

EXPLANATORY MEMORANDUM

This explanatory note relates to the Rail Safety National Law (Western Australia) Bill 2014 as introduced into Parliament.

Overview of Bill

The main purpose of the Rail Safety National Law (Western Australia) Bill 2014 is to provide for a national rail safety regulation scheme, including a single national rail safety regulator and a national rail safety investigator, in accordance with the terms of the *Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform* (Intergovernmental Agreement).

In June 2009, the Council of Australian Governments (COAG) agreed to establish a single national regulator for rail safety as well as a national rail safety investigator. This reform is part of the Council of Australia Governments' *National Partnership Agreement to Deliver a Seamless National Economy*. The reform aims to decrease compliance costs to business by reducing the level of unnecessary regulation and inconsistent regulation across jurisdictions.

In August 2011 COAG, including the Premier of Western Australia (WA), signed the Intergovernmental Agreement to establish a national system of rail safety regulation and investigation. It was noted that WA would adopt the Rail Safety National Law through mirror legislation to ensure that any future amendments to the law could be considered by the Western Australian Parliament.

In May 2012, the South Australian Parliament passed the *Rail Safety National Law* which established the National Rail Safety Regulator. This left the other jurisdictions to pass legislation to adopt the Rail Safety National Law to create the National Rail Safety Regulator as Australia's single rail safety regulatory authority.

The objectives of this Bill are:

- To provide for a national scheme regarding the regulation of rail safety, by enacting in mirror form as a law of this State the Rail Safety National Law which is contained in the Schedule to the Bill (the Schedule).
- To provide for the making of national regulations supporting the Rail Safety National Law in WA. The aim is to minimise the extent to which the State's sovereignty is impinged upon as a result of the national reform. In the other participating jurisdictions the national regulations are to be made by the Governor of South Australia and are to be adopted by each participating jurisdiction. The Bill provides for the Governor of Western Australia to make the relevant regulations in WA. In other participating jurisdictions a majority disallowance has been included which, in effect, will mean that a regulation made under the

legislation may only be disallowed if a majority of jurisdictions vote against it. In WA there will be no majority disallowance clause; Parliament will retain its power to allow, disallow or amend the national regulations in line with the *Interpretation Act 1984*.

- To provide local provisions for alcohol and drug testing that accord with those found in the local road traffic legislation in particular the *Road Traffic Act 1974* and its subsidiary legislation.
- To repeal the *Rail Safety Act 2010* and regulations under that Act.
- To make consequential amendments to other Acts and provisions of a transitional nature consequent on the enactment of the Bill.

The objectives of the Rail Safety National Law are:

- To establish the Office of the National Rail Safety Regulator.
- To provide for the appointment, functions and powers of the National Rail Safety Regulator.
- To provide for a national system of rail safety, including by providing a scheme for national accreditation of rail transport operators in respect of railway operations.
- To provide for the effective management of safety risks associated with railway operations.
- To provide for continuous improvement and the safe carrying out of railway operations.
- To provide for the control of particular risks arising from railway operations.
- To promote public confidence in the safety of transport of person or freight by rail.
- To promote the provision of advice, information, education and training for safe railway operations.
- To promote the effective involvement of relevant stakeholders, through consultation and cooperation, in the provision of safe railway operations.

Clause Notes

The Rail Safety National Law (WA) Bill 2014 is made up of two components; the first being the WA application provisions and the second being the Rail Safety National Law contained in a Schedule to the Bill (known as the Rail Safety National Law (WA)).

For clarity and ease of understanding in this document, when reference is made to a clause it is in relation to something that appears in the application provisions component of the Bill and reference to a section is in relation to something that appears in the Schedule and will be referred to as a 'section of the Schedule'.

PART 1 – PRELIMINARY

Clause 1 Short title

This clause will provide that when this Bill is passed by the Parliament and receives Royal Assent, it will be known as the *Rail Safety National Law (WA) Act 2014*.

Clause 2 Commencement

This clause will set out when the provisions of the *Rail Safety National Law (WA) Bill 2014* will commence operation.

Under clause 2(a), clause 1 of the Bill will commence operation on the day on which the Bill receives the Royal Assent and becomes an Act. Clause 1 contains confirmation of the Bill's short title.

Under clause 2(b), the Bill's remaining provisions will commence operation on a day designated in a proclamation made for that purpose.

Clause 2(b) will enable these provisions to commence operation at different times pursuant to two or more proclamations.

Clause 3 Terms used

This clause will define some terms that are used in the Bill.

The clause will provide that in the local application provisions of this Bill –

Local regulations means regulations made by the Governor of Western Australia under clause 37 or clause 50, the former being local regulations and the latter being for transitional regulations. The local regulations are contrasted with the National Regulations also made by the Governor under the *Bill*.

Rail Safety National Law (WA) means the provisions applying in this jurisdiction because of clause 4 (clause 4 being where the Rail Safety National Law is identified and applied).

This clause will also provide that terms given a meaning in the Rail Safety National Law set out in the Schedule, are taken to have the same meaning in the local application provisions of this Bill.

PART 2 – APPLICATION OF RAIL SAFETY NATIONAL LAW

Clause 4 Application of Rail Safety National Law

This clause will provide for the Rail Safety National Law to be identified and for it to be applied.

The clause will provide that the Rail Safety National Law set out in the Schedule and as modified in clause 5 (see immediately below) applies as a law of Western Australia, and as applied may be referred to as the Rail Safety National Law (WA). As it so applies, it will be part of the *Rail Safety National Law (WA) Act 2014*.

Clause 5 Local modifications to the Rail Safety National Law

This provision modifies the Rail Safety National Law so that it addresses circumstances in Western Australia.

Subclause (2) modifies section 127 of the Schedule by adding text to ensure that urine testing can continue in a rail safety context in this State.

Subclause (3) makes a consequential change in section 129 of the Schedule, which is to do with use of samples for other purposes.

Subclause (4) modifies the regulation making mechanism in section 264(1) of the Schedule so that the decision maker is the Governor of Western Australia, rather than the Governor of South Australia.

Subclause (5) modifies the regulation making mechanism in section 264(2) of the Schedule by deleting terms by which National Regulations are made on the unanimous recommendation of the Ministers of the relevant jurisdictions.

Subclause (6) modifies the Rail Safety National Law by deleting section 265 of the Schedule. Section 265 of the Schedule will be made redundant by the provision proposed in clause 8(2). The aim is for the regulation making provisions that would usually apply in this jurisdiction to apply in this context.

Subclause (7) makes changes to reflect the fact that future changes to the Rail Safety National Law as it appears in this State will be made by

the legislation of this State, rather than legislation made in South Australia.

Clause 6 **Meaning of generic terms in *Rail Safety National Law (WA)* for purposes of this jurisdiction**

This clause will define various terms for the purposes of the Rail Safety National Law (WA) Bill 2014 solely for the purposes of this jurisdiction. They are terms used in the Rail Safety National Law that need further text if they are to apply meaningfully in a WA context.

The term ***court*** to mean two things. First, the term court means State Administrative Tribunal. For the purposes of Part 5 of the Bill, the term is an important component of the mechanisms by which the Regulator may make an application for an injunction for non-compliance with notices. The requirement for a judicial member in that context reflects the potential complexity and the potentially serious consequences of an injunction application. The term also performs a broadly similar function in Part 7 of the Bill which will provide for a person to make an appeal of reviewable decisions made by the Regulator or a decision made, or taken to have been made, by the Regulator under section 216 of the Schedule in respect of a reviewable decision. Second, the term court means the Magistrates Court for the purposes of Part 10 Division 6 of the Bill. That Division will provide for the Regulator to make applications for the enforcement of an undertaking where the Regulator considers that a person has contravened an undertaking accepted by the Regulator.

The term ***emergency services*** to mean the Police Force of Western Australia, the department of the Public Service principally assisting in the administration of the *Fire and Emergency Services Act 1998* and other bodies or organisations prescribed by the local regulations.

The term ***Gazette*** to mean the *Government Gazette of Western Australia*.

The term ***Health Practitioner Regulation National Law*** to mean the *Health Practitioner Regulation National Law (Western Australia)*.

The term ***magistrate*** to mean a magistrate as defined in section 3 of the *Magistrates Court Act 2004*.

The term **Minister** to mean the Minister who will be responsible for administering the *Rail Safety National Law (WA) Act 2014*.

The term **police officer** to mean the same as the meaning given in section 5 of the *Interpretation Act 1984*.

The term **prescribed notifiable occurrence** to mean a prescribed notifiable occurrence within the meaning of the national regulations.

The term **public sector auditor** to mean the Auditor General as defined in section 4 of the *Public Finance and Audit Act 1987 (South Australia)*. This definition has been included to avoid doubt as to which auditor will audit the activities of the National Rail Safety Regulator.

The term **road vehicle** to mean if the *Road Traffic (Administration) Act 2008* is not in operation – a motor vehicle as defined in section 5(1) of the *Road Traffic Act 1974* or if the *Road Traffic (Administration) Act 2008* is in operation – a motor vehicle as defined in section 4 of that Act.

The term **shared path** to mean an area that is open to or used by the public and is developed for, or has as one of its main uses, use by both pedestrians and riders of bicycles. The wording used accords with that found in the *Road Traffic Act 1974*.

The term **jurisdiction** or **this jurisdiction** to mean Western Australia.

Subclause (2) states the position of the Office of the National Rail Safety Regulator with regard to a particular WA statute. Under section 12(3) of the Schedule, the Office of the National Rail Safety Regulator represents the Crown. Subclause (2) will provide that for the purposes of the local application provisions of this Bill, the Rail Safety National Law (WA) and any other Act or Law:

- The Office of the National Rail Safety Regulator is not an agency as defined in section 3(1) of the *Public Sector Management Act 1994*.
- An employee of the Office of the National Rail Safety Regulator is not a public service officer as defined in section 3(1) of the *Public Sector Management Act 1994*.

This clause reflects the multi-jurisdictional involvement in establishing and maintaining the Office of the National Rail Safety Regulator, as well as its independent status.

Clause 7 No double jeopardy

This clause addresses behaviour, be it an act or an omission, which is an offence against the Rail Safety National Law (WA) and is also an offence against a law of another participating jurisdiction. If an offender has been punished for that behaviour under the law of the other jurisdiction, the offender is not liable to be punished again for the behaviour by way of the corresponding offence provision under the Rail Safety National Law (WA).

Clause 8 Exclusion of legislation of this jurisdiction

This clause will provide that certain machinery of government legislation in WA does and does not apply in this context. It should be read and understood in conjunction with section 263 of the Schedule (see also Schedule 2 of the Rail Safety National Law (WA)).

Subclause (1) will provide that the *Freedom of Information Act 1992* and the *Interpretation Act 1984* do not apply to the Rail Safety National Law (WA) or to instruments made under that Law. As to the *Freedom of Information Act 1992*, it is considered enough that the South Australian equivalent applies. As to the *Interpretation Act 1984*, as the Rail Safety National Law is a South Australian Act, many of its terms have to be understood in the light of the South Australian equivalent.

Subclause (2) sets out an exception to subclause (1). Section 41 and section 42 of the *Interpretation Act 1984* will apply to allow for either House of the WA Parliament to pass a resolution to disallow national regulations, amend national regulations or substitute regulations in place of the national regulations. This is the procedure by which Parliament normally reviews delegated legislation in this jurisdiction.

