

Rail Safety National Law (WA) Bill 2014

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Rail Safety National Law (WA) Bill 2014

A Bill for

An Act to —

- **provide for a national scheme regarding the regulation of rail safety; and**
- **repeal the *Rail Safety Act 2010*; and**
- **make consequential amendments to various other Acts, and for related purposes.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Rail Safety National Law (WA) Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

- (1) For the purposes of this Act, the *local application provisions of this Act* are the provisions of this Act other than the Rail Safety National Law set out in the Schedule.
- (2) In the local application provisions of this Act —
 - local regulations* means regulations made under section 37 or 50;
 - Rail Safety National Law (WA)* means the provisions applying in this jurisdiction because of section 4.
- (3) Subject to section 6(1), if a term is given a meaning in the Rail Safety National Law set out in the Schedule, it has the same meaning in the local application provisions of this Act.

1 **Part 2 — Application of Rail Safety National Law**

2 **4. Application of Rail Safety National Law**

3 The Rail Safety National Law set out in the Schedule, and as
4 modified in section 5 —

- 5 (a) applies as a law of this jurisdiction; and
6 (b) as so applying may be referred to as the *Rail Safety*
7 *National Law (WA)*; and
8 (c) as so applying, is part of this Act.

9 **5. Local modifications to the Rail Safety National Law**

10 (1) This section modifies the Rail Safety National Law set out in
11 the Schedule.

12 (2) In section 127 delete “oral fluid analysis” (each occurrence) and
13 insert:

14
15 oral fluid analysis, urine analysis
16

17 (3) In section 129:

18 (a) delete “oral fluid or” and insert:

19
20 oral fluid, urine or
21

22 (b) delete “oral fluid analysis” and insert:

23
24 oral fluid analysis, urine analysis
25

26 (4) In section 264(1) delete “South Australia,” and insert:

27
28 Western Australia,
29

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1 (5) In section 264(2) delete “authority, on the unanimous
2 recommendation of the responsible Ministers,” and insert

3

4 authority

5

6 (6) Delete section 265.

7 (7) In Schedule 2 clauses 30(2) and (3)(b), 33, 35 and 36 delete
8 “South Australian” (each occurrence) and insert:

9

10 Western Australian

11

12 Note 1: The heading to modified section 127 is to read:

13 **Authorised person may require drug screening test, oral fluid**
14 **analysis, urine analysis and blood test**

15 Note 2: The heading to modified section 129 is to read:

16 **Oral fluid, urine or blood sample or results of analysis etc not**
17 **to be used for other purposes**

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

20 (1) In the *Rail Safety National Law (WA)* —

21 ***application Act*** means the local application provisions of this
22 Act;

23 ***court*** means the following —

24 (a) for the purposes of Parts 5 and 7 — the State
25 Administrative Tribunal (to be constituted by at least
26 one judicial member for the purposes of Part 5
27 Division 6);

28 (b) for the purposes of Part 10 Division 6 — the Magistrates
29 Court;

- 1 **emergency services** means each of the following —
- 2 (a) the Police Force of Western Australia;
- 3 (b) the department of the Public Service principally
- 4 assisting in the administration of the *Fire and*
- 5 *Emergency Services Act 1998*;
- 6 (c) another body or organisation prescribed by local
- 7 regulations;
- 8 **Gazette** means the *Government Gazette* of Western Australia;
- 9 **Health Practitioner Regulation National Law** means the
- 10 *Health Practitioner Regulation National Law (Western*
- 11 *Australia)*;
- 12 **magistrate** means a magistrate as defined in the *Magistrates*
- 13 *Court Act 2004* section 3;
- 14 **Minister** means the Minister administering this Act;
- 15 **police officer** has the meaning given in the *Interpretation*
- 16 *Act 1984* section 5;
- 17 **prescribed notifiable occurrence** means a notifiable occurrence
- 18 prescribed by the national regulations;
- 19 **public sector auditor** means the Auditor-General as defined in
- 20 the *Public Finance and Audit Act 1987* (South Australia)
- 21 section 4;
- 22 **road vehicle** means —
- 23 (a) if the *Road Traffic (Administration) Act 2008* is not in
- 24 operation — a motor vehicle as defined in the *Road*
- 25 *Traffic Act 1974* section 5(1);
- 26 (b) if the *Road Traffic (Administration) Act 2008* is in
- 27 operation — a motor vehicle as defined in section 4 of
- 28 that Act;
- 29 **shared path** means an area that —
- 30 (a) is open to or used by the public; and

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- 1 (b) is developed for, or has as one of its main uses, use by
2 both pedestrians and riders of bicycles;
- 3 ***the jurisdiction or this jurisdiction*** means Western Australia.
- 4 (2) For the purposes of the local application provisions of this Act,
5 the *Rail Safety National Law (WA)* and any other Act or law —
- 6 (a) the Office of the National Rail Safety Regulator is not
7 an agency as defined in the *Public Sector Management*
8 *Act 1994* section 3(1); and
- 9 (b) an employee of the Office of the National Rail Safety
10 Regulator is not a public service officer as defined in the
11 *Public Sector Management Act 1994* section 3(1).

12 **7. No double jeopardy**

13 Proceedings for an offence against the *Rail Safety National Law*
14 (*WA*) (the ***WA offence***) cannot be brought against a person if the
15 person has, for the same alleged act or omission, been convicted
16 or found guilty in a participating jurisdiction of an offence that
17 substantially corresponds to the *WA offence*.

18 **8. Exclusion of legislation of this jurisdiction**

- 19 (1) Except as provided in subsection (2), the following Acts of this
20 jurisdiction do not apply to the *Rail Safety National Law (WA)*
21 or to the instruments made under that Law —
- 22 (a) the *Freedom of Information Act 1992*;
- 23 (b) the *Interpretation Act 1984*.
- 24 (2) The *Interpretation Act 1984* sections 41 and 42 apply to
25 regulations made under the *Rail Safety National Law (WA)*.
- 26 (3) The following Acts of this jurisdiction do not apply to the *Rail*
27 *Safety National Law (WA)* or to the instruments made under that
28 Law (except as applied under the Law) —
- 29 (a) the *Auditor General Act 2006*;
- 30 (b) the *Financial Management Act 2006*;

- 1 (c) the *Parliamentary Commissioner Act 1971*;
- 2 (d) the *Public Sector Management Act 1994*;
- 3 (e) the *State Records Act 2000*.
- 4 (4) The Acts referred to in subsection (3) apply to a public sector
- 5 body as defined in the *Public Sector Management Act 1994*
- 6 section 3(1), and an officer or employee of the body, performing
- 7 a function under the *Rail Safety National Law (WA)*.

1 **Part 3 — Local provisions for alcohol and drug testing**

2 **Division 1 — Preliminary**

3 **9. Terms used**

4 (1) In this Part, unless the contrary intention appears —

5 **analyst** means an analyst or drugs analyst, as the case requires,
6 as defined in the *Road Traffic Act 1974* section 65;

7 **BAC** means blood alcohol concentration;

8 **breath analysis instrument** means —

9 (a) breath analysing equipment as defined in the *Road*
10 *Traffic Act 1974* section 65; or

11 (b) an instrument prescribed by the local regulations for the
12 purposes of this paragraph;

13 **drug screening test** means —

14 (a) a preliminary oral fluid test as defined in the *Road*
15 *Traffic Act 1974* section 65; or

16 (b) a test of a sample of a rail safety worker's oral fluid for
17 the purpose of providing a preliminary indication of the
18 presence of prescribed illicit drugs in the oral fluid using
19 a device, or a device of a type, prescribed by the local
20 regulations for the purposes of this paragraph;

21 **medical practitioner** means a person who is registered under the
22 *Health Practitioner Regulation National Law* in the medical
23 profession;

24 **oral fluid analysis**, in relation to a rail safety worker, means a
25 method of analysis for the purpose of ascertaining the presence
26 of prohibited drugs in the worker's oral fluid using —

27 (a) an approved device as defined in the *Road Traffic*
28 *Act 1974* section 65; or

29 (b) a device, or a device of a type, prescribed by the local
30 regulations for the purposes of this paragraph;

1 **preliminary breath test** means —

2 (a) a preliminary test as defined in the *Road Traffic*

3 *Act 1974* section 65; or

4 (b) a test of a sample of a rail safety worker’s breath for the

5 purpose of providing a preliminary indication of the

6 presence of prescribed illicit drugs in the breath using a

7 device, or a device of a type, prescribed by the local

8 regulations for the purposes of this paragraph;

9 **prescribed BAC**, in relation to a rail safety worker, means the

10 prescribed concentration of alcohol, as defined in the *Rail Safety*

11 *National Law (WA)* section 128(5), in the worker’s blood;

12 **prohibited drug** means a prescribed drug as defined in the *Rail*

13 *Safety National Law (WA)* section 128(5);

14 **qualified person**, in relation to the taking of a sample from

15 another person, means a person prescribed by the local

16 regulations as qualified to take that sample;

17 **registered nurse** means a person registered under the *Health*

18 *Practitioner Regulation National Law* in the nursing and

19 midwifery profession whose name is entered on Division 1 of

20 the Register of Nurses kept under that Law as a registered nurse;

21 **sample** means a sample of breath, oral fluid, urine or blood;

22 **sample taker** means —

23 (a) a medical practitioner; or

24 (b) a registered nurse; or

25 (c) a qualified person;

26 **urine analysis**, in relation to a rail safety worker, means a

27 method of analysis for the purpose of ascertaining the presence

28 of prohibited drugs in the worker’s urine in accordance with the

29 local regulations;

30 **work shift**, in relation to a rail safety worker, means a shift

31 during which rail safety work is performed by the worker;

32 **work shift location** means the place where a rail safety worker

33 completes a work shift.

- 1 (2) For the purposes of this Part and the *Rail Safety National Law*
2 (*WA*) Part 3 Division 9, anything done by a person acting under
3 the supervision or direction of a medical practitioner, registered
4 nurse or analyst is taken to have been done by the medical
5 practitioner, registered nurse or analyst, as the case may be.

6 **Division 2 — Alcohol testing**

7 **10. Using breath sample to find blood alcohol content**

- 8 (1) For the purposes of this Part and the *Rail Safety National*
9 *Law (WA)* section 128, if the concentration of alcohol in a rail
10 safety worker's breath is a particular number of grams of
11 alcohol per 210 litres of breath the worker's BAC is to be
12 regarded as being that number of grams of alcohol per 100 ml of
13 blood.
- 14 (2) Apparatus comprising breath analysing equipment is to be
15 regarded as being for the purpose of ascertaining a rail safety
16 worker's BAC by analysis of a sample of the worker's breath,
17 whether the apparatus gives the blood alcohol content directly
18 as the analysis result or enables it to be derived under
19 subsection (1).
- 20 (3) A device used to conduct a preliminary breath test is to be
21 regarded as being for the purpose of providing an indication of a
22 rail safety worker's BAC, or an indication of whether or not a
23 person has the prescribed BAC, whether the device gives the
24 indication directly or enables it to be derived under
25 subsection (1).

26 **11. Preliminary breath test or breath analysis**

- 27 (1) An authorised person's power under the *Rail Safety National*
28 *Law (WA)* section 126 to require a rail safety worker to submit
29 to testing by means of a preliminary breath test or breath
30 analysis (or both) is subject to this Division.

1 (2) A requirement mentioned in subsection (1) is a direction to the
2 worker as mentioned in the *Rail Safety National Law (WA)*
3 section 126(3).

4 **12. When breath test or breath analysis may be required**

5 (1) An authorised person may require a rail safety worker to submit
6 to a preliminary breath test or breath analysis (or both) —

7 (a) on a random basis — without suspecting the worker has
8 the prescribed BAC; or

9 (b) on a non-random basis — in either or both of the
10 following circumstances —

11 (i) a prescribed notifiable occurrence happens
12 involving the worker;

13 (ii) the authorised person suspects, on reasonable
14 grounds, that the worker has the prescribed BAC.

15 (2) Subsection (1) is subject to sections 13 to 15.

16 **13. Rail safety worker not obliged to comply with requirement**
17 **in certain circumstances**

18 (1) A rail safety worker who is still on railway premises after
19 carrying out rail safety work is not obliged to comply with a
20 requirement made under the *Rail Safety National Law (WA)*
21 section 126(1) if —

22 (a) the worker is not involved in a prescribed notifiable
23 occurrence; and

24 (b) more than 12 hours have passed since the worker carried
25 out the work.

26 (2) A rail safety worker who is involved in a prescribed notifiable
27 occurrence is not obliged to comply with a requirement made
28 under the *Rail Safety National Law (WA)* section 126(1) if —

29 (a) more than 12 hours have passed since the worker was
30 involved in the occurrence; or

- 1 (b) the worker —
2 (i) has completed the work shift and departed from
3 the work shift location; and
4 (ii) was unaware of the occurrence when the worker
5 completed the work shift.

6 **14. Authorised person must not make requirement in certain**
7 **circumstances**

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

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

17 **15. Conduct of breath analysis**

18 (1) An authorised person must not conduct a breath analysis for the
19 purposes of this Division unless the authorised person is —

- 20 (a) a police officer authorised by the Commissioner of
21 Police to use a breath analysis instrument; or
22 (b) any other person authorised by the Regulator to use a
23 breath analysis instrument.

24 (2) An authorised person conducting a breath analysis for the
25 purposes of this Division must use a breath analysis instrument.

26 **16. Further breath analysis**

27 (1) An authorised person may require a rail safety worker to submit
28 to one or more breath analyses whether or not the worker
29 provided a sufficient sample for an earlier analysis.

- 1 (b) on a non-random basis — in either or both of the
2 following circumstances —
- 3 (i) a prescribed notifiable occurrence happens
4 involving the worker;
- 5 (ii) the authorised person suspects, on reasonable
6 grounds, that a prohibited drug is present in the
7 worker's body.

8 (2) Subsection (1) is subject to sections 21 and 22.

9 **20. When urine analysis may be required**

10 (1) An authorised person may require a rail safety worker to submit
11 to urine analysis if a prescribed notifiable occurrence happens
12 involving the worker.

13 (2) Subsection (1) is subject to sections 21 and 22.

14 **21. Rail safety worker not obliged to comply with requirement
15 in certain circumstances**

16 (1) A rail safety worker who is on railway premises after carrying
17 out rail safety work is not obliged to comply with a requirement
18 made under the *Rail Safety National Law (WA)* section 127(1)
19 to submit to a drug screening test, oral fluid analysis or urine
20 analysis (or any combination of these) if —

- 21 (a) the worker is not involved in a prescribed notifiable
22 occurrence; and
- 23 (b) more than 12 hours have passed since the worker carried
24 out the work.

25 (2) A rail safety worker who is involved in a prescribed notifiable
26 occurrence is not obliged to comply with a requirement made
27 under the *Rail Safety National Law (WA)* section 127(1) to
28 submit to a drug screening test, oral fluid analysis or urine
29 analysis (or any combination of these) if —

- 30 (a) more than 12 hours have passed since the worker was
31 involved in the occurrence; or

1 (2) A requirement mentioned in subsection (1) is a direction to the
2 worker as mentioned in the *Rail Safety National Law (WA)*
3 section 127(3).

4 **25. Blood sample after preliminary breath test or breath**
5 **analysis requirement**

6 (1) If a rail safety worker who is required by an authorised person
7 to submit to a preliminary breath test or breath analysis under
8 section 12, or a further breath analysis under section 16(1),
9 refuses or fails to provide a sufficient sample of breath, the
10 authorised person may require the worker to provide a sample
11 of the worker's blood.

12 (2) However, the authorised person cannot require a rail safety
13 worker to provide a sample of his or her blood under
14 subsection (1) if the worker is not obliged to submit to a
15 preliminary breath test or breath analysis as mentioned in
16 section 13.

17 (3) An authorised person may also require a rail safety worker to
18 provide a sample of his or her blood if, as a result of a
19 preliminary breath test under section 12, the authorised person
20 has formed the opinion the worker might have the prescribed
21 BAC and —

22 (a) it is not possible to conduct a breath analysis (for
23 example if there is no authorised person available to
24 operate a breath analysis instrument or if breath analysis
25 is attempted but the instrument malfunctions); or

26 (b) the authorised person did not require the worker to
27 submit to a breath analysis for a reason mentioned in
28 section 14.

1 **26. Blood sample after drug screening, oral fluid analysis or**
2 **urine analysis requirement**

3 An authorised person may require a rail safety worker to
4 provide a sample of the worker's blood in any of the following
5 circumstances —

- 6 (a) if an authorised person requires the worker to submit to
7 a drug screening test, oral fluid analysis or urine analysis
8 and the worker refuses to submit to, or fails to provide a
9 sufficient sample for, the test;
- 10 (b) if, as a result of a drug screening test, oral fluid analysis
11 or urine analysis, the authorised person suspects on
12 reasonable grounds that a prohibited drug is present in
13 the worker's body;
- 14 (c) if the authorised person did not require the worker to
15 submit to a drug screening test, oral fluid analysis or
16 urine analysis for a reason mentioned in section 22;
- 17 (d) if the worker is involved in a prescribed notifiable
18 occurrence.

19 **27. Blood sample if test or analysis fails to explain conduct,**
20 **condition or appearance**

21 An authorised person may require the worker to provide a
22 sample of a rail safety worker's blood if —

- 23 (a) the worker submits to a preliminary breath test, breath
24 analysis, drug screening test, oral fluid analysis or urine
25 analysis; and
- 26 (b) the test or analysis fails to indicate that —
- 27 (i) the worker might have the prescribed BAC; or
28 (ii) a prohibited drug might be present in the
29 worker's body;
- 30 and

- 1 (c) the conduct, condition or appearance of the worker is
2 such as to give rise to a reasonable suspicion that the
3 worker is affected by alcohol or a prohibited drug.

4 **28. Rail safety worker not obliged to comply with requirement**
5 **in certain circumstances**

6 (1) A rail safety worker who is still on railway premises after
7 carrying out rail safety work is not obliged to comply with a
8 requirement made under the *Rail Safety National Law (WA)*
9 section 127(1) to submit to a blood test if —

- 10 (a) the worker is not involved in a prescribed notifiable
11 occurrence; and
12 (b) more than 12 hours have passed since the worker carried
13 out the work.

14 (2) A rail safety worker who is involved in a prescribed notifiable
15 occurrence is not obliged to comply with a requirement made
16 under the *Rail Safety National Law (WA)* section 127(1) to
17 submit to a blood test if —

- 18 (a) more than 12 hours have passed since the worker was
19 involved in the occurrence; or
20 (b) the worker —
21 (i) has completed the work shift and departed from
22 the work shift location; and
23 (ii) was unaware of the occurrence when the worker
24 completed the work shift.

25 **29. Compulsory blood testing following a prescribed notifiable**
26 **occurrence**

27 (1) If a rail safety worker suffers an injury as a result of a
28 prescribed notifiable occurrence and, within 12 hours after the
29 occurrence, the worker attends at, or is admitted to, a hospital to
30 receive treatment for the injury, an authorised person may
31 request a sample taker at the hospital to ensure that a sample of

- 1 the worker’s blood is taken as soon as practicable (even though
2 the worker might be unconscious).
- 3 (2) The sample taker may comply with the request if it is
4 reasonably practicable to do so in the circumstances.
- 5 (3) If a rail safety worker suffers an injury as a result of a
6 prescribed notifiable occurrence and the worker is dead on
7 arrival at the hospital, or dies before a sample of blood has been
8 taken, the medical practitioner who reports the death under the
9 *Coroners Act 1996* section 17 may —
- 10 (a) take a sample of blood from the body of the deceased or
11 cause a sample to be taken; or
- 12 (b) notify the coroner as soon as practicable that, in view of
13 the circumstances in which the death occurred, a sample
14 of blood should be taken from the body of the deceased.
- 15 (4) The coroner, on receipt of notification under subsection (3)(b),
16 may authorise and direct a pathologist to take a sample of blood
17 from the body of the deceased.
- 18 (5) A sample taker is not obliged to take a sample of blood under
19 this section if a sample of blood has previously been taken from
20 the body of the deceased under this section by another sample
21 taker.

Division 5 — Evidence

22
23 **30. Term used: relevant time**

24 In this Division —

25 ***relevant time***, in relation to a person who is a rail safety worker,
26 means —

- 27 (a) if the worker was tested for alcohol or prohibited drugs
28 because of the worker’s involvement in a prescribed
29 notifiable occurrence — the time the occurrence
30 happened; or

- 1 (b) otherwise — the time the worker last carried out rail
2 safety work.

3 **31. Use of test or analysis result in court proceedings**

4 (1) This section applies in any court proceedings in relation to a rail
5 safety worker even if evidence is given in the proceedings that
6 the worker consumed alcohol or a prohibited drug —

- 7 (a) after the relevant time in relation to the worker; and
8 (b) before a preliminary breath test, breath analysis, drug
9 screening test, oral fluid analysis or urine analysis was
10 conducted in relation to the worker or a sample of the
11 worker's blood was taken.

12 (2) If the breath analysis was conducted in relation to the rail safety
13 worker in accordance with this Part, the BAC indicated by the
14 analysis is taken to be the BAC of the person at the relevant
15 time.

16 (3) If more than one breath analysis was conducted, the lower of the
17 BACs indicated is taken to be the BAC of the rail safety worker
18 at the relevant time.

19 (4) If a sample of a rail safety worker's blood was taken under this
20 Part —

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

26 (5) If a sample of a rail safety worker's oral fluid or urine was taken
27 under this Part any prohibited drug detected by an analysis of
28 the sample is taken to have been present in the worker's body at
29 the relevant time.

1 **32. Calculating BAC at relevant time**

- 2 (1) For the purposes of section 31, a rail safety worker's BAC at the
3 relevant time is to be calculated —
- 4 (a) having regard to —
- 5 (i) the time of the worker's last drink containing
6 alcohol taken at or before the relevant time; and
- 7 (ii) the relevant time; and
- 8 (iii) the time at which the sample of the worker's
9 breath or blood was provided or taken for
10 analysis (the time of sampling); and
- 11 (iv) the safety worker's blood alcohol content at the
12 time of sampling;
- 13 and
- 14 (b) so as to give effect to the presumption that after the
15 worker's latest drink containing alcohol the worker's
16 blood alcohol content increases at the rate of 0.016 g of
17 alcohol per 100 ml of blood per hour for a period of
18 2 hours and, after that period, decreases at the rate of
19 0.016 g of alcohol per 100 ml of blood per hour.
- 20 (2) For the purpose of making a calculation under subsection (1) —
- 21 (a) in any case where any one or more of the times referred
22 to in that subsection can only be ascertained as falling
23 within a period of time, the calculation is to be made
24 taking such time within that period as produces the
25 result most favourable to the rail safety worker; and
- 26 (b) in any case where the time of a rail safety worker's last
27 drink containing alcohol is not ascertained, the time of
28 the worker's last drink containing alcohol is to be taken
29 to have been such time as produces the result most
30 favourable to the worker charged.
- 31 (3) The concentration of alcohol calculated to have been present in
32 the blood of a person at any time under this section is

1 conclusively presumed to have been present in the blood of that
2 person at that time.

3 **33. Evidence by certificate**

4 (1) In any court proceedings, a certificate in a form approved by the
5 Minister purporting to be signed by any of the following is
6 prima facie evidence of the matters stated in the certificate and
7 the facts on which they are based —

- 8 (a) the Commissioner of Police — certifying either of the
9 following about a person named in the certificate —
- 10 (i) the person is a police officer authorised to use a
11 breath analysis instrument;
- 12 (ii) the person is an analyst;
- 13 (b) the Regulator — certifying a person named in the
14 certificate is an authorised person;
- 15 (c) an authorised person — certifying any or all of the
16 following —
- 17 (i) the apparatus used by the authorised person was
18 a breath analysis instrument;
- 19 (ii) the breath analysis instrument was in proper
20 order and properly operated;
- 21 (iii) the breath analysis instrument was used in a
22 manner that complied with this Part or the local
23 regulations;
- 24 (iv) a sample of the breath of a rail safety worker
25 named in the certificate was provided for
26 analysis using a breath analysis instrument;
- 27 (v) a concentration of alcohol in breath expressed in
28 grams of alcohol per 210 litres of breath was
29 indicated by the breath analysis instrument as
30 being present in the breath of the rail safety
31 worker named in the certificate on the day and at
32 the time specified in the certificate;

- 1 (vi) a requirement imposed on the authorised person
2 by local regulations has been complied with;
- 3 (d) a member of the staff of a hospital — certifying
4 something arising out of the member’s occupation;
- 5 (e) an analyst, or a person acting under the supervision of
6 an analyst — certifying something arising out of the
7 analyst’s or person’s occupation.
- 8 (2) A certificate certifying anything mentioned in
9 subsection (1)(c), (d) or (e) cannot be received as evidence
10 against a person (the *defendant*) in proceedings for an offence
11 against this Part or the *Rail Safety National Law (WA)* Part 3
12 Division 9 if —
- 13 (a) a copy of the certificate has not been served on the
14 defendant at least 7 days before the commencement of
15 the proceedings; or
- 16 (b) the defendant has, at least 2 days before the
17 commencement of the trial, given to the court written
18 notice requiring the attendance at the trial of the person
19 who signed the certificate; or
- 20 (c) the court requires the person who signed the certificate
21 to attend at the trial.
- 22 (3) For the purposes of subsection (1), the Minister may approve
23 forms of certificates to be used by different persons for different
24 purposes.

25 **Division 6 — Other matters for purposes of this Part**

26 **34. Reports relating to worker’s refusal or failure to comply**
27 **with requirement of authorised person**

- 28 (1) This section applies if a rail safety worker —
- 29 (a) is required by an authorised person to submit to a
30 preliminary breath test or breath analysis and the worker
31 refuses or fails to comply with the requirement; or

1 (b) is required by an authorised person to submit to a drug
2 screening test, oral fluid analysis or urine analysis or to
3 provide a sample of his or her blood and the worker
4 refuses or fails to comply with the requirement.

5 (2) The authorised person must, as soon as practicable, report the
6 refusal or failure to comply with the requirement to —

7 (a) the accredited person for whom the rail safety worker
8 performs rail safety work; and

9 (b) the Regulator.

10 **35. Protection from personal liability for sample takers and**
11 **analysts**

12 A sample taker or an analyst, or a person acting under the
13 supervision of a sample taker or analyst, is not personally liable
14 for anything done or omitted to be done in good faith —

15 (a) in the exercise of a power or the performance of a
16 function under this Part or the *Rail Safety National Law*
17 (*WA*) Part 3 Division 9; or

18 (b) in the reasonable belief that the act or omission was in
19 the exercise of a power or the performance of a function
20 under this Part or the *Rail Safety National Law (WA)*
21 Part 3 Division 9.

22 **36. Self-incrimination no excuse**

23 A person is not entitled to refuse or fail to comply with a
24 requirement or direction relating to the taking of a sample of the
25 person's breath, oral fluid, urine or blood under this Part or the
26 *Rail Safety National Law (WA)* Part 3 Division 9 on the ground
27 the person —

28 (a) would or might, by complying with the requirement or
29 direction, provide evidence that could be used against
30 the person; or

- 1 (b) consumed alcohol or a prohibited drug after the person
2 last performed railway safety work and before the
3 requirement or direction was made or given to him or
4 her.

5 **37. Local regulations**

6 (1) The Governor may make regulations prescribing all matters —

- 7 (a) that are required or permitted under this Part or for the
8 *Rail Safety National Law (WA)* Part 3 Division 9; or
9 (b) that are necessary or convenient for this Part or the *Rail*
10 *Safety National Law (WA)* Part 3 Division 9.

11 (2) Without limiting subsection (1), the regulations may be made
12 for any or all of the following purposes —

- 13 (a) the procedures for, and equipment to be used in —
14 (i) conducting a preliminary breath test, breath
15 analysis, drug screening test, oral fluid analysis
16 or urine analysis; or
17 (ii) taking a blood sample;
18 (b) the destruction of —
19 (i) a sample taken for this Part or the *Rail Safety*
20 *National Law (WA)* Part 3 Division 9; and
21 (ii) any other forensic material taken incidentally for
22 the purposes of this Part or the *Rail Safety*
23 *National Law (WA)* Part 3 Division 9.

1 **Part 4 — Local repeal and transitional provisions**

2 **Division 1 — Preliminary**

3 **38. Terms used**

4 In this Part —

5 *commencement day* means the day on which this section
6 commences.

7 *repealed Act* means the *Rail Safety Act 2010*.

8 **Division 2 — Repeal**

9 **39. Repeal**

10 The *Rail Safety Act 2010* is repealed.

11 **Division 3 — Transitional**

12 **40. Accreditation**

13 (1) In this section —

14 *transitional railway operations* means railway operations in
15 respect of which —

16 (a) immediately before the commencement day,
17 accreditation was not required under the repealed Act;
18 and

19 (b) on and after the commencement day, accreditation is
20 required under the *Rail Safety National Law (WA)*.

21 (2) A rail transport operator who applies for accreditation under the
22 *Rail Safety National Law (WA)* in respect of transitional railway
23 operations during the period of 3 years beginning on the
24 commencement day is, from the time of the application is made
25 until the application is determined, to be taken to hold the
26 accreditation.

- 1 (3) An application for accreditation, or variation of accreditation,
2 made but not determined under the repealed Act immediately
3 before the commencement day, is taken to be an application for
4 accreditation, or variation of accreditation, under the *Rail Safety*
5 *National Law (WA)* and must be determined in accordance with
6 that Law.
- 7 (4) A rail transport operator that, immediately before the
8 commencement day, holds an accreditation under the repealed
9 Act in respect of railway operations carried out by or on behalf
10 of the operator is, on and after the commencement day, taken to
11 hold an accreditation in respect of those railway operations
12 under the *Rail Safety National Law (WA)* subject to any
13 conditions and restrictions that applied to the accreditation
14 under the repealed Act immediately before the commencement
15 day.
- 16 (5) If, immediately before the commencement day, the
17 accreditation, or part of the accreditation, of a rail transport
18 operator has been suspended under the repealed Act, the
19 accreditation under the *Rail Safety National Law (WA)* that the
20 operator is taken to have because of subsection (4) is subject to
21 the same suspension as applied to the accreditation under the
22 repealed Act immediately before the commencement day.

23 **41. Registration**

- 24 (1) A rail infrastructure manager of a private siding that,
25 immediately before the commencement day, is registered under
26 the repealed Act is, on and after the commencement day, taken
27 to be registered under the *Rail Safety National Law (WA)* in
28 respect of the private siding.
- 29 (2) A registration under subsection (1) is subject to conditions or
30 restrictions determined by the Regulator in accordance with
31 subsection (3).

- 1 (3) The conditions or restrictions must be determined by notice to
2 the relevant rail infrastructure manager and must comprise —
- 3 (a) any conditions or restrictions that applied to the
4 registration under the repealed Act (whether or not they
5 are varied by the Regulator); or
- 6 (b) any new conditions or restrictions determined by the
7 Regulator.
- 8 (4) A notice under subsection (3) —
- 9 (a) must be in writing and given to the rail infrastructure
10 manager; and
- 11 (b) if a condition or restriction has been imposed on the
12 registration, must include —
- 13 (i) the reasons for imposing the condition or
14 restriction; and
- 15 (ii) information about the right of review under the
16 *Rail Safety National Law (WA) Part 7.*

17 **42. Police officers continue to be authorised**

- 18 (1) In this section —
- 19 *authorised tester* means an authorised drug tester or authorised
20 person as those terms are defined in the *Road Traffic Act 1974*
21 section 65.
- 22 (2) A police officer who was an authorised tester immediately
23 before the commencement day is, on and after the
24 commencement day, taken to be authorised to use a breath
25 analysis instrument mentioned in section 15(1)(a).

26 **43. Alleged offences against repealed Act**

- 27 (1) Despite the repeal effected by section 39, the repealed Act
28 continues to apply to an offence allegedly committed against
29 that Act before the commencement day as if that Act had not
30 been repealed.

1 (2) For the purposes of this section, if an act or omission
2 constituting an offence against the repealed Act is alleged to
3 have taken place between 2 dates, one before and one on or after
4 the commencement day, the act or omission is taken to be
5 alleged to have taken place before the commencement day.

6 **44. Notifiable occurrences**

7 (1) A report of a notifiable occurrence made under Part 4 Division 6
8 of the repealed Act as in force immediately before the
9 commencement day has effect as if it were a report of that
10 occurrence made under the *Rail Safety National Law (WA)*
11 Part 3 Division 8.

12 (2) An investigation of a notifiable occurrence under Part 4
13 Division 6 of the repealed Act as in force immediately before
14 the commencement day continues as if it were an investigation
15 under the *Rail Safety National Law (WA)* Part 3 Division 8.

16 **45. Notices**

17 (1) An improvement notice in force under Part 5 Division 7 of the
18 repealed Act immediately before the commencement day has
19 effect as if it were an improvement notice under the *Rail Safety*
20 *National Law (WA)* Part 5 Division 1.

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

25 **46. Safety-related systems, agreements, plans, programmes and**
26 **assessments**

27 A system, agreement, plan, programme or assessment in force
28 under Part 4 Division 4 of the repealed Act immediately before
29 the commencement day has effect as if it were a corresponding
30 system, agreement plan, programme or assessment under the
31 *Rail Safety National Law (WA)* Part 3 Division 6.

