



New South Wales

Rail Safety Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to promote the safe construction, operation and maintenance of railways by providing for the following matters:

- (a) the accreditation of persons responsible for railway operations in this State and for the certification of railway employees,
- (b) the systems to be implemented by accredited persons to identify, manage and control the risks of carrying out railway operations so as to ensure the safety of railways,
- (c) the ongoing enforcement and monitoring of accreditation requirements and the monitoring and enforcement of safety standards of railways and railway operations,
- (d) reports of, and inquiries into, incidents and accidents involving railway operations and affecting rail safety,
- (e) standards for railway employees and the drug and alcohol testing of railway employees,

(f) other related and consequential matters.

The Bill also provides for the drug and alcohol testing of certain employees of bus and ferry operators.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the object of the proposed Act, which is to promote the safe construction, operation and maintenance of railways.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 defines the expressions *operator* and *railway operation*.

Clause 6 applies the proposed Act to railways within the State with a track gauge of 600 mm or more, the Darling Harbour monorail and other transport systems declared by the regulations. It also provides that the proposed Act does not apply to mine railways, certain amusement railways and aerial, cable operated transportation systems.

Clause 7 provides that the proposed Act binds the Crown.

Part 2 Accreditation of operators and certification of railway employees

Division 1 Accreditation of railway operators

Clause 8 makes it an offence for a person to be an operator of a railway if the person is not an accredited operator for the railway operations for which the person is responsible.

Clause 9 sets out the purpose of the accreditation of railway operators. It is to attest that an accredited person is of good repute and is in all other respects fit and proper to be responsible for the safe carrying out of the railway operations for which the person is accredited, that the systems submitted by the person for the identification, management and control of the risks of carrying out those railway operations have been accepted by the Director-General of the Department of Transport (the *Director-General*) and that the person has demonstrated the competency and capacity to implement the systems submitted by the person and accepted by the Director-General. Systems submitted for the purpose of accreditation must relate to the identification and analysis of risks associated with the railway operations, controls for managing the risks and the monitoring and modification of the controls.

Clause 10 requires an applicant for accreditation to give information to the Director-General that is reasonably required by the Director-General to enable the Director-General to effectively determine the application for accreditation. The regulations may also prescribe information that applicants must give to the Director-General. Applications for accreditation are to be in the form approved by the Director-General.

Clause 11 requires an applicant for accreditation to give to the Director-General a comprehensive safety management plan that identifies any significant risks that have arisen or may arise from the applicant's railway operations, specifies the relevant controls used to manage the risks and to monitor safety outcomes and complies with any requirements of the regulations. An additional requirement is imposed on an accredited person to give the Director-General an annual safety report not later than 28 days before each anniversary of accreditation. An annual safety report is to describe and assess the safety performance of railway operations, review any significant developments relating to safety, set out proposed safety initiatives and comply with other requirements contained in regulations or guidelines. The Director-General may require a safety management plan or an annual safety report to be resubmitted and may issue guidelines with respect to policy objectives and safety initiatives to be adopted in safety management plans and annual safety reports.

Clause 12 requires an applicant for accreditation to give the Director-General information about safety interfaces with other railways and railway operations as well as particulars of agreements relating to the management of the safety interfaces (*safety interface agreements*). The proposed clause also contains other requirements relating to safety interface agreements, including the requirement to demonstrate to the Director-General that there are or will be appropriate agreements, compliance with requirements prescribed by the regulations and a requirement to keep a register of agreements.

Clause 13 requires an applicant for accreditation that operates a railway involving the carriage of passengers to give the Director-General particulars of its passenger security policy and plan. The policy and plan must comply with any requirements prescribed by the regulations.

Clause 14 places on an applicant for accreditation a general obligation to demonstrate, by the submission of appropriate systems, that the applicant possesses the competency and capacity to safely carry out the railway operations for which the applicant is seeking accreditation.

Clause 15 requires an applicant for accreditation to describe, to the satisfaction of the Director-General, the elements of the infrastructure of the railway specified in the application, to identify the owner of the infrastructure and, if the applicant is not the owner, to show the basis of the applicant's entitlement to control and manage the infrastructure.

Clause 16 places an obligation on an applicant for accreditation to demonstrate, to the satisfaction of the Director-General, that the applicant possesses the competency and capacity to maintain the rolling stock used by the applicant in a safe condition. An applicant must also describe other matters and mark rolling stock in a manner approved by the Director-General.

Clause 17 requires a corporation applying for accreditation to nominate one or more of its directors or managers as persons for the purposes of satisfying the requirements of proposed section 9 that an applicant be of good repute and fit and proper to be responsible for the safe carrying out of railway operations. It will be an offence for a corporation to fail to withdraw the nomination of a person who ceases to be a director or manager and to nominate instead another person. It will also be an offence for a nominated former director or manager to fail to notify the Director-General on ceasing to be a director or manager.

Clause 18 enables the Director-General to grant accreditations to applicants. Accreditations may be general or limited in their scope and may be subject to the conditions and restrictions specified by the Director-General.

Clause 19 enables the Director-General to grant provisional accreditations for a specified period not exceeding 12 months. A provisional accreditation may be granted if a person has not yet satisfied all accreditation requirements or has an accreditation cancelled or if the Director-General is of the opinion that it is required in relation to a specified event or a limited period or is appropriate for any other reason. A person may renew a provisional accreditation only once.

Clause 20 requires the Director-General to give notice in the Government Gazette of the cancelling of a person's accreditation and the granting of provisional accreditation to the person. A person granted provisional accreditation may also be required to give notice to other persons of that accreditation.

Clause 21 enables the Director-General, by notice in writing, to exempt a person from compliance with accreditation requirements (including the requirement to be accredited). Such an exemption may be given only if an appropriate level of safety is likely to be achieved or the system or matter concerned is covered by services provided by another accredited person.

Clause 22 enables the Director-General to accredit a person accredited under an Act of another State or Territory or the Commonwealth without requiring the person to comply with all the accreditation requirements under the proposed Act. Such an accreditation may be given only if an appropriate level of safety is likely to be achieved. Any such person must also notify the Director-General of any cancellation, suspension, termination, variation or imposition of a condition affecting the person's other accreditation.

Clause 23 exempts owners of private sidings from accreditation but requires owners whose sidings are connected with or have access to a railway for which an accredited person is responsible to enter into agreements for the management of the relevant safety interface. It will be an offence to contravene the proposed section and the accredited person may also seek the Director-General's permission to disconnect the private siding from the railway concerned.

Clause 24 enables the Director-General to waive compliance with the requirements for accreditation in the case of a sale or transfer of a railway but only if the proposed transferee demonstrates, to the satisfaction of the Director-General, the personal capacity to comply with relevant requirements.

Division 2 Variation, suspension or cancellation of accreditation

Clause 25 confers on the Director-General power to attach conditions or restrictions to an accreditation or amend or remove them or otherwise vary an accreditation.

Clause 26 requires an accredited person to provide an annual declaration to the Director-General as to whether any circumstance exists that might require the person to apply for variation of an accreditation in the forthcoming year and, if it does, to apply for the variation.

Clause 27 requires an accredited person to apply for a variation of the accreditation if the person proposes to carry out a railway operation in a manner, or that is, not covered by the person's accreditation. The proposed section also enables an accredited person to apply at any time for a variation of an accreditation or to surrender an accreditation. A variation is not to be granted unless the Director-General is satisfied that the person meets the applicable accreditation requirements.

Clause 28 confers on the Director-General power to suspend and cancel, or cancel, a person's accreditation. Such action may be taken in circumstances including contravention of the requirements of the proposed Act or the regulations or of the conditions of or restrictions on the accreditation.

Clause 29 sets out the power of the Director-General to immediately suspend an accreditation if the Director-General considers that there is an immediate and significant threat to the safety of the public or to property or both. The action may be taken without complying with the usual requirements for variation, suspension or cancellation.

Clause 30 requires the Director-General to comply with proposed sections 31–34 before varying, suspending or cancelling an accreditation.

Clause 31 requires the Director-General to take into account systems that have been submitted by an accredited person and accepted by the Director-General before cancelling an accreditation.

Clause 32 requires the Director-General to give notice to an accredited person of a proposed variation, suspension or cancellation of the person's accreditation and sets out the matters that the notice must contain.

Clause 33 enables representations to be made to the Director-General by an accredited person about a proposed variation, suspension and cancellation or cancellation of the person's accreditation.

Clause 34 requires the Director-General to consider any representations made and sets out the Director-General's power to make a determination as to a proposed variation, suspension and cancellation or cancellation of an accreditation.

Clause 35 gives a person aggrieved by a decision of the Director-General under the proposed Division a right to apply to the Administrative Decisions Tribunal for a review of the decision.

Division 3 Certification of and requirements relating to railway employees

Clause 36 sets out the requirements for railway employees to have certificates of competency. An operator of a railway may issue certificates, as well as other persons authorised by the Director-General, and a person issuing certificates must have regard to any guidelines issued by the Director-General. A person other than an operator of a railway who applies for authorisation must give the Director-General any information that the Director-General reasonably requires to determine the application. It will be an offence for an operator of a railway to employ, or enter into a contract with, a person to carry out railway safety work unless the person holds an appropriate certificate of competency.

Clause 37 makes it an offence for a railway employee to carry out railway safety work unless the employee is the holder of an appropriate certificate of competency.

Clause 38 sets out the purpose of a certificate of competency which is to attest that the person is considered to be of good health and fitness and to be a fit and proper person, and to have sufficient knowledge, skills, responsibility and aptitude, to perform the railway safety work to which the certificate relates.

Clause 39 requires a register of certificates of competency to be kept by the operator of a railway or other person who issues them.

Clause 40 makes it a condition of accreditation that an accredited person ensure that all railway employees employed, or contracted, to perform railway safety work are adequately trained to perform the functions for which they are certified.

Clause 41 makes it a condition of accreditation that an accredited person ensure that all railway employees employed, or contracted, to perform railway safety work are of sufficient good health and fitness to perform the functions for which they are certified.

Clause 42 makes it a condition of accreditation that an accredited person prepare and implement a drug and alcohol program that complies with guidelines issued by the Director-General and ensure that railway employees are not under the influence of alcohol or other drugs when about to carry out, or while on duty for the purpose of carrying out, railway safety work. Power is conferred on the Director-General to arrange with accredited persons for the random testing of persons on duty for the purpose of performing railway safety work to ensure that accredited persons are complying with the terms of their accreditation. The proposed section also gives effect to proposed Schedule 1, which contains provisions conferring powers to make regulations relating to the testing of railway employees for drugs and alcohol.

Clause 43 makes it a condition of accreditation that an accredited person prepare and implement a program for the management of fatigue, safe hours of work and periods between work that complies with the regulations and guidelines issued by the Director-General. The proposed section also gives effect to proposed Schedule 2, which contains provisions relating to working conditions for certain train drivers, and also provides for an exemption from those provisions.

Division 4 Fees

Clause 44 requires an accredited person to pay an annual accreditation fee fixed by the Director-General and published in the Government Gazette.

Clause 45 requires the Director-General to fix annual accreditation fees on the basis determined by the Director-General and approved by the Minister. The Director-General is to have regard to any requirements relating to the basis on which fees are to be determined that are set out in the regulations. Accredited persons are to give the Director-General any information that the Director-General considers necessary for the purpose of fixing annual accreditation fees.

Clause 46 sets out the time for payment for annual accreditation fees and enables the Director-General to reduce or waive payment of them. If an annual accreditation fee is paid late, the person's accreditation will lapse.

Clause 47 confers on the Director-General power to extend the time for payment of an accreditation fee.

Clause 48 confers on the Director-General power to set minimum fees and to impose late fees. The Director-General will have power to waive the whole or any part of a late fee.

Part 3 Safety measures

Division 1 Inspections

Clause 49 requires the Director-General to carry out inspections to ensure that accredited persons are complying with the terms of their accreditations and sets out the matters that may be inspected, including railway track, railway operations, security arrangements and any other thing relevant to the safe carrying out of railway operations. Inspections must be carried out at least once every 12 months

in the case of passenger services and, in other cases, at least once every 3 years. The Director-General must also carry out an inspection if requested to do so by the Minister.

Clause 50 enables regulations to be made for or with respect to certain matters related to inspections.

Division 2 Improvement and prohibition notices and other requirements

Clause 51 provides for the giving of improvement notices by authorised officers if of the opinion that there is a contravention of the Act, the regulations or a condition or restriction attached to an accreditation, that railway operations contravene applicable safety interface agreements or that it is necessary to do so for the safety of members of the public or other persons. An improvement notice may require a contravention to be remedied or remedial safety work, or both, and is to specify a period for compliance (usually at least 7 days).

Clause 52 sets out requirements relating to improvement notices that direct the closure of a level-crossing, bridge or other structure for crossing over or passing over or under a railway. Compliance with the requirements is a condition of accreditation.

Clause 53 makes it an offence, without reasonable excuse, to fail to comply with an improvement notice.

Clause 54 provides for the giving of prohibition notices by authorised officers if of the opinion that at any railway premises there is occurring or about to occur any activity that involves or will involve an immediate risk to the health or safety of any person. It will be an offence, without reasonable excuse, to fail to comply with a prohibition notice.

Clause 55 enables an improvement or a prohibition notice to include directions as to the measures that are to be taken to remedy a contravention or matter to which the notice relates or to otherwise comply with the notice.

Clause 56 confers a right to seek a review of an improvement notice or a prohibition notice by the Director-General within 7 days (or such different period as the regulations may prescribe) of the notice being given. An improvement notice is stayed until the result of the review is given to the applicant. The Director-General may confirm, vary or revoke a notice on a review.

Clause 57 enables a person who applies to the Director-General for a review of a prohibition notice to apply to the Administrative Decisions Tribunal for a stay of the prohibition notice pending the review.

Clause 58 confers a right on a person aggrieved by a decision of the Director-General on a review to apply to the Administrative Decisions Tribunal for a review of the decision.

Clause 59 enables an improvement notice or a prohibition notice to be withdrawn at any time by the authorised officer concerned or by the Director-General if satisfied that the notice was given in error or is incorrect.

Clause 60 makes it clear that the giving, variation, revocation or withdrawal of an improvement notice or a prohibition notice does not affect any proceedings relating to any matter in respect of which the notice was issued.

Division 3 Safety reports and investigations

Clause 61 defines the expressions *train safety record* and *train safety recording*. Train safety records include statements made for the purposes of an inquiry under proposed section 67 (a *rail safety inquiry*), communications between persons involved in the operation of a train, medical or private information about persons involved in an accident or incident the subject of an inquiry and train safety recordings and transcripts of train safety recordings. A train safety recording is a recording of operational activities carried out by railway employees operating a train and other persons.

Clause 62 requires the Director-General to give the Minister an annual industry safety report relating to the carrying out of railway operations by accredited persons. The Minister is to table the report in both Houses of Parliament.

Clause 63 requires an accredited person to provide the Director-General with safety information required by the Director-General and with a safety report if required. It will be an offence not to do so.

Clause 64 obliges an accredited person to report a notifiable occurrence (as listed in proposed Schedule 3) to the Director-General and sets out requirements for any such report. The Director-General may also, by a written notice having effect for 12 months, require an accredited person to report any other incident that may endanger the safe carrying out of railway operations. It will be an offence to contravene the proposed section or any requirement made under the proposed section. The proposed section also enables the Schedule listing notifiable occurrences to be amended by proclamation.

Clause 65 enables conditions to be placed on accreditations requiring specified incidents or kinds of incidents to be reported to the Director-General.

Clause 66 requires an accredited person to inquire into, and report to the Director-General on, any railway accident or incident that may affect the safe carrying out of railway operations for which the person is accredited. It will be an offence for an accredited person to contravene the section. The Director-General must forward to the Minister, on the 15th day of each month, a list of any such reports or inquiries received by the Director-General in the preceding month.

Clause 67 enables the Director-General or a rail investigation panel to inquire into any railway accident or incident that may affect the safe carrying out of railway operations and also enables the Minister to require the Director-General, or a rail investigation panel, to carry out such an inquiry and report to the Minister. The Chairperson of rail investigation panels may initiate an inquiry by a rail investigation panel into a major railway accident. The costs of an inquiry may be recovered as a debt due to the Crown. There is to be a Chairperson of rail investigation panels appointed by the Governor.

Clause 68 provides for the tabling of annual industry safety reports and reports of rail safety inquiries in Parliament.

Clause 69 sets out the power of the Director-General and Chairperson of rail investigation panels to require the attendance of persons to answer questions or produce documents for the purposes of a rail safety inquiry and provides for the giving and taking of evidence at an inquiry.

Clause 70 enables the Director-General to disclose information acquired by the Director-General in the performance of his or her functions under the proposed Act if the Director-General thinks it necessary for rail safety. Any such information, and any report under proposed section 67, may be published by the Director-General if the Director-General thinks it desirable for the promotion of rail safety.

Clause 71 enables the Director-General, an authorised officer or a person who conducts a rail safety inquiry, with the consent of the Minister, to disclose to the Commonwealth or a Commonwealth authority the whole or part of a train safety record. The Minister may not consent unless of the opinion that the disclosure is in the public interest.

Clause 72 prohibits the disclosure of train safety records (other than train safety recordings and other specified records) except for the purposes of the proposed Division. On application to the Supreme Court, the Supreme Court may make an order for disclosure or production of a train safety record to a court if it is satisfied

that the public interest in the disclosure outweighs the adverse impact the disclosure or production may have on the inquiry to which the record relates or any future inquiries. The order must restrict access to the train safety record.

Clause 73 prohibits the publication or communication to a person of a train safety recording or part of a train safety recording or any information obtained from a train safety recording or part of a train safety recording, except for the purposes of an inquiry under the proposed Division or for the purposes of, or in connection with, criminal proceedings or proceedings for which an order has been made for disclosure or in any other circumstances connected with publication or disclosure by the Director-General or the Minister under the proposed Division.

Clause 74 prevents a train safety recording from being admissible in evidence in criminal proceedings against a railway employee.

Clause 75 prevents a train safety recording from being admissible in evidence in civil proceedings against a railway employee but enables the court concerned to order that it be admissible. Such an order may be made if the court is satisfied that a material fact will not otherwise be able to be determined, that the admission will assist in determining that fact and that the public interest in the determination of the fact outweighs that of protecting the privacy of employees.

Clause 76 sets out the conditions for the examination of a train safety recording under proposed section 75.

Clause 77 prevents the Director-General, an authorised officer or a person who conducts a rail safety inquiry from having to comply with a subpoena or similar direction relating to civil proceedings in respect of an accident or incident the subject of any such inquiry or in respect of any train safety record relating to any such accident or incident that is given within 6 months of the accident or incident. The court that issued the subpoena or direction may order that it be complied with if satisfied that it is in the interests of justice or the performance of the court's functions.

Clause 78 makes it clear that the proposed Division does not affect the admissibility of the evidence of words spoken by a railway employee other than evidence in the form of a train safety recording or a transcript of a train safety recording. It also excludes the State, the Director-General, the Minister and any person acting under the direction of the Director-General or the Minister, from liability in connection with the preparation or making of a report, or the disclosure or publication of information, under the proposed Division. The exclusion of liability extends to reports published by the Director-General and to fair reports or summaries of them.

