Transport (Rail Safety) Bill 2010

Explanatory Notes

General Outline

The main purpose of this Bill is to provide for rail safety legislation that will form part of a system of nationally consistent rail safety laws. The Bill sets out legal duties and operating requirements that are to be applied on a nationally consistent basis to all parties responsible for rail safety and will underpin future national regulations, compliance codes and guidelines.

Australia has adopted a co-regulatory approach to rail safety. Key characteristics of the 'co-regulatory' approach are as follows:

- Responsibilities for regulatory development, implementation and enforcement are shared between industry participants, industry associations and governments.
- Government's role is to establish performance-based obligations and specific duties necessary to achieve acceptable levels of safety, meet community expectations and maintain public confidence.
- Rail industry participants accept accountability for achieving required safety outcomes in return for the flexibility to identify and implement the most effective and efficient means of addressing risks to safety.
- Rail industry associations serve to represent industry interests in the regulatory development process, facilitate implementation of safety reforms and to provide guidance to industry in the form of codes and standards indicating effective and efficient means of compliance.
- The chief executive's role is to provide oversight. In the rail safety context this includes assessing the capacity and competence of rail organisations to be safe, ensuring that safety management systems are in place, and monitoring the activities of, and safety outcomes achieved by, individual rail organisations; educating rail organisations on potential opportunities to improve safety performance; and, if necessary, enforcing compliance with performance based obligations and duties using available powers and sanctions.

Short Title

The short title of the Bill is the Transport (Rail Safety) Bill 2010.

Policy Objectives of the Legislation

The Bill builds on the existing co-regulatory approach through the implementation of a number of regulatory best practices, including by clarifying the roles and duties of responsible parties, providing for more timely and transparent decision-making by Rail Safety Regulators, and equipping Rail Safety Regulators with the powers and tools they require monitoring and enforcing compliance with the legislation. Importantly the Bill is intended to deliver a higher degree of regulatory harmonisation across Australian States and Territories.

Reasons for the Bill

The Bill provides for:

- General safety duties that require all rail transport operators and contractors performing prescribed railway operations to ensure the safety of those operations. These statutory duties of care define the required level of safety and makes clear which parties have accountabilities for rail safety.
- A system of accreditation to provide assurance that rail transport operators have the competence and capacity to operate safely before they are permitted to operate. The system of accreditation requires that a rail transport operator must have a Safety Management System suitable for the rail transport operator's railway operations. Specific accreditation requirements are to:

    (a) Consult with persons who are intended to work on or at railway premises, both during the initial development of the system and in the on-going processof maintaining and changing the system.

    (b) Adopt an integrated approach to risk management to ensure that risks are assessed, evaluated and controlled jointly by those parties that will have a safety interface by virtue of the scope and nature of their intended operations.

    (c) Establish, implement and maintain: security, emergency, health and fitness, drug and alcohol and fatigue management plans.

- Audit and inspection powers necessary to enable the rail safety regulator to monitor the compliance of duty holders with statutory duties and related accreditation requirements.
- A hierarchy of compliance and enforcement powers and sanctions to facilitate an effective and proportionate regulatory response to detected forms of non-compliance by rail transport operators and other persons.
- An array of checks and balances on regulator behaviour to ensure that regulatory decision-making processes are timely, transparent and nationally consistent.
- Creation of subordinate legislation (Regulation) to be used to specify more detailed requirements that are not appropriate for inclusion in the Bill itself.

Administrative Costs

In 2006, the National Transport Commission estimated that a continuation of existing trends toward improvements in rail safety has the potential to realise benefits with a present value of $338.2 million over ten years across all jurisdictions. Regulatory reforms proposed in the national model Rail Safety Bill can be expected to contribute substantially to the achievement of these potential benefits.

The expected increase in national costs to implement the model Bill, but not including costs, if any, for implementation of resultant regulations, are estimated to total around $9 million per annum, ($2 million for regulators, $7 million for industry). This would equate to $69.5 million over ten years in present value terms.

The National Transport Commission also provided, within the Regulatory Impact Statement for the model Bill, an upper bound estimate of $12 million increased cost per annum, or $92.7 million over ten years has been calculated. These estimates are based on the application of a multiplier of two to five times the calculated costs estimated for regulators. The Commission did state however that it is possible actual regulatory cost increases may be below these figures, particularly since several of the model Bill's provisions are likely to result in cost savings to industry.

The National Transport Commission has confirmed that the benefits and costs are those expected to arise from the adoption of each of the major

components of the model Bill, meaning they are net costs over and above the costs of the existing regulatory regimes.

In examining aggregate reform costs in 2007, the National Transport Commission (in the Regulatory Impact Statement prepared for the national model Rail Safety Regulations) re-affirmed its view that the incremental increase in compliance costs implied by the rail safety reform package (national model Rail Safety Bill and Regulations) is less than the upper bound estimate used for the Regulatory Impact Statement for the national model Bill.

Achieving the Objectives

The Bill, by adopting the national model Bill's legislative intent, will ensure that Queensland's rail safety legislation embraces the principles of national conformity, as endorsed by the Australian Transport Council, and ensure that Queensland legislation is in line with other jurisdiction's legislation.

Fundamental Legislative Principles

The main purpose of the Transport (Rail Safety) Bill 2010 is to provide for rail safety legislation that will form part of a system of nationally consistent rail safety laws. The Bill builds on the existing co-regulatory approach through the implementation of a number of regulatory best practices. Importantly the Bill is intended to deliver a higher degree of regulatory harmonisation across Australian States and Territories.

The Scrutiny of Legislation committee has in the past been wary of national scheme legislation, due to the restriction on Parliament to amend, refuse to pass or disallow the law. In drafting this Bill, the Office of the Queensland Parliamentary Counsel has kept the policy contained in the national model Bill and used various filters in adapting this model to Queensland's drafting practice. However this approach has not entirely eliminated potential breaches of the fundamental legislative principles.

Queensland has never before had dedicated rail safety legislation and this Bill sets out legal duties and operating requirements that are to be applied on a nationally-consistent basis to parties responsible for rail safety and will underpin future national regulations, compliance codes and guidelines.

USE OF TEMPORARY REGULATIONS

The Transport (Rail Safety) Bill 2010 potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament (*Legislative Standards Act 1992* Section 4(2)(b)) by allowing a regulation to amend this Act. The potential breach is made less objectionable by the link to a temporary regulation. The temporary regulation-making power will expire after a twelve month period which is incorporated into the power.

The reason for this potential breach is that the national model Bill incorporates a number of potential breaches of the fundamental legislative principles, particularly with respect to what are known colloquially as "Henry VIII clauses".

The ability to prescribe additional requirements under a temporary regulation allows Queensland to maintain uniformity with other jurisdictions' legislation prior to an amending of Queensland's rail safety legislation by another Act. In this regard, it is noted that the potential breach is made less objectionable given that temporary regulations are made only when necessary for national uniformity and have a life of only 12 months.

This approach has been employed in clauses 5, 10, 22, 258, 259, 275 and 346. A temporary regulation-making power is defined in section 275 and referenced in schedule 3.

Clause 5 Application of Act generally

This Act applies to railway operations, rail safety work and other activities associated with railway operations. The types of railway operations not within the terms of this Bill are detailed in this section. Subclause 2(h) allows a temporary regulation to include another type of railway within this section. The model Bill authorises the inclusion of another railway by regulation. National uniformity is retained by use of a temporary regulation.

Clause 10 Meaning of rail safety work

This clause defines rail safety work. Subclause 2 states rail safety work does not include work prescribed under a temporary regulation to be rail safety work. The national model Bill authorises this prescription by regulation. As Australian jurisdictions implement this legislation, it may be

necessary for purposes of national uniformity to preclude certain work from being rail safety work**.**

Clause 22 Meaning of *prescribed railway operations*

This clause defines 'prescribed railway operations'. A rail transport operator or contractor performing activities included in this definition is subject to general safety duties under the Transport (Rail Safety) Bill 2010. The addition of activities to this definition if necessary, by means of a temporary regulation, gives the chief executive the ability to quickly respond if new activities are found to affect the safe operation of rolling stock on a railway track. This ability to act quickly is considered necessary for the safety of railway operations.

Clause 258 Giving information to Workplace Health and Safety chief executive; and

Clause 259 Confidentiality; and

Clause 346 Insertion of new section 185E into *Workplace Health and Safety Act 1995*

The Transport (Rail Safety) Bill 2009 and the *Workplace Health and Safety Act 1995* are both concerned with safety in Queensland. The sharing of information by the chief executives charged with administering these Acts means that the relevant chief executives will, in the circumstances prescribed by these sections be able to assist each other in administering these Acts. The use of a temporary regulation ensures that, if necessary, the prompt sharing of information can be authorised.

Clause 275 Temporary regulation-making power

This regulation-making power is made less objectionable by linking to the requirement that it is necessary for uniformity among Australian jurisdictions. The regulation-making power under subclause (1)(b) is a duplication of other specific temporary regulation-making powers in the Transport (Rail Safety) Bill 2010.

Schedule 3 Dictionary

The various definitions detailed below may be amended by temporary regulations. Any amendments required will be for reasons of national uniformity.

Definition of accreditation criteria

The effect of the inclusion of other criteria under a temporary regulation has implications for applications for the grant or variation of accreditation and the grounds for suspending, revoking or varying the accreditation. As uniform national rail safety legislation has never been used in Australia, the national model Bill uses a regulation-making power to authorise uniform amendment where jurisdictions believe it is necessary. As the various jurisdictions work with the new legislation it is to be expected that amendments to their legislation will be required. In Queensland's case a temporary regulation will deal with this issue until an amendment to the Act is made.

Definition of notifiable occurrence

Paragraph 1(b) of this definition does not provide any criteria for what kinds of accidents or incidents associated with railway operations may be prescribed as notifiable occurrences. National rail regulators have formed a working group which is considering the types of incidents which ought to be defined as a notifiable occurrence. The model Bill accordingly authorises the making of a regulation that will detail these criteria. In Queensland these criteria will be incorporated into the Act, however pending this incorporation a temporary regulation can be made.

Definition of private siding;

Definition of rail infrastructure; and

Definition of railway

The ability to amend these definitions pursuant to a temporary regulation allows Queensland to maintain uniformity with other jurisdictions prior to an amending of the Transport (Rail Safety) Act 2010 by another Act. In this regard, it is noted that the breach is made less objectionable given only a temporary regulation may add or detract from these definitions and temporary regulations are made only when necessary for national uniformity and have a life of only 12 months.

RAIL SAFETY DUTIES – RAIL SAFETY WORKERS

Clause 31 Particular provisions of Criminal Code do not apply

This clause potentially breaches the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification (*Legislative Standards Act 1992* Section 4(3)(d)) as it overrides the application of sections 23 and 24 of the Criminal Code (which deal with criminal responsibility) for rail safety duties imposed on rail safety workers. Instead, clauses 37 and 38 give rail safety workers a set of defences, including defences for taking reasonable precautions and exercising proper diligence and defences relating to causes over which the worker had no control. This approach is consistent with the approach taken for similar obligations in the *Workplace Health and Safety Act 1995* and other Queensland safety-related Acts.

Clause 179 Power to require alcohol or drug test or examination

The inclusion of this power affects the rights and liberties of individuals and is therefore a potential breach of the fundamental legislative principles.

This clause details a rail safety officer's power to require a rail safety worker to take an alcohol or drug test or medical examination after an incident.

This Clause currently exists in Queensland legislation as section 215(5) – (8) and (11) of the *Transport Infrastructure Act 1994*, which is being repealed by this Bill and replaced with clause 179. The provisions in clause 179 therefore represent no change from current legislation. The officer must have reasonable suspicions about the person before requiring that person to take a test, and the person has the benefit of a reasonable excuse defence. It is not a reasonable excuse that the requirement might tend to incriminate the person or make them liable to a penalty, however the results of the test are not admissible in evidence in any civil or criminal proceeding

ACCREDITATION

The Transport (Rail Safety) Bill 2010 potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992* Section

4(2)(a)) by allowing the chief executive to extend a 6 month period that is set by the Act.

The chief executive's accountability to decide applications made by rail transport operators within a reasonable period is called into question in clauses 94, 106 and 111. The national model Bill allows rail safety regulators six months (which may be extended by the regulator) to consider an application. The Transport (Rail Safety) Bill 2010 follows the national model Bill by authorising the regulator to extend this period.

The presence of cooperative and collaborative relationships between parties is widely acknowledged as being critical to the establishment and maintenance of a safety culture. It is intended that the rail safety regulator will, in undertaking its functions, rely primarily on a cooperative approach to achieving compliance through education, information dissemination and instructive warnings with the threat of enforcement action remaining so far as is possible, in the background.

In a cooperative and collaborative relationship the regulator and rail transport operator liaise regularly and although six months may be thought ample time to consider an application, rail issues are often extremely complicated involving complex planning and consideration of issues. If the six month period is extended, it will be as a result of the parties working together to resolve issues involved in the rail transport operator's application.

For this reason the potential breaches contained in clauses 94, 106 and 111 are justified.

Clause 94 Considering application

Subclause (2)(d) allows the chief executive to extend a 6 month period that is set by the Act.

Clause 106 Considering application for variation

Subclause (2)(d) allows the chief executive to extend a 6 month period that is set by the Act.

Clause 111 Considering application for variation of condition

Subclause (2)(d) allows the chief executive to extend a 6 month period that is set by the Act.

VARYING CONDITIONS OF ACCREDITATION

Clause 102 Varying Conditions of accreditation

This clause potentially breaches the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (*Legislative Standards Act 1992* Section 4(3)(a)).

There are no grounds stated for when the regulator may act under this clause. This is in alignment with the approach in section 53 of the model law. This potential breach is also made less objectionable through the requirement to allow the person to show cause (in the absence of emergency) and the grant of review and appeal rights.

Part 6 Administration

Clause 134 Reciprocal powers of rail safety officers

This clause potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament (*Legislative Standards Act 1992* Section 4(2)(b)) because it allows an administrative decision to give interstate rail safety officers powers under the Bill and deems Qld rail safety officers to have additional powers to those stated in the Bill. As stated previously, the Bill is part of a national reform and this section authorises the Minister charged with administering this Act to enter into a written agreement with a Minister of another State. That written agreement is about the exercise of powers under the corresponding State law by Queensland rail safety officers and the exercise of powers under this Act by interstate rail safety officers.

As the main purpose of the Transport (Rail Safety) Bill 2010 is to provide for rail safety legislation that will form part of a system of nationally consistent rail safety laws, this section enhances the uniform administration of rail regulation. An example where this section could be used is the appointment and exercising of powers by Queensland and New South Wales officers on the XPT train running between Brisbane and Sydney.

Part 7 Enforcement

The Transport (Rail Safety) Bill 2010 potentially breaches the fundamental legislative principle that legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer (*Legislative Standards Act 1992* Section 4(3)(e)) because it allows entry and seizure of evidence without warrant in certain circumstances.

Queensland's Rail Safety Regulator supports the view that a considered and balanced approach to compliance and enforcement, rather than a punitive approach, is required to maintain a cooperative and collaborative relationship between the regulator and the regulated.

However, in common with other legislation, there is an enforcement component to the Transport (Rail Safety) Bill 2010, and the provisions detailed below do potentially breach the aforementioned fundamental legislative principle. These provisions are presently located in the *Transport Infrastructure Act 1994* and are being transferred to the Transport (Rail Safety) Bill 2010.

These potential breaches involve powers concerning entry to places, seizure and use of evidence in proceedings. These enforcement powers are currently in force in Queensland, as mentioned above, and are considered by the Department of Transport and Main Roads to be an important element in ensuring rail safety. The powers are justified on this basis.

Clause 135 Power to enter places

Subclauses (1)(b), (d) and (e) authorise entry to a place without consent or a warrant in specified circumstances.

Clause 151 Seizing evidence at a place entered without consent or warrant

This clause authorises a rail safety officer to seize documents or other property without a warrant in specified circumstances.

Clause 152 Seizing evidence at place entered with consent or warrant

Subclauses (4) and (5) (and potentially subclause (2)) authorise a rail safety officer to seize documents or other property without a warrant in specified circumstances.

Use of Evidence, Part 8 Boards of Inquiry and Part 9 Provisions about Particular Investigations or Inquiries

Certain clauses of the Transport (Rail Safety) Bill 2010 potentially breaches the fundamental legislative principle that legislation should provide appropriate protection against self-incrimination (*Legislative Standards Act 1992* Section 4(3)(f)). These clauses are being transferred from the *Transport Infrastructure Act 1994* and are therefore currently in force. They have been used in previous rail safety incident investigations and are justified as being a necessary aid in investigating an incident. The in-built prohibition on unauthorised use of this evidence (for example clause 217 and Part 9) also lessens the potential breach of the fundamental legislative principles.

In December 2004, the Law Reform Commission reported on its review of the self-incrimination privilege. One of the recommendations of that report was that it should be clarified that if the privilege against self-incrimination is abrogated, the privilege against exposure to a civil penalty is also, by implication, abrogated. This is in accordance with the common law.

To give effect to the Commission's recommendation, all sections of the Bill that either preserve or abrogate the privilege have been updated to also refer to 'or make the individual/person liable to a penalty'. This also reflects the approach in the model law.

Clause 170 Use of particular evidence in proceedings

In this case, the information is in the peculiar knowledge of the person, any information obtained (directly or indirectly) can not be used in proceedings against the person and the person is not required to fulfil any condition to secure the restriction on the use of the information. The information is protected from use in civil or criminal proceedings.

Clause 182 Use of particular evidence in proceedings

The protection against self-incrimination under this section does not apply to accredited persons. However, other protections are given to this information under part 9.

Part 8 (clauses 201-219) concerning Boards of Inquiry, and Part 9 concerning particular investigations or inquiries (clauses 220-231) are being transferred from the *Transport Infrastructure Act 1994* and these provisions are therefore currently in force.

Clause 217 Self-incrimination

Under this clause, primary and derived evidence may still be used in proceedings against accredited persons even if they are individuals. However other protections are given to this information under part 9. Under Part 9, clauses 223-232 inclusive provide for the protection of this information.

Part 9 Subdivision 2 Particular disclosure etc. of restricted information authorised

This subdivision allows the chief executive to disclose, or allow another person to access, personal information about individuals. In particular, clause 227(2) expressly also allows the chief executive to disclose personal information about accredited persons who are individuals (with only disclosures about non-accredited individuals being limited to the prescribed circumstances).

It is noted that the disclosures and access are only in limited circumstances. For example, clause 227 only allows the release of restricted information in the interests of ensuring rail safety; clause 228 only allows access on request of a coroner; clause 229 only allows access if it is “necessary or desirable”.

The potential breach under clause 227 in terms of non-accredited individuals has been made less objectionable by allowing the disclosure of personal information for those individuals only in particular circumstances.

Part 10 Other Offences And Provisions About Liability For Offences And Part 12 Legal Proceedings

Clause 245 Executive officers must ensure corporation complies with Act

This clause potentially breaches the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification (*Legislative Standards Act 1992* Section 4(3)(d)) as it states that if a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence.

This potential breach is made less objectionable as it is a defence for an executive officer to prove that the officer exercised reasonable diligence to ensure the corporation complied with the provision or that the officer was not in a position to influence the conduct of the corporation in relation to the offence. This clause also does not apply to officers acting on a voluntary basis.

Similar executive officer liability provisions exist in the *Workplace Health and Safety Act 1995*, the *Transport Operations (Road Use Management) Act 1995* and many other Queensland Acts, including other safety-related legislation.

Clause 252 Evidence from records required to be kept under Act; and

Clause 254 Evidence of other matters

The above clauses potentially breach the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification as the use of evidentiary certificates effectively reverses the onus of proof.

The certificates issued under clauses 252 and 254 concern records, copies of records or extracts from records concerning accreditations, conditions of accreditation or improvement or prohibition notices. As these certificates only deal with facts, it is not considered that an individual's rights and liberties are breached.

Clause 257 Proceedings for offences

The inclusion of the subclause (2)(a) potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament because the period within which a proceeding may be started is longer than what is normally allowed in Queensland (*Justices Act 1886*, section 52).

This period is the same as that currently allowed in the *Transport Infrastructure Act 1994*, and it is being transferred into this legislation for consistency reasons. As rail safety incidents are often complex, requiring detailed investigation, the time period stated for commencing a proceeding is appropriate.

Part 13 General

Clause 260 Particular persons acting under this Act

This clause potentially breaches the fundamental legislative principle that legislation should not confer immunity from proceeding or prosecution without adequate justification (*Legislative Standards Act 1992* Section 4(3)(h)) as it states that if an authorised person does an act, or makes an omission, under a prescribed corresponding law, any civil liability for the act or omission would attach to the authorised person, liability passes to the state. This potential breach is justified in that the State assumes liability for the actions of its officers. The right of a person to pursue legal action remains, all that is affected is that the state is liable, not the official.

Clause 263 Registered health practitioners advising on fitness of rail safety worker

This clause allows certain medical practitioners to disclose otherwise confidential information about individuals. This potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights & liberties of individuals. This section also potentially breaches the fundamental legislative principles on the grounds that it grants immunity from proceeding or prosecution.

This potential breach is justified as there is no positive onus on a medical practitioner to disclose information, rather if the information is disclosed,

then the medical practitioner is protected against being sued for defamation or subject to disciplinary proceedings. Accordingly, this section protects the medical practitioner. As this is an Act about rail safety, information about a person's fitness for rail safety work is vital in protecting rail users.

Part 16 Amendment Of The *Transport Infrastructure Act 1994*

Clause 337 Amendment of section 487 *Transport Infrastructure Act 1994* (altering watercourse to adversely affect transport route)

Sections 487 of the *Transport Infrastructure Act 1994* gives accredited persons particular rights and powers of the chief executive as follows—

Section 487(3) allows an accredited person to give a notice to an owner of land requiring the person to take action to reduce or prevent collection of water that obstructs a railway, and non-compliance with the notice constitutes an offence with a maximum penalty of 200 penalty units.

The inclusion of this power affects the rights and liberties of individuals and therefore a potential breach of fundamental legislative principles. It is questionable whether it is appropriate for the legislative powers to be given to the accredited persons, particularly given an offence applies.

In the Scrutiny of Legislation Committee's comments on this amendment when the Bill was original introduced, the Committee queried whether accredited persons were appropriately qualified to exercise the powers and suggested that a requirement that they be appropriately qualified be inserted.