Subject to subclause (4), the following Acts of this jurisdiction do not apply to the *Rail Safety National Law (WA)* or to the instruments made under that Law:

- The *Auditor General Act 2006*.
- The *Financial Management Act 2006*.
- The *Parliamentary Commissioner Act 1971*.
- The *Public Sector Management Act 1994*.
- The *State Records Act 2000*.

However there may be circumstances in which they could apply. It might be that those laws are applied under the *Rail Safety National*

Law (WA), which is to say that they are mentioned specifically or apply by necessary implication.

Because of subclause (4), the Acts referred to in subclause (3) apply to a State entity exercising a function under the *Rail Safety National Law (WA)* and, consequentially, to an employee of a State entity. It is to be expected, for example, that some rail safety related work will continue to be carried out by staff in the Department that principally assists the Minister. Another example would be where the Police carry out the sort of law enforcement functions that they usually carry out. There is no reason for the Acts in question to not apply in those circumstances.

In contrast, it is expected that staff will be seconded from the Department of Transport to the Office of the National Rail Safety Regulator. This will most likely occur during a transitional period between the old and the new legislative regimes. Only one set of such oversight provisions should apply to such staff. As the substantive work will be taking place in the Regulator's Office, the applicable law should be the equivalent South Australian law, as that law is the most relevant for the administrative and legal environment in that Office.

PART 3 – LOCAL PROVISIONS FOR ALCOHOL AND DRUG TESTING

Division 1 – Preliminary

The details as to the drug and alcohol testing procedures to be followed are to be included in the application provisions of each of the participating jurisdictions so to allow for local variation.

This Part will make provisions for the carrying out of drug and alcohol testing under the Rail Safety National Law in Western Australia. The key provisions enabling the Regulator to conduct drug and alcohol tests on rail safety workers are set out in Part 3 Division 9 of the Rail Safety National Law.

Drug and alcohol testing procedures will align with those in local road traffic legislation in particular the *Road Traffic Act 1974* and its subsidiary legislation to facilitate the duties of 'authorised persons' for testing purposes under the Rail Safety National Law, including jurisdictional police officers.

It is possible that significant rail safety events might also have a road traffic component. For this reason it is appropriate that the rail safety testing procedures accord with those in the State's road traffic legislation.

WA is one of two jurisdictions where the existing rail safety legislation provides for urine testing in some circumstances. A particular aim in WA is to continue to allow for urine testing. Generally, there are instances where such testing is a useful enforcement or investigative tool. The limits of that usefulness are to an extent set by the technology that is available at an operational level. However, any urine-related drug testing will also raise individual liberty considerations.

Individual liberty considerations will weigh less heavily where there has been a rail safety incident. Accordingly, it is proposed that urine testing be an option where a significant rail safety incident (to use the legal terminology, a "notifiable occurrence") has occurred. Individual liberty considerations will weigh more heavily where it is merely a matter of there being a suspicion that someone has a drug present in their body. Such considerations will weigh more heavily still in what the Bill describes as being in a random testing context. That testing will have what might be thought of as a quality control aspect in that it is used to review drug and alcohol testing that employers will be obliged to carry out in house. In light of those individual liberty considerations, it is intended that urine testing will only take place in a post incident context.

Whether 'authorised persons' carry out urine tests or one of the other tests available to them will be a matter of operational discretion.

Clause 9 Terms used

This clause will define various terms for the purposes of this Part of the Rail Safety National Law (WA) Bill 2014 for the purpose of alcohol and drug testing in this jurisdiction.

The term **analyst** to mean analyst or drugs analyst as defined in section 65 of the *Road Traffic Act 1974*.

The term **BAC** to mean blood alcohol concentration.

The term **breath analysis instrument** to mean:

- Breath analysing equipment as defined in section 65 of the *Road Traffic Act 1974*.
- An instrument prescribed by the local regulations for the purposes of this paragraph. This covers the possibility that there will be a call

to approve equipment additional to that approved under the *Road Traffic Act 1974*.

The term **drug screening test** to mean:

- A preliminary oral fluid test as defined in section 65 of the *Road Traffic Act 1974*.
- A preliminary oral fluid test for prescribed illicit drugs using a prescribed device. This covers the possibility that there will be a call for additional tests to any approved under the *Road Traffic Act 1974*.

The term **medical practitioner** to mean a person who is registered under the *Health Practitioner Regulation National Law* in the medical profession.

The term **oral fluid analysis** in relation to a rail safety worker to mean a method of analysis for the purpose of ascertaining the presence of prohibited drugs in the worker's oral fluid using:

- An approved device as defined in section 65 of the *Road Traffic Act 1974*.
- A device prescribed for the purposes of this paragraph. This covers the possibility that there will be a call for additional tests to any approved under the *Road Traffic Act 1974*.

The term **preliminary breath test** to mean a preliminary test as defined in section 65 of the *Road Traffic Act 1974*.

The term **prescribed BAC** in relation to a rail safety worker, to mean the prescribed concentration of alcohol in the worker's blood, as defined in the Rail Safety National Law (WA) section 128(5) of the Schedule.

The term **prohibited drug** to mean a prescribed drug as defined in the *Rail Safety National Law (WA)* section 128(5) of the Schedule.

The term **qualified person** to mean a person prescribed by the local regulations as qualified to take samples of breath or blood from other persons.

The term **registered nurse** to mean a person registered under the *Health Practitioner Regulation National Law* in the nursing and

midwifery profession whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse.

The term **sample** to mean a sample of breath, oral fluid, urine or blood.

The term **sample taker** to mean:

- a medical practitioner; or
- a registered nurse; or
- a qualified person.

The term **urine analysis** to mean a prescribed method of analysis to ascertain the presence of a prohibited drug in a worker's urine in accordance with the local regulations.

The term **work shift** to mean a shift during which a worker performs rail safety work.

The term **work shift location** to mean where a rail safety worker completes a work shift.

Subclause (2) will provide that for Part 3 Division 9 of the *Rail Safety National Law (WA)*, anything done by a person acting under the supervision or direction of a medical practitioner, registered nurse or analyst is taken to have been done by the medical practitioner, registered nurse or analyst, as the case may be.

Division 2 – Alcohol testing

Clause 10 Using breath sample to find blood alcohol content

This clause will make local provision for using breath samples to find blood alcohol content. It states a measure of the link between alcohol in a person's breath and the alcohol in their blood. It reflects the substance and much of the terminology of section 65A(1) of the *Road Traffic Act 1974*. It also states more precisely the function of apparatus defined in clause 9 and precludes the mounting of particular legal arguments against the use of certain types of such measuring equipment.

Subclause (1) will provide that for the purposes of Part 4 and the *Rail Safety National Law (WA)* section 128 of the Schedule, if the concentration of alcohol in a person's breath is a particular number of

grams of alcohol per 210 litres of breath, the person's BAC is to be regarded as being that number of grams of alcohol per 100 ml of blood.

Subclause (2) will provide that for the purposes of the definition of breath analysing equipment in clause 9, apparatus to which that definition relates is to be regarded as being for ascertaining a person's BAC by analysis of a sample of the person's breath. That will be so whether the apparatus gives the blood alcohol content directly as the analysis result or enables it to be derived under subclause (1).

Subclause (3) will provide that for the purposes of the definition of preliminary breath test in clause 9, apparatus to which that definition relates is to be regarded as providing an indication of a person's BAC, or an indication of whether or not a person has the prescribed BAC. That will be so whether the apparatus gives the indication directly or enables it to be derived under subclause (1).

Clause 11 Preliminary breath test or breath analysis

This clause will make local provision for preliminary breath tests or breath analysis. It states the context for the forthcoming provisions in the Division. It also makes explicit a link between language used in the forthcoming provisions and particular language that is to be found in the *Rail Safety National Law (WA)*.

Subclause (1) will provide that an authorised person's power under the *Rail Safety National Law (WA)* section 126 of the Schedule to require a rail safety worker to submit to testing by means of a preliminary breath test or breath analysis (or both) is subject to the Division of the legislation in which the clause is located.

Subclause (2) will provide clarification as to the meaning of "requirement" in subclause (1). In relation to a rail safety worker for the purpose of requiring the worker to submit to testing by means of a preliminary breath test or breath analysis (or both), a "requirement" is a "direction" to the worker, in the sense in which "direction" is used in the *Rail Safety National Law (WA)* section 126(3) of the Schedule.

Clause 12 When breath test or breath analysis may be required

This clause will make local provision for when breath test or breath analysis may be required. The aim is to provide for testing in what the Bill describes as a random testing context. That testing will have what might be thought of as a quality control aspect in that it is used to

review drug and alcohol testing that employers will be obliged to carry out in house, where there is no reason to suspect that a particular person is affected by alcohol. Also to provide for where there is such a suspicion, either because of particular information or because of the knowledge that alcohol is often implicated in certain types of incident.

Subclause (1) will provide that an authorised person may require a rail safety worker to submit to a preliminary breath test or breath analysis (or both) –

- (a) on a random basis – without suspecting the worker has the prescribed BAC; or
- (b) on a non-random basis – in either or both of the following circumstances –
 - (i) a prescribed notifiable occurrence happens involving the worker;
 - (ii) the authorised person suspects, on reasonable grounds, that the worker has the prescribed BAC.

Subclause (2) will provide that subclause (1) is subject to clauses 13 to 15.

Clause 13 Rail safety worker not obliged to comply with requirement in certain circumstances

This clause will make local provision for when a rail safety worker is not obliged to comply with a requirement in certain circumstances. The provisions recognise that a person should, after a specified period, be able to carry on with their own affairs free from concerns about testing.

Under subclause (1) a rail safety worker who is still on railway premises after having carried out rail safety work and who has not been involved in a prescribed notifiable occurrence will not be required to comply with a requirement where more than 12 hours have passed since the worker carried out the work.

Under subclause (2) a rail safety worker who has been involved in a prescribed notifiable occurrence, will not be required to comply with a requirement where more than 12 hours have passed, the person has completed the work shift and departed from his or her work shift location, or was unaware of the occurrence upon completing the shift.

The relevant period of 12 hours was settled upon following consultation with the Western Australia Police (WA Police).

Clause 14 Authorised person must not make requirement in certain circumstances

This clause will make local provision setting out circumstances in which an authorised person must not make a requirement of a person. The provisions recognise that in some circumstances it might be unreasonable to require a potential test subject to provide a breath sample.

An authorised person must not require a rail safety worker to submit to a preliminary breath test or breath analysis (or both) if the authorised person suspects, on reasonable grounds that –

- (a) it would be detrimental to the worker's health to submit to a preliminary breath test or breath analysis; or
- (b) by reason of injury, disability or otherwise the worker is incapable of providing a sufficient sample of breath for the completion of a preliminary breath test or breath analysis.

Clause 15 Conduct of breath analysis

This clause will make local provision for the conduct of breath analysis. The clause identifies the ways in which a person can become authorised to conduct a breath analysis. It also limits the means by which an analysis can be carried out.

Subclause (1) will provide that an authorised person must not conduct a breath analysis for the purposes of this Division unless the authorised person is authorised in one of two ways.

First, the authorised person can be a police officer authorised by the Police Commissioner to use a breath analysis instrument. The provisions are not particular as to the legislation under which the authorisation is given. Second, the authorised person can be any other person authorised by the Regulator to use a breath analysis instrument.