Part 4 Enforcement

Division 1 Power of entry

Clause 79 confers on authorised officers power to enter railway premises for the purposes of the proposed Act, including the purposes of an inspection, investigation or inquiry or to determine whether there has been a contravention of the Act, the regulations or an accreditation.

Clause 80 sets out the powers that an authorised officer who enters railway premises may exercise.

Clause 81 sets out the powers that an authorised officer may exercise in respect of relevant documents found on railway premises entered under the proposed Act.

Clause 82 requires notice of entry to be given before railway premises are entered by an authorised officer, except in specified circumstances including an emergency.

Clause 83 restricts the use of force by an authorised officer to force that is reasonably necessary to enter premises or to do the thing for which premises are entered.

Clause 84 requires an authorised officer to do as little damage as possible in exercising enforcement functions.

Clause 85 enables the Director-General to recover the reasonable costs of the entry and inspection of railway premises from an accredited person.

Clause 86 requires the Director-General to pay compensation for any damage caused by an authorised officer in the exercise of a power to enter railway premises, other than damage arising from work done for the purpose of an inspection that reveals a contravention of the proposed Act or any other Act or law.

Clause 87 requires a person who exercises a power to enter railway premises or to take an action on railway premises to be in possession of a written authority and to produce that authority if required by the owner or occupier of the premises.

Clause 88 prohibits powers relating to entry on premises and taking action on premises from being exercised on residential premises except with the occupier's permission or under the authority of a search warrant.

Clause 89 prevents a person from seeking to be excused on the grounds of self-incrimination from complying with requirements under the proposed Act to answer questions, produce things or make statements. Any such answer, thing or statement

is not admissible in evidence against the person in criminal proceedings if the person claimed, before complying with the requirement, that it might tend to incriminate the person or unless the person's entitlement to make such a claim was drawn to the person's attention before the requirement was complied with.

Clause 90 enables authorised officers to apply for search warrants.

Division 2 Offences and proceedings

Clause 91 makes it an offence to obtain or attempt to obtain an accreditation or certification or an authorisation under proposed section 36 by a false statement or misrepresentation, to forge or fraudulently alter or use an accreditation or certification or authorisation or fraudulently allow it to be used by another person. It also makes it an offence to contravene, or knowingly permit another person to contravene, a condition or restriction of an accreditation or to knowingly carry out or permit to be carried out a railway operation that is not permitted by, or in a manner not authorised by, an accreditation.

Clause 92 makes it an offence to fail to install and maintain, or maintain, a system, device or appliance on a railway or rolling stock in accordance with an accreditation. It will also be an offence for an accredited person to fail to carry out a railway operation in accordance with accreditation terms related to the person's safety management systems.

Clause 93 makes it an offence to tamper with or disable the safety equipment of a railway or a unit or units of rolling stock or the interlocking system of a railway.

Clause 94 makes it an offence for a person to move a train to or from a private siding unless the person is an accredited person accredited to do so.

Clause 95 enables the making of regulations with respect to conduct on railways and related matters, including powers to regulate or prohibit specified matters (that is, to create offences). The matters concerned include matters related to fare evasion.

Clause 96 gives a police officer or authorised officer power to demand that a person reasonably suspected of committing or to have committed an offence against the proposed Act or the regulations state his or her full name and address. It will be an offence not to comply. The proposed section also contains safeguards relating to the exercise of the power by police officers and authorised officers, including the requirement to give a warning and to identify himself or herself as a police officer or authorised officer.

Clause 97 makes it an offence to hinder or obstruct an authorised officer in a manner that interferes with the performance of functions under the proposed Act, to (as an occupier) fail to provide an authorised officer with all reasonable facilities and assistance for the effective exercise of the officer's powers, to fail, without reasonable excuse to answer questions or provide information or to fail to produce documents when required by an officer.

Clause 98 makes it an offence to provide false or misleading information to an authorised officer, to an inquiry or in relation to an application for accreditation or variation of an accreditation or an authorisation under proposed section 36.

Clause 99 makes it an offence for a person to impersonate, or falsely represent that the person is, an authorised officer.

Clause 100 makes a corporation liable for offences relating to contraventions knowingly done or omitted by directors or persons concerned in the management of, or employees or agents of, the corporation.

Clause 101 makes a director or person concerned in the management of a corporation liable for an offence committed by the corporation unless the director or person proves lack of actual, imputed or constructive knowledge, lack of ability to influence the corporation's conduct in relation to the offence or that the director or person used all due diligence to prevent the offence.

Clause 102 prevents an offender from being punished twice for an act or omission that constitutes an offence under the proposed Act and other specified legislation.

Clause 103 sets out procedures for proceedings for offences under the proposed Act.

Clause 104 sets out the persons who may take proceedings for offences under the proposed Act or regulations and requires the Minister's consent to proceedings for offences taken against the Crown or a statutory body representing the Crown.

Clause 105 provides for the issue of penalty notices in relation to offences under the proposed Act or regulations under the proposed Act.

Clause 106 enables the Director-General to recover any fees, charges or other money payable under the proposed Act as a debt in any court of competent jurisdiction.

Clause 107 requires the Director-General to keep records of the grant, refusal, variation, suspension and cancellation of accreditations and enables the Director-General to issue certificates as to recorded matters that will be admissible in proceedings.

Part 5 General

Division 1 Administration

Clause 108 sets out the functions of the Director-General, including accreditation functions, the development and monitoring of safety performance systems, arranging inspections to monitor compliance with statutory requirements, issuing directions, considering and acting on reports of notifiable occurrences, arranging investigations and inquiries, providing advice to applicants for accreditation, making recommendations to the Minister concerning railway safety generally and issuing guidelines.

Clause 109 enables the use of staff of an Authority or of the Rail Infrastructure Corporation under the *Transport Administration Act 1988* for the purposes of the proposed Act.

Clause 110 enables the Director-General to engage consultants for the purposes of the exercise of functions under the proposed Act.

Clause 111 enables the Director-General to appoint Commonwealth officers as authorised officers for the purposes of exercising powers related to a specified railway accident or incident.

Clause 112 confers on the Minister and the Director-General power to delegate functions under the proposed Act.

Clause 113 excludes the Minister, the Director-General, an officer of the Department of Transport, an authorised officer or a person acting under the direction of the Minister or the Director-General from any action, liability, claim or demand in respect of a matter or thing that was done or omitted to be done in good faith for the purposes of the proposed Act or any other Act.

Clause 114 excludes the State from any civil liability arising from any act or omission of the Minister, the Director-General or any other officer of the Department of Transport in the course of exercising functions under the proposed Act.

Division 2 Miscellaneous

Clause 115 provides that the proposed Act does not affect the operation of other specified Acts, including the *Occupational Health and Safety Act 2000*.

Clause 116 sets out the manner in which documents given or served under the proposed Act are to be given or served.

Clause 117 enables the making of regulations under the proposed Act generally and also contains specific regulation-making powers relating to railways and other related matters.

Clause 118 repeals the *Rail Safety Act 1993*.

Clause 119 gives effect to proposed Schedule 5 which contains savings and transitional provisions.

Clause 120 gives effect to proposed Schedule 6 which amends the *Passenger Transport Act 1990* and to proposed Schedule 7 which amends other Acts.

Clause 121 provides for a review of the proposed Act to be undertaken 5 years after the date of assent to the proposed Act.

Schedule 1 Railway employees—alcohol or other drugs

The proposed Schedule contains provisions enabling the making of regulations relating to the testing of railway employees for alcohol and other drugs. Regulations will be able to be made as to the appointment of authorised officers, random testing of railway employees, procedures for testing railway employees for alcohol and other drugs and obtaining samples of blood and urine and other body tissues or fluids for that purpose, the taking and analysis of samples, the liability of medical practitioners or nurses, and persons acting under their direction, offences relating to the use of drugs and alcohol by railway employees at work, offences of refusing or failing to undergo tests or assessments or to provide samples, interfering with test results and, in the case of a medical practitioner or nurse, refusing or failing to take a sample or failing to comply with procedures and evidence relating to testing, including certificates relating to testing and disciplinary action.

Schedule 2 Fatigue management

The proposed Schedule sets out conditions relating to hours of work and breaks between shifts for certain train drivers and also enables regulations to be made about work conditions relating to such matters.

Schedule 3 Notifiable occurrences

The proposed Schedule lists the notifiable occurrences about which notice is to be given to the Director-General.

Schedule 4 Rail investigation panels

The proposed Schedule sets out provisions relating to the Chairperson of rail investigation panels and the constitution and procedure of rail investigation panels for the purpose of inquiring into railway accidents and incidents.

Schedule 5 Savings and transitional provisions

The proposed Schedule contains savings and transitional provisions consequent on the proposed repeal of the *Rail Safety Act 1993* and the enactment of the proposed Act.

Schedule 6 Amendment of Passenger Transport Act 1990

The proposed Schedule amends the *Passenger Transport Act 1990* (the *Principal Act*) to apply the same scheme for drug and alcohol testing that is to apply to railway employees to transport safety employees. It will apply in respect of operators of bus and ferry public passenger services and other ferry services, being charter services, long-distance services and tourist services and their employees.

Schedule 6 [1] makes it clear that notes in the text of the Principal Act do not form part of it.

Schedule 6 [2] and [3] insert proposed sections 9C and 53C. The proposed sections require operators to prepare and implement a drug and alcohol program that complies with guidelines issued by the Director-General and ensure that transport safety employees are not under the influence of alcohol or other drugs when about to carry out, or while on duty for the purpose of carrying out, transport safety work. Power is conferred on the Director-General to arrange with operators for the random testing of persons on duty for the purpose of performing transport safety work to ensure that operators (if accredited) are complying with the terms of their accreditation or, in other cases, are complying with the proposed section.

Proposed section 9C also gives effect to proposed Schedule 5 which contains provisions relating to testing for drugs and alcohol.

Schedule 6 [4] enables the making of any necessary savings and transitional regulations resulting from the amendments made to the Principal Act.

Schedule 6 [5] inserts proposed Schedule 5.

The proposed Schedule contains provisions enabling the making of regulations relating to the testing of transport safety employees for alcohol and other drugs. Regulations will be able to be made as to the appointment of authorised officers, random testing of transport safety employees, procedures for testing transport safety employees for alcohol and other drugs and obtaining samples of blood and urine and other body tissues and fluids for that purpose, the taking and analysis of samples, the liability of medical practitioners or nurses, and persons acting under their direction, offences relating to the use of drugs and alcohol by transport safety employees at work, offences of refusing or failing to undergo tests or assessments or to provide samples, interfering with test results and, in the case of a medical practitioner or nurse, refusing or failing to take a sample or failing to comply with procedures and evidence relating to testing, including certificates relating to testing and disciplinary action.

Schedule 7 Amendment of other Acts

Schedule 7.1 enables penalty notices issued under the proposed Act to be enforced under the *Fines Act 1996*.

Schedule 7.2 exempts documents relating to an inquiry into a railway accident or incident under section 66 or 67 of the proposed Act from the *Freedom of Information Act 1989*.

Schedule 7.3 amends the *Industrial Relations Act 1996* to make it an offence to victimise a railway employee because the employee reported or gave evidence in relation to a notifiable occurrence.

Schedule 7.4 repeals uncommenced amendments to the *Rail Safety Act 1993* and a regulation under that Act.

Schedule 7.5 applies provisions of the *Search Warrants Act 1985* to search warrants issued under the proposed Act.

Schedule 7.6 amends the *Transport Administration Act 1988* to make consequential amendments and to enable the transfer of staff of the State Rail Authority and the Rail Infrastructure Corporation between those organisations and

Rail Safety Bill 2002

Explanatory note

provides for the preservation of their conditions of employment and leave entitlements. Any transferred staff will also have the right to apply for vacancies in their previous organisation that would otherwise be limited to employees of that organisation.



New South Wales

Rail Safety Bill 2002

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New South Wales

Rail Safety Bill 2002

No. , 2002

A Bill for

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

Clause 1 Rail Safety Bill 2002

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Rail Safety Act 2002*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
7

3 Object of Act 8

The object of this Act is to promote the safe construction, operation and maintenance of railways. 9
10

4 Interpretation 11

(1) In this Act: 12

accreditation means accreditation under Division 1 of Part 2. 13

accredited person means a person accredited, or granted provisional accreditation, under Division 1 of Part 2. 14
15

approved means approved by the Director-General. 16

authorised officer means a person, or a member of a class of persons, appointed for the time being by the Director-General as an authorised officer or class of authorised officers for the purposes of the provision in which the expression is used, and includes an authorised officer appointed by the Director-General for the purposes of regulations made under Schedule 1. 17
18
19
20
21
22

certification means a certification of competency issued under Division 3 of Part 2. 23
24

Department means the Department of Transport. 25

Director-General means the Director-General of the Department. 26

exercise a function includes perform a duty. 27

function includes power, authority or duty. 28

improvement notice means a notice given under section 51. 29

<i>infrastructure of a railway</i> means those facilities that are necessary to enable a railway to operate safely and includes, but is not limited to, railway track, associated track structures, tunnels, bridges, stations, platforms, signalling systems, train control systems, communication systems, overhead electrical power supply systems, buildings (including buildings used for administrative purposes), workshops and associated plant, machinery and equipment.	1 2 3 4 5 6 7
<i>notifiable occurrence</i> means an occurrence specified in Schedule 3.	8
<i>operator</i> of a railway—see section 5 (1).	9
<i>previous offender</i> , in relation to the maximum penalty for an offence, means a person who has, at any time before being sentenced for that offence, been convicted of any other offence of any kind against this Act.	10 11 12 13
<i>private siding</i> means a siding that is owned and maintained by a person who does not own, control or manage the running line with which the siding connects or to which it has access.	14 15 16
<i>prohibition notice</i> means a notice given under section 54.	17
<i>rail investigation panel</i> means a panel established under section 67.	18
<i>rail safety inquiry</i> means an inquiry conducted under section 67.	19
<i>railway</i> means a guided system designed to transport passengers or freight or both (whether or not passengers, freight or both are being transported) on a railway track, together with its infrastructure and associated sidings, and includes a heavy railway, light railway, inclined railway, monorail or tramway.	20 21 22 23 24
<i>railway employee</i> , in relation to a railway, means:	25
(a) an employee or contractor of an operator of the railway who performs railway safety work, or	26 27
(b) a person who, without remuneration or reward, voluntarily and without obligation performs railway safety work for an operator of the railway, or	28 29 30
(c) an individual who is an operator of the railway and who performs railway safety work.	31 32
<i>railway operation</i> —see section 5 (3).	33

<i>railway premises</i> means:	1
(a) land (including any premises on the land) on or in which is situated any item or part of an item of the infrastructure of a railway, or	2 3 4
(b) land (including any premises on the land) on or in which is situated any over track structure or part of an over track structure, or	5 6 7
(c) land (including any premises on the land) on or in which records required for, or relating to, the accreditation of an operator of a railway are kept.	8 9 10
<i>railway safety work</i> means any of the following classes of work carried out by a railway employee:	11 12
(a) work involving the operation or movement of a train or trains,	13
(b) work on or about railway infrastructure relating to the repair, maintenance, cleaning or upgrading of railway tracks or any rolling stock or associated works or equipment,	14 15 16
(c) work involving certification as to the safety of infrastructure or rolling stock (or any item of infrastructure or rolling stock),	17 18
(d) work involving the development, management or monitoring of safeworking systems for railways,	19 20
(e) any other work that is prescribed by the regulations as railway safety work,	21 22
but does not include any work that involves the driving of a motor vehicle on a road or road related area within the meaning of the <i>Road Transport (Safety and Traffic Management) Act 1999</i> .	23 24 25
<i>rolling stock</i> means any vehicle that operates on or uses a railway track, but does not include a vehicle designed to operate both on and off a railway track or tracks when the vehicle is not operating on a railway track or tracks.	26 27 28 29
<i>running line</i> means all railway tracks (other than sidings) that are used for the through movement of trains.	30 31
<i>safety interface agreement</i> —see section 12 (1).	32
<i>safeworking systems</i> , in relation to a railway, means the systems and procedures for operating trains safely and for protecting railway employees, passengers, freight, rolling stock and motor vehicles on or in the proximity of railway tracks.	33 34 35 36

<i>siding</i> means a portion of railway track, connected by points to a running line or another siding, on which rolling stock can be placed clear of the running line and stabled.	1 2 3
<i>train</i> means one or more units of rolling stock operating on a railway (whether or not the units are in motion).	4 5
(2) Notes in the text of this Act do not form part of this Act.	6
5 Railway operations	7
(1) In this Act, an <i>operator</i> of a railway is a person who is responsible (whether because of ownership, control, management or contractual obligations) for a railway operation in relation to the railway.	8 9 10
(2) An operator of a railway may be responsible for one or more railway operations.	11 12
(3) In this Act, <i>railway operation</i> means any one or more of the following:	13 14
(a) the construction and maintenance, or the construction or maintenance, of infrastructure of a railway,	15 16
(b) the operation or movement, or causing the operation or movement, by any means, of any rolling stock on a railway, including operating a railway service if the operator of the service operates or moves, or causes the operation or movement of, rolling stock,	17 18 19 20 21
(c) the construction and maintenance, or construction or maintenance, of rolling stock.	22 23
6 Railways to which Act applies	24
(1) This Act applies to:	25
(a) any railway within, or partly within, the State with a railway track gauge equal to or greater than 600 mm, and	26 27
(b) the Darling Harbour monorail transport system, and	28
(c) any other system designed to transport passengers or freight or both and declared by the regulations to be a railway for the purposes of this Act,	29 30 31
and to the operation of any such railway.	32

Clause 6 Rail Safety Bill 2002

Part 1 Preliminary

- (2) This Act does not apply to: 1
- (a) a railway in a mine that is underground or predominantly 2
underground and to which the provisions of the *Coal Mines* 3
Regulation Act 1982 or the *Mines Inspection Act 1901* or 4
regulations or rules made under those Acts apply, or 5
 - (b) a railway operated at an amusement park the operator of which 6
holds a certificate of exemption from compliance with the 7
requirements of this Act issued by the Director-General, or 8
 - (c) an aerial, cable operated transportation system. 9

7 Act binds Crown 10

- (1) This Act binds the Crown in right of New South Wales and, in so far 11
as the legislative power of Parliament permits, the Crown in all its 12
other capacities. 13
- (2) If the Director-General is the operator of a railway, the functions of the 14
Director-General under this Act with respect to the accreditation of the 15
operator of the railway, and the operator of the railway, are to be 16
exercised by the Minister or a person authorised by the Minister. 17

Part 2 Accreditation of operators and certification of railway employees 1
2

Division 1 Accreditation of railway operators 3

8 Operators of railways to be accredited 4

A person who is an operator of a railway is guilty of an offence unless the person is an accredited operator for the railway operations for which the person is responsible. 5
6
7