1 **47. Reviews and appeals**

2 (1) If an application for accreditation, or variation of accreditation,
3 has been refused under the repealed Act and the period within
4 which the applicant could have applied for a review of the
5 decision had that Act not been repealed has not, immediately
6 before the commencement day, expired, the applicant may,
7 before the expiry of that period, apply for a review of the
8 decision under the *Rail Safety National Law (WA)* as if the
9 decision had been made under the Law.

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

17 **48. Provision of information and assistance by Director of Rail**
18 **Safety**

19 Despite any other Act or law, the Director of Rail Safety under
20 the repealed Act is authorised, on his or her own initiative or at
21 the request of ONRSR —

22 (a) to provide ONRSR with any information (including
23 information given in confidence) in the possession or
24 control of the Director that is reasonably required by
25 ONRSR for the local application provisions of this Act
26 or the *Rail Safety National Law (WA)*; and

27 (b) to provide ONRSR with any other assistance that is
28 reasonably required by ONRSR to perform or exercise a
29 function or power under the local application provisions
30 of this Act or the *Rail Safety National Law (WA)*.

31 **49. Funds in, or payable to, Rail Safety Accreditation Account**

32 (1) On the commencement day any moneys standing to the credit of
33 the Rail Safety Accreditation Account referred to in section 43

1 of the repealed Act (the *former account*) are to be credited to
2 the Consolidated Account and the former account is then to be
3 closed.

4 (2) The Consolidated Account is to be credited with any money that
5 became payable to the former account before the
6 commencement day and that is paid after that day.

7 **50. Transitional regulations**

8 (1) If there is no sufficient provision in this Act for dealing with a
9 transitional matter the Governor may make regulations
10 prescribing all matters that are required, necessary or convenient
11 to be prescribed in relation to that matter.

12 (2) Regulations made under subsection (1) may provide that
13 specific provisions of the *Rail Safety National Law (WA)* —

- 14 (a) do not apply; or
15 (b) apply with specific modifications,

16 to or in relation to any matter.

17 (3) If regulations made under subsection (1) provide that a specified
18 state of affairs is to be taken to have existed, or not to have
19 existed, on and from a day that is earlier than the day on which
20 the regulations are published in the *Gazette* but not earlier than
21 the day on which section 2 commenced, the regulations have
22 effect according to their terms.

23 (4) In subsection (3) —
24 *specified* means specified or described in the regulations.

25 (5) If regulations contain a provision referred to in subsection (3),
26 the provision does not operate so as —

- 27 (a) to affect in a manner prejudicial to any person (other
28 than the State or an authority of the State), the rights of
29 that person existing before the day of publication of
30 those regulations; or

Rail Safety National Law (WA) Bill 2014

Part 4 Local repeal and transitional provisions

Division 3 Transitional

s. 50

- 1 (b) to impose liabilities on any person (other than the State
2 or an authority of the State) in respect of anything done
3 or omitted to be done before the day of publication of
4 those regulations.
- 5 (6) Regulations made under this section must be made within
6 12 months after the day on which this section commenced.

Part 5 — Consequential amendments

51. Various references to “*Rail Safety Act 2010*” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “*Rail Safety Act 2010*” and insert:

Rail Safety National Law (WA) Act 2014

Table

<i>Government Railways Act 1904</i>	s. 2A s. 13(1a)(d) s. 61(5)
<i>Mines Safety and Inspection Act 1994</i>	s. 7(2)
<i>Personal Property Securities (Commonwealth Laws) Act 2011</i>	s. 17(1) def. of relevant State property law par. (d)
<i>Public Transport Authority Act 2003</i>	s. 3 def. of train s. 4(1)(a)
<i>Rail Freight System Act 2000</i>	s. 9(1)(a)
<i>Railways (Access) Act 1998</i>	s. 8

Notes:

- 1. In the *Government Railways Act 1904*, the heading to amended section 2A is to read:
Relationship of this Act to *Rail Safety National Law (WA) Act 2014*
- 2. In the *Railways (Access) Act 1998*, the heading to amended section 8 is to read:
Code is subject to *Rail Safety National Law (WA) Act 2014*

1 **Schedule — Rail Safety National Law**

2 [s. 4]

3 **Part 1 — Preliminary**

4 **1. Short title**

5 This Law may be cited as the *Rail Safety National Law*.

6 **2. Commencement**

7 This Law commences in a participating jurisdiction as provided by the
8 application Act of the jurisdiction.

9 **3. Purpose, objects and guiding principles of Law**

10 (1) The main purpose of this Law is to provide for safe railway operations
11 in Australia.

12 (2) The objects of this Law are —

- 13 (a) to establish the Office of the National Rail Safety Regulator
14 (the *ONRSR*); and
- 15 (b) to make provision for the appointment, functions and powers
16 of the National Rail Safety Regulator (the *Regulator*); and
- 17 (c) to make provision for a national system of rail safety,
18 including by providing a scheme for national accreditation of
19 rail transport operators in respect of railway operations; and
- 20 (d) to provide for the effective management of safety risks
21 associated with railway operations; and
- 22 (e) to provide for the safe carrying out of railway operations; and
- 23 (f) to provide for continuous improvement of the safe carrying
24 out of railway operations; and
- 25 (g) to make special provision for the control of particular risks
26 arising from railway operations; and
- 27 (h) to promote public confidence in the safety of transport of
28 persons or freight by rail; and
- 29 (i) to promote the provision of advice, information, education
30 and training for safe railway operations; and

- 1 **application Act** means the Act of a jurisdiction that applies the Rail
2 Safety National Law set out in the Schedule to the *Rail Safety*
3 *National Law (South Australia) Act 2012* of South Australia as a law
4 of the jurisdiction;
- 5 **approved code of practice** means a code of practice approved under
6 section 249;
- 7 **AQF** means the Australian Qualifications Framework within the
8 meaning of the *Skilling Australia's Workforce Act 2005* of the
9 Commonwealth;
- 10 **AQTF** means the Australian Quality Training Framework within the
11 meaning of the *Skilling Australia's Workforce Act 2005* of the
12 Commonwealth;
- 13 **associated railway track structures** includes —
- 14 (a) associated works (such as cuttings, sidings, tunnels, bridges,
15 stations, platforms, tram stops, excavations, land fill, track
16 support earthworks and drainage works); and
- 17 (b) over-track structures and under-track structures (including
18 tunnels under-tracks);
- 19 **Australian Accounting Standards** means Accounting Standards
20 issued by the Australian Accounting Standards Board;
- 21 **Australian rail safety law** means this Law or a corresponding
22 previous enactment in a participating jurisdiction corresponding, or
23 substantially corresponding, to this Law;
- 24 **authorised person** means —
- 25 (a) a police officer; or
26 (b) a person appointed under section 124;
- 27 **Category 1 offence** — see section 58;
- 28 **Category 2 offence** — see section 59;
- 29 **Category 3 offence** — see section 60;
- 30 **commercial benefits order** means an order under section 230;
- 31 **designated provision** of this Law — see section 204;
- 32 **drug** means —
- 33 (a) a substance declared by the national regulations to be a drug
34 for the purposes of this Law; and

- 1 (b) that is, or is of a class that is, prescribed by the national
2 regulations to be a notifiable occurrence or class of notifiable
3 occurrence,
4 but does not include an accident or incident, or class of accident or
5 incident, that is prescribed by the national regulations not to be a
6 notifiable occurrence;
- 7 ***occupational health and safety legislation*** means legislation relating
8 to occupational health and safety prescribed by the national
9 regulations for the purposes of this definition;
- 10 ***Office of the National Rail Safety Regulator*** or ***ONRSR*** means the
11 Office of the National Rail Safety Regulator established under Part 2
12 Division 1;
- 13 ***officer*** —
- 14 (a) in relation to a body corporate, has the same meaning as
15 officer has in relation to a corporation under section 9 of the
16 *Corporations Act 2001* of the Commonwealth;
- 17 (b) in relation to any other person, means an individual who
18 makes, or participates in making, decisions that affect the
19 whole, or a substantial part, of the business or undertaking of
20 the person;
- 21 ***participating jurisdiction*** means a jurisdiction in which —
- 22 (a) this Law applies as a law of the jurisdiction; or
23 (b) a law that substantially corresponds to the provisions of this
24 Law has been enacted; or
25 (c) a law prescribed by the national regulations for the purposes
26 of this definition has been enacted;
- 27 ***prescribed drug*** — see section 128;
- 28 ***private siding*** means a siding that is owned, controlled or managed by
29 a person, other than a person who manages the rail infrastructure with
30 which the siding connects or to which it has access, but does not
31 include —
- 32 (a) a marshalling yard; or
33 (b) a crossing loop; or
34 (c) a passenger terminal; or
35 (d) a freight terminal; or

- 1 ***rail infrastructure manager***, in relation to rail infrastructure of a
2 railway, means the person who has effective control and management
3 of the rail infrastructure, whether or not the person —
- 4 (a) owns the rail infrastructure; or
5 (b) has a statutory or contractual right to use the rail
6 infrastructure or to control, or provide, access to it;
- 7 ***rail or road crossing*** includes a railway crossing, a bridge carrying a
8 road over a railway and a bridge carrying a railway over a road;
- 9 ***rail safety officer*** means a person holding an appointment as a rail
10 safety officer under Part 4 Division 2;
- 11 ***rail safety undertaking*** — see Part 10 Division 6;
- 12 ***rail safety work*** — see section 8;
- 13 ***rail safety worker*** means an individual who has carried out, is
14 carrying out, or is about to carry out, rail safety work;
- 15 ***rail transport operator*** means —
- 16 (a) a rail infrastructure manager; or
17 (b) a rolling stock operator; or
18 (c) a person who is both a rail infrastructure manager and a
19 rolling stock operator;
- 20 ***rail workplace*** means a place where rail safety work is carried out,
21 and includes any place where a rail safety worker goes, or is likely to
22 be, while doing rail safety work;
- 23 ***railway*** means a guided system, or proposed guided system, designed
24 for the movement of rolling stock having the capability of
25 transporting passengers or freight (or both) on a railway track with a
26 gauge of 600 millimetres or more, together with its rail infrastructure
27 and rolling stock, and includes the following:
- 28 (a) a heavy railway;
29 (b) a light railway;
30 (c) a monorail;
31 (d) an inclined railway;
32 (e) a tramway;
33 (f) a railway within a marshalling yard or a passenger or freight
34 terminal;

- 1 (e) premises (including an office, building or housing) used in
2 connection with the carrying out of railway operations; or
- 3 (f) rolling stock or other vehicles associated with railway
4 operations; or
- 5 (g) any other rail workplace;
- 6 **reasonably practicable** — see section 47;
- 7 **Register** means the National Rail Safety Register established under
8 section 42;
- 9 **registered person** means a rail infrastructure manager who is
10 registered under this Law, but does not include a person whose
11 registration under this Law —
- 12 (a) has been surrendered or revoked or has otherwise ceased to
13 have effect under this Law; or
- 14 (b) is suspended under this Law;
- 15 **Regulator** means the National Rail Safety Regulator or an Acting
16 National Rail Safety Regulator appointed under Part 2 Division 2;
- 17 **responsible Minister**, for a participating jurisdiction, means the
18 Minister of that jurisdiction nominated by that jurisdiction as its
19 responsible Minister for the purposes of this Law;
- 20 **road infrastructure** includes —
- 21 (a) a road, including its surface or pavement; and
- 22 (b) anything under or supporting a road or its surface or
23 pavement; and
- 24 (c) any bridge, tunnel, causeway, road-ferry, ford or other work
25 or structure forming part of a road system or supporting a
26 road; and
- 27 (d) any bridge or other work or structure located above, in or on a
28 road; and
- 29 (e) any traffic control devices, electricity equipment, emergency
30 telephone systems or any other facilities (whether of the same
31 or a different kind) in, on, over, under or connected with
32 anything referred to in paragraphs (a) to (d); and

1 (f) anything prescribed by the national regulations to be road
2 infrastructure,
3 but does not include rail infrastructure or anything that is prescribed
4 by the national regulations not to be road infrastructure;

5 **road manager** —

6 (a) in relation to a private road — means the owner, or other
7 person responsible for the care, control and management, of
8 the road; or

9 (b) in relation to a public road — means an authority, person or
10 body responsible for the care, control or management of the
11 road;

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

18 **rolling stock operator** means a person who has effective control and
19 management of the operation or movement of rolling stock on rail
20 infrastructure for a railway, but does not include a person by reason
21 only that the person drives the rolling stock or controls the network or
22 the network signals;

23 **running line** means a railway track used primarily for the through
24 movement of trains;

25 **safety** means the safety of people, including rail safety workers,
26 passengers, other users of railways, users of rail or road crossings and
27 the general public;

28 **safety duty** — see section 57;

29 **safety management system** — see Part 3 Division 6;

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

33 **South Australian Minister** means the responsible Minister for South
34 Australia;

- 1 **substance** means substance in any form (whether gaseous, liquid,
2 solid or other), and includes material, preparation, extract and
3 admixture;
- 4 **supervisory intervention order** — see section 231;
- 5 **supply** includes —
- 6 (a) in relation to goods — supply or resupply by way of sale,
7 exchange, lease, hire or hire purchase, whether as principal or
8 agent; or
- 9 (b) in relation to services — provide, grant or confer, whether as
10 principal or agent;
- 11 **Territory** means the Australian Capital Territory or the Northern
12 Territory;
- 13 **this Law** means —
- 14 (a) this Law as it applies as a law of a participating jurisdiction;
15 or
- 16 (b) a law of a participating jurisdiction that —
- 17 (i) substantially corresponds to the provisions of this
18 Law; or
- 19 (ii) is prescribed by the national regulations for the
20 purposes of paragraph (c) of the definition of
21 **participating jurisdiction**;
- 22 **train** means —
- 23 (a) 2 or more units of rolling stock coupled together, at least 1 of
24 which is a locomotive or other self propelled unit; or
- 25 (b) a unit of rolling stock that is a locomotive or other self
26 propelled unit;
- 27 **train safety recording** — see section 130;
- 28 **union** means —
- 29 (a) an employee organisation that is registered, or taken to be
30 registered, under the *Fair Work (Registered Organisations)*
31 *Act 2009* of the Commonwealth; or
- 32 (b) an association of employees or independent contractors (or
33 both) that is registered or recognised as such an association
34 (however described) under a State or Territory industrial law.

- 1 **7. Railways to which this Law does not apply**
- 2 (1) This Law does not apply to or in relation to —
- 3 (a) a railway in a mine that is underground, or chiefly
4 underground, and that is used in connection with the
5 performance of mining operations; or
- 6 (b) a slipway; or
- 7 (c) a railway used only to guide a crane; or
- 8 (d) an aerial cable operated system; or
- 9 (e) a railway used only by a horse-drawn tram; or
- 10 (f) a railway used only for a static display; or
- 11 (g) any other railway, or class of railway, prescribed by the
12 national regulations to be a railway, or railway of a class, to
13 which this Law does not apply.
- 14 (2) This Law does not apply to or in relation to the following railways —
- 15 (a) a railway that —
- 16 (i) is privately owned and operated as a hobby; and
- 17 (ii) is operated only on private property; and
- 18 (iii) does not operate on or cross a public road; and
- 19 (iv) is not operated for hire or reward, or provided on hire
20 or lease; and
- 21 (v) to which members of the public do not have access
22 (whether by invitation or otherwise);
- 23 (b) a railway that —
- 24 (i) is used only for the purposes of an amusement
25 structure; and
- 26 (ii) is operated only within an amusement park; and
- 27 (iii) does not operate on or cross a public road; and
- 28 (iv) is not connected with another railway in respect of
29 which a rail transport operator is required to be
30 accredited or registered under this Law.
- 31 (3) Despite subsection (2)(b), the national regulations may prescribe a
32 specified railway of a class referred to in that paragraph to be a
33 railway to which or in relation to which this Law applies.

- 1 (j) work involving the development, management or monitoring
2 of safe working systems for railways;
- 3 (k) work involving the management or monitoring of passenger
4 safety on, in or at any railway;
- 5 (l) any other work that is prescribed by the national regulations
6 to be rail safety work.
- 7 (2) For the purposes of this Law, *rail safety work* does not include any
8 work, or any class of work, prescribed by the national regulations not
9 to be rail safety work.
- 10 **9. Single national entity**
- 11 (1) It is the intention of the Parliament of this jurisdiction that this Law as
12 applied by an Act of this jurisdiction, together with this Law as
13 applied by Acts of the other participating jurisdictions, has the effect
14 that an entity established by this Law is 1 single national entity, with
15 functions conferred by this Law as so applied.
- 16 (2) An entity established by this Law has power to do acts in or in
17 relation to this jurisdiction in the exercise of a function expressed to
18 be conferred on it by this Law as applied by Acts of each participating
19 jurisdiction.
- 20 (3) An entity established by this Law may exercise its functions in
21 relation to —
- 22 (a) 1 participating jurisdiction; or
23 (b) 2 or more or all participating jurisdictions collectively.
- 24 (4) In this section, a reference to this Law as applied by an Act of a
25 jurisdiction includes —
- 26 (a) a reference to a law that substantially corresponds to this Law
27 enacted in a jurisdiction; and
28 (b) a law prescribed by the national regulations for the purposes
29 of the definition of a *participating jurisdiction*.

1 **10. Extraterritorial operation of Law**

2 It is the intention of the Parliament of this jurisdiction that the
3 operation of this Law is to, as far as possible, include operation in
4 relation to the following —

- 5 (a) things situated in or outside the territorial limits of this
6 jurisdiction;
- 7 (b) acts, transactions and matters done, entered into or occurring
8 in or outside the territorial limits of this jurisdiction;
- 9 (c) things, acts, transactions and matters (wherever situated,
10 done, entered into or occurring) that would, apart from this
11 Law, be governed or otherwise affected by the law of another
12 jurisdiction.

13 **11. Crown to be bound**

- 14 (1) This Law binds the Crown, in right of this jurisdiction and, insofar as
15 the legislative power of the Parliament of this jurisdiction permits, the
16 Crown in all its other capacities.
- 17 (2) No criminal liability attaches to the Crown itself (as distinct from its
18 agents, instrumentalities, officers and employees) under this Law.

19 **Part 2 — Office of the National Rail Safety Regulator**

20 **Division 1 — Establishment, functions, objectives, etc**

21 **12. Establishment**

- 22 (1) The Office of the National Rail Safety Regulator (**ONRSR**) is
23 established.
- 24 (2) ONRSR —
- 25 (a) is a body corporate with perpetual succession; and
26 (b) has a common seal; and
27 (c) may sue and be sued in its corporate name.
- 28 (3) ONRSR represents the Crown.

1 **13. Functions and objectives**

2 (1) In addition to any other function conferred on ONRSR by this Law or
3 an Act, ONRSR has the following functions —

- 4 (a) to administer, audit and review the accreditation regime under
5 this Law;
- 6 (b) to work with rail transport operators, rail safety workers, and
7 others involved in railway operations, to improve rail safety
8 nationally;
- 9 (c) to conduct research, collect and publish information relating
10 to rail safety;
- 11 (d) to provide, or facilitate the provision of, advice, education
12 and training in relation to rail safety;
- 13 (e) to monitor, investigate and enforce compliance with this Law;
- 14 (f) to engage in, promote and coordinate the sharing of
15 information to achieve the objects of this Law, including the
16 sharing of information with a prescribed authority;
- 17 (g) at the request of the Commonwealth or a jurisdiction — to
18 carry out any other function as agreed between ONRSR and
19 the jurisdiction.

20 (2) In exercising its functions, ONRSR must —

- 21 (a) facilitate the safe operations of rail transport in Australia; and
22 (b) exhibit independence, rigour and excellence in carrying out
23 its regulatory functions; and
24 (c) promote safety and safety improvement as a fundamental
25 objective in the delivery of rail transport in Australia.

26 (3) In this section —

27 ***prescribed authority*** means —

- 28 (a) the Australian Transport Safety Bureau established under the
29 *Transport Safety Investigation Act 2003* of the
30 Commonwealth; and
31 (b) any other relevant authority established under a law of a
32 participating jurisdiction.

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Subdivision 2 — National Rail Safety Regulator

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17. Appointment of Regulator

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(1) A person may be appointed as the National Rail Safety Regulator who is qualified for appointment because the person has a high level of expertise in 1 or more areas relevant to ONRSR's functions.

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(2) The Regulator will be appointed for a term not exceeding 5 years on terms and conditions determined by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers.

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(3) The Regulator is entitled to be paid the remuneration and allowances decided by the South Australian Minister acting on the unanimous recommendation of the responsible Ministers from time to time.

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(4) In setting the remuneration and allowances for the Regulator, regard must be had to relevant rates (if any) published by the Remuneration Tribunal of the Commonwealth from time to time.

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(5) At the expiration of a term of appointment, the Regulator will be eligible for reappointment.

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(6) The conditions of appointment of the Regulator must not, without the consent of the Regulator, be varied while the Regulator is in office so as to become less favourable to the Regulator.

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(7) The Regulator must not engage, without the written consent of the South Australian Minister acting on the unanimous recommendation of the responsible Ministers, in any other remunerated employment.

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18. Acting National Rail Safety Regulator

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(1) The South Australian Minister may appoint an Acting National Rail Safety Regulator (who may, or may not, be a non-executive member or a member of the staff of ONRSR) to act in the office of the Regulator and a person so appointed has, while so acting, all the functions and powers of the Regulator.

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(2) An Acting Regulator may act in the office of the Regulator —

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(a) during a vacancy in the office of the Regulator (whether or not an appointment has previously been made to the office);
or

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- 1 (2) The Regulator may, by written notice served on the person, require
2 the person to do 1 or more of the following —
- 3 (a) to give the Regulator in writing signed by the person (or in
4 the case of a body corporate, by a competent officer of the
5 body corporate) and within the time and in the manner
6 specified in the notice, that information of which the person
7 has knowledge;
- 8 (b) to produce to the Regulator, in accordance with the notice,
9 those documents;
- 10 (c) to appear before a person appointed by the Regulator on a
11 day, and at a time and place, specified in the notice (being a
12 day, time and place that are reasonable in the circumstances)
13 and give either orally or in writing that evidence and produce
14 those documents.
- 15 (3) The notice must —
- 16 (a) state that the requirement is made under this section; and
17 (b) contain a statement to the effect that a failure to comply with
18 a requirement is an offence; and
19 (c) if the notice requires the person to provide information or
20 documents or answer questions —
- 21 (i) contain a statement about the effect of sections 155
22 and 245; and
23 (ii) state that the person may attend with a legal
24 practitioner.
- 25 (4) The Regulator must not make a requirement under subsection (2)(c)
26 unless the Regulator has taken all reasonable steps to obtain the
27 information under subsections (2)(a) and (b) and has been unable to
28 do so.
- 29 (5) A person must not, without reasonable excuse, fail to comply with a
30 requirement under this section.
- 31 Maximum penalty:
- 32 (a) in the case of an individual — \$10 000;
33 (b) in the case of a body corporate — \$50 000.
- 34 (6) Subsection (5) places an evidential burden on the accused to show a
35 reasonable excuse.

- 1 Ministers consider renders the member unfit to continue to
2 hold the office of member; or
- 3 (d) becomes bankrupt, applies to take the benefit of any law for
4 the relief of bankrupt or insolvent debtors, compounds with
5 the member's creditors or makes an assignment of the
6 member's remuneration for their benefit; or
- 7 (e) is absent, without leave first being granted by the relevant
8 entity from 3 or more consecutive meetings of ONRSR of
9 which reasonable notice has been given to the member
10 personally or by post; or
- 11 (f) is removed from office by the South Australian Minister
12 under this section; or
- 13 (g) dies.
- 14 (2) The South Australian Minister may remove a member of ONRSR
15 from office if the responsible Ministers recommend the removal of the
16 member on the basis that the member has engaged in misconduct or
17 has failed to or is unable to properly exercise the member's functions
18 as a member of ONRSR.
- 19 (3) In this section —
20 *relevant entity* means —
- 21 (a) for the Regulator — the responsible Ministers; or
22 (b) for a non-executive member — the Regulator.
- 23 **23. Member to give responsible Ministers notice of certain events**
- 24 A member of ONRSR must, within 7 days of either of the following
25 events occurring, give the responsible Ministers notice of the event —
- 26 (a) the member is convicted of an offence;
27 (b) the member becomes bankrupt, applies to take the benefit of
28 any law for the relief of bankrupt or insolvent debtors,
29 compounds with the member's creditors or makes an
30 assignment of the member's remuneration for their benefit.
- 31 **24. Extension of term of office during vacancy in membership**
- 32 (1) If the office of a member of ONRSR becomes vacant because the
33 member has completed the member's term of office, the member is

- 1 decision of ONRSR with respect to any matter that is, or may be,
2 affected by the conflict, unless —
- 3 (a) for the Regulator, the responsible Ministers otherwise decide;
4 or
- 5 (b) for a non-executive member, ONRSR otherwise decides.
- 6 (5) For the purposes of the making of a decision by ONRSR under
7 subsection (4) in relation to a matter, a member of ONRSR who has a
8 direct or indirect pecuniary or other interest that conflicts or may
9 conflict with the exercise of the member's functions as a member with
10 respect to the matter must not —
- 11 (a) be present during any deliberation of ONRSR for the purpose
12 of making the decision; or
- 13 (b) take part in the making of the decision by ONRSR.
- 14 (6) A contravention of this section does not invalidate any decision of
15 ONRSR but if ONRSR becomes aware a member of ONRSR
16 contravened this section, ONRSR must reconsider any decision made
17 by ONRSR in which the member took part in contravention of this
18 section.

19 **Division 3 — Procedures**

20 **27. Times and places of meetings**

- 21 (1) The Regulator must hold such meetings as he or she considers
22 necessary for the efficient exercise of ONRSR's functions.
- 23 (2) Meetings are to be held at such times and places as the Regulator
24 decides.

25 **28. Conduct of meetings**

- 26 (1) The Regulator is to preside at all meetings of ONRSR at which he or
27 she is present.
- 28 (2) If the Regulator is not present at a meeting, a person appointed to act
29 as the Regulator must be present and preside.
- 30 (3) A quorum of ONRSR consists of 2 members.
- 31 (4) A decision supported by a majority of the votes cast at a meeting of
32 ONRSR at which a quorum is present is the decision of ONRSR.

- 1 (3) Without limiting subsection (2), an authority may be given so as to
2 authorise 2 or more persons to execute documents jointly on behalf of
3 ONRSR.
- 4 (4) A document is duly executed by ONRSR if —
5 (a) the common seal of ONRSR is affixed to the document in
6 accordance with this section; or
7 (b) the document is signed on behalf of ONRSR by a person or
8 persons in accordance with an authority conferred under this
9 section.
- 10 (5) Where an apparently genuine document purports to bear the common
11 seal of ONRSR, it will be presumed in any legal proceedings, in the
12 absence of proof to the contrary, that the common seal of ONRSR has
13 been duly affixed to that document.

14 **Division 4 — Finance**

15 **32. Establishment of Fund**

- 16 (1) The National Rail Safety Regulator Fund is established.
17 (2) The Fund is to be administered by ONRSR.
18 (3) ONRSR may establish accounts with any financial institution for
19 money in the Fund.
20 (4) The Fund does not form part of the consolidated fund or consolidated
21 account of a participating jurisdiction or the Commonwealth.

22 **33. Payments into Fund**

23 There is payable into the Fund —

- 24 (a) all money appropriated by the Parliament of any participating
25 jurisdiction or the Commonwealth for the purposes of the
26 Fund; and
27 (b) all fees, charges, costs and expenses paid to or recovered by
28 ONRSR under this Law; and
29 (c) the proceeds of the investment of money in the Fund; and
30 (d) all grants, gifts and donations made to ONRSR, but subject to
31 any trusts declared in relation to the grants, gifts or donations;
32 and

- 1 (d) ensure its procedures, including internal control procedures,
2 afford adequate safeguards with respect to —
3 (i) the correctness, regularity and propriety of payments
4 made from the Fund; and
5 (ii) receiving and accounting for payments made to the
6 Fund; and
7 (iii) prevention of fraud or mistake;
8 and
9 (e) take any action necessary to ensure the preparation of
10 accurate financial statements in accordance with Australian
11 Accounting Standards for inclusion in its annual report; and
12 (f) take any action necessary to facilitate the audit of those
13 financial statements under this Law; and
14 (g) arrange for any further audit by a qualified person of the
15 books and records kept by ONRSR in relation to the Fund, if
16 directed to do so by the responsible Ministers.

17 **Division 5 — Staff**

18 **37. Chief executive**

- 19 (1) The Regulator is the chief executive of ONRSR responsible for —
20 (a) the day to day management of ONRSR; and
21 (b) carrying out any other function conferred on the chief
22 executive under this Law, an Act or by ONRSR.
23 (2) The chief executive must act consistently with the policies determined
24 by ONRSR.

25 **38. Staff**

- 26 (1) ONRSR may, for the purpose of exercising its functions, employ
27 staff.
28 (2) The staff of ONRSR are to be employed on the terms and conditions
29 decided by ONRSR from time to time.
30 (3) Subsection (2) is subject to any relevant industrial award or agreement
31 that applies to the staff.

- 1 (2) The Regulator must ensure that the following matters are recorded in
2 the Register —
- 3 (a) the accreditation of a rail transport operator under Part 3
4 Division 4;
- 5 (b) the variation, cancellation, suspension or expiry of the
6 accreditation of a rail transport operator under Part 3
7 Division 4;
- 8 (c) the registration of a rail infrastructure manager of a private
9 siding under Part 3 Division 5;
- 10 (d) the variation, cancellation, suspension or expiry of the
11 registration of a rail infrastructure manager of a private siding
12 under Part 3 Division 5;
- 13 (e) an exemption from this Law or specified provisions of this
14 Law conferred on a person and details of the exemption;
- 15 (f) a decision to accept a rail safety undertaking and the reasons
16 for that decision under Part 10 Division 6;
- 17 (g) a decision to withdraw or vary a rail safety undertaking under
18 Part 10 Division 6;
- 19 (h) the issuing of an improvement notice to a person;
- 20 (i) the variation, cancellation or expiry of an improvement
21 notice;
- 22 (j) the issuing of a prohibition notice to a person;
- 23 (k) the variation, cancellation or expiry of a prohibition notice;
- 24 (l) the issuing of a non-disturbance notice to a person;
- 25 (m) the variation, cancellation or expiry of a non-disturbance
26 notice;
- 27 (n) any other matter that is prescribed in the national regulations
28 to be included in the Register.
- 29 (3) The Register will be kept in the form of a computer record and
30 published on ONRSR's website.
- 31 (4) The Register is to be available for inspection, without fee, during
32 ordinary office hours at a public office, or public offices, determined
33 by the Regulator.

1 (5) The responsible Ministers may extend, or further extend, the period
2 for submission of an annual report to the responsible Ministers by a
3 total period of up to 3 months.

4 (6) As soon as practicable after the annual report has been tabled in at
5 least 1 House of the Parliament of a participating jurisdiction, the
6 Regulator must publish a copy of the report on ONRSR's website.

7 **44. Other reporting requirements**

8 The national regulations may require ONRSR to deliver to a
9 prescribed body or person, at prescribed intervals, a report containing
10 prescribed matters.

11 **45. Delegation**

12 (1) ONRSR may delegate to a body or person (including a person for the
13 time being holding or acting in a specified office or position) a
14 function or power of ONRSR under this Law or an Act.

15 (2) The Regulator may delegate to a body or person (including a person
16 for the time being holding or acting in a specified office or position) a
17 function or power of the Regulator under this Law or an Act.

18 (3) A function or power delegated under this section may, if the
19 instrument of delegation so provides, be further delegated.

20 **Part 3 — Regulation of rail safety**

21 **Division 1 — Interpretation**

22 **46. Management of risks**

23 A duty imposed on a person under this Law to ensure, so far as is
24 reasonably practicable, safety requires the person —

25 (a) to eliminate risks to safety so far as is reasonably practicable;
26 and

27 (b) if it is not reasonably practicable to eliminate risks to safety,
28 to minimise those risks so far as is reasonably practicable.

1 **47. Meaning of reasonably practicable**

2 In this Part —

3 *reasonably practicable*, in relation to a duty to ensure safety, means
4 that which is (or was at a particular time) reasonably able to be done
5 in relation to ensuring safety, taking into account and weighing up all
6 relevant matters, including —

- 7 (a) the likelihood of the hazard or the risk concerned occurring;
8 and
- 9 (b) the degree of harm that might result from the hazard or the
10 risk; and
- 11 (c) what the person concerned knows, or ought reasonably to
12 know, about —
- 13 (i) the hazard or the risk; and
14 (ii) ways of eliminating or minimising the risk;
- 15 and
- 16 (d) the availability and suitability of ways to eliminate or
17 minimise the risk; and
- 18 (e) after assessing the extent of the risk and the available ways of
19 eliminating or minimising the risk — the cost associated with
20 available ways of eliminating or minimising the risk
21 (including whether the cost is grossly disproportionate to the
22 risk).

23 **Division 2 — Occupational health and safety and railway operations**

24 **48. Relationship between this Law and OHS legislation**

25 (1) If a provision of the occupational health and safety legislation applies
26 to railway operations, that provision continues to apply, and must be
27 observed, in addition to this Law.

28 (2) If a provision of this Law is inconsistent with a provision of the
29 occupational health and safety legislation, the provision of the
30 occupational health and safety legislation prevails to the extent of any
31 inconsistency.