Subclause (2) will provide that an authorised person conducting a breath analysis for the purposes of this Division must use a breath analysis instrument.

Clause 16 Further breath analysis

This clause will make local provision for when an authorised person may require further breath analysis.

Subclause (1) will provide that an authorised person may require a rail safety worker to submit to one or more breath analyses whether or not the worker provided a sufficient sample for an earlier analysis.

Subclause (2) will provide that a requirement under subclause (1) –
(a) may be made only if it is reasonable in the circumstances; and
(b) is subject to clauses 13, 14 and 15.

The ‘reasonableness’ component incorporates an element of fairness and flexibility.

Clause 17 Breath analysis indicates prescribed BAC

This clause will make local provision for breath analysis to indicate prescribed BAC. By compelling the provision of testing information it will help the person being tested to be aware of the development of any case against them, thereby promoting transparency.

If an analysis of breath by a breath analysis instrument indicates a rail safety worker has the prescribed BAC, the authorised person who operated the instrument must give to the worker without delay a written statement (or a statement printed by the instrument) stating –
a) the date the sample of breath was taken and analysed; and
b) the time of the breath analysis; and
c) the result of the analysis.

Division 3 – Drug testing

Clause 18 Drug screening test, oral fluid analysis or urine analysis

This clause will make local provision for drug screening tests, oral fluid analyses and urine analyses. It states the context for the forthcoming provisions in the Division. It also makes explicit a link between language used in the forthcoming provisions and particular language that is to be found in the *Rail Safety National Law (WA)*.

Subclause (1) will provide that an authorised person’s power under the *Rail Safety National Law (WA)* section 127 of the Schedule to require a rail safety worker to submit to a drug screening test, oral fluid analysis, urine analysis (or any combination of these) (whether or not in combination with a blood test) is subject to the Division of the legislation in which the clause is located. The different way in which

blood testing is mentioned accords with the fact that blood testing is dealt with in the next Division.

Subclause (2) will provide clarification as to the meaning of “requirement” in subclause (1). In relation to a rail safety worker for the purpose of requiring the worker to submit to a drug screening test or oral fluid analysis (or both) a “requirement” is a “direction” to the worker, in the sense in which “direction” is used in the *Rail Safety National Law (WA)* section 127(3) of the Schedule.

Clause 19 When drug screening test or oral fluid analysis may be required

This clause will make local provision for when drug screening tests or oral fluid analyses may be required. The aim is to provide for testing in what the Bill describes as a random testing context. That testing will have what might be thought of as a quality control aspect in that it is used to review drug and alcohol testing that employers will be obliged to carry out in house, where there is no reason to suspect that a particular person is affected by alcohol. Also to provide for where an authorised person has a suspicion, based on reasonable grounds, that a prohibited drug is present. Reasonable grounds might stem from detailed information about a particular set of circumstances or be derived from data analysis which suggests that testing may be warranted.

Subclause (1) will provide that an authorised person may require a rail safety worker to submit to a drug screening test or oral fluid analysis (or both) –

- a) on a random basis – without suspecting the worker has a prohibited drug in his or her body; or
- b) on a non-random basis – in either or both of the following circumstances –
 - i) a prescribed notifiable occurrence happens involving the worker;
 - ii) the authorised person suspects, on reasonable grounds, that the worker has a prohibited drug in his or her body.

Subclause (2) will provide that subclause (1) is subject to clauses 21 and 22.

Clause 20 When urine analysis may be required

The effect of this clause will be that urine testing will only take place where a prescribed notifiable occurrence happens involving the worker.

Subclause (2) will provide that subclause (1) is subject to clauses 21 and 22.

The underlying policy is set out above in the preliminary comments for Part 3.

Clause 21 Rail safety worker not obliged to comply with requirement in certain circumstances

This clause will make local provision setting out circumstances in which a rail safety worker is not obliged to comply with a requirement to submit to relevant drug tests. The provisions recognise that a person should, after a specified period, be able to carry on with their own affairs free from concerns about testing.

Under subclause (1) a rail safety worker who is on rail premises after having carried out rail safety work and who has not been involved in a prescribed notifiable occurrence, will not be obliged to comply with a requirement.

Under subclause (2) a rail safety worker who has been involved in a prescribed notifiable occurrence where more than 12 hours have passed or who has completed the work shift and departed from his or her work shift location, being unaware of the occurrence upon completing the shift, will not be required to comply with a requirement.

The relevant period of 12 hours was settled upon following consultation with the WA Police.

Clause 22 Authorised person must not make requirement in certain circumstances

This clause will make local provision setting out circumstances in which an authorised person must not make a requirement of a person. The provisions recognise that in some circumstances it might be unreasonable to require a potential test subject to provide a relevant sample.

An authorised person must not require a rail safety worker to submit to a relevant drug test if the authorised person suspects, on reasonable grounds that –

- a) it would be detrimental to the worker's health to submit to such a procedure; or

- b) by reason of injury, disability or otherwise the worker is incapable of providing a sufficient sample for the completion of a procedure.

Division 4 – Blood samples

Clause 23 Term used: hospital

This clause will provide that in this Division “hospital” has the meaning given in the *Hospitals and Health Services Act 1927* section 2(1).

Clause 24 Provision of blood sample

This clause will make local provision for the taking of blood samples. It states the context for the forthcoming provisions in the Division. It also makes an explicit link between language used in the forthcoming provisions and particular language that is to be found in the *Rail Safety National Law (WA)*.

Subclause (1) will provide that an authorised person’s power under the *Rail Safety National Law (WA)* section 127 of the Schedule to require a rail safety worker to submit to a blood test (whether or not in combination with a drug screening test, oral fluid analysis or urine test, or any combination of those) is subject to this Division.

Subclause (2) will provide clarification as to the meaning of “requirement” in subclause (1). In relation to a rail safety worker for the purpose of requiring the worker to submit to a blood test, a “requirement” is a “direction” to the worker in the sense in which “direction” is used in the *Rail Safety National Law (WA)* section 127(3) of the Schedule.

Clause 25 Blood sample after preliminary breath test or breath analysis requirement

This clause will provide local provisions for blood sampling after preliminary breath test or breath analysis requirement.

Subclause (1) will provide that if a rail safety worker who is required by an authorised person to submit to a preliminary breath test or breath analysis under clause 12, or a further breath analysis under clause 16(1), refuses or fails to provide a sufficient sample of breath, the authorised person may require the worker to provide a sample of the worker’s blood.

Subclause (2) will provide that the authorised person cannot require a rail safety worker to provide a sample of his or her blood under subclause (1) if the worker is not obliged to submit to a preliminary breath test or breath analysis as mentioned in clause 13.

Subclause (3) will provide for further circumstances in which an authorised person may require a rail safety worker to provide a sample of his or her blood. First, as a result of a preliminary breath test under clause 12, the authorised person must have formed the opinion that the worker might have the prescribed BAC. Second, there must also be one of two additional circumstances. One circumstance is where it is not possible to conduct a breath analysis. It might not be possible, for example, to conduct such an analysis if there is no authorised person available who is able to operate a breath analysis instrument or if breath analysis is attempted but the instrument does not work as designed, intended, expected, or programmed. The other circumstance is where the authorised person did not require the worker to submit to a relevant test for a reason mentioned in clause 14.

Clause 26 Blood sample after drug screening, oral fluid analysis or urine analysis requirement

This clause will make local provision for blood sampling after drug screening or an oral fluid analysis requirement.

The clause, along with the next clause, sets out the circumstances in which an authorised person may require a rail safety worker to provide a sample of the worker's blood. These are –

- a) if an authorised person requires the worker to submit to a relevant drug test including a drug screening test, oral fluid analysis or urine analysis and the worker refuses to submit to, or fails to provide a sufficient sample for, the relevant drug test;
- b) if as a result of a relevant drug test, the authorised person suspects on reasonable grounds that the worker might have a prohibited drug in his or her body;
- c) if the authorised person did not require the worker to submit to a relevant drug test for a reason mentioned in clause 22;
- d) if the worker is involved in a prescribed notifiable occurrence.

Clause 27 Blood sample if test or analysis fails to explain conduct, condition or appearance

This clause will make local provision for blood sampling if a test or analysis fails to explain the worker's conduct, condition or appearance.

The term “conduct, condition or appearance” is used in the *Road Traffic Act 1974* and in other comparable statutes.

An authorised person may require a worker to provide a sample of the worker’s blood if –

- a) the worker submits to a preliminary breath test, breath analysis or relevant drug test; and
- b) the test or analysis fails to indicate that the worker might have –
 - i) the prescribed BAC; or
 - ii) a prohibited drug in his or her body; and
- c) the conduct, condition or appearance of the worker is such as to give rise to a reasonable suspicion that the worker is affected by alcohol or a prohibited drug.

Clause 28 Rail safety worker not obliged to comply with requirement in certain circumstances

This clause will make local provision setting out circumstances in which a rail safety worker is not obliged to comply with a requirement to submit to a blood test. The provisions recognise that a person should, after a specified period, be able to carry on with their own affairs free from concerns about testing.

Under subclause (1) a rail safety worker who is still on railway premises after having carried out rail safety work and who has not been involved in a prescribed notifiable occurrence, will not be obliged to comply with a requirement made under the Rail Safety National Law (WA) section 127(1) of the Schedule.

Under subclause (2) a rail safety worker who has been involved in a prescribed notifiable occurrence where more than 12 hours will have passed or has completed the work shift and departed from his or her work shift location, being unaware of the occurrence upon completing the shift, will not be required to comply with a requirement made under the Rail Safety National Law (WA) section 127(1) of the Schedule.

The relevant period of 12 hours was settled upon following consultation with the WA Police.

Clause 29 Compulsory blood testing following a prescribed notifiable occurrence

This clause will make local provision for compulsory blood testing following a prescribed notifiable occurrence.

Subclause (1) will provide for where a rail safety worker suffers an injury as a result of a prescribed notifiable occurrence and, within 12 hours after the occurrence attends at, or is admitted to, a hospital to receive treatment for the injury. An authorised person may then request a sample taker at the hospital to ensure that a sample of the worker's blood is taken as soon as practicable (even though the worker might be unconscious).

The relevant period of 12 hours was settled upon following consultation with the WA Police.

Subclause (2) will provide that the sample taker may comply with the request if it is reasonably practicable to do so in the circumstances.

Subclause (3) will provide for where a rail safety worker suffers an injury as a result of a prescribed notifiable occurrence and the worker is dead on arrival at the hospital, or dies before a sample of blood has been taken. When that happens, the medical practitioner who reports the death under the *Coroners Act 1996* section 17 must –

- a) take a sample of blood from the body of the deceased or cause a sample to be taken; or
- b) notify the coroner as soon as practicable that, in view of the circumstances in which the death occurred, a sample of blood should be taken from the body of the deceased.

Subclause 4 will provide that the coroner, on receipt of notice under subclause (3)(b), may authorise and direct a pathologist to take a sample of blood from the body of the deceased.

Subclause 5 will provide that a sample taker is not obliged to take a sample of blood under this clause if a sample of blood has previously been taken under sub-clause (3) by another sample taker.

Division 5 – Evidence

Clause 30 **Term used: relevant time**

This clause will provide a mechanism in this Division to fix a point in time for the purposes of carrying out relevant drug tests.