Maximum penalty: 8

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or 9
10
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or 11
12
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or 13
14
- (d) in the case of an individual (not being a previous offender)—500 penalty units. 15
16

9 Purpose of accreditation 17

- (1) The purpose of accreditation is to attest: 18
 - (a) that the accredited person is (or, in the case of an accredited corporation, the directors and managers of the corporation designated in accordance with section 17 are) considered to be of good repute and in all other respects fit and proper to be responsible for the safe carrying out of the railway operations for which the person is accredited, and 19
20
21
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 - (b) that the systems submitted by the accredited person for the identification, management and control of the risks of carrying out those railway operations have been accepted by the Director-General (subject to Division 2), and 25
26
27
28

Clause 9 Rail Safety Bill 2002

Part 2 Accreditation of operators and certification of railway employees

Division 1 Accreditation of railway operators

(c)	that the accredited person has demonstrated, to the degree and in the manner required by the Director-General, the competency and capacity to implement the systems submitted by the accredited person, and accepted by the Director-General, relating to the safe carrying out of those railway operations.	1 2 3 4 5
(2)	The systems submitted by a person seeking accreditation must relate to the following:	6 7
(a)	the identification and analysis of risks associated with the design of the railway and the carrying out of the railway operations for which the person is accredited,	8 9 10
(b)	the design and implementation of controls to manage those risks,	11 12
(c)	the monitoring of the controls for managing risk,	13
(d)	the modification of the systems in response to the monitoring of controls for managing risk.	14 15
(3)	The Director-General may require a person seeking accreditation to submit additional information and standards in relation to any system submitted by the person under this section.	16 17 18
10	Applicant to give information	19
(1)	An applicant for accreditation must give to the Director-General any information that the Director-General reasonably requires in the circumstances to enable the Director-General to effectively determine the application for accreditation.	20 21 22 23
(2)	The regulations may prescribe information that an applicant for accreditation is required to give to the Director-General, in addition to information that the Director-General may require to be given under subsection (1) or that is required to be given under this Division.	24 25 26 27
(3)	An application for accreditation is to be in the approved form.	28
11	Safety management plans	29
(1)	An applicant for accreditation must give to the Director-General a comprehensive safety management plan that complies with the requirements of this section.	30 31 32

(2) The safety management plan must:	1
(a) identify any significant risks that have arisen or may arise from the carrying out of railway operations by or on behalf of the applicant, and	2 3 4
(b) specify the controls (including audits, expertise, resources and staff) that are to be employed by the applicant to manage the risks and to monitor safety outcomes in relation to those railway operations, and	5 6 7 8
(c) comply with any requirements prescribed by the regulations.	9
(3) An accredited person must, not later than 28 days before each anniversary of the person's accreditation, give to the Director-General an annual safety report.	10 11 12
(4) The annual safety report must:	13
(a) describe and assess the safety performance of the railway operations for which the person was accredited during the preceding 12 months, and	14 15 16
(b) review any significant developments relating to the safety of those railway operations during that period, and	17 18
(c) set out any safety initiatives proposed to be undertaken in relation to the railway operations in the succeeding 12 months, and	19 20 21
(d) comply with any requirements prescribed by the regulations or contained in guidelines issued by the Director-General under this section.	22 23 24
(5) An accredited person must, if directed to do so by the Director-General and within any period required by the Director-General, amend or resubmit a safety management plan or an annual safety report given to the Director-General.	25 26 27 28
(6) The Director-General may issue guidelines with respect to policy objectives and safety initiatives to be adopted by accredited persons in safety management plans and annual safety reports.	29 30 31
12 Safety interface agreements	32
(1) An applicant for accreditation must:	33
(a) give to the Director-General information identifying safety interfaces between railway operations (and the railway to which they relate) for which the applicant seeks accreditation and	34 35 36

Clause 12 Rail Safety Bill 2002

Part 2 Accreditation of operators and certification of railway employees

Division 1 Accreditation of railway operators

	other railways or railway operations for which other persons are responsible, and	1 2
(b)	give to the Director-General particulars of agreements relating to the management of any such safety interfaces (<i>safety interface agreements</i>), and	3 4 5
(c)	demonstrate to the satisfaction of the Director-General that appropriate safety interface agreements are or will be in force in relation to any such safety interfaces.	6 7 8
(2)	Without limiting subsection (1), particulars of safety interface agreements relating to private sidings that are connected with or have access to the railway in relation to which the applicant is seeking accreditation as operator are to be provided.	9 10 11 12
(3)	Safety interface agreements entered into by an accredited person must comply with any requirements prescribed by the regulations.	13 14
(4)	An accredited person must keep a register of current safety interface agreements entered into by the accredited person.	15 16
13	Passenger security	17
(1)	An applicant for accreditation must, if the operation of the railway involves the carriage of passengers, give to the Director-General a passenger security policy and plan.	18 19 20
(2)	The passenger security policy and plan must comply with any requirements prescribed by the regulations.	21 22
14	Applicant to demonstrate capacity to safely carry out railway operations	23
	An applicant for accreditation must demonstrate, to the satisfaction of the Director-General, by the submission of appropriate systems with which the applicant agrees to comply, that the applicant possesses the competency and capacity to safely carry out the railway operations for which the applicant is seeking accreditation.	24 25 26 27 28
15	Applicant to describe, and identify ownership of, infrastructure	29
(1)	An applicant for accreditation must, to the satisfaction of the Director-General, describe all elements that comprise the infrastructure of the railway specified in the application and must identify the owner of the infrastructure.	30 31 32 33

-
- (2) If the applicant is not the owner of the infrastructure, the applicant must show the basis of the entitlement of the applicant to control and manage the infrastructure. 1
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3
- 16 Rolling stock to be identified** 4
- (1) An applicant for accreditation must demonstrate, to the satisfaction of the Director-General, that the applicant possesses the competency and capacity to maintain the rolling stock used by the applicant in a safe condition. 5
6
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8
- (2) The applicant must also describe the proposed ambit of operation, in terms of railway location, of rolling stock that the applicant intends to use. The applicant may for this purpose identify individual units of rolling stock or classes of rolling stock, as the applicant thinks fit. 9
10
11
12
- (3) An applicant for accreditation must cause all rolling stock specified in the application to be clearly marked, in an approved manner, to enable each unit to be individually identified. 13
14
15
- 17 Designated directors and managers** 16
- (1) For the purpose of obtaining accreditation under this Division: 17
- (a) a corporation must nominate, and the Director-General may accept the nomination of, any one or more of its directors and managers, and 18
19
20
- (b) further nominations, and withdrawals of nominations, may be made and accepted from time to time, and 21
22
- (c) a person so nominated becomes a director or manager designated for the purposes of section 9 (1) (a) only when the Director-General certifies acceptance of the nomination. 23
24
25
- (2) If a director or manager of a corporation designated for the purposes of section 9 (1) (a) ceases to be a director or manager of the corporation, the corporation must, not later than 30 days after the person ceases to be a director or manager, by notice in writing to the Director-General: 26
27
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29
30
- (a) withdraw the person's nomination, and 31
- (b) nominate another director or manager for the purposes of section 9 (1) (a). 32
33
- Maximum penalty: 5,000 penalty units. 34

Clause 17 Rail Safety Bill 2002

Part 2 Accreditation of operators and certification of railway employees

Division 1 Accreditation of railway operators

- (3) A person who ceases to be a director or manager of a corporation for which the person is designated for the purposes of section 9 (1) (a) (other than because of death or incapacity) must, not later than 30 days after the person ceases to be a director or manager, notify the Director-General in writing that the person has ceased to be a director or manager of the corporation. 1
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6
Maximum penalty: 100 penalty units. 7
- 18 Grant of accreditation** 8
- (1) The Director-General may grant accreditation to a person duly applying for accreditation as an operator of a railway for specified railway operations. 9
10
11
- (2) The Director-General must notify the person in writing of the particulars of the accreditation. 12
13
- (3) An accreditation may be general or limited and may be subject to such conditions and restrictions (if any) as are specified by the Director-General in the accreditation. 14
15
16
- (4) Without limiting subsection (3), an accreditation may be: 17
- (a) for the carrying on of railway operations for the whole of a railway, or 18
19
- (b) only for the carrying on of railway operations for the part or parts of a railway designated in the accreditation, or for a part or parts having the scope or characteristics so designated, or 20
21
22
- (c) only for the railway operations of the railway designated in the accreditation, or for a railway operation having the scope or characteristics so designated, or 23
24
25
- (d) only for any service or aspect, or part of a service or aspect, of a railway operation of the railway designated in the accreditation. 26
27
28
- (5) It is a condition of any accreditation that a third-party policy under the *Motor Accidents Compensation Act 1999* is in force in respect of each light rail vehicle designed only to operate on a railway track or tracks that is operated by the accredited person and is required to be insured under that Act. 29
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19	Provisional accreditation	1
(1)	The Director-General may grant provisional accreditation to a person as the operator of a railway for specified railway operations if:	2
		3
(a)	the person is an applicant who has not satisfied all the requirements for a grant of accreditation and the Director-General is satisfied that the person is in the course of preparing to satisfy those requirements, or	4
		5
		6
		7
(b)	the Director-General cancels the accreditation of the person, or	8
(c)	the Director-General is of the opinion that the person requires accreditation in relation only to a specified event or for a limited period or that, for any other reason, it is appropriate to do so.	9
		10
		11
		12
(2)	A grant of provisional accreditation:	13
(a)	may be subject to the same conditions and restrictions as a grant of accreditation under section 18, and	14
		15
(b)	may be subject to conditions relating to the carrying out of work or the meeting of other requirements relating to accreditation, and	16
		17
		18
(c)	is to be for a specified period, not exceeding 12 months.	19
(3)	The Director-General may renew a grant of provisional accreditation to a person only once.	20
		21
(4)	This Act applies to a person granted provisional accreditation in the same way that it applies to a person granted accreditation under section 18.	22
		23
		24
20	Notice of provisional accreditation	25
(1)	The Director-General must, by notice published in the Gazette, give notice of the cancellation of the accreditation of any person and the granting of provisional accreditation to the person.	26
		27
		28
(2)	The Director-General may require a person granted provisional accreditation to give notice of that accreditation to specified persons or classes of persons.	29
		30
		31

Clause 21	Rail Safety Bill 2002
Part 2	Accreditation of operators and certification of railway employees
Division 1	Accreditation of railway operators

21	Exemptions from accreditation and accreditation requirements	1
(1)	The Director-General may, by written notice, exempt a person from compliance with all or any one or more of the requirements of this Division (including the requirement to be accredited), for the period specified in the notice.	2 3 4 5
(2)	An exemption may be subject to any conditions and restrictions that appear to the Director-General to be appropriate.	6 7
(3)	An exemption may be granted only if the person demonstrates, to the satisfaction of the Director-General, that the systems, expertise, resources and methods to be employed with respect to the carrying out of railway operations are likely to achieve a level of safety that, in the opinion of the Director-General, is appropriate for the railway operations concerned.	8 9 10 11 12 13
(4)	Without limiting subsection (2), a person may be exempted from a requirement to submit a system, or any matter related to a system, for the purposes of this Division if the person demonstrates, to the satisfaction of the Director-General, that the system or matter is covered, or is to be covered, by the provision of services to the person by another accredited person.	14 15 16 17 18 19
(5)	A person is not guilty of an offence of contravening a requirement of this Division in respect of which the person holds a current notice of exemption under this section.	20 21 22
22	Exemption of interstate railway operators	23
(1)	A person who is the holder of an equivalent accreditation (however described) under an Act of another State or Territory or the Commonwealth may apply to the Director-General for the granting of accreditation as the operator of a railway for specified railway operations.	24 25 26 27 28
(2)	The Director-General may grant accreditation to the person, without requiring the person to comply with any or all of the requirements of this Division, if the Director-General is satisfied that:	29 30 31
(a)	the person is the holder of an equivalent accreditation (however described) under an Act of another State or Territory or the Commonwealth, and	32 33 34
(b)	the requirements for that accreditation are of a satisfactory standard in relation to the safe carrying out of railway operations or that the carrying out of railway operations by the	35 36 37

person is likely to achieve a level of safety that, in the opinion of the Director-General, is appropriate for the railway operations concerned.	1 2 3
(3) An accredited person who is the holder of an equivalent accreditation (however described) under an Act of another State or Territory or the Commonwealth must notify the Director-General in writing, within 5 working days, of any cancellation, suspension, termination or variation or imposition of a condition affecting the person's accreditation in that other State or Territory or the Commonwealth.	4 5 6 7 8 9
(4) A person is not guilty of an offence of contravening a requirement of this Division if the person is, because of this section, not required to comply with that requirement.	10 11 12
23 Exemption of operators of private sidings	13
(1) The owner of a private siding is not required to be accredited under this Act.	14 15
(2) The owner of a private siding must, if the siding is connected with or has access to a railway or siding of a railway for which an accredited person is responsible:	16 17 18
(a) enter into an agreement with the accredited person as to the management of the safety interface with the railway of the accredited person, and	19 20 21
(b) notify the accredited person in writing of any railway operations affecting or relating to the siding that may adversely affect the safety of the railway or siding of the accredited person.	22 23 24
(3) The agreement must comply with any requirements prescribed by the regulations.	25 26
(4) An owner of a private siding who contravenes this section is guilty of an offence.	27 28
Maximum penalty: 20 penalty units.	29
(5) If the owner of a private siding does not comply with this section, the accredited operator of the railway or siding with which the private siding connects may apply to the Director-General for permission to remove the private siding's connection with the railway or siding.	30 31 32 33
(6) If the Director-General grants permission under subsection (5), this section authorises the disconnection of the private siding from the railway or siding concerned.	34 35 36

Clause 23	Rail Safety Bill 2002	
Part 2	Accreditation of operators and certification of railway employees	
Division 1	Accreditation of railway operators	
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	(7) A person incurs no liability to the owner of a private siding if the person disconnects a private siding in accordance with permission granted under this section.	1 2 3
24	Sale or transfer of railway by accredited person	4
	(1) If an accredited person proposes to sell or otherwise transfer a railway in relation to which the person is accredited, the Director-General may, on an application for accreditation under this Division being made by the proposed transferee, waive compliance by the proposed transferee with any one or more of the requirements of this Division.	5 6 7 8 9
	(2) The Director-General is not to waive compliance with any such requirement unless the proposed transferee demonstrates, to the satisfaction of the Director-General, that the proposed transferee has the capacity to comply with the relevant requirements of this Division that apply to applicants for accreditation of the appropriate kind.	10 11 12 13 14
	(3) A waiver of compliance with requirements under this section may be given subject to such conditions and restrictions (if any) as appear to the Director-General to be appropriate.	15 16 17
Division 2	Variation, suspension or cancellation of accreditation	18 19
25	Variation of accreditations	20
	Having regard to the purpose of accreditation, the Director-General may, at any time:	21 22
	(a) attach any conditions or restrictions to a person's accreditation after it has been granted, or	23 24
	(b) amend or remove any conditions or restrictions on the accreditation, or	25 26
	(c) otherwise vary the accreditation.	27

26	Declarations as to variation of accreditation	1
	An accredited person must, at least 28 days before each anniversary of the person's accreditation:	2
		3
	(a) provide the Director-General with a declaration stating that, so far as the person is presently aware, no circumstance exists that might require the person to apply for variation of the person's accreditation in the forthcoming year, or	4
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	(b) if any such circumstance does exist, apply to the Director-General under this Division for variation of the accreditation.	8
		9
27	Requests by accredited persons for variation or surrender of accreditations	10
		11
	(1) An accredited person who proposes to carry out a railway operation in a manner, or a railway operation that is, not covered by the person's accreditation must apply to the Director-General for variation of the accreditation before commencing to carry out the railway operation concerned.	12
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	Maximum penalty: 20 penalty units.	17
	(2) An accredited person may apply at any time to the Director-General for variation of the person's accreditation or to surrender the person's accreditation.	18
		19
		20
	(3) Without limiting subsection (2), an accredited person may apply at any time to the Director-General for approval of a variation to a system, or matter relating to a system, submitted by the accredited person and accepted by the Director-General under section 9.	21
		22
		23
		24
	(4) The Director-General must not grant a variation of a person's accreditation unless satisfied that the person meets the applicable accreditation requirements in respect of the varied accreditation.	25
		26
		27
	(5) An accredited person is not required to apply to the Director-General for variation of the person's accreditation if a change in carrying out a railway operation or to a railway operation is of a kind permitted under a condition of the person's accreditation.	28
		29
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28	Suspension or cancellation of accreditation	32
	(1) Having regard to the purpose of accreditation, the Director-General may suspend and cancel, or cancel, a person's accreditation.	33
		34

Clause 28 Rail Safety Bill 2002

Part 2 Accreditation of operators and certification of railway employees

Division 2 Variation, suspension or cancellation of accreditation

(2)	Without limiting this section, the Director-General may suspend and cancel, or cancel, the accreditation of a person who contravenes the requirements of this Act, the regulations or any conditions or restrictions attached to the person's accreditation.	1 2 3 4
(3)	The accreditation of a person may be cancelled by the Director-General if no director or manager is designated for the purposes of section 9 (1) (a).	5 6 7
29	Suspension of accreditation in emergency	8
(1)	If the Director-General considers that there would be an immediate and significant threat to the safety of the public or to property or both unless the accreditation of a person is suspended immediately, the Director-General may, without complying with sections 31–34, suspend the accreditation immediately for a period (not exceeding 28 days) and on terms specified in the notice of suspension.	9 10 11 12 13 14
(2)	The Director-General must have regard to the purposes of the accreditation concerned and to the matters referred to in section 31 before suspending an accreditation.	15 16 17
(3)	A suspension under this section must not be extended or the accreditation concerned cancelled unless the Director-General has first complied with the requirements of sections 31–34 (as appropriately modified to meet the circumstances of the case).	18 19 20 21
30	Requirements for variation, suspension or cancellation	22
(1)	Before varying, suspending and cancelling or cancelling an accreditation of a railway operator, the Director-General must comply with sections 31–34.	23 24 25
(2)	This section does not apply to an application under section 27.	26
31	Systems to be considered before action taken	27
	Before varying, suspending and cancelling or cancelling an accreditation, the Director-General must take into consideration the systems submitted by the accredited person that have been accepted by the Director-General for the purposes of the person's accreditation.	28 29 30 31