32 Note: For example, if a provision of this Law deals with a certain matter and
33 a provision of the occupational health and safety legislation deals with
34 the same matter and it is impossible to comply with both provisions, a

1 person must comply with the occupational health and safety legislation
2 and not with this Law. If provisions of both this Law and the
3 occupational health and safety legislation deal with the same matter
4 but it is possible to comply with both provisions, a person must comply
5 with both.

6 (3) Compliance with this Law or with any requirement imposed under
7 this Law is not in itself a defence in any proceedings for an offence
8 against the occupational health and safety legislation.

9 (4) Evidence of a relevant contravention of this Law is admissible in any
10 proceedings for an offence against the occupational health and safety
11 legislation.

12 **49. No double jeopardy**

13 Where an act or omission constitutes an offence —

14 (a) under this Law; and

15 (b) under the occupational health and safety legislation,

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

18 **Division 3 — Rail safety duties**

19 **Subdivision 1 — Principles**

20 **50. Principles of shared responsibility, accountability, integrated risk**
21 **management, etc**

22 (1) Rail safety is the shared responsibility of —

23 (a) rail transport operators; and

24 (b) rail safety workers; and

25 (c) other persons who —

26 (i) design, commission, construct, manufacture, supply,
27 install, erect, maintain, repair, modify or
28 decommission rail infrastructure or rolling stock; or

29 (ii) supply rail infrastructure operations or rolling stock
30 operations to rail operators; or

- 1 (iii) in relation to the transport of freight by railway —
2 load or unload freight on or from rolling stock;
3 and
4 (d) the Regulator; and
5 (e) ONRSR; and
6 (f) the public.
- 7 (2) The level and nature of responsibility that a person referred to in
8 subsection (1), or falling within a class of person referred to in that
9 subsection, has for rail safety is dependent on the nature of the risk to
10 rail safety that the person creates from the carrying out of an activity
11 (or the making of a decision) and the capacity that person has to
12 control, eliminate or mitigate those risks.
- 13 (3) The persons and classes of persons referred to in subsection (1)
14 should —
15 (a) participate in or be able to participate in; and
16 (b) be consulted on; and
17 (c) be involved in the formulation and implementation of,
18 measures to manage risks to safety associated with railway operations.
- 19 (4) Managing risks associated with the carrying out of rail infrastructure
20 operations or rolling stock operations is the responsibility of the
21 person best able to control those risks.
- 22 (5) If approaches to managing risks associated with any particular railway
23 have potential impacts on any other railway or a railway network of
24 which the railway is a part, the best practicable rail safety outcome
25 should be sought.
- 26 **51. Principles applying to rail safety duties**
- 27 (1) A duty under this Law cannot be transferred to another person.
- 28 (2) A person can have more than 1 duty under this Law by virtue of being
29 in more than 1 class of duty holder.
- 30 (3) More than 1 person can concurrently have the same duty under this
31 Law and each duty holder must comply with that duty to the standard
32 required by this Law even if another duty holder has the same duty.

- 1 (4) If more than 1 person has a duty for the same matter, each person —
2 (a) retains responsibility for the person’s duty in relation to the
3 matter; and
4 (b) must discharge the person’s duty to the extent to which the
5 person has the capacity to influence and control the matter (or
6 would have had that capacity but for an agreement or
7 arrangement purporting to limit or remove that capacity).

8 **Subdivision 2 — Duties**

9 **52. Duties of rail transport operators**

- 10 (1) A rail transport operator must ensure, so far as is reasonably
11 practicable, the safety of the operator’s railway operations.
- 12 (2) Without limiting subsection (1), a rail transport operator must ensure,
13 so far as is reasonably practicable —
- 14 (a) that safe systems for the carrying out of the operator’s
15 railway operations are developed and implemented; and
16 (b) that each rail safety worker who is to perform rail safety work
17 in relation to the operator’s railway operations —
- 18 (i) is of sufficient good health and fitness to carry out
19 that work safely; and
20 (ii) is competent to undertake that work;
21 and
- 22 (c) that rail safety workers do not carry out rail safety work in
23 relation to the operator’s railway operations, and are not on
24 duty, while impaired by alcohol or a drug; and
25 (d) that rail safety workers who perform rail safety work in
26 relation to the operator’s railway operations do not carry out
27 rail safety work while impaired by fatigue or if they may
28 become so impaired; and
29 (e) the provision of adequate facilities for the safety of persons at
30 any railway premises under the control or management of the
31 operator; and
32 (f) the provision of —
- 33 (i) such information and instruction to, and training and
34 supervision of, rail safety workers as is necessary to

- 1 (d) that equipment, procedures and systems are established and
2 maintained so as to minimise risks to the safety of the
3 operator's railway operations; and
- 4 (e) that arrangements are made for ensuring safety in connection
5 with the use, operation and maintenance of the operator's
6 rolling stock; and
- 7 (f) that communications systems and procedures are established
8 and maintained so as to ensure the safety of the operator's
9 railway operations.
- 10 (5) This section applies to a person (other than a rail transport operator)
11 who carries out railway operations in the same way as it applies to a
12 rail transport operator, but does not apply if the person carries out
13 those operations as a rail safety worker or an employee.

14 **53. Duties of designers, manufacturers, suppliers etc**

- 15 (1) A person —
- 16 (a) who designs, commissions, manufactures, supplies, installs or
17 erects any thing; and
- 18 (b) who knows, or ought reasonably to know, that the thing is to
19 be used as or in connection with rail infrastructure or rolling
20 stock,
- 21 must —
- 22 (c) ensure, so far as is reasonably practicable, that the thing is
23 safe if it is used for a purpose for which it was designed,
24 commissioned, manufactured, supplied, installed or erected;
25 and
- 26 (d) ensure, so far as is reasonably practicable, that such testing
27 and examination of the thing as may be necessary for
28 compliance with this section is carried out; and
- 29 (e) take such action as is necessary to ensure, so far as is
30 reasonably practicable, that there will be available in
31 connection with the use of the thing adequate information
32 about —
- 33 (i) the use for which the thing was designed,
34 commissioned, manufactured, supplied, installed or
35 erected; and

- 1 (ii) the results of any testing or examination referred to in
2 paragraph (d); and
3 (iii) any conditions necessary to ensure, so far as is
4 reasonably practicable, that the thing is safe if it is
5 used for a purpose for which it was designed,
6 commissioned, manufactured, supplied, installed or
7 erected.

- 8 (2) For the purposes of subsection (1), if the person who supplies the
9 thing —
10 (a) carries on the business of financing the acquisition of the
11 thing by customers; and
12 (b) has, in the course of that business, acquired an interest in the
13 thing solely for the purpose of financing its acquisition by a
14 customer from a third person or its provision to a customer by
15 a third person; and
16 (c) has not taken possession of the thing or has taken possession
17 of it solely for the purpose of passing possession to that
18 customer,

19 the reference in that subsection to the person who supplies that thing
20 is instead taken to be a reference to the third person.

- 21 (3) A person who decommissions any rail infrastructure or rolling stock
22 must ensure, so far as is reasonably practicable —
23 (a) that the decommissioning is carried out safely; and
24 (b) such testing and examination as may be necessary for
25 compliance with this section is carried out.

26 **54. Duties of persons loading or unloading freight**

27 A person who loads or unloads freight on or from rolling stock in
28 relation to the transport of the freight by railway must ensure, so far as
29 is reasonably practicable, that the loading or unloading is carried out
30 safely and so as to ensure the safe operation of the rolling stock.

31 **55. Duty of officers to exercise due diligence**

- 32 (1) If a person has a duty or obligation under this Law, an officer of the
33 person must exercise due diligence to ensure that the person complies
34 with that duty or obligation.

- 1 (2) An officer of a person referred to in subsection (1) may be convicted
2 or found guilty of an offence under this Law relating to a duty under
3 this section whether or not the person has been convicted or found
4 guilty of an offence under this Law relating to the duty or obligation.
- 5 (3) In this section —
6 *due diligence* includes taking reasonable steps —
- 7 (a) to acquire and keep up-to-date knowledge of rail safety
8 matters; and
- 9 (b) to gain an understanding of the nature of the railway
10 operations of the person and, generally, of the risks associated
11 with those operations; and
- 12 (c) to ensure that the person has available for use, and uses,
13 appropriate resources and processes to eliminate or minimise
14 risks to safety from the railway operations of the person; and
- 15 (d) to ensure that the person has appropriate processes for
16 receiving and considering information regarding incidents
17 and risks and responding in a timely way to that information;
18 and
- 19 (e) to ensure that the person has, and implements, processes for
20 complying with any duty or obligation of the person under
21 this Law; and
- 22 (f) to verify the provision and use of the resources and processes
23 referred to in paragraphs (c) to (e).
- 24 **56. Duties of rail safety workers**
- 25 (1) A rail safety worker must, when carrying out rail safety work —
- 26 (a) take reasonable care for his or her own safety; and
- 27 (b) take reasonable care that his or her acts or omissions do not
28 adversely affect the safety of other persons; and
- 29 (c) comply, so far as the worker is reasonably able, with any
30 reasonable instruction given by the rail transport operator to
31 allow the operator to comply with this Law.

- 1 (2) A rail safety worker must not, when carrying out rail safety work,
2 intentionally or recklessly interfere with or misuse anything provided
3 to the worker by the rail transport operator —
4 (a) in the interests of safety; or
5 (b) under this Law.
- 6 (3) A rail safety worker must not, when carrying out rail safety work,
7 wilfully or recklessly place the safety of another person on or in the
8 immediate vicinity of rail infrastructure at risk.
- 9 (4) For the purposes of subsection (1)(a) or (b), in determining whether a
10 rail safety worker failed to take reasonable care, regard must be had as
11 to what the worker knew about the relevant circumstances.

12 **Subdivision 3 — Offences and penalties**

13 **57. Meaning of *safety duty***

14 In this Subdivision —

15 *safety duty* means a duty imposed under Subdivision 2.

16 **58. Failure to comply with safety duty — reckless conduct —**
17 **Category 1**

- 18 (1) A person commits a Category 1 offence if —
19 (a) the person has a safety duty; and
20 (b) the person, without reasonable excuse, engages in conduct
21 that exposes an individual to whom that duty is owed to a risk
22 of death or serious injury or illness; and
23 (c) the person is reckless as to the risk to an individual of death
24 or serious injury or illness.

25 Maximum penalty:

- 26 (a) in the case of an individual — \$300 000 or imprisonment
27 for 5 years, or both;
28 (b) in the case of a body corporate — \$3 000 000.
- 29 (2) The prosecution bears the burden of proving that the conduct was
30 engaged in without reasonable excuse.

1 **59. Failure to comply with safety duty — Category 2**

2 A person commits a Category 2 offence if —

- 3 (a) the person has a safety duty; and
4 (b) the person fails to comply with that duty; and
5 (c) the failure exposes an individual to a risk of death or serious
6 injury or illness.

7 Maximum penalty:

- 8 (a) in the case of an individual — \$150 000;
9 (b) in the case of a body corporate — \$1 500 000.

10 **60. Failure to comply with safety duty — Category 3**

11 A person commits a Category 3 offence if —

- 12 (a) the person has a safety duty; and
13 (b) the person fails to comply with that duty.

14 Maximum penalty:

- 15 (a) in the case of an individual — \$50 000;
16 (b) in the case of a body corporate — \$500 000.

17 **Division 4 — Accreditation**

18 **Subdivision 1 — Purpose and requirement for accreditation**

19 **61. Purpose of accreditation**

20 The purpose of accreditation of a rail transport operator in respect of
21 railway operations is to attest that the rail transport operator has
22 demonstrated to the Regulator the competence and capacity to
23 manage risks to safety associated with those railway operations.

24 **62. Accreditation required for railway operations**

25 (1) A person must not carry out any railway operations unless the
26 person —

- 27 (a) is a rail transport operator who —
28 (i) is accredited under this Part in respect of those
29 operations; or

- 1 (ii) is exempt under this Law from compliance with this
2 section in respect of those operations;
3 or
4 (b) is carrying out those operations for or on behalf of —
5 (i) a rail transport operator who is accredited under this
6 Part in respect of those operations; or
7 (ii) a rail transport operator who is exempt under this
8 Law from compliance with this section in respect of
9 those operations;
10 or
11 (c) is exempt under this Law from compliance with this section
12 in respect of those operations.

13 Maximum penalty:

- 14 (a) in the case of an individual — \$150 000;
15 (b) in the case of a body corporate — \$1 500 000.

16 Note: If a body corporate and related bodies corporate are involved, an
17 exemption may be given so that only 1 of the bodies need be
18 accredited (**related body corporate** meaning related by virtue of
19 section 50 of the *Corporations Act 2001* of the Commonwealth).

- 20 (2) Subsection (1) does not apply to a rail safety worker, not being a rail
21 transport operator, carrying out rail safety work for or on behalf of a
22 rail transport operator who —
23 (a) is accredited under this Part; or
24 (b) is exempt under this Law from compliance with this section,
25 in relation to that rail safety work.

26 **63. Purposes for which accreditation may be granted**

- 27 (1) Accreditation may be granted to a rail transport operator for any 1 or
28 more of the following purposes —
29 (a) for the carrying out of railway operations for the part or parts
30 of a railway specified in the accreditation, or for a part or
31 parts having the scope or characteristics so specified;
32 (b) for any service or aspect, or part of a service or aspect, of
33 railway operations specified in the accreditation;

- 1 (c) for specified railway operations to permit any 1 or more of
2 the following —
- 3 (i) construction of rail infrastructure;
- 4 (ii) restoration or repair work;
- 5 (iii) testing of railway tracks or other infrastructure;
- 6 (iv) other activities relating to railway operations
7 considered appropriate by the Regulator and specified
8 in the accreditation.
- 9 (2) Accreditation may be granted for railway operations carried out, or
10 proposed to be carried out, in 1 or more jurisdictions by a rail
11 transport operator.
- 12 (3) If the applicant so requests, accreditation may be granted for a
13 specified period only.
- 14 **Subdivision 2 — Procedures for granting accreditation**
- 15 **64. Application for accreditation**
- 16 (1) A rail transport operator may apply to the Regulator for accreditation
17 in respect of specified railway operations carried out, or proposed to
18 be carried out, by or on behalf of that operator.
- 19 (2) An application must be made in the manner and form approved by the
20 Regulator and —
- 21 (a) must specify the scope and nature of the railway operations in
22 respect of which accreditation is sought; and
- 23 (b) must include a description of the safety management system
24 (including a description of the measures to be taken to
25 manage identified risks) relating to those railway operations;
26 and
- 27 (c) must contain the prescribed information; and
- 28 (d) must be accompanied by the prescribed application fee.
- 29 (3) The Regulator may require a rail transport operator who has applied
30 for accreditation —
- 31 (a) to supply further information requested by the Regulator; and
32 (b) to verify by statutory declaration any information supplied to
33 the Regulator.

1 **65. What applicant must demonstrate**

2 The Regulator must not grant accreditation to an applicant unless
3 satisfied that the applicant has demonstrated —

- 4 (a) that the applicant is, or is to be, a rail infrastructure manager
5 or rolling stock operator in respect of the railway operations
6 for which accreditation is sought; and
- 7 (b) that the applicant has the competence and capacity to manage
8 risks to safety associated with the railway operations for
9 which accreditation is sought; and
- 10 (c) that the applicant —
- 11 (i) has the competence and capacity to implement the
12 proposed safety management system; and
- 13 (ii) has the financial capacity, or has public risk insurance
14 arrangements, to meet reasonable potential accident
15 liabilities arising from the railway operations; and
- 16 (iii) has met the consultation requirements set out in
17 Division 6 in relation to the applicant’s safety
18 management system; and
- 19 (iv) has complied with the requirements prescribed by the
20 national regulations (if any) for the purposes of this
21 section.

22 **66. Regulator may direct applicants to coordinate applications**

23 (1) If the Regulator —

- 24 (a) receives applications from 2 or more rail transport operators
25 for accreditation; and
- 26 (b) believes that coordinated preparation of the applications is
27 necessary to ensure railway operations of the applicants are
28 carried out safely,

29 the Regulator may give a direction in writing to each of the applicants
30 to coordinate their applications (a *coordination direction*).

31 (2) A coordination direction —

- 32 (a) may be given to rail transport operators carrying out, or
33 proposing to carry out, railway operations in different
34 jurisdictions; and

- 1 (b) may require each rail transport operator subject to the
2 direction to provide to each other rail transport operator
3 subject to the direction information concerning any
4 circumstances in relation to the carrying out of railway
5 operations by the first-mentioned operator that could
6 constitute a risk to safety in relation to the carrying out of
7 railway operations by another operator subject to the
8 direction.
- 9 (3) A rail transport operator to whom a coordination direction has been
10 given under this section must comply with the direction.
11 Maximum penalty:
12 (a) in the case of an individual — \$5 000;
13 (b) in the case of a body corporate — \$25 000.
- 14 (4) A rail transport operator who has coordinated the preparation of an
15 application with other rail transport operators in accordance with a
16 coordination direction under this section must include in the
17 application reference to —
18 (a) information given by the operator to each other operator
19 subject to the direction; and
20 (b) information given to the operator by each other operator
21 subject to the direction.
22 Maximum penalty:
23 (a) in the case of an individual — \$5 000;
24 (b) in the case of a body corporate — \$25 000.
- 25 **67. Determination of application**
- 26 (1) Subject to this section, the Regulator must, within the relevant
27 period —
28 (a) if the Regulator is satisfied as to the matters referred to in
29 section 65 and (if applicable) section 66 — notify the
30 applicant that accreditation has been granted, with or without
31 conditions or restrictions; or
32 (b) if the Regulator is not so satisfied — notify the applicant that
33 the application has been refused.

- 1 (ii) information about the right of review under Part 7;
2 and
3 (d) if the application has been refused, must include —
4 (i) the reasons for the decision to refuse to grant the
5 application; and
6 (ii) information about the right of review under Part 7;
7 and
8 (e) if the relevant period in relation to the application has been
9 extended, must include information about the right of review
10 under Part 7.

11 (5) In this section —

12 *relevant period*, in relation to an application, means —

- 13 (a) 6 months after the application was received by the Regulator;
14 or
15 (b) if the Regulator requested further information, 6 months, or
16 such other period, as is agreed between the Regulator and the
17 applicant, after the Regulator receives the last information so
18 requested; or
19 (c) if the Regulator, by written notice given to the applicant
20 before the expiry of the relevant 6 months, specifies another
21 period, that period,

22 whichever is the longer.

23 **Subdivision 3 — Variation of accreditation**

24 **68. Application for variation of accreditation**

- 25 (1) An accredited person may, at any time, apply to the Regulator for
26 variation of the accreditation.
- 27 (2) An accredited person must apply to the Regulator for variation of the
28 accreditation if —
- 29 (a) the applicant proposes to vary the scope and nature of the
30 railway operations in respect of which the applicant is
31 accredited; or

- 1 (b) the applicant no longer has the competence or capacity to
2 manage risks to safety associated with the railway operations
3 in respect of which the applicant is accredited; or
4 (c) any other variation is proposed in respect of the railway
5 operations in respect of which the applicant is accredited that
6 should be reflected in the accreditation.
- 7 (3) An application for variation must be made in the manner and form
8 approved by the Regulator and —
9 (a) must specify the details of the variation being sought; and
10 (b) must contain the prescribed information; and
11 (c) must be accompanied by the prescribed application fee.
- 12 (4) The Regulator may require an accredited person who has applied for a
13 variation —
14 (a) to supply further information requested by the Regulator; and
15 (b) to verify by statutory declaration any information supplied to
16 the Regulator.
- 17 (5) Section 66 applies to an application for variation as if a reference in
18 that section to accreditation were a reference to variation of
19 accreditation.

20 **69. Determination of application for variation**

- 21 (1) Subject to this section, the Regulator must, within the relevant
22 period —
23 (a) if the Regulator is satisfied as to the matters referred to in
24 sections 65 and 66 (so far as they are applicable to the
25 proposed variation) — notify the applicant that the
26 accreditation has been varied, with or without conditions or
27 restrictions; or
28 (b) if the Regulator is not so satisfied — notify the applicant that
29 the application has been refused.
- 30 (2) Notification under this section —
31 (a) must be in writing and given to the applicant; and
32 (b) if the accreditation has been varied, must specify —
33 (i) the prescribed details of the applicant; and

- 1 (ii) the variation to the accreditation so far as it applies to
2 the scope and nature of the railway operations, or the
3 manner in which they are to be carried out; and
4 (iii) any conditions and restrictions imposed by the
5 Regulator on the accreditation as varied; and
6 (iv) any other prescribed information;
7 and
8 (c) if a condition or restriction has been imposed on the
9 accreditation as varied, must include —
10 (i) the reasons for imposing the condition or restriction;
11 and
12 (ii) information about the right of review under Part 7;
13 and
14 (d) if the application to vary an accreditation has been refused,
15 must include —
16 (i) the reasons for the decision to refuse to grant the
17 application; and
18 (ii) information about the right of review under Part 7;
19 and
20 (e) if the relevant period in relation to an application has been
21 extended, must include information about the right of review
22 under Part 7.
- 23 (3) In this section —
24 *relevant period*, in relation to an application, means —
25 (a) 6 months after the application was received by the Regulator;
26 or
27 (b) if the Regulator requested further information, 6 months, or
28 such other period, as is agreed between the Regulator and the
29 applicant, after the Regulator receives the last information so
30 requested; or
31 (c) if the Regulator, by written notice given to the applicant
32 before the expiry of the relevant 6 months, specifies another
33 period, that period,
34 whichever is the longer.

1 **70. Prescribed conditions and restrictions**

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

5 **71. Variation of conditions and restrictions**

6 (1) An accredited person may, at any time, apply to the Regulator for a
7 variation of a condition or restriction imposed by the Regulator to
8 which the accreditation is subject.

9 (2) An application for variation of a condition or restriction must be made
10 as if it were an application for variation of accreditation (and
11 section 68 applies accordingly).

12 (3) The Regulator must consider the application and, if satisfied as to the
13 matters referred to in sections 65 and 66 (so far as they are applicable
14 to the proposed variation), notify the accredited person in accordance
15 with the provisions of this Division applicable to a grant of
16 accreditation (so far as is practicable) that the variation has been
17 granted or refused.

18 (4) Notification under subsection (3) that a variation has been refused
19 must include the reasons for the decision to refuse to grant the
20 variation and information about the right of review under Part 7.

21 **72. Regulator may make changes to conditions or restrictions**

22 (1) The Regulator may, subject to this section, at any time, vary or revoke
23 a condition or restriction imposed by the Regulator to which the
24 accreditation of an accredited person is subject or impose a new
25 condition or restriction.

26 (2) Before taking action under this section, the Regulator must —

27 (a) give the accredited person written notice of the action that the
28 Regulator proposes to take; and

29 (b) allow the accredited person to make written representations
30 about the intended action within 28 days (or any other period
31 that the Regulator and the accredited person agree on); and

32 (c) consider any representations made under paragraph (b) and
33 not withdrawn; and

- 1 (d) if the intended action is likely to result in significant costs or
2 expenses to the accredited person or any other person —
- 3 (i) conduct or cause to be conducted a cost-benefit
4 analysis of the effect of the intended action; and
- 5 (ii) consult with the Premier or Chief Minister, the
6 Treasurer, and any other Minister, of a participating
7 jurisdiction whose area of responsibility is likely to
8 be affected by the intended action.
- 9 (3) Subsection (2)(d) does not apply if the Regulator considers it
10 necessary to take immediate action in the interests of safety but, if the
11 action is likely to result in significant costs or expenses to the
12 accredited person or any other person, the Regulator must, as soon as
13 practicable after taking the action —
- 14 (a) conduct or cause to be conducted a cost-benefit analysis of
15 the effect of the action; and
- 16 (b) consult with the Premier or Chief Minister, the Treasurer, and
17 any other Minister, of a participating jurisdiction whose area
18 of responsibility is likely to be affected by the action.
- 19 (4) The Regulator must, by written notice given to the accredited person,
20 provide —
- 21 (a) details of any action taken under this section; and
- 22 (b) a statement of reasons for any action taken under this section,
23 including (if applicable) the results of any cost-benefit
24 analysis carried out; and
- 25 (c) information about the right of review under Part 7.

26 **Subdivision 4 — Revocation, suspension or surrender of accreditation**

27 **73. Revocation or suspension of accreditation**

- 28 (1) This section applies in respect of an accredited person if —
- 29 (a) the Regulator considers that the accredited person —
- 30 (i) is no longer able to demonstrate to the satisfaction of
31 the Regulator the matters referred to in section 65 or
32 to satisfy the conditions, or to comply with the
33 restrictions, of the accreditation; or

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1 operations, the Regulator must include in the notice of suspension or
2 revocation the reasons for the suspension or revocation and
3 information about the right of review under Part 7.

4 (5) The Regulator may withdraw a suspension of the accreditation of a
5 person by written notice given to the person.

- 1 (5) If the Regulator extends the suspension of the person, the Regulator
2 must notify the person in writing that the suspension is being
3 extended and include in the notice the reasons for the extension and
4 information about the right of review under Part 7.

5 **75. Surrender of accreditation**

- 6 (1) Accreditation may only be surrendered in accordance with this
7 section.
- 8 (2) If an accredited person intends to surrender accreditation, the
9 accredited person must —
- 10 (a) give the Regulator written notice of the intention to surrender
11 the accreditation; and
- 12 (b) provide the Regulator with details as to the arrangements
13 proposed in relation to the cessation of the person's railway
14 operations.
- 15 (3) If the Regulator is satisfied as to the arrangements proposed in
16 relation to the cessation of the accredited person's railway operations,
17 the Regulator must, as soon as reasonably practicable, by written
18 notice given to the person, inform the person that the person's
19 accreditation may be surrendered in accordance with the proposed
20 arrangements on the date specified in the notice.
- 21 (4) If the Regulator is not satisfied as to the arrangements proposed in
22 relation to the cessation of the accredited person's railway operations,
23 the Regulator must, as soon as reasonably practicable, by written
24 notice given to the person, inform the person —
- 25 (a) that the Regulator is not satisfied as to the proposed
26 arrangements; and
- 27 (b) of the reasons for the Regulator's dissatisfaction; and
- 28 (c) that the person's accreditation may not be surrendered until
29 the Regulator is satisfied as to the proposed arrangements.

30 **Subdivision 5 — Miscellaneous**

31 **76. Annual fees**

- 32 (1) An accredited person must pay the annual fee prescribed by the
33 national regulations.

- 1 (2) The annual fee must be paid by an accredited person at the time
2 accreditation is granted and thereafter on an annual basis on or before
3 the prescribed date.
- 4 (3) However, the Regulator may accept payment of an annual fee in
5 accordance with an agreement (that provides, for example, for the
6 payment of fees by instalments) made with the person who is liable to
7 pay the fee.
- 8 (4) The national regulations may —
- 9 (a) fix different fees for different kinds of accreditations; and
10 (b) fix various methods for the calculation of various fees; and
11 (c) fix fees which may be differential, varying according to any
12 factor determined by the Regulator; and
13 (d) impose additional fees for the late payment of fees under this
14 section.

15 **77. Waiver of fees**

16 The Regulator may waive, or refund, the whole or part of any fee
17 payable under this Division.

18 **78. Penalty for breach of condition or restriction**

19 An accredited person must not contravene a condition or restriction of
20 accreditation applying under this Part.

21 Maximum penalty:

- 22 (a) in the case of an individual — \$150 000;
23 (b) in the case of a body corporate — \$1 500 000.

24 **79. Accreditation cannot be transferred or assigned**

- 25 (1) An accreditation —
- 26 (a) is personal to the person who holds it; and
27 (b) is not capable of being transferred or assigned to any other
28 person or otherwise dealt with by the person who holds it;
29 and
30 (c) does not vest by operation of law in any other person.

1 (2) A purported transfer or assignment of an accreditation or any other
2 purported dealing with an accreditation by the person who holds it is
3 of no effect.

4 (3) This section has effect despite anything in this Law, an Act or a rule
5 of law to the contrary.

6 **80. Sale or transfer of railway operations by accredited person**

7 (1) If an accredited person proposes to sell or otherwise transfer any
8 railway operations for which the person is accredited, the Regulator
9 may, on an application for accreditation being made by the proposed
10 transferee, waive compliance by the proposed transferee with any 1 or
11 more of the requirements of this Part.

12 (2) However, the Regulator must not waive compliance with any such
13 requirements unless the proposed transferee demonstrates, to the
14 satisfaction of the Regulator, that the proposed transferee has the
15 competence and capacity to comply with the relevant requirements of
16 this Part that apply to applicants for accreditation of the appropriate
17 kind.

18 (3) A waiver of compliance with requirements may be given subject to
19 such conditions and restrictions (if any) as appear to the Regulator to
20 be necessary.

21 **81. Keeping and making available records for public inspection**

22 (1) A person must ensure that —

23 (a) if the person is an accredited person or has an exemption
24 under this Law — the current notice of accreditation or
25 exemption; and

26 (b) any other document prescribed by the national regulations for
27 the purposes of this section,

28 are available for inspection —

29 (c) if the person is a body corporate — at the person's registered
30 office during ordinary business hours;

31 (d) if the person is not a body corporate — at the person's
32 principal place of business during ordinary business hours

1 (or, if the Regulator approves another place and time, at that
2 place and time).

3 Maximum penalty:

- 4 (a) in the case of an individual — \$5 000;
5 (b) in the case of a body corporate — \$25 000.

6 (2) A person who is required under subsection (1) to make available
7 documents for inspection must maintain a register of those documents
8 for inspection.

9 Maximum penalty:

- 10 (a) in the case of an individual — \$5 000;
11 (b) in the case of a body corporate — \$25 000.

12 **Division 5 — Registration of rail infrastructure managers of private sidings**

13 **Subdivision 1 — Exemptions relating to certain private sidings**

14 **82. Exemption from accreditation in respect of certain private sidings**

15 (1) A rail infrastructure manager of a private siding is not required to be
16 accredited under this Part in respect of railway operations (other than
17 those involving the operation of rolling stock) carried out in the
18 private siding.

19 (2) Subject to section 83(2), a rail infrastructure manager of a private
20 siding is not required to comply with Division 6, Division 7 or
21 Division 8 of this Part in relation to the private siding in respect of
22 railway operations (other than those involving the operation of rolling
23 stock) carried out in the private siding.

24 **83. Requirement for managers of certain private sidings to be**
25 **registered**

26 (1) A rail infrastructure manager of a private siding that is to be (or
27 continue to be) connected with, or to have access to, a railway of an
28 accredited person or another private siding, must be registered in
29 respect of the private siding in accordance with this Division.

30 Maximum penalty:

- 31 (a) in the case of an individual — \$20 000;
32 (b) in the case of a body corporate — \$100 000.

- 1 (2) A rail infrastructure manager of a private siding that is to be (or
2 continue to be) connected with, or to have access to, a railway of an
3 accredited person or another private siding must —
- 4 (a) comply with the requirements of Division 6 Subdivision 2 of
5 this Part insofar as they are relevant to the railway operations
6 carried out in the private siding; and
- 7 (b) seek to enter into an interface agreement with the accredited
8 person or rail infrastructure manager of the other private
9 siding (as the case may be).

10 Maximum penalty:

- 11 (a) in the case of an individual — \$20 000;
- 12 (b) in the case of a body corporate — \$100 000.

13 **Subdivision 2 — Procedures for granting registration**

14 **84. Application for registration**

- 15 (1) A rail infrastructure manager of a private siding to which section 83
16 applies may apply to the Regulator for registration in respect of the
17 private siding.
- 18 (2) An application must be made in the manner and form approved by the
19 Regulator and —
- 20 (a) must contain —
- 21 (i) details about the scale and complexity of the private
22 siding; and
- 23 (ii) details about the extent of the railway track layout
24 and other rail infrastructure of the private siding; and
- 25 (iii) details about the railway operations to be carried out
26 in the private siding; and
- 27 (iv) if the private siding is to be (or continue to be)
28 connected with, or to have access to —
- 29 (A) a railway of an accredited person — the
30 prescribed details about the railway and the
31 accredited person; or

- 1 (2) Registration under this Law is subject to —
- 2 (a) any conditions or restrictions prescribed by the national
- 3 regulations for the purposes of this section; and
- 4 (b) any other condition or restriction imposed on the registration
- 5 by the Regulator.
- 6 (3) Notification under this section —
- 7 (a) must be in writing and given to the applicant; and
- 8 (b) if registration has been granted, must specify —
- 9 (i) the prescribed details of the applicant; and
- 10 (ii) the prescribed details of the private siding; and
- 11 (iii) any conditions and restrictions imposed by the
- 12 Regulator on the registration; and
- 13 (iv) any other prescribed information;
- 14 and
- 15 (c) if a condition or restriction has been imposed on the
- 16 registration, must include —
- 17 (i) the reasons for imposing the condition or restriction;
- 18 and
- 19 (ii) information about the right of review under Part 7;
- 20 and
- 21 (d) if the application has been refused, must include —
- 22 (i) the reasons for the decision to refuse to grant the
- 23 application; and
- 24 (ii) information about the right of review under Part 7;
- 25 and
- 26 (e) if the relevant period in relation to the application has been
- 27 extended, must include information about the right of review
- 28 under Part 7.
- 29 (4) In this section —
- 30 ***relevant period***, in relation to an application, means —
- 31 (a) 6 months after the application was received by the Regulator;
- 32 or

- 1 (b) if the Regulator requested further information, 6 months, or
2 such other period, as is agreed between the Regulator and the
3 applicant, after the Regulator receives the last information so
4 requested; or
5 (c) if the Regulator, by written notice given to the applicant
6 before the expiry of the relevant 6 months, specifies another
7 period, that period,
8 whichever is the longer.