Accordingly, **relevant time**, in relation to a person who is a rail safety worker means-

- a) if the worker was tested for alcohol or prohibited drugs because of the worker's involvement in a prescribed notifiable occurrence – the time the occurrence happened; or
- b) otherwise – the time the worker last carried out rail safety work.

Clause 31 **Use of test or analysis result in court proceedings**

This clause will make local provision for the use of a test or analysis result in court proceedings.

The aim of the first two subclauses is to ensure that a worker does not gain an evidential advantage by consuming alcohol or prohibited drugs after the events that the law is mainly concerned with. Without such a clause, a worker might assert that a relevant test is merely registering the results of alcohol/drug consumption in circumstances not covered by the legislation.

Subclause (1) will provide that this clause applies in any court proceedings in relation to a rail safety worker even if evidence is given in the proceedings that the worker consumed alcohol or a prohibited drug –

- a) after the relevant time in relation to the worker; and
- b) before a relevant test was conducted in relation to the worker or a sample of the worker's blood was taken.

Subclause (2) will provide that if the breath analysis was conducted in relation to the rail safety worker in accordance with this Part, the BAC indicated by the analysis is taken to be the BAC of the person at the relevant time.

Subclause (3) will provide that if more than one breath analysis was conducted, the lower of the BACs indicated is taken to be the BAC of the rail safety worker at the relevant time. The aim here is not to

mandate multiple tests; the provision merely decides which test should apply if multiple tests do occur.

The aim of subclauses (4) and (5) is essentially the same as the aim of subclauses (1) and (2). It is to ensure that a worker does not gain an evidential advantage by consuming alcohol or prohibited drugs after the events that the law is mainly concerned with. Without such a clause, a worker might assert that a relevant test is merely registering the results of alcohol/drug consumption in circumstances not covered by the legislation.

Subclause (4) will provide that if a sample of a rail safety worker's blood was taken under this Part –

- a) the BAC indicated by an analysis of the sample is taken to be the BAC of the worker at the relevant time; and
- b) any prohibited drug detected by an analysis of the sample is taken to have been present in the worker's body at the relevant time.

Subclause (5) will provide that if a sample of a rail safety worker's oral fluid or urine was taken under this Part any prohibited drug detected by an analysis of the sample is taken to have been present in the worker's body at the relevant time.

Also relevant here is clause 36(b), by which such consumption of alcohol or drugs will not provide a legal basis for refusing to comply with a requirement to be tested.

Clause 32 Calculating BAC at relevant time

This clause will make local provision that sets out a formula by which a person's BAC is to be calculated. The terms of this clause are modelled on those of section 71 of the *Road Traffic Act 1974*.

Subclause (1) will provide that for the purposes of clause 31, a rail safety worker's BAC at the relevant time is to be calculated –

- a) having regard to –
 - i) the time of the worker's last drink containing alcohol taken at or before the relevant time; and
 - ii) the relevant time; and
 - iii) the time at which the sample of the worker's breath or blood was provided or taken for analysis (the time of sampling); and
 - iv) the safety worker's blood alcohol content at the time of sampling;
- and

- b) so as to give effect to the presumption that after the worker's latest drink containing alcohol the worker's blood alcohol content increases at the rate of 0.016 g of alcohol per 100 ml of blood per hour for a period of 2 hours and, after that period, decreases at the rate of 0.016 g of alcohol per 100 ml of blood per hour.

Subclause (2) will provide that for the purpose of making a calculation under subsection (1) –

- a) in any case where any one or more of the times referred to in that subsection can only be ascertained as falling within a period of time, the calculation is to be made taking such time within that period as produces the result most favourable to the rail safety worker; and
- b) in any case where the time of a rail safety worker's last drink containing alcohol is not ascertained, the time of the worker's last drink containing alcohol is to be taken to have been such time as produces the result most favourable to the worker charged.

Subclause 3 will provide that the concentration of alcohol calculated to have been present in the blood of a person at any time under this clause is conclusively presumed to have been present in the blood of that person at that time.

Clause 33 Evidence by certificate

This clause will make local provision for the giving of evidence by certificate. The first subclause sets out who can certify what. The second subclause sets procedural safeguards to reduce the chance of certificate evidence leading to an unjust outcome. The third subclause clarifies the scope of the Minister's ability to approve relevant forms.

Subclause (1) will provide that in any court proceedings, a certificate in a form approved by the Minister purporting to be signed by any of the following is prima facie evidence of the matters stated in the certificate and the facts on which they are based –

- a) the Commissioner of Police – certifying, under whatever legislation, either of the following about a person named in the certificate –
 - i) the person is a police officer authorised to use a breath analysis instrument;
 - ii) the person is an analyst;
- b) the Regulator – certifying a person named in the certificate is an authorised person;
- c) an authorised person – certifying any or all of the following –

- i) the apparatus used by the authorised person was a breath analysis instrument;
 - ii) the breath analysis instrument was in proper order and properly operated;
 - iii) the breath analysis instrument was used in a manner that complied with this Part or local regulations;
 - iv) a sample of the breath of a rail safety worker named in the certificate was provided for analysis using a breath analysis instrument;
 - v) a BAC expressed in grams per 100 ml of blood was indicated by the breath analysis instrument as being present in the blood of the rail safety worker named in the certificate on the day and at the time specified in the certificate;
 - vi) a requirement imposed on the authorised person by local regulations has been complied with;
- d) a member of the staff of a hospital – certifying something arising out of the member’s occupation;
- e) an analyst, or a person acting under the supervision of an analyst – certifying something arising out of the analyst’s or person’s occupation.

Subclause (2) will provide that a certificate mentioned in subclause (1)(c), (d) or (e) cannot be received as evidence against a person (the defendant) in proceedings for an offence against this Part or the *Rail Safety National Law (WA)* Part 3 Division 9 if –

- a) a copy of the certificate has not been served on the defendant at least 7 days before the commencement of the proceedings; or
- b) the defendant has, as least 2 days before the commencement of the trial, given to the court written notice requiring the attendance at the trial of the person who signed the certificate; or
- c) the court requires the person who signed the certificate to attend at the trial.

Subclause 3 will provide that for the purposes of subclause (1), the Minister may approve forms of certificates to be used by different persons for different purposes.

Division 6 – Other matters for purposes of this Part

Clause 34 Reports relating to worker's refusal or failure to comply with requirement of authorised person

This clause will make local provision for reports relating to a worker's refusal or failure to comply with a requirement of an authorised person.

Subclause (1) will provide that this clause applies if a rail safety worker refuses or fails to comply with a drug or alcohol test requirement made by an authorised person.

Subclause (2) will provide that the authorised person must, as soon as practicable, report the refusal or failure to the Regulator and the accredited person for whom the rail safety worker performs rail safety work.

Clause 35 Protection from personal liability for sample takers and analysts

This clause will provide that a sample taker or an analyst, or someone under their supervision, is not personally liable for anything done or omitted to be done in good faith –

- a) in the exercise of a power or the performance of a function under this Part or the *Rail Safety National Law (WA)* Part 3 Division 9; or
- b) in the reasonable belief that the action or omission was in the exercise of such a power or the performance of such a function under this Part or the *Rail Safety National Law (WA)* Part 3 Division 9.

Clause 36 Self-incrimination no excuse

This clause will provide that a person is not entitled to refuse or fail to comply with a requirement or direction relating to a relevant alcohol or drug test on the ground that the person –

- a) would or might, by complying with the requirement or direction, provide evidence that could be used against the person; or
- b) consumed alcohol or a prohibited drug after the person last performed railway safety work and before the requirement or direction was made or given to him or her.

The intention is that this provision complements other provisions and is not an offence provision.

Clause 37 Local regulations

This clause will provide for WA-specific regulations addressing drug and alcohol testing.

Subclause (1) will provide that the Governor may make regulations required or permitted under Part 3 or for the *Rail Safety National Law (WA)* Part 3 Division 9 or which are necessary or convenient.

Subclause (2) will provide examples of things that the regulations may provide for. They include procedures and equipment for relevant alcohol and drug tests. They also include the destruction of relevant samples and other forensic material.

PART 4 – LOCAL REPEAL AND TRANSITIONAL PROVISIONS

This Part will make provision for the repeal of the *Rail Safety Act 2010* and for transitional arrangements.

Division 1 – Preliminary

Clause 38 Terms Used

This clause will define terms for the purposes of Part 4 of the Rail Safety National Law (WA) Bill 2014.

The term ***commencement day*** is to mean the day on which this clause commences.

The term ***repealed Act*** is to mean the *Rail Safety Act 2010*.

Division 2 – Repeal

Clause 39 Repeal

This clause will repeal the *Rail Safety Act 2010*.

Division 3 – Transitional

This Division contains provisions needed to help manage the transition from the old legislative scheme to the new scheme. It is expected that other transitional issues will be managed relying on provisions in the *Interpretation Act 1984*, provisions in the Rail Safety National Law and by way of administrative measures. For example, it is expected that use will be made of existing forms on the basis of section 11 of Schedule 2, which says that strict compliance with forms is not necessary.

Clause 40 Accreditation

This clause will provide for transitions from accreditations under the *Rail Safety Act 2010* to accreditations under the *Rail Safety National Law (WA)*. Subclause (1) defines the term “transitional railway operations” for the purposes of this clause.

Subclause (2) has been inserted for completeness. It covers the possibility that an entity that does not need accreditation under the current scheme requires accreditation under the new scheme because of a marginal increase in responsibilities. This might be on the basis of slight changes in terminology in the legislation. It is expected that there will be few if any cases in which there will be any need for it.

Subclause (3) will provide that an application for accreditation, or variation of accreditation, made under the repealed Act but not determined immediately before the commencement day, is to proceed under the *Rail Safety National Law (WA)*.

Subclause (4) will provide that a rail transport operator’s accreditation under the repealed Act in respect of railway operations carried out by or on behalf of the operator still applies under the *Rail Safety National Law (WA)*.

Subclause (5) will provide that an accreditation suspension under the repealed Act still applies under the *Rail Safety National Law (WA)*.

Clause 41 Registration

This clause will make transitional provision relating to registrations.

Subclause (1) will provide for the substance of a registration to be carried over. There will, however, be a change in focus. A rail infrastructure manager of a private siding that, immediately before the commencement day is registered under the repealed Act is, on and after the commencement day, taken to be registered under the *Rail Safety National Law (WA)* in respect of the private siding. Under the old legislation the siding was registered; under the new legislation the siding manager is registered.

Subclauses (2) and (3) will provide that a registration under subclause (1) is subject to the conditions or restrictions determined by the Regulator by notice to the relevant rail infrastructure manager. The

conditions or restrictions will be any that applied under the repealed Act and any new ones determined by the Regulator.

Subclause (4) sets out the notice requirements, including provisions to facilitate the right of review relating to conditions.

Clause 42 Police officers continue to be authorised

This clause will provide that in principle all police officers having the relevant skills and training under the *Road Traffic Act 1974* should be available to carry out comparable functions under the new legislation.

Subclause (1) will provide that “authorised tester” means an authorised drug tester or authorised person as defined under section 65 of the *Road Traffic Act 1974*.

Subclause (2) will provide that a police officer who was an authorised tester immediately before the commencement day is, on and after the commencement day, taken to be authorised to use a breath analysis instrument mentioned in clause 15(1)(a).

