

## Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to establish general duties to ensure safety in relation to railway operations, and
- (b) to implement in New South Wales a nationally consistent scheme for other rail safety requirements and accreditation of rail transport operators, and
- (c) to repeal the Rail Safety Act 2002 and to re-enact certain provisions of that Act relating to offences, and
- (d) to make consequential amendments to other Acts.

### Outline of provisions

#### Part 1 Preliminary

The proposed Part (proposed sections 1–7) contains provisions relating to the citation and commencement of the proposed Act, as well as a provision setting out the objects of the proposed Act and provisions defining words and expressions used in the proposed Act. Words and expressions defined include rail infrastructure, rolling stock, rail transport operator, rail infrastructure manager, notifiable occurrence, rolling stock operator, rail safety worker, railway and railway operations. The proposed Part defines the components of a duty under the proposed Act to ensure, so far as is reasonably practicable, safety. The proposed Part also sets out the railways that the proposed Act does not apply to, including slipways and aerial cable operated systems, and describes the classes of work that are rail safety work for the purposes of the proposed Act.

#### Part 2 General rail safety

##### Division 1 Duties to ensure public safety of railway operations

The proposed Division (proposed sections 8–11) imposes on rail transport operators and other persons duties relating to rail safety and makes it an offence to fail to carry out those duties. The duties include the following:

- (a) a requirement that a rail transport operator or person carrying out railway operations must ensure, so far as is reasonably practicable, the safety of the railway operations, with a failure to do particular things being a contravention of the duty. Those things include developing or implementing, so far as is reasonably practicable, safety systems for railway operations, ensuring the competence, health and fitness of rail safety workers and that they are not affected by alcohol or drugs or fatigue, providing adequate facilities for the safety of persons at railway premises and providing information. In the case of rail infrastructure managers they also include ensuring that the design, construction, commissioning and other matters relating to rail infrastructure are done in a way that ensures, so far as is reasonably practicable, the safety of railway operations and that systems and procedures for scheduling, controlling and monitoring railway operations also ensure safety. Rolling stock operators must do similar things,
- (b) a requirement that persons who design, commission, manufacture, supply, install or erect a thing, and who know or ought reasonably to know that the thing is to be used as or in connection with rail infrastructure or rolling stock, ensure, so far as is reasonably practicable, that it is safe when properly used. The duty extends to testing and examination and providing adequate information about its safe use,
- (c) a requirement that a person who decommissions rail infrastructure or rolling stock must ensure, so far as is reasonably practicable, that the decommission is carried out safely and must carry out testing and examination necessary to comply with the duty,

(d) requirements imposed on rail safety workers, when carrying out rail safety work, to take reasonable care for their own safety, the safety of people who may be affected by the workers' acts or omissions and to co-operate with the rail transport operator with respect to any action taken to comply with the proposed Act or regulations under the proposed Act.

The proposed Division also imposes on a defendant, in proceedings for an offence concerning the general duties set out in proposed Division 1 of Part 2, the onus to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty.

#### Division 2 Safety management of railway operations

The proposed Division (proposed sections 12–24) sets out specific requirements for rail transport operators to have and to review safety management systems and makes it an offence not to comply with those requirements. That obligation also extends to contractors (not being employees) who do rail safety work on behalf of a rail transport operator. It will also be an offence not to implement, and to fail to comply with, the safety management system. The safety management system is to comply with requirements to be prescribed by regulations, to identify and assess risks to safety arising from railway operations and specify controls and monitoring procedures relating to those risks. It is to include the following:

(a) measures to manage risks to safety arising to the railway operations of the rail transport operator from operations of other rail transport operators or road and rail crossings,

(b) a security management plan,

(c) an emergency management plan that complies with requirements to be prescribed by regulations,

(d) a health and fitness management program that complies with requirements to be prescribed by regulations,

(e) a drug and alcohol management program that complies with requirements to be prescribed by regulations,

(f) a fatigue management program that complies with requirements to be prescribed by regulations.

Safety performance reports are to be submitted by rail transport operators to the Independent Transport Safety and Reliability Regulator (the ITSRR) annually, or within such other periods as are agreed between the operators and the ITSRR.