9 **Subdivision 3 — Variation of registration**

10 **87. Application for variation of registration**

- 11 (1) A registered person may, at any time, apply to the Regulator for a
12 variation of the registration.
- 13 (2) A registered person must apply to the Regulator for a variation of the
14 registration if —
15 (a) the applicant proposes to vary the scale and complexity of the
16 private siding in respect of which the applicant is registered;
17 or
18 (b) the applicant proposes to vary the railway operations to be
19 carried out in the private siding in respect of which the
20 applicant is registered; or
21 (c) any other variation is proposed in relation to the private
22 siding in respect of which the applicant is registered that
23 should be reflected in the registration.
- 24 (3) An application for variation must be made in the manner and form
25 approved by the Regulator and —
26 (a) must specify the details of the variation being sought; and
27 (b) must contain the prescribed information; and
28 (c) must be accompanied by the prescribed application fee.
- 29 (4) The Regulator may require a registered person who has applied for a
30 variation under this section —
31 (a) to supply further information requested by the Regulator; and
32 (b) to verify by statutory declaration any information supplied to
33 the Regulator.

- 1 **88. Determination of application for variation**
- 2 (1) Subject to this section, the Regulator must, within the relevant
- 3 period —
- 4 (a) if the Regulator is satisfied as to the matters referred to in
- 5 section 85 (so far as they are applicable to the proposed
- 6 variation), notify the applicant that registration has been
- 7 varied, with or without conditions or restrictions; or
- 8 (b) if the Regulator is not so satisfied — notify the applicant that
- 9 the application has been refused.
- 10 (2) Notification under this section —
- 11 (a) must be in writing and given to the applicant; and
- 12 (b) if registration has been varied, must specify —
- 13 (i) the prescribed details of the applicant; and
- 14 (ii) the variation to the registration; and
- 15 (iii) any conditions and restrictions imposed by the
- 16 Regulator on the registration as varied; and
- 17 (iv) any other prescribed information;
- 18 and
- 19 (c) if a condition or restriction has been imposed on the
- 20 registration as varied, must include —
- 21 (i) the reasons for imposing the condition or restriction;
- 22 and
- 23 (ii) information about the right of review under Part 7;
- 24 and
- 25 (d) if the application has been refused, must include —
- 26 (i) the reasons for the decision to refuse to grant the
- 27 application; and
- 28 (ii) information about the right of review under Part 7;
- 29 and
- 30 (e) if the relevant period in relation to an application has been
- 31 extended, must include information about the right of review
- 32 under Part 7.

1 **91. Regulator may make changes to conditions or restrictions**

2 (1) The Regulator may, subject to this section, at any time, vary or revoke
3 a condition or restriction imposed by the Regulator to which the
4 registration of a registered person is subject or impose a new
5 condition or restriction.

6 (2) Before taking action under this section, the Regulator must —

7 (a) give the registered person written notice of the action that the
8 Regulator proposes to take; and

9 (b) allow the registered person to make written representations
10 about the intended action within 28 days (or any other period
11 that the Regulator and the registered person agree on); and

12 (c) consider any representations made under paragraph (b) and
13 not withdrawn.

14 (3) Subsection (2) does not apply if the Regulator considers it necessary
15 to take immediate action in the interests of safety.

16 (4) The Regulator must, by written notice given to the registered person,
17 provide —

18 (a) details of any action taken under subsection (1); and

19 (b) a statement of reasons for any action taken under
20 subsection (1); and

21 (c) information about the right of review under Part 7.

22 **Subdivision 4 — Revocation, suspension or surrender of registration**

23 **92. Revocation or suspension of registration**

24 (1) This section applies in respect of a registered person if —

25 (a) the Regulator considers that the registered person —

26 (i) is no longer able to demonstrate to the satisfaction of
27 the Regulator the matters referred to in section 85 or
28 to satisfy the conditions, or to comply with the
29 restrictions, of the registration; or

30 (ii) is not controlling or managing the private siding and
31 has not done so for at least the preceding 12 months;

32 or

- 1 registration of the person for a specified period, not exceeding
2 6 weeks.
- 3 (2) The Regulator may, by written notice given to a person whose
4 registration is suspended —
- 5 (a) reduce the period of suspension specified in a notice under
6 subsection (1); or
- 7 (b) extend the period of suspension specified in a notice under
8 subsection (1) but not so that the suspension continues for
9 more than 6 weeks after the date of the notice under that
10 subsection.
- 11 (3) The Regulator may withdraw a suspension of the registration of a
12 person by written notice given to the person.
- 13 (4) Before making a decision under subsection (2)(b) to extend a period
14 of suspension, the Regulator —
- 15 (a) must notify the person in writing —
- 16 (i) that the Regulator is considering extending the period
17 of suspension for the reasons specified in the
18 notification; and
- 19 (ii) that the person may, within 7 days or such longer
20 period as is specified in the notification, make written
21 representations to the Regulator showing cause why
22 the suspension should not be extended;
- 23 and
- 24 (b) must consider any representations made under
25 paragraph (a)(ii) and not withdrawn.
- 26 (5) If the Regulator extends the suspension of the person, the Regulator
27 must notify the person in writing that the suspension is being
28 extended and include in the notice the reasons for the extension and
29 information about the right of review under Part 7.

30 **94. Surrender of registration**

- 31 (1) Registration may only be surrendered in accordance with this section.

- 1 (4) The national regulations may —
2 (a) fix different fees for different kinds of registration; and
3 (b) fix various methods for the calculation of various fees; and
4 (c) fix fees which may be differential, varying according to any
5 factor determined by the Regulator; and
6 (d) impose additional fees for the late payment of fees under this
7 section.

8 **96. Waiver of fees**

9 The Regulator may waive, or refund, the whole or part of any fee
10 payable under this Division.

11 **97. Registration cannot be transferred or assigned**

- 12 (1) Registration —
13 (a) is personal to the person who holds it; and
14 (b) is not capable of being transferred or assigned to any other
15 person or otherwise dealt with by the person who holds it;
16 and
17 (c) does not vest by operation of law in any other person.
18 (2) A purported transfer or assignment of a registration or any other
19 purported dealing with a registration by the person who holds it is of
20 no effect.
21 (3) This section has effect despite anything in this Law, an Act or a rule
22 of law to the contrary.

23 **98. Offences relating to registration**

- 24 (1) A registered person must not contravene a condition or restriction of
25 the registration.
26 Maximum penalty:
27 (a) in the case of an individual — \$50 000;
28 (b) in the case of a body corporate — \$500 000.

- 1 (e) specifies the controls (including audits, expertise, resources
2 and staff) that are to be used by the operator to manage
3 identified risks and to monitor safety in relation to those
4 railway operations; and
- 5 (f) includes procedures for monitoring, reviewing and revising
6 the adequacy of those controls; and
- 7 (g) addresses and includes any other matter prescribed by the
8 national regulations that is relevant to the railway operations
9 for which the rail transport operator is accredited.
- 10 Maximum penalty:
- 11 (a) in the case of an individual — \$150 000;
- 12 (b) in the case of a body corporate — \$1 500 000.
- 13 (2) The safety management system for a rail transport operator must also
14 include the following matters prepared in accordance with the
15 requirements of this Division —
- 16 (a) measures to manage identified risks to safety for the purposes
17 of interface agreements;
- 18 (b) a security management plan;
- 19 (c) an emergency management plan;
- 20 (d) a health and fitness management program;
- 21 (e) a drug and alcohol management program;
- 22 (f) a fatigue risk management program.
- 23 (3) Before establishing a safety management system in relation to railway
24 operations in respect of which a rail transport operator is required to
25 be accredited or reviewing or varying any such safety management
26 system, the operator must, so far as is reasonably practicable —
- 27 (a) consult with —
- 28 (i) persons likely to be affected by the safety
29 management system or its review or variation, being
30 persons who carry out those railway operations or
31 work on or at the operator's railway premises or with
32 the operator's rolling stock; and
- 33 (ii) health and safety representatives (within the meaning
34 of the occupational health and safety legislation)

- 1 representing any of the persons referred to in
2 subparagraph (i); and
- 3 (iii) any union representing any of the persons referred to
4 in subparagraph (i); and
- 5 (iv) any other rail transport operator with whom the first
6 mentioned operator is required to enter into an
7 interface agreement relating to risks to safety of
8 railway operations carried out by or on behalf of
9 either of them; and
- 10 (v) the public, as appropriate;
- 11 and
- 12 (b) provide the persons consulted with a reasonable opportunity
13 to make submissions on the proposed safety management
14 system; and
- 15 (c) advise those persons in a timely manner of the outcome of the
16 consultation process.
- 17 (4) If the safety management system of a rail transport operator and the
18 safety management system of another rail transport operator who has
19 an agreement referred to in subsection (3)(a)(iv) with the first
20 mentioned operator, when taken as 1 system, comply with this Law,
21 both safety management systems are taken to comply with this Law.
- 22 (5) A safety management system must be evidenced in writing and must
23 identify —
- 24 (a) each person responsible for preparing any part of the safety
25 management system; and
- 26 (b) the person, or class of persons, responsible for implementing
27 the system.
- 28 **100. Conduct of assessments for identified risks**
- 29 (1) In conducting an assessment for the purposes of section 99(1)(d), the
30 rail transport operator must —
- 31 (a) examine and analyse each identified risk, including —
- 32 (i) the nature of the risk; and
- 33 (ii) the likelihood of the risk occurring; and

- 1 (iii) the magnitude and severity of the consequences
2 should a risk be realised; and
3 (iv) the range of control measures available and
4 considered to eliminate or minimise the risk;
5 and
6 (b) consider risks cumulatively as well as individually; and
7 (c) use assessment methodologies that are appropriate to the risks
8 under consideration.
- 9 (2) The rail transport operator must keep a detailed record of all aspects
10 of the assessment process, including —
11 (a) the risks considered; and
12 (b) the likelihood, severity of consequences and control measures
13 considered, including reasons for selecting certain control
14 measures and rejecting others.

15 **101. Compliance with safety management system**

- 16 (1) A rail transport operator must implement the operator's safety
17 management system.
18 Maximum penalty:
19 (a) in the case of an individual — \$150 000;
20 (b) in the case of a body corporate — \$1 500 000.
- 21 (2) A rail transport operator must not, without reasonable excuse, fail to
22 comply with the operator's safety management system for the
23 operator's railway operations.
24 Maximum penalty:
25 (a) in the case of an individual — \$150 000;
26 (b) in the case of a body corporate — \$1 500 000.
- 27 (3) Subsection (2) places an evidential burden on the accused to show a
28 reasonable excuse.

29 **102. Review of safety management system**

- 30 A rail transport operator must review the operator's safety
31 management system in accordance with the national regulations at
32 such times or within such periods as are prescribed (or, if no times or

1 periods are prescribed, at least once each year or at such other time as
2 is agreed between the operator and the Regulator).

3 Maximum penalty:

4 (a) in the case of an individual — \$10 000;

5 (b) in the case of a body corporate — \$50 000.

6 **103. Safety performance reports**

7 (1) A rail transport operator must give the Regulator a safety performance
8 report about the operator’s railway operations in respect of which the
9 operator is required to be accredited for each reporting period that —

10 (a) is in a form approved by the Regulator; and

11 (b) complies with the requirements (if any) prescribed by the
12 national regulations for the purposes of this section; and

13 (c) contains —

14 (i) a description and assessment of the safety
15 performance of the operator’s railway operations; and

16 (ii) comments on any deficiencies, and any irregularities,
17 in the railway operations that may be relevant to the
18 safety of the railway; and

19 (iii) a description of any safety initiatives in relation to the
20 railway operations undertaken during the reporting
21 period or proposed to be undertaken in the next
22 reporting period; and

23 (iv) any other information or performance indicators
24 prescribed by the national regulations for the
25 purposes of this section.

26 (2) A rail transport operator must submit a report in accordance with this
27 section within 6 months after the end of each reporting period.

28 Maximum penalty:

29 (a) in the case of an individual — \$5 000;

30 (b) in the case of a body corporate — \$25 000.

- 1 (3) In this section —
2 *reporting period* means a financial year or such other period as is
3 agreed from time to time by the Regulator and the rail transport
4 operator.
- 5 **104. Regulator may direct amendment of safety management system**
- 6 (1) The Regulator may, by written notice given to an accredited person,
7 direct the person to amend the person's safety management system in
8 a specified manner within a specified period, being not less than
9 28 days after the giving of the direction.
- 10 (2) Before giving a direction to amend a safety management system under
11 subsection (1), the Regulator must, if the intended amendment is
12 likely to result in significant costs or expenses to the accredited
13 person or any other person —
- 14 (a) conduct or cause to be conducted a cost-benefit analysis of
15 the effect of the intended amendment; and
- 16 (b) consult with the Premier or Chief Minister, the Treasurer, and
17 any other Minister, of a participating jurisdiction whose area
18 of responsibility is likely to be affected by the intended
19 amendment.
- 20 (3) A direction under subsection (1) —
- 21 (a) must state the reasons why the Regulator considers it
22 necessary for the rail transport operator to amend the safety
23 management system; and
- 24 (b) must include (if applicable) the results of any cost-benefit
25 analysis carried out under this section; and
- 26 (c) must include information about the right of review under
27 Part 7.
- 28 (4) An accredited person must not, without reasonable excuse, fail to
29 comply with a direction under subsection (1).
- 30 Maximum penalty:
- 31 (a) in the case of an individual — \$50 000;
32 (b) in the case of a body corporate — \$500 000.
- 33 (5) Subsection (4) places an evidential burden on the accused to show a
34 reasonable excuse.

Subdivision 2 — Interface agreements

105. Requirements for and scope of interface agreements

- (1) An interface agreement must include provisions for —
- (a) implementing and maintaining measures to manage risks identified under section 99(1)(c) associated with the interface; and
 - (b) the evaluation, testing and (where appropriate) revision of measures in relation to identified risks and incidents considered; and
 - (c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and
 - (d) procedures by which the parties to the agreement will exchange information about, and monitor compliance with, their obligations under the agreement; and
 - (e) a process for keeping the agreement under review and its revision.
- (2) An interface agreement may —
- (a) be entered into by 2 or more rail transport operators or by 1 or more rail transport operators and 1 or more road managers; and
 - (b) include measures to manage any number of risks to safety that may arise because of, or partly because of, any railway operations; and
 - (c) include measures to manage any number of risks to safety that may arise from any railway operations because of, or partly because of, the existence or use of any road infrastructure; and
 - (d) make provision for or in relation to any matter by applying, adopting or incorporating any matter contained in any document; and
 - (e) consist of 2 or more documents.

1 **106. Interface coordination — rail transport operators**

2 A rail transport operator must —

- 3 (a) identify and assess, so far as is reasonably practicable, risks
4 to safety that may arise from railway operations carried out
5 by or on behalf of the operator because of, or partly because
6 of, railway operations carried out by or on behalf of any other
7 rail transport operator; and
8 (b) determine measures to manage, so far as is reasonably
9 practicable, those risks; and
10 (c) for the purpose of managing those risks — seek to enter into
11 an interface agreement with the other rail transport operator
12 or rail transport operators.

13 Maximum penalty:

- 14 (a) in the case of an individual — \$50 000;
15 (b) in the case of a body corporate — \$500 000.

16 **107. Interface coordination — rail infrastructure and public roads**

17 (1) A rail infrastructure manager must —

- 18 (a) identify and assess, so far as is reasonably practicable, risks
19 to safety that may arise from railway operations carried out
20 on or in relation to the manager's rail infrastructure because
21 of, or partly because of —
22 (i) the existence of road infrastructure of a prescribed
23 public road; or
24 (ii) the existence or use of any rail or road crossing that is
25 part of the road infrastructure of a public road;
26 and
27 (b) determine measures to manage, so far as is reasonably
28 practicable, those risks; and
29 (c) for the purpose of managing those risks — seek to enter into
30 an interface agreement with the road manager of that road.

31 Maximum penalty:

- 32 (a) in the case of an individual — \$50 000;
33 (b) in the case of a body corporate — \$500 000.

- 1 (2) The road manager of a public road must —
- 2 (a) identify and assess, so far as is reasonably practicable, risks
- 3 to safety that may arise from the existence or use of any rail
- 4 or road crossing that is part of the road infrastructure of the
- 5 road because of, or partly because of —
- 6 (i) the existence of road infrastructure of a prescribed
- 7 public road; or
- 8 (ii) the existence or use of any rail or road crossing that is
- 9 part of the road infrastructure of a public road;
- 10 and
- 11 (b) determine measures to manage, so far as is reasonably
- 12 practicable, those risks; and
- 13 (c) for the purpose of managing those risks — seek to enter into
- 14 an interface agreement with the rail infrastructure manager of
- 15 the rail infrastructure.
- 16 (3) Nothing in this section authorises or requires a road manager to act
- 17 inconsistently with, or without regard to, the functions, obligations or
- 18 powers conferred on it by or under an Act or law.

19 **108. Interface coordination — rail infrastructure and private roads**

- 20 (1) A rail infrastructure manager must —
- 21 (a) identify and assess, so far as is reasonably practicable, risks
- 22 to safety that may arise from railway operations carried out
- 23 on or in relation to the manager’s rail infrastructure because
- 24 of, or partly because of, the existence or use of any rail or
- 25 road crossing that is part of the road infrastructure of a private
- 26 road; and
- 27 (b) consider the extent to which those risks are managed by any
- 28 prescribed protocols; and
- 29 (c) consider whether it is necessary to manage those risks in
- 30 conjunction with the road manager of that road and —
- 31 (i) if the rail infrastructure manager is of the opinion that
- 32 it is necessary that those risks be managed in
- 33 conjunction with the road manager — give written
- 34 notice of that opinion to the road manager and

- 1 determine measures to manage, so far as is
2 reasonably practicable, those risks; or
- 3 (ii) if the rail infrastructure manager is of the opinion that
4 the management of those risks does not need to be
5 carried out in conjunction with the road manager —
6 keep a written record of that opinion;
- 7 and
- 8 (d) unless paragraph (c)(ii) applies — for the purpose of
9 managing those risks, seek to enter into an interface
10 agreement with the road manager.
- 11 Maximum penalty:
- 12 (a) in the case of an individual — \$50 000;
13 (b) in the case of a body corporate — \$500 000.
- 14 (2) If a rail infrastructure manager gives a road manager of a private road
15 a written notice under subsection (1)(c)(i), the road manager must —
- 16 (a) identify and assess, so far as is reasonably practicable, risks
17 to safety that may arise from the existence or use of any rail
18 or road crossing that is part of the road infrastructure of the
19 road because of, or partly because of, railway operations; and
- 20 (b) determine measures to manage, so far as is reasonably
21 practicable, those risks; and
- 22 (c) for the purpose of managing those risks — seek to enter into
23 an interface agreement with the rail infrastructure manager.
- 24 Maximum penalty:
- 25 (a) in the case of an individual — \$50 000;
26 (b) in the case of a body corporate — \$500 000.
- 27 **109. Identification and assessment of risks**
- 28 A rail transport operator, rail infrastructure manager or road manager
29 that is required under this Subdivision to identify and assess risks to
30 safety that may arise from operations carried out by another person
31 may do so —
- 32 (a) by itself identifying and assessing those risks; or
33 (b) by identifying and assessing those risks jointly with the other
34 person; or

- 1 (c) by adopting the identification and assessment of those risks
2 carried out by the other person.

3 **110. Regulator may give directions**

4 (1) This section applies if the Regulator is satisfied that a rail transport
5 operator, rail infrastructure manager or road manager referred to in
6 this Subdivision —

- 7 (a) is unreasonably refusing or failing to enter into an interface
8 agreement with another person as required under this
9 Subdivision; or
10 (b) is unreasonably delaying the negotiation of such an
11 agreement.

12 (2) The Regulator may give a written notice to the rail transport operator,
13 rail infrastructure manager or road manager (as the case requires) and
14 the other person that —

- 15 (a) warns of the Regulator’s powers under this section, including
16 the power to issue a direction under subsection (3) at any time
17 after a specified date; and
18 (b) includes a copy of this section; and
19 (c) may contain suggested terms for inclusion in an interface
20 agreement.

21 (3) If the Regulator gives a notice under subsection (2) to a rail transport
22 operator, rail infrastructure manager or road manager, the Regulator
23 may, in writing, require the operator or manager to provide such
24 information as the Regulator reasonably requires for the purposes of
25 making a direction under this section.

26 (4) If a notice is given under subsection (2) and an interface agreement
27 has not been entered into by or on the date specified in the notice, the
28 Regulator —

- 29 (a) may determine the arrangements that are to apply in relation
30 to the management of risks to safety referred to in
31 section 106, 107 or 108 (as the case requires); and
32 (b) may direct any of the persons to whom the notice is issued to
33 give effect to those arrangements; and
34 (c) must specify the time within which a direction is to be
35 complied with.

- 1 (5) A direction under subsection (4) —
2 (a) must be in writing; and
3 (b) must set out any arrangements determined by the Regulator
4 under that subsection.
- 5 (6) A person to whom a notice or direction is given under this section
6 must comply with the notice or direction within the time specified in
7 the notice or direction.
- 8 Maximum penalty:
9 (a) in the case of an individual — \$20 000;
10 (b) in the case of a body corporate — \$100 000.

11 **111. Register of interface agreements**

- 12 (1) A rail transport operator must maintain a register of —
13 (a) interface agreements to which it is a party; and
14 (b) arrangements determined by the Regulator under section 110,
15 that are applicable to the operator’s railway operations.
- 16 Maximum penalty:
17 (a) in the case of an individual — \$5 000;
18 (b) in the case of a body corporate — \$25 000.
- 19 (2) A road manager must maintain a register of —
20 (a) interface agreements to which it is a party; and
21 (b) arrangements determined by the Regulator under section 110,
22 that are applicable to any road in relation to which it is the road
23 manager.
- 24 Maximum penalty:
25 (a) in the case of an individual — \$5 000;
26 (b) in the case of a body corporate — \$25 000.

Subdivision 3 — Other safety plans and programs

112. Security management plan

(1) A rail transport operator must have a security management plan for railway operations in respect of which the operator is required to be accredited that —

- (a) incorporates measures to protect people from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and
- (b) complies with this Law and any requirements prescribed by the national regulations.

Maximum penalty:

- (a) in the case of an individual — \$50 000;
- (b) in the case of a body corporate — \$500 000.

(2) The rail transport operator must ensure —

- (a) that the security management plan is implemented; and
- (b) that appropriate response measures of the security management plan are implemented without delay if an incident of a kind referred to in subsection (1)(a) occurs.

Maximum penalty:

- (a) in the case of an individual — \$50 000;
- (b) in the case of a body corporate — \$500 000.

113. Emergency management plan

(1) A rail transport operator must have an emergency management plan that complies with subsection (2) for railway operations in respect of which the operator is required to be accredited.

Maximum penalty:

- (a) in the case of an individual — \$50 000;
- (b) in the case of a body corporate — \$500 000.

(2) The emergency management plan must —

- (a) address and include the matters that are prescribed; and

- 1 (b) be prepared —
- 2 (i) so far as is reasonably practicable — in conjunction
- 3 with any of the emergency services that would be
- 4 expected to attend in the event of a significant
- 5 incident involving the operator's railway operations
- 6 and any other person who is prescribed; and
- 7 (ii) in accordance with the national regulations;
- 8 and
- 9 (c) be kept and maintained in accordance with the national
- 10 regulations; and
- 11 (d) be provided to the relevant emergency services and any other
- 12 person who is prescribed; and
- 13 (e) be tested in accordance with the national regulations.
- 14 (3) A rail transport operator must ensure that the appropriate response
- 15 measures of the emergency management plan are implemented if an
- 16 emergency occurs.
- 17 Maximum penalty:
- 18 (a) in the case of an individual — \$50 000;
- 19 (b) in the case of a body corporate — \$500 000.

20 **114. Health and fitness management program**

21 A rail transport operator must prepare and implement a health and

22 fitness program for rail safety workers who carry out rail safety work

23 in relation to railway operations in respect of which the operator is

24 required to be accredited that complies with the prescribed

25 requirements relating to health and fitness programs.

26 Maximum penalty:

- 27 (a) in the case of an individual — \$50 000;
- 28 (b) in the case of a body corporate — \$500 000.

29 **115. Drug and alcohol management program**

30 A rail transport operator must prepare and implement a drug and

31 alcohol management program for rail safety workers who carry out

32 rail safety work in relation to railway operations in respect of which

33 the operator is required to be accredited that complies with the

- 1 (ii) if subparagraph (i) does not apply — in accordance
2 with any qualifications or competencies prescribed by
3 the national regulations; and
- 4 (b) must be assessed by reference to the knowledge and skills of
5 the worker that would enable the worker to carry out the rail
6 safety work safely.
- 7 (3) A certificate purporting to have been issued under the AQF to a rail
8 safety worker certifying that the worker has certain qualifications or
9 units of competence is evidence that the worker has those
10 qualifications or units of competence.
- 11 (4) Subsection (2) does not apply if —
- 12 (a) it is not reasonably practicable for a rail transport operator to
13 assess the competence of a rail safety worker to carry out rail
14 safety work in relation to the operator’s rail infrastructure or
15 rolling stock in accordance with that subsection; and
- 16 (b) the operator satisfies the Regulator that —
- 17 (i) the worker has otherwise acquired the necessary
18 qualifications and competencies applicable to that rail
19 safety work; and
- 20 (ii) the worker has the knowledge and skills that would
21 enable the worker to carry out the rail safety work
22 safely.
- 23 (5) Nothing in this section prevents a rail transport operator from
24 requiring a rail safety worker to undertake further training before
25 carrying out rail safety work.
- 26 (6) A rail transport operator must maintain records in accordance with the
27 national regulations of the competence of rail safety workers who
28 carry out rail safety work on or in relation to the operator’s rail
29 infrastructure or rolling stock.
- 30 Maximum penalty:
- 31 (a) in the case of an individual — \$10 000;
- 32 (b) in the case of a body corporate — \$50 000.

1 **118. Identification of rail safety workers**

2 (1) A rail transport operator must ensure that each rail safety worker who
3 is to carry out rail safety work in relation to the operator's railway
4 operations has a form of identification that is sufficient to enable the
5 type of competence and training of the worker for that rail safety work
6 to be checked by a rail safety officer.

7 Maximum penalty:

8 (a) in the case of an individual — \$10 000;

9 (b) in the case of a body corporate — \$50 000.

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

13 Maximum penalty: \$2 500.

14 **Subdivision 5 — Other persons to comply with safety management system**

15 **119. Other persons to comply with safety management system**

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

21 Maximum penalty:

22 (a) in the case of an individual — \$50 000;

23 (b) in the case of a body corporate — \$500 000.

24 **Division 7 — Information about rail safety etc**

25 **120. Power of Regulator to obtain information from rail transport**
26 **operators**

27 (1) The Regulator may, by written notice given to a rail transport
28 operator, require the operator to provide to the Regulator on or before
29 a specified date and in a manner and form approved by the Regulator,
30 1 or more of the following —

31 (a) information concerning measures taken by the rail transport
32 operator to promote rail safety;

- 1 (b) information concerning matters, including matters relating to
2 the financial capacity or insurance arrangements of the rail
3 transport operator, relating to rail safety or the accreditation
4 of the rail transport operator that the Regulator reasonably
5 requires;
- 6 (c) the information prescribed for the purposes of this subsection.
- 7 (2) A rail transport operator must comply with a notice given to the
8 operator under subsection (1).
9 Maximum penalty:
10 (a) in the case of an individual — \$10 000;
11 (b) in the case of a body corporate — \$50 000.
- 12 (3) A rail transport operator must provide to the Regulator, in a manner
13 and form approved by the Regulator and at the prescribed times and in
14 respect of the prescribed periods, information prescribed by the
15 national regulations for the purposes of this subsection relating to rail
16 safety or accreditation.
17 Maximum penalty:
18 (a) in the case of an individual — \$10 000;
19 (b) in the case of a body corporate — \$50 000.

20 **Division 8 — Investigating and reporting by rail transport operators**

21 **121. Notification of certain occurrences**

- 22 (1) A rail transport operator must report to the Regulator or another
23 authority specified by the Regulator within the time, and in the
24 manner, prescribed by the national regulations, all notifiable
25 occurrences that happen on, or in relation to, the operator's railway
26 premises or railway operations.
27 Maximum penalty:
28 (a) in the case of an individual — \$20 000;
29 (b) in the case of a body corporate — \$100 000.
- 30 (2) Two or more rail transport operators may make a joint report with
31 respect to a notifiable occurrence affecting them.

1 (4) A rail transport operator who has carried out an investigation under
2 this section must report to the Regulator on the investigation in a
3 manner specified by the Regulator within the period specified by the
4 Regulator.

5 Maximum penalty:

6 (a) in the case of an individual — \$20 000;

7 (b) in the case of a body corporate — \$100 000.

8 (5) However, information or a document provided by a rail transport
9 operator in a report under this section is not admissible as evidence
10 against the operator in civil or criminal proceedings other than
11 proceedings arising out of the false or misleading nature of the
12 information or document.

13 **Division 9 — Drug and alcohol testing by Regulator**

14 **123. Testing for presence of drugs or alcohol**

15 A rail safety worker may be required to undertake a test for the
16 presence of a drug or alcohol in accordance with this Law and the
17 application Act.

18 **124. Appointment of authorised persons**

19 (1) The Regulator may, by instrument in writing, appoint —

20 (a) a rail safety officer; or

21 (b) a person with qualifications or experience considered by the
22 Regulator to be appropriate for the performance of relevant
23 functions under this Law and the application Act,

24 to be an authorised person for a term, and subject to the conditions,
25 specified in the instrument.

26 Note: A person appointed under subsection (1)(b) need not be an employee
27 of a government agency or instrumentality.

28 (2) The authority of an authorised person may be limited by the relevant
29 instrument of appointment to a particular part of a participating
30 jurisdiction, to a particular railway or to particular rail safety workers,
31 or otherwise.

1 (b) give any other reasonable direction to the worker.

2 Example: An authorised person may (for example) direct the rail safety
3 worker to accompany the authorised person and attend at a
4 specified place for the purposes of carrying out the preliminary
5 breath test or breath analysis.

6 (3) A rail safety worker must immediately comply with a direction given
7 by an authorised person (whether under this section or the application
8 Act) for the purpose of requiring the worker to submit to a
9 preliminary breath test or breath analysis.

10 Maximum penalty: \$10 000.

11 (4) The application Act and regulations made under the application Act
12 may prescribe the manner in which a preliminary breath test or breath
13 analysis is to be conducted and may (for example) require that more
14 than 1 sample of breath is to be provided for testing or analysis (and,
15 in such a case, specify which reading of the apparatus or instrument
16 will be taken to be the result of the preliminary breath test or breath
17 analysis for the purposes of this Law, the application Act or any other
18 Act).

19 **127. Authorised person may require drug screening test, oral fluid**
20 **analysis and blood test**

21 (1) Subject to this section, an authorised person may at any time require a
22 rail safety worker who —

23 (a) is about to carry out rail safety work; or

24 (b) is carrying out rail safety work; or

25 (c) is attempting to carry out rail safety work; or

26 (d) is still on railway premises after carrying out rail safety work;
27 or

28 (e) without limiting a preceding paragraph — is involved in a
29 prescribed notifiable occurrence,

30 to submit to a drug screening test, oral fluid analysis or blood test (or
31 any combination of these).

1 (2) For the purposes of making a requirement that a rail safety worker
2 submit to a drug screening test, oral fluid analysis or blood test, an
3 authorised person may —

- 4 (a) require the worker to provide the worker's name and
5 residential address; and
6 (b) give any other reasonable direction to the worker.

7 Example: An authorised person may (for example) direct the rail safety
8 worker to accompany the authorised person and attend at a
9 specified place for the purposes of carrying out the drug
10 screening test, oral fluid analysis or blood test.

11 (3) A rail safety worker must immediately comply with a direction given
12 by an authorised person (whether under this section or the application
13 Act) for the purpose of requiring the worker to submit to a drug
14 screening test, oral fluid analysis or blood test (or any combination of
15 these).

16 Maximum penalty: \$10 000.

17 (4) The application Act and regulations made under the application Act
18 may prescribe the manner in which a drug screening test, oral fluid
19 analysis or blood test is to be conducted.

20 **128. Offence relating to prescribed concentration of alcohol or**
21 **prescribed drug**

22 (1) A rail safety worker must not carry out, or attempt to carry out, rail
23 safety work —

- 24 (a) while there is present in his or her blood the prescribed
25 concentration of alcohol; or
26 (b) while a prescribed drug is present in his or her oral fluid or
27 blood; or
28 (c) while so much under the influence of alcohol or a drug as to
29 be incapable of effectively discharging a function or duty of a
30 rail safety worker.