The term “authorised tester” did not exist in the *Rail Safety National Law 2010*.

Clause 43 Alleged offences against repealed Act

This clause will provide for alleged offences against the repealed Act to continue to apply.

Subclause (1) will provide that despite the repeal of the *Rail Safety Act 2010*, the repealed Act will continue to apply to an offence allegedly committed against that Act before the commencement day, as if that Act had not been repealed.

Subclause (2) will provide that for the purpose of this clause, if an act or omission constituting an offence against the repealed Act is alleged to have taken place between 2 dates, one before and one on or after the commencement day, the act or omission is taken to be alleged to have taken place before the commencement day.

Clause 44 Notifiable occurrences

This clause will provide for reports and investigations of notifiable occurrences to continue.

Subclause (1) will provide that a report of a notifiable occurrence made under Part 4 Division 6 of the repealed Act immediately before the commencement day has effect as if it were a report of that occurrence made under the *Rail Safety National Law (WA)* Part 3 Division 8.

Subclause (2) will provide that an investigation of a notifiable occurrence under Part 4 Division 6 of the repealed Act immediately before the commencement day continues as if it were an investigation under the *Rail Safety National Law (WA)* Part 3 Division 8.

Clause 45 Notices

This clause will provide that improvement and prohibition notices will continue to have force.

Subclause (1) will provide that an improvement notice in force under Part 5 Division 7 of the repealed Act immediately before the commencement day has effect as if it were an improvement notice under the *Rail Safety National Law (WA)* Part 5 Division 1.

Subclause (2) will provide that a prohibition notice in force under Part 5 Division 8 of the repealed Act immediately before the commencement day continues to have effect as if it were a prohibition notice under the *Rail Safety National Law (WA)* Part 5 Division 2.

Clause 46 Safety-related systems, agreements, plans, programmes and assessments

This clause will provide for safety systems, agreements, plans, programmes and assessments under the repealed legislation to carry over as if they were made under the new legislation.

Clause 47 Reviews and appeals

This clause will provide that an applicant can apply for a review of a decision made under the repealed Act.

Subclause (1) will provide that a review can take place of a refused application for accreditation, or variation. The period within which the applicant could have applied for a review must not have expired before the commencement day. The matter will proceed as an application for a review under the *Rail Safety National Law (WA)* as if the decision had been made under that Law.

Subclause (2) will provide that a person who is to be granted accreditation as the result of a review of, or appeal against, a decision made under the repealed Act who has not, immediately before the commencement day, been accredited, must be granted accreditation under the *Rail Safety National Law (WA)* subject to any conditions and restrictions that would have applied to the accreditation under the repealed Act.

Clause 48 Provision of information and assistance by Director of Rail Safety

This clause will provide that despite any other Act or law, the Director of Rail Safety under the repealed Act is authorised, on his or her own initiative or at the request of the Office of the Rail Safety Regulator to provide information and assistance.

Clause 49 Funds in, or payable to, Rail Safety Accreditation Account

This clause will make provision for moneys currently held in a specialist account under the *Rail Safety Act 2010*.

Subclause (1) will provide that the account will be closed and that any such moneys are to be credited to the Consolidated Account.

Subclause (2) will provide that the Consolidated Account will receive any similar money that became payable before commencement day and is received afterwards.

Clause 50 Transitional regulations

This clause will provide for regulations to be made to address transitional matters.

Subclause (1) will provide for the Governor to make transitional regulations where there is no sufficient provision in the Act.

Subclause (2) will provide that regulations under subclause (1) can dis-apply provisions in the Rail Safety National Law (WA), or apply them with modifications.

Subclause (3) will allow regulations to deem a state of affairs to have existed or not existed. Such a regulation can have that effect on a state of affairs that existed before the regulations were published, but not before the commencement of clause 2 of the Bill.

Subclause (4) defines the word “specified” as it appears in subclause (3).

Subclause (5) will limit the effect of regulations made under subclause (3). The regulations will not have a prejudicial effect on rights a person had before the regulations were published. Neither will the regulations impose any liabilities in those circumstances. Those limitations will not apply to the State or an authority of the State.

Subclause (6) provides that such regulations must be made within 12 months after the day on which the clause commences.

PART 5 – CONSEQUENTIAL AMENDMENTS

This Part will make provision for related amendments to a number of Acts.

Clause 51 Various references to “Rail Safety Act 2010” amended

The table lists consequential amendments. These replace references to *the Rail Safety Act 2010* with a reference to the *Rail Safety National Law (Western Australia) Act 2014*:

- Sections 2A, 13(1a)(d) and 61(5) of the *Government Railways Act 1904*
- Section 7(2) of the *Mines Safety and Inspection Act 1994*
- Section 17(1)(d) of the *Personal Property Securities (Commonwealth Laws) Act 2011*
- Sections 3 and 4(1)(a) of the *Public Transport Authority Act 2003*
- Section 9(1)(a) of the *Rail Freight System Act 2000*
- Section 8 of the *Railways (Access) Act 1998*

SCHEDULE - RAIL SAFETY NATIONAL LAW

An Explanatory Memorandum can be referred to by courts to assist in ascertaining Parliament's intent. Since the aim is to move towards national uniformity, the contents of Explanatory Memorandum should, to the extent possible, remain the same across the participating jurisdictions. Accordingly, the following section notes are the same as those used for the Rail Safety National Law in South Australia. In some instances, however, the notes refer to text in the Rail Safety National Law that it is proposed will be modified by clause 5 of the local application provisions of the Act. Those modifications are addressed earlier in this Explanatory Memorandum.

PART 1 - PRELIMINARY

- Section 1 Short title**
Provides that this Law may be referred to as the Rail Safety National Law (the RSNL).
- Section 2 Commencement**
The RSNL will commence as provided by the application Act.
- Section 3 Purpose, objects and guiding principles of Law**
Sets out the purpose, objects and guiding principles of the RSNL.
- Section 4 Interpretation**
Sets out the definitions used in the RSNL.
- Section 5 Interpretation generally**
Schedule 2 of the RSNL sets out the interpretation provisions that apply to the RSNL.
- Section 6 Declaration of substance to be drug**
Provides for the declaration of substances as drugs for the purposes of the RSNL.
- Section 7 Railways to which this Law does not apply**
Sets out railways that are not covered by the RSNL.
- Section 8 Meaning of rail safety work**
Sets out the meaning of rail safety work.

Section 9 Single national entity

Provides that the intention of Parliament is for the RSNL applied by this jurisdiction, together with other jurisdictions, to create 1 single national entity.

Section 10 Extraterritorial operation of Law

Provides for the extraterritorial operation of the RSNL to the extent allowable.

Section 11 Crown to be bound

Provides that the RSNL binds the Crown, in right of this jurisdiction and, insofar as the legislative power of the Parliament of this jurisdiction permits, the Crown in all its other capacities. No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under the RSNL.

PART 2 – OFFICE OF THE NATIONAL RAIL SAFETY REGULATOR

Division 1 – Establishment, functions, objectives, etc

Section 12 Establishment

Establishes the Office of the National Rail Safety Regulator (ONRSR) as a body corporate. ONRSR would represent the Crown of each participating jurisdiction, but would not thereby become a Crown agency or instrumentality as such.

Section 13 Functions and objectives

Sets out the functions and objectives of the ONRSR.

Section 14 Independence of ONRSR

Provides that except as otherwise provided, the ONRSR is not subject to Ministerial direction in the exercise of its functions or powers.

Section 15 Powers

Sets out the powers of the ONRSR.

Division 2 – Office of the National Rail Safety Regulator

Section 16 Constitution of ONRSR

Sets out the membership of the ONRSR.

Section 17 Appointment of Regulator

Provides for the appointment of the National Rail Safety Regulator (the Regulator).

- Section 18 Acting National Rail Safety Regulator**
Provides for the appointment of an acting National Rail Safety Regulator.
- Section 19 Functions of Regulator**
Sets out the functions of the Regulator
- Section 20 Power of Regulator to obtain information**
Gives the Regulator the power to obtain information that will assist in monitoring or enforcing compliance with the RSNL.
- Section 21 Appointment of non-executive members**
Provides for the appointment of non-executive members of the ONRSR.
- Section 22 Vacancy in or removal from office**
Sets out when the office of a member of the ONRSR becomes vacant or may be removed.
- Section 23 Member to give responsible Ministers notice of certain events**
Sets out that a member of the ONRSR must notify the Minister of the member's bankruptcy or conviction of an offence.
- Section 24 Extension of term of office during vacancy in membership**
Provides that a member's term of office may be extended until a vacancy is filled.
- Section 25 members to act in public interest**
Provides that members of the ONRSR must act in the public interest.
- Section 26 Disclosure of conflict of interest**
Provides that members of ONRSR must give notice of any conflict of interest.

Division 3 – Procedures

- Section 27 Times and places of meetings**
Provides that meetings are to be held in order to conduct the business of the ONRSR.
- Section 28 Conduct of meetings**
Sets out the requirements for the conduct of ONRSR meetings.
- Section 29 Defects in appointment of members**
Provides that ONRSR business is not affected by irregularity in the appointment of a member.

Section 30 Decisions without meetings

Provides for decisions of ONRSR without a meeting.

Section 31 Common seal and execution of documents

Sets out provisions for the use of the common seal of the ONRSR.

Division 4 – Finance

Section 32 Establishment of Fund

Establishes the National Rail Safety Regulator Fund (the Fund).

Section 33 Payments into Fund

Provides for payments into the Fund.

Section 34 Payments out of Fund

Provides for payments out of the Fund.

Section 35 Investment of money in Fund

Allows for investment of funds and requires records to be kept.

Section 36 Financial management duties of ONRSR

Sets out the duties of the ONRSR in relation to its financial management.

Division 5 – Staff

Section 37 Chief executive

Provides that the Regulator is the chief executive of the ONRSR.

Section 38 Staff

Provides for the employment of staff by the ONRSR.

Section 39 Secondments to ONRSR

Provides for the secondment of staff to the ONRSR from government agencies.

Section 40 Consultants and contractors

Provides that the ONRSR may engage contractors and consultants.

Division 6 – Miscellaneous

- Section 41 Regulator may be directed to investigate rail safety matter**
Provides that the Minister may direct the Regulator to investigate or provide information or advice about a rail safety matter.
- Section 42 National Rail Safety Register**
Provides that the Regulator must establish and maintain the National Rail Safety Register and sets out what is to be included in the Register.
- Section 43 Annual report**
Requires the Regulator to provide an annual report to the responsible Ministers and sets out the requirements for the report.
- Section 44 Other reporting requirements**
Provides that the national regulations may stipulate other reporting requirements.
- Section 45 Delegation**
Provides the ONRSR with the power to delegate its functions or powers.

PART 3 – REGULATION OF RAIL SAFETY

Division 1 – Interpretation

- Section 46 Management of risks**
Provides that safety duties imposed by the RSNL are to eliminate or minimise risks to safety so far as reasonably practicable.
- Section 47 Meaning of reasonably practicable**
Sets out the meaning of 'reasonably practicable' in relation to duties of safety.

Division 2 – Occupational health and safety and railway operations

- Section 48 Relationship between this Law and OHS legislation**
Sets out the relationship between this Law and occupational health and safety legislation.
- Section 49 No double jeopardy**
Provides that there is no double jeopardy in relation to offences under the RSNL or occupational health and safety legislation.