32	Notice of proposed action	1
(1)	Before varying, suspending and cancelling or cancelling an accreditation, the Director-General must give notice to the person concerned of the proposed action.	2 3 4
(2)	The notice must contain the following matters:	5
(a)	in the case of variation—the terms of the proposed variation,	6
(b)	in the case of suspension—the terms and period of the proposed suspension and the steps that it is proposed should be taken by the person to have the suspension lifted and to avoid cancellation of the accreditation,	7 8 9 10
(c)	a statement that the person may make representations to the Director-General as to why the accreditation should not be varied, suspended or cancelled or as to any of the other matters in the notice.	11 12 13 14
(3)	The notice may provide that the representations are to be made to the Director-General on or before a specified date, being a date that is reasonable in the circumstances of the case.	15 16 17
33	Representations to the Director-General	18
(1)	A person may, in accordance with a notice under section 32, make representations concerning the proposed variation, suspension and cancellation or cancellation.	19 20 21
(2)	The Director-General must consider any representations made.	22
34	Determination by Director-General	23
(1)	After considering any representations made about a proposed variation, suspension and cancellation or cancellation, the Director-General may determine:	24 25 26
(a)	to vary, suspend or cancel the accreditation in accordance with the proposed variation, suspension and cancellation or cancellation, or	27 28 29
(b)	to vary, suspend or cancel the accreditation in accordance with modifications made to the proposed variation, suspension and cancellation or cancellation, or	30 31 32
(c)	not to vary, suspend or cancel the accreditation.	33

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Part 2	Accreditation of operators and certification of railway employees	
Division 2	Variation, suspension or cancellation of accreditation	
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	(2) If the determination is to vary, suspend or cancel the accreditation in accordance with modifications made to the proposed variation, suspension and cancellation or cancellation, the Director-General is not required to give notice under this Division of the proposed variation, suspension and cancellation or cancellation.	1 2 3 4 5
35	Application to Administrative Decisions Tribunal for review of decision of Director-General	6 7
	A person aggrieved by a decision of the Director-General under this Division may apply to the Administrative Decisions Tribunal for a review of the decision.	8 9 10
Division 3	Certification of and requirements relating to railway employees	11 12
36	Employees to be issued with certificates of competency	13
	(1) An operator of a railway may issue certificates of competency to employees or prospective employees of the operator who carry out, or intend to carry out, railway safety work.	14 15 16
	(2) A person other than an operator of a railway may, if authorised in writing to do so by the Director-General, issue certificates of competency to employees or prospective employees of an operator of a railway who carry out, or intend to carry out, railway safety work.	17 18 19 20
	(3) A person other than an operator of a railway must give to the Director-General any information that the Director-General reasonably requires in the circumstances to enable the Director-General to effectively determine the person's application for authorisation.	21 22 23 24
	(4) The regulations may prescribe information that an applicant for authorisation is required to give to the Director-General.	25 26
	(5) An application for authorisation is to be in the approved form.	27

(6)	In issuing certificates of competency, an operator of a railway or other person is to have regard to any guidelines issued by the Director-General for the purposes of this section and published in the Gazette.	1 2 3
(7)	An operator of a railway who employs, or enters into a contract with, a person to perform railway safety work is guilty of an offence unless the person is the holder of an appropriate certificate of competency issued under this section.	4 5 6 7
	Maximum penalty: 25 penalty units.	8
37	Employee must hold certificate of competency	9
	A railway employee must not carry out railway safety work unless the employee is the holder of an appropriate certificate of competency issued under section 36.	10 11 12
	Maximum penalty: 25 penalty units.	13
38	Certificates of competency	14
	The purpose of the issue of a certificate of competency is to attest that the person certified:	15 16
(a)	is considered to be of good health and fitness and in all other respects to be a fit and proper person to perform railway safety work, and	17 18 19
(b)	is considered to have sufficient knowledge, skills, responsibility and aptitude to perform the railway safety work to which the certification relates.	20 21 22
39	Register of certificates	23
	An operator of a railway or other person who issues certificates of competency must:	24 25
(a)	keep a register, in an approved form, of current certificates of competency issued by the operator or person, or	26 27
(b)	ensure that particulars of certificates issued by the operator or person are kept by an approved person in a register, in an approved form.	28 29 30
	Maximum penalty: 25 penalty units.	31

40	Training of railway employees engaged in railway safety work	1
	It is a condition of accreditation that an accredited person must ensure that all railway employees employed, or contracted, by the person to perform railway safety work are adequately trained to perform the functions for which they are certified.	2 3 4 5
41	Health and fitness of railway employees	6
	It is a condition of accreditation that an accredited person must ensure that all railway employees employed, or contracted, by the person to perform railway safety work are of sufficient good health and fitness to perform the functions for which they are certified.	7 8 9 10
42	Railway employees—alcohol or other drugs	11
(1)	It is a condition of accreditation that an accredited person must:	12
(a)	prepare and implement a drug and alcohol program for its railway employees that complies with guidelines issued by the Director-General for the purposes of this section and published in the Gazette, and	13 14 15 16
(b)	ensure that all railway employees employed, or contracted, by the person to perform railway safety work are not under the influence of alcohol or any other drug when about to carry out, or while on duty for the purpose of carrying out (whether or not carrying out), railway safety work.	17 18 19 20 21
(2)	The drug and alcohol program is to include any matters required to be included by the guidelines issued by the Director-General for the purposes of this section.	22 23 24
(3)	Without limiting subsection (1) (a), the guidelines are to include provisions for or with respect to the following:	25 26
(a)	protocols for fair procedures,	27
(b)	education and assistance of railway employees.	28
(4)	The Director-General may at any time arrange with an accredited person for the random testing of any person on duty for the purpose of carrying out railway safety work for the presence of alcohol or any other drug to ensure that the accredited person is complying with the terms of the person’s accreditation.	29 30 31 32 33
(5)	Schedule 1 has effect.	34

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

43 Fatigue management

- (1) It is a condition of accreditation that an accredited person must prepare and implement a program for the management of fatigue, safe hours of work and periods between work for its railway employees that complies with the regulations and guidelines issued by the Director-General for the purposes of this section and published in the Gazette.
- (2) The program for the management of fatigue, safe hours of work and periods between work is to include any matters required to be included by the regulations and guidelines issued by the Director-General for the purposes of this section.
- (3) It is a condition of accreditation that an accredited person must provide conditions of work in accordance with Schedule 2.
- (4) The Director-General may exempt (either unconditionally or subject to conditions) an accredited person from a condition referred to in subsection (3).

Division 4 Fees

44 Annual accreditation fees

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

45 Fixing of annual accreditation fees

- (1) The Director-General is to fix annual accreditation fees on the basis determined by the Director-General and approved by the Minister.
- (2) The Director-General may fix different fees for different classes of accredited persons or kinds of accreditations.
- (3) In determining the basis for fixing annual accreditation fees and in determining the fees, the Director-General:

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Part 2 Accreditation of operators and certification of railway employees

Division 4 Fees

(a)	must have regard to any requirements relating to the basis on which fees are to be determined set out in the regulations, and	1 2
(b)	may use any information given to the Director-General by an accredited person or an applicant for accreditation.	3 4
(4)	An accredited person must give to the Director-General any information relating to the performance of a railway that the Director-General considers necessary for the purposes of fixing annual accreditation fees under this section.	5 6 7 8
46	Payment of annual fees	9
(1)	An annual accreditation fee must be paid by a person who has applied for accreditation on or before accreditation and, by an accredited person, at least 28 days before each anniversary of the person's accreditation.	10 11 12 13
(2)	The Director-General may accept payment of an annual accreditation fee due and payable by a person in accordance with an agreement made with the person (for example, relating to the payment of fees by instalments).	14 15 16 17
(3)	The Director-General may reduce or waive an annual accreditation fee having regard to the capacity of an accredited person to pay the fees.	18 19
47	Additional time for payment	20
(1)	If an annual accreditation fee is not paid by the due date, the accreditation of the person failing to pay the fee lapses and a fresh application for accreditation may be required if the person concerned wishes to continue to be accredited.	21 22 23 24
(2)	However, if the fee is paid by the date determined and notified to the person by the Director-General, the accreditation is taken not to have lapsed.	25 26 27
48	Minimum and late payment fees	28
(1)	The Director-General may fix minimum fees and impose additional fees for late payment of fees after the due date for payment.	29 30
(2)	A fee for late payment of fees may be, but is not required to be, calculated on a daily basis.	31 32
(3)	The Director-General may, at the Director-General's discretion, waive payment of the whole or any part of a fee for late payment of a fee.	33 34

Part 3 Safety measures

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Division 1 Inspections

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49 Safety inspections

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- (1) The Director-General must cause inspections to be carried out to ensure that an accredited person is complying with the terms of the person's accreditation. 4
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- (2) For the purposes of this section, the Director-General may cause the following to be inspected: 7
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- (a) the railway track, other infrastructure and rolling stock relating to the railway operations for which the person is accredited, 9
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 - (b) the carrying out of railway operations by the accredited person, 11
 - (c) the performance of railway employees, 12
 - (d) the arrangements for the security of members of the public using railways or in or on railway infrastructure, 13
14
 - (e) any other thing the Director-General considers to be relevant to the safe carrying out of railway operations in relation to which the person is accredited. 15
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- (3) The inspections are to be carried out at such intervals as the Director-General thinks fit and: 18
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- (a) in the case of an accredited person who carries out railway operations principally relating to the carriage of passengers, must be carried out at least once every 12 months, and 20
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 - (b) in any other case, must be carried out at least once every 3 years. 23
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- (4) The Director-General must, if requested to do so by the Minister and in accordance with any directions of the Minister, cause an inspection to be carried out under this section in respect of an accredited person. 25
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50 Regulations

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

- (a) the methodology or standards with which inspections carried out under this Division must comply,
- (b) provision of inspection reports to accredited persons,
- (c) procedures with respect to responses to inspection reports.

Division 2 Improvement and prohibition notices and other requirements

51 Improvement notices

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

(4) However, an authorised officer may specify a period that is less than 7 days after the improvement notice is given if satisfied that it is reasonably practicable for the person to comply with the requirements imposed by the notice by the end of that period.	1 2 3 4
(5) An improvement notice must:	5
(a) state that the authorised officer is of the opinion referred to in subsection (1), and	6 7
(b) state the reasons for that opinion, and	8
(c) if in the authorised officer’s opinion there is a contravention of a provision of this Act or the regulations or a condition or restriction attached to an accreditation, specify the provision, condition or restriction, and	9 10 11 12
(d) include information about obtaining a review of the notice under this Division.	13 14
52 Closure of level-crossings or other structures	15
(1) Without limiting section 51 (1), an improvement notice may direct an accredited person to close any level-crossing, bridge or other structure for crossing over or passing over or under a railway.	16 17 18
(2) An accredited person given a direction must, before closing the level-crossing, bridge or other structure:	19 20
(a) cause a notice of the proposed closure to be published in a local newspaper circulating in the area in which the level-crossing, bridge or other structure is situated, and	21 22 23
(b) notify the Roads and Traffic Authority and the council of the area concerned of the proposed closure.	24 25
(3) On the closure of the level-crossing, bridge or other structure, all rights, easements and privileges in relation to that crossing, bridge or other structure are extinguished.	26 27 28
53 Failure to comply with improvement notice	29
A person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence.	30 31
Maximum penalty:	32
(a) in the case of a corporation (being a previous offender)—750 penalty units, or	33 34

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Part 3 Safety measures

Division 2 Improvement and prohibition notices and other requirements

(b)	in the case of a corporation (not being a previous offender)—500 penalty units, or	1 2
(c)	in the case of an individual not acting in the capacity of an employee (being a previous offender)—375 penalty units, or	3 4
(d)	in the case of an individual not acting in the capacity of an employee (not being a previous offender)—250 penalty units, or	5 6 7
(e)	in the case of an individual acting in the capacity of an employee (being a previous offender)—22.5 penalty units, or	8 9
(f)	in the case of an individual acting in the capacity of an employee (not being a previous offender)—15 penalty units.	10 11
54	Prohibition notices	12
(1)	If an authorised officer is of the opinion that at any railway premises there is occurring or is about to occur any activity that involves or will involve an immediate risk to the health or safety of any person, the authorised officer may give to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the matters that give or will give rise to the risk are remedied.	13 14 15 16 17 18 19
(2)	A prohibition notice must:	20
(a)	state that the authorised officer is of the opinion referred to in subsection (1), and	21 22
(b)	state the reasons for that opinion, and	23
(c)	specify the activity in respect of which that opinion is held, and	24
(d)	if in the authorised officer's opinion the activity involves a contravention or likely contravention of any provision of this Act or the regulations or of a condition or restriction attached to an accreditation—specify that provision, condition or restriction and state the reasons for that opinion, and	25 26 27 28 29
(e)	include information about obtaining a review of the notice under this Division.	30 31

(3) A person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence.	1 2
Maximum penalty:	3
(a) in the case of a corporation (being a previous offender)—1,500 penalty units, or	4 5
(b) in the case of a corporation (not being a previous offender)—1,000 penalty units, or	6 7
(c) in the case of an individual not acting in the capacity of an employee (being a previous offender)—750 penalty units, or	8 9
(d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—500 penalty units, or	10 11 12
(e) in the case of an individual acting in the capacity of an employee (being a previous offender)—45 penalty units, or	13 14
(f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—30 penalty units.	15 16
55 Notices may include directions	17
(1) An authorised officer may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.	18 19 20 21
(2) Any such direction may:	22
(a) adopt, by reference, the requirements of any industry or other code of practice or standard, and	23 24
(b) offer the person to whom it is issued a choice of ways in which to remedy the contravention or matter or to comply with the notice.	25 26 27
56 Review of notices by Director-General	28
(1) A person who is given a notice under this Division may apply in writing to the Director-General for a review of the notice.	29 30
(2) The application for review must be made within 7 days after the notice is given or, if the regulations prescribe a different period, within the period so prescribed.	31 32 33

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Part 3 Safety measures

Division 2 Improvement and prohibition notices and other requirements

(3)	An application for review may be made only once in respect of any particular notice.	1 2
(4)	The Director-General is to review a notice that is the subject of a duly made application for review.	3 4
(5)	The notice is stayed (unless it is a prohibition notice) from when the application for review is received by the Director-General until the Director-General gives notice to the applicant of the result of the review.	5 6 7 8
(6)	The Director-General may, as a result of the review, confirm the notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to the applicant.	9 10 11 12
(7)	Regulations may be made with respect to reviews under this section.	13
57	Application to Administrative Decisions Tribunal for stay of prohibition notice	14 15
(1)	A person who applies for a review of a prohibition notice under section 56 may apply to the Administrative Decisions Tribunal for a stay of the notice.	16 17 18
(2)	A stay may be granted for the period considered appropriate by the Tribunal, but not so as to extend past the time when notice of the result of the review is given to the applicant by the Director-General.	19 20 21
(3)	A stay may be granted on such conditions as the Tribunal thinks appropriate and may be revoked or amended by the Tribunal.	22 23
58	Appeal to Administrative Decisions Tribunal	24
	A person who is aggrieved by a decision of the Director-General on an application for a review under section 56 may apply to the Administrative Decisions Tribunal for a review of the decision.	25 26 27
59	Withdrawal of notices	28
(1)	An improvement notice or a prohibition notice may be withdrawn at any time by the authorised officer who gave the notice, or by the Director-General, if satisfied that the notice was given in error or is incorrect in some respect.	29 30 31 32
(2)	The withdrawal has effect when notice of the withdrawal is given to the person to whom the notice was given.	33 34

(3) The withdrawal or revocation of an improvement notice or a prohibition notice does not prevent the giving of any other notice.	1 2
60 Proceedings for offences not affected by notices	3
The giving, variation, revocation or withdrawal of an improvement notice or a prohibition notice does not affect any proceedings for an offence against this Act or the regulations or any other Act or law in connection with any matter in respect of which the notice was issued.	4 5 6 7
Division 3 Safety reports and investigations	8
61 Definitions	9
In this Division:	10
<i>train safety record</i> means any or all of the following:	11
(a) all statements (whether oral or in writing) taken from persons by an authorised officer or other person for the purposes of a rail safety inquiry, including any record of any such statement,	12 13 14
(b) all communications (other than a train safety recording or a transcript of a train safety recording) between persons involved in the operation of a train,	15 16 17
(c) medical or private information regarding persons (including deceased persons) involved in an accident or incident the subject of a rail safety inquiry,	18 19 20
(d) train safety recordings and transcripts of train safety recordings.	21
<i>train safety recording</i> means a recording consisting of (or mainly of) sounds or images or data, or any combination of sounds, images or data, produced by a device installed in a train, a signal box, a train control complex or other railway premises for the purpose of recording operational activities carried out by railway employees operating a train and other persons.	22 23 24 25 26 27
62 Industry safety reports	28
(1) The Director-General must, not later than 1 July in each year, provide to the Minister an industry safety report relating to the carrying out of railway operations by accredited persons.	29 30 31

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Part 3	Safety measures
Division 3	Safety reports and investigations

(2)	The Director-General must report on the matters prescribed by the regulations for the purposes of this section and may report on such other matters as the Director-General thinks fit.	1 2 3
(3)	The Minister must table the report in each House of Parliament.	4
63	Provision of information relating to safety to Director-General	5
(1)	An accredited person must provide to the Director-General the information concerning measures taken by the person to promote rail safety or concerning other matters relating to rail safety that the Director-General reasonably requires.	6 7 8 9
(2)	An accredited person must submit a safety report to the Director-General at such times as the Director-General specifies by written notice given to the person.	10 11 12
(3)	The information or report must be provided in the approved form and manner.	13 14
	Maximum penalty:	15
(a)	in the case of a corporation (being a previous offender)—750 penalty units, or	16 17
(b)	in the case of a corporation (not being a previous offender)—500 penalty units, or	18 19
(c)	in the case of an individual (being a previous offender)—375 penalty units, or	20 21
(d)	in the case of an individual (not being a previous offender)—250 penalty units.	22 23
64	Accredited persons must report notifiable occurrences to Director-General	24 25
(1)	An accredited person must report to the Director-General any notifiable occurrence of a kind specified in Schedule 3 that occurs on railway premises relating to a railway in respect of which the person is accredited.	26 27 28 29
(2)	A report of a notifiable occurrence must:	30
(a)	be made to the Director-General within the time prescribed by the regulations or, if no time is prescribed, within the time specified by written notice given by the Director-General to accredited persons, and	31 32 33 34
(b)	be made in the approved form and manner, and	35

(c)	if required by the Director-General, be verified by statutory declaration.	1 2
(3)	Two or more accredited persons may make a joint report with respect to a notifiable occurrence.	3 4
(4)	In addition to the matters specified in Schedule 3, the Director-General may, by written notice that expires 12 months after it is given, require an accredited person to report to the Director-General any incident of any other kind that endangers or could endanger the safe carrying on of railway operations.	5 6 7 8 9
(5)	A person who contravenes this section, or a requirement made under this section, is guilty of an offence.	10 11
	Maximum penalty:	12
(a)	in the case of a corporation (being a previous offender)—750 penalty units, or	13 14
(b)	in the case of a corporation (not being a previous offender)—500 penalty units, or	15 16
(c)	in the case of an individual (being a previous offender)—375 penalty units, or	17 18
(d)	in the case of an individual (not being a previous offender)—250 penalty units.	19 20
(6)	The Governor may, by proclamation published in the Gazette, amend or substitute Schedule 3 at any time.	21 22
65	Reports of other matters	23
	In addition to any other requirements of this Division, a condition may be imposed on an accredited person's accreditation requiring the person to report specified incidents or kinds of incidents to the Director-General.	24 25 26 27
66	Inquiries into railway accidents and incidents by accredited persons	28
(1)	An accredited person must inquire into, and report to the Director-General on, any railway accident or incident that may affect the safe carrying out of railway operations for which the person is accredited.	29 30 31
(2)	An accredited person must, if required to do so by the Director-General, review and resubmit a report prepared under this section.	32 33