31 Maximum penalty: \$10 000.

32 (2) For the purposes of subsection (1)(c), a person is incapable of
33 effectively discharging a function or duty of a rail safety worker if,
34 owing to the influence of alcohol or a drug, the use of any mental or
35 physical faculty of that person is lost or appreciably impaired (but this

- 1 subsection does not restrict in any way the operation of
2 subsection (1)(c)).
- 3 (3) Subject to subsection (4), it is a defence to a charge of an offence
4 against subsection (1)(b) if the defendant proves that he or she did not
5 knowingly consume the prescribed drug present in his or her oral fluid
6 or blood.
- 7 (4) Subsection (3) does not apply if the defendant consumed the
8 prescribed drug believing that he or she was consuming a substance
9 unlawfully but was mistaken as to, unaware of, or indifferent to, the
10 identity of the prescribed drug.
- 11 (5) For the purposes of this section —
12 ***prescribed concentration of alcohol***, in relation to a rail safety
13 worker, means —
14 (a) any concentration of alcohol in the blood; or
15 (b) if some other concentration of alcohol is prescribed in the
16 national regulations (being a specified amount of alcohol in
17 100 millilitres of blood) for the purposes of this definition —
18 that concentration;
- 19 ***prescribed drug*** means —
20 (a) any of the following substances —
21 (i) *delta-9-tetrahydrocannabinol*;
22 (ii) Methylamphetamine (Methamphetamine);
23 (iii) 3,4-Methylenedioxymethylamphetamine (MDMA);
24 and
25 (b) any other substance declared by the national regulations to be
26 a prescribed drug for the purposes of this section.
- 27 **129. Oral fluid or blood sample or results of analysis etc not to be used**
28 **for other purposes**
- 29 A sample of oral fluid or blood taken under this Part or the application
30 Act (and any other forensic material taken incidentally during a drug
31 screening test, oral fluid analysis or blood test) must not be used for a
32 purpose other than that contemplated by this Part or the application
33 Act, in connection with the control or management of any work or

- 1 **132. Admissibility of evidence of train safety recordings in civil**
2 **proceedings**
- 3 (1) A train safety recording is not admissible in evidence in any civil
4 proceedings against a rail safety worker.
- 5 (2) A party to civil proceedings may, at any time before the determination
6 of the proceedings, apply to the court in which the proceedings have
7 been instituted for an order that a train safety recording, or part of a
8 train safety recording, be admissible in evidence in the proceedings.
- 9 (3) If an application is made to a court under subsection (2), the court
10 must —
- 11 (a) examine the train safety recording; and
12 (b) if satisfied that —
- 13 (i) a material question of fact in the proceedings will not
14 be able to be properly determined from other
15 evidence available to the court; and
- 16 (ii) the train safety recording, or a part of the train safety
17 recording, if admitted in evidence in the proceedings,
18 will assist in the proper determination of that material
19 question of fact; and
- 20 (iii) in the circumstances of the case, the public interest in
21 the proper determination of that material question of
22 fact outweighs the public interest in protecting the
23 privacy of rail safety workers,
- 24 the court may order that the train safety recording, or that part
25 of the train safety recording, be admissible in evidence in the
26 proceedings.
- 27 (4) If the court makes an order referred to in subsection (3), the train
28 safety recording is (despite subsection (1)) admissible in evidence in
29 the proceedings.
- 30 Note: Part 6 of the *Transport Safety Investigation Act 2003* of the
31 Commonwealth provides for limitations on the disclosure and use of
32 train safety recordings in court proceedings.

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Part 4 — Securing compliance

Division 1 — Guiding principle

134. Guiding principle

Enforcement of this Law should be undertaken for the purpose of —

- (a) protecting public safety; and
- (b) promoting improvement in rail safety; and
- (c) removing incentive for any unfair commercial advantage that might be derived from contravening the rail safety requirements under this Law; and
- (d) influencing the attitude and behaviour of persons whose actions may have adverse impacts on rail safety; and
- (e) securing compliance with this Law through effective and appropriate compliance and enforcement measures.

Division 2 — Rail safety officers

135. Appointment

- (1) The Regulator may, by instrument in writing, appoint a person, or a person of a prescribed class, to be a rail safety officer for a term, and subject to the conditions, specified in the instrument.

Notes:

- 1 A person appointed under subsection (1) need not be an employee of a government agency or instrumentality.
- 2 A person appointed under subsection (1) may be a police officer of a participating jurisdiction.

- (2) Without limiting the conditions to which the appointment of a rail safety officer may be subject, a condition may specify 1 or more of the following —

- (a) functions under this Law that may not be exercised by the officer;
- (b) the only functions under this Law that may be exercised by the officer;

1 (c) the circumstances or manner in which a function under this
2 Law may be performed by the officer.

3 **136. Identity cards**

4 (1) The Regulator must give each rail safety officer an identity card that
5 states the person's name and appointment as a rail safety officer and
6 includes any other matter prescribed by the national regulations.

7 (2) A rail safety officer must produce his or her identity card for
8 inspection on request when exercising a function under this Law.

9 (3) If a person to whom an identity card has been issued ceases to be a
10 rail safety officer, the person must return the identity card to the
11 Regulator as soon as practicable.

12 Maximum penalty: \$5 000.

13 **137. Accountability of rail safety officers**

14 (1) A rail safety officer must give written notice to the Regulator of all
15 interests, pecuniary or otherwise, that the officer has, or acquires, and
16 that conflict or could conflict with the proper exercise of the officer's
17 functions.

18 (2) The Regulator must give a direction to a rail safety officer not to deal,
19 or to no longer deal, with a matter if the Regulator becomes aware
20 that the officer has a potential conflict of interest in relation to a
21 matter and the Regulator considers that the officer should not deal, or
22 should no longer deal, with the matter.

23 **138. Suspension and ending of appointment of rail safety officers**

24 (1) The Regulator may suspend or end the appointment of a rail safety
25 officer.

26 (2) A person's appointment as a rail safety officer ends when the person
27 ceases to be eligible for appointment as a rail safety officer.

28 **Division 3 — Regulator has functions and powers of rail safety officers**

29 **139. Regulator has functions and powers of rail safety officers**

30 (1) The Regulator has all the functions and powers that a rail safety
31 officer has under this Law.

- 1 (2) Accordingly, a reference in this Law to a *rail safety officer* includes a
2 reference to the Regulator.

3 **Division 4 — Functions and powers of rail safety officers**

4 **140. Functions and powers**

5 A rail safety officer has the following functions and powers under this
6 Law —

- 7 (a) to provide information and advice about compliance with this
8 Law;
- 9 (b) to require compliance with this Law through the issuing of
10 notices;
- 11 (c) to investigate contraventions of this Law and assist in the
12 prosecution of offences;
- 13 (d) other functions or powers conferred by the national
14 regulations.

15 **141. Conditions on rail safety officers' powers**

16 A rail safety officer's powers under this Law are subject to any
17 conditions specified in the instrument of the officer's appointment.

18 **142. Rail safety officers subject to Regulator's directions**

- 19 (1) A rail safety officer is subject to the directions of the Regulator in the
20 exercise of his or her powers under this Law.
- 21 (2) A direction under subsection (1) may be of a general nature or may
22 relate to a specified matter or specified class of matter.

23 **Division 5 — Powers relating to entry**

24 **Subdivision 1 — General powers of entry**

25 **143. Powers of entry**

- 26 (1) A rail safety officer may at any time enter a place that is, or that the
27 officer reasonably suspects is, railway premises.
- 28 (2) If a rail safety officer enters a place under subsection (1) and it is not
29 railway premises, the officer must leave the place immediately.

1 (3) A rail safety officer may enter a place that adjoins railway premises if
2 the entry is urgently required for the purpose of dealing with a railway
3 accident or incident.

4 (4) An entry may be made under subsection (1) or (3) with or without the
5 consent of the person with control or management of the place.

6 (5) A rail safety officer may enter any place if the entry is authorised by a
7 search warrant.

8 Note: A rail safety officer may enter residential premises to gain access to
9 railway premises — see section 153(c).

10 **144. Notification of entry**

11 (1) A rail safety officer may enter a place under section 143 without prior
12 notice to any person.

13 (2) A rail safety officer must, as soon as practicable after entry to a place
14 that is, or that the officer reasonably suspects is, railway premises,
15 take all reasonable steps to notify the person with control or
16 management of the place.

17 (3) However, a rail safety officer is not required to notify any person if to
18 do so would defeat the purpose for which the place was entered or
19 cause unreasonable delay.

20 **145. General powers on entry**

21 (1) A rail safety officer who enters a place under section 143 may do any
22 of the following —

23 (a) inspect, examine and make inquiries at the place;

24 (b) inspect and examine any thing (including a document) at the
25 place;

26 (c) bring to the place and use any equipment or materials that
27 may be required;

28 (d) enter or open, using reasonable force, rail infrastructure,
29 rolling stock, a road vehicle or other thing to examine the
30 structure, rolling stock, road vehicle or other thing;

31 (e) give directions with respect to the stopping or movement of
32 any rolling stock or road vehicle;

- 1 (f) take measurements, make surveys and take levels and, for
2 those purposes, dig trenches, break up the soil and set up any
3 posts, stakes or markers;
- 4 (g) conduct tests and make sketches or recordings (including
5 photographs, films, audio, video, digital or other recordings);
- 6 (h) mark, tag or otherwise identify rolling stock, a road vehicle or
7 other thing;
- 8 (i) seize any thing (including a document) at the place if the
9 officer reasonably believes the thing is evidence of an offence
10 against this Law;
- 11 (j) take and remove for analysis, testing or examination a sample
12 of any substance or thing without paying for it;
- 13 (k) require a person at the place to give the officer reasonable
14 help to exercise the officer's powers under paragraphs (a)
15 to (j);
- 16 (l) exercise any power that is reasonably necessary to be
17 exercised by the officer for the purposes of this Law.
- 18 (2) A film, photograph, video or digital recording, or other image, taken
19 under subsection (1)(g) of rail infrastructure, or of any part of rail
20 infrastructure, is not inadmissible as evidence by reason only of the
21 fact that it includes the likeness of 1 or more persons if the capturing
22 of that likeness is incidental to the taking of the film, photograph,
23 video or digital recording, or other image.
- 24 (3) A person required to give reasonable help under subsection (1)(k)
25 must not, without reasonable excuse, fail to comply with the
26 requirement.
- 27 Maximum penalty:
- 28 (a) in the case of an individual — \$10 000;
- 29 (b) in the case of a body corporate — \$50 000.
- 30 (4) Subsection (3) places an evidential burden on the accused to show a
31 reasonable excuse.
- 32 (5) In this section —
- 33 *reasonable help* includes —
- 34 (a) assistance to enable the rail safety officer to find and gain
35 access to electronically stored material and information; and

- 1 (b) unloading rolling stock; and
2 (c) running the engine of a locomotive; and
3 (d) driving a train; and
4 (e) giving the rail safety officer assistance to enter any rail
5 infrastructure or any part of rail infrastructure, or open rolling
6 stock or any part of rolling stock.

7 **146. Persons assisting rail safety officers**

- 8 (1) A person (the *assistant*), including an interpreter, may accompany a
9 rail safety officer entering a place under this Part to assist the officer
10 if the officer considers the assistance necessary.
- 11 (2) The assistant —
- 12 (a) may do such things at the place and in such manner as the rail
13 safety officer reasonably requires to assist the officer in the
14 exercise of his or her powers under this Law; but
- 15 (b) must not do anything that the officer does not have power to
16 do, except as permitted under a search warrant.
- 17 (3) Anything done lawfully by the assistant is taken for all purposes to
18 have been done by the rail safety officer.

19 **147. Use of electronic equipment**

- 20 (1) Without limiting section 145, if —
- 21 (a) a thing found in or on rolling stock or a road vehicle, or at a
22 place, is, or includes, a disk, tape or other device for the
23 storage of information; and
- 24 (b) the equipment in or on the rolling stock or road vehicle, or at
25 the place, may be used with the disk, tape or other device,
- 26 the rail safety officer, or a person assisting the officer, may operate
27 the equipment to access the information.
- 28 (2) A rail safety officer, or a person assisting a rail safety officer, must
29 not operate or seize equipment for the purpose mentioned in this
30 section unless the officer or person assisting believes on reasonable
31 grounds that the operation or seizure of the equipment can be carried
32 out without damage to the equipment.

1 **148. Use of equipment to examine or process things**

2 (1) Without limiting section 145, a rail safety officer exercising a power
3 under this Part may bring to, onto, or into, rolling stock, a road
4 vehicle or a place any equipment reasonably necessary for the
5 examination or processing of things found at, on or in the rolling
6 stock, road vehicle or place in order to determine whether they are
7 things that may be seized.

8 (2) The rail safety officer, or a person assisting the officer, may operate
9 equipment already in or on the rolling stock or road vehicle, or at the
10 place, to carry out the examination or processing of a thing found in
11 or on the rolling stock or road vehicle, or at the place in order to
12 determine whether it is a thing that may be seized, if the officer or
13 person assisting believes on reasonable grounds that —

- 14 (a) the equipment is suitable for the examination or the
15 processing; and
16 (b) the examination or processing can be carried out without
17 damage to the equipment.

18 **149. Securing a site**

19 (1) For the purpose of protecting evidence that might be relevant for
20 compliance or investigative purposes, an authorised officer may
21 secure the perimeter of any site at a place by whatever means the
22 authorised officer considers appropriate.

23 (2) A person must not, without the permission of an authorised officer,
24 enter or remain at a site the perimeter of which is secured under this
25 section.

26 Maximum penalty: \$10 000.

27 (3) Subsection (2) does not apply if the person enters the site, or remains
28 at the site —

- 29 (a) to ensure the safety of persons; or
30 (b) to remove deceased persons or animals from the site; or
31 (c) to move a road vehicle, or the wreckage of a road vehicle, to
32 a safe place; or
33 (d) to protect the environment from significant damage or
34 pollution.

- 1 (e) the date, within 7 days after the search warrant's issue, the
2 search warrant ends.
- 3 (6) A rail safety officer may apply to a magistrate for a search warrant by
4 telephone, fax or other prescribed means if the officer considers the
5 urgency of the situation requires it and, in such a case, the following
6 provisions will apply —
- 7 (a) the magistrate may complete and sign the warrant without the
8 provision of sworn evidence and without a written application
9 that states the grounds on which the warrant is sought if the
10 magistrate is satisfied that there are reasonable grounds for
11 issuing the warrant urgently;
- 12 (b) if the magistrate completes and signs a warrant under
13 paragraph (a), the magistrate must then tell the officer —
- 14 (i) the terms of the warrant (as contemplated by
15 subsection (5)); and
- 16 (ii) the date on which, and the time at which, the warrant
17 was signed;
- 18 (c) if steps are taken under paragraph (b), the officer must
19 then —
- 20 (i) complete a form of warrant in the same terms as the
21 warrant signed by the magistrate and write on the
22 form —
- 23 (A) the name of the magistrate; and
24 (B) the date on which, and the time at which,
25 the warrant was signed;
- 26 and
- 27 (ii) send the magistrate the completed form of warrant
28 not later than the day after the warrant is executed or
29 comes to an end;
- 30 (d) a form of warrant completed by an officer under
31 paragraph (c) has the same force and effect as a warrant
32 signed by the magistrate under subsections (4) and (5).

- 1 (c) for the sole purpose of gaining access to suspected railway
2 premises, but only —
3 (i) if the officer reasonably believes that no reasonable
4 alternative access is available; and
5 (ii) at a reasonable time, having regard to the times at
6 which the officer believes rail safety work is being
7 carried out at the place to which access is sought.

8 **Subdivision 4 — Specific powers on entry**

9 **154. Power to require production of documents and answers to**
10 **questions**

- 11 (1) A rail safety officer who enters a place under this Division may —
12 (a) require a person to tell the officer who has custody of, or
13 access to, a document; or
14 (b) require a person who has custody of, or access to, a document
15 to produce that document to the officer while the officer is at
16 the place, or within a specified period; or
17 (c) require a person at the place to answer any questions put by
18 the officer.
- 19 (2) A requirement under subsection (1)(b) must be made by written notice
20 unless the circumstances require the rail safety officer to have
21 immediate access to the document.
- 22 (3) An interview conducted by a rail safety officer under subsection (1)(c)
23 must be conducted in private if —
24 (a) the rail safety officer considers it appropriate; or
25 (b) the person being interviewed so requests.
- 26 (4) Subsection (3) does not limit the operation of section 146 or prevent a
27 representative of the person being interviewed from being present at
28 the interview.
- 29 (5) Subsection (3) may be invoked during an interview by —
30 (a) the rail safety officer; or
31 (b) the person being interviewed,
32 in which case the subsection applies to the remainder of the interview.

1 (6) A person must not, without reasonable excuse, fail to comply with a
2 requirement under this section.

3 Maximum penalty:

4 (a) in the case of an individual — \$5 000;

5 (b) in the case of a body corporate — \$25 000.

6 (7) Subsection (6) places an evidential burden on the accused to show a
7 reasonable excuse.

8 **155. Abrogation of privilege against self-incrimination**

9 (1) A person is not excused from answering a question or providing
10 information or a document under this Part on the ground that the
11 answer to the question, or the information or document, may tend to
12 incriminate the person or expose the person to a penalty.

13 (2) However, the answer to a question or information or a document
14 provided by an individual is not admissible as evidence against that
15 individual in civil or criminal proceedings other than proceedings
16 arising out of the false or misleading nature of the answer,
17 information or document.

18 **156. Warning to be given**

19 (1) Before requiring a person to answer a question or provide information
20 or a document under this Part, a rail safety officer must —

21 (a) identify himself or herself to the person as a rail safety officer
22 by producing the officer's identity card or in some other way;
23 and

24 (b) warn the person that failure to comply with the requirement
25 or to answer the question, without reasonable excuse, would
26 constitute an offence; and

27 (c) warn the person about the effect of section 155; and

28 (d) advise the person about the effect of section 245.

29 (2) It is not an offence for an individual to refuse to answer a question put
30 by a rail safety officer or provide information or a document to a rail
31 safety officer under this Part on the ground that the question,
32 information or document might tend to incriminate him or her, unless
33 he or she was first given the warning in subsection (1)(c).

- 1 (3) Nothing in this section prevents a rail safety officer from obtaining
2 and using evidence given to the officer voluntarily by any person.

3 **157. Power to copy and retain documents**

- 4 (1) A rail safety officer may —
5 (a) make copies of, or take extracts from, a document given to
6 the officer in accordance with a requirement under this Law;
7 and
8 (b) keep that document for the period that the officer considers
9 necessary.
- 10 (2) While a rail safety officer retains custody of a document, the officer
11 must permit the following persons to inspect or make copies of the
12 document at all reasonable times:
13 (a) the person who produced the document;
14 (b) the owner of the document;
15 (c) a person authorised by a person referred to in paragraph (a)
16 or (b).

17 **Subdivision 5 — Powers to support seizure**

18 **158. Power to seize evidence etc**

- 19 (1) A rail safety officer who enters railway premises under section 143
20 may seize anything (including a document) at the premises if the
21 officer reasonably believes the thing is evidence of an offence against
22 this Law.
- 23 (2) A rail safety officer who enters a place with a search warrant may
24 seize the evidence for which the warrant was issued.
- 25 (3) A rail safety officer may also seize anything else at the place if the
26 officer reasonably believes —
27 (a) the thing is evidence of an offence against this Law; and
28 (b) the seizure is necessary to prevent the thing being hidden, lost
29 or destroyed or used to continue or repeat the offence.

- 1 **159. Directions relating to seizure**
- 2 (1) To enable a thing to be seized under this Part, a rail safety officer may
3 direct the person in control of it —
- 4 (a) to take it to a specified place within a specified time; and
5 (b) if necessary, to remain in control of it at the specified place
6 for a period specified in the direction.
- 7 (2) A direction under subsection (1) —
- 8 (a) must be given by signed written notice given to the person; or
9 (b) if for any reason it is not practicable to give a signed written
10 notice to the person — may be given orally and confirmed by
11 signed written notice given to the person as soon as is
12 practicable.
- 13 (3) A further direction may be made under this section about the thing if
14 it is necessary and reasonable to make the further direction.
- 15 Example: A further direction may (for example) be that the thing be
16 transported during stated off-peak hours, be transported along a
17 particular route, or be transported in a particular way.
- 18 (4) A person given a direction under subsection (1) or (3) must comply
19 with that direction unless the person has a reasonable excuse.
20 Maximum penalty: \$5 000.
- 21 (5) Subsection (4) places an evidential burden on the accused to show a
22 reasonable excuse.
- 23 (6) Without limiting what may otherwise be a reasonable excuse under
24 subsection (4), it is a reasonable excuse for a person in control of a
25 thing not to comply with a direction under subsection (1) or (3) if, in
26 all the circumstances, the direction was unreasonable.
- 27 (7) In this section —
- 28 *in control*, in relation to a thing, means having, or reasonably
29 appearing to a rail safety officer as having, authority to exercise
30 control over the thing.
- 31 **160. Rail safety officer may direct a thing's return**
- 32 (1) If a rail safety officer has directed a person to take a thing to a
33 specified place within a specified time under section 159(1), a rail

1 safety officer may direct the person to return the thing to the place
2 from which it was taken.

3 (2) A person given a direction under subsection (1) must comply with
4 that direction unless the person has a reasonable excuse.

5 Maximum penalty: \$5 000.

6 (3) Subsection (2) places an evidential burden on the accused to show a
7 reasonable excuse.

8 **161. Receipt for seized things**

9 (1) After a rail safety officer seizes a thing under this Part, the officer
10 must give a receipt for it to the person from whom the thing was
11 seized or the owner of the thing.

12 (2) However, if for any reason it is not practicable to comply with
13 subsection (1), the rail safety officer must leave the receipt at the
14 place of seizure in a conspicuous position and in a reasonably secure
15 way.

16 (3) The receipt must describe generally the thing seized and its condition.

17 (4) This section does not apply if it would be impracticable or
18 unreasonable to expect the rail safety officer to account for the thing,
19 given its condition, nature and value.

20 **162. Forfeiture of seized things**

21 (1) A seized thing is forfeited to the Regulator if the Regulator —

22 (a) cannot find the person entitled to the thing after making
23 reasonable inquiries; or

24 (b) cannot return it to the person entitled to it, after making
25 reasonable efforts; or

26 (c) reasonably believes it is necessary to forfeit the thing to
27 prevent it being used to commit an offence against this Law.

28 (2) Subsection (1)(a) does not require the Regulator to make inquiries if it
29 would be unreasonable to make inquiries to find the person entitled to
30 the thing.

1 (3) The Regulator may impose any conditions on the return of the thing
2 under this section that the Regulator considers appropriate to
3 eliminate or minimise any risk to rail safety related to the thing.

4 (4) In this section —
5 *person entitled* to a thing means the person entitled to possess the
6 thing or the owner of the thing.

7 **164. Access to seized thing**

8 (1) Until a seized thing is forfeited or returned under this Part, a rail
9 safety officer must allow its owner to inspect it and, if it is a
10 document, to copy it.

11 (2) Subsection (1) does not apply if it is impracticable or it would be
12 unreasonable to allow the inspection or copying.

13 **Division 6 — Damage and compensation**

14 **165. Damage etc to be minimised**

15 In the exercise, or purported exercise, of a power under this Law, a
16 rail safety officer must take all reasonable steps to ensure that the
17 officer, and any assistant to the officer, cause as little inconvenience,
18 detriment and damage as is practicable.

19 **166. Rail safety officer to give notice of damage**

20 (1) This section applies if a rail safety officer or an assistant to a rail
21 safety officer damages a thing when exercising or purporting to
22 exercise a power under this Law.

23 (2) The rail safety officer must, as soon as practicable, give written notice
24 of the damage to the person whom the officer believes on reasonable
25 grounds is the person in control of the thing.

26 (3) If the rail safety officer believes the damage was caused by a latent
27 defect in the thing or circumstances beyond the officer's or assistant's
28 control, the officer may state it in the notice.

29 (4) If, for any reason, it is impracticable to comply with subsection (2),
30 the rail safety officer must leave the notice in a conspicuous position
31 and in a reasonably secure way where the damage happened.

- 1 (5) This section does not apply to damage the rail safety officer
2 reasonably believes is trivial.

3 **167. Compensation**

- 4 (1) A person may claim compensation from the Regulator if the person
5 incurs loss or expense because of the exercise or purported exercise of
6 a power under Division 5.
- 7 (2) Compensation may be claimed and ordered in a proceeding —
8 (a) brought in a court of competent jurisdiction; or
9 (b) for an offence against this Law brought against the person
10 claiming compensation.
- 11 (3) The court may order compensation to be paid only if it is satisfied it is
12 just to make the order in the circumstances of the particular case.
- 13 (4) The national regulations may prescribe matters that may, or must, be
14 taken into account by the court when considering whether it is just to
15 make the order.

16 **Division 7 — Other matters**

17 **168. Power to require name and address**

- 18 (1) A rail safety officer may require a person to provide the person's
19 name and residential address if —
20 (a) the officer finds the person committing an offence against this
21 Law; or
22 (b) the officer finds the person in circumstances that lead, or has
23 information that leads, the officer to reasonably suspect the
24 person has committed an offence against this Law; or
25 (c) the officer reasonably believes that the person may be able to
26 assist in the investigation of an offence against this Law.
- 27 (2) When asking a person to provide the person's name and residential
28 address, the rail safety officer must —
29 (a) tell the person the reason for the requirement to provide the
30 person's name and residential address; and

1 (b) warn the person that it is an offence to fail to state that name
2 and residential address, unless the person has a reasonable
3 excuse.

4 (3) If the rail safety officer reasonably believes that the name or
5 residential address is false, the officer may require the person to give
6 evidence of its correctness.

7 (4) A person must not, without reasonable excuse, fail to comply with a
8 requirement under subsection (1) or (3).

9 Maximum penalty: \$5 000.

10 (5) Subsection (4) places an evidential burden on the accused to show a
11 reasonable excuse.

12 **169. Rail safety officer may take affidavits**

13 A rail safety officer is authorised to take affidavits for any purpose
14 relating or incidental to the exercise of his or her powers under this
15 Law.

16 **170. Attendance of rail safety officer at inquiries**

17 A rail safety officer may participate in any inquiry into the cause of
18 any death or injury of a rail safety worker while carrying out rail
19 safety work, or into any other incident or event relevant to safety at
20 railway premises.

21 **171. Directions may be given under more than 1 provision**

22 (1) A rail safety officer may, on the same occasion, give directions under
23 1 or more provisions of this Law.

24 (2) Without limiting subsection (1), a rail safety officer may, in the
25 course of exercising powers under a provision of this Law, give —

26 (a) further directions under the provision; or

27 (b) directions under 1 or more other provisions of this Law,

28 or both.

1 **Division 8 — Offences in relation to rail safety officers**

2 **172. Offence to hinder or obstruct rail safety officer**

3 A person must not intentionally hinder or obstruct a rail safety officer
4 in exercising his or her powers under this Law, or induce or attempt to
5 induce any other person to do so.

6 Maximum penalty: \$10 000.

7 **173. Offence to impersonate rail safety officer**

8 A person who is not a rail safety officer must not, in any way, hold
9 himself or herself out to be a rail safety officer.

10 Maximum penalty: \$10 000.

11 **174. Offence to assault, threaten or intimidate rail safety officer**

12 A person must not directly or indirectly assault, threaten or intimidate,
13 or attempt to assault, threaten or intimidate, a rail safety officer or a
14 person assisting a rail safety officer.

15 Maximum penalty:

16 (a) in the case of an individual — \$50 000 or imprisonment
17 for 2 years, or both;

18 (b) in the case of a body corporate — \$250 000.

19 **Part 5 — Enforcement measures**

20 **Division 1 — Improvement notices**

21 **175. Issue of improvement notices**

22 (1) This section applies if a rail safety officer reasonably believes that a
23 person —

24 (a) is contravening a provision of this Law; or

25 (b) has contravened a provision of this Law in circumstances that
26 make it likely that the contravention will continue or be
27 repeated; or

28 (c) is carrying out or has carried out —

29 (i) railway operations that threaten safety; or

- 1 (ii) other operations that threaten rail safety.
- 2 (2) Subject to this section, the rail safety officer may issue an
3 improvement notice requiring the person —
- 4 (a) to remedy the contravention; or
5 (b) to prevent a likely contravention from occurring; or
6 (c) to remedy the things or operations causing the contravention
7 or likely contravention; or
8 (d) to carry out railway operations or other operations so that
9 safety is not threatened or likely to be threatened.
- 10 (3) Before serving an improvement notice issued to a person on a ground
11 stated in subsection (1)(a) or (b) that includes a direction that the
12 person take specified action to remedy the contravention or prevent
13 the likely contravention, or to remedy the things or operations causing
14 the contravention or likely contravention, the Regulator must, if of the
15 opinion that the action is likely to result in significant costs or
16 expenses to the person or any other person —
- 17 (a) conduct or cause to be conducted a cost-benefit analysis of
18 the effect of the action; and
19 (b) consult with the Premier or Chief Minister, the Treasurer, and
20 any other Minister, of a participating jurisdiction whose area
21 of responsibility is likely to be affected by the action.
- 22 (4) Before serving an improvement notice issued to a person on a ground
23 stated in subsection (1)(c) that includes a direction that the person
24 take specified action by which railway operations or other operations
25 may be carried out so that safety is not threatened or likely to be
26 threatened, the Regulator must, if of the opinion that the action is
27 likely to result in significant costs or expenses to the person or any
28 other person —
- 29 (a) conduct or cause to be conducted a cost-benefit analysis of
30 the effect of the action; and
31 (b) consult with the Premier or Chief Minister, the Treasurer, and
32 any other Minister, of a participating jurisdiction whose area
33 of responsibility is likely to be affected by the action.
- 34 (5) Subsections (3) and (4) do not apply if the Regulator considers it
35 necessary to take immediate action in the interests of safety but, if the

- 1 action is likely to result in significant costs or expenses to the person
2 or any other person, the Regulator must, as soon as practicable after
3 taking the action —
- 4 (a) conduct or cause to be conducted a cost-benefit analysis of
5 the effect of the action; and
- 6 (b) consult with the Premier or Chief Minister, the Treasurer, and
7 any other Minister, of a participating jurisdiction whose area
8 of responsibility is likely to be affected by the action.

9 **176. Contents of improvement notices**

- 10 (1) An improvement notice must —
- 11 (a) if the notice relates to a contravention or likely contravention
12 of this Law —
- 13 (i) state that the rail safety officer believes the person —
- 14 (A) is contravening a provision of this Law; or
15 (B) has contravened a provision of this Law in
16 circumstances that make it likely that the
17 contravention will continue or be repeated;
- 18 and
- 19 (ii) state the provision the officer believes is being, or has
20 been, contravened; and
- 21 (iii) briefly, state how the provision is being, or has been,
22 contravened; and
- 23 (iv) state the day before which the person is required to
24 remedy the contravention or likely contravention;
- 25 and
- 26 (b) in any other case —
- 27 (i) state that the rail safety officer believes the person is
28 carrying out or has carried out —
- 29 (A) railway operations that threaten safety; or
30 (B) other operations that threaten rail safety;
- 31 and

- 1 (ii) briefly, state how —
2 (A) the railway operations are threatening, or
3 have threatened, safety; or
4 (B) the other operations are threatening, or have
5 threatened, rail safety;
6 and
7 (iii) state the day before which the person is required to
8 carry out railway operations or other operations so
9 that safety is not threatened or likely to be threatened;
10 and
11 (c) if a cost-benefit analysis has been carried out under
12 section 175, set out the results of that analysis; and
13 (d) set out the penalty for non-compliance with the notice; and
14 (e) include information about the right to a review under Part 7
15 of the decision to serve the notice; and
16 (f) state that the notice is served under this section.
- 17 (2) An improvement notice served on a person on a ground stated in
18 section 175(1)(a) or (b) may include directions concerning the action
19 to be taken to remedy the contravention or prevent the likely
20 contravention, or the things or operations causing the contravention or
21 likely contravention, to which the notice relates.
- 22 (3) An improvement notice served on a person on the ground stated in
23 section 175(1)(c) may include directions concerning the action to be
24 taken by which railway operations or other operations to which the
25 notice relates may be carried out so that safety is not threatened or
26 likely to be threatened.
- 27 (4) The day stated for compliance with the improvement notice must be
28 reasonable in all the circumstances.
- 29 **177. Compliance with improvement notice**
- 30 The person to whom an improvement notice is issued must comply
31 with the notice within the period specified in the notice.
- 32 Maximum penalty:
- 33 (a) in the case of an individual — \$50 000;

- 1 **180. Contents of prohibition notice**
- 2 (1) A prohibition notice must —
- 3 (a) state that the rail safety officer believes that grounds for the
4 issue of the prohibition notice exist and the basis for that
5 belief; and
- 6 (b) briefly, state the activity that the officer believes involves or
7 will involve the risk and the matters that give or will give rise
8 to the risk; and
- 9 (c) state the provision (if any) of this Law that the officer
10 believes is being, or is likely to be, contravened by that
11 activity; and
- 12 (d) set out the penalty for contravening the notice; and
- 13 (e) include information about the right to a review under Part 7
14 of the decision to serve the notice; and
- 15 (f) state that the notice is served under this section.
- 16 (2) A prohibition notice may include directions on the measures to be
17 taken to remedy the risk, activities or matters to which the notice
18 relates, or the contravention or likely contravention mentioned in
19 subsection (1)(c).
- 20 (3) A direction in a prohibition notice may offer the person on whom the
21 notice has been served a choice of ways to remedy the risk, activities
22 or matters to which the notice relates, or the contravention or likely
23 contravention mentioned in subsection (1)(c).
- 24 (4) Without limiting section 179, a prohibition notice that prohibits the
25 carrying on of an activity in a specified way may do so by specifying
26 1 or more of the following —
- 27 (a) a place, or part of a place, at which the activity is not to be
28 carried out;
- 29 (b) any thing that is not to be used in connection with the
30 activity;
- 31 (c) any procedure that is not to be followed in connection with
32 the activity.