In addition, the ITSRR may arrange with a rail transport operator for the random testing of a person who is on duty for the purpose of carrying out rail safety work for the presence of alcohol or drugs. Regulations may be made with respect to testing procedures and offences of failing to comply with test procedure requirements (proposed Schedule 1).

A rail transport operator is required to ensure that each rail safety worker who carries out rail safety work has the competence to do so and to keep records of competence. Procedures for assessing competence are also set out.

The proposed Division also requires rail safety workers to be provided by the rail transport operator with a form of identification sufficient to enable the worker's

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competence and training to be checked by a rail safety officer and makes it an offence for a worker, without a reasonable excuse, not to produce the form of identification on request by a rail safety officer.

The ITSRR may direct a rail transport operator to amend its safety management system.

#### Division 3 Interface co-ordination

The proposed Division (proposed sections 25–33) imposes the following obligations

on rail transport operators, rail infrastructure managers and roads authorities in relation to risks to safety arising from their operations and railway operations of other rail transport operators or from rail or road crossings:

(a) a rail transport operator must assess risks to safety arising from railway operations of other rail transport operators, determine measures to manage the risks and seek to enter interface agreements for managing those risks with the other operators,

(b) a rail infrastructure manager must assess risks to safety arising from rail or road crossings, consider or determine (in the case of public roads) measures to manage the risks and must (in the case of public roads) or may (in the case of other roads) seek to enter into interface agreements for managing those risks with the roads authority for the road concerned,

(c) a roads authority must assess risks to safety arising from rail or road crossings wholly or partly because of railway operations, determine measures to manage the risks and seek to enter interface agreements for managing those risks with the roads authority for the road concerned if it is a public road or any other road (if a rail infrastructure manager has notified the authority that the risks should be managed jointly).

If the relevant agreements are not entered into, the ITSRR may appoint a person to give directions as to the interface arrangements that are to apply and it will be an offence not to comply with a direction. The proposed Division also requires rail transport operators and roads authorities to maintain registers of applicable interface agreements and arrangements determined under the proposed Division.

#### Part 3 Accreditation of rail transport operators

##### Division 1 Requirement for accreditation

The proposed Division (proposed sections 34–37) makes it an offence for a person to carry out railway operations unless the person is a rail transport operator who is accredited under proposed Part 3, carries out the operations on behalf of an accredited person or an exempt person or is exempt from the requirement for accreditation. A person may be accredited to carry out railway operations for specified railways or parts of railways, for a particular service or aspect of railway operations or for specified railway operations such as to permit construction and repair work. It will also be an offence to fail to comply with a condition or restriction of an accreditation or to carry out a railway operation not authorised by an accreditation or in a manner not so authorised, or to cause or permit another person to do so.

##### Division 2 Applications for accreditation

The proposed Division (proposed sections 38–45) sets out requirements for applications to the ITSRR for accreditation. Accreditation may not be granted unless, among other requirements, the ITSRR is satisfied that the applicant has the competence and capacity to manage risks to safety associated with the railway operations and has the competence and capacity to implement the proposed safety management system. Accreditation may be granted subject to conditions or restrictions imposed by the ITSRR and other conditions or restrictions may be imposed by regulations. One or more applicants for accreditation may be directed by the ITSRR to co-ordinate their applications if the ITSRR thinks it necessary to ensure the applicants' railway operations are carried out safely. An accreditation cannot be transferred or assigned but the ITSRR may waive requirements of the proposed Division for a transferee of railway operations.

##### Division 3 Accreditation fees and inspection of documents

The proposed Division (proposed sections 46–51) enables the regulations to prescribe annual accreditation fees and contains other related provisions, including provisions that confer powers on the ITSRR to accept fees by instalments and to waive fees. Rail transport operators are also required to make current notices of

accreditation or exemption available for public inspection. Private siding operators must also make registration notices available for public inspection.