These powers were given to accredited persons because they may be needed for infrastructure development (not rail safety purposes). The Department of Transport and Main Roads considers that the accreditation process will be sufficient to ensure that the persons are appropriately qualified and the delegation has been expressly linked to the accreditation process considering the application of the powers under section 487 of the *Transport Infrastructure Act 1994.*

Also, it is noted that the accredited person can only act under this section if the water is obstructing or is likely to obstruct traffic and it is considered

there may be circumstances for the accredited person to act quickly, rather than wait for the chief executive to exercise his/her powers.

Clause 338 Amendment of section 488 *Transport Infrastructure Act 1994* (altering materials etc.)

Section 488(2) of the *Transport Infrastructure Act 1994* allows an accredited person to fix conditions about depositing rubbish or abandoning goods on a railway, and contravention of the conditions constitutes an offence with a maximum penalty of 200 penalty units.

The inclusion of this power affects the rights and liberties of individuals and therefore a potential breach of fundamental legislative principles. It is questionable whether it is appropriate for the legislative power to be given to the accredited persons, particularly given an offence applies.

In the Scrutiny of Legislation Committee's comments on this amendment when the Bill was original introduced, the Committee queried whether accredited persons were appropriately qualified to exercise the powers and suggested that a requirement that they be appropriately qualified be inserted. Given the nature of the act and the unlikely abuse of the power, the department considers that the accreditation process will be sufficient to ensure that the persons are appropriately qualified.

Clause 339 Amendment of section 489 *Transport Infrastructure Act 1994* (Recovery of cost of damage)

Section 489(2) of the *Transport Infrastructure Act 1994* gives an accredited person a right to recover the costs of repairing damage to works on a railway.

The inclusion of this power affects the rights and liberties of individuals and therefore a potential breach of fundamental legislative principles. It is questionable whether it is appropriate for the legislative power to be given to the accredited persons.

In the Scrutiny of Legislation Committee's comments on these amendments when the Bill was original introduced, the Committee queried whether accredited persons were appropriately qualified to exercise the powers and suggested that a requirement that they be appropriately qualified be inserted. Given the nature of the act and the unlikely abuse of the power, the department considers that the accreditation process will be sufficient to ensure that the persons are appropriately qualified.

Consultation

Extensive consultation has occurred with key government departments and agencies consulted including:

Department of Communities

Department of Emergency Services

Department of Employment and Industrial Relations

Department of Justice and Attorney-General

Department of Local Government, Sport and Recreation

Department of Main Roads

Department of Mines and Energy

Department of Natural Resources and Water

Department of the Premier and Cabinet

Department of Tourism, Regional Development and Industry

Office of Urban Management

Queensland Health

Queensland Police Service

Queensland Treasury

(The reference is to the departments as they were named throughout the consultation process.)

Commercial rail operators consulted

Airtrain Citylink Ltd

Australian Rail Track Corporation

Freightliner Australia Pty Ltd

Genesee and Wyoming Australia Pty Ltd

GrainCorp

Interail

Pacific National Pty Ltd

Cairns Kuranda

Port of Brisbane Corporation

Queensland Rail

RailCorp

SCT Logistics

Smorgon Steel Tube Mills

Tourist and Heritage Railways

Association of Tourist Railways Qld Inc.

Association of Tourist & Heritage Rail Australia

Australian Narrow Gauge Railway Museum

Australian Railway Historical Society Queensland Division

Brisbane Tramway Museum

Mary Valley Heritage Railway

Nambour Heritage Cane Train

Sunshine Coast Model Rail

Manufacturers, contractors and consultants.

Bombardier

Bradken Rail

Downer-EDI Limited-Works Infrastructure Pty Ltd

Downs Steam

United Rail Group

Unions consulted

Australian Federated Union of Locomotive Employees

Australian Manufacturing Workers Union

Australian Workers Union

Electrical Trades Union

Queensland Council of Unions

Rail Tram and Bus Union

Transport Workers Union

Others consulted

Australasian Railways Association

Australian Sugar Milling Council

Civil Constructors Federation

CSR

Laing O'Rourke

The Local Government Association of Queensland

Notes on Clauses

Title

The title states that this is a Bill for an Act to provide for rail safety, and for related purposes. The Act will form part of a system of nationally-consistent rail safety laws.

This Bill has a different structure to the national model Rail Safety Bill 2006 (the model law), in terms of both whole parts and divisions and within parts and divisions, which reflects Queensland preferences. There are also some changes in wording in this Bill in line with Queensland preferences. The intent of the model law is still followed to the greatest extent possible and corresponding model law sections are noted in individual clause descriptions, below.

Part 1 Preliminary

Division 1 Introduction

Short Title

Clause 1 sets out the short title of the Act as the *Transport (Rail Safety) Act 2010*.

Commencement

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

Division 2 Objects and application of Act

Clause 3 sets out the objects of this Bill, which are -

- to provide for improvement of the safe carrying out of railway operations
- to provide for the management of risks associated with railway operations
- to make special provision for the control of particular risks arising from railway operations
- to promote public confidence in the safety of transport of persons or freight by rail.

This clause gives effect to section 3 of the model law. The reference to 'rail safety' has been changed to 'ensuring rail safety' to match the style used in clause 12. In paragraph (d) 'transport of passengers' replaces 'transport of persons' for consistency with other provisions of this Bill.

Clause 4 sets out the way in which this Bill achieves its objects. This section does not appear in the model law. It states that this Bill:

- together with the *Workplace Health and Safety Act 1995* and *Electrical Safety Act 2002*, imposes duties and obligations directed at ensuring rail safety on rail transport operators and other persons carrying out railway operations; and rail safety workers.

- provides for a system of accreditation directed at ensuring rail transport operators have the competence and capacity to carry out particular railway operations safely
- provides for the establishment and implementation of interface coordination plans; plans and programs to manage specific risks to the safety of railway operations arising from security incidents, emergencies, poor health and fitness of workers, fatigue of workers and the presence of alcohol and drugs in workers; measures for ensuring rail safety workers are competent and not impaired by the presence of alcohol or drugs; and the reporting of information about, and the auditing, monitoring and investigation of, the carrying out of railway operations.

Clause 5 sets out the types of railway to which this Bill does not apply. These are railways in underground mines, slipways, railways used only to guide cranes, aerial cable operated systems, railways operated solely in amusement or theme parks (which are amusement devices required to be registered under the *Workplace Health and Safety Act 1995* and do not operate on or across a road), monorails and cane railways.

This clause gives effect to section 6 of the model law. This clause does not imply that the items mentioned in (2)(a) to (g) are a 'railway' within the meaning given by the definition of 'railway' under this Bill. A 'slipway' and an 'aerial cable operated system' are not a 'railway' within the meaning given by that definition. Subsection (2)(a) has been replaced with the exemption currently in the *Transport Infrastructure Act 1994* which extends to all railways used for mining operations (the model law only excludes railways that are underground or chiefly underground). Subsections (2)(f) and (g) are not in the model law but are included because monorails and cane railways (as defined in the clause) are exempt under the *Transport Infrastructure Act 1994*. Subsection (2)(h) provides a temporary regulation-making power, rather than an ordinary regulation-making power, to make the potential breach of the Fundamental Legislative Principles less objectionable.

Clause 6 provides that this Bill has no application in circumstances in which the *Electrical Safety Act 2002* applies. The model law does not include an equivalent of this clause. This clause is included to ensure consistency with the way the *Workplace Health and Safety Act 1995* applies to railway operations (under section 3A of that Act, it would not apply to railway operations in relation to circumstances to which the *Electrical Safety Act 2002* applies).

Clause 7 states that this Bill binds all persons including the State and where permissible, the Commonwealth. This clause gives effect to model law section 11.

Division 3 Interpretation

Clause 8 provides that the dictionary in schedule 3 defines particular words used in the Bill.

Section 9 of the model law provides that an example is part of the Act, and is subject to 'local variations'. An equivalent of that section has not been incorporated in this Bill due to the *Acts Interpretation Act 1954*, section 14(3). Section 10 of the model law provides that a note is not part of this Act, and is subject to 'local variations'. An equivalent of that section has not been incorporated in this Bill due to the *Acts Interpretation Act 1954*, section 14(4) and (7).

Clause 9 defines the term railway operations. Paragraph (e) of the model law definition refers to 'the movement, or causing the movement, of rolling stock for the purposes of operating a railway service'. The content of that paragraph has been combined with paragraph (d) by adding the words 'or operating a railway service' at the end of the paragraph. This definition has been converted to a sectional definition to ensure the concept of 'rail safety work' is not elevated above that of 'railway operations'.

Clause 10 sets out the classes of work carried out by rail safety workers which are taken to be rail safety work for the purposes of the Bill, including any work that is prescribed under a temporary regulation to be rail safety work. It also specifies that rail safety work does not include work prescribed under a temporary regulation not to be rail safety work. This clause gives effect to section 8 of the model law. This Bill inserts 'similar' in (1)(a) and (b) to distinguish the 'other activity' caught by each paragraph. It also recasts (1)(d) to remove elements in the model law equivalent of that paragraph that are about rail infrastructure and not rolling stock. The elements about rail infrastructure are already captured by subsection (1)(f) and so have been removed. Additional words are inserted in (1)(g)(ii) to clarify that the relevant 'telecommunications systems' are those that are 'relating to rail infrastructure or used in connection with rail infrastructure'.

Clause 11 defines that for the purpose of corresponding laws this Bill is a rail safety law and the chief executive is the rail safety regulator for this Bill. This clause gives effect to model law section 4 and the definitions of rail *safety law* and *rail safety regulator*. The declarations in this clause are achieved by means of a section rather than a definition, and the words 'for the purposes of corresponding laws' have been added. This approach is adopted because these definitions are not necessary for this Bill, however the declaration and defined terms will be required for corresponding laws.

Division 4 Ensuring rail safety

Clause 12 explains the concept of ensuring rail safety under the Bill. Rail safety is ensured when persons are free from death, injury or illness (and risk of death, injury or illness) caused by railway operations, rail safety work or other activities associated with railway operations. This clause gives effect to model law section 7. The concept of 'ensuring safety' in model law has been replaced with a concept of 'ensuring rail safety' similar to the approach used in the *Workplace Health and Safety Act 1995*.

Part 2 Relationship with Workplace Health and Safety Act

Clause 13 explains the purpose of Part 2 which is to explain the operation of this Bill in relation to the operation of the *Workplace Health and Safety Act 1995*.

This part does not refer to the *Electrical Safety Act 2002* because the operation of clause 5 means that the two Acts will not apply in the same circumstances.

The note before section 12 of the model law has not been included. The content of most of the note has been recast as follows—

- the statement about how the *Workplace Health and Safety Act 1995* is the main Act dealing with the health and safety of people at work is removed from here but is mentioned in clause 20(4)(b).

- the statement about how the Act creates additional protections, rights and obligations necessary because of the special risks associated with railway operations is removed because it is covered by the new provision (clause 4) about how the objects of this Bill are achieved.
- the statement about how the Act is intended to increase the standard of protection of people at work in railway operations is removed because it is covered by clause 4 and because it had the potential of being misleading in relation to rail safety duties applying to 'prescribed railway operations'.

Clause 14 explains the application of this Bill in circumstances to which the *Workplace Health and Safety Act 1995* applies. This clause provides that if this Bill applies in particular circumstances, and the *Workplace Health and Safety Act 1995* also has application in the circumstances, the *Workplace Health and Safety Act 1995* continues to apply, and must be complied with, in addition to this Bill. It also provides that if this Bill is inconsistent with the *Workplace Health and Safety Act 1995*, the *Workplace Health and Safety Act 1995* prevails to the extent of the inconsistency. However, this Bill is not inconsistent with the *Workplace Health and Safety Act 1995* only because it imposes additional duties on a person on whom an obligation is imposed under the *Workplace Health and Safety Act 1995* or otherwise increases the standards of safety required for railway operations, rail safety work or another activity associated with railway operations. If a provision of this Bill deals with a particular matter and a provision of the *Workplace Health and Safety Act 1995* deals with the same matter and it is impossible to comply with both provisions, a person must comply with the provision of the *Workplace Health and Safety Act 1995*. If a provision of this Bill deals with a particular matter and a provision of the *Workplace Health and Safety Act 1995* deals with the same matter and it is possible to comply with both provisions, a person must comply with both provisions.

This clause gives effect to sections 12, 13 and 16 of the model law. The application of this section has been limited to only circumstances in which both Acts apply to deal with the situation that part 3, division 2 of this Bill is intended to override the *Workplace Health and Safety Act 1995*. Note 1 in subsection (2) is used instead of the section about double jeopardy in the model law (section 16). Note 2 in subsection (2) is inserted as part of 'local variations' for the references to Workplace Health and Safety legislation. Subsection (4) is inserted because this Bill imposes 'additional' obligations and these are to apply even if they are inconsistent with the *Workplace*

Health and Safety Act 1995. Subsection (5) is an example in the model law but converted to a subsection in this Bill.

Clause 15 provides defences in a proceeding against a person for a safety direction contravention if the person proves the person committed the act or omission constituting the safety direction contravention as part of complying with the person's workplace obligations and in committing the act or omission constituting the safety direction contravention, the person did each of the following—

- chose an appropriate way to diminish the consequences of the safety direction contravention.
- took reasonable care and skill to diminish the consequences of the safety direction contravention.
- exercised proper diligence to diminish the consequences of the safety direction contravention.

It also defines, for this section, safety direction contravention and workplace obligations. This section does not appear in the model law but section 13 of the model law provides for there to be local variations in this context.

Clause 16 provides that if a person complies with this Bill, or a requirement imposed under it, it is not in itself a defence in a proceeding for an offence against the *Workplace Health and Safety Act 1995.* This clause gives effect to model law section 14. Note 2 is added as part of the 'local variations' for the references to Workplace Health and Safety legislation. The example in model about a person potentially being guilty of an offence under Workplace Health and Safety legislation for an act or omission required or permitted under this Act has been omitted to avoid misinterpretation.

This Bill does not include an equivalent to section 15 of the model law (which provides that evidence of a contravention of this Act is admissible in a proceeding for an offence against Workplace Health and Safety legislation).

Part 3 Rail Safety Duties

Part 3 Division 1 contains a range of safety duties that require rail industry participants to ensure the safety of railway operations. In particular, safety duties are imposed on rail transport operators (infrastructure managers and rolling stock operators), contractors and subcontractors to rail transport operators, to ensure, so far as is reasonably practicable, the safety of railway operations.

These safety duties impose an explicit obligation to conduct railway operations safely, improving the transparency as to what is required by the legislation for all stakeholders. The expression of the required outcome in the form of a general duty rather than prescriptively defining how it must be achieved maintains the flexibility for organisations to determine the most cost effective and practical means of compliance.

This part adopts a modified version of the duties to ensure safety in the model law to allow for variations necessary to bring the duties in line with the *Workplace Health and Safety Act 1995* to the greatest practicable extent. In general terms, the differences to the model law are—

- The duty of rail transport operators and contractors to ensure rail safety 'so far as is reasonably practicable' is limited to only particular railway operations (called 'prescribed railway operations').
- For these 'prescribed railway operations', the *Workplace Health and Safety Act 1995* has been overridden to impose the 'so far as is reasonably practicable' standard.
- The duty of designers, manufacturers, suppliers, installers and erectors to ensure rail safety has not been included in this Bill however the *Workplace Health and Safety Act 1995* duties for these parties will continue to apply.
- The duties of rail safety workers are given the benefit of a defence similar to the defences in the *Workplace Health and Safety Act 1995*.

Division 1 Preliminary Matters

Clause 17 provides that if more than one person has a rail safety duty for a matter, each person retains responsibility for the person's rail safety duty

for the matter and must discharge the person's rail safety duty to the extent the matter is within the person's control and must consult, and cooperate, with all other persons who have a rail safety duty for the matter. This is in conformity with the *Workplace Health and Safety Act 1995*.

Clause 18 provides that a person on whom a rail safety duty is imposed may be subject to more than one rail safety duty. This is in conformity with the *Workplace Health and Safety Act 1995*.

Clause 19 provides that this part does not create a civil cause of action based on a contravention of a provision of this part or affect a civil right or remedy existing apart from this part, whether at common law or otherwise. However, compliance with this part does not necessarily show that a civil obligation existing apart from this part has been satisfied or has not been breached. This clause gives effect to model law section 150 however the wording has been taken from the *Transport Infrastructure Act 1994*, section 120. The drafting of this provision, although more general than the model law, still covers everything in the model law provision.

Division 2 Rail transport operators and particular operators

Clause 20 explains that the object of this division is to ensure, so far as is reasonably practicable, rail safety is not affected by the carrying out of prescribed railway operations. The object is achieved by providing for the elimination or minimisation of risks to safety caused by prescribed railway operations, so far as is reasonably practicable. To ensure the efficient, effective and safe carrying out of prescribed railway operations it is necessary to provide for express and specific duties for ensuring rail safety and to ensure these duties are consistently imposed and applied nationally. This division seeks to strike an appropriate balance between the need for nationally consistent duties and obligations for ensuring rail safety and the need for consistency with the *Workplace Health and Safety Act 1995*. To achieve this balance, the duties imposed under this division are limited to 'prescribed railway operations', and workplace health and safety obligations under the *Workplace Health and Safety Act 1995* continue to apply to other railway operations and associated activities. These prescribed railway operations are identified as requiring nationally consistent duties and requirements to ensure the effective and efficient carrying out of railway operations across State borders.

Clause 21 provides that this division applies only in relation to prescribed railway operations of a rail transport operator, including prescribed railway operations carried out by another person on the operator's behalf.

Clause 22 defines the term 'prescribed railway operations'. 'Prescribed railway operations' encompasses the operation or movement of rolling stock on a railway track and activities that affect the safe operation or movement of rolling stock on a railway track (such activities are listed in subclause (2)). Subclause (3) clarifies that constructing, maintaining, repairing or modifying a platform, station, tram stop or similar structure or works are not considered to be activities that affect the safe operation or movement of rolling stock on a railway track for the purposes of this definition.

Clause 23 explains the concept of ensuring rail safety is not affected by prescribed railway operations. It states that a duty holder is required to eliminate or reduce the risks to safety caused by prescribed railway operations, so far as is reasonably practicable and lists the matters to which regard must be had when deciding how to reduce or eliminate those risks. This clause gives effect to section 7 of the model law and includes a new subclause (2) which clarifies the circumstances in which the list of matters in subclause (3) must be considered.

Clause 24 imposes a duty on rail transport operators to ensure, so far as is reasonably practicable, rail safety is not affected by the carrying out of the operator's prescribed railway operations. This clause gives effect to section 28(1) of the model law. The wording is slightly different to the model law to reflect the use of the concept of ensuring rail safety in clause 12 and the wording used in section 28(1) of the *Workplace Health and Safety Act 1995* (Obligations of persons conducting business or undertaking). The use of wording similar to that in the *Workplace Health and Safety Act 1995* is intended clarify the differences between obligations under that Act and duties under this clause. Unlike the model law, breach of this clause is not declared to be an indictable offence to reflect the status of similar offences under the *Workplace Health and Safety Act 1995*.

Clause 25 contains the actions that a rail transport operator must undertake to ensure compliance with the safety duty in clause 24. This clause gives effect to section 28(2) of the model law. Subclause (1)(a) refers to 'safe working systems' (rather than 'safe systems' as in the model law) for consistency with other provisions of this Bill. Similarly, references to 'perform' rail safety work have been replaced with 'carry out' rail safety work for consistency with the definition of 'rail safety work' and other

provisions of this Bill. Subclause (1)(c) only refers to being 'on duty' for carrying out rail safety work (the model law refers to a rail safety worker who 'carries out' rail safety work or is 'on duty') due to a definition for this term in subclause (2) which provides that being 'on duty' includes carrying out rail safety work. Subclause (1)(f) and (g) are combined in the model law and have been recast to pick up the concept of 'rail safety' as used in this Bill.

Clause 26 contains the actions that a rail infrastructure manager must undertake to ensure compliance with the safety duty in clause 24. This clause gives effect to section 28(3) of the model law. References to 'ensure the safety of railway operations' have been replaced with 'ensures rail safety' to pick up the concept of 'ensuring rail safety' in clause 12. This clause provides that it also does not limit clauses 24 or 25. The lead-in words include a reference to 'prescribed railway operations' so that the references to 'prescribed railway operations' in both paragraphs are specifically linked back to the rail infrastructure manager's prescribed railway operations. Paragraph (a) does not apply to 'design', 'commissioning', 'installation' and 'decommissioning' (unlike the model law) as these will be covered by the obligations on designers, installers, commissioners and decommissioners in the *Workplace Health and Safety Act 1995.*

Clause 27 contains the actions that a rolling stock operator must undertake to ensure compliance with the safety duty in clause 24. This clause gives effect to section 28(4) of the model law. As for clause 26, references to 'ensure safety' or 'ensure safety of railway operations' have been replaced with 'ensure rail safety'; this clause provides that it also does not limit clauses 24 or 25; each paragraph is linked to the rolling stock operator's prescribed railway operations; and paragraph (b) does not apply to 'design', 'construction', 'commissioning', 'installation' and 'decommissioning'. Paragraph (c) refers to the 'systems and procedures' established by rail infrastructure managers to match the wording of clause 26(b). Paragraph (e) has been amended (from the model law approach) to also apply the obligation in that paragraph to 'repair' and 'modification' as these are closely linked to 'maintenance'.

Clause 28 provides that the duties for rail transport operators under this division extend to any contractor who undertakes prescribed railway operations on behalf of a rail transport operator, to the extent the duties relate to matters over which the operator has control or would have had control if not for an agreement purporting to limit or remove the control.

This clause gives effect to section 28A of the model law. This clause has been recast to make it easier to read and to more precisely identify the requirement under subclause (3), contravention of which is an offence. This clause only extends the duties to contractors. The duties applying to the contractor's employees are the duties under division 3 applying to rail safety workers. This clause replaces the concept of 'undertakes railway operations on or in relation to a rail transport operator's rail infrastructure or rolling stock' with a simpler connection of 'undertakes prescribed railway operations on behalf of a rail transport operator'.

Division 3 Rail safety workers

Subdivision 1 Preliminary

Clause 29 explains that the object of this division is to ensure rail safety is not affected by the activities of rail safety workers. This object is achieved by imposing duties on rail safety workers. The obligations of workers in the *Workplace Health and Safety Act 1995* continue to apply to rail safety workers in addition to the duties in this division.

Clause 30 defines the term 'relevant operator' for the purposes of this division. This definition does not appear in the model law equivalent of this division and it is inserted to clarify that the duties under this division also apply to rail safety workers carrying out rail safety work for a contractor. For rail safety workers carrying out rail safety work for a contractor, the relevant operator is both the contractor and the rail transport operator.