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Division 3	Safety reports and investigations

(3)	Inquiries by accredited persons are to be conducted in an approved manner and within the time specified by the Director-General.	1 2
(4)	The Director-General must, on the 15th day of each month, forward to the Minister a list of any reports of inquiries conducted by accredited persons under this section and received by the Director-General in the preceding month.	3 4 5 6
(5)	An accredited person who contravenes this section is guilty of an offence.	7 8
	Maximum penalty:	9
(a)	in the case of a corporation (being a previous offender)—750 penalty units, or	10 11
(b)	in the case of a corporation (not being a previous offender)—500 penalty units, or	12 13
(c)	in the case of an individual (being a previous offender)—375 penalty units, or	14 15
(d)	in the case of an individual (not being a previous offender)—250 penalty units.	16 17
67	Inquiries by Director-General or rail investigation panels or at direction of Minister	18 19
(1)	The Director-General or, at the request of the Director-General, a rail investigation panel may inquire into any railway accident or incident that may affect the safe carrying out of railway operations.	20 21 22
(2)	The Director-General or Chairperson of rail investigation panels must provide to the Minister a report on an inquiry conducted by the Director-General or a rail investigation panel under subsection (1).	23 24 25
(3)	The Minister may require the Director-General or a rail investigation panel to inquire into and report to the Minister on any railway accident or incident that may affect the safe carrying out of railway operations or the personal security of any railway employee or member of the public using a railway or in or on railway premises.	26 27 28 29 30
(4)	The Chairperson of rail investigation panels may, on the Chairperson's own motion, refer a major railway accident to a rail investigation panel to inquire into and report to the Minister on the accident.	31 32 33
(5)	The Governor is to appoint a person as Chairperson of rail investigation panels, who is to be a permanent member of the panels.	34 35

- (6) The Director-General may recover the reasonable costs of conducting an inquiry under this section as a debt due to the Crown in a court of competent jurisdiction. The costs are recoverable jointly or severally from any one or more accredited persons in respect of the railway concerned. 1
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- (7) Schedule 4 has effect with respect to a rail investigation panel and the Chairperson of rail investigation panels. 6
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- (8) In this section: 8
- major railway accident* means a railway accident involving extensive property damage or one or more deaths (not being death resulting from suicide or of a trespasser). 9
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- 68 Tabling of reports** 12
- (1) The Minister is to lay (or cause to be laid) a report under section 62 or 67 before both Houses of Parliament not later than 28 days after the Minister receives the report. 13
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- (2) If a House of Parliament is not sitting when the Minister seeks to lay a report before it, the Minister may present copies of the report to the Clerk of the House concerned. 16
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- (3) The report: 19
- (a) is, on presentation and for all purposes, taken to have been laid before the House, and 20
21
- (b) may be printed by authority of the Clerk of the House, and 22
- (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and 23
24
- (d) is to be recorded: 25
- (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and 26
27
- (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly, 28
29
- on the first sitting day of the House after receipt of the report by the Clerk. 30
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69	Power to require persons to attend to answer questions or produce documents or other things	1 2
(1)	The Director-General or Chairperson of rail investigation panels may, by notice in writing, require either or both of the following:	3 4
(a)	the attendance of any person at any place to answer questions at a rail safety inquiry,	5 6
(b)	the production of any documents or other things required for the purposes of any such inquiry.	7 8
(2)	At a rail safety inquiry, the Director-General or rail investigation panel conducting the inquiry:	9 10
(a)	is not bound by the rules of evidence, and	11
(b)	may conduct the inquiry without regard to legal forms, and	12
(c)	may inform himself or herself or itself in such manner as the person or panel thinks fit.	13 14
(3)	At any such inquiry, the Director-General or Chairperson of the rail investigation panel conducting the inquiry may administer an oath or require any statement to be verified by statutory declaration.	15 16 17
(4)	A person is not required under this section to travel more than 16 kilometres from the person's residence at the time of receiving the notice, unless a reasonable allowance for expenses incidental to attendance to give evidence is tendered to the person on the scale allowed for a witness attending on subpoena to give evidence before the District Court.	18 19 20 21 22 23
(5)	A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this section.	24 25
	Maximum penalty: 100 penalty units.	26
	Note. Section 89 provides protection in relation to self-incriminating evidence.	27
70	Disclosure of information by Director-General	28
(1)	The Director-General may, if the Director-General thinks it necessary for rail safety, disclose information acquired by the Director-General in the performance of his or her functions under this Act to any other person.	29 30 31 32
(2)	The Director-General may, if the Director-General thinks it desirable for the promotion of rail safety, publish any information, including a report made under section 67.	33 34 35

(3)	A publication under subsection (2) must not identify a person by name.	1
(4)	This section does not apply to the disclosure of the whole or part of a train safety record to the Commonwealth or a Commonwealth authority.	2 3 4
71	Disclosure of train safety record to Commonwealth or Commonwealth authority	5 6
(1)	Despite any other provision of this Division, the Director-General, a person who is or was an authorised officer or a member of a rail investigation panel or any other person may, with the consent of the Minister, disclose to the Commonwealth or a Commonwealth authority the whole or part of a train safety record.	7 8 9 10 11
(2)	The Minister may not consent to a disclosure under this section unless the Minister is of the opinion that it is in the public interest to do so.	12 13
72	Disclosure of train safety records (other than train safety recordings) to a court or person	14 15
(1)	The Director-General, a person who is or was an authorised officer or a member of a rail investigation panel must not, except for the purposes of this Division, directly or indirectly:	16 17 18
(a)	disclose to any person, or to a court, the whole or part of a train safety record, or	19 20
(b)	produce to any person, or to a court, the whole or any part of a train safety record.	21 22
	Maximum penalty: 100 penalty units.	23
(2)	This section does not apply to or in respect of the following:	24
(a)	a train safety record that is a train safety recording,	25
(b)	criminal proceedings, investigations relating to a criminal offence, investigations by or proceedings before the coroner, or a proceeding relating to bail,	26 27 28
(c)	disclosure of a train safety record that is permitted under this Act or the regulations,	29 30
(d)	disclosure in accordance with an order of a court referred to in subsection (4).	31 32
(3)	A person may apply to the Supreme Court for an order that a train safety record must be disclosed to a court or produced to a court.	33 34

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(4)	The Supreme Court must order the disclosure or production of the train safety record if it is satisfied that the public interest in the disclosure outweighs the adverse impact the disclosure or production may have on the inquiry to which the record relates or on any future inquiries.	1 2 3 4
(5)	If the Supreme Court makes an order under subsection (4), the Court must also make an order that restricts access to the train safety record to:	5 6 7
(a)	the person or persons constituting the court, and	8
(b)	the parties to the proceedings (including any interveners), and	9
(c)	the parties' legal representatives, and	10
(d)	specified witnesses for the purposes of the proceedings,	11
	unless the Court is satisfied that such an order would not be in the interests of justice or would not be desirable in the interests of the court performing its functions.	12 13 14
73	Disclosure of train safety recordings	15
	A person must not publish or communicate to any person:	16
(a)	a train safety recording or any part of a train safety recording, or	17 18
(b)	any information obtained from a train safety recording or any part of a train safety recording,	19 20
	otherwise than in the course of an inquiry into an accident or incident under this Division or for the purposes of, or in connection with:	21 22
(c)	criminal proceedings (not being criminal proceedings in which it is not admissible) or investigations by or proceedings before the coroner, or	23 24 25
(d)	civil proceedings in which an order is made under section 75, or	26 27
(e)	a disclosure or publication that is permitted under this Act or the regulations.	28 29
	Maximum penalty: 100 penalty units.	30
74	Evidence of train safety recordings in criminal proceedings	31
	A train safety recording is not admissible in evidence in any criminal proceedings against a railway employee.	32 33

75	Evidence of train safety recordings in civil proceedings	1
(1)	A train safety recording is not admissible in evidence in any civil proceedings against a railway employee.	2 3
(2)	A party to civil proceedings may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that a train safety recording, or part of a train safety recording, be admissible in evidence in the proceedings.	4 5 6 7
(3)	If an application is made to a court under subsection (2), the court must:	8 9
(a)	examine the train safety recording, and	10
(b)	if it is satisfied:	11
(i)	that a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court, and	12 13 14
(ii)	that the train safety recording, or a part of the train safety recording, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact, and	15 16 17 18
(iii)	that, in the circumstances of the case, the public interest in the proper determination of that material question of fact outweighs the public interest in protecting the privacy of railway employees,	19 20 21 22
	the court may order that the train safety recording, or that part of the train safety recording, be admissible in evidence in the proceedings.	23 24 25
(4)	If the court makes an order referred to in subsection (3), the train safety recording is, despite subsection (1), admissible in evidence in the proceedings.	26 27 28
76	Examination by a court of train safety recording	29
(1)	This section applies if a court examines a train safety recording under section 75.	30 31
(2)	The only persons who may be present at the examination are:	32
(a)	the person or persons constituting the court, other than the members of the jury (if any), and	33 34
(b)	the legal representatives of the parties to the proceedings, and	35
(c)	such other persons (if any) as the court directs.	36

- (3) The court may direct that the train safety recording or the part of the train safety recording, or any information obtained from the recording or part of the recording, must not:
- (a) be published or communicated to any person, or
 - (b) be published or communicated except in such manner, and to such persons, as the court specifies.
- (4) The train safety recording, or that part of the train safety recording, is not evidence for the purpose of the determination of the liability in the proceedings of a railway employee the subject of a recording.
- (5) If there are 2 or more defendants in the proceedings of whom at least one is a railway employee the subject of a recording and the remaining defendant or defendants are not railway employees the subject of a recording, the train safety recording, or that part of the train safety recording, is evidence for the purpose of determining whether or not any railway employee has been negligent for the purposes only of determining the liability in the proceedings of any defendant who is not a railway employee the subject of a recording.
- 77 Compliance with subpoenas and other directions**
- (1) The Director-General, an authorised officer or a member of a rail investigation panel is not obliged to comply with a subpoena or similar direction of a court in relation to civil proceedings to:
- (a) attend and answer questions relating to an accident or incident that is the subject of a rail safety inquiry, or
 - (b) attend and produce any part of a train safety record relating to any such accident or incident,
- within 6 months after the day of the accident or incident.
- (2) A person who has obtained a subpoena or similar direction from a court that does not have to be complied with because of subsection (1) may apply to that court for an order that the subpoena or similar direction be complied with.
- (3) If the court is satisfied that, in the circumstances of the case, it is desirable, in either the interests of justice or the performance by the court of its functions, for the officer or person to attend and answer questions or to attend and produce train safety records within 6 months after the day of the accident or incident, the court must order that the officer or person comply with the subpoena or similar direction.

78	Admissibility of other evidence and liability	1
(1)	Nothing in this Division affects the admissibility in any proceedings of evidence of words spoken by a railway employee other than evidence constituted by a train safety recording or a transcript or summary of a train safety recording.	2 3 4 5
(2)	No liability is incurred by the State and no personal liability is incurred by, or by any person acting at the direction of, the Minister or the Director-General in respect of anything done in good faith in connection with the preparation or making public of a report, or the disclosure or publication of information, under this Division.	6 7 8 9 10
(3)	No liability is incurred by a person for publishing in good faith:	11
(a)	a report made public, or information published by the Director-General, under this Division, or	12 13
(b)	a fair report or summary of any such report or information.	14
(4)	In this section:	15
	<i>liability</i> includes liability for defamation.	16
	<i>the State</i> includes the Crown in right of the State and the Government of the State.	17 18

Part 4 Enforcement

1

Division 1 Power of entry

2

79 Power of entry

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(1) An authorised officer may enter any railway premises for the purposes of this Act, including the following purposes:

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(a) the purposes of an inspection, investigation, rail safety inquiry or other inquiry under this Act,

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(b) the purpose of determining whether there has been a contravention of the Act, the regulations or the terms of an accreditation.

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(2) Entry may only be made at a reasonable hour in the daytime or at any hour during which a railway operation or other related activity is in progress or is usually carried out in or on the railway premises.

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80 Inspections and investigations

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

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(a) power to inspect any infrastructure, over track structures or rolling stock or any part of the infrastructure, over track structures or rolling stock of a railway in or on the premises,

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(b) power to inquire into any notifiable occurrence, railway accident or other incident affecting the safe carrying out of railway operations or the personal security of members of the public or railway employees that has happened in or on the premises,

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(c) power to take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers,

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(d) power to examine and test any part of the railway or rolling stock,

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(e) power to take samples or photographs in connection with any inspection or inquiry,

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(f)	power to search for evidence of any contravention of this Act, the regulations or the terms of accreditations,	1 2
(g)	power to search for and inspect relevant documents and require any person in or on the premises to produce to the authorised officer any relevant documents in the person's custody or under the person's control,	3 4 5 6
(h)	power to require any person in or on the premises to answer questions or otherwise give information in relation to the matter the subject of the inspection, investigation or inquiry,	7 8 9
(i)	power to exercise functions under section 81 in relation to any relevant documents found in or on the premises or produced to an authorised officer,	10 11 12
(j)	power to secure the perimeter of the site of any notifiable occurrence, railway accident or other incident by whatever means the authorised officer considers appropriate or the Director-General specifies.	13 14 15 16
81	Functions of authorised officers in relation to relevant documents	17
(1)	An authorised officer has the following powers in relation to relevant documents found by an authorised officer in or on railway premises entered by the authorised officer or produced to the authorised officer pursuant to a requirement made under this Part:	18 19 20 21
(a)	power to take possession of the documents or secure them against interference,	22 23
(b)	power to make copies of, or take extracts from, the documents,	24
(c)	power to require any person who was party to the creation of the documents to make a statement providing any explanation that the person is able to provide as to any matter relating to the creation of the documents or as to any matter to which the documents relate,	25 26 27 28 29
(d)	power to retain possession of the documents for such period as is necessary to enable the documents to be inspected, and copies of, or extracts from, the documents to be made or taken.	30 31 32
(2)	While an authorised officer retains possession of a document, the authorised officer must permit a person who would be entitled to inspect the document were it not in the possession of the authorised officer to inspect the document at any reasonable time and make a copy of, or take extracts from, the document.	33 34 35 36 37

- (3) If an authorised officer takes possession of or secures against interference any relevant document on which a person has a lien, the authorised officer's actions do not prejudice the lien. 1
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82 Notice of entry 4

Before an authorised officer enters railway premises under this Act, the authorised officer must give the owner or occupier of the railway premises reasonable notice of the intention to enter the railway premises unless: 5
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- (a) the giving of notice would defeat the purpose for which it is intended to enter the premises, or 9
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(b) entry to the premises is made with the consent of the owner or occupier of the premises, or 11
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(c) entry is required in an emergency. 13

83 Use of force 14

A power conferred by this Act to enter any railway premises, or to do anything in or on any railway premises, may not be exercised unless the authorised officer proposing to exercise the power uses no more force than is reasonably necessary to effect the entry or to do the thing for which entry is effected. 15
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84 Care to be taken 20

In the exercise of a function under this Division, an authorised officer must do as little damage as possible. 21
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85 Recovery of cost of entry and inspection 23

The Director-General may recover from an accredited person the reasonable costs of the entry and inspection of railway premises in respect of which the person is accredited (other than the costs of a routine safety inspection under Part 3). 24
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86 Compensation 28

The Director-General must pay compensation for any damage caused by any authorised officer in the exercise of a power to enter railway premises under this Division, other than damage arising from work done for the purpose of an inspection which reveals that there has been a contravention of this or any other Act or law. 29
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87 Authority to enter railway premises	1
(1) A power conferred by this Division to enter railway premises, or to make an inspection or take other action on railway premises, may not be exercised unless the person proposing to exercise the power is in possession of an authority and produces the authority, if required to do so by the owner or occupier of the premises.	2 3 4 5 6
(2) The authority must be a written authority that is issued by the Director-General and that:	7 8
(a) states that it is issued under this Act, and	9
(b) states the name of the person to whom it is issued, and	10
(c) describes the nature of the powers conferred and the source of the powers, and	11 12
(d) states the date (if any) on which it expires, and	13
(e) describes the railway premises to which the power extends, and	14
(f) bears the signature of the Director-General or an approved person.	15 16
(3) This section does not apply to a power conferred by a search warrant.	17
88 Premises used for residential purposes	18
The powers of entry and inspection conferred by this Division are not exercisable in relation to any premises or part of premises that are being used for residential purposes except:	19 20 21
(a) with the permission of the occupier of the premises or part of the premises, or	22 23
(b) under the authority conferred by a search warrant.	24
89 Protection from incrimination	25
(1) A person is not excused from any of the following requirements made under this Act on the ground that the statement might tend to incriminate him or her:	26 27 28
(a) a requirement to answer a question or produce a thing,	29
(b) a requirement to make a statement.	30
(2) However, the answer to the question, production of the thing, any information obtained as a direct result of the answer or production, or the statement, is not admissible in evidence against the person in criminal proceedings:	31 32 33 34

Clause 89 Rail Safety Bill 2002

Part 4 Enforcement

Division 1 Power of entry

- (a) if the person claims before giving the answer, producing the thing or making the statement that it might tend to incriminate the person, or 1
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- (b) unless the person's entitlement to make a claim of the kind referred to in paragraph (a) was drawn to the person's attention before the statement was made. 4
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- (3) Except as provided by subsection (2), an answer to a question, production of a thing, any information obtained as a direct result of any such answer or production, or a statement made by a person, in compliance with a requirement under this Act, may be used in evidence in any criminal or civil proceedings against the person. 7
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- 90 Search warrants** 12
- (1) An authorised officer may apply to an authorised justice for a search warrant if the authorised officer has reasonable grounds for believing that the provisions of this Act, the regulations or the terms of an accreditation or certification have been or are being contravened in or on any railway premises. 13
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- (2) An authorised justice to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant: 18
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- (a) to enter the railway premises, and 21
- (b) to search the railway premises for evidence of a contravention of this Act, the regulations or the terms of an accreditation. 22
23
- (3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section. 24
25
- (4) Without limiting the generality of section 18 of the *Search Warrants Act 1985*, a police officer: 26
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- (a) may accompany an authorised officer executing a search warrant issued under this section, and 28
29
- (b) may take all reasonable steps to assist the authorised officer in the exercise of the person's functions under this section. 30
31
- (5) In this section, *authorised justice* has the same meaning as it has in the *Search Warrants Act 1985*. 32
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Division 2	Offences and proceedings	1
91	Offences involving accreditation, certification and authorisation	2
(1)	A person who:	3
(a)	by any false statement or misrepresentation, obtains or attempts to obtain any accreditation, certification or authorisation under this Act, or	4 5 6
(b)	forges or fraudulently alters or uses or purports to use any accreditation, certification or authorisation, or	7 8
(c)	fraudulently allows any such accreditation, certification or authorisation to be used by any other person,	9 10
	is guilty of an offence.	11
(2)	A person who:	12
(a)	contravenes a condition or restriction attached to an accreditation, or	13 14
(b)	knowingly permits another person to contravene a condition or restriction attached to an accreditation, or	15 16
(c)	knowingly carries out, or permits the carrying out of, a railway operation that is not authorised by an accreditation or in a manner that is not authorised by an accreditation,	17 18 19
	is guilty of an offence.	20
(3)	In this section:	21
	authorisation means an authorisation under section 36.	22
	Maximum penalty:	23
(a)	in the case of a corporation (being a previous offender)—7,500 penalty units, or	24 25
(b)	in the case of a corporation (not being a previous offender)—5,000 penalty units, or	26 27
(c)	in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or	28 29
(d)	in the case of an individual (not being a previous offender)—500 penalty units.	30 31