#### Division 4 Surrender, revocation and variation of accreditation

The proposed Division (proposed sections 52–59) enables an accredited person to surrender his or her accreditation and enables the ITSRR to suspend or revoke an accreditation or to impose conditions or restrictions on, or vary the conditions on or restrictions of, an accreditation. Such action may be taken if a person is not able to demonstrate the requirements for accreditation, is not able to comply with the conditions or restrictions of accreditation, has not managed the accredited railway operations for at least 12 months or contravenes the proposed Act or regulations. Notice of any such action is to be given and a person the subject of action may make submissions to the ITSRR. The ITSRR may immediately suspend an accreditation if it considers there is, or would be (without suspension), an immediate and serious risk to safety. The proposed Division also provides for applications by accredited persons to vary accreditations or the conditions or restrictions of accreditations and applies the requirements for the granting of an accreditation to such applications. The proposed Division also makes it clear that any accreditation that is varied is subject to any conditions or restrictions prescribed by the regulations and that are applicable to the varied accreditation.

#### Division 5 Private sidings

The proposed Division (proposed section 60) exempts the rail infrastructure manager of a private siding from accreditation, safety management system and certain notification requirements of the proposed Act but requires the manager to register the siding with the ITSRR and comply with any conditions imposed by the ITSRR with respect to the siding. The manager may also be required, by the regulations, to comply with the safety management system requirements of the proposed Act or the notification requirements.

### Part 4 Safety reports and investigations

#### Division 1 Safety reports

The proposed Division (proposed sections 61–64) enables the ITSRR, by notice in writing, to require a rail transport operator to provide the ITSRR with information about measures taken to promote rail safety or relating to the operator's financial capacity and insurance arrangements. It also enables regulations to be made requiring the provision of information to the ITSRR. It will be an offence to fail to comply with any such requirement. The ITSRR is to make an industry safety report to the Minister for Transport in each year on the carrying out of railway operations of accredited persons, including reporting on rail safety and improvements and changes in rail safety, as well as on any other matters prescribed by the regulations.

Notifiable occurrences (which include accidents or incidents that have, or could have, resulted in significant property damage, serious injury or death) must be reported by a rail safety operator to the ITSRR or another authority specified by the ITSRR. The ITSRR may also require other specified occurrences that endanger or could endanger rail safety to be reported. It will be an offence not to comply with these obligations.

The proposed Division also re-enacts the provision of the Rail Safety Act 2002 that provides for the Chief Investigator of the Office of Transport Safety Investigations (the Chief Investigator) to establish a system for the voluntary reporting by rail safety workers of matters that may affect the safety of railway operations.

#### Division 2 Investigations of accidents and incidents

The proposed Division (proposed sections 65–74) provides for the following investigations and inquiries:

(a) investigations, at the request of the Chief Investigator, by rail transport operators of notifiable occurrences and railway accidents or incidents that may

endanger the safety of railway operations or other matters prescribed by regulations,

(b) investigations by the Chief Investigator of, and reports to the Minister for Transport on, railway accidents or incidents that may endanger the safety of railway operations, either at the discretion of the Chief Investigator or on the Minister's request,

(c) rail safety inquiries by Boards of Inquiry constituted by the Minister into a railway accident or incident or any other event that may affect the safety of railway operations.

The proposed Division prohibits information obtained by the Chief Investigator from a report by a rail transport operator under proposed section 65 from being used (unless a court otherwise directs) in criminal or civil proceedings against the operator. It also sets out the powers of the Chief Investigator and a Board of Inquiry to require persons to answer questions and produce evidence for the purposes of an investigation or a rail safety inquiry. The Chief Investigator may request that a rail safety inquiry be held and assessors may be appointed to sit with and advise a Board of Inquiry. The report of a rail safety inquiry is to be given to the Minister for Transport and tabled in Parliament.

Division 3 Disclosure of train safety records

The proposed Division (proposed sections 75–83) re-enacts sections 71–78 of the Rail Safety Act 2002 relating to the disclosure of train safety records to persons and in proceedings in courts.

Division 4 Audit by ITSRR

The proposed Division (proposed section 84) enables the ITSRR to audit the railway operations of rail transport operators and to conduct an annual audit program for the railway operations of rail transport operators.

Part 5 Investigation powers

Division 1 Powers of entry

The proposed Division (proposed sections 85–87) confers on rail safety officers powers to enter places (including railway premises) for compliance and investigative purposes or in an emergency. A residence may not be entered without a search warrant or the occupier's consent. Reasonable notice must be given of an intention to enter railway premises.