Clause 31 provides that the Criminal Code, sections 23 and 24 do not apply to an offence under this division. This approach has been adopted in conformity with the *Workplace Health and Safety Act 1995*, section 24(2).

Subdivision 2 Duties

Clause 32 provides that a rail safety worker, when carrying out prescribed rail safety work, must take reasonable care for the worker's own safety and take reasonable care for the safety of persons who may be affected by the worker's acts or omissions. This clause gives effect to model law section

70(1)(a) and (b) and (4). Unlike the model law, breach of this clause is not declared to be an indictable offence to reflect the status of similar offences under the *Workplace Health and Safety Act 1995*. The rail safety work to which this clause applies is limited to only rail safety work relating to rolling stock and railway tracks and associated structures or railways.

Clause 33 provides that a rail safety worker, when carrying out rail safety work, must comply with instructions given by the relevant operator for the work when the rail safety worker knows, or ought reasonably to know, the instruction is action, or a part of action, that is taken by the operator to comply with a requirement under this Bill. This clause gives effect to model law section 70(1)(c). Similar to clause 32, above, breach of this clause is not declared to be an indictable offence. The model law requires rail safety workers to 'cooperate' with the operator. This has been changed to 'comply with instructions' in order to clarify the intent of this provision.

Clause 34 provides that a rail safety worker, when carrying out rail safety work, must not intentionally or recklessly interfere with or misuse anything provided to the worker by the relevant operator for the work in the interests of ensuring safety of persons or under this Act. This clause gives effect to model law section 70(2). Similar to clauses 32 and 33, above, breach of this clause is not declared to be an indictable offence. Paragraph (a) refers to ‘interests of ensuring safety of persons’ rather than ‘interests of safety’ to pick up the definition of ‘safety’ used in this Bill, which is defined by reference to persons.

Clause 35 provides that a rail safety worker must not intentionally or recklessly place the safety of another person at risk when carrying out rail safety work on or in the immediate vicinity of rail infrastructure. This clause gives effect to model law section 70(3). Similar to clauses 32, 33 and 34, above, breach of this clause is not declared to be an indictable offence.

Subdivision 3 Defences

Clause 36 sets out the defences in a proceeding against a person for a contravention of a duty imposed on the person under this division. This approach has been adopted in conformity with the *Workplace Health and Safety Act 1995*, section 37(1) and (3).

Clause 37 provides that it is a defence in a proceeding against a person for an offence against this division for the person to prove that the commission

of the offence was due to causes over which the person had no control. This is in conformity with the *Workplace Health and Safety Act 1995*, section 37(2).

Part 4 Other requirements relating to safety of railway operations

Division 1 Preliminary

Clause 38 provides that part 4 does not create a civil course of action based on a contravention of a provision of this part or affect a civil right or remedy that exists apart from this part, whether at common law or otherwise. Compliance with part 4 does not necessarily show that a civil obligation that exists apart from this part has been satisfied or has not been breached. This clause gives effect to model law section 150 however the wording has been taken from the *Transport Infrastructure Act 1994*, section 120. The drafting of this provision, although more general than the model law, still covers everything in the model law provision.

Division 2 Accreditation requirement

Part 4 Division 2 outlines the purpose of accreditation under the Bill and the details of the accreditation system. Under the Bill, the purpose of accreditation is to provide assurance to the public that a rail transport operator has demonstrated competence and capacity to manage risks to safety associated with the railway operations for which accreditation has been sought.

The Bill makes it clear that gaining accreditation is no more than a threshold requirement for rail transport operators: a precursor to being permitted to operate. The granting of accreditation simply indicates that, in the opinion of the chief executive, the rail transport operator has the capacity, competency and systems to carry out the railway operations for which it is seeking accreditation. The granting of accreditation is not a certification of safety.

The Bill limits the range of parties to be accredited: only the rail infrastructure manager and the rolling stock operator (collectively referred to as rail transport operators) are required to be accredited.

The logic of the focus on rail transport operators is that infrastructure managers and rolling stock operators should be primarily responsible for demonstrating the competence and capacity of those other parties with whom they contract due to the fact that the accreditation process essentially relates to the operation of whole systems, characterised by multiple, interacting risks that need to be managed in a systemic fashion. Rail transport operators need to be able to demonstrate that their contractors' practices fit with, and form part of the rail transport operators' safety management systems.

Subdivision 1Requirement to be accredited

Clause 39 provides that a person must not carry out railway operations unless the person is accredited or exempt from the requirement to be accredited (or the person is carrying out the operations on behalf of another person who is accredited or exempt). This clause gives effect to section 31 of the model law. Subclause (1)(b) has been recast to cover both (1)(a)(ii) and (1)(c) of the model law provision to avoid any repetition or overlap. Subclause (1)(c) has been linked to 'another person' to cover the situation where a non-rail transport operator may be made exempt. The references to 'exempt under this Act from the requirement to be accredited for the railway operations' is used to clarify what is meant by the phrase 'exempt under this Act from compliance with this section' in the model law. The model law includes a separate subsection for rail safety workers. In this Bill the reference to rail safety workers has been combined with (1)(c) through the insertion of the words "whether as an employee or otherwise" which clarifies that that subclause refers to employees as well as contractors. Subsection (2) has been added to make it clear that the accreditation has to be in force due to the fact that the definition of 'accredited person' includes suspended persons.

Subdivision 2 Exemption for related body corporate

Clause 40 provides that if railway operations are carried out by or on behalf of both a corporation and a related body corporate of the corporation and the corporation is accredited for the railway operations the related body

corporate is exempt from the requirement to be accredited. This clause converts a note in section 31 of the model law to a substantive provision. The note in the model law provides that 'an exemption may be given so that only 1 of the [related] bodies need be accredited', without specifying how that exemption is given. This provision clarifies that the exemption is a straight exemption and does not require an administrative decision by the chief executive.

Subdivision 3 Exemption for private sidings

Clause 41 provides that a rail infrastructure manager of a private siding is exempt from the requirement to be accredited for the following railway operations carried out on or at the private siding by or on behalf of the manager -

- the construction of a railway, railway tracks and associated track structures;
- the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure.

This clause gives effect to model law section 56(1)(a). The exemption from the application of part 4, divisions 3 to 5, has been moved to those divisions so that the exemption is closer to the obligations to which it applies. The references to 'railway operations' have been expanded to clarify that this refers to railway operations carried out "by or on behalf of" the rail infrastructure manager, and therefore the exemption also applies to contractors. This clause clarifies that it is only the railway operations relating to the rail infrastructure that are exempt.

Subdivision 4 Provisions about particular private sidings

Clause 42 provides that subdivision 4 applies to a private siding if all or some of the railway operations carried out on or at the private siding by or on behalf of the rail infrastructure manager of the private siding are not the subject of an accreditation.

Clause 43 defines the terms 'accredited railway' and 'rail infrastructure railway operations' for this subdivision.

Clause 44 provides that it applies if a rail infrastructure manager of a private siding and an accredited person for an accredited railway have entered into an agreement about the private siding's connection with, or access to, the accredited railway. Subject to any agreement between the accredited person and the rail infrastructure manager of the private siding, the accredited person may disconnect the private siding from the accredited railway or close the connection between the private siding and the accredited railway. Before taking this action the accredited person must—

- give at least three months notice of the proposed action or
- get the written agreement to the proposed action from the rail infrastructure manager of the private siding.

The clause also provides that if the accredited person takes the above-mentioned action the accredited person may, by notice, require the rail infrastructure manager of the private siding to remove any part of the private siding that is on land managed by the accredited person. If the rail infrastructure manager of the private siding does not remove the part within a reasonable time, the accredited person may remove it and recover the costs of the removal from the rail infrastructure manager as a debt. The model law does not include an equivalent of this clause. The clause is based on the *Transport Infrastructure Act 1994* section 261(1) to (6).

Clause 45 provides that if a rail infrastructure manager of a private siding wishes the siding to be connected with, or have access to, an accredited railway the manager must lodge a request for the registration of the private siding with the chief executive. The chief executive must then register the siding and may impose a condition on the registration about the safe construction, maintenance or operation of the siding. This provision does not apply until 3 years after this Act commences. This transitional period is intended to allow private siding managers time to comply with these new requirements. This clause gives effect to section 56(2)(a), (3) and (4) of the model law. Subclauses (2)(a) and (3) clarify that the rail infrastructure manager lodges a request for registration and it is the chief executive who registers the siding. Subclause 2(b) provides that the registration request must be accompanied by a document stating details of the interface coordination plan under clause 49. Subclause (5) clarifies that the conditions imposed by the chief executive can not apply to railway operations the subject of an accreditation. Subclause (6) is added to ensure

that imposed conditions are included on the notice of registration and to give the person information about the person's right of review and appeal. Subclause (7) has been recast to avoid the implication that a regulation can amend this Act. The requirement to pay the annual fee has been moved to a separate clause, as have the requirements applying after the registration.

Clause 46 provides that a regulation may prescribe a condition about the safe construction, maintenance or operation of a private siding. If there is an inconsistency between a condition stated on a registration notice for a private siding and a prescribed registration condition applying to the registration of the siding, the prescribed registration condition applies to the extent of the inconsistency. This section does not appear in the model law. It is included here to give a direct regulation-making power and to clarify that conditions imposed under a regulation prevail over conditions imposed by the chief executive.

Clause 47 provides that a person carrying out railway operations on or at a registered private siding must not contravene a condition of the registration. This clause gives effect to model law section 56(2)(b). The offence in subclause (1) is in terms of a contravention to match the style used for accreditation conditions. Subclause (1) clarifies that any person (not just the rail infrastructure manager) carrying out railway operations on or at a registered private siding must not contravene a registration condition. The definition of 'registration condition' clarifies that the conditions imposed under a regulation prevail over conditions imposed by the chief executive.

Clause 48 provides the rail infrastructure manager of a registered private siding must pay an annual registration fee. This clause gives effect to model law section 56(2)(a). It clarifies that the first year's fee must accompany the request for registration and subsequent fees must be paid annually on the date prescribed under a regulation.

Clause 49 provides that if a registered private siding registered is connected to an accredited railway the rail infrastructure manager of the private siding and the accredited person for the accredited railway must identify risks to safety that may arise as a result of the interface between the two railways and develop and implement an interface agreement to minimise or eliminate the identified risks. Each party must give the other party notice of any railway operations carried out on their railway that may affect the safety of persons on or at the other railway. Both parties must keep a register of the current interface agreements. This clause gives effect to model law section 56(2)(c) and (d). It expands the model law requirement that the rail infrastructure manager must comply with model

clause 61 (requirements about interface agreements) by replicating the relevant aspects of that clause. This clause clarifies that the requirements under this section apply to the rail infrastructure manager of the private siding as well as the accredited person. Subclause (6) states that in the event of either the rail infrastructure manager or accredited person failing to agree on an interface agreement, that the chief executive may exercise the powers contained in clauses 67 and 68.

Clause 50 The chief executive may cancel the registration of a private siding under clause 45 if the private siding is not or is no longer connected with, or no longer has or does not have access to, an accredited railway, and the chief executive has obtained written agreement for the cancellation from the rail infrastructure manager of the private siding. This clause does not appear in the model law.

Subdivision 5 Exemption notices

Clause 51 provides that if a person is exempt from the requirement to be accredited for railway operations carried out by or on behalf of the person they must apply to the chief executive for the issue of an exemption notice and the chief executive must give the person an exemption notice for the railway operations. This clause is not in the model law. It has been included as there is a requirement that rail transport operators have the notice available for inspection under clause 86. A general provision has been inserted here rather than in each exempting provision to clarify that an exemption notice should always be applied for and given - whether the exemption is under a provision in the Act itself or a provision in a regulation made under the Act.

Division 3 Requirements about safety management

Subdivision 1 Application

Clause 52 provides that division 3 does not apply to railway operations carried out by or on behalf of a rail transport operator for which the

operator is exempt from the requirement to be accredited. This clause gives effect to model law section 56(1)(b). It extends the exclusion of the operation of this division to all persons who are exempt from the requirement to be accredited to cover the situation where a temporary regulation prescribes an exemption and to capture the exemption for related bodies corporate. This clause clarifies that it is the railway operations that are excluded from the application of this part, rather than the rail transport operator. This is because the rail transport operator may have more than one railway operation and the obligations continue to apply to those for which the operator is required to be accredited. In the model law, the exemption in this section is part of the exemption from the requirement to be accredited. In this Bill, the exemption has been placed closer to the requirements to which it applies (and appears in divisions 3, 4 and 5).

Subdivision 2 Safety Management System

Clause 53 provides that a rail transport operator must have and implement a safety management system for railway operations carried out by or on behalf of the operator. If two or more rail transport operators have an interface coordination plan under clause 62, and if the safety management systems of all the rail transport operators, when taken as one system, comply with this division, then each safety management system is taken to comply with this division. This clause gives effect to model law section 57(1) and (3) and section 58(1). The phrase ‘railway operations carried out on or in relation to the rail transport operator’s rail infrastructure or rolling stock’ has been replaced with ‘railway operations carried out by or on behalf of the rail transport operator’ for consistency with other references. The offence for not implementing the safety management system in section 58(1) of the model law has been combined with this offence, for consistency with other offences in this part. The reference to the ‘safety of persons’ in subclause (2) replaces the reference to 'safety' in the model law to align with the definition of ‘safety’ in this Bill, which is defined by reference to the safety of persons. Subclauses (2) and (3) are a recast of the effect of section 57(2) of the model law, which includes splitting the subclause into two and adding more detail in the cross-reference to clause 61. Subclauses (2) and (3) clarify that the provisions apply to safety management systems of “2 or more” rail transport operators.

Clause 54 provides that a rail transport operator's safety management system must be in the approved form and comply with the requirements prescribed under a regulation. This clause describes the information that must be contained in the safety management system including the identification of risks to safety, the controls that will be used to manage the risks to safety and those persons who are responsible for preparing and implementing the system.

Clause 55 provides that a rail transport operator must review the operator's safety management system at the times or within the periods prescribed under a regulation, or if no regulation applies, at the times or within the periods agreed with the chief executive, or otherwise at least yearly. This clause gives effect to model law section 59. The paragraphs in subsection (1) put the three timing requirements in the order in which they apply, making clear that regulation has the highest status and the timing in paragraph (c) is a fall-back position.

Clause 56 provides that a rail transport operator, before establishing a safety management system for railway operations, or reviewing or varying a safety management system for railway operations, must, so far as is reasonably practicable, consult with persons likely to be affected by the system or its review. This clause gives effect to model law section 57**.**

Clause 57 provides that a rail transport operator must not contravene its safety management system without a reasonable excuse. A reasonable excuse includes, but is not limited to, if the contravention can not be avoided without the operator contravening an accreditation condition, improvement notice or prohibition notice or without the contravention, the likelihood of a notifiable occurrence happening would increase. This clause gives effect to model law section 58(2), (3) and (4). Subclause (2)(a) has been recast to refer to the contravention being unavoidable without non-compliance with a condition instead of the concept of the person complying with the safety management system 'to the extent practicable' while complying with the condition. Subclause (2)(a) also extends the reasonable excuse to compliance with improvement notices and prohibition notices. Subclause (2)(b) has been recast to avoid reference to the person having to 'demonstrate' that compliance would increase the likelihood of a notifiable occurrence. The term 'accreditation condition' includes conditions stated on the accreditation notice as well as prescribed accreditation conditions.

Clause 58 provides that before a contractor starts carrying railway operations for a rail transport operator, the operator must give the

contractor a notice stating where and when the contractor may inspect the parts of the rail transport operator's safety management system applying to those railway operations and ensure the relevant parts are available for inspection by the contractor in the way stated in the notice. The contractor must not contravene the operator's safety management system, to the extent the system applies to the railway operations undertaken by the contractor, without a reasonable excuse. A reasonable excuse includes, but is not limited to, if the contravention can not be avoided without the contractor contravening an accreditation condition, improvement notice or prohibition notice, without the contravention, the likelihood of a notifiable occurrence happening would increase or the contractor complied with the parts of the safety management system that were made available by the operator. This clause gives effect to model law section 71. The substance of the model law provision has been split into 2 subclauses - (1) and (3). Subclause (1) has been recast to match the wording used in clause 25. Subclause (2) is a new requirement that is not in the model law. Subclause (3) inserts a reasonable excuse defence and subclauses (4)(a) and (b) and (5) replicate the reasonable excuses applying to rail transport operators under clause 57. Subclause (4)(c) is an additional reasonable excuse based on the new requirement that the operator makes the relevant parts of the system available to the contractor. The term 'accreditation condition' includes conditions stated on the accreditation notice as well as prescribed accreditation conditions.

Clause 59 provides that the chief executive may direct a rail transport operator to amend its safety management system within a stated period of at least 28 days after the direction is given. A notice giving a direction must include an information notice for the decision to give the direction. The operator must comply with the direction. This clause gives effect to model law section 51.

Subdivision 3 Safety performance reports

Clause 60 provides that a rail transport operator must, for each reporting period, give the chief executive a safety performance report within six months after the end of the period. It also specifies the required form and content of the safety performance report. This clause gives effect to model law section 60. The clause has been restructured so that the offence covers the entire obligation. Subclause (2)(b) does not qualify the reference to

'requirements prescribed under a regulation' by 'if any' for consistency with similar provisions of this Bill where there may or may not be requirements prescribed. The reference to 'ensuring rail safety in relation to' in subclause (2)(c)(ii) replaces 'safety of' to align with the concept of ensuring safety in clause 12. The reference to initiatives 'relating to the safety of persons in relation to' in subclause (2)(c)(iii) replaces 'safety initiatives' to align with the definition of 'safety' in this Bill, which is defined by reference to the safety of persons.

Subdivision 4 Interface coordination

Clause 61 defines interface agreements. Subsection (1)(a) of the definition clarifies the 'risks' to which the agreement applies to match the obligations in clauses 62 to 66.

Subsection (1)(e) expands on the model law equivalent to explain what is required in relation to providing for the agreement's "revision". Subsection (2)(b) combines 2 paragraphs of the model provisions but expands on the model provisions to match the 3 types of risks identified in clauses 62 to 66. Subsections (1) and (2) are combined into 1 section so that all material about the nature and scope of interface agreements is in the 1 place.

Clause 62 provides that a rail transport operator must identify, so far as is reasonably practicable, risks to the safety of persons arising, or potentially arising, from railway operations carried out by or on behalf of the operator that may be caused by railway operations carried out by or on behalf of another operator.

The reference to 'safety of person' in subsection (1)(a) recasts reference to 'safety' in the model law so that we pick up our defined term 'safety' (which is defined by reference to the safety of persons) and make an appropriate link to the railway operations. This also resulted in the addition of the words "arising, or potentially arising, from" to make a link between the safety of persons and the railway operations.

Subsection (2) provides that only a temporary regulation may override the exception in the subsection to make the potential fundamental legislative principles breach less objectionable. Subsections (3) and (4) inserted as part of the transitional arrangements.

Clause 63 provides that a rail infrastructure manager must identify, so far as is reasonably practicable, risks to the safety of persons arising, or

potentially arising, from railway operations carried out on or in relation to the manager's rail infrastructure that may be caused wholly or partly by, the existence or use of a rail or road crossing for a public road.

Reference to 'safety of person' in subsection (1)(a) recasts reference to 'safety' in the model law so that the defined term 'safety' is picked up (which is defined by reference to the safety of persons) and makes an appropriate link to the railway operations. This also resulted in the addition of the words "arising, or potentially arising, from" to make a link between the safety of persons and the railway operations. Subsections (1) and (2) are inserted as part of the transitional arrangements.

Clause 64 provides that a rail infrastructure manager must identify, so far as is reasonably practicable, risks to the safety of persons arising, or potentially arising, from railway operations carried out on or in relation to the manager's rail infrastructure that may be caused wholly or partly by, the existence or use of a rail or road crossing on a road other than a public road.

The reference to 'safety of person' in subsection (1)(a) recasts the reference to 'safety' in the model law so that the defined term 'safety' is picked up (which is defined by reference to the safety of persons) and makes an appropriate link to the railway operations. This also resulted in the addition of the words "arising, or potentially arising, from" to make a link between the safety of persons and the railway operations. In the model, subsection (1)(d)(i), (ii) and (e) are all a part of paragraph (b) and (1)(d)(iii) is in a separate paragraph (paragraph (c)). Subsections (3) and (4) are inserted as part of the transitional arrangements.

Clause 65 provides that the responsible road manager must identify, so far as is reasonably practicable, risks to the safety of persons arising, or potentially arising, from the existence or use of a rail or road crossing for the road that may be caused wholly or partly by railway operations carried out on or in relation to rail infrastructure.

The reference to 'safety of person' in subsection (1)(a) recasts reference to 'safety' in the model law so that the defined term 'safety' is picked up (which is defined by reference to the safety of persons) and makes an appropriate link to the railway operations. This also resulted in the addition of the words "arising, or potentially arising, from" to make a link between the safety of persons and the railway operations. Subsection (3) only refers to 'functions' and 'powers' because the *Acts Interpretation Act 1954* defines 'functions' to include 'duty' which should capture obligations. Subsections (4) and (5) are inserted as part of the temporary arrangements.

Section 61C(2) of the model is separated into a separate section for consistency with approach taken for rail infrastructure managers.

Clause 66 provides that if under clause 64(1)(d) a rail infrastructure manager gives a written notice about a rail or road crossing on a road other than a public road to the responsible road manager for the road. The responsible road manager for the road must identify and assess, so far as is reasonably practicable, risks to the safety of persons arising, or potentially arising, from the existence or use of a rail or road crossing forming a part of the road infrastructure of for the road that may be caused, wholly or partly, by railway operations carried out on or in relation to the rail infrastructure manager's rail infrastructure; and identify measures to manage the identified risks so far as is reasonably practicable; and for managing the identified risks, seek to enter into an interface agreement about the risks with the rail infrastructure manager.

The reference to 'safety of person' in subsection (2)(a) recasts the reference to 'safety' in the model law so that the defined term 'safety' is picked up (which is defined by reference to the safety of persons) and makes an appropriate link to the railway operations. This also resulted in the addition of the words "arising, or potentially arising, from" to make a link between the safety of persons and the railway operations. Subsection (2)(a) clarifies the 'railway operations' that must be considered - the model law only refers to 'railway operations' with referring back to the rail infrastructure manager. Subsection (4) only refers to 'functions' and 'powers' because the *Acts Interpretation Act 1954* defines 'functions' to include 'duty' which should capture obligations. Subsections (5) and (6) inserted as part of the transitional arrangements.