92	Failure to maintain safety systems, devices or appliances	1
(1)	An accredited person who fails to install and maintain, or maintain, a system, device or appliance on a railway or rolling stock in accordance with the terms of the person's accreditation is guilty of an offence.	2 3 4
(2)	An accredited person who fails to carry out a railway operation in accordance with any terms of the person's accreditation related to the person's safety management systems is guilty of an offence.	5 6 7
(3)	It is a defence to an offence under this section if the defendant proves that the failure concerned did not, and was not likely to, affect the safe carrying out of railway operations.	8 9 10
(4)	In this section:	11
	<i>safety management system</i> includes, but is not limited to, a safety management plan.	12 13
	Maximum penalty:	14
(a)	in the case of a corporation (being a previous offender)—7,500 penalty units, or	15 16
(b)	in the case of a corporation (not being a previous offender)—5,000 penalty units, or	17 18
(c)	in the case of an individual (being a previous offender)—750 penalty units or 2 years imprisonment, or both, or	19 20
(d)	in the case of an individual (not being a previous offender)—500 penalty units.	21 22
93	Tampering with railway equipment	23
(1)	A person who tampers with or disables:	24
(a)	the safety equipment (including track and communication systems) of a railway or of a unit or units of rolling stock, or	25 26
(b)	the interlocking system of a railway,	27
	is guilty of an offence.	28

- (2) In this section: 1
- interlocking system* means any lever or collection of levers, or 2
 electrical, electronic or mechanical device or devices, that operate or 3
 control points and signals, or signals, and that are interlocked to 4
 prevent conflicting movements of trains. 5
- Maximum penalty: 1,000 penalty units or 3 years imprisonment, or 6
 both. 7

94 Private sidings 8

A person must not move a train to or from a private siding unless the 9
 person is an accredited person who is accredited to do so. 10

Maximum penalty: 11

- (a) in the case of a corporation (being a previous offender)—7,500 12
 penalty units, or 13
- (b) in the case of a corporation (not being a previous 14
 offender)—5,000 penalty units, or 15
- (c) in the case of an individual (being a previous offender)—750 16
 penalty units or 2 years imprisonment, or both, or 17
- (d) in the case of an individual (not being a previous 18
 offender)—500 penalty units. 19

95 Railway offences 20

The regulations may make provision for or with respect to the 21
 following: 22

- (a) the regulation or prohibition of persons travelling or attempting 23
 to travel on a train without paying a fare or without paying the 24
 correct fare, 25
- (b) the regulation or prohibition of persons who travel or attempt 26
 to travel on a train for which they do not have the correct, or a 27
 valid, ticket or pass, 28
- (c) the regulation or prohibition of persons who fail to pay a fare 29
 on demand, 30
- (d) the regulation or prohibition of eating, drinking or smoking in 31
 trains or in other public areas of a railway, 32
- (e) the conduct of passengers and drivers on trains or in other parts 33
 of a railway, 34

Clause 95 Rail Safety Bill 2002

Part 4 Enforcement

Division 2 Offences and proceedings

(f)	the powers and duties of drivers of trains and of authorised officers,	1 2
(g)	the authority of drivers of trains, and of authorised officers, to eject persons guilty of any contravention of a regulation,	3 4
(h)	the taking up or setting down of passengers or other matters incidental to the transport of passengers,	5 6
(i)	the carriage of passengers' luggage or other goods, and animals, on trains,	7 8
(j)	the regulation or prohibition of the carriage of passengers standing in or on any part of the train,	9 10
(k)	the custody and return of property left in trains or in other parts of a railway, the payment of compensation for any such property and the disposal or sale of any such property not claimed and the time of any such disposal or sale,	11 12 13 14
(l)	the exhibition in or on any train or other part of a railway of such notices in the public interest as the Director-General considers necessary,	15 16 17
(m)	the erection and display of signs and notices for the guidance of drivers of trains and the public,	18 19
(n)	the sale of tickets and the conditions under which tickets must be sold,	20 21
(o)	generally as to the regulation and control of trains, of their drivers and passengers, and of other parts of a railway.	22 23
96	Offenders to state name and address	24
(1)	A person reasonably suspected by a police officer or an authorised officer to be committing or to have committed an offence against this Act or the regulations may be required to state his or her full name and residential address.	25 26 27 28
(2)	A person who, without reasonable excuse:	29
(a)	fails or refuses to comply with the requirements of a police officer or authorised officer made under subsection (1), or	30 31

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- (b) in purported compliance with such a requirement, states a name that is not his or her name or an address that is not his or her residential address, 1
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3
- is guilty of an offence. 4
- Maximum penalty: 15 penalty units. 5
- (3) The police officer or authorised officer may request the person to provide reasonable proof of the person's identity. 6
7
- (4) A person is not guilty of an offence under this section unless it is established that the police officer or authorised officer: 8
9
- (a) warned the person that a failure or refusal to comply with the requirement is an offence, and 10
11
- (b) identified himself or herself as a police officer or as an authorised officer. 12
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- (5) In this section, *authorised officer* includes, in the case of a railway specified in an accreditation under this Act, a person nominated by a person accredited in respect of that railway and appointed by the Director-General to be an authorised officer for the purposes of this section. 14
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- (6) The authority of a person appointed under subsection (5): 19
- (a) is limited to the railway specified in the accreditation of the person who nominates the person to the Director-General for appointment, and 20
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- (b) may be limited by the instrument of appointment to matters specified in the instrument. 23
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- (7) The Director-General must provide a person authorised under subsection (5) with a certificate of appointment as an authorised officer and the officer must, if requested to do so, produce the certificate to any person requested by the officer to comply with this section. 25
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- (8) Information obtained under this section by a person appointed under subsection (5) must be forwarded to the Director-General for consideration and, if appropriate, the taking of action in accordance with this Division. 29
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97 Obstruction	1
A person must not:	2
(a) hinder or obstruct an authorised officer in a manner that interferes with the performance by the officer of his or her functions under this Act or the regulations, or	3 4 5
(b) being the occupier or person in charge of railway premises or any other place or land entered by the authorised officer under a power conferred by this Act, fail to provide the officer with all reasonable facilities and assistance for the effective exercise of the officer’s powers under this Act, or	6 7 8 9 10
(c) fail, without reasonable excuse, to answer questions or give information when required to do so by an authorised officer in the exercise of his or her functions as an authorised officer, or	11 12 13
(d) fail to produce for inspection any documents when required to do so by an authorised officer in the exercise of his or her functions as an authorised officer.	14 15 16
Maximum penalty:	17
(a) in the case of a corporation—1,000 penalty units and, in the case of a continuing offence, a further penalty of 500 penalty units for each day the offence continues, or	18 19 20
(b) in the case of an individual—500 penalty units and, in the case of a continuing offence, a further penalty of 250 penalty units for each day the offence continues.	21 22 23
98 False or misleading information	24
A person must not:	25
(a) provide to an authorised officer (whether in answer to a question asked by the authorised officer or otherwise) information (including a document) that the person knows is false or misleading in a material particular, or	26 27 28 29
(b) provide to the Director-General or to any other person on behalf of the Director-General for the purposes of an inquiry held under Division 3 of Part 3 information (including a document) that the person knows is false or misleading in a material particular, or	30 31 32 33 34

(c)	provide in relation to an application for accreditation, or for variation of accreditation, information (including a document) that the person knows is false or misleading in a material particular, or	1 2 3 4
(d)	provide in relation to an application for an authorisation under section 36, information (including a document) that the person knows is false or misleading in a material particular.	5 6 7
	Maximum penalty:	8
(a)	in the case of a previous offender—150 penalty units,	9
(b)	in any other case—100 penalty units.	10
99	Offence of impersonating an authorised officer	11
	A person must not impersonate, or falsely represent that the person is, an authorised officer.	12 13
	Maximum penalty: 100 penalty units.	14
100	Offences by directors or managers of corporations	15
(1)	If a person knowingly contravenes, whether by act or omission, any provision of this Act or the regulations:	16 17
(a)	while acting in the capacity of a director, a person concerned in the management, or an employee or an agent, of a corporation, or	18 19 20
(b)	at the direction or with the consent or agreement (whether express or implied) of such a director, person, employee or agent,	21 22 23
	the corporation is taken to have contravened the same provision.	24
(2)	A corporation may be proceeded against and convicted under a provision pursuant to subsection (1), whether or not the director, person, employee or agent has been proceeded against or convicted under that provision.	25 26 27 28
(3)	Nothing in this section affects any liability imposed on a person for an offence committed by the person against this Act or the regulations.	29 30
101	Offences by corporations	31
(1)	If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation	32 33 34

Clause 101	Rail Safety Bill 2002
Part 4	Enforcement
Division 2	Offences and proceedings

is taken to have contravened the same provision, unless the person satisfies the court that:	1
(a) the corporation contravened the provision without the actual, imputed or constructive knowledge of the person, or	2
(b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or	3
(c) the person, if in such a position, used all due diligence to prevent the contravention by the corporation.	4
(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.	5
(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.	6
(4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention.	7
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102 Double jeopardy 20

If an act or omission constitutes an offence under this Act or the regulations and:	21
(a) under the <i>Occupational Health and Safety Act 2000</i> or the regulations made under that Act, or	22
(b) under associated occupational health and safety legislation within the meaning of that Act, or	23
(c) under the <i>Road and Rail Transport (Dangerous Goods) Act 1997</i> or the regulations made under that Act,	24
the offender is not to be punished twice in respect of the offence.	25
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103 Proceedings for offences 30

(1) Proceedings for an offence against this Act or the regulations are to be disposed of in a summary manner before:	31
(a) a Local Court, or	32
(b) the Supreme Court in its summary jurisdiction.	33
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(2)	The maximum pecuniary penalty that may be imposed by a Local Court in proceedings for an offence against this Act or the regulations is 500 penalty units.	1 2 3
(3)	Proceedings for an offence against this Act or the regulations may be taken within 2 years after the offence was committed despite anything in any other Act.	4 5 6
(4)	In any proceedings for an offence under this Act, the onus of proving that a person had a reasonable excuse is on the defendant.	7 8
104	Authority to take proceedings	9
(1)	Subject to this section, any legal proceedings for an offence against, or to recover any charge, fee or money due under, this Act or the regulations may be taken only by the Director-General or by a person authorised by the Director-General for the purpose, either generally or in any particular case.	10 11 12 13 14
(2)	Proceedings for an offence against this Act are not to be instituted in the Supreme Court in its summary jurisdiction without the written consent of the Director-General or of any other officer of the Department authorised by the Director-General for the purposes of this section.	15 16 17 18 19
(3)	Proceedings against the Crown or a statutory body representing the Crown for an offence against this Act or the regulations are not to be instituted without the written consent of the Minister.	20 21 22
(4)	In any proceedings referred to in this section, the production of an authority or consent purporting to be signed by the Director-General or the Minister is to be evidence of the authority or consent without proof of the signature of the Director-General or the Minister.	23 24 25 26
(5)	The Director-General may, for the purposes of subsection (1), authorise any person who is a member of a specified class of persons to take the actions referred to in that subsection.	27 28 29
105	Penalty notices for certain offences	30
(1)	An authorised officer may serve a penalty notice on a person who appears to the officer to have committed a penalty notice offence.	31 32
(2)	The amount of the penalty to be specified in a penalty notice is the amount prescribed by the regulations for the alleged offence concerned, being an amount not exceeding the maximum amount of penalty that could be imposed for the offence by a court.	33 34 35 36

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Division 2	Offences and proceedings

(3)	A penalty notice may be served personally or by post.	1
(4)	If the amount of the penalty prescribed by the regulations for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.	2 3 4
(5)	Payment of a penalty under this section is not to be regarded as an admission of liability for the purpose of, nor in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.	5 6 7 8
(6)	This section does not limit the operation of any other provision of this or any other Act or any statutory rule.	9 10
(7)	In this section:	11
	<i>penalty notice</i> means a notice to the effect that, if the person served with the notice does not wish to have an alleged offence dealt with by a court, the person may pay, in accordance with the notice, the penalty specified in the notice.	12 13 14 15
	<i>penalty notice offence</i> means an offence against this Act or the regulations declared by the regulations to be a penalty notice offence.	16 17
106	Recovery of amounts due	18
	Any fees, charges or other money payable under this Act or the regulations may be recovered by the Director-General as a debt in any court of competent jurisdiction.	19 20 21
107	Records and evidence from records	22
(1)	The Director-General must keep records of the grant, refusal, variation, suspension and cancellation of accreditations under this Act.	23 24
(2)	A certificate purporting to be signed by the Director-General and certifying that:	25 26
	(a) on a date specified in the certificate, or	27
	(b) during any period so specified,	28
	the particulars set out in the certificate as to any matter required to be recorded under this section did or did not appear on or from the records is, for the purposes of any legal proceedings, prima facie evidence of what it certifies.	29 30 31 32
(3)	Such a certificate is admissible in any proceedings:	33
	(a) without proof of the signature of the Director-General, and	34

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

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Part 5 General	1
Division 1 Administration	2
108 Functions of Director-General	3
The functions of the Director-General under this Act include the following:	4
(a) accreditation of operators of railways under Part 2 and the variation, suspension and cancellation or cancellation of accreditation granted under that Part,	5
(b) development of safety performance systems for the safe carrying on of railway operations,	6
(c) development of safety performance systems for the personal security of members of the public and railway employees using railways or in or on railway premises,	7
(d) monitoring the effectiveness of safety performance systems and revising, replacing or repealing those systems and developing new systems, as necessary,	8
(e) arranging for the conduct of inspections to monitor compliance of operators and railway employees with the requirements of this Act, the regulations and accreditations,	9
(f) issuing directions for the purposes of Part 3,	10
(g) considering and acting on reports of notifiable occurrences under Part 3,	11
(h) arranging for the investigation of possible breaches of this Act and the regulations,	12
(i) arranging for the conduct of inquiries into railway accidents and incidents affecting the safe carrying out of railway operations,	13
(j) arranging for the provision of advice to intending applicants for accreditation on such matters as safety performance systems and the criteria for the grant of accreditations and certifications and concerning railway safety generally,	14
(k) making recommendations to the Minister concerning railway safety generally,	15
(l) issuing guidelines as required or permitted by or under this Act.	16

109	Use of staff of Authority or Corporations	1
	The Director-General may, for the purposes of this Act, on such terms and conditions as may be arranged with the Authority or Corporation concerned, make use of the services of any person employed by an Authority or the Rail Infrastructure Corporation under the <i>Transport Administration Act 1988</i> .	2 3 4 5 6
110	Consultants	7
	The Director-General may engage such consultants as the Director-General requires for the exercise of functions under this Act.	8 9
111	Authorised officers	10
	In addition to any other persons who may be appointed as authorised officers under this Act, the Director-General may, for the purpose of the investigation or exercise of powers related to a specified railway accident or railway incident, appoint as an authorised officer a person exercising powers, or holding office under, a Commonwealth Act.	11 12 13 14 15
112	Delegation by Minister and Director-General	16
	(1) The Minister may delegate any function under this Act (except this power of delegation) to any officer of the Department.	17 18
	(2) The Director-General may delegate any function under this Act (except this power of delegation or any function delegated to the Director-General by the Minister) to any officer of the Department or any person prescribed by the regulations.	19 20 21 22
	(3) A reference in this section to a function under this Act includes a reference to a function under a condition of an accreditation or certification.	23 24 25
113	Exclusion of personal liability	26
	No matter or thing done, or omitted to be done, by the Minister, the Director-General, an officer of the Department, an authorised officer or a person acting under the direction of the Minister, the Director-General or any such officer subjects the Minister, the Director-General or any such officer or person personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purposes of this or any other Act.	27 28 29 30 31 32 33 34

Clause 114 Rail Safety Bill 2002

Part 5 General

Division 1 Administration

114	Exclusion of liability of the State	1
	No act or omission of the Minister, the Director-General or any other officer of the Department in the course of exercising functions under this Act gives rise to any civil liability (including, for example, liability in negligence or for breach of statutory duty) against the State or any authority of the State.	2 3 4 5 6
Division 2	Miscellaneous	7
115	Savings of other Acts etc	8
	This Act does not affect the operation of the following:	9
	(a) the <i>Road and Rail Transport (Dangerous Goods) Act 1997</i> or regulations made under that Act,	10 11
	(b) the <i>Occupational Health and Safety Act 2000</i> , associated occupational health and safety legislation within the meaning of that Act or regulations made under that Act or legislation,	12 13 14
	(c) the functions of the WorkCover Authority under the <i>Occupational Health and Safety Act 2000</i> or associated occupational health and safety legislation within the meaning of that Act.	15 16 17 18
116	Service of documents	19
	(1) A document that is authorised or required under this Act to be given to or served on any person may be served:	20 21
	(a) personally or by post, or	22
	(b) by leaving it with a person apparently of or above the age of 16 years at, or by posting it to, the person's place of business or, in the case of a corporation, the registered office of the corporation.	23 24 25 26
	(2) If a person on whom a document is authorised or required under this Act to be served is absent from the State or cannot, after diligent inquiry, be found, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land on which the railway of which the person is the operator is located.	27 28 29 30 31 32

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- (3) If, under this Act, a document is authorised or required to be served on the holder of an accreditation and there is more than one holder, service on any one holder of the document, together with copies of the document addressed to the other holders, is taken to be service on all of the holders. 1
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- (4) If a person has more than one place of business, service may be effected under this section at any of those places. 6
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- (5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a document exchange, but the burden of establishing that service has been so effected is on the person asserting that fact. 8
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- 117 Regulations** 13
- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 14
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- (2) In particular, the regulations may make provision for or with respect to the following: 18
19
- (a) the safe operation and maintenance of historic or preserved rolling stock, 20
21
- (b) the safe construction, operation and maintenance of sidings, 22
- (c) the functions, training, health and fitness of railway employees, 23
- (d) the regulation of the conduct of passengers and other persons on railways, 24
25
- (e) the exclusion of persons, animals or freight from railways, 26
- (f) tampering with, or damaging, railways, 27
- (g) the unauthorised use of railways and rolling stock, 28
- (h) trespass on railways, 29
- (i) the opening and closing of railway gates, 30
- (j) the regulation of vehicles, animals and pedestrians crossing railway tracks, 31
32
- (k) the regulation of level-crossings, 33
- (l) the loading and unloading of freight on railways, 34