1 **181. Compliance with prohibition notice**

2 The person to whom a direction is given under this Division or a
3 prohibition notice is issued must comply with the direction or notice.

4 Maximum penalty:

- 5 (a) in the case of an individual — \$150 000;
6 (b) in the case of a body corporate — \$1 500 000.

7 **Division 3 — Non-disturbance notices**

8 **182. Issue of non-disturbance notice**

9 A rail safety officer may issue a non-disturbance notice to the person
10 with control or management of railway premises if the officer
11 reasonably believes that it is necessary to do so to facilitate the
12 exercise of his or her powers under this Law.

13 **183. Contents of non-disturbance notice**

- 14 (1) A non-disturbance notice may require the person to —
- 15 (a) preserve the site at which a notifiable occurrence has
16 occurred for a specified period; or
- 17 (b) prevent the disturbance of a particular site (including the
18 operation of plant) in other circumstances for a specified
19 period that is reasonable in the circumstances.
- 20 (2) A non-disturbance notice must specify the period (of no more than
21 7 days) for which it applies and set out —
- 22 (a) the obligations of the person to whom the notice is issued;
23 and
- 24 (b) the measures to be taken to preserve a site or prevent
25 disturbance of a site; and
- 26 (c) information about the right to a review under Part 7 of the
27 decision to serve the notice; and
- 28 (d) the penalty for contravening the notice.
- 29 (3) In subsection (1), a reference to a site includes any plant, substance,
30 structure or thing associated with the site.

- 1 (4) A non-disturbance notice does not prevent any action —
2 (a) to assist an injured person; or
3 (b) to remove a deceased person; or
4 (c) that is essential to make the site safe or prevent a further
5 incident; or
6 (d) that is associated with a police investigation; or
7 (e) in respect of which a rail safety officer has given permission.

8 **184. Compliance with non-disturbance notice**

- 9 (1) A person must not, without reasonable excuse, fail to comply with a
10 non-disturbance notice issued to the person.
11 Maximum penalty:
12 (a) in the case of an individual — \$20 000;
13 (b) in the case of a body corporate — \$100 000.
14 (2) Subsection (1) places an evidential burden on the accused to show a
15 reasonable excuse.

16 **185. Issue of subsequent notices**

17 If a rail safety officer considers it necessary to do so, he or she may
18 issue 1 or more subsequent non-disturbance notices to a person,
19 whether before or after the expiry of the previous notice, each of
20 which must comply with section 183.

21 **Division 4 — General requirements applying to notices**

22 **186. Application of Division**

23 In this Division —
24 *notice* means an improvement notice, or a prohibition notice or
25 non-disturbance notice.

26 **187. Notice to be in writing**

- 27 (1) Subject to subsection (2), a notice must be in writing.
28 (2) A prohibition notice may be issued orally, but must be confirmed by
29 written notice as soon as practicable.

1 **188. Directions in notices**

2 A direction included in an improvement notice or prohibition notice
3 may —

- 4 (a) refer to an approved code of practice; and
5 (b) offer the person to whom it is issued a choice of ways in
6 which to remedy the contravention.

7 **189. Recommendations in notice**

8 (1) An improvement notice or prohibition notice may include
9 recommendations.

10 (2) It is not an offence to fail to comply with recommendations in an
11 improvement notice or a prohibition notice.

12 **190. Variation or cancellation of notice by rail safety officer**

13 (1) A rail safety officer may make minor changes to a notice —

- 14 (a) for clarification; or
15 (b) to correct errors or references; or
16 (c) to reflect changes of address or other circumstances.

17 (2) A rail safety officer may extend the compliance period for an
18 improvement notice in accordance with section 178.

19 (3) A rail safety officer may cancel a notice.

20 **191. Formal irregularities or defects in notice**

21 A notice is not invalid merely because of —

- 22 (a) a formal defect or irregularity in the notice unless the defect
23 or irregularity causes or is likely to cause substantial
24 injustice; or
25 (b) a failure to use the correct name of the person to whom the
26 notice is issued if the notice sufficiently identifies the person
27 and is issued or given to the person in accordance with
28 section 192.

1 **192. Serving notices**

- 2 (1) A notice may be served on a person —
- 3 (a) in accordance with section 258; or
- 4 (b) by leaving it for the person at the railway premises to which
- 5 the notice relates with a person who is or appears to be the
- 6 person with control or management of the premises; or
- 7 (c) in a prescribed manner.
- 8 (2) The national regulations may prescribe —
- 9 (a) the manner of serving a notice; and
- 10 (b) the steps a person on whom a notice is served must take to
- 11 bring it to the attention of other persons.

12 **Division 5 — Remedial action**

13 **193. When Regulator may carry out action**

- 14 (1) This section applies if a person to whom a prohibition notice is issued
- 15 fails to take reasonable steps to comply with the notice.
- 16 (2) The Regulator may take any remedial action the Regulator believes
- 17 reasonable to make the railway premises or situation safe after giving
- 18 written notice to the person to whom the prohibition notice was issued
- 19 of —
- 20 (a) the Regulator's intention to take that action; and
- 21 (b) the owner's or person's liability for the costs of that action.

22 **194. Power of Regulator to take other remedial action**

- 23 (1) This section applies if the Regulator reasonably believes that —
- 24 (a) circumstances in which a prohibition notice can be issued
- 25 exist; and
- 26 (b) a prohibition notice cannot be issued at railway premises
- 27 because, after taking reasonable steps, the person with control
- 28 or management of the premises cannot be found.
- 29 (2) The Regulator may take any remedial action necessary to make the
- 30 railway premises safe.

- 1 specified in the notice, safety or protective systems, devices,
2 equipment or appliances specified in the notice.
- 3 (2) A direction under this section must state the reasons why the
4 Regulator considers it is necessary for the rail transport operator to
5 take the action specified in the direction and include information
6 about the right of review under Part 7.
- 7 (3) If the action specified to be taken in a direction is, in the opinion of
8 the Regulator, likely to result in significant costs or expenses to the
9 rail transport operator, the Regulator must, before giving the
10 direction —
- 11 (a) conduct or cause to be conducted a cost-benefit analysis of
12 the effect of taking the action; and
- 13 (b) consult with the Premier or Chief Minister, the Treasurer, and
14 any other Minister, of a participating jurisdiction whose area
15 of responsibility is likely to be affected by the action.
- 16 (4) A rail transport operator must not, without reasonable excuse, fail to
17 comply with a direction under this section.
- 18 Maximum penalty:
- 19 (a) in the case of an individual — \$150 000;
20 (b) in the case of a body corporate — \$1 500 000.
- 21 (5) Subsection (4) places an evidential burden on the accused to show a
22 reasonable excuse.
- 23 (6) A **report to which this section applies** is —
- 24 (a) a report (including any recommendations) following an
25 inquest held by a coroner under an Act of a participating
26 jurisdiction; or
- 27 (b) a report of an investigation held under the *Transport Safety*
28 *Investigation Act 2003* of the Commonwealth; or
- 29 (c) any other report of an investigation into a matter relating to
30 rail safety.

1 **199. Power to require works to stop**

2 (1) A person (other than a rail transport operator) must, before carrying
3 out any works near a railway that threaten, or are likely to threaten —
4 (a) the safety of the railway; or
5 (b) the operational integrity of the railway,
6 notify the relevant rail infrastructure manager of the intention to carry
7 out those works.

8 Maximum penalty:

- 9 (a) in the case of an individual — \$20 000;
10 (b) in the case of a body corporate — \$100 000.

11 (2) If —

- 12 (a) a person is carrying out, or proposes to carry out, works near
13 a railway; and
14 (b) the Regulator believes on reasonable grounds that the works
15 threaten, or are likely to threaten —
16 (i) the safety of the railway; or
17 (ii) the operational integrity of the railway,

18 the Regulator may, by written notice, give the person a direction to
19 stop, alter or not to commence the work.

20 (3) If —

- 21 (a) a rail transport operator is carrying out, or proposes to carry
22 out, railway operations on or near land on which there is
23 infrastructure, or works, of a utility; and
24 (b) the Regulator believes on reasonable grounds that the railway
25 operations threaten, or are likely to threaten —
26 (i) the safety of the utility infrastructure or works; or
27 (ii) the safe provision by the utility of water, gas or
28 electricity or other like services,

29 the Regulator may, by written notice, give the operator a direction to
30 stop, alter or not to commence the railway operations.

- 1 (4) A person who is given a notice under subsection (2) or (3) must
2 comply with the direction set out in the notice unless the person has a
3 reasonable excuse.
- 4 Maximum penalty:
- 5 (a) in the case of an individual — \$20 000;
6 (b) in the case of a body corporate — \$100 000.
- 7 (5) If a person carries out work in contravention of subsection (1) or a
8 direction given under subsection (2) or (3), the Regulator may, by
9 written notice, direct a person who has the care, control or
10 management of the land where the infrastructure or works are situated
11 to alter, demolish or take away the work within a reasonable time
12 specified in the notice.
- 13 (6) A person who is given a notice under subsection (5) must comply
14 with the requirement unless the person has a reasonable excuse.
- 15 Maximum penalty:
- 16 (a) in the case of an individual — \$10 000;
17 (b) in the case of a body corporate — \$50 000.
- 18 (7) Subsections (4) and (6) place an evidential burden on the accused to
19 show a reasonable excuse.
- 20 (8) A notice under this section must —
- 21 (a) include information about the right to a review under Part 7
22 of the decision to serve the notice; and
23 (b) state that the notice is served under this section.
- 24 **200. Temporary closing of railway crossings, bridges etc**
- 25 (1) An authorised officer may close temporarily or regulate a railway
26 crossing, bridge, subway or other structure for crossing or passing
27 over or under a railway if satisfied it is necessary because of an
28 immediate threat to safety.
- 29 (2) If an authorised officer decides to close temporarily or regulate a
30 railway crossing, bridge, subway or other structure, the authorised
31 officer must, as soon as practicable after its closure or regulation,
32 notify the person or authority responsible for the railway crossing,
33 bridge, subway or other structure of its closure or regulation.

- 1 (3) In this section —
2 *authorised officer* means —
3 (a) a person who holds a specific authority from the Regulator
4 for the purposes of this section; or
5 (b) a person who holds a specific authority issued by an
6 accredited person for the purposes of this section.

7 **201. Use of force**

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

13 **202. Power to use force against persons to be exercised only by police**
14 **officers**

15 A provision in this Law that authorises a person to use reasonable
16 force does not authorise a person who is not a police officer to use
17 force against another person.

18 **Part 6 — Exemptions**

19 **Division 1 — Ministerial exemptions**

20 **203. Ministerial exemptions**

- 21 (1) The Minister may, after consultation with the Regulator, by notice in
22 the Gazette, grant exemptions from this Law or specified provisions
23 of this Law in respect of railway operations carried out, or proposed
24 to be carried out, in this jurisdiction —
25 (a) to a person specified by the Minister; or
26 (b) in relation to a railway specified by the Minister.
- 27 (2) The Minister may grant an exemption under subsection (1) —
28 (a) on conditions specified in the notice; and
29 (b) for a period (not exceeding 3 months) specified in the notice.

- 1 (3) The Minister may, at any time, by further notice in the Gazette —
2 (a) vary or revoke an exemption; or
3 (b) vary or revoke a condition of an exemption.
- 4 (4) A person who has been granted an exemption under this section who
5 contravenes a condition imposed on the exemption is guilty of an
6 offence.
- 7 Maximum penalty:
- 8 (a) in the case of an individual — \$20 000;
9 (b) in the case of a body corporate — \$100 000.

10 **Division 2 — Exemptions granted by Regulator**

11 **Subdivision 1 — Interpretation**

12 **204. Interpretation**

13 In this Division —

14 *designated provision* of this Law means a provision of —

- 15 (a) Part 3 Division 4; or
16 (b) Part 3 Division 5; or
17 (c) Part 3 Division 6 Subdivision 3.

18 **Subdivision 2 — Procedures for conferring exemptions**

19 **205. Application for exemption**

- 20 (1) A rail transport operator may apply to the Regulator for an exemption
21 from a designated provision of this Law in respect of specified
22 railway operations carried out, or proposed to be carried out, by or on
23 behalf of the operator.
- 24 (2) An application must be made in the manner and form approved by the
25 Regulator and —
- 26 (a) must specify the scope and nature of the railway operations in
27 respect of which an exemption is sought; and
28 (b) if the railway operations include the operation or movement
29 of rolling stock on a railway — must include details about the
30 operation or movement of rolling stock; and

- 1 (b) any other condition or restriction imposed on the exemption
2 by the Regulator.
- 3 (3) Notification under this section —
- 4 (a) must be in writing and given to the applicant; and
- 5 (b) if the exemption has been granted, must specify —
- 6 (i) the prescribed details of the applicant; and
- 7 (ii) the scope and nature of the railway operations, and
8 the manner in which they are to be carried out, in
9 respect of which the exemption is granted; and
- 10 (iii) any condition or restriction imposed by the Regulator
11 under this section on the exemption; and
- 12 (iv) any other prescribed information;
- 13 and
- 14 (c) if a condition or restriction has been imposed on the
15 exemption, must include —
- 16 (i) the reasons for imposing the condition or restriction;
17 and
- 18 (ii) information about the right of review under Part 7;
- 19 and
- 20 (d) if the application has been refused must include —
- 21 (i) the reasons for the decision to refuse to grant the
22 application; and
- 23 (ii) information about the right of review under Part 7;
- 24 and
- 25 (e) if the relevant period in relation to an application has been
26 extended, must include information about the right of review
27 under Part 7.
- 28 (4) In this section —
- 29 *relevant period*, in relation to an application, means —
- 30 (a) 6 months after the application was received by the Regulator;
31 or
- 32 (b) if the Regulator requested further information, 6 months, or
33 such other period, as is agreed between the Regulator and the

1 **209. Determination of application for variation**

- 2 (1) Subject to this section, the Regulator must, within the relevant
3 period —
- 4 (a) if the Regulator is satisfied as to the matters referred to in
5 section 206 (so far as they are applicable to the proposed
6 variation) — notify the applicant that the exemption has been
7 varied, with or without conditions or restrictions; or
- 8 (b) if the Regulator is not so satisfied — notify the applicant that
9 the application has been refused.
- 10 (2) Notification under this section —
- 11 (a) must be in writing and given to the applicant; and
- 12 (b) if the exemption has been varied, must specify —
- 13 (i) the prescribed details of the applicant; and
- 14 (ii) the variation to the exemption so far as it applies to
15 the scope and nature of the railway operations, or the
16 manner in which they are to be carried out; and
- 17 (iii) any conditions and restrictions imposed by the
18 Regulator on the exemption as varied; and
- 19 (iv) any other prescribed information;
- 20 and
- 21 (c) if a condition or restriction has been imposed on the
22 exemption as varied, must include —
- 23 (i) the reasons for imposing the condition or restriction;
24 and
- 25 (ii) information about the right of review under Part 7;
26 and
- 27 (d) if the application has been refused, must include —
- 28 (i) the reasons for the decision to refuse to grant the
29 application; and
- 30 (ii) information about the right of review under Part 7;
31 and
- 32 (e) if the relevant period in relation to an application has been
33 extended, must include information about the right of review
34 under Part 7.

- 1 (3) In this section —
2 *relevant period*, in relation to an application, means —
3 (a) 6 months after the application was received by the Regulator;
4 or
5 (b) if the Regulator requested further information, 6 months, or
6 such other period, as is agreed between the Regulator and the
7 applicant, after the Regulator receives the last information so
8 requested; or
9 (c) if the Regulator, by written notice given to the applicant
10 before the expiry of the relevant 6 months, specifies another
11 period, that period,
12 whichever is the longer.

13 **210. Prescribed conditions and restrictions**

14 An exemption granted to a rail transport operator that is varied under
15 this Division is subject to any conditions or restrictions prescribed by
16 the national regulations that are applicable to the exemption as varied.

17 **211. Variation of conditions and restrictions**

- 18 (1) A rail transport operator who has been granted an exemption under
19 this Division may, at any time, apply to the Regulator for a variation
20 of a condition or restriction imposed by the Regulator to which the
21 exemption is subject.
- 22 (2) An application for variation of a condition or restriction must be made
23 as if it were an application for variation of an exemption (and
24 section 208 applies accordingly).
- 25 (3) The Regulator must consider the application and, if satisfied as to the
26 matters referred to in sections 206 and 207 (so far as they are
27 applicable to the proposed variation), notify the applicant in
28 accordance with the provisions of this Division applicable to the
29 granting of an exemption (so far as is practicable) that the variation
30 has been granted or refused.
- 31 (4) Notification under subsection (3) that a variation has been refused
32 must include the reasons for the decision to refuse to grant the
33 variation and information about the right of review under Part 7.

1 **212. Regulator may make changes to conditions or restrictions**

2 (1) The Regulator may, subject to this section, at any time, vary or revoke
3 a condition or restriction imposed by the Regulator on an exemption
4 granted to a rail transport operator under this Division or impose a
5 new condition or restriction.

6 (2) Before taking action under this section, the Regulator must —

- 7 (a) give the rail transport operator written notice of the action
8 that the Regulator proposes to take; and
9 (b) allow the operator to make written representations about the
10 intended action within 28 days (or any other period that the
11 Regulator and the operator agree on); and
12 (c) consider any representations made under paragraph (b) and
13 not withdrawn.

14 (3) The Regulator must, by written notice given to the rail transport
15 operator, provide —

- 16 (a) details of any action taken under this section; and
17 (b) a statement of reasons for any action taken under this section;
18 and
19 (c) information about the right of review under Part 7.

20 **Subdivision 4 — Revocation or suspension of an exemption**

21 **213. Revocation or suspension of an exemption**

22 (1) This section applies in respect of a rail transport operator who has
23 been granted an exemption under this Division if —

- 24 (a) the Regulator considers that the operator —
25 (i) is no longer able to demonstrate to the satisfaction of
26 the Regulator the matters referred to in section 206 or
27 to satisfy the conditions, or to comply with the
28 restrictions, of the exemption; or
29 (ii) is not managing the rail infrastructure, or is not
30 operating rolling stock in relation to any rail
31 infrastructure, to which the exemption relates and has
32 not done so for at least the preceding 12 months;

33 or

1 **Subdivision 5 — Penalty for breach of condition or restriction**

2 **214. Penalty for breach of condition or restriction**

3 A rail transport operator who has been granted an exemption under
4 this Division must not contravene a condition or restriction of the
5 exemption applying under this Division.

6 Maximum penalty:

- 7 (a) in the case of an individual — \$20 000;
8 (b) in the case of a body corporate — \$100 000.

9 **Part 7 — Review of decisions**

10 **215. Reviewable decisions**

11 (1) The following table sets out —

- 12 (a) decisions made under this Law that are reviewable in
13 accordance with this Part (*reviewable decisions*); and
14 (b) who is eligible to apply for review of a reviewable decision
15 (the *eligible person* in relation to the reviewable decision).

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 67 (refusal to accredit or imposing conditions or restrictions on accreditation)	A rail transport operator whose application for accreditation is refused or is subject to conditions or restrictions
2	Section 67 (extending the period for determining an application)	A rail transport operator who has applied for accreditation
3	Section 69 (refusal to grant variation of accreditation or imposing a condition or restriction)	A rail transport operator whose application for variation of accreditation is refused
4	Section 69 (grant of variation of accreditation subject to conditions or restrictions)	A rail transport operator whose accreditation is varied subject to a condition or restriction

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
5	Section 69 (extending the period for determining an application for variation)	A rail transport operator who has applied for variation of accreditation
6	Section 71 (refusal to grant variation of a condition or restriction of accreditation)	A rail transport operator whose application for variation of a condition or restriction is refused
7	Section 72 (variation or revocation of a condition or restriction, or imposition of a new condition or restriction)	A rail transport operator whose conditions or restrictions of accreditation are changed
8	Section 73 (revocation or suspension of accreditation)	A rail transport operator whose accreditation is revoked or suspended
9	Section 74 (immediate suspension)	A rail transport operator whose accreditation is suspended
10	Section 74 (extension of immediate suspension)	A rail transport operator whose accreditation is suspended
11	Section 75 (surrender of accreditation)	An accredited person whose application for surrender of accreditation has been refused
12	Section 86 (refusal to register or imposing conditions or restrictions on registration)	A rail infrastructure manager whose application for registration is refused or is subject to conditions or restrictions
13	Section 86 (extending the period for determining an application)	A rail infrastructure manager who has applied for registration
14	Section 88 (refusal to grant variation of registration or imposing a condition or restriction)	A rail infrastructure manager whose application for variation of registration is refused

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
15	Section 88 (grant of variation of registration subject to conditions or restrictions)	A rail infrastructure manager whose registration is varied subject to a condition or restriction
16	Section 88 (extending the period for determining an application for variation)	A rail infrastructure manager who has applied for variation of registration
17	Section 90 (refusal to grant variation of a condition or restriction of registration)	A rail infrastructure manager whose application for variation of a condition or restriction is refused
18	Section 91 (variation or revocation of a condition or restriction, or imposition of a new condition or restriction)	A rail infrastructure manager whose conditions or restrictions of registration are changed
19	Section 92 (revocation or suspension of registration)	A rail infrastructure manager whose registration is revoked or suspended
20	Section 93 (immediate suspension)	A rail infrastructure manager whose registration is suspended
21	Section 93 (extension of immediate suspension)	A rail infrastructure manager whose registration is suspended
22	Section 94 (surrender of registration)	A registered person whose application for surrender of registration has been refused
23	Section 104 (direction to amend safety management system)	A rail transport operator given a direction to amend a safety management system
24	Section 162 (forfeiture of seized thing)	A person who is entitled to the thing

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
25	Section 175 (decision to serve an improvement notice)	A person on whom an improvement notice is served A rail transport operator whose interests are affected by the decision
26	Section 178 (extension of time for compliance with improvement notice)	A person on whom an improvement notice is served A rail transport operator whose interests are affected by the decision
27	Section 179 (decision to serve a prohibition notice)	A person on whom a prohibition notice is served A rail transport operator whose interests are affected by the decision
28	Section 182 (decision to serve a non-disturbance notice)	A person on whom a non-disturbance notice is served A rail transport operator whose interests are affected by the decision
29	Section 185 (decision to issue subsequent non-disturbance notice)	A person on whom a subsequent non-disturbance notice is served A rail transport operator whose interests are affected by the decision
30	Section 198 (direction to take specified action following report)	A rail transport operator given a direction to take specified action

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
31	Section 199 (decision to serve notice giving a direction)	<p>A person given a direction to stop, alter or not to commence works on or near a railway</p> <p>A rail transport operator given a direction to stop, alter or not to commence railway operations</p> <p>A person given a direction to alter, demolish or take away work</p>
32	Section 205 (refusal to exempt or imposing conditions or restrictions on exemption)	A rail transport operator whose application for exemption is refused or is subject to conditions or restrictions
33	Section 205 (extending the period for determining an application)	A rail transport operator who has applied for an exemption
34	Section 209 (refusal to grant variation of exemption or imposing a condition or restriction)	A rail transport operator whose application for variation of an exemption is refused
35	Section 209 (grant of variation of exemption subject to conditions or restrictions)	A rail transport operator whose exemption is varied subject to a condition or restriction
36	Section 209 (extending the period for determining an application for variation)	A rail transport operator who has applied for variation of an exemption
37	Section 211 (refusal to grant variation of a condition or restriction of exemption)	A rail transport operator whose application for variation of a condition or restriction is refused

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
38	Section 212 (variation or revocation of a condition or restriction, or imposition of a new condition or restriction)	A rail transport operator whose conditions or restrictions of an exemption are changed
39	Section 213 (revocation or suspension of exemption)	A rail transport operator whose exemption is revoked or suspended

- 1 (2) Unless the contrary intention appears, a reference in this Part to a
 2 decision includes a reference to —
- 3 (a) include information about the right to a review under Part 7
 4 of the decision to serve the notice; or
 - 5 (b) state that the notice is served under this section; or
 - 6 (c) making, suspending, revoking or refusing to make a
 7 determination or decision; or
 - 8 (d) giving, suspending, revoking or refusing to give a direction,
 9 approval, consent or permission; or
 - 10 (e) issuing, suspending, revoking or refusing to issue an
 11 accreditation or a registration, or to grant an exemption; or
 - 12 (f) imposing a condition; or
 - 13 (g) making a declaration, demand or requirement; or
 - 14 (h) retaining, or refusing to deliver up, an article; or
 - 15 (i) doing or refusing to do any other act or thing.

16 (3) In this section —
 17 *person entitled* to a thing means the person from whom it was seized
 18 unless that person is not entitled to possess it, in which case it means
 19 the owner of the thing.

20 **216. Review by Regulator**

- 21 (1) An eligible person —
- 22 (a) in relation to a reviewable decision made by the Regulator —
 23 may, within 28 days after the decision was made, apply to the
 24 Regulator for a review of the decision;

- 1 (b) in relation to a reviewable decision other than a decision
2 made by the Regulator — may apply to the Regulator for
3 review of the decision within —
- 4 (i) 28 days after the day on which the decision first came
5 to the eligible person’s notice; or
6 (ii) such longer period as the Regulator allows.
- 7 (2) The Regulator may appoint a person to review decisions on
8 applications under subsection (1)(a) (who must not be the person who
9 made the decision the subject of the review).
- 10 (3) An application for a review must be in the form approved (in writing)
11 by the Regulator.
- 12 (4) If an application is made to the Regulator in accordance with this
13 section, the Regulator may make a decision —
- 14 (a) to affirm or vary the reviewable decision; or
15 (b) to set aside the reviewable decision and substitute another
16 decision that the Regulator considers appropriate.
- 17 (5) The Regulator must give a written notice to the applicant setting
18 out —
- 19 (a) the Regulator’s decision under subsection (4) and the reasons
20 for the decision; and
21 (b) the findings on material questions of fact that led to the
22 decision, referring to the evidence or other material on which
23 those findings were based,
- 24 and must do so within 14 days after the application is made or, if the
25 reviewable decision was made under Division 1, Division 2 or
26 Division 3 of Part 5, within 7 days after the application is made.
- 27 (6) If the Regulator has not notified an applicant of a decision in
28 accordance with subsection (5), the Regulator is taken to have made a
29 decision to affirm the reviewable decision.
- 30 (7) An application under this section does not affect the operation of the
31 reviewable decision or prevent the taking of any action to implement
32 it unless the Regulator, on the Regulator’s own initiative or on the
33 application of the applicant for review, stays the operation of the
34 decision (not being an immediate suspension of accreditation or

- 1 (b) an offence in respect of which proceedings may only be
2 commenced within a period of less than 2 years after its
3 alleged commission.
- 4 (2) Despite anything to the contrary in an Act, proceedings for an offence
5 against this Law to which this section applies may be commenced
6 within —
- 7 (a) the period of 2 years after commission of the alleged offence;
8 or
- 9 (b) if evidence of an alleged offence comes to light as a result of
10 an inquiry by a prescribed authority — within 1 year after the
11 report of the inquiry is published; or
- 12 (c) if a rail safety undertaking has been given in relation to the
13 offence — within 6 months after —
- 14 (i) the undertaking is contravened; or
15 (ii) it comes to the notice of the Regulator that the
16 undertaking has been contravened; or
- 17 (iii) the Regulator has agreed under section 256 to the
18 withdrawal of the undertaking.
- 19 (3) A proceeding for a Category 1 offence may be brought after the end
20 of the applicable limitation period in subsection (2) if fresh evidence
21 relevant to the offence is discovered and the court is satisfied that the
22 evidence could not reasonably have been discovered within the
23 relevant limitation period.
- 24 (4) In this section —
- 25 *prescribed authority* means —
- 26 (a) a coroner of a participating jurisdiction; or
27 (b) a commission of inquiry (by whatever name) established
28 under a law of a participating jurisdiction; or
29 (c) any other relevant authority established under a law of a
30 participating jurisdiction.
- 31 **219. Multiple contraventions of rail safety duty provision**
- 32 (1) Two or more contraventions of a rail safety duty provision by a
33 person that arise out of the same factual circumstances may be
34 charged as a single offence or as separate offences.

1 for that offence to prove that the person referred to in subsection (1)
2 had the relevant knowledge, intention or recklessness.

3 (3) If for an offence against this Law mistake of fact is relevant to
4 determining liability, it is sufficient in proceedings against a body
5 corporate for that offence if the person referred to in subsection (1)
6 made that mistake of fact.

7 **Subdivision 3 — Records and evidence**

8 **222. Records and evidence from records**

9 (1) A certificate purporting to be signed by the Regulator and certifying
10 that —

11 (a) on a date specified in the certificate; or

12 (b) during any period so specified,

13 the particulars set out in the certificate as to any matter required to be
14 recorded in the National Rail Safety Register under section 42 did or
15 did not appear on or from the Register is, for the purposes of any legal
16 proceedings, evidence of what it certifies.

17 (2) Such a certificate is admissible in any proceedings —

18 (a) without proof of the signature of the Regulator; and

19 (b) without production of any record or document on which the
20 certificate is founded.

21 **223. Certificate evidence**

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

26 **224. Proof of appointments and signatures unnecessary**

27 (1) For the purposes of this Law and the national regulations, it is not
28 necessary to prove the appointment of an office holder.

29 (2) For the purposes of this Law, a signature purporting to be the
30 signature of an office holder is evidence of the signature it purports to
31 be.

- 1 (d) has made a complaint about a breach or alleged breach of an
2 Australian rail safety law to a former employer, former fellow
3 employee, union, public authority or public official.
- 4 Maximum penalty:
- 5 (a) in the case of an individual — \$10 000;
6 (b) in the case of a body corporate — \$50 000.
- 7 (3) An employer or prospective employer may be guilty of an offence
8 against subsection (2) only if the reason mentioned in
9 subsection (2)(a), (b), (c) or (d) is the dominant reason why the
10 employer or prospective employer engaged in the conduct.
- 11 (4) In proceedings for an offence against subsection (2), if all the facts
12 constituting the offence other than the reason for the defendant's
13 conduct are proved, the defendant bears the onus of proving that the
14 reason alleged in the charge was not the dominant reason why the
15 defendant engaged in the conduct.
- 16 (5) If an employer or prospective employer is convicted or found guilty
17 of an offence against this section, the court may (in addition to
18 imposing a penalty) make either or both of the following orders —
- 19 (a) an order that the offender pay (within a specified period) such
20 damages to the employee or prospective employee against
21 whom the offender discriminated as the court considers
22 appropriate to compensate him or her;
- 23 (b) an order that —
- 24 (i) the employee be reinstated or re-employed in his or
25 her former position or, if that position is not
26 available, in a similar position; or
- 27 (ii) the prospective employee be employed in the position
28 for which he or she had applied or a similar position.
- 29 (6) In this section —
- 30 *employee* includes an individual who works under a contract for
31 service;
- 32 *public authority* includes ONRSR, the Regulator, a rail safety officer
33 or police officer, and a police officer of another jurisdiction.

1 **227. Not to interfere with train, tram etc**

2 (1) A person must not, without either the permission of an authorised
3 officer or reasonable excuse —

4 (a) move or attempt to move; or

5 (b) interfere or attempt to interfere with; or

6 (c) disable, or attempt to disable; or

7 (d) operate or attempt to operate,

8 any equipment, rail infrastructure or rolling stock owned or operated
9 by a rail transport operator.

10 Maximum penalty: \$10 000.

11 (2) Subsection (1) places an evidential burden on the accused to show a
12 reasonable excuse.

13 (3) In this section —

14 *authorised officer* means the rail transport operator, a rail safety
15 officer or a police officer.

16 **228. Applying brake or emergency device**

17 (1) A person must not, without reasonable excuse —

18 (a) apply any brake or make use of any emergency device fitted
19 to a train or tram; or

20 (b) make use of any emergency device on railway premises.

21 Maximum penalty: \$10 000.

22 Example: Emergency devices include an emergency button on a station
23 communication board or on an escalator.

24 (2) Subsection (1) places an evidential burden on the accused to show a
25 reasonable excuse.

26 **229. Stopping a train or tram**

27 (1) A person must not, without reasonable excuse, cause or attempt to
28 cause a train or tram in motion to be stopped.

29 Maximum penalty: \$10 000.

- 1 offence, the court is required to disregard any costs, expenses or
2 liabilities incurred by the person or by an associate of the person.
- 3 (5) Nothing in this section prevents the court from ordering payment of
4 an amount that is —
- 5 (a) less than 3 times the estimated gross commercial benefit; or
6 (b) less than the estimated gross commercial benefit.
- 7 (6) For the purposes of this section, a person is an associate of another
8 if —
- 9 (a) 1 is a spouse, de facto partner, parent, brother, sister or child
10 of the other; or
- 11 (b) they are members of the same household; or
- 12 (c) they are partners; or
- 13 (d) they are both trustees or beneficiaries of the same trust, or 1 is
14 a trustee and the other is a beneficiary of the same trust; or
- 15 (e) 1 is a body corporate and the other is a director or member of
16 the governing body of the body corporate; or
- 17 (f) 1 is a body corporate (other than a public company whose
18 shares are listed on a stock exchange) and the other is a
19 shareholder in the body corporate; or
- 20 (g) they are related bodies corporate within the meaning of the
21 *Corporations Act 2001* of the Commonwealth; or
- 22 (h) a chain of relationships can be traced between them under
23 any 1 or more of the above paragraphs.
- 24 (7) For the purposes of subsection (6), a beneficiary of a trust includes an
25 object of a trust.
- 26 **231. Supervisory intervention order**
- 27 (1) The court that finds a person guilty of an offence against this Law
28 may, on the application of the prosecutor or the Regulator, if the court
29 considers the person to be a systematic or persistent offender against
30 the Australian rail safety laws, make an order under this section.