Clause 67 applies if the chief executive is satisfied that a rail transport operator, or a responsible road manager for a road, to whom section 62(1), 63 (1), 64(1), 65(1) or 66(2) (the ***relevant provision***) applies is unreasonably refusing or failing to enter into an interface agreement with another person under the relevant provision; or is unreasonably delaying the negotiation of an interface agreement the operator or manager is seeking to enter into with another person under the relevant provision.

The chief executive may give the rail transport operator or responsible road manager, and the other person, a notice (a ***preliminary notice***) that (a) states the chief executive's powers under this section, including that the chief executive may issue a direction under section 68(2)(b) at any time after a stated date that is at least 28 days after the preliminary notice is given); and (b) includes a copy of this section and section 68; and (c) if the

chief executive considers it appropriate, contains suggested terms for inclusion in an interface agreement for the risks mentioned in the relevant provision.

The chief executive may, by notice, ask a person to whom a preliminary notice was given for information the chief executive reasonably requires for giving an interface risk management direction. A person to whom an interface risk management direction is given must comply with the direction.

Clause 68 provides if the chief executive gives the rail transport operator or responsible road manager, and the other person, a preliminary notice and the operator or road manager and the other person have not entered into an interface agreement for the risks mentioned in the relevant provision by the relevant date, the chief executive may—

(a) decide the arrangements that are to apply in relation to the management of the risks mentioned in the relevant provision; and

(b) direct the rail transport operator or responsible road manager, or the other person, or both of them to implement the arrangements by a stated date.

A direction given under subsection (2)(b) must be written and state the arrangements decided by the chief executive that are to apply in relation to the management of the risks mentioned in the relevant provision; and by what date the arrangements must be implemented.

Subsection (2)(a) clarifies the chief executive's discretion to decide the arrangements that are to apply in relation to the management of the risks (the model law simply says that the notice "may contain suggested terms."). Subsection (4) clarifies that the timing that will be specified is when the arrangements are to be "implemented" rather than when the direction is to be complied with (because the arrangements may provide for ongoing obligations). Subsection (4) clarifies that if the chief executive gives an interface risk management direction, it must state when it must be complied with (the model law is silent as to how this information is given to the operator etc.).

Clause 69 provides a rail transport operator must prepare and keep a register containing each interface arrangement applying to the operator's railway operations. A responsible road manager for a road or roads must prepare and keep a register containing each interface arrangement applying to the road or roads.

This section uses a defined term 'interface arrangement' (the national model repeats the list in both subsections (1) and (2) - which is also used in the heading (model law is misleading because it only refers to interface agreements).

Clause 70 provides that a rail transport operator must give another rail transport operator (the ***other operator***) with whom the operator has an interface arrangement notice of any railway operations carried out by or on behalf of the operator that may affect the safety of railway operations carried out by or on behalf of the other operator.

A rail infrastructure manager must give a responsible road manager for a road with whom the rail infrastructure manager has an interface arrangement notice of any railway operations carried out on or in relation to the rail infrastructure manager's rail infrastructure that may affect the safety of a rail or road crossing, or the use of a rail or road crossing, for the road.

A responsible road manager for a road must give a rail infrastructure manager with whom the road manager has an interface arrangement notice of any use of a rail or road crossing for the road that may affect the safety of railway operations carried out on or in relation to the rail infrastructure manager's rail infrastructure.

The obligations in this section are not in the national model. They have been included for consistency with the approach for private sidings and given the importance of the notification requirements.

Subdivision 5 Management plans

Clause 71 provides that a rail transport operator must have a security management plan and specifies the required content of the plan. The plan must be implemented and the appropriate response measures of the plan must be implemented without delay if an incident happens. However, if an incident results in an emergency, the security management plan does not have to be implemented to the extent that the implementation of the plan, or a response measure of the plan, is inconsistent with a response measure of the emergency management plan required to be implemented under clause 63 for the emergency. This clause gives effect to model law section 72. In subclause (1), 'railway operations carried out by or on behalf of the operator' replaces 'railway operations carried out by or on behalf of the

operator on or in relation to the operator's rail infrastructure or rolling stock' for consistency with other provisions of this Bill. In subclause (2)(a) the words 'and respond to acts of' have been inserted to clarify that 'protect' includes responsive methods as well as preventative methods. Subclause (2)(b) only refers to requirements prescribed under a regulation as there are no other requirements about security management plans in this Bill. The offences in (1) and (3) are in 1 subsection in the model law but separated in this clause for consistency with other provisions of this division. Subclause (4) has been added to deal with any situation where there may be an inconsistency between a security management plan and an emergency management plan.

Clause 72 provides that a rail transport must have an emergency management plan and specifies this is must be prepared in the way and provide for the matters prescribed under a regulation. The plan must be kept in a way that complies with the requirements prescribed under a regulation, a copy of the plan must be given to each emergency service and each other person prescribed under a regulation and the plan must be tested in the way prescribed under a regulation. A rail transport operator must ensure that the appropriate response measures of the plan that the operator is required to take are implemented without delay if an emergency happens.

This clause gives effect to model law section 63. In subclause (1), 'railway operations carried out by or on behalf of the operator' replaces 'railway operations carried out by or on behalf of the operator on or in relation to the operator's railway operations' for consistency with other provisions of this Bill. In subclause (2)(a), 'provide for' replaces the reference to 'address and include' in the model law to clarify the intent. The requirements in subclause (3) are split from the requirements under subclause (2) as the requirements in (3) apply after the preparation of the plan. Subclause (4) clarifies that the appropriate response measures are to be implemented "without delay", which matches the timing requirements in clause 71(3)(b) for security management plans. Subclause (4) also clarifies that it is only the measures that the operator is required to take under the plan that have to implemented by the operator. As the plan is prepared in conjunction with emergency services, the plan may include measures that the emergency service is required to take and the operator is not required to be responsible for those measures. A definition of 'emergency service' has been inserted as part of 'local variations' from the model law.

Subdivision 6 Management programs

Clause 73 provides that a rail transport operator must have and implement a health and fitness program that complies with requirements prescribed under a regulation for rail safety workers who carry out rail safety work on or in relation to the operator's infrastructure or rolling stock. This clause gives effect to model law section 64.

Clause 74 provides that a rail transport operator must have and implement an alcohol and drug management program that complies with requirements prescribed under a regulation for rail safety workers who carry out rail safety work on or in relation to the operator's infrastructure or rolling stock. This clause gives effect to model law section 65. It refers to 'rail safety work' rather than 'railway operations' for consistency with other provisions of this Bill and the definition of 'rail safety worker'. This clause requires compliance with the regulation requirements only as this Bill does not include any further requirements for alcohol and drug management programs.

Clause 75 provides that a rail transport operator must have and implement a fatigue management program that complies with requirements prescribed under a regulation for rail safety workers who carry out rail safety work on or in relation to the operator's infrastructure or rolling stock. This clause gives effect to model law section 67. It refers to 'rail safety work' rather than 'railway operations' for consistency with other provisions of this Bill and the definition of 'rail safety worker'. This clause calls the program a 'fatigue management program' rather than 'a program for the management of fatigue' to match the drafting style of other provisions in this division.

Subdivision 7 Other requirements about safety management

Clause 76 provides that the chief executive may enter into an arrangement with a rail transport operator about the testing, in the way prescribed under a regulation, for the presence of alcohol or drugs in a rail safety worker who is on duty for carrying out rail safety work on or in relation to the operator's rail infrastructure or rolling stock. The operator must comply with the arrangement. This clause gives effect to model law section 66. It only provides for arrangements with rail transport operators rather than the

model law which also allows for arrangements with a "person undertaking railway operations on or in relation to the operator's rail infrastructure or rolling stock". The arrangement is only entered into with the operator, but the arrangement could apply to contractors or employees carrying out rail safety work for the operator. Contractors will only be tested if they are carrying out rail safety work. This clause only applies to the testing of 'rail safety workers' as anyone who carries out rail safety work is a rail safety worker. Subclause (1) further clarifies the relationship between the operator and the persons who are to be tested by linking to persons carrying out rail safety work "in relation to the operator's rail infrastructure or rolling stock'. Subclause (2) and the note have been inserted to clarify that the operator is required to comply with the arrangement and identify the consequences for non-compliance. Subclause (3) has been included to clarify when a rail safety worker is considered to be '***on duty***'.

Clause 77 provides that a rail transport operator must ensure, in the way prescribed under a regulation, that each rail safety worker who is carrying out rail safety work has the competence to carry out the work. The competence must be assessed in the way prescribed under a regulation and rail transport operator must also keep records of competence in the way prescribed under a regulation. This clause gives effect to model law section 68. It does not apply until 2 years after this Bill commences to allow time for rail transport operators to train rail safety workers to the required standard, if necessary. Subclause (2) has been recast to allow a regulation to prescribe the way the competence is to be assessed.

Clause 78 provides that a rail transport operator must ensure that each rail safety worker who is to carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock has identification that allows a rail safety officer to check the type of competence and training the worker has for the work they are performing. The rail safety worker must provide this identification if asked by a rail safety officer. This clause gives effect to model law section 69. It does not apply until 2 years after this Bill commences to align with the transitional period in clause 78. Subclause (1) refers to 'operator's rail infrastructure or rolling stock' rather than 'railway operations' as used in model law, for consistency with other provisions of this part. Subclause (2) has been recast so that it only applies to rail safety workers carrying out rail safety work for a rail transport operator who gives identification under subsection (1).

Division 4 Information giving requirements

Clause 79 provides that division 4 does not apply to railway operations carried out by or on behalf of a rail transport operator for which the operator is exempt from the requirement to be accredited. This clause gives effect to model law section 56(1)(b). It extends the exclusion of the operation of this division to all persons who are exempt from the requirement to be accredited to cover the situation where a temporary regulation prescribes an exemption and to capture the exemption for related bodies corporate. This clause clarifies that it is the railway operations that are excluded from the application of this part, rather than the rail transport operator. This is because the rail transport operator may have more than one railway operation and the obligations continue to apply to those for which the operator is required to be accredited. In the model law, the exemption in this section is part of the exemption from the requirement to be accredited. In this Bill, the exemption has been placed closer to the requirements to which it applies (and appears in divisions 3, 4 and 5).

Clause 80 empowers the chief executive to require a rail transport operator to provide, by the date and in the way stated in a notice, information about measures taken by the operator to ensure rail safety, information the chief executive reasonably requires for the administration of this Act about rail safety or the operator's accreditation for railway operations, including information about the operator's financial capacity or insurance arrangements and information prescribed under a regulation. This clause gives effect to model law section 72(1) and (3). The reference to 'ensure rail safety' in subclause (1)(a) replaces 'promote rail safety' to align with the concept of ensuring rail safety in clause 12. Subclause (2) includes a 'reasonable excuse' defence.

Clause 81 provides that a rail transport operator must give the chief executive the information about safety, or the operator's accreditation for railway operations, that is prescribed under a regulation. The information must be given in the way, within the time and for the periods prescribed under a regulation. This clause gives effect to model law section 72(3). This clause applies to 'information about safety' rather than 'information about rail safety' as appears in the model law to align with the changes made in clause 76. Subclause (2)(a) provides that the way the information is to be given is 'the way prescribed under a regulation' rather than the model law which refers to the 'manner and form approved by the rail safety

regulator'. This is to ensure the regulation can include all requirements about the information to be in the form of a 'return'.

Division 5 Investigating and reporting requirements

Clause 82 provides that division 5 does not apply to railway operations carried out by or on behalf of a rail transport operator for which the operator is exempt from the requirement to be accredited. This clause gives effect to model law section 56(1)(b). It extends the exclusion of the operation of this division to all persons who are exempt from the requirement to be accredited to cover the situation where a temporary regulation prescribes an exemption and to capture the exemption for related bodies corporate. This clause clarifies that it is the railway operations that are excluded from the application of this part, rather than the rail transport operator. This is because the rail transport operator may have more than one railway operation and the obligations continue to apply to those for which the operator is required to be accredited. In the model law, the exemption in this section is part of the exemption from the requirement to be accredited. In this Bill, the exemption has been placed closer to the requirements to which it applies (and appears in divisions 3, 4 and 5).

Clause 83 provides that a rail transport operator must report a notifiable occurrence to the chief executive or a nominated entity within the period and in the way prescribed under a regulation. Two or more rail transport operators may make a joint report about a notifiable occurrence affecting them. The chief executive may give a notice requiring a rail transport operator to give to the chief executive, or another entity, a written report, complying with the requirements stated in the notice, about another occurrence or type of occurrence that endangers or could endanger the safe operation of railway operations carried out by or on behalf of the operator. This clause gives effect to model law section 73. A requirement has been inserted in subclause (1) that the nomination of the other authority to whom the report is to be given must be in a notice. The words 'for complying with subsection (1)' have been inserted in subclause (2) to clarify that both operators will be complying with subsection (1) if they give the joint report. The words 'carried out by or on behalf of the operator' have been inserted to clarify that the requirement of the chief executive will only be about railway operations carried out by or on behalf of the operator. A

'reasonable excuse' defence has been inserted in subsection (5), which also includes a penalty for failing to give a statutory declaration.

Clause 84 empowers the chief executive, by notice to a rail transport operator, to require the operator to conduct an internal investigation into any notifiable occurrence or another occurrence that could endanger the safe operation of the operator's railway operations. The chief executive must decide the level of the investigation having regard to the severity and potential consequences of the notifiable occurrence or other occurrence and whether or not there have been any similar occurrences on or in relation to the operator's railway premises or railway operations. The chief executive must also ensure that the focus of the investigation is directed at identifying the cause of, and factors contributing, to the occurrence, rather than to apportion blame. The rail transport operator must ensure that the investigation is conducted in the way and within the period stated in the notice or if the chief executive has extended the period by a later notice, the extended period mentioned in the later notice. This clause gives effect to model law section 74(1), (2) and (3). Subclauses (1) and (4) have been recast to provide that the way the investigation is required to be carried out is the way 'stated in the notice' rather than the model law which provides that it is the way 'approved by the [chief executive]'. Subclause (1) clarifies that the investigation applies to the operator's railway premises or railway operations. The requirements in subclauses (2) and (3) have been converted into obligations on the chief executive and linked to the way the investigation is required to be carried out under subsection (1). A 'reasonable excuse' defence has been inserted in subclause (4). Subclause (4) also provides that the period within which the investigation is to be carried out is the period stated in the notice given by the chief executive or an extended period if the chief executive gives another notice. This replaces the model law reference to the 'period specified by the chief executive'.

Clause 85 provides that a rail transport operator must give the chief executive a report of an investigation conducted under clause 84 which complies with the requirements stated in the notice, within the period stated in the notice or if the chief executive has extended the period by a later notice, the extended period mentioned in the later notice. A report given under this clause or any information, or document or other thing, obtained as a direct or indirect result of the report is not admissible in evidence against an individual in any civil or criminal proceeding. However this does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence and has no effect on the use or admissibility of the

primary evidence or derived evidence in a coronial procedure. This clause gives effect to model law section 74(4). Subclause (2) provides that the period within which the report is to be given is the period stated in the notice given by the chief executive or an extended period if the chief executive gives another notice. This replaces the model law reference to the 'period specified by the chief executive' which does not expressly state how the chief executive will give that specification to the operator. Subclause (2) also provides that the report of the investigation must comply with the requirements stated in the notice to allow the chief executive to require the relevant information about the investigation to be included in the report. The inadmissibility of the report does not appear in the model law however it is included in this Bill as the focus of the report is on identifying the cause of, and factors contributing, to the occurrence, rather than apportioning blame.

Division 6 Keeping documents and making them available for inspection

Clause 86 provides that a rail transport operator must keep its accreditation notice, exemption notice or notice of registration (for a private siding) and any other document prescribed under a regulation at a stated place during the stated times. These documents must be produced for inspection by a rail safety officer if requested. This clause gives effect to model law section 46. Subclause (1) includes an explicit requirement to produce the relevant document for inspection by a rail safety officer. A rail safety officer's power to require production of documents is also provided for in clause 169. The defined terms ***'relevant document', 'relevant place'*** and ***'relevant times'*** have been introduced in this clause to make the provision easier to read. Paragraph (b) of the definition of 'relevant document' is more detailed than the model law in that it expressly states the operators who are required to have the exemption notice available for inspection. This is to ensure the persons captured by (a) and (b) are not mutually exclusive, as there could be a situation where a rail transport operator is accredited for some railway operations but exempt from accreditation for other railway operations.

Part 5 Accreditation

Division 1 Preliminary

Clause 87 provides that the purpose of accrediting a person for railway operations is to attest that the person has demonstrated to the chief executive that they have competence and capacity to manage risks to safety of persons arising, or potentially arising, from the railway operations. This clause gives effect to model law section 30. The reference to 'safety associated with railway operations' in the model law has been recast to align with the definition of 'safety' in this Bill, which is defined by reference to the safety of persons. This clause refers to a 'person' rather than a 'rail transport operator' to clarify that it applies to persons who are or will be a rail infrastructure manager or rolling stock operator.

Clause 88 lists the accreditation criteria for being accredited for railway operations. The person who wishes to be accredited must demonstrate that they are or will be a rail infrastructure manager or rolling stock operator in relation to the operations; they have the competence and capacity to manage risks to the safety of persons and to implement their safety management system; they have the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities; they have met the consultation requirements; and they are not disqualified under clause 99(3) from applying for accreditation. Other criteria may also be prescribed under a temporary regulation. This clause gives effect to model law section 34.

Clause 89 enables accreditation to be granted for stated railway operations on or at a stated railway or part of a railway (or a stated railway or part of a railway of a stated scope and nature); a service or aspect, or part of a service or aspect, of stated railway operations; construction of stated rail infrastructure; and an activity that is a part of railway operations. It also enables accreditation to be granted for a limited period upon the applicant's request. This clause gives effect to model law section 32.

This clause has been recast to reflect the intent behind listing the purposes for which an accreditation could be granted and to fit the list with the rest of this Bill and particularly clause 91. The changes from the model law are as follows: subclause (1) has a statement that the chief executive can grant accreditations; the concept of 'purposes' has been removed as it is not used anywhere else in this Bill (this Bill refers to accreditation for railway operations rather than accreditation for a purpose); subclause (2) provides what 'scope and nature' includes; the list in subclause (3) is linked to

'stated railway operations' (which matches the model law concept of 'specified') to follow on from the statement in (1) and align with the concept used throughout this Bill; subsection (3)(a) introduces the concept of 'all or stated railway operations' to clarify that there may be accreditations that apply to all operations relating to a railway and the concept of a 'stated railway or part of a railway' to clarify that there may be accreditations that apply to an entire railway; subclause (3)(c) has been separated from the list in (d) because the construction of rail infrastructure is actually "railway operations" (not a part of railway operations); subclause (3)(d) has been recast so that the list is linked to things that are 'part of railway operations' to clarify that an accreditation for these things is only granted if they are a part of 'railway operations'; and subclause (3)(d)(iii) refers to 'rail infrastructure' rather than 'infrastructure' as this Bill is concerned with rail infrastructure.

Division 2 Applying for accreditation

Clause 90 makes provision in relation to applications for accreditation. It provides that a person may apply to the chief executive for accreditation for stated railway operations proposed to be carried out by or on behalf of the person

Provisions of this clause -

specify the manner and form in which an application for accreditation must be made, and the things which must accompany an application;

- allow the chief executive to require an applicant to supply further information or verify by declaration information supplied for the purposes of the application.
- This clause gives effect to model law section 33. It refers to a 'person' applying for accreditation rather than a 'rail transport operator' to clarify that it applies to persons who are or will be a rail infrastructure manager or rolling stock operator. Subclause (2)(b)(ii)(A) clarifies that an accredited person under a corresponding law still has to state that the person is an accredited person even if the accreditation is suspended. Subclause (2)(b)(iii) has been added to require the applicant to also notify the chief executive if the applicant's accreditation under a corresponding law is suspended. Subclause

(2)(c)(i) refers to 'information or other items prescribed under a regulation' rather than 'prescribed information' as appears in the model law because the regulation may prescribe things to be included in an application that are not 'information'. The reference to the safety management system is preceded with 'proposed' as the requirement to have a safety management system only applies to accredited persons.

Clause 91 provides that the chief executive may grant an accreditation for railway operations to the applicant only if the chief executive is satisfied that the applicant meets the accreditation criteria for being accredited for the railway operations for which accreditation is sought and has complied with any other requirements prescribed for this clause. This clause gives effect to model law section 34. The word construction "may grant" and "only if" is used instead of the model law approach of "must not grant" and "unless". The words "that the applicant has demonstrated" have been removed from the lead-in to the 'accreditation criteria' as it is clear that the person will need to demonstrate these things for the chief executive to be satisfied of them. This clause does not require the chief executive to have regard to guidelines as such guidelines are not mandatory. This clause links to a defined term 'accreditation criteria' which lists the matters in section 34 of the model law.

Clause 92 enables the chief executive to direct rail transport operators to coordinate their applications for accreditation to ensure that railway operations are carried out safely. A direction given under this clause may require a rail transport operator the subject of the direction to give another rail transport operator the subject of the direction information about the circumstances relating to the operator's railway operations that constitute a risk to the safety of persons in relation to the other operator's railway

A rail transport operator who has coordinated the preparation of an application for accreditation in compliance with a direction under this section must ensure the application is amended accordingly after the coordination and the operator must then give the amended application to the chief executive. If the applicant does not give the amended application to the chief executive within 6 months after the consultation direction is given, the applicant's application for accreditation lapses unless the chief executive has extended the period within which the amended application must be given by notice to the applicant. This clause gives effect to model law section 35. Subclause (3) includes reference to 'Without limiting subsection (2)' which does not appear in model law to clarify that there may be other directions given under subclause (2). Subclause (3) is

redrafted in the interests of making it shorter. In particular, it is drafted in the singular, refers to "about the circumstances" rather than "concerning the circumstances" and refers to the concept of 'railway operations of a rail transport operator' rather than referencing railway operations carried out by or on behalf of a rail transport operator. Subclause (3) also refers to "safety of persons" rather than "safety" to align with the definition of 'safety' in this Bill, which is defined by reference to the safety of persons. Subclause (4) includes a 'reasonable excuse' defence which does not appear in the model law. Subclause (5) clarifies that the application is "amended" to include "details of" the information mentioned in that subsection. A definition has been inserted to clarify that this clause applies to persons who are or will be a rail infrastructure manager or rolling stock operator.