Division 3 – Rail safety duties

- Section 50 Principles of shared responsibility, accountability, integrated risk management, etc**
Provides that rail safety is the responsibility of rail transport operators, rail safety workers and others who work on, with or supply rolling stock or rail infrastructure.
- Section 51 Principles applying to rail safety duties**
Sets out the principles that apply to duties under the RSNL.
- Section 52 Duties of rail transport operators**
Sets out the rail safety duties of rail transport operators.
- Section 53 Duties of designers, manufacturers, suppliers etc**
Sets out the rail safety duties of designers, manufacturers and suppliers and others involved in things used as or in connection with rail infrastructure or rolling stock.
- Section 54 Duties of person loading or unloading freight**
Sets out the rail safety duties of persons loading or unloading freight from rolling stock.
- Section 55 Duty of officers to exercise due diligence**
Provides that officers of a person who has a duty or obligation under the RSNL must exercise due diligence to ensure the person complies with that duty or obligation and sets out the meaning of 'due diligence'.
- Section 56 Duties of rail safety workers**
Sets out the duties of rail safety workers carrying out rail safety work.
- Section 57 Meaning of *safety duty***
Sets out the meaning of safety duty for the purposes of the subdivision.
- Section 58 Failure to comply with safety duty – reckless conduct – Category 1**
Sets out what is a 'category 1' offence in relation to a breach of a safety duty.
- Section 59 Failure to comply with safety duty – reckless conduct – Category 2**
Sets out what is a 'category 2' offence in relation to a breach of a safety duty.

- Section 60 Failure to comply with safety duty – reckless conduct – Category 3**
Sets out what is a 'category 3' offence in relation to a breach of a safety duty.

Division 4 – Accreditation

- Section 61 Purpose of accreditation**
Sets out the purpose for accreditation.
- Section 62 Accreditation required for railway operations**
Sets out the accreditation requirements for a person carrying out railway operations.
- Section 63 Purposes for which accreditation may be granted**
Sets out the purposes for which a rail transport operator may be granted accreditation.
- Section 64 Application for accreditation**
Sets out the application process and requirements for accreditation.
- Section 65 What applicant must demonstrate**
Sets out what an applicant for accreditation must show.
- Section 66 Regulator may direct applicants to coordinate applications**
Provides that applicants may have to coordinate the preparation of applications for accreditation for rail safety reasons.
- Section 67 Determination of application**
Sets out the process for granting accreditation and for imposing restrictions and conditions on accreditation.
- Section 68 Application for variation of accreditation**
Provides for an accredited person to apply for the variation of the accreditation.
- Section 69 Determination of application for variation**
Provides for the determination of an application for variation of accreditation.
- Section 70 Prescribed conditions and restrictions**
Provides that a varied accreditation is subject to any conditions and restrictions prescribed by the national regulations.

- Section 71 Variation of conditions and restrictions**
Provides that an accredited person may apply to the Regulator to vary or revoke any conditions or restrictions on the accreditation.
- Section 72 Regulator may make changes to conditions or restrictions**
Gives the Regulator the power to vary or revoke a condition of accreditation at any time and sets out the process for so doing.
- Section 73 Revocation or suspension of accreditation**
Provides that the Regulator may revoke or suspend a person's accreditation in particular circumstances.
- Section 74 Immediate suspension of accreditation**
In the case of an immediate and serious risk to safety the Regulator may suspend an accreditation immediately.
- Section 75 Surrender of accreditation**
Sets out the manner in which a person may surrender his or her accreditation.
- Section 76 Annual fees**
Provides for the payment of accreditation fees.
- Section 77 Waiver of fees**
Gives the Regulator the power to waive or refund fees.
- Section 78 Penalty for breach of condition or restriction**
Provides that it is an offence to breach a condition or restriction of accreditation that applies under Part 3.
- Section 79 Accreditation cannot be transferred or assigned**
Provides that it is not possible to transfer or assign an accreditation.
- Section 80 Sale or transfer of railway operations by accredited person**
Provides for the waiver by the Regulator of compliance with certain requirements of Part 3 in relation to the application for accreditation by a person proposing to purchase railway operations of an accredited person.
- Section 81 Keeping and making available records for public inspection**
Requires that current notices of accreditation or exemptions or other prescribed documents must be available for inspection.

Division 5 – Registration of rail infrastructure managers of private sidings

Section 82 Exemption from accreditation in respect of certain private sidings

Provides for the exemption from accreditation for railway operations carried out by a rail infrastructure manager in a private siding.

Section 83 Requirement for managers of certain private sidings to be registered

Provides that a rail infrastructure manager of a private siding that is connected with, or has access to, the railway of an accredited person or another private siding, must be registered in relation to that private siding.

Section 84 Application for registration

Sets out the application process for the registration of a rail infrastructure manager in relation to a private siding.

Section 85 What applicant must demonstrate

Sets out what the Regulator must be satisfied of before granting registration to an applicant.

Section 86 Determination of application

Sets out the process for the determination of an application for registration and the imposition of conditions and restrictions

Section 87 Application for variation of registration

Provides that a registered person may apply to the Regulator for the variation of registration at any time, and sets out the process required.

Section 88 Determination of application for variation

Sets out the process for determining an application for the variation of registration.

Section 89 Prescribed conditions and restrictions

Provides that registration as varied is subject to any conditions or restrictions prescribed by the national regulations.

Section 90 Variation of conditions and restrictions

Provides for the application by a registered person for the variation or revocation of conditions or restrictions of registration.

Section 91 Regulator may make changes to conditions or restrictions

Provides that the Regulator may vary, revoke or impose new conditions or restrictions on the registration of a registered person.

Section 92 Revocation or suspension of registration

Provides that the Regulator may suspend or revoke registration of a registered person in certain circumstances.

Section 93 Immediate suspension of registration

Provides that registration may be suspended immediately by the Regulator if there is an immediate and serious risk to safety.

Section 94 Surrender of registration

Provides that a person may surrender his or her registration and sets out the process required.

Section 95 Annual fees

Provides for fees prescribed by the national regulations to be paid by a registered person.

Section 96 Waiver of fees

Provides that the Regulator may waive or refund fees.

Section 97 Registration cannot be transferred or assigned

Provides that it is not possible to transfer or assign registration.

Section 98 Offences relating to registration

Sets out the offences in relation to registration including breach of a condition or restriction of registration.

Division 6 – Safety management

Section 99 Safety management system

Requires a rail transport operator to have a safety management system in relation to the railway operations for which he or she is required to be accredited. Sets out the requirements for that safety management system.

Section 100 Conduct of assessments for identified risks

Sets out the manner in which a rail transport operator must make an assessment of risks for the purposes of the safety management system.

Section 101 Compliance with safety management system

It is an offence for a rail transport operator to fail to comply with the operator's safety management system.

Section 102 Review of safety management system

A rail transport operator must review the safety management system in accordance with the national regulations.

Section 103 Safety performance reports

Requires a rail transport operator to give the Regulator a safety performance report in relation to the operator's railway operations.

Section 104 Regulator may direct amendment of safety management system

Provides that the Regulator may direct a person to amend the person's safety management system.

Section 105 Requirements for and scope of interface agreements

Sets out the requirements for an interface agreement between 2 or more rail transport operators or a rail transport operator and 1 or more road managers to manage risks to safety.

Section 106 Interface coordination – rail transport operators

Requires a rail transport operator to identify and assess risks to safety arising from the operator's railway operations due to the operations of any other rail transport operator. Provides for entering into an interface agreement in order to manage those risks.

Section 107 Interface coordination – rail infrastructure and public roads

Requires a rail infrastructure manager to identify and assess risks to safety arising from railway operations carried out on the manager's rail infrastructure in relation to a public road or any rail or road crossing that is part of a public road. Provides for entering into an interface agreement with a road manager in order to manage those risks.

Section 108 Interface coordination – rail infrastructure and private roads

Requires a rail infrastructure manager to identify and assess risks to safety arising from railway operations carried out on the manager's rail infrastructure due to the existence of any rail or road crossing that is part of the road infrastructure of a private road. Provides for entering into an interface agreement with the road manager in order to manage those risks.

Section 109 Identification and assessment of risks

Provides for the manner of identification and assessment of risks by rail transport operators, rail infrastructure managers or road managers.

Section 110 Regulator may give directions

Provides for the Regulator to give directions in certain circumstances in relation to the entering into of an interface agreement by various parties. The Regulator may, in the absence of an interface agreement, determine the arrangements that are to apply in relation to the management of identified risks to safety.

Section 111 Register of interface agreements

Provides that a rail transport operator or road manager must keep a register of any interface agreements to which it is a party, or any arrangements determined by the Regulator to apply under section 110.

Section 112 Security management plan

Requires a rail transport operator to have a security management plan in relation to the operator's railway operations and sets out the requirements for that plan.

Section 113 Emergency management plan

Requires a rail transport operator to have an emergency management plan in relation to the operator's railway operations and sets out the requirements for that plan.

Section 114 Health and fitness management program

Requires a rail transport operator to prepare and implement a health and fitness program for rail safety workers who carry out rail safety work in relation to the operator's railway operations. The program to comply with requirements prescribed by the national regulations.

Section 115 Drug and alcohol management program

Requires a rail transport operator to prepare and implement a drug and alcohol management program for rail safety workers who carry out rail safety work in relation to the operator's railway operations. The program to comply with requirements prescribed by the national regulations.

Section 116 Fatigue risk management program

Requires a rail transport operator to prepare and implement a program for the management of fatigue of rail safety workers who carry out rail safety work in relation to the operator's railway operations. The program to comply with requirements prescribed by the national regulations.

Section 117 Assessment of competence

Requires a rail transport operator to ensure that a rail safety worker carrying out rail safety work is competent to do so. Sets out the process for assessing that competence.

Section 118 Identification of rail safety workers

Requires a rail safety worker to carry identification that allows for the checking of training or competence by a rail safety officer.

Section 119 Other persons to comply with safety management system

Requires persons other than employees carrying out railway operations in relation to rail infrastructure or rolling stock of a rail transport operator, to comply with the operator's safety management system.

Division 7 – Information about rail safety etc

Section 120 Power of Regulator to obtain information from rail transport operators

Gives the Regulator the power to obtain certain information from rail transport operators.

Division 8 – Investigating and reporting by rail transport operators

Section 121 Notification of certain occurrences

Requires a rail transport operator to provide information about a notifiable occurrence that happens on or in relation to the operator's railway premises or operations.

Section 122 Investigation of notifiable occurrences

Regulator may require an operator to investigate a notifiable occurrence or other occurrences that have endangered safety.

Division 9 – Drug and alcohol testing by Regulator

Section 123 Testing for presence of drugs or alcohol

Provides that a rail safety worker may be tested for the presence of drugs and alcohol in accordance with the RSNL and the application Act.

Section 124 Appointment of authorised persons

Provides that the Regulator may appoint authorised persons in relation to drug and alcohol testing.

Section 125 Identity cards

Requires authorised persons to have identity cards.

Section 126 Authorised person may require preliminary breath test or breath analysis

Provides for an authorised person to require a rail safety worker to submit to breath testing.

Section 127 Authorised person may require drug screening test, oral fluid analysis and blood test

Provides for an authorised person to require a rail safety worker to submit to a drug screening test, oral fluid analysis or blood test.

