accreditation in the forthcoming year, or
- (b) if any such circumstance does exist, make application to the Director-General under Division 3 of Part 2 for amendment or variation of the accreditation.

## **54 Supply of information**

Accredited persons must provide the Director-General with such information concerning measures taken by them to promote rail safety or concerning other matters relating to rail safety as the Director-General reasonably requires.

## **55 Safety reports**

- (1) Accredited persons must submit annual safety reports dealing with the general conduct of their railway operations and any significant developments relating to those operations in an approved form to the Director-General within 28 days before each anniversary of their accreditation.
- (2) In addition, accredited persons must submit safety reports to the Director-General at such other times as the Director-General specifies by written notice served on those persons.

## **56 Accredited persons to report notifiable occurrences to Director-General**

- (1) Accredited owners and operators must report to the Director-General within the time

specified in this section any notifiable occurrence that happens on a railway owned or operated by them and that is of a kind specified in Schedule 1.

- (2) Accredited persons may make a joint report with respect to a notifiable occurrence.
- (3) In addition to the matters specified in Schedule 1, the Director-General may, by written notice which expires 12 months after it is given, require accredited persons to report to the Director-General any other incident which endangers or could endanger the safe construction, operation or maintenance of a railway.
- (4) A report under this section must be in the approved form and be given in an approved manner and the Director-General may require the information supplied to be verified by statutory declaration.
- (5) Notifiable occurrences are to be reported to the Director-General within the following times:
  - (a) in the case of a notifiable occurrence specified in item 1 of Part 1 of Schedule 1 (involving the death of a person)—as soon as practicable after the occurrence but, in any event, no later than 72 hours after the occurrence happens,
  - (b) in the case of a notifiable occurrence specified in items 1–26 of Part 2 of Schedule 1 (involving collisions, derailments, fires and explosions), which relates to a major collision, derailment or fire as designated by this section or any explosion—as soon as practicable after the occurrence but, in any event, no later than 72 hours after the occurrence happens,
  - (c) in all other cases—within the time prescribed by the regulations or, if no time is so prescribed, within the time specified by written notice from the Director-General to accredited persons.
- (6) For the purposes of this section:
  - (a) a collision is a **major collision** if it involves 2 or more units of rolling stock that contain passengers or sustain damage in excess of an amount prescribed by the regulations or, if no amount is so prescribed, an amount specified by the Director-General and published in the Gazette from time to time, and
  - (b) a derailment is a **major derailment** if it involves a unit or units of rolling stock that contain passengers or sustain damage in excess of an amount prescribed by the regulations or, if no amount is so prescribed, an amount specified by the Director-General and published in the Gazette from time to time, and
  - (c) a fire is a **major fire** if it involves a unit or units of rolling stock or infrastructure that sustain damage in excess of an amount prescribed by the regulations or, if no amount is so prescribed, an amount specified by the Director-General and published in the Gazette from time to time.

Maximum penalty: 20 penalty units.

#### **57 Amendment of Schedule 1 (notifiable occurrences)**

The Governor may, by proclamation published in the Gazette, amend or substitute Schedule 1 at any time.

#### **58 Inquiries into railway accidents and incidents affecting the safe construction, operation or maintenance of railways**

- (1) An accredited person must inquire into, and report to the Director-General on, any railway accident or incident that may affect the safe construction, operation or maintenance of a railway in respect of which the person is accredited.

Maximum penalty: 20 penalty units.

- (2) Inquiries by accredited persons are to be conducted in an approved manner and within the time specified by the Director-General.
- (3) 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 calendar month.
- (4) The Minister may require the Director-General or a person or body nominated by the Minister to inquire into and report to the Minister on any railway accident or incident that may affect the safe construction, operation or maintenance of a railway.

#### **59 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.

#### **60 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.

#### **61 Railway employees—alcohol or other drugs**

- (1) 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 not under the influence of alcohol or other drugs when about to carry out, or while carrying out, railway safety work.
- (2) The Director-General may at any time arrange with accredited persons for the random testing of any person carrying out railway safety work on railways owned or operated by those persons for the presence of alcohol or any other drug to ensure that



accredited persons are complying with the terms of their accreditations.

- (3) The result of any random test conducted under subsection (2) is not admissible against the person tested in any proceedings for an offence under this Act or in any disciplinary proceedings.
- (4) Schedule 2 has effect.
- (5) In this section, ***about to carry out railway safety work*** has the meaning set out in clause 6 (2) of Schedule 2.

## **62 Installation of protective or safety devices**

- (1) The Director-General may, if of the opinion that such action is necessary for the purposes of the safe operation of a railway, direct an accredited person, by notice in writing, to install on the infrastructure of a railway or on rolling stock within the time specified in the notice such protective or safety devices as are specified in the notice.
- (2) Without limiting this section, the protective or safety devices may include bells, lighting, boom gates, brakes and carriage door locks.
- (3) An accredited person on whom a notice under this section is served must not fail to comply with the notice.

Maximum penalty: 200 penalty units.

## **63 Closure of level-crossings**

- (1) The Director-General may direct an accredited person to close any level-crossing, bridge or other structure for crossing or passing over or under a railway if the Director-General considers that it is necessary to do so for the safe operation of the railway.
- (2) An accredited person served with a direction under this section must, before closing any such 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 any such level-crossing, bridge or other structure, all rights, easements and privileges in relation to that crossing, bridge or other structure are extinguished.
- (4) It is a condition of accreditation that an accredited person must comply with the requirements of this section.

## **Part 4 Enforcement**

### **Division 1 Power of entry**

#### **64 Power of entry**

- (1) For the purposes of this Act, an authorised officer may enter any land.
- (2) Entry may only be made at a reasonable hour in the daytime or at any hour during which the construction, operation or maintenance of a railway is in progress or is usually carried out on the land.

#### **65 Inspections and investigations**

For the purposes of this Act, an authorised officer has the following powers on land that the officer is authorised to enter:

- (a) power to inspect any railway or any part of any railway on the land,
- (b) power to inquire into any notifiable occurrence, railway accident or other incident affecting the safe construction, operation or maintenance of a railway that has happened on the land,
- (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,
- (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 credentials,
- (g) power to search for and inspect relevant documents and require any person on the land 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 on the land to answer questions or otherwise furnish information in relation to the matter the subject of the inspection, investigation or inquiry,
- (i) power to exercise functions under section 66 in relation to any relevant documents found on the land or produced to an authorised officer.