- 1 manner in which, and frequency with which, they are to be made
2 public.
- 3 (5) The court may only make a supervisory intervention order if it is
4 satisfied that the order is capable of improving the person's ability or
5 willingness to comply with this Law, having regard to —
- 6 (a) the offences against Australian rail safety laws of which the
7 person has been previously found guilty; and
- 8 (b) the offences against Australian rail safety laws for which the
9 person has been proceeded against by way of unwithdrawn
10 expiation notices or infringement notices; and
- 11 (c) any other offences or other matters that the court considers to
12 be relevant to the conduct of the person in connection with
13 railway operations.
- 14 (6) The order may direct that any other penalty or sanction imposed for
15 the offence by the court is suspended until the court determines that
16 there has been a substantial failure to comply with the order.
- 17 (7) A court that has power to make supervisory intervention orders may
18 revoke or amend a supervisory intervention order on the application
19 of —
- 20 (a) the Regulator; or
- 21 (b) the person in respect of whom the order was made, but in that
22 case only if the court is satisfied that there has been a change
23 of circumstances warranting revocation or amendment.
- 24 (8) A person who is subject to a requirement of a supervisory intervention
25 order must not engage in conduct that results in a contravention of the
26 requirement.
- 27 Maximum penalty:
- 28 (a) in the case of an individual — \$10 000;
- 29 (b) in the case of a body corporate — \$50 000.

- 1 (3) The court may only make an order under this section if it is satisfied
2 that the person should not continue the things the subject of the
3 proposed order and that a supervisory intervention order is not
4 appropriate, having regard to —
- 5 (a) the offences against an Australian rail safety law of which the
6 person has previously been found guilty; and
- 7 (b) the offences against an Australian rail safety law for which
8 the person has been proceeded against by way of
9 unwithdrawn expiation notices or infringement notices; and
- 10 (c) any other offences or other matters that the court considers to
11 be relevant to the conduct of the person in connection with
12 railway operations.
- 13 (4) A court that has power to make an exclusion order may revoke or
14 amend an exclusion order on the application of —
- 15 (a) the Regulator; or
- 16 (b) the person in respect of whom the order was made, but in that
17 case only if the court is satisfied that there has been a change
18 of circumstances warranting revocation or amendment.
- 19 (5) A person who is subject to an exclusion order must not engage in
20 conduct that results in a contravention of the order.
- 21 Maximum penalty:
- 22 (a) in the case of an individual — \$20 000;
- 23 (b) in the case of a body corporate — \$100 000.

24 **Part 9 — Infringement notices**

25 **233. Meaning of infringement penalty provision**

26 For the purposes of this Law, an *infringement penalty provision* is —

- 27 (a) a provision of this Law specified in an item in the Table at the
28 foot of this section; or
- 29 (b) a provision of this Law (other than an offence provision) or
30 the national regulations that is prescribed by the national
31 regulations to be an infringement penalty provision.

Item	Infringement penalty provision	Infringement penalty
1	Section 66(3) (Regulator may direct applicants to coordinate in applications)	\$1 000
2	Section 66(4) (Regulator may direct applicants to coordinate in applications)	\$1 000
3	Section 81(1) (Keeping and making available records for public inspection)	\$1 000
4	Section 81(2) (Keeping and making available records for public inspection)	\$1 000
5	Section 98(2) (Offences relating to registration)	\$1 000
6	Section 98(3) (Offences relating to registration)	\$1 000
7	Section 102 (Review of safety management system)	\$2 000
8	Section 103 (Safety performance reports)	\$1 000
9	Section 111(1) (Register of interface agreements)	\$1 000
10	Section 111(2) (Register of interface agreements)	\$1 000
11	Section 117(6) (Assessment of competence)	\$2 000
12	Section 118(1) (Identification of rail safety workers)	\$2 000
13	Section 118(2) (Identification of rail safety workers)	\$500
14	Section 120(2) (Power of Regulator to obtain information from rail transport operators)	\$2 000
15	Section 120(3) (Power of Regulator to obtain information from rail transport operators)	\$2 000

Item	Infringement penalty provision	Infringement penalty
16	Section 131 (Disclosure of train safety recordings)	\$2 000
17	Section 136(3) (Identity cards)	\$1 000
18	Section 149(2) (Securing a site)	\$2 000
19	Section 231(8) (Supervisory intervention order)	\$2 000
20	Section 254 (Compliance with rail safety undertaking)	\$2 000

1 **234. Power to serve notice**

2 (1) The Regulator may serve an infringement notice on a person that the
3 Regulator has reason to believe has breached an infringement penalty
4 provision.

5 (2) The Regulator must, however, serve an infringement notice not later
6 than 12 months after the date on which the Regulator forms a belief
7 that there has been a breach of an infringement penalty provision.

8 (3) An infringement notice may be served on an individual —

9 (a) by delivering it personally to the individual; or

10 (b) by sending it by post addressed to the individual to his or her
11 usual or last known place of residence or business.

12 (4) An infringement notice may be served on a person that is a body
13 corporate —

14 (a) by delivering it personally to the registered office or usual or
15 last known place of business of the body corporate; or

16 (b) by sending it by post addressed to the body corporate to its
17 registered office or usual or last known place of business.

18 **235. Form of notice**

19 An infringement notice must state —

20 (a) the date of the notice; and

- 1 (b) the infringement notice has not been withdrawn by the
2 Regulator in accordance with section 238.

3 **238. Withdrawal of notice**

- 4 (1) The Regulator may withdraw an infringement notice at any time
5 before the end of the time for payment specified in the notice by
6 serving a withdrawal notice on the person served with the
7 infringement notice.
- 8 (2) A withdrawal notice may be served on an individual —
9 (a) by delivering it personally to the individual; or
10 (b) by sending it by post addressed to the individual to his or her
11 usual or last known place of residence or business.
- 12 (3) A withdrawal notice may be served on a person that is a body
13 corporate —
14 (a) by delivering it personally to the registered office or usual or
15 last known place of business of the body corporate; or
16 (b) by sending it by post addressed to the body corporate to its
17 registered office or usual or last known place of business.
- 18 (4) An infringement notice may be withdrawn even if the infringement
19 penalty has been paid.

20 **239. Refund of infringement penalty**

21 If an infringement notice is withdrawn in accordance with
22 section 238, the amount of any infringement penalty paid must be
23 refunded by the Regulator.

24 **240. Payment exiates breach of infringement penalty provision**

25 No proceedings may be taken by the Regulator against a person on
26 whom an infringement notice was served in respect of an alleged
27 breach of an infringement penalty provision if —

- 28 (a) the infringement penalty is —
29 (i) paid within the time for payment stated in the notice;
30 and

- 1 (2) The person must not do any of the following —
- 2 (a) disclose to anyone else —
- 3 (i) the information; or
- 4 (ii) the contents of or information contained in the
- 5 document;
- 6 (b) give access to the document to anyone else;
- 7 (c) use the information or document for any purpose.
- 8 Maximum penalty:
- 9 (a) in the case of an individual — \$10 000;
- 10 (b) in the case of a body corporate — \$50 000.
- 11 (3) Subsection (2) does not apply to the disclosure of information, or the
- 12 giving of access to a document or the use of information or a
- 13 document —
- 14 (a) about a person, with the person’s consent; or
- 15 (b) that is necessary for the exercise of a function or power under
- 16 this Law; or
- 17 (c) that is made or given by ONRSR, a member of ONRSR, or a
- 18 person authorised by ONRSR, if ONRSR reasonably believes
- 19 the disclosure, access or use —
- 20 (i) is necessary for administering, or monitoring or
- 21 enforcing compliance with, this Law; or
- 22 (ii) is necessary for the administration or enforcement of
- 23 an Act prescribed by the national regulations; or
- 24 (iii) is necessary for the administration or enforcement of
- 25 an Act or other law, if the disclosure, access or use is
- 26 necessary to lessen or prevent a serious risk to public
- 27 health or safety;
- 28 or
- 29 (d) that is required by any court, tribunal, authority or person
- 30 having lawful authority to require the production of
- 31 documents or the answering of questions; or
- 32 (e) that is required or authorised under a law; or
- 33 (f) to a Minister of a participating jurisdiction.

1 **247. Protection from personal liability for persons exercising functions**

2 (1) A person who is or was a protected person is not personally liable for
3 anything done or omitted to be done in good faith —

- 4 (a) in the exercise of a function under this Law; or
5 (b) in the reasonable belief that the act or omission was the
6 exercise of a function under this Law.

7 (2) Any liability resulting from an act or omission that would, but for
8 subsection (1), attach to a protected person attaches instead to
9 ONRSR.

10 (3) In this section —

11 *protected person* means any of the following —

- 12 (a) a member of ONRSR;
13 (b) a member of a committee of ONRSR;
14 (c) a member of the staff of ONRSR;
15 (d) a rail safety officer;
16 (e) an authorised person;
17 (f) a person to whom ONRSR has delegated any of its functions;
18 (g) a person to whom an entity, or the chief executive of an entity
19 or department of government, of a participating jurisdiction
20 has subdelegated a function delegated to the chief executive
21 by ONRSR;
22 (h) a member of the staff of an entity or department referred to in
23 paragraph (g);
24 (i) a person acting under the authority or direction of a person
25 referred to in paragraphs (a) to (h).

26 **248. Immunity for reporting unfit rail safety worker**

27 (1) No action may be taken against a person to whom this section applies
28 who, in good faith, reports to —

- 29 (a) ONRSR; or
30 (b) a member of ONRSR; or
31 (c) a rail transport operator; or

- 1 (d) any other person who is employed or engaged by ONRSR or
2 a rail transport operator,
3 any information which discloses that a person is unfit to carry out rail
4 safety work or certain types of rail safety work or that it may be
5 dangerous to allow that person to carry out rail safety work or certain
6 types of rail safety work.
- 7 (2) No action may be taken against a person to whom this section applies
8 who, in good faith, reports —
9 (a) the results of a test or examination carried out under this Law
10 or the national regulations; or
11 (b) an opinion formed by that person as a result of conducting
12 such a test or examination,
13 to a person referred to in subsection (1)(a), (b), (c) or (d).
- 14 (3) In this section —
15 *person to whom this section applies* means —
16 (a) a person registered under the *Health Practitioner Regulation*
17 *National Law* to practise in the medical profession (other than
18 as a student); or
19 (b) a person registered under the *Health Practitioner Regulation*
20 *National Law* to practise in the nursing and midwifery
21 profession as a nurse (other than as a student); or
22 (c) a person registered under the *Health Practitioner Regulation*
23 *National Law* to practise in the optometry profession (other
24 than as a student); or
25 (d) a person registered under the *Health Practitioner Regulation*
26 *National Law* to practise in the physiotherapy profession
27 (other than as a student); or
28 (e) a person brought within the ambit of this definition by the
29 national regulations.

Division 5 — Codes of practice

- 1
- 2 **249. Approved codes of practice**
- 3 (1) The responsible Ministers may approve a code of practice for the
4 purposes of this Law and may vary or revoke an approved code of
5 practice.
- 6 (2) The responsible Ministers may only approve, vary or revoke a code of
7 practice under subsection (1) if that code of practice, variation or
8 revocation was developed by a process that involved consultation
9 among —
- 10 (a) each participating jurisdiction; and
11 (b) rail transport operators and any relevant employer
12 organisation; and
13 (c) rail safety workers and any relevant union.
- 14 (3) A code of practice may apply, adopt or incorporate any matter
15 contained in a document formulated, issued or published by a person
16 or body whether —
- 17 (a) with or without modification; or
18 (b) as in force at a particular time or from time to time.
- 19 (4) An approval of a code of practice, or a variation or revocation of an
20 approved code of practice —
- 21 (a) is to be published on the NSW legislation website in
22 accordance with Part 6A of the *Interpretation Act 1987* of
23 New South Wales; and
24 (b) will commence on the day or days specified in the approval,
25 variation or revocation for its commencement (being not
26 earlier than the date it is published); and
27 (c) is to be published by the Regulator on ONRSR's website.
- 28 (5) The Regulator must ensure that a copy of —
- 29 (a) each code of practice that is currently approved; and
30 (b) each document applied, adopted or incorporated (to any
31 extent) by an approved code of practice,

1 **252. Notice of decisions and reasons for decision**

2 (1) The Regulator must give the person seeking to make a rail safety
3 undertaking written notice of the Regulator's decision to accept or
4 reject the undertaking and of the reasons for the decision.

5 (2) The Regulator must publish, on the Register, notice of a decision to
6 accept a rail safety undertaking and the reasons for that decision.

7 **253. When a rail safety undertaking is enforceable**

8 A rail safety undertaking takes effect and becomes enforceable when
9 the Regulator's decision to accept the undertaking is given to the
10 person who made the undertaking or at any later date specified by the
11 Regulator.

12 **254. Compliance with rail safety undertaking**

13 A person must not contravene a rail safety undertaking made by that
14 person that is in effect.

15 Maximum penalty:

16 (a) in the case of an individual — \$10 000;

17 (b) in the case of a body corporate — \$50 000.

18 **255. Contravention of rail safety undertaking**

19 (1) If the Regulator considers that a person has contravened an
20 undertaking accepted by the Regulator, the Regulator may apply to
21 the court for enforcement of the undertaking.

22 (2) If the court is satisfied that the person has contravened the
23 undertaking, the court, in addition to the imposition of any penalty,
24 may make any of the following orders —

25 (a) an order that the person must comply with the undertaking or
26 take specified action to comply with the undertaking;

27 (b) an order discharging the undertaking;

28 (c) an order directing the person to pay to the Regulator —

29 (i) the costs of the proceedings; and

30 (ii) the reasonable costs of the Regulator in monitoring
31 compliance with the rail safety undertaking in the
32 future;

1

Division 7 — Other matters

2

258. Service of documents

3

(1) A notice or document required or authorised by or under this Law to be given or served on a person may be served on the person —

4

5

(a) by delivering it personally to the person; or

6

(b) by sending it by post addressed to the person to the person's last known address; or

7

8

(c) if the person holds an accreditation or registration, or has been granted an exemption, under this Law —

9

10

(i) by sending it by post addressed to the person to that person's address for service; or

11

12

(ii) be left for the person at the person's address for service with someone apparently over the age of 16 years;

13

14

15

or

16

(d) be transmitted by fax or email to a fax number or email address provided by the person for that purpose (in which case the notice or document will be taken to have been given or served at the time of transmission).

17

18

19

20

(2) The *address for service* of a person is the address last provided by the person in writing to the Regulator as the address for service.

21

22

259. Recovery of certain costs

23

The Regulator may recover as a debt from a rail transport operator the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an inspection of an accredited person under Part 3 Division 11.

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260. Recovery of amounts due

29

Every fee, charge or other amount of money payable under this Law may be recovered by the Regulator as a debt due to the Regulator in a court of competent jurisdiction.

30

31

1 **261. Compliance with conditions of accreditation or registration**

2 (1) If—

3 (a) a condition or restriction to which the accreditation of a
4 person is subject makes provision for or with respect to a duty
5 or obligation imposed by this Law; and

6 (b) the accredited person complies with the condition or
7 restriction to the extent that it makes that provision,

8 the accredited person is, for the purposes of this Law, taken to have
9 complied with this Law in relation to that duty or obligation.

10 (2) If—

11 (a) a condition or restriction to which the registration of a person
12 is subject makes provision for or with respect to a duty or
13 obligation imposed by this Law; and

14 (b) the registered person complies with the condition or
15 restriction to the extent that it makes that provision,

16 the registered person is, for the purposes of this Law, taken to have
17 complied with this Law in relation to that duty or obligation.

18 **262. Contracting out prohibited**

19 A term of any contract or agreement that purports to exclude, limit or
20 modify the operation of this Law or any duty under this Law or to
21 transfer to another person any duty owed under this Law is void.

22 **Division 8 — Application of certain South Australian Acts to this Law**

23 **263. Application of certain South Australian Acts to this Law**

24 (1) The following Acts (as in force from time to time) apply as laws of a
25 participating jurisdiction for the purposes of this Law —

26 (a) the *Freedom of Information Act 1991* of South Australia;

27 (b) the *Ombudsman Act 1972* of South Australia;

28 (c) the *Public Finance and Audit Act 1987* of South Australia;

29 (d) the *State Records Act 1997* of South Australia.

30 (2) However, subject to subsection (4), the Acts referred to in
31 subsection (1) do not apply for the purposes of this Law to the extent

- 1 that functions are being exercised under this Law by a State or
2 Territory entity, other than a South Australian entity.
- 3 (3) The national regulations may modify any such Act for the purposes of
4 this Law.
- 5 (4) Without limiting subsection (3), the national regulations may —
- 6 (a) provide that the Act applies as if a provision of the Act
7 specified in the national regulations were omitted; or
- 8 (b) provide that the Act applies as if an amendment to the Act
9 made by a law of South Australia, and specified in the
10 national regulations, had not taken effect; or
- 11 (c) confer a function on a State or Territory entity; or
- 12 (d) confer jurisdiction on a tribunal or court of a participating
13 jurisdiction.
- 14 (5) An Act referred to in subsection (1) applies for the purposes of this
15 Law as if the Minister responsible for a government agency were the
16 Minister in relation to a body established by this Law.

17 **Division 9 — National regulations**

18 **264. National regulations**

- 19 (1) For the purposes of this section, the designated authority is the
20 Governor of the State of South Australia, or other officer for the time
21 being administering the Government of that State, acting with the
22 advice and consent of the Executive Council of that State.
- 23 (2) The designated authority, on the unanimous recommendation of the
24 responsible Ministers, may make regulations (*national regulations*)
25 as contemplated by this Law, or as necessary or expedient for the
26 purposes of this Law, including regulations that make provision for or
27 in relation to any of the matters specified in Schedule 1 to this Law.
- 28 (3) Where the national regulations refer to or incorporate a code, standard
29 or other document prepared or published by a prescribed body —
- 30 (a) a copy of the code, standard or other document must be kept
31 available for inspection by members of the public, without
32 charge and during normal office hours, at the office or offices
33 specified in the regulations; and

- 1 (b) in legal proceedings, evidence of the contents of the code,
2 standard or other document may be given by production of a
3 document purporting to be certified by or on behalf of the
4 Regulator as a true copy of the code, standard or other
5 document; and
6 (c) the code, standard or other document has effect as if it were a
7 regulation made under this Law.

8 **265. Publication of national regulations**

- 9 (1) The national regulations are to be published on the NSW legislation
10 website in accordance with Part 6A of the *Interpretation Act 1987* of
11 New South Wales.
12 (2) A regulation commences on the day or days specified in the
13 regulation for its commencement (being not earlier than the date it is
14 published).

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Schedule 1 — National regulations

1. Accreditations under this Law, including —
 - (a) requirements, standards, qualifications or conditions that must be satisfied; and
 - (b) requirements as to the terms, conditions, restrictions or particulars applying under or with respect to them; and
 - (c) other matters relating to their granting, refusal, variation, suspension, cancellation or surrender.
2. Registrations under this Law, including —
 - (a) requirements, standards, qualifications or conditions that must be satisfied; and
 - (b) requirements as to the terms, conditions, restrictions or particulars applying under or with respect to them; and
 - (c) other matters relating to their granting, refusal, variation, suspension, cancellation or surrender.
3. A scheme for certificates of competency (or provisional certificates of competency) for persons employed or engaged in rail safety work, and for the duration, variation, suspension or cancellation of those certificates.
4. The prohibition of the carrying on of rail safety work or other prescribed activity except by or under the supervision of a person —
 - (a) who holds an appropriate certificate of competency; or
 - (b) who has prescribed qualifications, training or experience.
5. Safety standards or other requirements that must be complied with —
 - (a) in connection with the construction, maintenance or operation of a railway; or
 - (b) in connection with the performance of any work or activity; or
 - (c) in relation to any rail infrastructure, rolling stock, trains, system, devices, appliance or equipment; or
 - (d) in relation to sidings.
6. Procedures (including consultation) for the making, adoption and amendment of rules and procedures relating to rail network operations

- 1 made or adopted for the purposes of Part 3 Division 3 by the rail
2 infrastructure manager responsible for the management of that part of
3 the rail network.
- 4 7. The safeguarding, siting, installing, testing, altering, maintaining or
5 removal of any rail infrastructure, rolling stock, system, device,
6 appliance or equipment.
- 7 8. The records and documents to be kept by any person, the manner of
8 keeping those records and documents, and their inspection.
- 9 9. The providing of returns and other information, verified as prescribed.
- 10 10. The registration of plans and other documents required under this
11 Law.
- 12 11. The recording, investigation and reporting of accidents and incidents.
- 13 12. The health, fitness and functions of rail safety workers.
- 14 13. Drug and alcohol management of rail safety workers, including —
15 (a) the allowed concentration of alcohol; and
16 (b) procedures for drug and alcohol testing, including
17 compulsory testing; and
18 (c) providing for the authorisation of persons to conduct drug
19 and alcohol testing and operate equipment for that purpose;
20 and
21 (d) regulating the collection of biological samples from rail
22 safety workers for the purposes of drug and alcohol testing;
23 and
24 (e) providing for the analysis of test results, including the
25 accreditation of persons conducting the analysis; and
26 (f) providing for the approval of devices used in carrying out
27 drug and alcohol testing and analysis; and
28 (g) providing for the use of results from any testing or analysis,
29 or the steps that may be taken on account of any testing or
30 any evidence or information produced as a result of testing;
31 and
32 (h) prescribing the circumstances that amount to a defence to a
33 breach of the regulations, including where the consumption
34 of alcohol or drugs occurs after rail safety work has been
35 carried out; and
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- 1 (i) providing for the confidentiality of test results; and
2 (j) regulating the destruction of biological samples collected for
3 testing; and
4 (k) providing for the protection of persons involved in taking or
5 conducting testing from liability for acts or omissions done
6 in good faith and in accordance with the regulations.
- 7 14. Fatigue management of rail safety workers, including work hours and
8 rest periods.
- 9 15. The regulation of the conduct of passengers and other persons on
10 railways, or on land or premises associated with a railway.
- 11 16. Trespass on, or entry to, railways, or on land, premises, infrastructure
12 or rolling stock associated with a railway.
- 13 17. The regulation or prohibition of the carriage of goods, freight or
14 animals on railways.
- 15 18. The unauthorised use of railways or rolling stock.
- 16 19. The display of signs and notices.
- 17 20. The opening and closing of railway gates.
- 18 21. The regulation of vehicles, animals and pedestrians crossing railways.
- 19 22. The regulation of crossings.
- 20 23. The loading, unloading or transportation of freight.
- 21 24. The identification of rolling stock, rail infrastructure, devices,
22 appliances, equipment or freight.
- 23 25. Causing damage to, or interfering with or removing, rolling stock, rail
24 infrastructure, devices, appliances, equipment or freight.
- 25 26. Procedures associated with inspections, examinations or tests under
26 this Law.
- 27 27. The form and service of notices and other documents under this Law.
- 28 28. Empowering the Regulator to prohibit a person from acting (or from
29 continuing to act) as a rail safety worker for a specified period, or
30 until further order of the Regulator.
- 31 29. Fixing fees and charges for the purposes of this Law or in respect of
32 any matter arising under this Law, including a fee that the Regulator

- 1 may recover from an accredited person as a debt if the accredited
2 person fails to comply with a requirement of this Law within a
3 specified time.
- 4 30. Generally, evidence in proceedings for an offence against the
5 regulations.
- 6 31. Infringement penalty provisions, including requirements for
7 infringement notices and the fixing of infringement penalties, not
8 exceeding \$1 500, for contravention of an alleged offence against this
9 Law or the regulations.
- 10 32. The imposition of penalties, not exceeding \$10 000 for a
11 contravention of, or failure to comply with, a regulation.

1 **Schedule 2 — Miscellaneous provisions relating to interpretation**

2 **Part 1 — Preliminary**

3 **1. Displacement of Schedule by contrary intention**

4 The application of this Schedule may be displaced, wholly or partly,
5 by a contrary intention appearing in this Law.

6 **Part 2 — General**

7 **2. Law to be construed not to exceed legislative power of Parliament**

8 (1) This Law is to be construed as operating to the full extent of, but so as
9 not to exceed, the legislative power of the Parliament of this
10 jurisdiction.

11 (2) If a provision of this Law, or the application of a provision of this
12 Law to a person, subject matter or circumstance, would, but for this
13 clause, be construed as being in excess of the legislative power of the
14 Parliament of this jurisdiction —

15 (a) it is a valid provision to the extent to which it is not in excess
16 of the power; and

17 (b) the remainder of this Law, and the application of the
18 provision to other persons, subject matters or circumstances,
19 is not affected.

20 (3) This clause applies to this Law in addition to, and without limiting the
21 effect of, any provision of this Law.

22 **3. Every section to be a substantive enactment**

23 Every section of this Law has effect as a substantive enactment
24 without introductory words.

25 **4. Material that is, and is not, part of this Law**

26 (1) The heading to a Part, Division or Subdivision into which this Law is
27 divided is part of this Law.

28 (2) A Schedule to this Law is part of this Law.

- 1 (3) Punctuation in this Law is part of this Law.
- 2 (4) A heading to a section or subsection of this Law does not form part of
3 this Law.

4 **5. References to particular Acts and to enactments**

5 In this Law —

- 6 (a) an Act of this jurisdiction may be cited —
- 7 (i) by its short title; or
- 8 (ii) by reference to the year in which it was passed and its
9 number;
- 10 and
- 11 (b) a Commonwealth Act may be cited —
- 12 (i) by its short title; or
- 13 (ii) in another way sufficient in a Commonwealth Act for
14 the citation of such an Act,
- 15 together with a reference to the Commonwealth; and
- 16 (c) an Act of another jurisdiction may be cited —
- 17 (i) by its short title; or
- 18 (ii) in another way sufficient in an Act of the jurisdiction
19 for the citation of such an Act,
- 20 together with a reference to the jurisdiction.

21 **6. References taken to be included in Law or Act citation etc**

- 22 (1) A reference in this Law to this Law or an Act includes a reference
23 to —
- 24 (a) this Law or the Act as originally enacted, and as amended
25 from time to time since its original enactment; and
- 26 (b) if this Law or the Act has been repealed and re-enacted (with
27 or without modification) since the enactment of the
28 reference — this Law or the Act as re-enacted, and as
29 amended from time to time since its re-enactment.

- 1 (2) A reference in this Law to a provision of this Law or of an Act
2 includes a reference to —
- 3 (a) the provision as originally enacted, and as amended from
4 time to time since its original enactment; and
- 5 (b) if the provision has been omitted and re-enacted (with or
6 without modification) since the enactment of the reference —
7 the provision as re-enacted, and as amended from time to
8 time since its re-enactment.
- 9 (3) Subclauses (1) and (2) apply to a reference in this Law to a law of the
10 Commonwealth or another jurisdiction as they apply to a reference in
11 this Law to an Act and to a provision of an Act.
- 12 **7. Interpretation best achieving Law's purpose or object**
- 13 (1) In the interpretation of a provision of this Law, the interpretation that
14 will best achieve the purpose or object of this Law is to be preferred
15 to any other interpretation.
- 16 (2) Subclause (1) applies whether or not the purpose is expressly stated in
17 this Law.
- 18 **8. Use of extrinsic material in interpretation**
- 19 (1) In this clause —
- 20 *extrinsic material* means relevant material not forming part of this
21 Law, including (for example) —
- 22 (a) material that is set out in the document containing the text of
23 this Law as printed by the Government Printer; and
- 24 (b) a relevant report of a Royal Commission, Law Reform
25 Commission, commission or committee of inquiry, or a
26 similar body, that was laid before the Parliament of this
27 jurisdiction before the provision concerned was enacted; and
- 28 (c) a relevant report of a committee of the Parliament of this
29 jurisdiction that was made to the Parliament before the
30 provision was enacted; and
- 31 (d) a treaty or other international agreement that is mentioned in
32 this Law; and
- 33 (e) an explanatory note or memorandum relating to the Bill that
34 contained the provision, or any relevant document, that was

- 1 laid before, or given to the members of, the Parliament of this
2 jurisdiction by the member bringing in the Bill before the
3 provision was enacted; and
- 4 (f) the speech made to the Parliament of this jurisdiction by the
5 member in moving a motion that the Bill be read a second
6 time; and
- 7 (g) material in the Votes and Proceedings of the Parliament of
8 this jurisdiction or in any official record of debates in the
9 Parliament of this jurisdiction; and
- 10 (h) a document that is declared by this Law to be a relevant
11 document for the purposes of this clause;
- 12 **ordinary meaning** means the ordinary meaning conveyed by a
13 provision having regard to its context in this Law and to the purpose
14 of this Law.
- 15 (2) Subject to subclause (3), in the interpretation of a provision of this
16 Law, consideration may be given to extrinsic material capable of
17 assisting in the interpretation —
- 18 (a) if the provision is ambiguous or obscure — to provide an
19 interpretation of it; or
- 20 (b) if the ordinary meaning of the provision leads to a result that
21 is manifestly absurd or is unreasonable — to provide an
22 interpretation that avoids such a result; or
- 23 (c) in any other case — to confirm the interpretation conveyed
24 by the ordinary meaning of the provision.
- 25 (3) In determining whether consideration should be given to extrinsic
26 material, and in determining the weight to be given to extrinsic
27 material, regard is to be had to —
- 28 (a) the desirability of a provision being interpreted as having its
29 ordinary meaning; and
- 30 (b) the undesirability of prolonging proceedings without
31 compensating advantage; and
- 32 (c) other relevant matters.

1 **9. Effect of change of drafting practice**

2 If—

3 (a) a provision of this Law expresses an idea in particular words;
4 and

5 (b) a provision enacted later appears to express the same idea in
6 different words for the purpose of implementing a different
7 legislative drafting practice, including (for example) —

8 (i) the use of a clearer or simpler style; or

9 (ii) the use of gender-neutral language,

10 the ideas must not be taken to be different merely because different
11 words are used.

12 **10. Use of examples**

13 If this Law includes an example of the operation of a provision —

14 (a) the example is not exhaustive; and

15 (b) the example does not limit, but may extend, the meaning of
16 the provision; and

17 (c) the example and the provision are to be read in the context of
18 each other and the other provisions of this Law, but, if the
19 example and the provision so read are inconsistent, the
20 provision prevails.

21 **11. Compliance with forms**

22 (1) If a form is prescribed or approved by or for the purpose of this Law,
23 strict compliance with the form is not necessary and substantial
24 compliance is sufficient.

25 (2) If a form prescribed or approved by or for the purpose of this Law
26 requires —

27 (a) the form to be completed in a specified way; or

28 (b) specified information or documents to be included in,
29 attached to or given with the form; or

- 1 **Commonwealth** means the Commonwealth of Australia but, when
2 used in a geographical sense, does not include an external Territory;
3 **confer**, in relation to a function, includes impose;
4 **contravene** includes fail to comply with;
5 **country** includes —
6 (a) a federation; or
7 (b) a state, province or other part of a federation;
8 **date of assent**, in relation to an Act, means the day on which the Act
9 receives the Royal Assent;
10 **definition** means a provision of this Law (however expressed) that —
11 (a) gives a meaning to a word or expression; or
12 (b) limits or extends the meaning of a word or expression;
13 **document** means any record of information and includes —
14 (a) any paper or other material on which there is writing; or
15 (b) any paper or other material on which there are marks, figures,
16 symbols or perforations having a meaning for a person
17 qualified to interpret them; or
18 (c) any computer, disc, tape or other article or any material from
19 which sounds, images, writings or messages are capable of
20 being reproduced (with or without the aid of another article or
21 device); or
22 (d) a map, plan, drawing or photograph;
23 **electronic communication** means —
24 (a) a communication of information in the form of data, text or
25 images by means of guided or unguided electromagnetic
26 energy, or both; or
27 (b) a communication of information in the form of sound by
28 means of guided or unguided electromagnetic energy, or
29 both, where the sound is processed at its destination by an
30 automated voice recognition system;
31 **estate** includes easement, charge, right, title, claim, demand, lien or
32 encumbrance, whether at law or in equity;
33 **expire** includes lapse or otherwise cease to have effect;

- 1 *oath*, in relation to a person allowed by law to affirm, declare or
2 promise, includes affirmation, declaration or promise;
- 3 *office* includes position;
- 4 *omit*, in relation to a provision of this Law or an Act, includes repeal;
- 5 *party* includes an individual or a body politic or corporate;
- 6 *penalty* includes forfeiture or punishment;
- 7 *person* includes an individual or a body politic or corporate;
- 8 *power* includes authority;
- 9 *prescribed* means prescribed by, or by regulations made or in force
10 for the purposes of or under, this Law;
- 11 *printed* includes typewritten, lithographed or reproduced by any
12 mechanical means;
- 13 *proceeding* means a legal or other action or proceeding;
- 14 *property* means any legal or equitable estate or interest (whether
15 present or future, vested or contingent, or tangible or intangible) in
16 real or personal property of any description (including money), and
17 includes things in action;
- 18 *provision*, in relation to this Law or an Act, means words or other
19 matter that form or forms part of this Law or the Act, and includes —
- 20 (a) a Chapter, Part, Division, Subdivision, section, subsection,
21 paragraph, subparagraph, subsubparagraph or Schedule of or
22 to this Law or the Act; or
- 23 (b) a clause, section, subsection, item, column, table or form of
24 or in a Schedule to this Law or the Act; or
- 25 (c) the long title and any preamble to the Act;
- 26 *repeal* includes —
- 27 (a) revoke or rescind; or
- 28 (b) repeal by implication; or
- 29 (c) abrogate or limit the effect of this Law or instrument
30 concerned; or
- 31 (d) exclude from, or include in, the application of this Law or
32 instrument concerned, any person, subject matter or
33 circumstance;
- 34 *sign* includes the affixing of a seal or the making of a mark;

- 1 **statutory declaration** means a declaration made under an Act of this
2 jurisdiction, or under a Commonwealth Act or an Act of another
3 jurisdiction, that authorises a declaration to be made otherwise than in
4 the course of a judicial proceeding;
- 5 **statutory instrument** means an instrument (including a regulation)
6 made or in force under or for the purposes of this Law, and includes
7 an instrument made or in force under any such instrument;
- 8 **swear**, in relation to a person allowed by law to affirm, declare or
9 promise, includes affirm, declare or promise;
- 10 **word** includes any symbol, figure or drawing;
- 11 **writing** includes any mode of representing or reproducing words in a
12 visible form;
- 13 **year**, without specifying the type of year, means calendar year.
- 14 (2) In a statutory instrument —
15 **the Law** means this Law.
- 16 **13. Provisions relating to defined terms and gender and number**
- 17 (1) If this Law defines a word or expression, other parts of speech and
18 grammatical forms of the word or expression have corresponding
19 meanings.
- 20 (2) Definitions in or applicable to this Law apply except so far as the
21 context or subject matter otherwise indicates or requires.
- 22 (3) In this Law, words indicating a gender include each other gender.
- 23 (4) In this Law —
24 (a) words in the singular include the plural; and
25 (b) words in the plural include the singular.
- 26 **14. Meaning of *may* and *must* etc**
- 27 (1) In this Law, the word “may”, or a similar word or expression, used in
28 relation to a power indicates that the power may be exercised or not
29 exercised, at discretion.
- 30 (2) In this Law, the word “must”, or a similar word or expression, used in
31 relation to a power indicates that the power is required to be
32 exercised.