Clause 93 provides for the co-ordination of the determination of applications for accreditation and applications for variations of accreditation where the applicant is accredited or is applying for accreditation in two or more jurisdictions. The chief executive must consult with the Rail Safety Regulator or Rail Safety Regulators in each of the other relevant jurisdictions prior to determining the application. This clause gives effect to model law section 36. This clause only applies to applications for accreditation rather than the model law which also applies to applications for variation and applications for a variation of a condition. Those two types of applications are dealt with separately so that all the provisions about each type of application are kept together. Subclauses (1) and (2) include drafting changes to allow for the situation where the applications for accreditation in the various jurisdictions are not made at the same time. Subclause (1)(a) includes the words "whether or not the accreditation is suspended under the corresponding law" to ensure that this section still applies if the accreditation is suspended in the other jurisdiction. Subclause (2) is more detailed than the model law in order to distinguish between an existing accreditation in the other jurisdiction and a new accreditation that is the subject of an application. This clause does not require the chief executive to have regard to guidelines.

Clause 94 provides requirements on the chief executive determine an application and grant an accreditation, with or without conditions or otherwise, refuse the application. The determination must be made within 6 months after the application was received, unless further information is required by the chief executive, or unless the chief executive extends the time for determination of the application. This clause gives effect to model law section 37(1), (3)(b) and (4). Section 37 of the model law has been split

into two clauses (clauses 94 and 95). Subclause (2) clarifies that if the applicant is required to "coordinate" the application with other rail transport operators, the 6 month decision-making period starts after the applicant amends the application after the coordination.

Clause 95 provides that if accreditation is granted, the chief executive must give the applicant a notice granting the accreditation which states the details of the applicant prescribed under a regulation, the scope and nature of the railway operations for which accreditation is granted, the way in which railway operations are to be carried out, any conditions imposed by the chief executive on the accreditation and any other information prescribed under a regulation.

If the chief executive has imposed a condition on the accreditation, the applicant must be given an information notice for the decision to impose the condition. If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision. This clause gives effect to model law section 37(1), (2) and (3)(a).

Division 3 Conditions of accreditation

Clause 96 provides that a regulation may prescribe a condition to which a person's accreditation for railway operations is subject. If there is an inconsistency between a condition stated on an accreditation notice and a prescribed accreditation condition, the prescribed accreditation condition applies to the extent of the inconsistency and the condition stated on the accreditation notice has no effect to the extent of the inconsistency. For the application of a prescribed accreditation condition to a person's accreditation for railway operations, it is irrelevant when the accreditation was granted. Also, if a person's accreditation for railway operations is varied under this part, the accreditation as varied is subject to the prescribed accreditation conditions. This clause gives effect to model law sections 38 and 50. Subclauses (1) to (3) reflect the drafting of the *Transport Infrastructure Act 1994* section 129 which is different to section 38 of the model law but achieves the same thing. The only notable difference is that subclause (1) is a direct regulation-making power rather than the model law which states that the accreditation is subject to conditions prescribed under a regulation. Subclause (4) reflects section 50 of the model law. This approach clarifies that there will only be one set of conditions prescribed and that the effect of a variation of an accreditation is

to potentially make some of those already prescribed accreditation conditions applicable to the accreditation as varied. This approach also makes it clear that the offence in clause 97 applies equally to accreditations and accreditations as varied.

Clause 97 provides that a person carrying out railway operations the subject of an accreditation must not contravene an accreditation condition of the accreditation. This gives effect to model law section 39. The offence in the model law is in terms of failure to comply which has been changed to 'contravene' in this clause. This clause clarifies that any person carrying out railway operations under an accreditation must not contravene a condition of the accreditation (rather than model law which only imposes this requirement on the accredited person). The use of the term 'accreditation condition' and its definition in the dictionary clarify that this section applies to conditions stated on the accreditation notice as well as prescribed accreditation conditions. The model law refers to these as a condition of an accreditation 'applying under this Part'.

Division 4 Fees payable for accreditation

Clause 98 provides that an accredited person must pay the annual accreditation fee prescribed under a regulation and that the payment may be in instalments. This clause gives effect to model law section 40. Subclause (1) includes a regulation-making power for prescribing when fees are to be payable. The model law allows for 'local variations' for the regulation-making power.

The additional fee for late payment in section 41 of the model law has not been included. Section 42 of the model law (Waiver of fees) has not been included in this Bill because section 30B of the *Statutory Instruments Act 1992* provides that a power to prescribe a fee includes a power to waive payment of the fee or exempt persons from the payment of the fee.

Division 5 Suspending, revoking or varying accreditation

Subdivision 1 Suspension, revocation or variation of conditions by chief executive

Clause 99 provides grounds for the chief executive to suspend or revoke (wholly or partly) accreditation where the an accredited person contravenes the Act or chief executive considers the accredited person -

- no longer meets the accreditation criteria for being accredited; or
- is unable to carry out the railway operations in a way that complies with the requirements under the Act; or
- is not managing the rail infrastructure or operating rolling stock and has not done so for the previous year or longer

The accreditation may be suspended or revoked with immediate effect or with effect from a stated future date. If the chief executive revokes an accredited person's accreditation, the chief executive may declare that the person is disqualified from applying for accreditation, or accreditation for stated railway operations, for a stated period.

This clause gives effect to model law section 44(1) and (2). In subclause (1)(a)(i), the drafting is updated to link to the concept of accreditation criteria as defined in this Bill and the requirement to 'demonstrate' the matters mentioned is removed in alignment with clause 91. Subclause (1)(a)(ii) is a recast of the model law wording that the person is 'no longer able to satisfy the conditions of the accreditation'. The requirement is intended to apply to the way the accredited railway operations are carried out - including complying with conditions stated on the accreditation notice, conditions prescribed under a regulation and any other requirements under the Act. In subclause (1)(a)(iii), the rail infrastructure & rolling stock is linked to the accreditation through the 'railway operations' to which the accreditation relates rather than the model law which links the rail infrastructure to the accreditation directly and the rolling stock via rail infrastructure. Subclause (2)(a) refers to 'wholly or partly, or in relation to stated railway operations' rather than the model law reference to 'suspend the accreditation, or part of the accreditation'. The phrase used in this clause reflects the wording used in subclause (2)(b) and clause 101(2)(a)

for consistency. This clause does not refer to imposing additional conditions on, or varying conditions of, an accreditation as the imposition of new conditions and variation of conditions is covered under clause 102. This clause does not include a reference to the power to withdraw a suspension as this is covered by the *Acts Interpretation Act 1954*, section 22AA. Section 44 of the model law has been split into 2 clauses (clauses 99 and 100).

Clause 100 provides the procedure to be followed for suspending or revoking accreditation. It provides that the chief executive must give the accredited person notice in writing that the chief executive is considering making a decision under clause 99 of the kind and for the reasons stated in the notice and that the person may, within the period of at least 28 days stated in the notice, make written representations to the chief executive showing cause why the decision should not be made and the chief executive must consider any representatives made.

It also provides the procedures that the chief executive must follow after making a decision, the responsibilities of the person to whom any notice is directed to, the timeframes for action and the requirement that the chief executive advise the corresponding rail safety regulator if an accreditation is suspended for a person accredited under a corresponding law. This clause gives effect to model law section 44(3),(4) and (5). Subclauses (3), (4) and (5) are not in the model law but reflect the current position in section 159(6), (7) and (8) of the *Transport Infrastructure Act 1994*, with the addition of a reasonable excuse in subclause (4). Subclause (6) includes the words “including a person whose accreditation is suspended under the corresponding law” to ensure that the subclause still applies if the accreditation is suspended in the other jurisdiction. Subclause (7) is not in the model law but reflects the current position under section 160 of the *Transport Infrastructure Act 1994*.

Clause 101 provides for the immediate suspension of a person's accreditation, or part of an accreditation, for up to six weeks, where there is an immediate and serious risk to the safety of persons. The chief executive may do this by notice and amend the person's accreditation to reduce the period of suspension, or to extend the period of suspension so long as the total suspension period does not exceed 6 weeks. If the chief executive proposes to extend the period of suspension the chief executive must give the person whose accreditation has been suspended notice in writing of this intention, as well as the opportunity to show cause why the suspension should not be extended and consider any representations that the person

makes. If the chief executive decides to extend or reduce the suspension, the chief executive must give the person a notice indicating the amended time frames. If the chief executive decides to take any such action and the accredited person is accredited under a corresponding law the chief executive must notify the corresponding rail safety regulator of the decision.

This clause gives effect to model law section 45. The reference to 'safety' in model law is replaced with 'safety of persons' to align with the defined term in this Bill, which is defined by reference to the safety of persons. This clause includes a requirement to give an information notice rather than the model law which is silent on the requirement but does provide that the decision to immediately suspend a person's accreditation is subject to review and appeal. This provision excludes all of clause 100 and replicates the coordination requirement in subsection (7).

Clause 102 provides that the chief executive may, at any time, vary or revoke a condition imposed on an accreditation or impose a new condition on the accreditation. The chief executive must give the accredited person notice of the intended course of action and allow the person an opportunity to make representations to the chief executive, unless the chief executive reasonably considers it necessary to take immediate action in the interests of ensuring the safety of persons. If the chief executive decides to vary or revoke a condition imposed on an accreditation or impose a new condition on the accreditation, the chief executive must give the accredited person an information notice for the decision. This clause gives effect to model law section 53. Subclause (1) does not include the phrase 'in the discretion of the [chief executive]' as appears in the model law as this is already implied by the use of 'may' and 'at any time'. In subclause (3) the reference to 'ensuring the safety of persons' replaces the reference to 'safety' in the model law to align with the defined term in this Bill, which is defined by reference to the safety of persons. In subclause (4) the link to 'information notice' replaces the model law requirement that the chief executive give written details of the action taken and the reasons for the action and give written notice of the right of review and appeal. The dual requirement in the model law can be achieved by the information notice.

Clause 103 provides for the accredited person to apply for a variation of the person's accreditation.

Provisions of this clause:

- address the form in which an application for variation of accreditation must be made, and the information which must accompany an application; and
- allow the chief executive to require an applicant to supply further information or verify by declaration information supplied for the purposes of the application.

This clause gives effect to model law section 47. Subclause (2)(b)(ii) refers to 'information or other matters' prescribed under a regulation rather than the model law which only refers to 'prescribed information' as more than just information may be prescribed for this in the regulation for this clause.

Clause 104 provides that if the applicant for a variation of accreditation is a person to whom a direction under clause 92 was given, the chief executive may give the applicant a written direction to consult with one or more rail transport operators who were the subject of the original direction. A direction under this clause may require the applicant to give another rail transport operator information about how the proposed variation may or will affect the railway operations of the other rail transport operator. An applicant for a variation of accreditation who has consulted with a rail transport operator in compliance with a direction must ensure the application is amended after the consultation, to include details of the consultation and give the amended application to the chief executive. If the applicant does not give the amended application to the chief executive within 6 months after the consultation direction is given, the applicant's application for variation of accreditation lapses unless the chief executive has extended the period within which the amended application must be given by notice to the applicant. This clause gives effect to model law section 48. This clause is a detailed version of the intent behind section 48 of the model law in relation to the reference to section 35 of the model law (which is clause 92 of this Bill).

Clause 105 provides that when the chief executive receives an application for a variation of accreditation that indicates that the applicant is an accredited person for railway operations under a corresponding law or has applied for accreditation for railway operations under a corresponding law, the chief executive must, as soon as possible and before deciding the application, consult with the relevant corresponding rail safety regulator in relation to the application with a view to ensuring the chief executive's decision on the application is consistent with—

- if the applicant is an accredited person under the corresponding law—the applicant's accreditation, including any decision of the relevant corresponding rail safety regulator on an application for a variation of the accreditation, or a variation of a condition of the accreditation; or
- if the applicant is applying for accreditation under the corresponding law—the decision of the relevant corresponding rail safety regulator on the application.

This clause gives effect to model law section 48. This clause is a detailed version of the intent behind section 48 of the model law in relation to the reference to section 36 of the model law (which is clause 94 of this Bill).

Clause 106 provides that the chief executive must consider each application for a variation of accreditation and if the chief executive is satisfied that the applicant has complied with the accreditation criteria for being accredited for the railway operations the subject of the accreditation as varied by the proposed variation—vary the accreditation, with or without the imposition of new or varied conditions on the accreditation or otherwise refuse the application. The chief executive must vary the accreditation or refuse the application within six months of the application's receipt, or if the applicant is required to consult with other rail operators, six months after that consultation, or if further information is required six months after receipt of that information or if the chief executive extends the time for determination of the application, the end of that period (whichever period ends the latest)**.** This clause gives effect to model law section 49(1), (3)(b) and (4). Subclause (1)(a) refers to "new or varied conditions" as there may be conditions that are varied or removed. That is, the subsection is not limited to the imposition of new conditions. The wording in subclause (1)(a) clarifies that it is the accreditation that will be subject to the conditions, not the variation. Subclause (2) clarifies that if the applicant is required to "consult" on the application with other rail transport operators, the 6 month decision-making period starts after the applicant amends the application after the consultation. Section 49 of the model law is split into 2 clauses (clauses 106 and 107).

Clause 107 provides that if the application for a variation is granted, a notice varying the accreditation must be given to the applicant and must also include prescribed details of the applicant, information on how the variation affects the scope and nature and way in which the applicant's railway operations are carried out, any new or varied conditions imposed on the accreditation and any other information prescribed under a

regulation. If the chief executive has imposed new or varied conditions on the accreditation the chief executive must give the applicant an information notice for the decision and if the application for a variation is refused, the chief executive must give the applicant an information notice for the decision. This clause gives effect to model law section 49(2) and (3).

Subdivision 3 Variation of condition of accreditation on application by accredited person

Clause 108 provides that an accredited person may apply for a variation of a condition of the person's accreditation imposed by the chief executive. Such an application must be made in the same manner as an application for a variation of accreditation and the chief executive may require the applicant to provide further information and the verify by statutory declaration the information. This clause gives effect to model law section 51(1) and (2). The reference in section 52(2) of the model law to 'and section 47 applies accordingly' has been replaced with subclause (3).

Clause 109 provides that if the applicant for a variation of a condition of accreditation is a person to whom a direction under clause 92 was given, the chief executive may give the applicant a written direction to consult with one or more rail transport operators who were the subject of the original direction. A direction under this clause may require the applicant to give another rail transport operator information about how the proposed variation may or will affect the railway operations of the other rail transport operator. An applicant for a variation of a condition of accreditation who has consulted with a rail transport operator in compliance with a direction must ensure the application is amended after the consultation, to include details of the consultation and give the amended application to the chief executive. If the applicant does not give the amended application to the chief executive within 6 months after the consultation direction is given, the applicant's application for variation of a condition of accreditation lapses unless the chief executive has extended the period within which the amended application must be given by notice to the applicant. This clause gives effect to model law section 52(3). Section 52(3) of the model law requires the chief executive considering an application for a variation of a condition of accreditation to act 'in accordance with the provisions of this part so far as they are applicable'. This includes the provision about requiring the applicant to consult with affected rail transport operators, the

provision about requiring the chief executive to coordinate applications with other rail safety regulators, and the timing requirements for the decision-making. Those provisions have been replicated in this Bill as clauses 109 to 112.

Clause 110 provides that if the chief executive receives an application for a variation of a condition of accreditation that indicates that the applicant is an accredited person for railway operations under a corresponding law or has applied for accreditation for railway operations under a corresponding law the chief executive must, as soon as possible and before deciding the application, consult with the relevant corresponding rail safety regulator in relation to the application with a view to ensuring the chief executive's decision on the application is consistent with—

- if the applicant is an accredited person under the corresponding law—the applicant's accreditation, including any decision of the relevant corresponding rail safety regulator on an application for a variation of the accreditation, or a variation of a condition of the accreditation; or
- if the applicant is applying for accreditation under the corresponding law—the decision of the relevant corresponding rail safety regulator on the application.

This clause gives effect to model law section 52(3) as detailed above.

Clause 111 provides that the chief executive must consider each application for a variation of a condition of accreditation and if the chief executive is satisfied the applicant meets accreditation criteria for being accredited for the railway operations the subject of the accreditation, as varied by the proposed variation, vary the condition or otherwise, refuse the application. The chief executive must vary the condition or refuse the application within six months of the application's receipt, or if the applicant is required to consult with other rail operators, six months after that consultation, or if further information is required 6 months after receipt of that information or if the chief executive extends the time for determination of the application, the end of that period (whichever period ends the latest)**.** This clause gives effect to model law section 52(3) as detailed above. Subclause (1) clarifies that the chief executive must grant the variation if satisfied the accreditation criteria are met. The model law includes a requirement that the chief executive be satisfied of matters mentioned in the equivalent to clause 92. That clause imposes a procedural requirement which is covered in clause 110 above.

Clause 112 provides that if the chief executive decides to vary the condition of the accreditation, the chief executive must give the applicant a notice varying the condition of the accreditation and stating the details of the applicant prescribed under a regulation, details of the variation of the condition of the accreditation to the extent the variation applies to the scope and nature of the railway operations the subject of the accreditation, or the way in which the railway operations are to be carried out, the conditions of the accreditation after the variation and any other information prescribed under a regulation. If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision. This clause gives effect to model law section 52(3) and (4).

Division 6 Other provisions about accreditation

Clause 113 provides for a consolidated accreditation notice. If a person's accreditation or a condition of accreditation for railway operations is varied, the chief executive must, immediately after the variation, issue the person a 'consolidated accreditation notice' stating the matters mentioned in clause 95(2) for the accreditation as applying after the variation. The consolidated accreditation notice must identify when each variation of the accreditation, or a condition of the accreditation, came into effect. This clause does not appear in the model law.

Clause 114 provides for surrender of accreditation, in a way prescribed under a regulation. This clause gives effect to model law section 43.

Clause 115 provides that accreditation for railway operations granted to a person cannot be transferred or otherwise similarly dealt with or vest in another person by operation of law. This gives effect to model law section 54. Subclause (1) does not include a statement that the accreditation is personal to the person who holds it as this is covered by the declaration that it is not transferable and can not vest in another person. Subclause (1)(a) and (2) refer to 'similar dealing' rather than model law reference to 'otherwise dealt with' which has potentially wide application.

Clause 116 provides that if railway operations are to be sold or transferred by an accredited person, the chief executive may exercise discretion, when considering an application for accreditation from the proposed transferee, to waive compliance with some or all of the accreditation requirements, provided that the proposed transferee meets the accreditation criteria for

being accredited for the railway operations or meets a part of the accreditation criteria for being accredited for the railway operations. The waiver of compliance may however be subject to such conditions and restrictions as the chief executive may impose. This clause gives effect to model law section 55. Subclauses (1) and (2) recast the effect of subsections (1) and (2) of the model law in order to clarify the way this section is intended to operate in practice. The main differences are as follows: the waiver can be given before the transferee makes the actual application; the waiver clearly only applies to the application for accreditation and not the requirements that apply after the accreditation is granted; the pre-condition to the waiver in subsection (1)(c) is linked to the chief executive being satisfied the transferee meets the accreditation criteria rather than the test that the transferee demonstrate that they have 'the competence and capacity to comply with the requirement'; and examples have been inserted to further clarify the intent of this clause.

Part 6 Administration

Division 1 Functions and powers of chief executive

Subdivision 1 General functions and powers

Clause 117 sets out the functions of the chief executive including:

- to administer, audit and review the accreditation regime under the Bill:
- to work with parties involved in railway operations to improve rail safety in Queensland and nationally;
- to give information to corresponding rail safety regulators including information about causal factors of notifiable occurrences, accreditation processes, investigation methods and risk assessment methodologies;
- to collect and publish information about the safety of railways;

- to provide or facilitate the provision or advice, education and training about the safety of railways; and
- to monitor, investigate and enforce compliance with this Bill.

This clause gives effect to model law section 18. References to 'rail safety' have been replaced with 'safety of railways' to distinguish this concept from the concept of ensuring rail safety in clause 12. The reference to 'notifiable occurrence' in (1)(c) replaces the model law reference to 'rail incidents'.

Clause 118 sets out the information to be included in the department's annual report including information about the developments in the safety of railways that happened in the year and information about any improvements and other important changes for the regulation of the safety of railways that happened in the year. This gives effect to model law section 19. References to 'rail safety' have been replaced with 'safety of railways' to distinguish this concept from the concept of ensuring rail safety in clause 12. The annual report has been linked to the department's annual report under the *Financial Accountability Act 2009*. The words 'that happened in the year' have been included in (1)(b) to link the information requirement to the financial year and align with (1)(a). The requirement to include "an aggregation of statistics of a class prescribed under a regulation, reported to the chief executive under this Act" has been removed. This clause does not include a statement it is in addition to other requirements under other Acts, for consistency with other Queensland legislation.

Clause 119 provides that the chief executive may exercise any power conferred on a rail safety officer by this Bill. This clause gives effect to model law section 21.

Subdivision 2 Auditing railway operations

Clause 120 provides the power for the chief executive to audit the railway operations of a rail transport operator, prepare and implement an audit program for each year, for inspecting the railway operations of rail transport operators, and for an audit, inspect the railway operations of a rail transport operator whether or not under an audit program. Before inspecting the railway operations of a rail transport operator the chief executive must give the operator a notice about the proposed inspection at least 24 hours before the inspection is proposed to be carried out. A

regulation may prescribe procedures for the conduct of audits, including procedures to ensure the confidentiality of records. In this clause 'rail transport operator' includes a person who undertakes railway operations on behalf of a rail transport operator, other than as an employee of the operator. This clause gives effect to model law section 75. The reference to 'rail safety' has been replaced with 'safety of railways' to distinguish this concept from the concept of ensuring rail safety in clause 12. In subclause (5), the definition is recast to match the wording in clause 28.

This part does not include an equivalent of section 20 (Delegation) of the model law because the chief executive can delegate powers under the Act under section 37 of the *Transport Planning and Coordination Act 1994*. The *Acts Interpretation Act 1954*, section 27A also has application.

Subdivision 3 Provisions about access disputes relating to rail safety

Clause 121 provides definitions for dispute matter, Queensland Competition Authority, rail transport infrastructure, safety matter and safety matter direction for this subdivision.

Clause 122 provides that if parties to negotiations for a proposed agreement about access to rail transport infrastructure are unable to agree about a matter relating to rail safety (a 'safety matter') the chief executive may make a decision about the safety matter in the circumstances listed in subclause (2). If the chief executive makes a decision about a safety matter under subclause (2)(a) (the access is required to be given under an access undertaking), the Queensland Competition Authority must not make a decision relating to the safety matter that is inconsistent with the chief executive's decision and if the chief executive makes a decision about a safety matter under subclause (2)(b) (the access is required to be given under the *Queensland Competition Authority Act 1997*), the Queensland Competition Authority must have regard to the decision when exercising a power under the *Queensland Competition Authority Act 1997* relating to the safety matter. If the chief executive makes a decision about a safety matter under subclause (2)(c) (one of the parties asks the chief executive to make the decision), the decision is binding on the parties to the negotiations only if the parties agreed to be bound by the decision. The chief executive may develop guidelines for making decisions under subclause (2) and must ensure a copy of the guidelines is available for

inspection, free of charge, at each department office during office hours on business days. This clause does not appear in the model law but reflects the *Transport Infrastructure Act 1994*, section 139.