Clause 117 Rail Safety Bill 2002

Part 5 General

Division 2 Miscellaneous

(m)	the publication of statistics relating to rail safety,	1
(n)	standards (including age restrictions and physical requirements) for the employment of railway employees and for the issue of certificates of competency,	2 3 4
(o)	the management of fatigue, including safe hours of work and periods between work for railway employees,	5 6
(p)	rules relating to railway network operations and operations of specified operators and the making of any such rules.	7 8
(3)	Without limiting subsection (2), regulations made under subsection (2) (n) or (p) may provide for the issue of guidelines by the Director-General with respect to the matters referred to in those paragraphs.	9 10 11 12
(4)	The regulations may exempt, or provide for the exemption of, either absolutely or subject to conditions, any person, railway, part of a railway or operation from all or any of the provisions of this Act.	13 14 15
(5)	In the event of an inconsistency between a by-law or regulation made, or taken to be made, under the <i>Transport Administration Act 1988</i> and a regulation made under this Act, the regulation made under this Act prevails to the extent of the inconsistency.	16 17 18 19
(6)	A regulation made under this Act does not limit the operation of a by-law or regulation made, or taken to be made, under the <i>Transport Administration Act 1988</i> so far as it can operate concurrently with a regulation made under this Act.	20 21 22 23
(7)	The regulations may create offences punishable by a penalty not exceeding 250 penalty units.	24 25
118	Repeal	26
	The <i>Rail Safety Act 1993</i> is repealed.	27
119	Savings and transitional provisions	28
	Schedule 5 has effect.	29
120	Amendment of Acts	30
(1)	The <i>Passenger Transport Act 1990</i> is amended as set out in Schedule 6.	31 32
(2)	The Acts specified in Schedule 7 are amended as set out in that Schedule.	33 34

121 Review of Act

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- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 2
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- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. 5
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- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. 7
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Schedule 1	Railway employees—alcohol or other drugs	1
		2
	(Section 42 (5))	3
1	Application of Schedule	4
	This Schedule applies to the testing of railway employees for the presence of alcohol or drugs.	5 6
2	Regulations relating to alcohol and drug testing	7
(1)	The regulations may make provision for or with respect to the following:	8 9
(a)	the appointment of authorised officers and the authorisation of persons:	10 11
(i)	to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or drugs, and	12 13 14
(ii)	to operate equipment for that purpose,	15
(b)	the circumstances when tests for detecting the presence of alcohol or drugs may be conducted, including (but not limited to) random testing and testing of employees when about to carry out, or while on duty for the purpose of carrying out, railway safety work,	16 17 18 19 20
(c)	the conduct of testing, which may include the taking of blood or urine samples or other body tissues or fluids,	21 22
(d)	the taking of samples of blood or urine or other body fluids or tissues,	23 24
(e)	the devices used in carrying out breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices,	25 26 27
(f)	the accreditation of persons conducting analyses for the presence of drugs,	28 29
(g)	the procedure for the handling and analysis of samples of blood or urine or other body tissues or fluids,	30 31
(h)	offences relating to the carrying out of railway safety work while under the influence of alcohol or any other drug,	32 33

(i)	offences relating to the carrying out of railway safety work while the prescribed concentration of alcohol is present in the employee's blood,	1 2 3
(j)	offences relating to the carrying out of railway safety work while a drug (other than alcohol), or a prescribed concentration or amount of any such drug, is present in the employee's blood or urine or other body tissues or fluids,	4 5 6 7
(k)	offences relating to refusal or failure to undergo tests or otherwise comply with test procedures or interference with test results,	8 9 10
(l)	offences relating to refusal or failure to administer tests or take samples or to do so in accordance with required procedures,	11 12
(m)	evidence in proceedings as to matters relating to drug and alcohol testing,	13 14
(n)	without limiting paragraph (m), the use of certificates as to concentration of alcohol or presence of drugs as evidence of the matters stated in the certificate in proceedings for offences,	15 16 17
(o)	confidentiality of test results,	18
(p)	protection against liability for persons administering tests or taking samples of blood or urine or other body tissues or fluids,	19 20
(q)	disciplinary action that may be taken consequent on a breach of regulations made under this clause.	21 22
(2)	An offence under a regulation made under this clause relating to a refusal or failure by a railway employee to undergo tests or otherwise comply with test procedures or to interference by a railway employee with test results, may, in addition to the penalty provided for by section 117 for offences under the regulations, be punishable by a period of imprisonment not exceeding 9 months.	23 24 25 26 27 28

Schedule 2	Fatigue management	1
	(Section 43 (3))	2
1	Working hours for railway employees driving freight trains	3
	The following conditions of work apply to railway employees who drive freight trains:	4
		5
	(a) In the case of a 2 person operation, the maximum shift length to be worked is 12 hours.	6
		7
	(b) In the case of a one person operation, the maximum shift length to be worked is 9 hours.	8
		9
	(c) In the case of a one person operation, there is to be a minimum break of not less than 30 minutes taken at some time between the third and fifth hour of each shift.	10
		11
		12
	(d) There is to be a break of at least 11 continuous hours between each shift worked by a railway employee where the employee ends a shift at the home depot.	13
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	(e) There is to be a break of at least 7 continuous hours between each shift worked by a railway employee where the employee ends a shift away from the home depot and the break is taken away from the home depot.	16
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	(f) A maximum number of 12 shifts is to be worked in any 14-day period.	20
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2	Working hours for railway employees driving single manning passenger trains	22
		23
	(1) The following conditions of work apply to railway employees who drive passenger trains in a one person operation:	24
		25
	(a) The maximum shift length to be worked is 10 hours for the driver of an intercity or interurban train or 9 hours for the driver of a suburban train.	26
		27
		28
	(b) There is to be a break of at least 11 continuous hours between each shift worked by a railway employee where the employee ends a shift at the home depot.	29
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(c)	There is to be a break of at least 7 continuous hours between each shift worked by a railway employee where the employee ends a shift away from the home depot and the break is taken away from the home depot.	1 2 3 4
(d)	A maximum number of 12 shifts is to be worked in any 14-day period.	5 6
(2)	The conditions of work set out in clause 1 (a) and (d)–(f) apply to railway employees who drive passenger trains in a 2 person operation.	7 8
3	Emergencies and accidents	9
	The requirements of this Schedule do not apply in the event of:	10
(a)	an accident or emergency, or	11
(b)	any urgent circumstances approved by the Director-General,	12
	if the driver or drivers concerned indicate their fitness to work the extended hours.	13 14
4	Relationship with State industrial instruments	15
	Except as provided by the regulations, this Schedule prevails over any inconsistent State industrial instrument (whether made before or after the commencement of this clause) to the extent that this Schedule provides for shorter hours of work or additional or longer breaks from work than are provided for by the State industrial instrument.	16 17 18 19 20
5	Regulations	21
	The regulations may amend this Schedule (other than this clause) for or with respect to the following matters:	22 23
(a)	modifying conditions of work set out in this Schedule,	24
(b)	prescribing other conditions of work for railway employees for the purposes of fatigue management or regulating safe hours of work and periods between work.	25 26 27

Schedule 3	Notifiable occurrences	1
	(Section 64)	2
1	Notifiable occurrences	3
	An occurrence is a <i>notifiable occurrence</i> if it:	4
(a)	occurs in or on railway premises or with respect to a railway or the infrastructure of a railway, and	5 6
(b)	results in or may potentially result in a derailment, a collision, a fatality, permanent or temporary incapacitating injury to any person, substantial damage to railway premises or any other property in or on railway premises or substantial damage to other property, and	7 8 9 10 11
(c)	arises out of any of the following circumstances:	12
(i)	an act or omission of a railway employee,	13
(ii)	an act or omission by any other person,	14
(iii)	a failure, defect or design fault in equipment on rolling stock,	15 16
(iv)	a failure, defect or design fault in the infrastructure of a railway,	17 18
(v)	a failure to comply with safe working procedures,	19
(vi)	a fire or explosion,	20
(vii)	inadequacy or failure of systems for the safe operation, construction or maintenance of a railway,	21 22
(viii)	environmental conditions.	23
2	Definitions	24
	In this Schedule:	25
	<i>permanent incapacitating injury</i> includes loss of sight or of a limb.	26
	<i>temporary incapacitating injury</i> means an injury that necessitates absence from work for longer than 7 days.	27 28

Schedule 4	Rail investigation panels	1
	(Section 67 (7))	2
1	Definition	3
	In this Schedule:	4
	<i>Chairperson</i> means the Chairperson of rail investigation panels appointed under section 67.	5 6
2	Rail investigation panels	7
	(1) There are to be rail investigation panels for the purposes of this Act.	8
	(2) A rail investigation panel has and may exercise the jurisdiction and functions conferred or imposed on it by or under this or any other Act.	9 10
3	Constitution of panels	11
	(1) If the Director-General or Minister, or the Chairperson under section 67 (4), decides to refer a matter to a rail investigation panel, the Minister must, in consultation with the Chairperson, appoint a rail investigation panel for the purpose of conducting a rail safety inquiry.	12 13 14 15
	(2) The Chairperson is to be a member of each rail investigation panel.	16
	(3) In the case of a rail safety inquiry into a railway accident or incident that resulted in the death of any person, the rail investigation panel must consist of not fewer than 3 members.	17 18 19
	(4) Subclause (3) does not apply if the death concerned:	20
	(a) is a suspected suicide, or	21
	(b) is a death of a person who died while trespassing, or	22
	(c) arose out of a level-crossing accident subject to investigation by the coroner, or	23 24
	(d) is the subject of a criminal investigation.	25
	(5) The Minister may, subject to subclauses (1) and (2) and the regulations, appoint such persons as the Minister thinks fit as members of a rail investigation panel.	26 27 28
	(6) Without limiting subclause (5), the Minister may appoint a person exercising powers, or holding office under, an Act of the Commonwealth as a member of a rail investigation panel.	29 30 31

(7) The regulations may make provision for or with respect to the qualifications and appointment of members of rail investigation panels.	1 2
(8) A member of a rail investigation panel (other than the Chairperson), while sitting on the panel, is entitled to be paid at the rate determined by the Minister.	3 4 5
4 Chairperson of rail investigation panels	6
(1) Subject to this Schedule, the Chairperson holds office for such period (not exceeding 3 years) as is specified in the Chairperson's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	7 8 9 10
(2) The Chairperson is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Chairperson.	11 12 13
(3) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson, and the Minister may revoke any such appointment.	14 15 16
(4) In the absence of the Chairperson, the Chairperson's deputy may, if available, act in the place of the Chairperson.	17 18
(5) While acting in the place of the Chairperson, a person:	19
(a) has all the functions of the Chairperson and is taken to be the Chairperson, and	20 21
(b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.	22 23 24
(6) For the purposes of this clause, a vacancy in the office of the Chairperson is taken to be an absence of the Chairperson.	25 26
(7) For the purposes of exercising his or her functions under this Act, the Chairperson is taken to be an authorised officer.	27 28
5 Vacancy in office of Chairperson	29
(1) The office of Chairperson becomes vacant if the Chairperson:	30
(a) dies, or	31
(b) completes a term of office and is not re-appointed, or	32
(c) resigns the office by instrument in writing addressed to the Minister, or	33 34

(d)	is removed from office by the Governor under this clause, or	1
(e)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	2 3 4 5
(f)	becomes a mentally incapacitated person, or	6
(g)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	7 8 9 10 11
(2)	The Governor may at any time remove the Chairperson from office.	12
(3)	If the office of Chairperson becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	13 14
6	Procedure of panels	15
(1)	The procedure for the meetings of a rail investigation panel is, subject to this Act and the regulations, to be as determined by the panel.	16 17
(2)	Without limiting subclause (1), the regulations may make provision for or with respect to the provision of assistance to, or representation of, persons attending a rail safety inquiry, whether conducted by the Director-General or a rail investigation panel.	18 19 20 21
7	Decisions of panel	22
(1)	A decision supported by a majority of members of a rail investigation panel is the decision of the panel.	23 24
(2)	The panel's report to the Minister on any rail safety inquiry is to include any minority decision.	25 26
8	Effect of certain other Acts	27
	If by or under any Act provision is made:	28
(a)	requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	29 30 31

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Schedule 4 Rail investigation panels

- (b) prohibiting the person from engaging in employment outside the duties of that office, 1
2
- the provision does not operate to disqualify the person from holding that office and also the office of a member of a rail investigation panel or from accepting and retaining any remuneration payable to the person under this Act as a member of a rail investigation panel. 3
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Schedule 5	Savings and transitional provisions	1
	(Section 119)	2
Part 1	Preliminary	3
1	Regulations	4
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	5
	this Act	6
	this Act	7
(2)	Any such provision may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.	8
		9
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	10
		11
		12
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	13
		14
		15
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	16
		17
		18
Part 2	Provisions consequent on the enactment of this Act	19
		20
2	Definitions	21
	In this Schedule:	22
	<i>continuing operator</i> means a person taken to be an accredited person under clause 3.	23
		24
	<i>the commencement day</i> means the day on which Part 2 of this Act commences.	25
		26
	<i>the former Act</i> means the <i>Rail Safety Act 1993</i> .	27

3	Certain owners taken to be accredited	1
(1)	A person who, immediately before the commencement day, was an accredited person under the former Act is taken to be an accredited person for the purposes of this Act and the provisions of this Act and the regulations apply accordingly.	2 3 4 5
(2)	The accreditation of the continuing operator continues in force, subject to the same terms as in force immediately before that commencement, until it is varied or suspended or cancelled under this Act.	6 7 8
(3)	Except as provided by this Schedule, or by a condition imposed on the accreditation of the continuing operator by the Director-General, the operator is not required to comply with any provision of this Act relating to applications for accreditation under this Act.	9 10 11 12
(4)	For the purposes of section 11, the continuing operator must give to the Director-General an annual safety report under section 11 not later than 12 months after the commencement of this clause and on each anniversary of that commencement while the operator remains an accredited person.	13 14 15 16 17
(5)	The Director-General may, not later than 6 months after the commencement day, require a continuing operator to submit or provide to the Director-General any system, information, plan or other particulars that the person would be required to submit or provide if the person were seeking accreditation for the first time.	18 19 20 21 22
(6)	It is a condition of a continuing operator's accreditation that the operator comply with a requirement made by the Director-General under this clause.	23 24 25
(7)	For the purposes of this Act, the date of the anniversary of a continuing operator's accreditation is taken to be the anniversary of the operator's accreditation under the former Act.	26 27 28
4	Authorised officers—alcohol or other drugs	29
(1)	On the commencement of this subclause, a person who was an authorised officer under the former Act immediately before that commencement is taken to be an authorised officer for the same purposes under this Act for a period of 12 months after that commencement.	30 31 32 33 34

(2)	On the commencement of regulations made under Schedule 1, a person authorised for the purposes of Schedule 2 of, or who was an authorised officer under, the former Act immediately before that day is taken to be authorised for the purposes of those regulations for a period of 12 months after the commencement day.	1 2 3 4 5
5	Private sidings	6
	Section 26 of the former Act continues to apply in respect of a person who owns a private siding until 6 months after the commencement day or until the person complies with the requirements of section 23 of this Act, whichever occurs first.	7 8 9 10
6	Certificates of competency	11
(1)	A person who holds a certificate of competency in force immediately before the repeal of Division 2 of Part 2 of the former Act is taken to be the holder of a certificate of competency, in respect of the same railway safety work, issued under Division 3 of Part 2 of this Act.	12 13 14 15
(2)	This clause ceases to have effect 6 months after the commencement day.	16 17
7	Applications to Administrative Decisions Tribunal	18
	Nothing in this Act affects an application for a review made to the Administrative Decisions Tribunal under the former Act before the commencement of this clause.	19 20 21
8	Drug and alcohol programs	22
	A continuing operator is not required to comply with section 42, in so far as it requires the preparation and implementation of a drug and alcohol program, until 6 months after the commencement of that section.	23 24 25 26
9	Drug and alcohol testing	27
(1)	Schedule 2 to the <i>Rail Safety Act 1993</i> continues to have effect pending the commencement of regulations made under Schedule 1.	28 29
(2)	Subclause (1) is subject to any regulations made under this Schedule.	30

10	Fatigue management	1
	A continuing operator is not required to comply with section 43 (1) and (2) until 6 months after the commencement of those subsections.	2 3
11	Annual fees	4
	The repeal of the former Act does not affect the liability of an accredited person in respect of a fee fixed under Division 6 of Part 2 of the former Act.	5 6 7
12	Inquiries	8
	The repeal of the former Act does not affect the obligation of an accredited person or any other person to inquire into, and report on, any railway accident or incident that occurred before the commencement of this clause and the provisions of the former Act continue to apply accordingly.	9 10 11 12 13
13	Regulations	14
	(1) A regulation made for the purposes of section 79B of the former Act, and in force immediately before the repeal of that section by this Act, continues in force and is taken to have been made under this Act, pending the commencement of regulations made under section 95.	15 16 17 18
	(2) Subclause (1) is subject to any regulations made under this Schedule.	19
	(3) For the purposes of section 6 of the <i>Subordinate Legislation Act 1989</i> , that section applies in respect of any principal regulation made under this Act within 6 months of the commencement of this clause as if the responsible Minister within the meaning of that Act had issued a certificate under section (6) (1) (b) of that Act.	20 21 22 23 24
	Note. The effect of subclause (3) is to postpone the requirement for a regulatory impact statement for a period of 4 months after the regulation is made (see section 6 (2) of the <i>Subordinate Legislation Act 1989</i>).	25 26 27

Schedule 6	Amendment of Passenger Transport Act 1990	1
		2
	(Section 120 (1))	3
[1]	Section 6A	4
	Insert after section 6:	5
	6A Notes	6
	Notes in the text of this Act do not form part of this Act.	7
[2]	Section 9C	8
	Insert after section 9B:	9
	9C Accreditation conditions relating to drug and alcohol programs and testing	10
		11
	(1) Without limiting section 9B, it is a condition of an accreditation of an accredited service operator that carries on a public passenger service by means of a bus or a regular passenger service by means of a ferry:	12
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		15
	(a) that the operator prepare and implement a drug and alcohol program for its transport safety employees that complies with guidelines approved by the Director-General for the purposes of this section and published in the Gazette, and	16
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		20
	(b) that the operator ensure that all transport safety employees employed, or contracted, by the operator to perform transport safety work are not under the influence of alcohol or any other drug when about to carry out, or while on duty for the purposes of carrying out (whether or not carrying out), transport safety work.	21
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	(2) The drug and alcohol program is to include any matters required to be included by the guidelines approved by the Director-General for the purposes of this section.	27
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		29