Section 128 Offence relating to prescribed concentration of alcohol or prescribed drug

Sets out the offences for a rail safety worker in relation to undertaking rail safety work while there is the prescribed concentration of alcohol present in his or her blood, or a prescribed drug present in his or her oral fluid or blood or is under the influence of drugs or alcohol.

Section 129 Oral fluid or blood sample or results of analysis etc not to be used for other purposes

Restricts the use of samples of oral fluid or blood or other forensic material collected for drug and alcohol testing for the purposes of the RSNL.

Division 10 – Train safety recordings

Section 130 Interpretation

Defines the meaning of 'train safety recording'.

Section 131 Disclosure of train safety recordings

Provides for restrictions on the disclosure of train safety recordings.

Section 132 Admissibility of evidence of train safety recordings in civil proceedings

Restricts the use of train safety recordings in civil proceedings.

Division 11 – Audit of railway operations by Regulator

Section 133 Audit of railway operations by Regulator

Provides for the audit of the railway operations of a rail transport operator by the Regulator.

PART 4 – SECURING COMPLIANCE

Division 1 – Guiding principle

Section 134 guiding principle

Sets out the guiding principles in relation to the enforcement of the RSNL.

Division 2 – Rail safety officers

Section 135 Appointment

Provides for the appointment of rail safety officers by the Regulator.

Section 136 Identity cards

Requires rail safety officers to have identity cards.

Section 137 Accountability of rail safety officers

Sets out requirements for the accountability of rail safety officers.

Section 138 Suspension and ending of appointment of rail safety officers

Provides that the Regulator may suspend or terminate the appointment of a rail safety officer.

Division 3 – Regulator has functions and powers of rail safety officers

Section 139 Regulator has functions and powers of rail safety officers

Provides that the Regulator has the functions and powers of a rail safety officer under the RSNL, and a reference to a rail safety officer includes a reference to the Regulator.

Division 4 – Functions and powers of rail safety officers

Section 140 Functions and powers

Sets out the functions and powers of rail safety officers.

Section 141 Conditions on rail safety officers' powers

The powers of a rail safety officer are subject to any conditions set out in his or her instrument of appointment.

Section 142 Rail safety officers subject to Regulator's directions

Provides that the Regulator may give directions to a rail safety officer in the exercise of his or her powers.

Division 5 – Powers relating to entry

Section 143 Powers of entry

Sets out a rail safety officer's powers of entry.

Section 144 Notification of entry

Provides that notification of entry by a rail safety officer may not be required.

Section 145 General powers on entry

Sets out the general powers of a rail safety officer on entry to a place.

Section 146 Persons assisting rail safety officers

Persons assisting a rail safety officer may accompany the officer on entering a place.

Section 147 Use of electronic equipment

Provides that equipment present at a place of entry may be used by a rail safety officer in order to access information found.

Section 148 Use of equipment to examine or process things

Provides that a rail safety officer may bring equipment to a place in order to examine or process things found at the place entered in order to determine if they may be seized.

Section 149 Securing a site

Sets out the powers of an authorised officer (rail safety officer or police officer) to secure a site to protect evidence.

Section 150 Search warrants

Sets out procedures and requirements for search warrants.

Section 151 Announcement before entry on warrant

Provides that an announcement is required before entering a place on a warrant.

Section 152 Copy of warrant to be given to person with control or management of place

Requires a copy of a warrant to be given to the person in charge of a place.

Section 153 Places used for residential purposes

Sets out limitations on the power of entry in relation to residential premises.

Section 154 Power to require production of documents and answers to questions

Provides that a rail safety officer may require a person to produce documents or answer questions on entry to a place.

Section 155 Abrogation of privilege against self-incrimination

Provides that a person cannot refuse to answer a question or give information on the grounds of self-incrimination. However, such answers or information cannot be used against them in civil or criminal proceedings other than those for providing false or misleading information.

Section 156 Warning to be given

Provides that a rail safety officer must give a person certain warnings before requiring a person to answer a question or provide information.

Section 157 Power to copy and retain documents

Gives a rail safety officer the power to copy and retain documents.

Section 158 Power to seize evidence etc

Gives a rail safety officer the power to seize anything that he or she reasonably believes may be evidence of an offence against the RSNL.

Section 159 Directions relating to seizure

Provides that, in order to seize something, a rail safety officer may give certain directions to a person who has control of it.

Section 160 Rail safety officer may direct a thing's return

Provides that a rail safety officer may also give directions in relation to the return of something.

Section 161 Receipt for seized things

Provides that a receipt is to be provided for anything seized.

Section 162 Forfeiture of seized things

Provides for the forfeiture of things seized in certain circumstances.

Section 163 Return of seized things

Provides that a person may apply to the Regulator for the return of a thing that has been seized.

Section 164 Access to seized thing

Provides that a person may be given access by a rail safety officer to something that has been seized.

Division 6 – Damage and compensation

Section 165 Damage etc to be minimised

Provides that in the exercise of a power under the RSNL, a rail safety officer must take reasonable steps to cause as little damage, detriment and inconvenience as is practicable.

Section 166 Rail safety officer to give notice of damage

Provides for a rail safety officer to give notice of any damage to a thing in exercising a power under the RSNL.

Section 167 Compensation

Provides that a person may apply for compensation from the Regulator for any loss or expense incurred due to the exercise of a power under Part 4 Division 5 of the RSNL.

Division 7 – Other matters

Section 168 Power to require name and address

Provides that a rail safety officer may require a person to give his or her name and address in certain circumstances.

Section 169 Rail safety officer may take affidavits

Gives rail safety officers the authority to take an affidavit.

Section 170 Attendance of rail safety officer at inquiries

Provides that a rail safety officer may participate in an inquiry in relation to an incident involving rail safety.

Section 171 Directions may be given under more than 1 provision

Provides for a rail safety officer to be able to give one or more directions in relation to an exercise of power.

Division 8 – Offences in relation to rail safety officers

Section 172 Offence to hinder or obstruct rail safety officer

Provides that it is an offence to hinder or obstruct a rail safety officer in the performance of his or her duties.

Section 173 Offence to impersonate rail safety officer

Provides that a person must not impersonate a rail safety officer.

Section 174 Offence to assault, threaten or intimidate rail safety officer

Provides that it is an offence to assault, threaten or intimidate a rail safety officer.

PART 5 – ENFORCEMENT MEASURES

Division 1 – Improvement notices

Section 175 Issue of improvement notices

Provides for the issue of improvement notices by a rail safety officer in certain circumstances.

Section 176 Contents of improvement notices

Sets out the required contents of an improvement notice.

Section 177 Compliance with improvement notice

Requires a person issued with an improvement notice to comply with it.

Section 178 Extension of time for compliance with improvement notices

Allows for an extension of time in order to comply with an improvement notice.

Division 2 – Prohibition notices

Section 179 Issue of prohibition notice

Provides for the issue of a prohibition notice by a rail safety officer in certain circumstances which involve an immediate risk to safety.

Section 180 Contents of prohibition notice

Sets out the required contents of the prohibition notice.

Section 181 Compliance with prohibition notice

Requires a person to comply with a prohibition notice or direction under this Division.

Division 3 – Non-disturbance notices

Section 182 Issue of non-disturbance notice

Provides that a rail safety officer may issue a non-disturbance notice to a person with the control or management of a railway premises in order to facilitate the exercise of his or her powers under the RSNL.

Section 183 Contents of non-disturbance notice

Sets out the required contents of a non-disturbance notice.

Section 184 Compliance with non-disturbance notice

Provides that a person must comply with a non-disturbance notice unless they have a reasonable excuse.

Section 185 Issue of subsequent notices

Provides that further notices may be issued if a rail safety officer considers it necessary.

Division 4 – General requirements applying to notices

Section 186 Application of Division

Provides that this Division applies to an improvement notice, prohibition notice or non-disturbance notice.

Section 187 Notice to be in writing

Provides that a notice must be in writing and if given orally must be reduced to writing as soon as practicable.

Section 188 Directions in notices

Provides that directions contained in a notice may refer to an approved code of practice or offer a person a choice of ways in which to remedy a contravention.

Section 189 Recommendations in notice

Provides that an improvement notice or a prohibition notice may include recommendations.

Section 190 Variation or cancellation of notice by rail safety officer

Provides that a rail safety officer may make minor changes to a notice.

Section 191 Formal irregularities or defects in notice

Provides that irregularities in a notice will not invalidate the notice.

Section 192 Serving notices

Sets out provisions for the service of notices.

Division 5 – Remedial action

Section 193 When Regulator may carry out action

Provides that the Regulator may take remedial action to make a situation or premises safe where a person fails to take reasonable steps to comply with a prohibition notice.

Section 194 Power of Regulator to take other remedial action

Provides that the Regulator may take remedial action where the person with the control or management of premises cannot be found and thus no prohibition order could be issued.

Section 195 Costs of remedial or other action

Provides that reasonable costs of remedial action may be recovered by the Regulator.

Division 6 – Injunctions

Section 196 Application of Division

Provides that this Division applies to an improvement notice, a prohibition notice or a non-disturbance notice.

Section 197 Injunctions for non-compliance with notices

Provides that the Regulator may apply to the court for an injunction in relation to a notice.

Division 7 – Miscellaneous

Section 198 Response to certain reports

Provides that in response to certain reports, the Regulator may give directions in a notice to a rail transport operator to install safety or protective systems, devices, equipment or appliances in relation to rail infrastructure or rolling stock, as specified in the notice. Sets out the requirements for such a direction.

Section 199 Power to require works to stop

Sets out provisions to ensure the safety or operational integrity of a railway in relation to works being carried out near a railway.

Section 200 Temporary closing of railway crossings, bridges etc

Provides that an authorised officer may close temporarily a railway crossing, bridge, subway or other structure for crossing over or under a railway, if there is an immediate threat to safety.

Section 201 Use of force

Provides that in exercising a power to enter railway premises or do anything in or on railway premises, a rail safety officer must not use more force than is reasonably necessary.

Section 202 Power to use force against persons to be exercised only by police officers

Provides that force against a person must not be used by a person who is not a police officer.

PART 6 - EXEMPTIONS

Division 1 – Ministerial exemptions

Section 203 Ministerial exemptions

Provides for exemptions from the RSNL granted by the Minister, after consultation with the Regulator.

Division 2 – Exemptions granted by Regulator

Section 204 Interpretation

Provides that this Division applies to specified provisions of the RSNL.

Section 205 Application for exemption

Provides for a rail transport operator to apply to the Regulator for an exemption from a particular provision of the RSNL .

Section 206 What applicant must demonstrate

Sets out what an applicant for an exemption must demonstrate before an exemption may be granted by the Regulator.

Section 207 Determination of application

Sets out the provisions for the determination of an application for an exemption by the Regulator.

Section 208 Application for variation of an exemption

Provides that a rail transport operator may apply to the Regulator for a variation of an exemption.

Section 209 Determination of application for variation

Provides for the determination of an application for the variation of an exemption by the Regulator.

Section 210 Prescribed conditions and restrictions

Provides that an exemption granted by the Regulator that is varied is subject to any conditions or restrictions prescribed by the national regulations.

Section 211 Variation of conditions and restrictions

Provides that a rail transport operator who has been granted an exemption may apply to the Regulator for the variation of a condition or restriction imposed on the exemption.