#### **66 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 on land 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.

#### **67 Notice of entry**

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

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

#### **68 Use of force**

A power conferred by this Act to enter any land, or to do anything on any land, 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.

#### **69 Care to be taken**

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

## **70 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 a railway in respect of which the person is accredited (other than the costs of a routine safety compliance inspection under Part 3).

## **71 Compensation**

The Director-General must pay compensation for any damage caused by any authorised officer in exercise of a power to enter land 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.

## **72 Authority to enter land**

- (1) A power conferred by this Division to enter land, or to make an inspection or take other action on land, 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 land.
- (2) The authority must be a written authority which is issued by the Director-General and which:
  - (a) states that it is issued under this Act, and
  - (b) gives 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 land 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.

## **73 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, or
- (b) under the authority conferred by a search warrant.

## **74 Protection from incrimination**

- (1) A person is not excused from making a statement pursuant to a requirement under

this Division on the ground that the statement might tend to incriminate him or her.

- (2) However, the statement is not admissible in evidence against the person in criminal proceedings:
  - (a) if the person claims before making the statement that the statement 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), a statement made by a person in compliance with a requirement under this Division may be used in evidence in any criminal or civil proceedings against the person.

## 75 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 credentials granted have been or are being contravened on any land.
- (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 land, and
  - (b) to search the land for evidence of a contravention of this Act, the regulations or the terms of credentials.
- (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 person in the exercise of the person's functions under this section.
- (5) In this section, **authorised justice** has the same meaning it has in the [Search Warrants Act 1985](#).

## Division 2 Offences and proceedings

### 76 Offences involving credentials

(1) A person who:

- (a) by any false statement or misrepresentation, obtains or attempts to obtain any credentials under this Act, or
  - (b) forges or fraudulently alters or uses any credentials, or
  - (c) fraudulently allows any such credentials to be used by any other person,
- is guilty of an offence.

Maximum penalty: 2,500 penalty units in the case of a corporation or, in any other case, 1,000 penalty units or imprisonment for 12 months, or both.

(2) A person who:

- (a) contravenes a condition or restriction attached to credentials, or
- (b) knowingly permits another person to contravene a condition or restriction attached to credentials,

is guilty of an offence.

Maximum penalty: 200 penalty units.

### 77 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) Without limiting this section, systems, devices and appliances include safeworking systems, braking systems, signalling systems, wheels, isolating switches and points.

Maximum penalty: 100 penalty units.

### 78 Tampering with railway equipment

(1) A person who tampers with or disables:

- (a) the safety equipment of a railway or of a unit or units of rolling stock, or
- (b) the interlocking system of a railway,

is guilty of an offence.

(2) In this section, ***interlocking system*** means any lever or collection of levers, or

electrical and mechanical devices, or electrical devices, that operate or control points and signals, or signals, at locations where trains can be directed from one track to another and that are interlocked to prevent conflicting movements of trains.

Maximum penalty: 1,000 penalty units.

## **79 Offences involving private sidings**

- (1) A person who is not an accredited operator must not move a train to or from a private siding.

Maximum penalty: 2,500 penalty units in the case of a corporation or, in any other case, 1,000 penalty units or imprisonment for 12 months or both.

- (2) A person must not operate a railway on a private siding that is not registered under this Act.

Maximum penalty: 20 penalty units.

## **79A Offence of failure to pay fares on railway**

- (1) In this section, **train** means a train operated by the State Rail Authority, a light rail vehicle operated on a light rail system (within the meaning of the [Transport Administration Act 1988](#)) by the operator of that system or any other train of a class prescribed by the regulations.

- (2) A person who does any of the following is guilty of an offence:

- (a) without reasonable excuse, travels or attempts to travel on a train without previously having paid the fare,
- (b) travels or attempts to travel on a train without previously having paid the fare and fails, without reasonable excuse to pay the fare on demand made by an officer authorised in that regard by the operator of the train system,
- (c) knowingly and without reasonable excuse, fails to leave a train on arriving at the point to which he or she has paid the fare,
- (d) knowingly and without reasonable excuse, travels or attempts to travel on a train in a carriage of a class to which the person's ticket does not apply,
- (e) uses a travel pass to travel or attempt to travel on a train, knowing that he or she is not entitled to use the pass or that the pass is no longer valid.

Maximum penalty: 5 penalty units.

- (3) It is not a defence to a prosecution under subsection (2) (a) for a person to prove:

- (a) that the time taken or likely to have been taken in payment of the fare before travelling or attempting to travel on the train would or may have caused the

person to have been unable to so travel or attempt to travel, or

- (b) that the person intended to pay the fare while travelling or on arriving at a particular place,

but it is a defence to such a prosecution if the person proves:

- (c) that it appeared to the person, after reasonable investigation, that no facilities were available at the station or stop at which the person got on or attempted to get on the train to enable him or her to pay the fare before getting on or attempting to get on the train, or
- (d) that the person:
- (i) had arrived at that station or stop within such period of time before getting on or attempting to get on the train as would, in the circumstances ordinarily existing at that time of the day and on that day of the week, have enabled the person to have paid the fare before getting on or attempting to get on the train, and
  - (ii) diligently took all steps reasonably necessary to pay the fare, but that the person was unable, due to circumstances beyond his or her control, to pay the fare.

#### **79B Offences relating to passengers or vehicles**

- (1) In this section, **train** has the same meaning it has in section 79A.
- (2) The regulations may make provisions for or with respect to:
- (a) the regulation or prohibition of eating, drinking or smoking in trains or in other public areas of a railway, and
  - (b) the conduct of passengers and drivers on trains or in other parts of a railway, and
  - (c) the powers and duties of drivers of trains and of authorised officers, and
  - (d) the authority of drivers of trains, and of authorised officers, to eject persons guilty of any contravention of a regulation, and
  - (e) the taking up or setting down of passengers or other matters incidental to the transport of passengers, and
  - (f) the carriage of passengers' luggage or other goods, and animals, on trains, and
  - (g) the regulation or prohibition of the carriage of passengers standing in or on any part of a train, and
  - (h) 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, and

- (i) 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, and
- (j) the erection and display of signs and notices for the guidance of the drivers of trains and the public, and
- (k) the sale of tickets and the conditions under which tickets must be sold, and
- (l) generally as to the regulation and control of trains, of their drivers and passengers, and of other parts of a railway.