Division 2 General enforcement powers of rail safety officers

The proposed Division (proposed sections 88–93) sets out the powers of rail safety officers who enter a place under the proposed Part, including search and seizure powers and the power to require a person to answer questions or otherwise give information.

Other powers that the proposed Division confers are:

(a) powers relating to relevant documents found in a place, and

(b) powers to use assistants, and

(c) powers to operate electronic equipment to access information, and

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(d) powers to use equipment on a place or vehicle to examine or process things found on the vehicle or place, and

(e) a power to secure a site for investigative, compliance or safety offences.

It will be an offence to enter a secured site without the permission of a rail safety officer.

Division 3 Search warrants

The proposed Division (proposed section 94) enables a rail safety officer to apply for a search warrant to enter and search a place if the rail safety officer believes on reasonable grounds that the provisions of the proposed Act or regulations or the

terms of an accreditation have been or are being contravened in or on a place or something connected with such a contravention is in or on a place.

#### Division 4 Powers to support seizure

The proposed Division (proposed sections 95–98) confers on rail safety officers the following powers and obligations related to seizure of things under the proposed Part:

- (a) power to direct things to be taken to specified places or remain under the control of a person at a specified place,
- (b) an obligation to give a receipt for any thing seized (or to leave a receipt in a conspicuous place) and to enable the owner to have access to the thing,
- (c) a power to issue an embargo notice prohibiting certain actions (such as moving, sale, deletion of information) from being taken in relation to a thing that cannot, or cannot readily, be seized or moved.

It will be an offence to do any thing forbidden by an embargo notice or to instruct or request another person to do so or to fail to take reasonable steps to prevent another person from doing something forbidden by an embargo notice.

#### Division 5 Dealings with seized items

The proposed Division (proposed sections 99–102) sets out procedures for dealing with things seized under the proposed Part. A rail safety officer must return any such thing to the owner if it is not required as evidence or is not forfeited or the officer is otherwise authorised to retain, destroy or dispose of it. Conditions may be imposed on the return of an item so as to eliminate or reduce risks to safety. A thing that is seized may be forfeited to the Crown if the rail safety officer involved in its seizure considers it is necessary to retain it to prevent an offence or if, after making reasonable efforts or inquiries, the thing cannot be returned to its owner or the owner cannot be found. The ITSRR may deal with a forfeited thing in any way it thinks fit. Provisions of the Law Enforcement (Powers and Responsibilities) Act 2002 that are applicable to property in the custody of police officers are applied to property in the custody of a rail safety officer.

#### Division 6 Directions

The proposed Division (proposed sections 103–107) confers on rail safety officers the following powers and obligations relating to directions:

- (a) power to direct a rail transport operator or rail safety worker to give the rail safety officer reasonable assistance to exercise a function under the proposed Part,
- (b) power to direct a person to state the person's name and address if the person is committing an offence against rail safety law, is found in circumstances that lead to a reasonable suspicion that the person has committed such an offence or is a person carrying out railway operations who is found at railway premises and the rail safety officer reasonably considers the information is necessary for the purposes of the proposed Act or regulations,
- (c) an obligation to warn a person that it is an offence to fail to comply with a direction under paragraph (a) or (b) unless the person has a reasonable excuse,
- (d) power, if the rail safety officer has reasonable grounds to believe that a person is capable of giving information, producing documents or giving evidence in relation to a possible contravention of a rail safety law or for the purposes of an audit, investigation, rail safety inquiry or other inquiry, by notice in writing, to require the person to give information, produce documents or appear before a rail safety officer to give such evidence and produce such documents,
- (e) a power to inspect, take copies of or take possession of documents produced in response to the notice.

It will be an offence for a person who is given a notice referred to in the proposed Division to fail to comply with the notice unless the person has a reasonable excuse.

#### Division 7 Miscellaneous

The proposed Division (proposed sections 108–111) makes it clear that a rail safety officer may give more than one direction under the proposed Part on the same occasion under different provisions and may give further directions. It also empowers a person authorised by the ITSRR to close temporarily, or regulate, a railway crossing and requires notice to be given of such actions.