Section 212 Regulator may make changes to conditions or restrictions

Provides that the Regulator may at any time vary or revoke a condition or restriction imposed on an exemption, or impose a new condition or restriction.

Section 213 Revocation or suspension of an exemption

Gives the Regulator the power to suspend or revoke an exemption in certain circumstances.

Section 214 Penalty for breach of condition or restriction

It is an offence for a rail transport operator to contravene a condition or restriction of an exemption granted by the Regulator.

PART 7 – REVIEW OF DECISIONS

Section 215 Reviewable decisions

Sets out the decisions made under the RSNL that are reviewable (a reviewable decision) and who is eligible to apply for a review.

Section 216 Review by Regulator

Sets out the process that applies in respect of a reviewable decision made by the Regulator.

Section 217 Appeals

Provides for an appeal to the court in respect of certain decisions.

PART 8 – GENERAL LIABILITY AND EVIDENTIARY PROVISIONS

Division 1 – Legal proceedings

Section 218 Period within which proceedings for offences may be commenced

Sets out the period in which proceedings for an offence may be commenced.

Section 219 Multiple contraventions of rail safety duty provision

Provides that 2 or more contraventions of a rail safety duty arising out of the same factual circumstances may be charged as a single offence or as separate offences.

Section 220 Authority to take proceedings

Provides that certain legal proceedings will first require the approval of the Minister or the Regulator.

Section 221 Imputing conduct to bodies corporate

Provides for certain conduct to be imputed to bodies corporate.

Section 222 Records and evidence from records

Provides that the Regulator may sign a certificate that certifies as to matters required to be recorded in the National Safety Register for the purposes of legal proceedings.

Section 223 Certificate evidence

Provides for the Regulator, a rail safety officer or a police officer to provide a certificate as to any matter that appears in certain records, that is admissible as evidence in court proceedings.

Section 224 Proof of appointments and signatures unnecessary

Provides that it is not necessary to prove appointments or signatures.

Division 2 – Discrimination against employees

Section 225 Dismissal or other victimisation of employee

Provides that it is an offence for an employer to victimise an employee who has assisted or made a complaint in relation to a breach or alleged breach of an Australian rail safety law.

Division 3 – Offences

Section 226 Offence to give false or misleading information

Provides that it is an offence to give false or misleading information or documents.

Section 227 Not to interfere with train, tram etc

Provides that it is an offence to interfere with rolling stock, rail infrastructure or equipment of a rail transport operator.

Section 228 Applying brake or emergency device

Provides that it is an offence to apply a brake or emergency device on a train or tram or on railway premises without a reasonable excuse.

Section 229 Stopping a train or tram

Provides that it is an offence to stop a tram or train without reasonable excuse.

Division 4 – Court-based sanctions

Section 230 Commercial benefits order

Provides for a court to make a commercial benefits order on the application of the prosecutor or the Regulator if a person is found guilty of an offence.

Section 231 Supervisory intervention order

Provides for a court to make a supervisory intervention order on the application of the prosecutor or the Regulator if a person is found guilty of an offence and the court considers the person to be a systematic and persistent offender against the rail safety laws.

Section 232 Exclusion orders

Provides for a court to make an exclusion order on the application of the prosecutor or the Regulator if a person is found guilty of an offence and the court considers the person to be a systematic and persistent offender against the rail safety laws.

PART 9 – INFRINGEMENT NOTICES

Section 233 Meaning of infringement penalty provision

Sets out the meaning of an '*infringement penalty provision*'.

Section 234 Power to serve notice

Provides the Regulator with the power to serve an infringement notice on a person who has breached an infringement penalty provision.

Section 235 Form of notice

Sets out the requirements for an infringement notice.

Section 236 Regulator cannot institute proceedings while infringement notice on foot

Provides that the Regulator must not institute proceedings in relation to a breach for which an infringement notice has been served and is current.

Section 237 Late payment of penalty

Provides for payment of an infringement penalty after the time for payment has expired.

Section 238 Withdrawal of notice

Provides that the Regulator may withdraw an infringement notice at any time.

Section 239 Refund of infringement penalty

Provides that if an infringement notice is withdrawn by the Regulator, any infringement penalty paid must be refunded.

Section 240 Payment exiate breach of infringement penalty provision

Provides that if an infringement penalty is paid and a notice has not been withdrawn, then no proceedings can be taken in respect of the alleged breach.

Section 241 Payment not to have certain consequences

Provides that payment of an infringement penalty is not to be taken to be an admission of liability for the purpose of any proceedings instituted in respect of the breach.

Section 242 Conduct in breach of more than 1 infringement penalty provision

Provides that if a person's conduct constitutes a breach of 2 or more infringement penalty provisions, an infringement notice may be served in relation to the breach of any 1 or more of those provisions. However, a person is liable to pay no more than one infringement penalty in respect of the same conduct.

PART 10 - GENERAL

Division 1 – Delegation by Minister

Section 243 Delegation by Minister

Provides that the Minister may delegate a function or power of the Minister under the RSNL.

Division 2 – Confidentiality of information

Section 244 Confidentiality of information

Provides for the protection of confidential information.

Division 3 – Law does not affect legal professional privilege

Section 245 Law does not affect legal professional privilege

Provides that information or documents that are subject to legal professional privilege are protected.

Division 4 – Civil liability

Section 246 Civil liability not affect by Part 3 Division 3 or Division 6

Provides that nothing in Part 3 Division 3 (*Rail safety duties*) or Division 6 (*Safety management*) affects civil proceedings.

Section 247 Protection from personal liability for persons exercising functions

Provides that certain persons exercising a function under the RSNL are protected from personal liability for things done or omitted in good faith. Any liability attaches instead to the ONRSR.

Section 248 Immunity for reporting unfit rail safety worker

Provides certain health professionals with immunity for providing information that discloses a rail safety worker as unfit to carry out rail safety work.

Division 5 – Codes of practice

Section 249 Approved codes of practice

Provides that responsible Ministers may approve a code of practice for the purposes of the RSNL.

Section 250 Use of codes of practice in proceedings

Provides that an approved code of practice may be used in proceedings for an offence against the RSNL as evidence of whether or not a duty or obligation has been complied with.

Division 6 – Enforceable voluntary undertakings

Section 251 Enforceable voluntary undertaking

Provides that the Regulator may accept a written rail safety undertaking in relation to a contravention or alleged contravention of the RSNL (other than for a Category 1 offence).

Section 252 Notice of decisions and reasons for decision

Provides that the Regulator must give notice and reasons of the Regulator's decision to accept or reject an undertaking and must publish a notice of the decision to accept a rail safety undertaking and the reasons for doing so.

Section 253 When a rail safety undertaking is enforceable

Provides that a rail safety undertaking accepted by the Regulator is enforceable.

Section 254 Compliance with rail safety undertaking

Provides that it is an offence for a person to fail to comply with a rail safety undertaking made by that person.

Section 255 Contravention of rail safety undertaking

Provides that the Regulator may apply to the court for enforcement of an rail safety undertaking.

Section 256 Withdrawal or variation of rail safety undertaking

Provides that a person who has made a rail safety undertaking may, with the written agreement of the Regulator, withdraw or vary the undertaking.

Section 257 Proceedings for alleged contravention

Provides that no proceedings for a contravention or alleged contravention of the RSNL may be brought against a person if there is a rail safety undertaking in effect in relation to that contravention. A rail safety undertaking may be accepted by the Regulator in relation to proceedings that have not been finalised, in which case the proceedings are to be discontinued.

Division 7 – Other matters

Section 258 Service of documents

Sets out the procedures for service.

Section 259 Recovery of certain costs

Provides for the recovery by the Regulator from a rail transport operator of the reasonable costs of inspection of railway infrastructure, rolling stock or railway premises (other than an inspection under Part 3 Division 11).

Section 260 Recovery of amounts due

Provides that fees, charges and other amounts payable under the RSNL may be recovered a debt due to the Regulator.

Section 261 Compliance with conditions of accreditation or registration

Provides that a person who complies with a condition or restriction of accreditation or registration, will be taken to have complied with the RSNL.

Section 262 Contracting out prohibited

Prohibits the ability for a contract or agreement to exclude, limit or modify the operation of the RSNL or any duty under the RSNL.

Division 8 – Application of certain South Australian Acts to this Law

Section 263 Application of certain South Australian acts to this Law

Sets out the application of certain South Australian Acts to the RSNL and provides that the national regulations may modify these Acts for the purposes of the RSNL.

Applies the South Australian *Freedom of Information Act 1991*, *Ombudsman Act 1972*, *Public Finance and Audit Act 1987* and *State Records Act 1997* to the RSNL and provides that the national regulations may modify these South Australian Acts for the purposes of the RSNL.

These South Australian oversight laws do not apply to the extent that functions are being exercised under the RSNL by a State or Territory entity other than a South Australian entity.

State entities exercising powers and functions under the RSNL will continue to be bound by the equivalent State oversight laws.

Division 9 – National regulations

Section 264 National regulations

Sets out provisions in relation to the making of the national regulations.

Sets out provisions governing the making of the national regulations. The Governor of the State of South Australia may make national regulations on the unanimous recommendation of the Ministers nominated by each participating state and Territory as responsible for the RSNL in their jurisdiction.

Section 265 Publication of national regulations

Provides that the national regulations are to be published on the NSW legislation website.

National regulations are to be published on the New South Wales legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

National Regulations commence on the day they are specified to commence and that date cannot be earlier than the publication date.

SCHEDULE 1 – NATIONAL REGULATIONS

This Schedule sets out the matters in relation to which the national regulations may be made.

SCHEDULE 2 – MISCELLANEOUS PROVISIONS RELATING TO INTERPRETATION

This Schedule sets out provisions governing the interpretation of the RSNL. These provisions are necessary due to the disapplication of the *Acts Interpretation Act 1915*.

PART 1 – PRELIMINARY

Section 1 Displacement of Schedule by contrary intention

PART 2 – GENERAL

Section 2 Law to be construed not to exceed legislative power of Parliament

Section 3 Every section to be a substantive enactment

Section 4 Material that is, and is not, part of this Law

Section 5 References to particular Acts and to enactments

Section 6 References taken to be included in Law or Act citation etc

Section 7 Interpretation best achieving Law's purpose or object

Section 8 Use of extrinsic material in interpretation

Section 9 Effect of change of drafting practice

Section 10 Use of examples

Section 11 Compliance with forms

PART 3 – TERMS AND REFERENCES

Section 12 Definitions

Section 13 Provisions relating to defined terms and gender and number

Section 14 Meaning of *may* and *must* etc

Section 15 Words and expressions used in statutory instruments

Section 16 Effect of express references to bodies corporate and individuals

Section 17 Production of records kept in computers etc

Section 18 References to this jurisdiction to be implied

Section 19 References to officers and holders of offices

Section 20 Reference to certain provisions of Law

Section 21 Reference to provisions of this Law or an Act is inclusive

PART 4 – FUNCTIONS AND POWERS

Section 22 Exercise of statutory functions

Section 23 Power to make instrument or decision includes power to amend or repeal

Section 24 Matters for which statutory instruments may make provision

Section 25 Presumption of validity and power to make

Section 26 Appointments may be made by name or office

Section 27 Acting appointments

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PART 7 – INSTRUMENTS UNDER LAW

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