### **80 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:
  - (a) fails or refuses to comply with the requirements of a police officer or authorised officer made under this section, 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: 5 penalty units.
- (3) 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.
- (4) 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.
- (5) The authority of a person appointed under subsection (4):
  - (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.

- (6) The Director-General must furnish a person authorised under subsection (4) 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.
- (7) Information obtained under this section by a person appointed under subsection (4) must be forwarded to the Director-General for consideration and, if appropriate, the taking of action in accordance with this Division.

### **81 Obstruction**

A person who hinders or obstructs an authorised officer or other person in the execution of his or her functions under this Act or the regulations is guilty of an offence against this Act.

Maximum penalty: 50 penalty units.

### **82 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.

### **83 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 if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or

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.

#### **84 Evidence of intention of corporation**

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 at that time.

#### **85 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.

#### **86 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 constituted by a Magistrate sitting alone, 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 200 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 the *Justices Act 1902*.

#### **87 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 such other officer of the Department as may be 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.

### **88 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 which 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.

### **89 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.

## **90 Records and evidence from records**

- (1) The Director-General must keep records of the grant, refusal, amendment, variation, suspension and cancellation of accreditations and certifications 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 forth 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**

#### **91 Functions of Director-General**

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

- (a) accreditation of owners and operators under Division 1 of Part 2 and the amendment, variation, suspension and cancellation or cancellation of accreditation granted under that Division,
- (b) certification of railway employees under Division 2 of Part 2 and the amendment, variation, suspension and cancellation or cancellation of certification granted under that Division,
- (c) development of safety performance standards for the safe construction, operation and maintenance of railways,
- (d) monitoring the effectiveness of safety performance standards and revising, replacing or repealing those standards and developing new standards, as necessary,
- (e) arranging for the conduct of inspections to monitor compliance of owners, operators and railway employees with the requirements of this Act, the regulations and credentials,
- (f) issuing directions for the purposes of Part 3,
- (g) considering 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 operation of railways,
- (j) arranging for the provision of advice to intending applicants for accreditation on such matters as safety performance standards and the criteria for the grant of credentials and concerning railway safety generally,
- (k) making recommendations to the Minister concerning railway safety generally.

## **92 Use of staff of Authority**

The Director-General may, for the purposes of this Act, on such terms and conditions as may be arranged with the Authority concerned, make use of the services of any person employed by an Authority under the *Transport Administration Act 1988*.

### **92A Consultants**

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

## **93 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.

## **94 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.

## **95 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**

### **96 Savings of other Acts etc**

This Act does not affect the operation of the *Road and Rail Transport (Dangerous Goods) Act 1997* or regulations made under that Act or of 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 or the functions of the WorkCover Authority under that Act or legislation.

### **97 (Repealed)**

### **98 Applications generally**

An application under this Act must be in the approved form.

### **99 Service of documents**

- (1) A document that is authorised or required under this Act to be 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 owned or operated by the person 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 such holder, service on any one such 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 lies on the person asserting that fact.

### **100 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.
- (3) The regulations may exempt, or provide for the exemption (either absolutely or subject to conditions) of, any person, railway, part of a railway or operation from all or any of the provisions of this Act.
- (4) In the event of an inconsistency between a by-law or regulation made, or taken to be made, under the *Transport Administration Act 1988* and a regulation made under this Act, the regulation made under this Act prevails to the extent of the inconsistency.
- (5) A regulation made under this Act does not limit the operation of a by-law or regulation made, or taken to be made, under the *Transport Administration Act 1988* so far as it can operate concurrently with a regulation made under this Act.
- (6) The regulations may create offences punishable by a penalty not exceeding 20 penalty units.

### **101 (Repealed)**

### **102 Savings and transitional provisions**

Schedule 4 has effect.



### **103 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 Notifiable occurrences**

(Section 56)

### **Part 1 Occurrences directly affecting persons**

#### **1 Occurrences involving death**

Any accident or incident involving the death of a person while that person was on or in the proximity of railway tracks or other infrastructure. The requirement to notify applies in respect of the death of any person (including passengers, other members of the public, railway employees and trespassers) and in respect of any cause of death (including accident, suicide and ill health).

#### **2 Occurrences involving permanent incapacitating injury**

Any accident or incident involving a permanent incapacitating injury (eg, loss of sight or of a limb) to a person (including a passenger, other member of the public, railway employee or trespasser) while the person was on or in the proximity of railway tracks or other infrastructure.

#### **3 Occurrences involving temporary incapacitating injury**

Any accident or incident involving a temporary incapacitating injury (eg, an injury which necessitates absence from work of longer than 3 days) to a person (including a passenger, other member of the public, railway employee or trespasser) while the person was on or in the proximity of railway tracks or other infrastructure.

#### **4 Other occurrences involving persons**

Any occurrence, not included within items 1-3, in which a person:

- (a) falls off a railway platform, bridge or structure, or
- (b) falls between a train and a platform, or
- (c) falls from a train during the running of a train, or

- (d) falls on steps, escalators or level customer areas on railway premises, or
- (e) is struck by a train or other unit of rolling stock, or
- (f) is struck by an object thrown at or from a train, or
- (g) is assaulted on railway premises, or
- (h) is struck by dangerous goods or affected by gases or fumes on a railway, or
- (i) is struck by, or receives a shock from, electricity on a railway or on railway premises.

## **Part 2 Occurrences affecting railway infrastructure or rolling stock**

### **5 Collisions resulting from rolling stock equipment irregularities**

Any collision as the result of irregularities in equipment on rolling stock (eg, involving brakes, swinging doors, vehicles fouling gauge etc).

### **6 Collisions resulting from track obstruction**

Any collision as the result of track obstruction (eg, involving livestock, rock or fill, water flooding, plant or equipment fouling track etc).