Clause 123 provides that if a dispute under an agreement for accessing rail transport infrastructure is about a safety matter, a person who gives notice of the dispute to another party to the agreement may give the chief executive a signed notice stating details of the dispute. Each rail transport operator who is a party to the agreement must give the chief executive a notice stating details of the resolution of the dispute within 14 days after the resolution. Definitions are provided for the terms 'access agreement' and 'resolution' used in this clause. This clause does not appear in the model law but reflects the *Transport Infrastructure Act 1994*, section 140.

Clause 124 provides that if the chief executive is given a notice under clause 123(2) about a matter that is in dispute and has taken steps the chief executive considers appropriate to become reasonably informed about the dispute matter and reasonably considers that in relation to the dispute matter it is reasonable to give a rail transport operator a written direction ('safety matter direction') to do or not to do a stated act, the chief executive may, by complying with clause 125, give the rail transport operator the safety matter direction. The steps the chief executive takes may include consulting with each rail transport operator who is a party to the agreement or another person whom the chief executive reasonably believes may be able to help the chief executive in relation to the dispute matter, about the dispute matter. For consulting with a rail transport operator, the chief executive may give a notice to the operator stating a reasonable time and place for a meeting with the operator, and the operator must attend the meeting at the time and place stated in the notice, unless the operator has a reasonable excuse. This clause does not appear in the model law but reflects the *Transport Infrastructure Act 1994*, section 141 and 142(1).

Clause 125 provides that if the chief executive proposes to give, under clause 124, a rail transport operator a safety matter direction in relation to a dispute matter, the chief executive must give each party to the agreement, and the Queensland Competition Authority, a notice stating the listed information. The chief executive must consider any written representations made within the stated period and if, after considering any written representations made within the stated period, the chief executive still considers it is reasonable to give the safety matter direction, the chief executive may give the safety matter direction. The safety matter direction must state the day by it must be complied with and include, or be

accompanied by, an information notice about the chief executive's decision to give the direction. The chief executive must give a notice about the fact that a safety matter direction has been given to a rail transport operator under clause 124 to each other person who was given a notice about the safety matter direction. This clause does not appear in the model law but reflects the *Transport Infrastructure Act 1994*, section 142(2), 143, 144(1), (2) and (4).

Clause 126 provides that a person to whom a safety matter direction is given under clause 124 must comply with the direction, unless the person has a reasonable excuse. This clause does not appear in the model law but reflects the *Transport Infrastructure Act 1994*, section 144(3).

Division 2 Rail safety officers

In this division, the approach taken in the *Transport Infrastructure Act 1994*, and other transport legislation, has been used instead of the model law provisions. Provisions not in the *Transport Infrastructure Act 1994* but in the model law are specifically noted in the relevant clauses.

Clause 127 provides that the chief executive may appoint an officer of the department, or another person, as a rail safety officer only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience. This clause gives effect to model law section 22(1) and (2) and also reflects the *Transport Infrastructure Act 1994*, section 171(2) and (3).

Clause 128 provides that a rail safety officer holds office on the conditions stated in the officer's instrument of appointment or a notice signed by the chief executive given to the officer or a regulation. The instrument of appointment, the notice signed by the chief executive or a regulation may limit the officer's powers under the Act. This clause reflects the *Transport Infrastructure Act 1994*, section 172.

Clause 129 provides that the chief executive must issue an identity card to each rail safety officer. The identity card must contain a recent photo of the officer and a copy of the officer's signature, identify the person as a rail safety officer under this Act and state an expiry date for the card. This clause does not prevent the issue of a single identity card to a person for this Act and other purposes. This clause gives effect to model law section 24 and also reflects the *Transport Infrastructure Act 1994*, section 173.

Clause 130 provides that in exercising a power under the Act in relation to another person, a rail safety officer must produce the officer's identity card for the other person's inspection before exercising the power or have the card displayed so that it is clearly visible to the other person when exercising the power. However, if it is not practical to comply with this provision, the officer must produce the identity card for the other person's inspection at the first reasonable opportunity. The clause clarifies that a rail safety officer does not exercise a power in relation to another person only because the officer has entered a place as mentioned in clause 135(1)(b) or (2). This clause gives effect to model law sections 25 and 26 and also reflects the *Transport Infrastructure Act 1994*, section 174.

Clause 131 provides that a rail safety officer ceases to hold office if the term of office stated in a condition of office ends, under another condition of office, the officer ceases to hold office, or the officer's resignation under clause 132 takes effect. This does not limit the ways a rail safety officer may cease to hold office. This clause reflects the *Transport Infrastructure Act 1994*, section 175.

Clause 132 provides that a rail safety officer may resign by signed notice given to the chief executive. This clause reflects the *Transport Infrastructure Act 1994*, section 176.

Clause 133 provides that a person who ceases to be a rail safety officer must return the person's identity card to the chief executive within 21 days after ceasing to be a rail safety officer unless the person has a reasonable excuse. This clause gives effect to model law section 27 and also reflects the *Transport Infrastructure Act 1994*, section 177.

Division 3 Reciprocal powers

Clause 134 provides for the making of agreements between responsible Ministers of two or more jurisdictions to allow rail safety officers appointed in any one of those jurisdictions to exercise powers under the corresponding rail safety laws of the other jurisdiction or jurisdictions if there is a provision corresponding to this clause in force under the corresponding law of the other State. An act or omission of a Queensland rail safety officer exercising a power under a corresponding law is taken to be an act or omission done or made under both this Act and the corresponding law. A regulation may provide for the way reciprocal powers

may be exercised. This clause gives effect to model law section 23. Subclause (2) identifies the Minister of the other State as the 'Minister responsible for administering the corresponding law of the other State' rather than the model law reference which could capture any Minister. Subclause (2) also clarifies what the agreement may be about. In subclause (3) 'to the extent envisaged by [an] agreement' has been replaced with 'to the extent provided for in an agreement' and defined terms have been used. Subclause (5) clarifies that the regulation-making power may only provide for the exercise of powers conferred under subclause (3).

Part 7 Enforcement

In this part, the approach taken in the *Transport Infrastructure Act 1994*, and other transport legislation, has been used instead of the model law provisions. Provisions not in the *Transport Infrastructure Act 1994* but in the model law are specifically noted in the relevant clauses. The model law (Part 5) provides that local variations will apply throughout this part.

Division 1 Entry to places by rail safety officers

Clause 135 provides that a rail safety officer may enter a place if—

- an occupier of the place consents to the entry; or
- the place is a public place and the entry is made when it is open to the public; or
- the entry is authorised by a warrant;
- or the place is railway premises and the entry is made when the place is open for carrying on activities for which the place is railway premises, required to be open for inspection under an accreditation, otherwise open for entry, or not open as previously mentioned but the entry is urgently required to investigate the circumstances of a notifiable occurrence.

For the purpose of asking the occupier of a place for consent to enter, a rail safety officer may, without the occupier's consent or a warrant, enter land around premises at the place to an extent that is reasonable to contact the

occupier or enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier. A rail safety officer who enters railway premises without consent or a warrant must not unnecessarily impede any activities being conducted at the railway premises. Nothing in this part allows entry to a home without the occupier's consent or a warrant. This clause provides the definitions, for this clause, of home, notifiable occurrence and public place. This clause gives effect to model law sections 76 and 77 and also reflects the *Transport Infrastructure Act 1994*, section 178.

Clause 136 provides that if a rail safety officer intends to ask the occupier of a place to consent to the officer or another person entering the place, before asking for the consent, the officer must tell the occupier the purpose of the entry and that the occupier is not required to consent. If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent that must state that the occupier has been told the purpose of the entry, that the occupier is not required to consent, the purpose of the entry, that the occupier gives the officer consent to enter the place and exercise powers under this part and the date and time the consent was given. If the occupier signs an acknowledgment, the officer must immediately give a copy to the occupier. If an issue arises in a proceeding about whether the occupier consented to the entry and an acknowledgment complying with this clause for the entry is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented. This clause reflects the *Transport Infrastructure Act 1994*, section 179.

Clause 137 provides that if a rail safety officer intends to enter railway premises under clause 135(1)(d) or (e), the officer must give the occupier of the railway premises reasonable notice of the intention to enter unless the giving of the notice would be reasonably likely to defeat the purpose for which it is intended to enter the railway premises or entry is required in circumstances for which the officer reasonably believes there is an immediate risk to the safety of persons because of the carrying out of railway operations at the railway premises. If an occupier is present when the officer intends to enter the railway premises, the officer must, before entering the railway premises, tell, or make a reasonable attempt to tell, the occupier the purpose of the entry and that the officer is permitted to enter the railway premises without the occupier's consent or a warrant. Subclause (2) reflects the model law section 78, with the exception that it refers to 'safety of persons' to align with the definition of 'safety' in this

Bill, which is defined by reference to the safety of persons. The remainder of this section reflects the *Transport Infrastructure Act 1994*, section 180.

Clause 138 provides that a rail safety officer may apply to a magistrate for a warrant for a place, the officer must prepare a written application that states the grounds on which the warrant is sought and the written application must be sworn. The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires. This clause gives effect to model law section 84 and also reflects the *Transport Infrastructure Act 1994*, section 181.

Clause 139 provides that the magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting there is a particular thing or activity that may provide evidence of an offence against this Act and the evidence is at the place or, within the next 7 days, will be at the place. It also contains all the information that the warrant must state. This clause gives effect to model law section 84 and also reflects the *Transport Infrastructure Act 1994*, section 182.

Clause 140 provides that an application for a warrant may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if a rail safety officer reasonably considers it necessary because of urgent circumstances or other special circumstances. The application may not be made before the officer prepares the written application under clause 138(2) but may be made before the written application is sworn. The magistrate may issue the warrant only if the magistrate is satisfied it was necessary to make the application under this clause and the way the application was made was appropriate. After the magistrate issues the original warrant, if there is a reasonably practicable way of immediately giving a copy of the warrant to the officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the officer. Otherwise the magistrate must tell the officer the date and time the warrant is issued and the other terms of the warrant and the officer must complete a form of warrant. The copy of the warrant or the form of warrant is a duplicate of, and as effectual as, the original warrant.

The officer must, at the first reasonable opportunity, send a written application to the magistrate and the completed form of warrant if applicable. The magistrate must keep the original warrant and, on receiving the documents from the officer, attach the documents to the original warrant and give the original warrant and documents to the clerk of the

court of the relevant magistrates court. If an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section and the original warrant is not produced in evidence, the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power. This clause reflects the *Transport Infrastructure Act 1994*, section 183.

Clause 141 provides that a warrant is not invalidated by a defect in the warrant, or in compliance with clause 138, 139 or 140, unless the defect affects the substance of the warrant in a material particular.

Clause 142 provides the procedure required to be followed if a rail safety officer named in a warrant issued under this part for a place is intending to enter the place under the warrant. Before entering the place, the officer must do or make a reasonable attempt to do certain things including identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the officer's identity card or other document evidencing the appointment, give the person a copy of the warrant, tell the person the officer is permitted by the warrant to enter the place and give the person an opportunity to allow the officer immediate entry to the place without using force. However, the officer need not comply with these procedures if the officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated. This clause reflects the *Transport Infrastructure Act 1994*, section 184.

Division 2 General enforcement powers

Clause 143 provides the procedures that apply to a rail safety officer who enters a place under this part. However, if a rail safety officer enters a place to get the occupier's consent to enter a place, this section applies to the officer only if the consent is given or the entry is otherwise authorised. It provides the things that an officer may do for compliance or investigative purposes. If a rail safety officer takes, or authorises another person to take, a sample or thing for analysis, the officer must give a receipt for it to the person in charge of the thing or the place from which it was taken. For a sample or thing with an intrinsic value, at the end of 6 months after the sample or thing was taken, the officer must return it to the person who appears to be the owner of it, the person in charge of the thing, or the place from which it was taken. However, if for any reason it is not practicable to

comply with this provision, the officer must leave the receipt at the place in a conspicuous position and in a reasonably secure way. This clause gives effect to model law sections 79, 80(1) and 82(1) and also reflects the *Transport Infrastructure Act 1994*, section 185. Section 79(2) of the model law regarding the admissibility of photographs has not been replicated in this Bill and so the ordinary rules of evidence will apply. Subclauses (4) and (5) do not appear in the model law.

Clause 144 provides the things that, a rail safety officer must do or make a reasonable attempt to do, if a relevant person is present at rolling stock or a road vehicle before entering the rolling stock or vehicle under clause 143, including telling the relevant person the purpose for entry and asking for consent. If a relevant person is not present at rolling stock or a road vehicle, before entering the rolling stock or vehicle, the officer must take reasonable steps to find a relevant person for the rolling stock or vehicle and comply with procedures contained in this provision for the relevant person if found. The officer is not required to take a step the officer reasonably believes may frustrate or otherwise hinder an inspection or investigation under this Act or the purpose of the intended entry. A 'relevant person' is defined as the driver or guard of, or engineer for, the rolling stock or a person who appears to be the driver, or to be in control, of the road vehicle. This clause reflects the *Transport Infrastructure Act 1994*, section 186.

Clause 145 provides that a rail safety officer may require the occupier of, or someone else at, a place entered under this part to give the officer reasonable help to exercise a power under clause 143 or information to help the officer ascertain whether the Act is being or has been complied with. When making this requirement, the officer must warn the person that it is an offence to fail to comply with the requirement unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with a requirement to give information under this clause if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty. This clause gives effect to model law section 95 and also reflects the *Transport Infrastructure Act 1994*, section 187.

Clause 146 provides that if rolling stock or a road vehicle that a rail safety officer may enter or open under this part is moving or about to move, the officer may require the rail transport operator who manages or controls the operation of the rolling stock or vehicle, or ask or signal the person in control of the rolling stock or vehicle to stop, not move or move the rolling stock or vehicle. Before making a request or giving a signal under this clause for rolling stock, the officer must consult with the train controller for

the rolling stock about whether it is safe to stop the rolling stock at, or not move the rolling stock from, the place, taking into account other rolling stock. The request or signal must disrupt the operation of rolling stock only to the extent that is reasonably necessary. A rail transport operator of whom a requirement is made or person in control of rolling stock, or a vehicle, to whom a request is made or signal given must comply with the requirement, request or signal, unless they have a reasonable excuse. It is a reasonable excuse for the person in control of rolling stock or a road vehicle not to comply with the request or signal if to immediately comply with the request or signal would endanger the person or someone else or cause damage to rail infrastructure, rolling stock or a road vehicle and the person complies with the request or signal as soon as is practicable to comply with it. This clause reflects the *Transport Infrastructure Act 1994*, section 188.

Clause 147 provides that if a rail safety officer enters or opens rolling stock or a road vehicle under this part, the officer may require the person in control of the rolling stock or vehicle to give the officer reasonable help to enter or open the rolling stock or vehicle or to bring the rolling stock or vehicle to a stated reasonable place and remain in control of the rolling stock or vehicle for a reasonable period to allow the officer to exercise a power under this part. This clause reflects the *Transport Infrastructure Act 1994*, section 189.

Clause 148 provides that if a thing found in or on rolling stock or a road vehicle, or at a place, is, or includes, a disk, tape or other device used for the storage of information and equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other device, a rail safety officer may operate the equipment to access the information and may seize the equipment to enable the officer to operate it to access the information. A rail safety officer may operate or seize equipment only if the officer reasonably believes the operation or seizure can be carried out without damage to the equipment. This clause gives effect to model law section 81. It includes a power to seize in subclause (2) because of the reference to the seizure in subclause (3). Subclause (3) has been recast to be a requirement that the officer "may" exercise the power "only if" the reasonable belief is held rather than the model law which provides that the officer "must not" exercise the power "unless" the reasonable belief is held. This clause does not refer to 'assistant' because this Bill provides that the rail safety officer can take persons in to help them but does not expressly give those persons the powers the rail safety officer has. This is the usual Queensland approach.

Clause 149 provides that a rail safety officer exercising a power under this part may operate equipment in or on rolling stock or a road vehicle, or at a place, to carry out the examination or processing of a thing found in or on the rolling stock or road vehicle, or at the place, in order to decide whether it is a thing that may be seized. However, this only applies only if the officer reasonably believes that the equipment is suitable for the examination or the processing and the examination or processing can be carried out without damage to the equipment. This gives effect to model law section 82(2). This clause does not refer to 'assistant' because this Bill provides that the rail safety officer can take persons in to help them but does not expressly give those persons the powers the rail safety officer has. This is the usual Queensland approach.

Clause 150 provides that in order to protect evidence that might be relevant for compliance or investigative purposes, a rail safety officer may secure a part of a place entered under this part in the way the officer considers appropriate. A person must not, without the written approval of a rail safety officer or a reasonable excuse, enter or remain at the site unless one of the listed circumstances apply. This clause gives effect to model law section 83. Section 83(4) of the model law provides that a rail safety officer must not 'unreasonably withhold a permission' mentioned in subsection (2). This subsection has not been included for consistency with other provisions of this Bill which allow rail safety officers to authorise particular conduct without stating that the withholding of the authority must not be unreasonable. Subclause (1) provides that the power is to "secure a part of a place entered under this part" rather than the model law which provides that the power is to secure "the perimeter of any site at a place". Subclause (1) also provides that site may be secured "in the way" the officer considers appropriate rather than the model law which provides that the site may be secured "by whatever means" the officer considers appropriate. Subclause (2) refers to the 'written approval' of the rail safety officer rather than 'permission' as used in the model law. The term 'approval' is consistent with other provisions of this part which are based on the *Transport Infrastructure Act 1994*. Subclause (2) also includes an exception for when the person entering the site has a reasonable excuse.

Division 3 Seizing evidence

Subdivision 1 Powers to seize evidence

Clause 151 provides that a rail safety officer who lawfully enters a place under this part without the consent of the occupier and without a warrant, may seize a thing at the place only if the officer reasonably believes the thing is evidence of an offence against this Act and the seizure is necessary to prevent the thing being destroyed, hidden or lost, or used to commit, continue or repeat an offence against this Act. This clause reflects the *Transport Infrastructure Act 1994*, section 190.

Clause 152 provides that if a rail safety officer is authorised to enter a place under this part only with the consent of the occupier or a warrant and the officer enters the place after obtaining the necessary consent the officer may seize a thing at the place only if the officer reasonably believes the thing is evidence of an offence against this Act and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent. If the officer enters the place with a warrant, the officer may seize the evidence for which the warrant is issued and may seize anything else at the place if the officer reasonably believes the thing is evidence of an offence against this Act and the seizure is necessary to prevent the thing being destroyed, hidden or lost or used to commit, continue, or repeat an offence against this Act. Also, the officer may seize a thing at the place if the officer reasonably believes it has just been used in committing an offence against this Act. This clause gives effect to model law section 85 and also reflects the *Transport Infrastructure Act 1994*, section 191.

Subdivision 2 Powers to support seizure

Clause 153 provides that having seized a thing under this part, a rail safety officer may move the thing from the place where it was seized or leave the thing at the place of seizure but take reasonable action to restrict access to it or for equipment, make it inoperable. This clause reflects the *Transport Infrastructure Act 1994*, section 192.

Clause 154 provides that if a rail safety officer restricts access to a seized thing under clause 153**,** a person must not tamper with the thing, or something restricting access to the thing, without a rail safety officer's written approval. If a rail safety officer makes seized equipment inoperable, a person must not tamper with the equipment without a rail safety officer's written approval. This clause reflects the *Transport Infrastructure Act 1994*, section 193.

Clause 155 provides that to enable a thing to be seized under this part, a rail safety officer may require the person in control of it to take it to a stated reasonable place by a stated reasonable time and if necessary, to remain in control of it at the stated place for a stated reasonable time. The requirement must be made by notice or if for any reason it is not practicable to give the notice, may be given orally and confirmed by notice as soon as is practicable. A further requirement may be made under this clause about the same thing if it is necessary and reasonable to make the further requirement. This clause gives effect to model law section 86 and also reflects the *Transport Infrastructure Act 1994*, section 194.

Clause 156 provides that if a rail safety officer has required a person to take a thing to a stated reasonable place by a stated reasonable time under clause 155(1), the officer may require the person to return the thing to the place from which it was taken and the person must comply with the requirement unless the person has a reasonable excuse. This clause gives effect to model law section 87 and also reflects the *Transport Infrastructure Act 1994*, section 195.

Subdivision 3 Other provisions about seizure

Clause 157 provides that as soon as practicable after a rail safety officer seizes a thing under this part, the officer must give a receipt for it to the person from whom it was seized. However, if for any reason it is not practicable to comply with this clause, the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way and the receipt must describe generally each thing seized and its condition. This clause does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value. This clause gives effect to model law section 88 and also reflects the *Transport Infrastructure Act 1994*, section 196.

Clause 158 provides that until a thing that has been seized under this part is forfeited or returned, a rail safety officer must allow its owner to inspect it and, if it is a document, to copy it. This does not apply if it is impracticable or it would be unreasonable to allow the inspection or copying. This clause gives effect to model law section 89 and also reflects the *Transport Infrastructure Act 1994*, section 198.

Clause 159 provides that if a thing has been seized by a rail safety officer under this part but not forfeited, the officer must return it to its owner at the end of 6 months after the seizure, or if a proceeding for an offence involving the thing is started within 6 months after the seizure, at the end of the proceeding and any appeal from the proceeding, or if the officer stops being satisfied its continued retention as evidence is necessary, immediately. However this provision does not apply if the thing seized does not have any intrinsic value. This clause gives effect to model law section 91 and also reflects the *Transport Infrastructure Act 1994*, section 197.

Division 4 Embargo notices for things that can not be seized

Clause 160 provides that this division applies if a rail safety officer is authorised to seize a record, device or other thing under this part and the record, device or other thing can not, or can not readily, be physically seized and removed. This clause gives effect to model law section 90(1).