The proposed Division also imposes an obligation on a rail safety officer to take reasonable steps to return any rail infrastructure, rolling stock, railway premises or motor vehicle that is damaged by the use of unreasonable or unauthorised force to the condition in which it was before the action was taken. The ITSRR must also pay compensation for damage caused by the exercise of a power of entry by a rail safety officer except where an inspection reveals a breach of a law. It prohibits the use of any more force than is reasonably necessary to effect an entry or to exercise a power.

#### Part 6 Improvement and prohibition notices

##### Division 1 Improvement notices

The proposed Division (proposed sections 112–116) sets out a scheme for the issuing, enforcement and withdrawal and amendment of improvement notices to require remedial rail safety work to be undertaken, a contravention or likely contravention of a rail safety law to be remedied or railway operations or operations in relation to a rail or road crossing to be carried out safely, within a specified period (of at least 7 days). An improvement notice may be issued if a rail safety officer believes on reasonable grounds that a person is contravening a rail safety law, has contravened and is likely to continue to contravene a rail safety law or is carrying out or has carried out railway operations that threaten safety. It will be an offence to fail to comply with a notice unless the person has a reasonable excuse and it will be a defence in proceedings for an offence if a contravention or threat to safety is remedied by a method other than one specified in a notice. The issue of or any other action relating to an improvement notice does not affect any proceedings in relation to any connected matter. The ITSRR may arrange for rail safety work to be carried out to remedy a matter that is the subject of an improvement notice that is not complied with and may recover its costs from the person to whom the notice is issued.

##### Division 2 Prohibition notices

The proposed Division (proposed sections 117–121) sets out a scheme for the issuing, enforcement and withdrawal and amendment of prohibition notices to prohibit the carrying on of an activity either wholly or in a specified way. A prohibition notice may be issued if a rail safety officer believes on reasonable grounds that an activity that involves or will involve an immediate risk to safety is occurring, or may occur, in relation to railway operations or railway premises or may occur at, on, or in the immediate vicinity of, rail infrastructure or rolling stock. An oral direction prohibiting an activity may be made if it is not possible or reasonable to immediately serve a notice. An oral direction ceases to have effect if a prohibition notice is not issued within 5 days of the giving of the direction. It will be an offence to fail to comply with a notice or oral direction unless the person has a reasonable excuse. The issue of or any other action relating to a prohibition notice does not affect any proceedings in relation to any connected matter.

##### Division 3 General provisions relating to notices

The proposed Division (proposed sections 122–125) enables a person given an improvement notice or a prohibition notice to apply to the ITSRR for a review of the notice and then, if not satisfied with the result of the review, to the Local Court constituted by an Industrial Magistrate. The effect of an application for a review is to stay an improvement notice but a prohibition notice may only be stayed by the Local Court constituted by an Industrial Magistrate. The proposed Division also makes it clear that the revocation or withdrawal of an improvement notice or a prohibition notice does not prevent the issue of another notice.

## Part 7 Offences, penalties and other sanctions

### Division 1 Offences

The proposed Division (proposed sections 126–131) provides for the following offences:

- (a) intentionally obstructing or hindering the ITSRR or a rail safety officer or a person assisting them or intentionally concealing the location or existence of, or failing to comply with a request to produce, a record, document or other thing,
- (b) impersonating or falsely representing to be a rail safety officer,
- (c) attempting to obtain, or obtaining, by false statement or misrepresentation, an accreditation,
- (d) forging or fraudulently altering or using or purporting to use an accreditation or fraudulently allowing an accreditation to be used by any other person,
- (e) failing to give a notice of the commencement, discontinuation or completion of activities prescribed by the regulations that may adversely affect the safety of rail infrastructure or rolling stock,
- (f) tampering or disabling emergency or safety equipment of a railway or a unit or units of rolling stock or the interlocking system of a railway.

The proposed Division re-enacts, with minor changes, a provision of the Rail Safety Act 2002 enabling the regulations to make provision for offences relating to fare evasion, trespass and other matters relating to passenger conduct and the regulation and control of trains, drivers and railways.