### **7 Collisions resulting from safeworking staff irregularities**

Any collision as the result of safeworking staff irregularities (eg, involving clearance points, crew performance, shunting irregularities, pass signal at stop, protection of worksite, single line working irregularities etc).

### **8 Collisions resulting from wrong side signals**

Any collision as the result of wrong side signals.

### **9 Collisions at level crossings**

Any collision at a level crossing.

### **10 Collisions resulting from track irregularities**

Any collision as the result of track irregularities (eg, involving heat buckle, track centres etc).

### **11 Collisions resulting from track structure failure**

Any collision as the result of track structure failure (eg, involving structure collapse, worn points, cutting or side fill failure etc).

### **12 Collisions resulting from vehicle loading irregularities**

Any collision as the result of vehicle loading irregularities (eg, involving unsecured doors

or loads, out of gauge irregularities etc).

**13 Collisions after derailments**

Any collision after a derailment (eg, involving vehicles fouling track, driver not warned, signal protection, site protection etc).

**14 Derailments resulting from rolling stock equipment irregularities**

Any derailment as the result of irregularities in equipment on rolling stock (eg, collapsed or defective wheel bearings, faulty wheels or axles, faulty brakes etc).

**15 Derailments resulting from track obstruction**

Any derailment as the result of track obstruction (eg, involving vandalism, discharge of load on the main line, related track maintenance work etc).

**16 Derailments resulting from safeworking staff irregularities**

Any derailment as the result of safeworking staff irregularities (eg, involving crew performance, shunting irregularities, signal manipulation, incorrect route, pass signal at stop, protection of worksite, uncleaned points etc).

**17 Derailments resulting from wrong side signals**

Any derailment as the result of wrong side signals (eg, involving false proceed indications, phantom signal indications etc).

**18 Derailments resulting from track irregularities**

Any derailment as the result of track irregularities (eg, involving heat buckle, track centres, joints pulling apart or points or crossing irregularities etc).

**19 Derailments resulting from track structure failures**

Any derailment as the result of track structure failure (eg, involving broken rails, spread road, rail wear, bridge collapses, subsiding embankments etc).

**20 Derailments resulting from vehicle loading problems**

Any derailment as the result of vehicle loading problems (eg, involving uneven loading, unsecured loads, overloading etc).

**21 Derailments resulting from excessive vehicle speed**

Any derailment as the result of excessive vehicle speed (eg, involving crew performance, track geometry design, speed board irregularities etc).

**22 Derailments resulting from track geometry exceedent**

Any derailment as the result of track geometry exceedent (eg, involving irregular

alignment, irregular superelevation or top, broken joints, train-track dynamics etc).

**23 Derailments resulting from collisions**

Any derailment as the consequence of a collision (eg, involving damaged rolling stock, damaged structures, damaged track etc).

**24 Derailments resulting from signal equipment irregularities**

Any derailment as the result of signal equipment irregularities (eg, involving multiple signal indications, vandalism etc).

**25 Fires**

Any fire affecting railway infrastructure (including premises) or rolling stock.

**26 Explosions**

Any explosion affecting railway infrastructure (including premises) or rolling stock.

**27 Equipment failures**

Any failure of an axle, bearing, wheel or tyre on a train, tram or other unit of rolling stock which results in the vehicle being unfit to travel.

**28 Accidental division of train**

Any accidental division of a train.

**29 Rail fracture**

Any fracture of a rail in the permanent way.

**30 Rail buckling**

Any buckling of a rail in the permanent way.

**31 Failure of tunnels, bridges or elevated structures**

Any failure of a tunnel, bridge or elevated structure or any part of a tunnel, bridge or elevated structure which endangers or could endanger the safe operation of the railway.

**32 Failure of signal structures or fixed signalling electrical systems**

Any failure of a signal structure or any part of the fixed signalling electrical system which endangers or could endanger the safe operation of a railway.

**33 Trains or rail vehicles passing signals at stop**

Any incident involving a train or rail vehicle passing a signal at stop which endangers or could endanger the safe operation of the railway.

## Schedule 2 Railway employees—alcohol or other drugs

(Section 61)

### Part 1 Preliminary

#### 1 Definitions

(1) In this Schedule:

**analyst, breath analysing instrument, breath analysis** and **breath test** have the same meanings as they have in the *Road Transport (Safety and Traffic Management) Act 1999*.

**authorised officer** means a person who is appointed as an authorised officer under clause 2.

**drug** means:

(a) alcohol, or

(b) any substance that is a drug within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*.

**hospital** means a public or private hospital, and includes any premises, institution or establishment that is a hospital for the purposes of section 19 of the *Road Transport (Safety and Traffic Management) Act 1999* or that is prescribed by the regulations.

**prescribed concentration of alcohol** means a concentration of 0.02 grammes or more of alcohol in 100 millilitres of blood.

(2) A reference in this Schedule to a police officer authorised by the Commissioner of Police to operate breath analysing instruments is a reference to a police officer so authorised under the *Road Transport (Safety and Traffic Management) Act 1999*.

(3) For the purposes of this Schedule, a thing is to be regarded as having been done by a medical practitioner or analyst if it is done by a person acting under the supervision or direction of the medical practitioner or analyst.

(4) For the purposes of this Schedule, a power to require a person to provide a sample of blood or urine includes a power to require a person to provide samples of both blood and urine.

#### 2 Appointment of authorised officers

(1) The Director-General may, by instrument in writing, appoint an officer of the Department, a person employed in the transit police service or, 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 Schedule.

- (2) The Director-General may appoint as an authorised officer:
  - (a) a person by name, or
  - (b) the holder from time to time of a particular office by reference to the title of the office concerned.
- (3) The authority of an authorised officer may be limited by the relevant instrument of appointment to a particular part of the State, to a particular railway or to particular railway employees, or otherwise.
- (4) The authority of an authorised officer who is the nominee of an accredited person is limited to the railway specified in the accreditation of the person who nominates the officer to the Director-General for appointment.
- (5) Anything done by an authorised officer in accordance with this Schedule is not invalid merely because of a contravention of a limitation to which the authority of the officer is subject.
- (6) The Director-General must furnish authorised officers with certificates of their appointment as authorised officers.
- (7) If the Director-General has appointed as an authorised officer the holder of an office, evidence that the authorised officer holds the office concerned has the same effect as the production of a certificate of appointment as an authorised officer.
- (8) An authorised officer must, if requested to do so, produce the certificate of appointment to any person required by the officer to submit to a breath test or to do any other thing under this Schedule.