Clause 161 provides that a rail safety officer may issue an embargo notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with a record, device or other thing, or any part of it, without the written approval of a rail safety officer or the chief executive. The embargo notice must state a description of the thing to which the notice applies, the activities that the notice forbids, the particulars prescribed under a regulation, the requirements under clause 163 and the maximum penalties for failing to comply with the requirements. On issuing an embargo notice, a rail safety officer must give a copy of the notice to the owner of the record, device or other thing or if the owner can not be found after making reasonable inquiries, attach a copy of the notice to the record, device or other thing in a conspicuous position and in a reasonably secure way. This clause gives effect to model law section 90(2), (3), (4) and (5). Subclause (1) combines section 90(2) and

(3) of the model law. Subclause (2)(a) is not in the model law but is in the model regulations as one of the 'particulars' that must be stated on the notice. Subclause (2)(d) requires all the requirements about embargo notices to be stated in the notice rather than the model law which only requires the offence in clause 162(4) to be stated. Subclause (3) uses different terminology to the model law to reflect similar sections in this part (which are based on the *Transport Infrastructure Act 1994* and other Queensland legislation).

Clause 162 provides that a person must not knowingly do anything that is forbidden by an embargo notice and a person must not instruct or ask another person to do anything that the person knows is forbidden by an embargo notice. It is a defence in a proceeding against a person for an offence relating to the movement of a record, device or other thing, or a part of a record, device or other thing, for the person to prove that they moved the record, device, other thing or part for the purpose of protecting or preserving it and notified the rail safety officer who issued the embargo notice of the movement and new location within 48 hours after the movement the movement. A person to whom a copy of an embargo notice is given under this division must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice. Despite any other Act or law, a sale, lease, transfer or other dealing with a record, device or other thing, or a part of a record, device or other thing, in contravention of this section is void. This clause gives effect to model law section 90(6), (7), (8), (9) and (10). Subclause (3) specifically provides that the defence applies to proceedings for offences "relating to the movement of a record, device or other thing, or a part of a record, device or other thing".

Division 5 Forfeiture

Clause 163 provides that a sample or thing taken for analysis, or a thing seized, under this part is forfeited to the State if the rail safety officer who took, or arranged the taking of, the sample or thing or who seized the thing can not find its owner, after making reasonable inquiries or can not return it to its owner, after making reasonable efforts or reasonably considers that it is necessary to retain it to prevent the commission of an offence against the Act. This does not require the officer to make inquiries if it would be unreasonable to make inquiries to find the owner and does not require the

officer to make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner. If a thing is forfeited to the State, the rail safety officer who decided it is necessary to retain the thing to prevent the commission of an offence against this Act must give the thing's owner an information notice for the decision. This does not apply if the officer can not find the owner after making reasonable enquiries. Regard must be had to a sample's or thing's nature, condition and value in deciding whether it is reasonable to make inquiries or efforts and if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable. Subclause (1)(c) reflects the model law section 92(1)(c), and subclauses (4) and (5) reflect the model law section 94(3). This clause also reflects the *Transport Infrastructure Act 1994*, section 199.

Clause 164 provides that on conviction of a person for an offence against this Act, a court may order the forfeiture to the State of anything owned by the person and seized under this part. The court may make any order to enforce the forfeiture it considers appropriate. This clause gives effect to model law section 93 and also reflects the *Transport Infrastructure Act 1994*, section 200.

Clause 165 provides that on forfeiture of a sample or thing to the State, the sample or thing becomes the State's property and may be dealt with by the chief executive in a way the chief executive reasonably believes is appropriate. The chief executive may destroy or dispose of the sample or thing. This clause gives effect to model law section 94 and also reflects the *Transport Infrastructure Act 1994*, section 201.

Division 6 Other powers

Clause 166 provides that this clause applies if a rail safety officer finds a person committing an offence against this Act, or a person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has committed an offence against this Act or a rail safety officer finds a person at railway premises and reasonably believes the person is carrying out railway operations on behalf of a rail transport operator and reasonably considers that it is necessary for this Act to know the person's name and residential or business address. The officer may require the person to state the person's name and address and when making the requirement, the officer must warn the person it is an offence to fail to comply, unless the person has a reasonable excuse. The officer may

also require the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects it to be false. This clause gives effect to model law section 96 also reflects the *Transport Infrastructure Act 1994*, section 202.

Clause 167 provides that a person of whom a requirement is made under clause 166(2) or (4) must comply with the requirement, unless the person has a reasonable excuse. A person does not commit an offence if they were required to state their name or address by a rail safety officer who suspected the person had committed an offence against this Act and the person is not proved to have committed the offence. It is not a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty. This clause gives effect to model law section 97 also reflects the *Transport Infrastructure Act 1994*, section 203.

Clause 168 provides that a rail safety officer may require a person carrying out railway operations to make available for inspection by the officer, or produce to the officer for inspection, at a reasonable time and place nominated by the officer, a document that the person is required to keep under this Act, including a document the person is required to prepare and implement for the railway operations or a document that:

- is prepared by the person in relation to a document mentioned above; and
- the officer reasonably believes is necessary for the officer to consider to understand or verify the document mentioned above; or
- another document kept by or otherwise under the control of, the person if the document is relevant to carrying out the railway operations.

When making a requirement under this clause, the officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse. The officer may keep the document to copy it but must return the document to the person after copying it. This clause gives effect to model law section 98 also reflects the *Transport Infrastructure Act 1994*, section 206. This clause is limited to only persons carrying out railway operations. Subclause (1)(a) has been amended to specifically include documents prepared under the Act because the sections about safety management system requirements do not all refer to a requirement to "keep" the documents. Examples have been added because

the requirements to these systems, plans and programs do not refer to the system, plans or program being a 'document'. Subclause (1)(b) has been recast so that the document is prepared in relation to a document mentioned in subsection (1)(a) rather than document 'prepared for the management of rail infrastructure or the operation of rolling stock'. Subclause (1)(c) has been amended to refer to documents "kept" instead of "held" for consistency with (1)(c) and limit the power to documents that are "relevant" to carrying out railway operations rather than "related to" as in the model law.

Clause 169 provides that a person of whom a requirement is made under clause 168 must comply with the requirement, unless the person has a reasonable excuse. It is not a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty. This clause gives effect to model law section 99 also reflects the *Transport Infrastructure Act 1994*, section 207.

Clause 170 provides that **t**his clause applies to the following, ('primary evidence')—

- any answer given by an individual in response to a requirement under clause 166(2) or (4);
- any document mentioned in clause 169(1) produced by an individual to a rail safety officer, and the fact of that production, in response to a requirement under clause 168(1).

It provides that primary evidence or any information, or document or other thing, obtained as a direct or indirect result of primary evidence ('derived evidence') is not admissible in evidence against an individual in any civil or criminal proceeding. This does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence. This clause gives effect to model law section 115. The model law provision has been updated to match similar provisions about the abrogation of the privilege against self-incrimination in this Bill, which reflect current *Transport Infrastructure Act 1994* provisions. The main differences are that the model law only protects the use of information obtained and documents produced as a 'direct result' of the compliance with the requirement and the model law includes a pre-condition to the protection by requiring the person to claim the self-incrimination privilege or show that they were not advised of the right to make such a claim.

Clause 171 provides that if a rail safety officer reasonably believes a provision of this Act has been contravened and a person may be able to give information about the contravention, the officer may require the person to give information within the person's knowledge about the contravention in a stated reasonable time and in a stated reasonable way. When making a requirement under this clause, the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse. This clause reflects the *Transport Infrastructure Act 1994*, section 204.

Clause 172 provides that a person of whom a requirement is made under clause 171 must comply with the requirement, unless the person has a reasonable excuse. It is a reasonable excuse for an individual to not comply with the requirement if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty. This clause reflects the *Transport Infrastructure Act 1994*, section 205.

Division 7 Investigation of notifiable and other occurrences

Subdivision 1 Investigation and report

Clause 173 provides that this clause applies if a notifiable occurrence happens or the chief executive becomes aware that a notifiable occurrence, or another occurrence that endangers or could endanger the safe operation of railway operations, may have happened, even if it has not been reported. It provides that the chief executive may require a rail safety officer to investigate the matter and if a report has been given to the chief executive about the occurrence under clause 84, the chief executive may require the officer to investigate the matter by reviewing the report. This clause reflects the *Transport Infrastructure Act 1994*, section 216(1), (2) and (3).

Clause 174 provides that after a rail safety officer finishes an investigation under clause 173, the officer must give a report of the results of the investigation to the chief executive, including whether or not the officer reasonably considers the occurrence being investigated to be a notifiable occurrence and if the officer considers the occurrence being investigated to be a notifiable occurrence - the reasons for considering the occurrence to be a notifiable occurrence. It also provides that the chief executive must give

the Minister a copy of the report within 14 days after receiving it and the Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving it. The report and any draft or interim reports are not admissible in evidence in any civil or criminal proceedings. This has no effect on the use or admissibility of such a report in a coronial procedure. This clause reflects the *Transport Infrastructure Act 1994*, section 216(4), (5), (6), (7) and (8).

Subdivision 2 Powers of rail safety officer conducting investigation

Clause 175 provides that this subdivision applies if a notifiable occurrence has happened or a notifiable occurrence, or another occurrence that endangers or could endanger the safe operation of railway operations, may have happened and a rail safety officer is investigating the occurrence, whether or not at the chief executive's request. This clause reflects the *Transport Infrastructure Act 1994*, section 217(1).

Clause 176 defines 'alcohol test' for this subdivision. This reflects the definition of 'alcohol test' in the *Transport Infrastructure Act 1994*, section 217(12).

Clause 177 provides that if the rail safety officer reasonably needs help in investigating the occurrence, the officer may require a person to give the officer reasonable help in the investigation. A requirement may only be made of a person whom the rail safety officer reasonably believes is competent to give the help. This clause reflects the *Transport Infrastructure Act 1994*, section 217(2) and (3).

Clause 178 provides that if the rail safety officer reasonably believes it necessary for the purposes of the investigation, the officer may require a person to answer questions relevant to the occurrence or produce documents or other things relevant to the occurrence. This clause reflects the *Transport Infrastructure Act 1994*, section 217(4).

Clause 179 provides that the rail safety officer may require a person carrying out rail safety work on or in relation to a rail transport operator's rail infrastructure or rolling stock to take an alcohol test, drug test or medical examination if the officer reasonably suspects the person caused, or was directly involved in, the occurrence and the result of the test or examination may help in deciding the circumstances and probable causes

of the occurrence. The test must take place within two hours after the occurrence happens and the medical examination must take place within a reasonable time after the officer forms the reasonable suspicions about the person. The cost of a test or examination under this clause must be borne by the rail transport operator. If the person refuses to take a test mentioned above, the person may be taken, for a purpose prescribed under a regulation, to have been under the influence of alcohol or a drug when the occurrence happened, in the absence of evidence to the contrary. This clause reflects the *Transport Infrastructure Act 1994*, section 217(5), (6), (7), (8) and (11).

Clause 180 provides that when making a requirement of an individual under this part, a rail safety officer must warn the individual it is an offence to fail to comply with the requirement unless the individual has a reasonable excuse and advise the individual that—

- it is not a reasonable excuse that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty; and
- if the individual is not an accredited person, anything obtained under the requirement, and any evidence derived directly or indirectly from anything obtained under the requirement, is not admissible in evidence against the individual in any civil or criminal proceeding.

This clause reflects the *Transport Infrastructure Act 1994*, section 217(10).

Clause 181 provides that a person of whom a requirement is made under this subdivision must comply with the requirement, unless the person has a reasonable excuse. It is not a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty. This clause reflects the *Transport Infrastructure Act 1994*, section 217(9) and (9A).

Clause 182 provides the following ('primary evidence') is not admissible in evidence against an individual in any civil or criminal proceeding—

- any help given by the individual to a rail safety officer in investigating an occurrence in response to a requirement under clause 177;
- any answer given by the individual to a question mentioned in clause 178(a) to a rail safety officer in investigating an occurrence in response to a requirement under clause 178(a);

- a document or other thing mentioned in clause 178(b) produced by the individual to a rail safety officer in investigating an occurrence, and the fact of that production, in response to a requirement under clause 178(b);
- the results of an alcohol test, drug test or medical examination of the individual mentioned in clause 179**.**

Also, any information, or document or other thing, obtained as a direct or indirect result of primary evidence ('derived evidence') is not admissible in evidence against the individual in any civil or criminal proceeding. This does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence. In this clause 'individual' does not include an accredited person. This clause reflects the *Transport Infrastructure Act 1994*, section 217(9B), (9C), (9D) and 12 and the definition of 'accredited person'.

Division 8 Improvement notices

Clause 183 provides that this clause applies if a rail safety officer reasonably believes a person is contravening a provision of this Act, or a person has contravened a provision of this Act and it is likely that the contravention will continue or be repeated, or a person is carrying out or has carried out railway operations that threaten rail safety. The officer may give the person a notice (an 'improvement notice') stating the person must, within the period of at least 7 days stated in the notice, carry out rail safety work, or do another thing, to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention (if a person has contravened or is contravening a prevision of the Act) or carry out the railway operations in a way that ensures rail safety is not threatened. This clause gives effect to model law section 100(1), (2) and (3). References to ‘safety’ have been replaced with ‘rail safety’. This clause includes the lead-in words in subsection (2)(a) and (b) to distinguish between what types of requirements apply to what grounds for giving the notice. The term “remedial rail safety work” is replaced with “rail safety work” as the term is connected to the work that is carried out “to remedy the contravention or likely contravention”.

Clause 184 provides that an improvement notice given to a person on a ground mentioned in clause 183(1)(a) or (b) may state the way (or choice of ways) in which the contravention, or the matters or activities occasioning it must be remedied, or that the person to whom the notice is given must give the chief executive a program of rail safety work they propose to carry out to remedy the contravention, or the matters or activities occasioning it. An improvement notice given to a person on the ground mentioned in clause 184(1)(c) may state the way (or choice of ways) in which the railway operations may be carried out to ensure rail safety is not threatened, or that the person to whom the notice is given must give the chief executive a program of the railway operations they propose to carry out to remedy the threat to rail safety. The improvement notice may state that a program mentioned in subclause (1)(c) or (2)(c) must include a timetable for the completion of the program.

This clause gives effect to model law section 100(5), (6) and (7). The changes in terminology made in clause 183 have also been made here. Subclause (3) has been recast to refer to an additional thing that the improvement notice 'may state' to clarify that the requirement would be part of the requirements under the notice rather than the model law which says that "a program may include a timetable."

Clause 185 provides that an improvement notice given by a rail safety officer must state the following—

- the reasons for the decision to give the notice;
- for an improvement notice given on the basis a person is reasonably believed to be contravening, have contravened, or be likely to further contravene a provision of this Act - the provision of this Act in relation to which the belief is held;
- for an improvement notice given on the basis a person is reasonably believed to be carrying out or have carried out railway operations that threaten rail safety - the railway operations in relation to which the belief is held;
- the penalty for failing to comply with the notice;
- the effect of clause 188;
- that the notice is given under this clause; and
- the review and appeal information for the decision to give the notice.

This clause gives effect to model law section 100(4). The changes in terminology made in clause 183 have also been made here.

Clause 186 provides that a person to whom an improvement notice has been given must comply with the notice, unless the person has a reasonable excuse. It also provides defences for a person in a proceeding for an offence against this clause. This clause gives effect to model law section 101. The changes in terminology made in clause 183 have also been made here. Subsections (2) and (3) of the model law have been combined in subclause (2).

Clause 187 provides that an amendment of an improvement notice given to a person is ineffective to the extent it purports to deal with a contravention of a different provision of this Act from that dealt with in the improvement notice when first given. To remove any doubt, it declares that if the chief executive decides to amend an improvement notice given to a person, the chief executive must give the person an information notice for the decision. This clause gives effect to model law section 102. This Bill does not include the power to amend or withdraw the improvement notice because of the operation of the *Acts Interpretation Act 1954*, section 24AA but it does include the two additional more specific statements about amendments that are made in the model law. Subclause (1) limits the 'ineffectiveness' of the amendment "to the extent" that it purports to deal with a different provision of this Bill rather than the model law which potentially makes the whole amendment ineffective. This is to cover the situation where an amendment includes more than one aspect.

Clause 188 provides that the giving, amendment or repeal of an improvement notice does not affect any proceedings for an offence against this Act, or the *Workplace Health and Safety Act 1995*, in connection with any matter in relation to which the improvement notice was given. This clause gives effect to model law section 103 however this Bill also extends the operation of this clause to proceedings under the *Workplace Health and Safety Act 1995*.

Clause 189 provides that if a person fails to comply with an improvement notice given to the person on a ground mentioned in clause 183(1)(a) or (b) requiring the person to carry out rail safety work to remedy the alleged contravention or likely contravention or the matters or activities occasioning the alleged contravention or likely contravention, the chief executive may arrange for the rail safety work to be carried out and may recover from the person given the improvement notice the reasonable costs

and expenses incurred by the chief executive for the carrying out of the rail safety work as a debt. This clause gives effect to model law section 104.

Division 9 Prohibition notices

Clause 190 applies if a rail safety officer reasonably believes—

- an activity happening in relation to railway operations or railway premises involves or is likely to involve an immediate risk to the safety of persons; or
- an activity may happen in relation to railway operations or railway premises and, if it happens, the activity will involve or is likely to involve an immediate risk to the safety of persons; or
- an activity may happen at, on, or in the immediate vicinity of, rail infrastructure or rolling stock and, if it happens, the activity will involve or is likely to involve an immediate risk to the safety of persons.

The officer may give a person who has or appears to have control over the activity a prohibition notice stating that either of the following is prohibited until the officer has certified in writing that the matters that give or are likely to give rise to the risk have been remedied - the carrying on of the activity or the carrying on of the activity in a stated way. A prohibition notice under this clause may state that the carrying on of an activity in a stated way is prohibited by stating or more of the following:—

- a place, or part of a place, at which the activity must not be carried on;
- a thing that must not be used in connection with the activity;
- a procedure that must not be followed in connection with the activity.

This clause gives effect to model law section 105(1), (2), (3) and (7).

This Bill splits section 105 of the model law into 3 clauses *(*clauses 190, 191 and 192*).* The references to 'safety of persons' replaces the reference to 'safety' in the model law to align with the definition of 'safety' in this Bill, which is defined by reference to the safety of persons. Subclause (1) combines subsection (1) of the model law provision with the lead-in words of subsection (2) of the model law provision and adjusts the order of the wording in paragraphs (a) to (c). The references to 'will involve' and similar terms have been replaced with 'will involve or is likely to involve'

to match the *Transport Infrastructure Act 1994* and *Workplace Health and Safety Act 1995* wording.

Clause 191 provides that a prohibition notice may state a requirement about the measures that must be taken to minimise or eliminate the risk to safety to which the notice relates or the activity causing, or likely to cause, the risk to safety to which the notice relates or the matters that give, or are likely to give, rise to the risk to safety to which the notice relates or if the officer believes the activity to which the notice relates involves a contravention or likely contravention of this Act—the contravention or likely contravention. This clause gives effect to model law section 105(5) and (6). The model law's references to 'directions' that may be included in a prohibition notice have been recast in this Bill to be requirements that may be 'stated' in the notice. The list in subclause (1) is split into paragraphs for readability, allowing a more detailed link to the primary power in clause 190.

Clause 192 provides that a prohibition notice given by a rail safety officer must state the following—

- the basis for the officer's belief on which the giving of the notice is based;
- the activity that the officer believes involves or is likely to involve the risk to safety to which the notice relates, and the matters that give, or are likely to give, rise to the risk;
- if the officer believes that the activity involves a contravention or likely contravention of a provision of this Act, the provision and the basis for the belief;
- the penalty for failing to comply with the notice;
- the effect of clause 196;
- that the notice is given under this section;
- the review and appeal information for the decision to give the notice.

This clause gives effect to model law section 105(4). The reference to 'safety of persons' replaces the reference to 'safety' in the model law to align with the definition of 'safety' in this Bill, which is defined by reference to the safety of persons.

Clause 193 provides that a person to whom a prohibition notice is given must comply with the notice, unless the person has a reasonable excuse.

This clause gives effect to model law section 106, however the model law does not contain the editor's note.

Clause 194 provides that if a rail safety officer reasonably believes that an activity mentioned in clause 190(1) is happening or may happen and it is not possible or reasonable to give a prohibition notice under that section immediately the officer may direct a person who has or appears to have control over the activity to do or not to do a stated act by telling the person to do or not to do the stated act and the reason for the officer giving the direction. When giving the direction, the officer must warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse and a person to whom a direction is given under this clause must comply with it, unless the person has a reasonable excuse.

A direction given under this clause ceases to have effect if the officer does not, within 5 days after giving the direction, give the person to whom the direction is given a prohibition notice in relation to the activity. This clause gives effect to model law section 107. Subclause (1) and (2) are one subsection in the model law and it is split here for enhanced readability. Subclause (3) is a pre-condition on the giving of the direction compared with the model law which gives a person a 'reasonable excuse' defence if the officer did not tell the person that failure to comply with the direction is an offence. The above approach is consistent with similar provisions of this part which are based on the *Transport Infrastructure Act 1994*. The wording in subsection (5) is reordered from the model law equivalent but includes all the elements of the model law provision.

Clause 195 provides that an amendment of a prohibition notice is ineffective to the extent it purports to deal with a contravention of a different provision of this Act from that dealt with in the prohibition notice when first given and to remove any doubt, it declares that if the chief executive decides to amend a prohibition notice given to a person, the chief executive must give the person an information notice for the decision. This clause gives effect to model law section 108. It does not include the power to amend or repeal the prohibition notice because of the operation of the *Acts Interpretation Act 1954*, section 24AA but includes the two specific requirements about such amendments that are in the model law. Subclause (1) limits the 'ineffectiveness' of the amendment "to the extent" that it purports to deal with a different provision of this Bill compared with the model law which potentially makes the whole amendment ineffective. This is to cover the situation where an amendment includes more than one aspect.

Clause 196 provides that the giving, amendment or repeal of a prohibition notice does not affect any proceedings for an offence against this Act, or the *Workplace Health and Safety Act 1995*, in connection with any matter in relation to which the prohibition notice was given. This clause gives effect to model law section 109, however this Bill extends the operation of this clause to proceedings under the *Workplace Health and Safety Act 1995.*

Division 10 Damage to property in exercising powers under this part

Clause 197 provides that this section applies if a rail safety officer damages property when exercising or purporting to exercise a power under this part or a person acting under the direction or authority of a rail safety officer damages property. The officer must immediately give a notice to the person who appears to be the owner of the property stating the particulars of the damage and that the person who suffered the damage may claim compensation under clause 198. If the officer believes the damage was caused by a latent defect in the property or circumstances beyond the officer's or other person's control, the officer may state the belief in the notice. If, for any reason, it is impracticable to give the notice to the owner, the officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened. This section does not apply to damage the officer reasonably believes is trivial. This clause reflects the *Transport Infrastructure Act 1994*, Section 212.