### Division 2 Proceedings for offences

The proposed Division (proposed sections 132–139) confers jurisdiction on the Local Court and the Industrial Court of New South Wales to deal with offences under the proposed Act and contains other matters relating to proceedings, including limiting the Local Court to imposing maximum penalties of 500 penalty units or 12 months imprisonment, or both. Offences under the regulations relating to conduct on railway premises are to be dealt with by the Local Court. The proposed Division sets out the period within which proceedings for offences under the proposed Act or regulations may be commenced, enables proceedings for such offences to be taken by the ITSRR or a person authorised by the ITSRR and makes a director or person concerned in the management of a corporation liable for such offences unless they show they were not in a position to influence the conduct of the corporation or, if in such a position, used all due diligence to prevent the offence.

The proposed Division also makes it clear that persons may be proceeded against for multiple offences against the proposed Act or regulations in relation to different parts of the same rail infrastructure, railway premises or rolling stock and provides for continuing offences.

The proposed Division also applies provisions of the Occupational Health and Safety Act 2000 relating to the prosecution of Crown and State agencies to offences under the proposed Act and regulations made under the proposed Act.

Penalty notices will be able to be issued for offences prescribed by the regulations as penalty notice offences.

### Division 3 Enforceable voluntary undertakings

The proposed Division (proposed sections 140 and 141) sets out a scheme whereby the ITSRR may accept voluntary undertakings by persons in relation to a contravention or alleged contravention of the proposed Act or regulations but may not bring proceedings related to the offence while the undertaking is in force. An undertaking may be enforced by the Local Court constituted by an Industrial Magistrate.

### Division 4 Court-based sanctions

The proposed Division (proposed sections 142–146) provides for the following remedies, at the discretion of a court, if the court finds a person guilty of an offence



under the proposed Act or regulations:

(a) a commercial benefits order requiring the person to pay, as a fine, an amount not exceeding 3 times the gross commercial benefit (as estimated by the court) that the person or an associate (such as a close relative or related body corporate) received or was likely to receive from the commission of the offence,

(b) if the court considers the person to be a systematic or persistent offender against rail safety laws, a supervisory intervention order requiring the person to take specified actions for a specified period not exceeding one year, including actions to improve compliance with rail safety laws, to carry out specified practices and appointing persons with specific compliance responsibilities,

(c) if the court considers the person to be a systematic or persistent offender against rail safety laws and that a supervisory intervention order is not appropriate, an exclusion order prohibiting the person, for a specified period, from carrying out specified or any railway operations or from being involved in the management of a corporation involved in managing rail infrastructure or operating rolling stock or from being involved in managing rail infrastructure or operating rolling stock.

It will be an offence to contravene a supervisory intervention order or an exclusion order.

#### Part 8 Administration

The proposed Part (proposed sections 147–154) enables the Minister to delegate any of the Minister's functions under the proposed Act to any member of staff of the ITSRR.

The proposed Part also enables the ITSRR to appoint rail safety officers and requires rail safety officers to be issued with identification cards, not to exercise functions as an officer unless issued with an identification card, to display the identification card or wear an approved uniform when exercising functions and to produce the identification card if requested to do so by a person in relation to whom a function is being or is to be exercised. The ITSRR may also exercise any function conferred on a rail safety officer. Under an agreement with another State or Territory, rail safety officers may exercise functions in the other State or Territory and rail safety officers from the other State or Territory may exercise functions in this State.

#### Part 9 Miscellaneous

The proposed Part (proposed sections 155–179) contains the following miscellaneous provisions relating to enforcement, liability, regulations and other matters:

(a) a provision providing for the proposed Act to bind the Crown in right of New South Wales and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities,

(b) a provision enabling the ITSRR to enter into information sharing arrangements with WorkCover, the Chief Investigator and other prescribed persons or bodies concerning information relating to possible breaches of the proposed Act or regulations, the safe carrying out of railway operations and other prescribed information,

(c) provisions establishing a scheme for the review of specified decisions by the ITSRR under the proposed Act, consisting of an initial review of the decision by the ITSRR and a further right to seek a review from the Administrative Decisions Tribunal,