## **Part 2 Offences relating to alcohol or other drugs**

### **3 Offence—carrying out railway safety work with prescribed concentration of alcohol in blood**

A railway employee who carries out railway safety work while the prescribed concentration of alcohol is present in the employee's blood is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

### **4 Offence—carrying out railway safety work while under the influence of alcohol or other drug**

- (1) A railway employee who carries out railway safety work while under the influence of alcohol or any other drug is guilty of an offence.

Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.

- (2) If a person is charged with an offence under this clause:
- (a) the information may allege the person was under the influence of more than one drug and is not liable to be dismissed on the ground of uncertainty or duplicity if each of those drugs is described in the information, and
  - (b) the offence is proved if the court is satisfied beyond reasonable doubt that the defendant was under the influence of:
    - (i) a drug described in the information, or
    - (ii) a combination of drugs any one or more of which was or were described in the information.

## **5 Double jeopardy**

- (1) A railway employee is not liable to be convicted of both:
- (a) an offence under clause 3 of carrying out railway safety work while the prescribed concentration of alcohol is present in the employee's blood, and
  - (b) an offence under clause 4 of carrying out that railway safety work while under the influence of alcohol or any other drug.
- (2) A railway employee is not liable to be convicted of both:
- (a) an offence under clause 4 of carrying out railway safety work while under the influence of alcohol or any other drug, and
  - (b) an offence under clause 17 of refusing or failing to submit to a breath analysis or to provide a sample of blood or urine in connection with the carrying out of that railway safety work.

## **Part 3 Testing for alcohol or other drugs**

### **6 Breath testing of railway employees about to carry out railway safety work**

- (1) If an authorised officer has reasonable cause to believe that a railway employee is about to carry out railway safety work, the officer may require the employee to undergo a breath test in accordance with the directions of the officer.
- (2) 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.
- (3) The result of any such breath test (or of any subsequent breath or other analysis) may be used for the purposes of any disciplinary proceedings against the railway

employee, but is not admissible in any proceedings for an offence under this Schedule.

#### **7 Breath testing of railway employees carrying out railway safety work**

If an authorised officer or a police officer has reasonable cause to believe that:

- (a) a railway employee is carrying out railway safety work and there is alcohol in the employee's blood, or
- (b) a railway employee has been involved in an accident or irregular incident while carrying out railway safety work,

the officer may require the employee to undergo a breath test in accordance with the directions of the officer.

#### **8 Assessment of sobriety if breath testing device not available**

(1) If:

- (a) an authorised officer or a police officer is entitled under this Schedule to require a railway employee to undergo a breath test, and
- (b) the device required to carry out the breath test is not readily available,

the officer may require the employee to submit to an assessment of the employee's sobriety in accordance with the directions of the officer.

- (2) A requirement that a railway employee submit to such an assessment is not open to challenge in any proceedings on the basis that the device was readily available.

#### **9 Breath analysis of railway employees following breath testing etc**

(1) If:

- (a) it appears to an authorised officer or a police officer as a result of a breath test or assessment under this Schedule that the prescribed concentration of alcohol may be present in a railway employee's blood, or
- (b) a railway employee who is required by an authorised officer or a police officer to undergo a breath test or to submit to an assessment under this Schedule refuses or fails to do so in accordance with the directions of the officer,

the officer may require the employee to submit to a breath analysis in accordance with the directions of the officer.

- (2) If an authorised officer or a police officer is entitled to require a railway employee to submit to a breath analysis, the officer may:

- (a) arrest the employee without warrant, and



- (b) take the employee with such force as may be necessary to a police station or such other place as the officer considers desirable and there detain the employee for the purposes of the breath analysis.
- (3) A breath analysis must be carried out by:
  - (a) an authorised officer, or
  - (b) a police officer authorised by the Commissioner of Police to operate breath analysing instruments,at or near a police station or such other place as the officer considers desirable.
- (4) As soon as practicable after a railway employee has submitted to a breath analysis the authorised officer or police officer operating the breath analysis instrument must deliver to the employee a statement in writing signed by the officer specifying:
  - (a) the concentration of alcohol determined by the analysis to be present in the employee's blood and expressed in grammes of alcohol in 100 millilitres of blood, and
  - (b) the day on which and time of the day at which the breath analysis was completed.
- (5) A railway employee who is required to submit to a breath analysis may request the authorised officer or police officer making the requisition to arrange for the taking (in the presence of an authorised officer or a police officer) of a sample of the employee's blood for analysis, at the employee's own expense, by:
  - (a) a medical practitioner nominated by the employee, or
  - (b) a medical practitioner nominated by the officer at the employee's request.
- (6) The making of any such request or the taking of a sample of a railway employee's blood does not absolve the employee from the obligation imposed on the employee to submit to a breath analysis in accordance with this clause.
- (7) A medical practitioner by whom a sample of a railway employee's blood is taken in accordance with an arrangement referred to in subclause (5) must divide the sample into 2 approximately equal portions of which one must be handed to the employee from whom it was taken and one, enclosed in a suitable sealed container, must be handed to the authorised officer or police officer present at the time the sample was taken.

#### **10 Blood or urine samples taken at hospitals from railway employees involved in accidents in carrying out railway safety work**

- (1) If a railway employee attends or is admitted to a hospital for examination or treatment because the employee has been involved in an accident while carrying out

railway safety work, an authorised officer or police officer may require the employee to provide as soon as practicable a sample of the employee's blood or urine in accordance with the directions of a medical practitioner who attends the employee at the hospital.

- (2) If there is no medical practitioner present to attend the person at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.
- (3) Any such medical practitioner or nurse must take the sample if informed by the authorised officer or police officer that the sample is required to be taken by the practitioner or nurse under this Act.
- (4) A requirement under subclause (1) need not be made directly to the railway employee concerned but may be made through a medical practitioner or any such nurse who attends the employee at the hospital.