- (3) Without limiting subsection (1) (a), the guidelines are to include provisions for or with respect to the following:
1
2
- (a) protocols for fair procedures,
3
- (b) education and assistance of transport safety employees.
4
- (4) The Director-General may at any time arrange with accredited service operators for the random testing of any person on duty for the purposes of carrying out transport safety work for the presence of alcohol or any other drug to ensure that the accredited service operators are complying with the conditions imposed by this section.
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- (5) Nothing in this Act or the regulations derogates from the operation of Division 4 of Part 2 of the *Road Transport (Safety and Traffic Management) Act 1999* or the *Marine (Boating Safety—Alcohol and Drugs) Act 1991*.
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- (6) Schedule 5 has effect.
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- (7) For the purposes of this section, a transport safety employee is to be regarded as being about to carry out transport safety work if the employee:
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17
18
- (a) has left home or a temporary residence for work (being transport safety work), and
19
20
- (b) has not commenced work after having so left home or the temporary residence.
21
22
- (8) In this section:
23
- transport safety employee*** means:
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- (a) an employee or a contractor of an accredited service operator who performs transport safety work, or
25
26
- (b) a person who, without remuneration or reward, voluntarily and without obligation performs transport safety work for an accredited service operator, or
27
28
29
- (c) an individual who is an accredited service operator and who performs transport safety work.
30
31
- transport safety work*** means any of the following classes of work:
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33
- (a) work relating to the driving or other operation of a bus, the loading or disembarking of passengers from a bus or the movement of buses,
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(b)	work relating to the driving or other operation of a ferry (including, but not limited to, the course, propulsion or berthing of a ferry), the loading or disembarking of passengers from a ferry or the movement of ferries,	1 2 3 4
(c)	work relating to the repair, maintenance or upgrading of buses, ferries, bus or ferry terminals, ferry wharves or bus or ferry maintenance facilities,	5 6 7
(d)	work involving the development, management or monitoring of safeworking systems for public passenger services carried on by means of buses or ferries,	8 9 10
(e)	any other work that is prescribed by the regulations as transport safety work.	11 12
[3]	Section 53C	13
	Insert after section 53B:	14
	53C Drug and alcohol programs and testing relating to non-accredited ferry services	15 16
(1)	This section applies to a person (the <i>operator</i>) who carries on a charter service, a long-distance service or a tourist service by means of a ferry.	17 18 19
(2)	An operator must:	20
(a)	prepare and implement a drug and alcohol program for its transport safety employees that complies with guidelines approved by the Director-General for the purposes of this section and published in the Gazette, and	21 22 23 24 25
(b)	ensure that all transport safety employees employed, or contracted, by the operator to perform transport safety work are not under the influence of alcohol or any other drug when about to carry out, or while on duty for the purposes of carrying out (whether or not carrying out), transport safety work, and	26 27 28 29 30 31
(c)	report to the Director-General, if requested in writing by the Director-General to do so, as to the implementation of the operator's drug and alcohol program.	32 33 34
	Maximum penalty: 500 penalty units.	35

- (3) The drug and alcohol program is to include any matters required to be included by the guidelines approved by the Director-General for the purposes of this section. 1
2
3
- (4) Without limiting subsection (2) (a), the guidelines are to include provisions for or with respect to the following: 4
5

 - (a) protocols for fair procedures, 6
 - (b) education and assistance of transport safety employees. 7
- (5) The Director-General may at any time arrange with an operator for the random testing of any person on duty for the purposes of carrying out transport safety work with respect to services operated by the operators for the presence of alcohol or any other drug to ensure that the operator is complying with this section. 8
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- (6) For the purposes of this section, a transport safety employee is to be regarded as being about to carry out transport safety work if the employee: 14
15
16

 - (a) has left home or a temporary residence for work (being transport safety work), and 17
18
 - (b) has not commenced work after having so left home or the temporary residence. 19
20
- (7) In this section: 21

transport safety employee means: 22

 - (a) an employee or a contractor of an operator who performs transport safety work, or 23
24
 - (b) a person who, without remuneration or reward, voluntarily and without obligation performs transport safety work for an operator. 25
26
27

transport safety work means any of the following classes of work: 28
29

 - (a) work relating to the driving or other operation of a ferry (including, but not limited to, the course, propulsion or berthing of a ferry), the loading or disembarking of passengers from a ferry or the movement of ferries, 30
31
32
33
 - (b) work relating to the repair, maintenance or upgrading of ferries, ferry terminals, ferry wharves or ferry maintenance facilities, 34
35
36

- (c) work involving the development, management or monitoring of safeworking systems for public passenger services carried on by means of ferries, 1
2
3
- (d) any other work that is prescribed by the regulations as transport safety work. 4
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Note. Schedule 5 (which is given effect to by section 9C) applies to the testing of employees and contractors of operators. 6
7

[4] Schedule 3 Savings and transitional provisions 8

Insert at the end of clause 2 (1): 9

Rail Safety Act 2002 (but only in relation to the amendments made to this Act) 10
11

[5] Schedule 5 12

Insert at the end of Schedule 4: 13

Schedule 5 Transport safety employees—alcohol or other drugs 14
15

(Section 9C (6)) 16

1 Definitions 17

In this Schedule: 18

transport safety employee means: 19

- (a) an employee or a contractor of an accredited service operator, or of an operator of a charter service, a long-distance service or a tourist service by means of a ferry, who performs transport safety work, or 20
21
22
23
- (b) a person who, without remuneration or reward, voluntarily and without obligation performs transport safety work for an accredited service operator or an operator of a charter service, a long-distance service or a tourist service by means of a ferry, or 24
25
26
27
28

- (c) an individual who is an accredited service operator, or an operator of a charter service, a long-distance service or a tourist service by means of a ferry, and who performs transport safety work. 1
2
3
4
- transport safety work* has the same meaning as it has in section 9C. 5
6

2 Application of Schedule 7

This Schedule applies to the testing of transport safety employees for the presence of alcohol or drugs. 8
9

3 Regulations relating to drug testing 10

- (1) The regulations may make provision for or with respect to the following: 11
12
 - (a) the appointment of authorised officers and the authorisation of persons: 13
14
 - (i) to administer breath tests, breath analyses or other tests for the purpose of detecting the presence of alcohol or drugs, and 15
16
 - (ii) to operate equipment for that purpose, 17
18
 - (b) the circumstances when tests for detecting the presence of alcohol or drugs may be conducted, including (but not limited to) random testing and testing of employees when about to carry out, or while on duty for the purpose of carrying out, transport safety work, 19
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21
22
23
 - (c) the conduct of testing, which may include the taking of blood or urine samples or other body tissues or fluids, 24
25
 - (d) the taking of samples of blood or urine or other body tissues or fluids, 26
27
 - (e) the devices used in carrying out breath tests, breath analyses and other tests, including the calibration, inspection and testing of those devices, 28
29
30
 - (f) the accreditation of persons conducting analyses for the presence of drugs, 31
32
 - (g) the procedure for the handling and analysis of samples of blood or urine or other body tissues or fluids, 33
34

(h)	offences relating to the carrying out of transport safety work while under the influence of alcohol or any other drug,	1 2 3
(i)	offences relating to the carrying out of transport safety work while the prescribed concentration of alcohol is present in the employee's blood,	4 5 6
(j)	offences relating to the carrying out of transport safety work while a drug (other than alcohol), or a prescribed concentration or amount of any such drug, is present in the employee's blood or urine or other body tissues or fluids,	7 8 9 10 11
(k)	offences relating to refusal or failure to undergo tests or otherwise comply with test procedures or interference with test results,	12 13 14
(l)	offences relating to refusal or failure to administer tests or take samples or to do so in accordance with required procedures,	15 16 17
(m)	evidence in proceedings as to matters relating to drug and alcohol testing,	18 19
(n)	without limiting paragraph (m), the use of certificates as to concentration of alcohol or presence of drugs as evidence of the matters stated in the certificate in proceedings for offences,	20 21 22 23
(o)	confidentiality of test results,	24
(p)	protection against liability for persons administering tests or taking samples of blood or urine or other body tissues or fluids,	25 26 27
(q)	disciplinary action that may be taken consequent on a breach of regulations made under this clause.	28 29
(2)	An offence under a regulation made under this clause relating to a refusal or failure by a transport safety employee to undergo tests or otherwise comply with test procedures or to interference by a transport safety employee with test results, may, in addition to the penalty provided for by section 63 for offences under the regulations, be punishable by a period of imprisonment not exceeding 9 months.	30 31 32 33 34 35 36

Schedule 7 Amendment of other Acts	1
(Section 120 (2))	2
7.1 Fines Act 1996 No 99	3
Schedule 1 Statutory provisions under which penalty notices issued	4
	5
Omit “ <i>Rail Safety Act 1993</i> , section 88”.	6
Insert instead “ <i>Rail Safety Act 2002</i> , section 105”.	7
7.2 Freedom of Information Act 1989 No 5	8
Schedule 1 Exempt documents	9
Insert at the end of clause 20 (e):	10
, or	11
(f) matter relating to an inquiry into a railway accident or incident under section 66 or 67 of the <i>Rail Safety Act 2002</i> .	12
	13
	14
(2) Despite subclause (1) (f), a document containing matter referred to in that paragraph ceases to be an exempt document:	15
	16
(a) in the case of a document containing matter relating to an inquiry under section 66 into an accident or incident that is not also the subject of an inquiry under section 67, if the inquiry under section 66 is included in a list forwarded to the Minister under that section, or	17
	18
	19
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	21
(b) in the case of a document containing matter relating to an inquiry under section 67, when the report into the inquiry is tabled before both Houses of Parliament.	22
	23
	24

7.3 Industrial Relations Act 1996 No 17	1
	2
Section 210 Freedom from victimisation	3
Insert after section 210 (1) (i):	4
(ia) informs any person or body of, or gives evidence in	5
relation to, a notifiable occurrence within the meaning	6
of the <i>Rail Safety Act 2002</i> .	7
7.4 Road Transport (Safety and Traffic Management) Amendment	8
(Blood Sampling) Act 2000 No 78	9
[1] Section 7 Amendment of Rail Safety Act 1993 No 50	10
Omit the section.	11
[2] Section 8 Amendment of Rail Safety Regulation 1999	12
Omit the section.	13
[3] Schedule 5 Amendment of Rail Safety Act 1993 No 50	14
Omit the Schedule.	15
[4] Schedule 6 Amendment of Rail Safety Regulation 1999	16
Omit the Schedule.	17
	18
7.5 Search Warrants Act 1985 No 37	19
Section 10 Definitions	20
Omit “section 75 of the <i>Rail Safety Act 1993</i> ,” from the definition of <i>search</i>	21
<i>warrant</i> .	22
Insert instead “section 90 of the <i>Rail Safety Act 2002</i> ,”.	23

7.6 Transport Administration Act 1988 No 109	1
[1] Sections 7A, 37A, 104E (2), clause 11 (2) (c) of Schedule 6A and clause 8 of Schedule 6AA	2
	3
Omit “ <i>Rail Safety Act 1993</i> ” wherever occurring.	4
Insert instead “ <i>Rail Safety Act 2002</i> ”.	5
[2] Section 19M Transfer of staff	6
Omit “(Transfer of certain SRA staff (other than certain chief executives))”.	7
[3] Section 58A	8
Insert after section 58:	9
58A Transfer of staff	10
Schedule 6 has effect with respect to a transfer of members of	11
staff of the Rail Infrastructure Corporation to the State Rail	12
Authority and from that Authority to the Rail Infrastructure	13
Corporation.	14
[4] Section 70 Payments into State Rail Authority Fund	15
Omit “section 79A (or the regulations under section 79B) of the <i>Rail Safety Act 1993</i> ” from section 70 (c).	16
	17
Insert instead “regulations under section 95 of the <i>Rail Safety Act 2002</i> ”.	18
[5] Section 104L Definitions	19
Omit the definition of <i>operate</i> . Insert instead:	20
<i>operate</i> a light rail system means:	21
(a) operate or move, or cause the operation or moving, by	22
any means, of any rolling stock on a light rail system,	23
and includes operate a light rail service if the operator of	24
the service operates or moves, or causes the operation or	25
moving of, rolling stock, or	26
(b) construct and maintain, or construct or maintain, rolling	27
stock.	28

[6] Schedule 6	1
Omit the heading. Insert instead:	2
Schedule 6 Transfer of certain staff	3
[7] Schedule 6, section reference	4
Omit “59C”. Insert instead “58A”.	5
[8] Schedule 6, Part 1, heading	6
Insert before clause 1:	7
Part 1 Preliminary	8
[9] Schedule 6, clause 1, Definitions	9
Insert in alphabetical order:	10
<i>former RIC staff</i> means the members of staff of the RIC who, after the commencement of Part 3, are transferred to the State Rail Authority by an order made under this Schedule.	11 12 13
[10] Schedule 6, clause 1	14
Omit the definition of <i>former SRA staff</i> . Insert instead:	15
<i>former SRA staff</i> means:	16
(a) the members of staff of the SRA immediately before the commencement of this Schedule (other than the holder of a position specified in clause 48 or 49 of Part 3 of Schedule 7) who, after that commencement and before the commencement of Part 3, are transferred to a Rail Corporation or the RSA by an order made under this Schedule, or	17 18 19 20 21 22 23
(b) the members of staff of the SRA who, after the commencement of Part 3, are transferred to the Rail Infrastructure Corporation by an order made under this Schedule.	24 25 26 27

[11] Schedule 6, clause 1A	1
Insert after clause 1:	2
1A Transport Appeal Boards Act 1980 not to apply to Rail Corporations	3
	4
The <i>Transport Appeal Boards Act 1980</i> does not apply in relation to a Rail Corporation.	5
	6
[12] Schedule 6, Part 2, heading	7
Insert before clause 2:	8
Part 2 Original transfers of SRA staff to Rail Corporations	9
	10
[13] Schedule 6, clause 3A	11
Insert after clause 3:	12
3A Transfers to cease	13
An order may not be made under this Part on or after the commencement of Part 3.	14
	15
[14] Schedule 6, clause 7, Special provision relating to long service leave and sick leave for staff of Rail Corporations	16
	17
Omit “clause 10 (relating to sick leave) of the <i>Transport Administration (Staff) Regulation 1995</i> ” from clause 7 (1) (b).	18
	19
Insert instead “clause 11 (relating to sick leave) of the <i>Transport Administration (Staff) Regulation 2000</i> ”.	20
	21
[15] Schedule 6, clause 8, Applications for transfer by certain SRA staff	22
Omit “, in the period of 6 years after the commencement of this Schedule,” from clause 8 (1).	23
	24

[16] Schedule 6, Part 3	1
Omit clause 10. Insert instead:	2
Part 3 Transfer of SRA and RIC staff	3
10 Transfer of SRA staff to Rail Infrastructure Corporation	4
(1) The Minister may, by order in writing, provide that such SRA staff as are specified or described in the order are transferred to the Rail Infrastructure Corporation.	5 6 7
(2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of the Rail Infrastructure Corporation, in accordance with the terms of the order, on the day specified in the order.	8 9 10 11
11 Transfer of RIC staff to State Rail Authority	12
(1) The Minister may, by order in writing, provide that such RIC staff as are specified or described in the order are transferred to the State Rail Authority.	13 14 15
(2) A person who is the subject of an order under this clause is taken for all purposes as having become an employee of the State Rail Authority, in accordance with the terms of the order, on the day specified in the order.	16 17 18 19
12 Preservation of remuneration and other conditions of employment on transfer	20 21
(1) Except as otherwise provided by this Part and the regulations, the terms and conditions on which former SRA staff or former RIC staff become employed on being transferred under this Schedule (including terms and conditions as to remuneration, allowances and duration of employment) are those on which they were employed by the SRA or the RIC (as the case requires) immediately before the transfer.	22 23 24 25 26 27 28
(2) Nothing in this clause prevents the terms and conditions of employment referred to in subclause (1) from being varied.	29 30

13	Preservation of leave and other entitlements for previous service and mobility entitlements for future service	1
		2
(1)	Continuous service of former SRA staff or former RIC staff with the SRA and the RIC is taken, for all purposes, as service with whichever of the SRA or the RIC is the current employer.	3
		4
		5
(2)	This clause applies, without limiting its operation, for the purpose of the accrual of leave with the current employer and for the purpose of any entitlements to redundancy payments from the current employer.	6
		7
		8
		9
(3)	In particular, former SRA staff or former RIC staff retain, on transfer under this Schedule (or on subsequent transfer) to the RIC or SRA, any rights to annual leave, long service leave and sick leave accrued in their previous employment with the SRA or RIC, or both.	10
		11
		12
		13
		14
(4)	A person's entitlement to any such leave is to be calculated:	15
(a)	for the part of any period during which that leave accrued or was accruing that occurred before the day of transfer—at the rate for the time being applicable to the person before that day, and	16
		17
		18
		19
(b)	for the part of the period that occurred after the day of transfer—at the rate for the time being applicable to the person after that day.	20
		21
		22
14	Special provision relating to long service leave and sick leave for staff of RIC	23
		24
(1)	For the purposes of this Part, terms and conditions, in relation to former SRA staff who are transferred to the RIC pursuant to an order to which this Part applies, include the provisions of:	25
		26
		27
(a)	Schedule 5 (Extended leave for staff of each Authority) as if references in that Schedule to:	28
		29
(i)	an officer included references to an employee of the RIC, and	30
		31
(ii)	a relevant Authority included references to the RIC, and	32
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| (b) | clause 11 (relating to sick leave) of the <i>Transport Administration (Staff) Regulation 2000</i> as if the references in that clause to: | 1
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| (i) | SRA officers and other employees of the SRA included references to employees of the RIC, and | 4
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6 |
| (ii) | the SRA included references to the RIC. | 7 |
| (2) | The provisions referred to in subclause (1) are, in so far as they relate to the RIC, taken to have been fixed by an award. | 8
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| 15 | No payment out on transfer or dual benefits | 10 |
| (1) | This clause applies to a person who becomes, because of this Part, a member of staff of the RIC or the SRA. | 11
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| (2) | A person to whom this clause applies is not entitled to receive any payment or other benefit merely because the person ceases to be a member of staff of the RIC or the SRA. | 13
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| (3) | A person to whom this clause applies is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service. | 16
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| 16 | Multiple transfers | 19 |
| | A person may be the subject of more than one order under this Part. | 20
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| 17 | Applications for transfer by former SRA or RIC staff | 22 |
| (1) | This clause applies to the filling of any vacant position in the SRA or RIC if the applicants eligible to apply for the vacancy are limited to the staff of the SRA or RIC. | 23
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| (2) | Any former SRA or RIC staff who are transferred under this Part are eligible to apply for a vacancy to which this clause applies as if they were members of staff of the SRA or RIC. | 26
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| (3) | This clause does not apply to former SRA or RIC staff who are no longer employed by the SRA or the RIC. | 29
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| (4) | Any former SRA or RIC staff who apply for any vacant position to which this clause applies have the same rights of appeal against the filling of the position as they would have if they were employees of the SRA or RIC, as the case may be. | 31
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Rail Safety Bill 2002

Schedule 7 Amendment of other Acts

[17] Schedule 7 Savings, transitional and other provisions	1
Insert at the end of clause 2 (1):	2
<i>Rail Safety Act 2002</i> (but only in relation to amendments to this Act)	3 4