(d) a provision providing for protection from self-incrimination for persons required under the investigation provisions of the proposed Act to make statements, give or furnish information or answer questions or produce documents, so that any such statement, information or document may not be

used in criminal proceedings (other than those relating to the giving of false or misleading information or similar offences), if the person objected on the ground of self-incrimination or the person was not warned that providing the statement, information or document might incriminate the person,

(e) provisions requiring the ITSRR to keep records of the granting, refusal and variation of accreditations and the granting of improvement and prohibition notices and enabling the ITSRR to issue evidentiary certificates based on such records and providing for such certificates to be admissible in proceedings,

(f) a provision making it an offence for persons who are or have been engaged in the administration of the proposed Act to disclose or communicate information obtained in that administration except in certain specified circumstances,

(g) a provision making it clear that the provisions establishing rail safety duties under the proposed Act do not confer a right of action in civil proceedings or a defence in civil proceedings,

(h) a provision excluding the Minister, the ITSRR, the Chief Investigator, a member of, or an assessor for, a Board of Inquiry, an officer of the ITSRR, a rail safety officer or a person acting under the direction of any such person from personal liability for things done or omitted in good faith for the purposes of the proposed Act or any other Act,

(i) a provision excluding the State or an authority of the State from civil liability for any act or omission of the Minister, the ITSRR, the Chief Investigator, a member of, or an assessor for, a Board of Inquiry, a rail safety officer or an officer of the ITSRR in exercising functions under the proposed Act,

(j) a provision conferring immunity from action on a person who, in good faith, reports to the ITSRR or a rail transport operator or an employee or contractor of the ITSRR or a rail transport operator that a person is unfit to carry out rail safety work or that it may be dangerous to allow the person to carry out rail safety work,

(k) provisions establishing a scheme for the approval by order of the Minister of compliance codes (which may be disallowed in the same way as regulations) and for the approval by order of the ITSRR of guidelines. A code and evidence of a failure to observe a code may be admissible as evidence in criminal proceedings. A person is not liable to any civil or criminal proceedings by reason only of a failure to observe a compliance code,

(l) a provision enabling the ITSRR to recover the costs of entry and inspection of rail infrastructure, rolling stock or railway premises,

(m) a provision enabling money payable to the ITSRR under the proposed Act or regulations to be recovered by the ITSRR as a debt in a court of competent jurisdiction,

(n) a provision prohibiting contracting out of any or all of the provisions of the proposed Act,

(o) a provision setting out how documents required to be served under the proposed Act may be served,

(p) a provision setting out additional matters for which regulations may be made under the proposed Act and enabling the making of regulations,

(q) a provision about the relationship between the proposed Act and the occupational health and safety legislation,

(r) a provision repealing the Rail Safety Act 2002,

(s) formal provisions giving effect to Schedule 3 (which contains savings and transitional provisions) and Schedule 4 (which contains amendments to other Acts),

(t) a provision providing for the review of the proposed Act as soon as possible after the period of 5 years after the proposed Act is assented to.

Schedule 1 Rail safety workers—alcohol or other drugs

Schedule 1 contains regulation-making powers enabling regulations to be made to establish a system for the testing of rail safety workers for the presence of alcohol or other drugs, including regulations as to the conduct of testing, devices for testing and offences relating to the carrying out by rail safety workers of rail safety work while under the influence of alcohol or any other drug or while having the prescribed concentration of alcohol in the worker's breath or blood. Regulations may also be made creating offences relating to refusals or failures to undergo tests and conferring protection against personal liability on persons administering tests.

Schedule 2 Fatigue management

Schedule 2 re-enacts, with some changes, the provisions of the Rail Safety Act 2002 which established rules for the working periods, and breaks between working periods, of train drivers. Regulations may be made amending the proposed Schedule.

Schedule 3 Savings, transitional and other provisions

Schedule 3 enables regulations containing savings and transitional provisions to be made as a consequence of the enactment of the proposed Act and contains savings and transitional provisions consequent on that enactment.

Schedule 4 Amendment of other Acts

Schedule 4 contains amendments to other Acts consequent on the enactment of the proposed Act and the repeal of the Rail Safety Act 2002.