#### **11 Blood or urine samples taken if breath analysing instrument not available**

(1) If:

- (a) an authorised officer or a police officer is entitled under this Schedule to require a railway employee to submit to a breath analysis, and
- (b) a breath analysing instrument is not readily available,

the officer or member may require the employee to provide a sample of the employee's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the employee.

- (2) If there is no medical practitioner present to attend the railway employee at the hospital, the blood or urine sample is to be taken by a registered nurse who is accredited by a hospital as competent to perform the sampling procedures.
- (3) Any such medical practitioner or nurse must take the sample if informed by the authorised officer or police officer that the sample is required to be taken by the practitioner or nurse under this Act.
- (4) A requirement that a railway employee provide a sample is not open to challenge in any proceedings on the basis that a breath analysing instrument was readily available.
- (5) If an authorised officer or a police officer is entitled to require a railway employee to provide a sample of blood or urine, the officer may:
  - (a) arrest the employee without warrant, and
  - (b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

## **12 Blood or urine samples taken for detecting drugs**

(1) If:

- (a) a railway employee has undergone a breath test in accordance with this Schedule, and
- (b) the result of the test does not permit the employee to be required to submit to a breath analysis,

an authorised officer or a police officer may require the employee to submit to an assessment of his or her sobriety in accordance with the directions of the officer.

(2) A railway employee must not be required to submit to the assessment unless the authorised officer or police officer has a reasonable belief that, by the way in which the employee was acting, the employee might be under the influence of a drug.

(3) If:

- (a) a railway employee refuses to submit to the assessment, or
- (b) after the assessment has been made, an authorised officer or a police officer has a reasonable belief that the employee is under the influence of a drug,

the officer may require the employee to provide a sample of the employee's blood or urine at a hospital in accordance with the directions of a medical practitioner who attends the employee.

(4) Any such medical practitioner must take the sample if informed by the authorised officer or police officer that the sample is required to be taken by the practitioner under this Act.

(5) If an authorised officer or a police officer is entitled to require a railway employee to provide a sample of blood or urine, the officer may:

- (a) arrest the employee without warrant, and
- (b) take the employee with such force as may be necessary to a hospital and there detain the employee for the purpose of obtaining the sample.

## **13 Restrictions on requiring breath test, assessment, breath analysis or sample**

An authorised officer or a police officer must not require a railway employee to undergo a breath test, submit to an assessment or a breath analysis or provide a sample of blood or urine:

- (a) if the employee has been admitted to a hospital for medical treatment, unless the medical practitioner who attends the employee at the hospital (or, if no medical practitioner is present to attend the person, a registered nurse who is accredited by a

hospital as competent to perform the sampling procedures) has been notified of the intention to make the requisition and the medical practitioner or nurse does not object on the ground that compliance would be prejudicial to the proper care or treatment of the employee, or

- (b) if it appears to the officer that it would (because of injuries sustained by the employee) be dangerous to the employee's medical condition if the employee complied with the requisition, or
- (c) at any time after the expiration of 2 hours from the time the employee carried out the railway safety work (or was due to commence the railway safety work) to which the requisition relates, or
- (d) at the employee's home.

#### **14 Action by medical practitioner or nurse with respect to samples of blood or urine**

- (1) A medical practitioner or nurse who takes a sample of blood or urine when required under this Schedule to do so must:
  - (a) divide the sample into 2 approximately equal portions, and
  - (b) place each portion into a container, and
  - (c) fasten and seal each container, and
  - (d) mark or label each container for future identification.
- (2) Of the 2 sealed containers:
  - (a) one must be handed by the medical practitioner or nurse to the railway employee from whom the sample was taken or to some other person on behalf of the employee, and
  - (b) the other must be handed by the medical practitioner or nurse to the authorised officer or police officer present when the sample was taken.

#### **15 Analysis of samples of blood or urine**

- (1) An authorised officer or a police officer may arrange for a portion of a sample of a railway employee's blood or urine taken in accordance with this Schedule to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains another drug or drugs.
- (2) If the blood or urine sample was obtained under clause 10, an authorised officer or a police officer may not make arrangements under this clause for the analysis of the sample to determine the concentration in the blood or urine of a drug other than alcohol except in circumstances where the authorised officer or police officer has reasonable grounds to believe that, at the time of the accident concerned, the person

from whom the sample was taken was under the influence of a drug other than alcohol and where:

- (a) no police officer or authorised officer attended the scene of the accident that led to the taking of the sample, or
  - (b) although a police officer or officers or one or more authorised officers attended the scene of the accident, there was no reasonable opportunity to require the person from whom the sample was taken to submit to a breath test or, in accordance with clause 12, an assessment of his or her sobriety.
- (3) An analyst to whom a portion of a sample of blood or urine is submitted for analysis under this clause may carry out an analysis of the portion to determine the concentration of alcohol in the blood or to determine whether the blood or urine contains alcohol or another drug or drugs, as the case requires.

#### **16 Medical practitioners and nurses—protection from liability**

No civil or criminal liability is incurred by a medical practitioner or nurse (nor by any person acting under the supervision or direction of the medical practitioner or nurse) in respect of anything properly and necessarily done by the practitioner or nurse in the course of taking a sample of blood or urine from a person if the practitioner or nurse:

- (a) believed on reasonable grounds that the practitioner or nurse was required under this Act to take the sample of blood or urine from the person, or
- (b) was informed by an authorised officer or a police officer that the person was a person from whom the practitioner or nurse was required under this Act to take the sample of blood or urine.

### **Part 4 Offences relating to testing for alcohol or other drugs**

#### **17 Refusal to be tested**

- (1) Any railway employee who, when required under this Schedule to do so, refuses or fails:

- (a) to undergo a breath test, or
- (b) to submit to an assessment,

in accordance with this Schedule is guilty of an offence.

Maximum penalty: 10 penalty units.

- (2) Any railway employee who, when required under this Schedule to do so, refuses or fails:

- (a) to submit to a breath analysis, or

(b) to provide a sample of blood or urine,  
in accordance with this Schedule is guilty of an offence.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

(3) It is a defence to a prosecution for an offence under this clause if the defendant satisfies the court that the defendant was unable on medical grounds to comply with the requirement concerned.