1 (3) This clause has effect despite any rule of construction to the contrary.

2 **15. Words and expressions used in statutory instruments**

3 (1) Words and expressions used in a statutory instrument have the same
4 meanings as they have, from time to time, in this Law, or relevant
5 provisions of this Law, under or for the purposes of which the
6 instrument is made or in force.

7 (2) This clause has effect in relation to an instrument except so far as the
8 contrary intention appears in the instrument.

9 **16. Effect of express references to bodies corporate and individuals**

10 In this Law, a reference to a person generally (whether the expression
11 “person”, “party”, “someone”, “anyone”, “no-one”, “one”, “another”
12 or “whoever” or another expression is used) —

13 (a) does not exclude a reference to a body corporate or an
14 individual merely because elsewhere in this Law there is
15 particular reference to a body corporate (however expressed);
16 and

17 (b) does not exclude a reference to an individual or a body
18 corporate merely because elsewhere in this Law there is
19 particular reference to an individual (however expressed).

20 **17. Production of records kept in computers etc**

21 If a person who keeps a record of information by means of a
22 mechanical, electronic or other device is required by or under this
23 Law —

24 (a) to produce the information or a document containing the
25 information to a court, tribunal or person; or

26 (b) to make a document containing the information available for
27 inspection by a court, tribunal or person,

28 then, unless the court, tribunal or person otherwise directs —

29 (c) the requirement obliges the person to produce or make
30 available for inspection (as the case may be) a document that
31 reproduces the information in a form capable of being
32 understood by the court, tribunal or person; and

- 1 (d) the production to the court, tribunal or person of the
2 document in that form complies with the requirement.

3 **18. References to this jurisdiction to be implied**

4 In this Law —

- 5 (a) a reference to an officer, office or statutory body is a
6 reference to such an officer, office or statutory body in and
7 for this jurisdiction; and
8 (b) a reference to a locality or other matter or thing is a reference
9 to such a locality or other matter or thing in and of this
10 jurisdiction.

11 **19. References to officers and holders of offices**

12 In this Law, a reference to a particular officer, or to the holder of a
13 particular office, includes a reference to the person for the time being
14 occupying or acting in the office concerned.

15 **20. Reference to certain provisions of Law**

16 If a provision of this Law refers —

- 17 (a) to a Part, section or Schedule by a number and without
18 reference to this Law — the reference is a reference to the
19 Part, section or Schedule, designated by the number, of or to
20 this Law; or
21 (b) to a Schedule without reference to it by a number and without
22 reference to this Law — the reference, if there is only
23 1 Schedule to this Law, is a reference to the Schedule; or
24 (c) to a Division, Subdivision, subsection, paragraph,
25 subparagraph, subsubparagraph, clause, subclause, item,
26 column, table or form by a number and without reference to
27 this Law — the reference is a reference to —
28 (i) the Division, designated by the number, of the Part in
29 which the reference occurs; and
30 (ii) the Subdivision, designated by the number, of the
31 Division in which the reference occurs; and
32 (iii) the subsection, designated by the number, of the
33 section in which the reference occurs; and

- 1 (iv) the paragraph, designated by the number, of the
2 section, subsection, Schedule or other provision in
3 which the reference occurs; and
- 4 (v) the paragraph, designated by the number, of the
5 section, subsection, item, column, table or form of or
6 in the Schedule in which the reference occurs; and
- 7 (vi) the subparagraph, designated by the number, of the
8 paragraph in which the reference occurs; and
- 9 (vii) the subparagraph, designated by the number, of
10 the subparagraph in which the reference occurs; and
- 11 (viii) the clause, section, subsection, item, column, table or
12 form, designated by the number, of or in the Schedule
13 in which the reference occurs,
14 as the case requires.

15 **21. Reference to provisions of this Law or an Act is inclusive**

16 In this Law, a reference to a portion of this Law or an Act includes —

- 17 (a) a reference to the Chapter, Part, Division, Subdivision,
18 section, subsection or other provision of this Law or the Act
19 referred to that forms the beginning of the portion; and
- 20 (b) a reference to the Chapter, Part, Division, Subdivision,
21 section, subsection or other provision of this Law or the Act
22 referred to that forms the end of the portion.

23 Example: A reference to “sections 5 to 9” includes both section 5 and
24 section 9. It is not necessary to refer to “sections 5 to 9 (both
25 inclusive)” to ensure that the reference is given an inclusive
26 interpretation.

27 **Part 4 — Functions and powers**

28 **22. Exercise of statutory functions**

- 29 (1) If this Law confers a function on a person or body, the function may
30 be exercised from time to time as occasion requires.
- 31 (2) If this Law confers a function on a particular officer or the holder of a
32 particular office, the function may be exercised by the person for the
33 time being occupying or acting in the office concerned.

- 1 (3) If this Law confers a function on a body (whether or not
2 incorporated), the exercise of the function is not affected merely
3 because of vacancies in the membership of the body.
- 4 **23. Power to make instrument or decision includes power to amend**
5 **or repeal**
- 6 If this Law authorises or requires the making of an instrument or
7 decision —
- 8 (a) the power includes power to amend or repeal the instrument
9 or decision; and
- 10 (b) the power to amend or repeal the instrument or decision is
11 exercisable in the same way, and subject to the same
12 conditions, as the power to make the instrument or decision.
- 13 **24. Matters for which statutory instruments may make provision**
- 14 (1) If this Law authorises or requires the making of a statutory instrument
15 in relation to a matter, a statutory instrument made under this Law
16 may make provision for the matter by applying, adopting or
17 incorporating (with or without modification) the provisions of —
- 18 (a) an Act or statutory instrument; or
- 19 (b) another document (whether of the same or a different kind),
20 as in force at a particular time or as in force from time to
21 time.
- 22 (2) If a statutory instrument applies, adopts or incorporates the provisions
23 of a document, the statutory instrument applies, adopts or incorporates
24 the provisions as in force from time to time, unless the statutory
25 instrument otherwise expressly provides.
- 26 (3) A statutory instrument may —
- 27 (a) apply generally throughout this jurisdiction or be limited in
28 its application to a particular part of this jurisdiction; or
- 29 (b) apply generally to all persons, matters or things or be limited
30 in its application to —
- 31 (i) particular persons, matters or things; or
- 32 (ii) particular classes of persons, matters or things;
- 33 or

- 1 (c) otherwise apply generally or be limited in its application by
2 reference to specified exceptions or factors.
- 3 (4) A statutory instrument may —
- 4 (a) apply differently according to different specified factors; or
- 5 (b) otherwise make different provision in relation to —
- 6 (i) different persons, matters or things; or
- 7 (ii) different classes of persons, matters or things.
- 8 (5) A statutory instrument may authorise a matter or thing to be from time
9 to time determined, applied or regulated by a specified person or
10 body.
- 11 (6) If this Law authorises or requires a matter to be regulated by statutory
12 instrument, the power may be exercised by prohibiting by statutory
13 instrument the matter or any aspect of the matter.
- 14 (7) If this Law authorises or requires provision to be made with respect to
15 a matter by statutory instrument, a statutory instrument made under
16 this Law may make provision with respect to a particular aspect of the
17 matter despite the fact that provision is made by this Law in relation
18 to another aspect of the matter or in relation to another matter.
- 19 (8) A statutory instrument may provide for the review of, or a right of
20 appeal against, a decision made under the statutory instrument, or this
21 Law, and may, for that purpose, confer jurisdiction on any court,
22 tribunal, person or body.
- 23 (9) A statutory instrument may require a form prescribed by or under the
24 statutory instrument, or information or documents included in,
25 attached to or given with the form, to be verified by statutory
26 declaration.
- 27 **25. Presumption of validity and power to make**
- 28 (1) All conditions and preliminary steps required for the making of a
29 statutory instrument are presumed to have been satisfied and
30 performed in the absence of evidence to the contrary.
- 31 (2) A statutory instrument is taken to be made under all powers under
32 which it may be made, even though it purports to be made under this
33 Law or a particular provision of this Law.

1 **26. Appointments may be made by name or office**

- 2 (1) If this Law authorises or requires a person or body —
- 3 (a) to appoint a person to an office; or
- 4 (b) to appoint a person or body to exercise a power; or
- 5 (c) to appoint a person or body to do another thing,
- 6 the person or body may make the appointment by —
- 7 (d) appointing a person or body by name; or
- 8 (e) appointing a particular officer, or the holder of a particular
- 9 office, by reference to the title of the office concerned.
- 10 (2) An appointment of a particular officer, or the holder of a particular
- 11 office, is taken to be the appointment of the person for the time being
- 12 occupying or acting in the office concerned.

13 **27. Acting appointments**

- 14 (1) If this Law authorises a person or body to appoint a person to act in an
- 15 office, the person or body may, in accordance with this Law,
- 16 appoint —
- 17 (a) a person by name; or
- 18 (b) a particular officer, or the holder of a particular office, by
- 19 reference to the title of the office concerned,
- 20 to act in the office.
- 21 (2) The appointment may be expressed to have effect only in the
- 22 circumstances specified in the instrument of appointment.
- 23 (3) The appointer may —
- 24 (a) determine the terms and conditions of the appointment,
- 25 including remuneration and allowances; and
- 26 (b) terminate the appointment at any time.
- 27 (4) The appointment, or the termination of the appointment, must be in,
- 28 or evidenced by, writing signed by the appointer.
- 29 (5) The appointee must not act for more than 1 year during a vacancy in
- 30 the office.

- 1 (6) If the appointee is acting in the office otherwise than because of a
2 vacancy in the office and the office becomes vacant, then, subject to
3 subclause (2), the appointee may continue to act until —
4 (a) the appointer otherwise directs; or
5 (b) the vacancy is filled; or
6 (c) the end of a year from the day of the vacancy,
7 whichever happens first.
- 8 (7) The appointment ceases to have effect if the appointee resigns by
9 writing signed and delivered to the appointer.
- 10 (8) While the appointee is acting in the office —
11 (a) the appointee has all the powers and functions of the holder
12 of the office; and
13 (b) this Law and other laws apply to the appointee as if the
14 appointee were the holder of the office.
- 15 (9) Anything done by or in relation to a person purporting to act in the
16 office is not invalid merely because —
17 (a) the occasion for the appointment had not arisen; or
18 (b) the appointment had ceased to have effect; or
19 (c) the occasion for the person to act had not arisen or had
20 ceased.
- 21 (10) If this Law authorises the appointer to appoint a person to act during a
22 vacancy in the office, an appointment to act in the office may be made
23 by the appointer whether or not an appointment has previously been
24 made to the office.
- 25 **28. Powers of appointment imply certain incidental powers**
- 26 (1) If this Law authorises or requires a person or body to appoint a person
27 to an office —
28 (a) the power may be exercised from time to time as occasion
29 requires; and
30 (b) the power includes —
31 (i) power to remove or suspend, at any time, a person
32 appointed to the office; and

- 1 (ii) power to appoint another person to act in the office if
2 a person appointed to the office is removed or
3 suspended; and
- 4 (iii) power to reinstate or reappoint a person removed or
5 suspended; and
- 6 (iv) power to appoint a person to act in the office if it is
7 vacant (whether or not the office has ever been
8 filled); and
- 9 (v) power to appoint a person to act in the office if the
10 person appointed to the office is absent or is unable to
11 discharge the functions of the office (whether because
12 of illness or otherwise).

13 (2) The power to remove or suspend a person under subclause (1)(b) may
14 be exercised even if this Law provides that the holder of the office to
15 which the person was appointed is to hold office for a specified
16 period.

17 (3) The power to make an appointment under subclause (1)(b) may be
18 exercised from time to time as occasion requires.

19 (4) An appointment under subclause (1)(b) may be expressed to have
20 effect only in the circumstances specified in the instrument of
21 appointment.

22 **29. Delegation of functions**

23 (1) If this Law authorises a person or body to delegate a function, the
24 person or body may, in accordance with this Law and any other
25 applicable law, delegate the function to —

- 26 (a) a person or body by name; or
27 (b) a specified officer, or the holder of a specified office, by
28 reference to the title of the office concerned.

29 (2) The delegation may —

- 30 (a) be general or limited; and
31 (b) be made from time to time; and
32 (c) be revoked, wholly or partly, by the delegator.

- 1 (3) The delegation, or a revocation of the delegation, must be in, or
2 evidenced by, writing signed by the delegator or, if the delegator is a
3 body, by a person authorised by the body for the purpose.
- 4 (4) A delegated function may be exercised only in accordance with any
5 conditions to which the delegation is subject.
- 6 (5) The delegate may, in the exercise of a delegated function, do anything
7 that is incidental to the delegated function.
- 8 (6) A delegated function that purports to have been exercised by the
9 delegate is taken to have been properly exercised by the delegate
10 unless the contrary is proved.
- 11 (7) A delegated function that is properly exercised by the delegate is
12 taken to have been exercised by the delegator.
- 13 (8) If, when exercised by the delegator, a function is dependent on the
14 delegator's opinion, belief or state of mind, then, when exercised by
15 the delegate, the function is dependent on the delegate's opinion,
16 belief or state of mind.
- 17 (9) If —
- 18 (a) the delegator is a specified officer or the holder of a specified
19 office; and
- 20 (b) the person who was the specified officer or holder of the
21 specified office when the delegation was made ceases to be
22 the holder of the office,
- 23 then —
- 24 (c) the delegation continues in force; and
- 25 (d) the person for the time being occupying or acting in the office
26 concerned is taken to be the delegator for the purposes of this
27 clause.
- 28 (10) If —
- 29 (a) the delegator is a body; and
- 30 (b) there is a change in the membership of the body,
- 31 then —
- 32 (c) the delegation continues in force; and

- 1 (d) the body as constituted for the time being is taken to be
2 delegator for the purposes of this clause.
- 3 (11) If a function is delegated to a specified officer or the holder of a
4 specified office —
- 5 (a) the delegation does not cease to have effect merely because
6 the person who was the specified officer or the holder of the
7 specified office when the function was delegated ceases to be
8 the officer or the holder of the office; and
- 9 (b) the function may be exercised by the person for the time
10 being occupying or acting in the office concerned.
- 11 (12) A function that has been delegated may, despite the delegation, be
12 exercised by the delegator.
- 13 (13) The delegation of a function does not relieve the delegator of the
14 delegator’s obligation to ensure that the function is properly
15 exercised.
- 16 (14) Subject to subclause (15), this clause applies to a subdelegation of a
17 function in the same way as it applies to a delegation of a function.
- 18 (15) If this Law authorises the delegation of a function, the function may
19 be subdelegated only if this Law expressly authorises the function to
20 be subdelegated.
- 21 **30. Exercise of powers between enactment and commencement**
- 22 (1) If a provision of this Law (the *empowering provision*) that does not
23 commence on its enactment would, had it commenced, confer a
24 power —
- 25 (a) to make an appointment; or
- 26 (b) to make a statutory instrument of a legislative or
27 administrative character; or
- 28 (c) to do another thing,
- 29 then —
- 30 (d) the power may be exercised; and

- 1 (e) anything may be done for the purpose of enabling the
2 exercise of the power or of bringing the appointment,
3 instrument or other thing into effect,
4 before the empowering provision commences.
- 5 (2) If a provision of a South Australian Act (the *empowering provision*)
6 that does not commence on its enactment would, had it commenced,
7 amend a provision of this Law so that it would confer a power —
8 (a) to make an appointment; or
9 (b) to make a statutory instrument of a legislative or
10 administrative character; or
11 (c) to do another thing,
12 then —
13 (d) the power may be exercised; and
14 (e) anything may be done for the purpose of enabling the
15 exercise of the power or of bringing the appointment,
16 instrument or other thing into effect,
17 before the empowering provision commences.
- 18 (3) If—
19 (a) this Law has commenced and confers a power to make a
20 statutory instrument (the *basic instrument-making power*);
21 and
22 (b) a provision of a South Australian Act that does not
23 commence on its enactment would, had it commenced,
24 amend this Law so as to confer additional power to make a
25 statutory instrument (the *additional instrument-making*
26 *power*),
27 then —
28 (c) the basic instrument-making power and the additional
29 instrument-making power may be exercised by making a
30 single instrument; and
31 (d) any provision of the instrument that required an exercise of
32 the additional instrument-making power is to be treated as
33 made under subclause (2).

- 1 (4) If an instrument, or a provision of an instrument, is made under
2 subclause (1) or (2) that is necessary for the purpose of —
- 3 (a) enabling the exercise of a power mentioned in the subclause;
4 or
- 5 (b) bringing an appointment, instrument or other thing made or
6 done under such a power into effect,
- 7 the instrument or provision takes effect —
- 8 (c) on the making of the instrument; or
- 9 (d) on such later day (if any) on which, or at such later time (if
10 any) at which, the instrument or provision is expressed to take
11 effect.
- 12 (5) If —
- 13 (a) an appointment is made under subclause (1) or (2); or
- 14 (b) an instrument, or a provision of an instrument, made under
15 subclause (1) or (2) is not necessary for a purpose mentioned
16 in subclause (4),
- 17 the appointment, instrument or provision takes effect —
- 18 (c) on the commencement of the relevant empowering provision;
19 or
- 20 (d) on such later day (if any) on which, or at such later time (if
21 any) at which, the appointment, instrument or provision is
22 expressed to take effect.
- 23 (6) Anything done under subclause (1) or (2) does not confer a right, or
24 impose a liability, on a person before the relevant empowering
25 provision commences.
- 26 (7) After the enactment of a provision mentioned in subclause (1) but
27 before the provision's commencement, this clause applies as if the
28 references in subclauses (2) and (5) to the commencement of the
29 empowering provision were references to the commencement of the
30 provision mentioned in subclause (2) as amended by the empowering
31 provision.
- 32 (8) In the application of this clause to a statutory instrument, a reference
33 to the enactment of the instrument is a reference to the making of the
34 instrument.

1

Part 5 — Distance, time and age

2

31. Matters relating to distance, time and age

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(1) In the measurement of distance for the purposes of this Law, the distance is to be measured along the shortest road ordinarily used for travelling.

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(2) If a period beginning on a given day, act or event is provided or allowed for a purpose by this Law, the period is to be calculated by excluding the day, or the day of the act or event, and —

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(a) if the period is expressed to be a specified number of clear days or at least a specified number of days — by excluding the day on which the purpose is to be fulfilled; and

10

11

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(b) in any other case — by including the day on which the purpose is to be fulfilled.

13

14

(3) If the last day of a period provided or allowed by this Law for doing anything is not a business day in the place in which the thing is to be or may be done, the thing may be done on the next business day in the place.

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(4) If the last day of a period provided or allowed by this Law for the filing or registration of a document is a day on which the office is closed where the filing or registration is to be or may be done, the document may be filed or registered at the office on the next day that the office is open.

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(5) If no time is provided or allowed for doing anything, the thing is to be done as soon as possible, and as often as the prescribed occasion happens.

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(6) If, in this Law, there is a reference to time, the reference is, in relation to the doing of anything in a jurisdiction, a reference to the legal time in the jurisdiction.

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(7) For the purposes of this Law, a person attains an age in years at the beginning of the person's birthday for the age.

30

1 **Part 6 — Effect of repeal, amendment or expiration**

2 **32. Time of Law ceasing to have effect**

3 If a provision of this Law is expressed —

- 4 (a) to expire on a specified day; or
5 (b) to remain or continue in force, or otherwise have effect, until
6 a specified day,

7 this provision has effect until the last moment of the specified day.

8 **33. Repealed provisions not revived**

9 If a provision of this Law is repealed or amended by a South
10 Australian Act, or a provision of a South Australian Act, the provision
11 is not revived merely because the South Australian Act or the
12 provision of the South Australian Act —

- 13 (a) is later repealed or amended; or
14 (b) later expires.

15 **34. Saving of operation of repealed Law provisions**

16 (1) The repeal, amendment or expiry of a provision of this Law does
17 not —

- 18 (a) revive anything not in force or existing at the time the repeal,
19 amendment or expiry takes effect; or
20 (b) affect the previous operation of the provision or anything
21 suffered, done or begun under the provision; or
22 (c) affect a right, privilege or liability acquired, accrued or
23 incurred under the provision; or
24 (d) affect a penalty incurred in relation to an offence arising
25 under the provision; or
26 (e) affect an investigation, proceeding or remedy in relation to
27 such a right, privilege, liability or penalty.

28 (2) Any such penalty may be imposed and enforced, and any such
29 investigation, proceeding or remedy may be begun, continued or
30 enforced, as if the provision had not been repealed or amended or had
31 not expired.

1 **35. Continuance of repealed provisions**

2 If a South Australian Act repeals some provisions of this Law and
3 enacts new provisions in substitution for the repealed provisions, the
4 repealed provisions continue in force until the new provisions
5 commence.

6 **36. Law and amending Acts to be read as one**

7 This Law and all South Australian Acts amending this Law are to be
8 read as one.

9 **Part 7 — Instruments under Law**

10 **37. Schedule applies to statutory instruments**

11 (1) This Schedule applies to a statutory instrument, and to things that may
12 be done or are required to be done under a statutory instrument, in the
13 same way as it applies to this Law, and things that may be done or are
14 required to be done under this Law, except so far as the context or
15 subject matter otherwise indicates or requires.

16 (2) The fact that a provision of this Schedule refers to this Law and not
17 also to a statutory instrument does not, by itself, indicate that the
18 provision is intended to apply only to this Law.

19

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
accredited person	Sch. cl. 4(1)
Act	Sch. 2 cl. 12(1)
Acting Regulator	Sch. cl. 4(1)
additional instrument-making power	Sch. 2 cl. 30(3)
address for service	Sch. cl. 258(2)
adult	Sch. 2 cl. 12(1)
affidavit	Sch. 2 cl. 12(1)
amend	Sch. 2 cl. 12(1)
amusement structure	Sch. cl. 4(1)
analyst	9(1)
application Act	6(1), Sch. cl. 4(1)
appoint	Sch. 2 cl. 12(1)
approved code of practice	Sch. cl. 4(1)
AQF	Sch. cl. 4(1)
AQTF	Sch. cl. 4(1)
assistant	Sch. cl. 146(1)
associated railway track structures	Sch. cl. 4(1)
audit program	Sch. cl. 133(1)
Australia	Sch. 2 cl. 12(1)
Australian Accounting Standards	Sch. cl. 4(1)
Australian rail safety law	Sch. cl. 4(1)
authorised officer	Sch. cl. 149(5), 200(3) and 227(3)
authorised person	Sch. cl. 4(1)
authorised tester	42(1)
BAC	9(1)
basic instrument-making power	Sch. 2 cl. 30(3)
breath analysis instrument	9(1)
business day	Sch. 2 cl. 12(1)
calendar month	Sch. 2 cl. 12(1)
calendar year	Sch. 2 cl. 12(1)
Category 1 offence	Sch. cl. 4(1)
Category 2 offence	Sch. cl. 4(1)
Category 3 offence	Sch. cl. 4(1)
commencement	Sch. 2 cl. 12(1)
commencement day	38
commercial benefits order	Sch. cl. 4(1)
Commonwealth	Sch. 2 cl. 12(1)
Commonwealth Minister	Sch. cl. 4(2)

Defined terms

compliance period.....	Sch. cl. 178(4)
compliance report	Sch. cl. 231(9)
confer	Sch. 2 cl. 12(1)
contravene.....	Sch. 2 cl. 12(1)
coordination direction	Sch. cl. 66(1)
country	Sch. 2 cl. 12(1)
court	6(1)
date of assent.....	Sch. 2 cl. 12(1)
defendant.....	33(2)
definition.....	Sch. 2 cl. 12(1)
designated provision	Sch. cl. 4(1) and 204
document.....	Sch. 2 cl. 12(1)
drug.....	Sch. cl. 4(1)
drug screening test	9(1)
due diligence.....	Sch. cl. 55(3)
electronic communication.....	Sch. 2 cl. 12(1)
eligible person.....	Sch. cl. 215(1)
emergency services	6(1)
employee.....	Sch. cl. 4(1) and 225(6)
employer	Sch. cl. 4(1)
empowering provision	Sch. 2 cl. 30(1) and 30(2)
estate	Sch. 2 cl. 12(1)
evidence	Sch. cl. 150(4)
exercise	Sch. cl. 4(1)
expire	Sch. 2 cl. 12(1)
external Territory	Sch. 2 cl. 12(1)
extrinsic material.....	Sch. 2 cl. 8(1)
fail.....	Sch. 2 cl. 12(1)
financial year	Sch. 2 cl. 12(1)
footpath.....	Sch. cl. 4(1)
former account.....	49(1)
function.....	Sch. 2 cl. 12(1)
Fund.....	Sch. cl. 4(1)
Gazette	6(1)
Government Printer.....	Sch. 2 cl. 12(1)
Health Practitioner Regulation National Law	6(1)
hospital.....	23
improvement notice	Sch. cl. 4(1)
in control.....	Sch. cl. 159(7)
individual	Sch. 2 cl. 12(1)
information system	Sch. 2 cl. 12(1)
infringement penalty provision	Sch. cl. 4(1) and 233
insert	Sch. 2 cl. 12(1)
instrument	Sch. 2 cl. 12(1)
interest.....	Sch. 2 cl. 12(1)

Defined terms

interface agreement.....	Sch. cl. 4(1)
internal Territory.....	Sch. 2 cl. 12(1)
Jervis Bay Territory.....	Sch. 2 cl. 12(1)
jurisdiction.....	Sch. cl. 4(1)
level crossing.....	Sch. cl. 4(1)
local application provisions of this Act.....	3(1)
local regulations.....	3(2)
magistrate.....	6(1)
make.....	Sch. 2 cl. 12(1)
medical practitioner.....	9(1)
member.....	Sch. cl. 4(1)
Minister.....	6(1)
minor.....	Sch. 2 cl. 12(1)
modification.....	Sch. 2 cl. 12(1)
month.....	Sch. 2 cl. 12(1)
named month.....	Sch. 2 cl. 12(1)
national regulations.....	Sch. cl. 4(1) and 264(2)
non-disturbance notice.....	Sch. cl. 4(1)
Northern Territory.....	Sch. 2 cl. 12(1)
notice.....	Sch. cl. 186 and 196
notifiable occurrence.....	Sch. cl. 4(1)
number.....	Sch. 2 cl. 12(1)
oath.....	Sch. 2 cl. 12(1)
occupational health and safety legislation.....	Sch. cl. 4(1)
office.....	Sch. 2 cl. 12(1)
office holder.....	Sch. cl. 224(3)
Office of the National Rail Safety Regulator.....	Sch. cl. 4(1)
officer.....	Sch. cl. 4(1)
omit.....	Sch. 2 cl. 12(1)
ONRSR.....	Sch. cl. 3(2), 4(1) and 12(1)
oral fluid analysis.....	9(1)
ordinary meaning.....	Sch. 2 cl. 8(1)
participating jurisdiction.....	Sch. cl. 4(1)
party.....	Sch. 2 cl. 12(1)
penalty.....	Sch. 2 cl. 12(1)
person.....	Sch. 2 cl. 12(1)
person entitled.....	Sch. cl. 162(9), 163(4) and 215(3)
person to whom this section applies.....	Sch. cl. 248(3)
police officer.....	6(1)
power.....	Sch. 2 cl. 12(1)
preliminary breath test.....	9(1)
prescribed.....	Sch. 2 cl. 12(1)
prescribed authority.....	Sch. cl. 13(3) and. 218(4)
prescribed BAC.....	9(1)
prescribed concentration of alcohol.....	Sch. cl. 128(5)

Defined terms

prescribed drug	Sch. cl. 4(1) and 128(5)
prescribed notifiable occurrence	6(1)
printed	Sch. 2 cl. 12(1)
private siding	Sch. cl. 4(1)
proceeding.....	Sch. 2 cl. 12(1)
prohibited drug.....	9(1)
prohibition notice	Sch. cl. 4(1)
property	Sch. 2 cl. 12(1)
protected person	Sch. cl. 247(3)
provision	Sch. 2 cl. 12(1)
public authority	Sch. cl. 225(6)
public place	Sch. cl. 4(1)
public road	Sch. cl. 4(1)
public sector auditor.....	6(1), Sch. cl. 4(1)
qualified person.....	9(1)
rail infrastructure.....	Sch. cl. 4(1)
rail infrastructure manager	Sch. cl. 4(1)
rail or road crossing	Sch. cl. 4(1)
rail safety duty provision	Sch. cl. 219(4)
Rail Safety National Law (WA)	3(2)
rail safety officer	Sch. cl. 4(1) and 139(2)
rail safety undertaking	Sch. cl. 4(1) and 251(1)
rail safety work	Sch. cl. 4(1), 8(1) and 8(2)
rail safety worker	Sch. cl. 4(1)
rail transport operator.....	Sch. cl. 4(1) and 133(5)
rail workplace	Sch. cl. 4(1)
railway	Sch. cl. 4(1)
railway crossing	Sch. cl. 4(1)
railway operations.....	Sch. cl. 4(1)
railway premises	Sch. cl. 4(1)
reasonable help	Sch. cl. 145(5)
reasonably practicable.....	Sch. cl. 4(1), 47 and 250(3)
Register	Sch. cl. 4(1)
registered nurse	9(1)
registered person	Sch. cl. 4(1)
Regulator.....	Sch. cl. 3(2), 4(1) and 16(1)
related body corporate	Sch. cl. 62(1)
relevant entity	Sch. cl. 22(3)
relevant period	Sch. cl. 67(5), 69(3), 86(4), 88(3), 207(4) and 209(3)
relevant time	30
repeal	Sch. 2 cl. 12(1)
repealed Act	38
report to which this section applies.....	Sch. cl. 198(6)
reporting period.....	Sch. cl. 103(3)
responsible Minister.....	Sch. cl. 4(1)

Defined terms

responsible Ministers	Sch. cl. 4(2)
reviewable decisions	Sch. cl. 215(1)
road infrastructure.....	Sch. cl. 4(1)
road manager	Sch. cl. 4(1)
road vehicle.....	6(1)
rolling stock	Sch. cl. 4(1)
rolling stock operator	Sch. cl. 4(1)
running line	Sch. cl. 4(1)
safety	Sch. cl. 4(1)
safety duty.....	Sch. cl. 4(1) and 57
safety management system	Sch. cl. 4(1)
sample	9(1)
sample taker	9(1)
service agreement	Sch. cl. 15(2)
shared path	6(1)
siding	Sch. cl. 4(1)
sign.....	Sch. 2 cl. 12(1)
South Australian Minister	Sch. cl. 4(1)
specified	50(4)
statutory declaration.....	Sch. 2 cl. 12(1)
statutory instrument	Sch. 2 cl. 12(1)
substance.....	Sch. cl. 4(1)
supervisory intervention order	Sch. cl. 4(1)
supply.....	Sch. cl. 4(1)
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Territory	Sch. cl. 4(1)
the jurisdiction	6(1)
the Law	Sch. 2 cl. 12(2)
this jurisdiction	6(1)
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train	Sch. cl. 4(1)
train safety recording	Sch. cl. 4(1) and 130
transitional railway operations.....	40(1)
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urine analysis	9(1)
WA offence.....	7
word	Sch. 2 cl. 12(1)
work shift	9(1)
work shift location	9(1)
writing.....	Sch. 2 cl. 12(1)
year	Sch. 2 cl. 12(1)