### **18 Interfering with results of test**

A railway employee who does anything to introduce, or alter the concentration of, alcohol or any other drug in the employee's blood or urine before submitting to a breath analysis or providing a sample of blood or urine under this Schedule is guilty of an offence if the employee does so for the purpose of preventing or restricting the use of the results of the analysis in any proceedings against the employee.

Maximum penalty: 25 penalty units or imprisonment for 9 months, or both.

### **19 Taking of samples by medical practitioner or nurse**

(1) Any medical practitioner or nurse who, when required under this Schedule to take a sample of blood or urine from a railway employee:

- (a) refuses or fails to take the sample, or
- (b) does not comply with the requirements of clause 14 with respect to any sample taken,

is guilty of an offence.

Maximum penalty: 5 penalty units.

(2) It is a defence to a prosecution for an offence under subclause (1) if the medical practitioner or nurse satisfies the court that:

- (a) the practitioner or nurse believed on reasonable grounds that the taking of the sample from the railway employee would be prejudicial to the proper care and treatment of the railway employee, or
- (b) the practitioner or nurse was, because of the behaviour of the railway employee, unable to take the sample, or
- (c) there was other reasonable cause for the practitioner or nurse not to take the sample.

(3) A person who hinders or obstructs a medical practitioner or nurse in attempting to take a sample of the blood or urine of any other person under this Schedule is guilty of an offence.

Maximum penalty: 10 penalty units.

## **Part 5 Certificate evidence in proceedings**

### **20 Certificate evidence of concentration of alcohol in blood determined by breath analysis**

- (1) In proceedings for an offence under clause 3, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by a breath analysing instrument operated by:
  - (a) an authorised officer, or
  - (b) a police officer authorised by the Commissioner of Police to operate breath analysing instruments.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person at the time the person carried out the railway safety work to which the breath analysis relates if the breath analysis was made within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of blood.
- (3) In proceedings for an offence under clause 3, a certificate purporting to be signed by an authorised officer or a police officer and certifying that:
  - (a) the officer is a duly appointed authorised officer or (as the case requires) the police officer is authorised by the Commissioner of Police to operate breath analysing instruments, and
  - (b) the person named in the certificate submitted to a breath analysis, and
  - (c) the apparatus used by the officer to make the breath analysis was a breath analysing instrument within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*, and
  - (d) the analysis was made on the day and completed at the time stated in the certificate, and
  - (e) a concentration of alcohol (determined by that breath analysis instrument and expressed in grammes of alcohol in 100 millilitres of blood) was present in the blood of that person on the day and at the time stated in the certificate, and
  - (f) a statement in writing required by clause 9 (4) was delivered in accordance with that subclause,

is prima facie evidence of the particulars certified in and by the certificate.

- (4) In proceedings for an offence under clause 3, a certificate purporting to be signed by

the Commissioner of Police that the police officer named in the certificate is authorised by the Commissioner of Police to operate breath analysing instruments is prima facie evidence of the particulars certified in and by the certificate.

- (5) In any proceedings for an offence under clause 3, evidence of the condition of a breath analysing instrument or the manner in which it was operated is not to be required unless evidence that the instrument was not in proper condition or was not properly operated has been adduced.

## **21 Certificate evidence of concentration of alcohol in blood determined by analysis of sample of blood**

- (1) In proceedings for an offence under clause 3, evidence may be given of the concentration of alcohol present in the blood of the person charged, as determined by an analysis under this Schedule of a portion of a sample of the person's blood.
- (2) The concentration of alcohol so determined is taken to be the concentration of alcohol in the blood of the person charged at the time the person carried out the railway safety work to which the analysed sample of blood relates, if that sample of blood was taken within 2 hours after that time, unless the defendant proves that the concentration of alcohol in the defendant's blood at that time was less than 0.02 grammes of alcohol in 100 millilitres of the blood.
- (3) In proceedings for an offence under clause 3, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters:
  - (a) that the practitioner or nurse was a medical practitioner or nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the person's blood in accordance with this Schedule on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with clause 14,
  - (d) that the practitioner or nurse used equipment of a specified description in so taking and dealing with the sample,
  - (e) that the container was sealed, and marked or labelled, in a specified manner,is prima facie evidence of the particulars certified in and by the certificate.
- (4) In proceedings for an offence under clause 3, a certificate purporting to be signed by an authorised officer or a police officer and certifying any one or more of the following matters:
  - (a) that the officer received a portion of a sample of a specified person's blood taken in accordance with this Schedule,



(b) that the officer arranged for the portion to be submitted for analysis by an analyst to determine the concentration of alcohol in the blood,

(c) that the container was sealed, and marked or labelled, in a specified manner,

is prima facie evidence of the particulars certified in and by the certificate.

(5) In proceedings for an offence under clause 3, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:

(a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood in a container submitted for analysis under this Schedule,

(b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,

(c) that, on receipt by the analyst of the container, the seal was unbroken,

(d) that the analyst carried out an analysis of the portion to determine the concentration of alcohol in the sample,

(e) that the concentration of alcohol determined pursuant to the analysis and expressed in grammes of alcohol in 100 millilitres of blood was present in that sample,

(f) that the analyst was, at the time of the analysis, an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*,

is prima facie evidence of the matters set out in subclause (6).

(6) A certificate under subclause (5) is prima facie evidence:

(a) of the particulars certified in and by the certificate, and

(b) that the sample was a portion of the sample of the blood of that specified person, and

(c) that the portion had not been tampered with before it was received by the analyst.

## **22 Certificate evidence of presence of drugs**

(1) In proceedings for an offence under clause 4:

(a) evidence may be given of:

(i) the presence of a drug, or

(ii) the presence of a particular concentration of a drug,

in the blood or urine of the person charged, as determined pursuant to an analysis

under this Schedule of a portion of a sample of the person's blood or urine, and

(b) the drug the presence of which is so determined or the particular concentration of the drug the presence of which is so determined, as the case may be, is taken to have been present in the blood or urine of that person at the time the person carried out the railway safety work to which the analysed sample relates,

if the sample was taken within 2 hours after that time, unless the defendant proves the absence of the drug, or the presence of the drug in a different concentration, at that time.

- (2) In proceedings for an offence under clause 4, a certificate purporting to be signed by a medical practitioner or nurse and certifying any one or more of the following matters:
- (a) that the practitioner or nurse was a medical practitioner or nurse who attended a specified person at a hospital,
  - (b) that the practitioner or nurse took a sample of the person's blood or urine in accordance with this Schedule on the day and at the time stated in the certificate,
  - (c) that the practitioner or nurse dealt with the sample in accordance with clause 14,
- is prima facie evidence of the particulars certified in and by the certificate.
- (3) In proceedings for an offence under clause 4, a certificate purporting to be signed by an authorised officer or a police officer and certifying any one or more of the following matters:
- (a) that the officer received a portion of a sample of a specified person's blood or urine taken in accordance with this Schedule,
  - (b) that the officer arranged for the portion to be submitted for an analysis by an analyst to determine whether any drug was present in the sample,
  - (c) that the container was sealed, and marked or labelled, in a specified manner,
- is prima facie evidence of the particulars certified in and by the certificate.
- (4) In proceedings for an offence under clause 4, a certificate purporting to be signed by an analyst and certifying any one or more of the following matters:
- (a) that the analyst received, on a specified day, a portion of a sample of a specified person's blood or urine in a container submitted for analysis under this Schedule,
  - (b) that the container, as received by the analyst, was sealed, and marked or labelled, in a specified manner,
  - (c) that, on receipt by the analyst of the container, the seal was unbroken,

- (d) that the analyst carried out an analysis of the portion to determine whether any drug was present in the sample,
- (e) that a specified drug ascertained pursuant to the analysis was present in that portion and, if so certified, was present in that portion in a specified concentration,
- (f) that the analyst was, at the time of the analysis, an analyst within the meaning of the *Road Transport (Safety and Traffic Management) Act 1999*,

is prima facie evidence of the matters set out in subclause (5).

- (5) A certificate under subclause (4) is prima facie evidence:
  - (a) of the particulars certified in and by the certificate, and
  - (b) that the portion was a portion of the sample of the blood or urine of that specified person, and
  - (c) that the portion had not been tampered with before it was received by the analyst.
- (6) Nothing in this clause enables evidence to be given of or in relation to:
  - (a) the presence of a drug other than alcohol, or
  - (b) the presence of a particular concentration of a drug other than alcohol,in the blood or urine of a person charged with an offence under clause 4, as determined by an analysis of a sample obtained under clause 10, unless the court is satisfied that the analysis was not arranged in contravention of clause 15 (2).

### **23 Certificate evidence of appointment of authorised officer**

In proceedings for an offence under this Schedule, a certificate purporting to be signed by the Director-General and certifying that the officer named in the certificate is an authorised officer is prima facie evidence of the particulars certified in and by the certificate.

## **Schedule 3 (Repealed)**

## **Schedule 4 Savings and transitional provisions**

(Section 102)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

*Traffic Legislation Amendment Act 1997* (but only in relation to the amendments made to this Act)

*Sydney Harbour Foreshore Authority Act 1998* (but only in relation to the amendments made to 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:

**the 1988 Act** means the *Transport Administration Act 1988*.

**the commencement day** means the day on which Part 2 (other than sections 11 and 28) of this Act commences.

### **3 Certain owners taken to be accredited**

- (1) An owner who, immediately before the commencement day, owned a railway to which this Act applies is taken to be an accredited owner for the purposes of this Act for that railway for a period ending one month after the commencement day.
- (2) If, during the period of one month referred to in subclause (1), an owner applies to the Director-General for accreditation or interim accreditation under Division 1 of Part 2, the owner is taken to be an accredited owner for the railway concerned until such time as the owner's application for accreditation or interim accreditation has been determined by the Director-General.

### **4 Certain operators taken to be accredited for period**

- (1) An operator who, immediately before the commencement day, was a party, or subject, to an agreement, licence or other arrangement made pursuant to the 1988 Act which entitled the operator to operate a railway on track owned or controlled by the State Rail Authority is taken to be an accredited operator under this Act for that

railway for a period ending 6 months after the commencement day.

- (2) An operator to whom this clause applies who wishes to obtain accreditation must apply to the Director-General for accreditation in accordance with Part 2 of this Act.

### 5 **Authorised officers—alcohol or other drugs**

On the commencement day, a person authorised for the purposes of Schedule 4 (Railway staff—alcohol or other drugs) to the 1988 Act immediately before that day is taken to be authorised for the purposes of Schedule 2 of this Act for a period of 12 months after the commencement day.

## Part 3 Provisions consequent on enactment of **Sydney Harbour Foreshore Authority Act 1998**

### 6 **Darling Harbour (Monorail) Regulation 1995**

The *Darling Harbour (Monorail) Regulation 1995* is taken to be a regulation under this Act, and may be amended and repealed accordingly.

## Dictionary

(Section 10)

**accreditation** means accreditation under Division 1 of Part 2.

**approved** means approved by the Director-General.

**authorised agent** has the meaning given to it by section 32.

**authorised officer** means a person who is appointed for the time being by the Director-General as an authorised officer 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 Schedule 2.

**certification** means a certification of competency under Division 2 of Part 2.

**credentials** means accreditation and certification of competency under Divisions 1 and 2 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.

**infrastructure of a railway** has the meaning given to it by section 5.

**notifiable occurrence** means an occurrence specified in Schedule 1.

**operate** a railway has the meaning given to it by section 7 (3).

**operator** has the meaning given to it by section 7 (2).

**owner** has the meaning given to it by section 7 (1).

**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.

**railway** has the meaning given to it by section 4.

**railway employee**, in relation to a railway, means an employee or contractor of an owner or operator who performs railway safety work.

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

- (a) work as a driver, guard, observer or engineman on a train,
- (b) work at a railway station or other place as a station-master, operator of train signals or shunter of trains or work which otherwise relates to the movement of trains,
- (c) work on or about railway infrastructure relating to the repair, maintenance or upgrading of railway tracks or any rolling stock or associated works or equipment,
- (d) 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** has the meaning given to it by section 6.

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

**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).