Clause 198 provides that this clause applies if a person incurs loss or expense because of the exercise or purported exercise of a power under this part by a rail safety officer, other than because of a forfeiture under clause 163 or 164. If the power was exercised or purportedly exercised under division 7, the person may claim compensation for the loss or expense from the officer's employing authority. If this provision does not apply, the person is entitled to be paid the reasonable compensation because of the loss or expense that is agreed between the chief executive and the person, or failing agreement, decided by a court. This clause provides the process for claiming payment of compensation and that a court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case. A regulation may also prescribe matters that may, or must, be taken into account by the court in considering

whether it is just to make the order. This clause reflects the *Transport Infrastructure Act 1994*, Sections 213 and 218.

Division 11 Miscellaneous

As part of the 'local variations' for this part, an equivalent of section 110 (Directions may be given under more than one provision) of the model law has not been included in this Bill. A provision of that type is not usually included in Queensland legislation. Also, the *Acts Interpretation Act 1954*, section 23(1) provides for the multiple exercise of the same power "as occasion requires". Section 111 of the model law has not been included because temporary closing of railway crossings is dealt with under the *Transport Infrastructure Act 1994*, section 169.

Clause 199 provides that a power under this part to enter a place, or to do anything in or on a place, may be exercised only if the person proposing to exercise the power uses no more force than is reasonably necessary to exercise the power. This clause gives effect to model law section 113. It refers to 'a person' exercising a power rather than the model law which specifically mentions rail safety officers and persons assisting rail safety officers. This clause also refers to 'a place' rather than the model law reference to 'railway premises' as the entry power is drafted by reference to 'a place'.

Clause 200 provides that a provision of this part authorising a person to use reasonable force does not authorise a person who is not a police officer to use force against another person. This clause gives effect to model law section 114. It refers to 'a person' exercising a power rather than the model law which specifically mentions rail safety officers and persons assisting rail safety officers.

Part 8 Boards of Inquiry

Division 1 General

Clause 201 provides that the Minister may, by gazette notice, establish or re-establish a board of inquiry about an occurrence that has happened on or in relation to railway premises or railway operations and the Minister considers is a notifiable occurrence. The gazette notice, or a subsequent gazette notice, may state matters relevant to the board of inquiry, including the membership of the board and its terms of reference and the Minister may exercise powers under this section for an occurrence whether or not the occurrence has been investigated by a rail safety officer and whether or not a board of inquiry has previously inquired into the occurrence. This clause reflects the *Transport Infrastructure Act 1994* section 219.

Clause 202 provides that the board of inquiry must inquire into the circumstances and probable causes of the relevant occurrence and give the Minister a written report of the board's findings. The report may contain the recommendations the board considers appropriate and other relevant matters and the Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report. However, if the board gives the Minister a separate report of matters that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly. A report under this section, any report prepared by the board as an interim report under this section, any report prepared by the board as a draft report under this section for consultation purposes are not admissible in evidence in any civil or criminal proceeding. This clause reflects the *Transport Infrastructure Act 1994* section 220.

Clause 203 provides that members of the board of inquiry are entitled to be paid the fees and allowances that may be decided by the Minister and the member's terms of office are the terms provided by this Act and any other terms decided by the Minister. This clause reflects the *Transport Infrastructure Act 1994* section 221.

Clause 204 provides that as soon as practicable after the board of inquiry is established or re-established, the chief executive must consult with the chairperson of the board and arrange for the services of officers and employees of the department, rail safety officers and other persons to be made available to the board for the conduct of the inquiry and financial matters relevant to the board. This clause reflects the *Transport Infrastructure Act 1994* section 222.

Clause 205 provides that this clause applies to a rail safety officer whose services have been made available to the board of inquiry and that the officer may exercise powers under part 7 of this Act for the occurrence the subject of the board's inquiry. This clause reflects the *Transport Infrastructure Act 1994* section 223.

Division 2 Conduct of inquiry

Clause 206 provides that in conducting its inquiry, the board of inquiry must observe natural justice and must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues. In conducting the inquiry, the board is not bound by the rules of evidence and may inform itself in any way it considers appropriate, including, for example, by holding hearings and may decide the procedures to be followed for the inquiry however, the board must comply with this division and any procedural rules prescribed under a regulation and the chairperson of the board presides at the inquiry. This clause reflects the *Transport Infrastructure Act 1994* section 224.

Clause 207 provides that the chairperson of the board of inquiry must give at least 14 days notice of the time and place of its inquiry to anyone who the chairperson has reason to believe should be given the opportunity to appear at the inquiry. This clause reflects the *Transport Infrastructure Act 1994* section 225.

Clause 208 provides that the board of inquiry's inquiry must be held in public however, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present. The board may give this direction only if it is satisfied it is appropriate to make the direction in the special circumstances of the inquiry. This clause reflects the *Transport Infrastructure Act 1994* section 226.

Clause 209 provides that a member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a judge of the Supreme Court and also a lawyer or other person appearing before the board for someone else has the same protection and immunity as a lawyer appearing for a party in a proceeding in the Supreme Court and a person summoned to attend or appearing before the board as a witness has

the same protection as a witness in a proceeding in the Supreme Court. This clause reflects the *Transport Infrastructure Act 1994* section 227.

Clause 210 provides that the board of inquiry must keep a record of its proceedings. This clause reflects the *Transport Infrastructure Act 1994* section 228.

Clause 211 provides that in conducting its inquiry, the board of inquiry must give anyone directly concerned in the occurrence the subject of the inquiry the opportunity of making a defence to all claims made against the person either in person or by lawyer or agent. This clause reflects the *Transport Infrastructure Act 1994* section 229.

Clause 212 provides that in conducting its inquiry, the board of inquiry may act in the absence of any person who has been given a notice under clause 207 or some other reasonable notice and receive evidence on oath or affirmation or by statutory declaration and adjourn the inquiry and disregard any defect, error, omission or insufficiency in a document and permit or refuse to permit a person, including a lawyer, to represent someone else at the inquiry. It also provides that a member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry. This clause reflects the *Transport Infrastructure Act 1994* section 230.

Clause 213 provides that the chairperson of the board of inquiry may, by notice given to a person, require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things and a person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson. This clause reflects the *Transport Infrastructure Act 1994* section 231.

Clause 214 provides that if a document or other thing is produced to the board of inquiry at its inquiry, the board may inspect the document or other thing and make copies of, photograph, or take extracts from, the document or other thing if it is relevant to the inquiry. The board may also take possession of the document or other thing, and keep it while it is necessary for the inquiry and while the board keeps a document or other thing under this section, the board must permit a person otherwise entitled to possession of the document or other thing to inspect it, make copies of it, photograph it, or take extracts from it, at a reasonable place and time the board decides. This clause reflects the *Transport Infrastructure Act 1994* section 232.

Clause 215 provides that the inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise. This clause reflects the *Transport Infrastructure Act 1994* section 233.

Clause 216 provides that a person given a notice under clause 213 must not fail, without a reasonable excuse, to attend as required by the notice or fail, without a reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance. It also provides that a person appearing as a witness at the board's inquiry must not fail to take an oath or make an affirmation when required by the chairperson of the board or fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board or fail, without a reasonable excuse, to produce a document or thing the person is required to produce by a notice under clause 213. This clause reflects the *Transport Infrastructure Act 1994* section 233

Clause 217 provides that an individual appearing as a witness at the board of inquiry's inquiry is not excused from answering a question put to the individual at the inquiry or producing a document or other thing at the inquiry on the ground that the answer or producing the document or other thing might tend to incriminate the individual or make the person liable to a penalty. This clause reflects the *Transport Infrastructure Act 1994* section 235.

Clause 218 provides that a person must not insult the board of inquiry or deliberately interrupt the board's inquiry or create or continue or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry or do anything that would be contempt of court if the board were a judge acting judicially. This clause reflects the *Transport Infrastructure Act 1994* section 238.

Clause 219 provides that the inquiry of the board of inquiry is not affected by a change in its membership. This clause reflects the *Transport Infrastructure Act 1994* section 239.

Part 9 Provisions about particular investigations or inquiries

This part is taken from the *Transport Infrastructure Act 1994*. There are no equivalent provisions in the model law.

Division 1 Interpretation

Clause 220 provides the definitions of 'court', 'data logger recording', 'data logger recording information', 'inquiry', 'investigation', and 'restricted information' for this part.

Clause 221 provides the definition of **'**relevant person' as the chief executive, a rail safety officer who is required to investigate a matter under clause 173(2) or who is not required to investigate a matter under clause 173(2) but who is investigating a notifiable occurrence for the purpose of finding out its cause as opposed to finding evidence of a suspected offence or whose services are made available to a board of inquiry under clause 204 and another person made available to help a board of inquiry in any capacity. This clause reflects the *Transport Infrastructure Act 1994* section 213B.

Division 2 Protection of particular information

Subdivision 1 Limitations on disclosure etc. of restricted information

Clause 222 provides that a person who is or has been a relevant person must not make a record of restricted information and that a person who is or has been a relevant person must not disclose restricted information to any person or to a court. This clause reflects the *Transport Infrastructure Act 1994* section 239AA (1) and (2).

Clause 223 provides that a person who has, or had, access to restricted information under clause 229 must not make a record of the information or disclose the information to any person or to a court. This clause reflects the *Transport Infrastructure Act 1994* section 239AA (3).

Clause 224 provides that clauses 222(1) and (2) and 223(1) do not apply to in a number of circumstances and it lists these circumstances. This clause reflects the *Transport Infrastructure Act 1994* section 239AA (4), (5), (6) and (7).

Clause 225 provides that if a person is prohibited by this subdivision from disclosing restricted information the person can not be required by a court to disclose the information and any information disclosed by the person in contravention of this section is not admissible in any civil or criminal proceeding, other than a proceeding against the person under this division. This clause reflects the *Transport Infrastructure Act 1994* section 239AA (4), (5), (6) and (7).

Clause 226 provides that a court in which a disclosure mentioned in clause 224(1)(c) is made may direct that the restricted information, or any information obtained from the restricted information, must not be published or communicated to any person or be published or communicated other than in the way, and to the persons, the court states. This clause reflects the *Transport Infrastructure Act 1994* section 239(8).

Subdivision 2 Particular disclosure etc. of restricted information authorised

Clause 227 provides that the chief executive may disclose restricted information to any person if the chief executive considers that the disclosure is necessary or desirable for the purposes of ensuring rail safety. However, the chief executive may only disclose restricted information that is, or that contains, personal information in the circumstances prescribed under a regulation. This clause reflects the *Transport Infrastructure Act 1994* section 239AB.

Clause 228 provides that if a coroner requests or requires the chief executive to give restricted information to the coroner the chief executive must give the restricted information to the coroner. This clause reflects the *Transport Infrastructure Act 1994* section 239AC.

Clause 229 provides that the chief executive may authorise someone other than a relevant person to have access to restricted information if the chief executive considers that it is necessary or desirable to do so. This clause reflects the *Transport Infrastructure Act 1994* section 239AD.

Division 3Provisions about relevant persons

Clause 230 provides that the chief executive may issue a certificate stating that a stated person who is or has been a relevant person is involved, or has been involved, in an investigation or inquiry about a stated occurrence. This clause reflects the *Transport Infrastructure Act 1994* section 239AF.

Clause 231 provides that a person who is or has been a relevant person is not obliged to comply with a subpoena or similar direction of a court to

attend and answer questions about an occurrence if the chief executive has issued a certificate under clause 230 for the person in relation to the occurrence. It also provides that a relevant person is not compellable to give an expert opinion in any civil or criminal proceeding in relation to rail safety and that this clause does not apply to an inquiry or an inquiry conducted by a board of inquiry established or re-established under the *Transport Infrastructure Act 1994*, section 219 as in force from time to time before the commencement or coronial inquest and it defines 'expert opinion'. This clause reflects the *Transport Infrastructure Act 1994* section 239AG.

Part 10 Other offences and provisions about liability for offences

Division 1 Offence about discrimination or victimisation

Clause 232 provides that an employer must not dismiss an employee, or otherwise prejudice an employee in the employee's employment, for the dominant or substantial reason that the employee has helped or given information to a public agency in relation to a breach or alleged breach of an Australian rail safety law or has made a complaint about a breach or alleged breach of an Australian rail safety law to an employer, former employer, fellow employee, former fellow employee, union or public agency. It also provides that an employer must not fail to offer employment to a prospective employee, or in offering employment to a prospective employee treat the prospective employee less favourably than another prospective employee would be treated in similar circumstances, for the dominant or substantial reason that the prospective employee has helped or given information to a public agency in relation to a breach or alleged breach of an Australian rail safety law or has made a complaint about a breach or alleged breach of an Australian rail safety law to an employer, former employer, fellow employee, former fellow employee, union or public agency. It also defines 'Australian rail safety law', 'employee', 'employer' and 'public agency'.

This clause gives effect to model law section 129 and it also reflects section 174 of the *Workplace Health and Safety Act 1995*. The model law provision is restructured into two separate offences and the offences are recast into one positive statement (the model law first states the persons to whom the section applies and then provides that the person commits an offence if they do one of the acts mentioned above). In subclause(1), the concept of 'or otherwise prejudice an employee in the employee's employment' is used instead of 'or injures an employee in the employee's employment or otherwise alters the position of an employee'. The approach follows the *Workplace Health and Safety Act 1995* and other Queensland legislation. Subclause (1)(a) and (b), and subclause (2)(a) and (b), are a condensed version of the model law. The test in this clause is by reference to 'dominant or substantial reason' compared with model law where the test is by reference to 'dominant reason'. This clause also does not reverse the onus of proof for showing whether the action was for the 'dominant or substantial reason' mentioned in the offence compared to section 130 of the model law. This clause does not include an offence for threatening to do an act mentioned in subsection (1) or (2). This offence is not declared to be an indictable offence to reflect the status of similar offences under the *Workplace Health and Safety Act 1995.*

Clause 233 provides that this clause applies if an employer is convicted of an offence against clause 232 in relation to an employee or prospective employee and in addition to imposing a penalty, a court may make a number of orders relating to the payment of damages and the reinstatement and reemployment of employees and it defines 'employee' and 'employer'. This clause gives effect to model law section 131.

Division 2 Offences about false or misleading information

Clause 234 provides that a person must not state anything to an official that the person knows is false or misleading in a material particular and in a proceeding for an offence against this clause it is enough for a charge to state that the statement made was 'false or misleading', without specifying which. This clause gives effect to model law, section 132(1), (2) and (6) and also reflects section 208 of the *Transport Infrastructure Act 1994*. The offence in this Bill applies to a statement that the person 'knows is false or misleading'. The model law also makes it an offence if the person 'is

reckless as to whether the statement is false or misleading'. A straight maximum penalty is stated compared to model law which, in circumstances where the official is exercising a power under the Act requiring the statement be given, applies the penalty for non-compliance with the requirement. Through the definition of 'official', this clause also applies to statements made to an interstate rail safety officer exercising powers under a reciprocal powers agreement and a board of inquiry

Clause 235 provides that a person must not give an official a document containing information the person knows is false or misleading in a material particular however this clause does not apply if the person, when giving the document tells the official, to the best of the person's ability, how it is false or misleading and if the person has, or can reasonably obtain, the correct information - gives the correct information and in a proceeding for an offence against this clause, it is enough for a charge to state that the document was 'false or misleading', without specifying which. This clause gives effect to model law section 132(3), (4) and (6) and also reflects section 209 of the *Transport Infrastructure Act 1994.* The offence in this Bill applies to a document that the person 'knows is false or misleading'. The model law also makes it an offence if the person 'is reckless as to whether the document is false or misleading'. A straight maximum penalty is stated compared to model law which, in circumstances where the official is exercising a power under the Act requiring the statement be given, applies the penalty for non-compliance with the requirement. Through the definition of 'official', this section also applies to documents given to an interstate rail safety officer exercising powers under a reciprocal powers agreement or a board of inquiry.

Division 3 Other offences

Clause 236 provides that a person must not obstruct an official in the exercise of a power under this Bill, unless the person has a reasonable excuse and if a person has obstructed an official and the official decides to proceed with the exercise of the power, the official must warn the person that it is an offence to obstruct the official, unless the person has a reasonable excuse and the official considers the person's conduct is an obstruction and it defines, for this clause, 'obstruct' and 'official'. This clause gives effect to model law section 133(1)(a) and (2). The offence in this Bill applies to a person obstructing an official, as in the *Transport*

Infrastructure Act 1994 and other Queensland legislation. The model law limits the offence to a person who 'intentionally' obstructs an official. The offence in this Bill includes a reasonable excuse defence, which does not appear in the model law. This clause also applies to obstructing interstate rail safety officers exercising a power under a reciprocal powers agreement.

Clause 237 provides that a person must not intentionally conceal the location or existence of a document or other thing from an official in the exercise of a power under this Bill. This clause gives effect to model law section 133(1)(b). The offence also applies to concealing documents from a board of inquiry (through paragraph (e) of the definition of 'official'). Through the definition of 'official', this section also applies to documents given to an interstate rail safety officer exercising powers under a reciprocal powers agreement or a board of inquiry

Clause 238 provides that a person must not pretend to be a rail safety officer. This clause gives effect to model law section 134 and also reflects section 211 of the *Transport Infrastructure Act 1994.*

Clause 239 provides that a person must not interfere with equipment, rail infrastructure or rolling stock unless the interference is permitted or authorised by an authorised person for the equipment, rail infrastructure or rolling stock or under the *Transport Infrastructure Act 1994,* section 253 or the person has a reasonable excuse. Subclause (1)(a)(ii) allows for the interference to be authorised or permitted under section 253 of the *Transport Infrastructure Act 1994*. It also provides (subclause 2) that this clause does not apply to a person who carries out urgent maintenance of equipment, rail infrastructure or rolling stock and it defines, for this clause, 'authorised person' and 'interfere with'. This clause gives effect to model law section 135. Paragraph (a) of the definition of 'authorised person' has been adjusted to refer to the rail transport operator "who has the effective management and control: of the equipment etc. rather than the model law which refers to the operator who "owns or operates". The wording used here matches the way the terms 'rail infrastructure manager' and 'rolling stock operator' are defined.

Clause 240 provides that a person must not, unless the person has a reasonable excuse, apply a brake, or use an emergency device, fitted to a train or tram or use an emergency device on railway premises however, this does not apply to a person who has lawful control of the train or tram or a person who is using a brake or emergency device on the train or tram, or an emergency device on railway premises, and has lawful authority to use the brake or device. This clause gives effect to model law section 136.

Subclause (2) does not appear in the model law. It is included here to ensure that certain persons who have an obvious excuse to contravene the provision are excluded from the application of the offence (rather than require them to claim a reasonable excuse).

Clause 241 provides that a person must not, unless the person has a reasonable excuse, cause, or attempt to cause, a train or tram in motion to stop. However, this does not apply a person who has lawful control of the train or tram or a person who is using a brake or emergency device on the train or tram, or an emergency device on railway premises, and has lawful authority to use the brake or device. This clause gives effect to model law section 137. Subclause (2) does not appear in the model law. It is included here to ensure that certain persons who have an obvious excuse to contravene the provision are excluded from the application of the offence (rather than require them to claim a reasonable excuse).

Clause 242 provides that this clause applies if a person prescribed under a regulation for this clause carries out, or intends to carry out, an operation or activity prescribed under a regulation for this section and the operation or activity could adversely affect the safety of a rail transport operator's rail infrastructure or rolling stock. The person must, within the period prescribed under a regulation, notify the operator, in the approved form, of the commencement of the operation or activity, any discontinuation or recommencement of the operation or activity and the completion of the operation or activity. This clause gives effect to model law section 160. The model law provision has been split into two subsections to enhance readability. In subclause (2), the requirement is to give the information 'in the approved form' compared with model law which requires that it be given in the form prescribed under a regulation.

Division 4 Provisions about liability for offences

Clause 243 provides that despite any Act or other law, a person may be punished for more than one breach of a requirement of this Act if the breaches relate to different parts of the same railway premises, rail infrastructure or rolling stock. This clause gives effect to model law section 127.

Clause 244 provides that this clause applies in a proceeding for an offence against this Act and if it is relevant to prove a person's state of mind about a

particular act or omission, it is enough to show the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority and the representative had the state of mind. It also provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission and it defines, for this clause, 'representative' and 'state of mind'. This clause gives effect to model law section 123. The usual Queensland version of vicarious liability is used in this context. The only difference to the model law is that this section combines the provisions for bodies corporate and employers. Section 123 of the model law is a 'non-core provision'.

Clause 245 provides that the executive officers of corporations must ensure the corporation complies with this Bill. This clause gives effect to model law section 128(1), (7), (10) and (11). The usual Queensland version of liability of executive officers is used in this context, with the exception that subsection (4) is included from the model law. A notable change is that this section refers to 'corporation' and 'executive officer' (with a defined term) rather than model law which refers to 'body corporate' and 'director'.

This Bill does not deem offences committed by partners, management members or employees to be offences committed by partnerships, unincorporated bodies or employers in the way the model law does under section 128.

Clause 246 provides that a person who commits an offence against this Act that requires the person to do something or not do something, the offence is a continuing offence and may be charged in one or more complaints for periods for which the offence continues and that a daily penalty can be imposed for each day the offence continues after the person is convicted of the offence. This clause gives effect to model law section 143. The usual Queensland version of continuing penalties is used in this context.

This Bill does not include sections 138 and 139 of the model law which are about infringement notice fines which are dealt with under the *State Penalties Enforcement Act 1999.*

This Bill does not include sections 142 to 148 of the model law which are about court imposed sanctions and subject to 'local variations'.

Clause 247 provides that if an accreditation condition of a person's accreditation makes provision in relation to preventing a contravention of an obligation imposed under the Act, if the person complies with the condition to the extent that it makes that provision, the person is taken to have complied with the obligation and 'obligation' includes a rail safety duty. This clause gives effect to model law section 159. It identifies the relevant types of conditions to which this clause applies by using the test 'in relation to preventing a contravention of a requirement of this Act' compared to model law which refers to 'provision for or with respect to a duty'. The above test matches the approach taken in clause 37 (defence for contravening rail safety duty). The use of the term 'accreditation condition' and its definition in the dictionary clarify that this section applies to conditions stated on the accreditation notice as well as prescribed accreditation conditions.

Clause 248 provides that if a compliance code makes provision in relation to preventing a contravention of a requirement of this Act and a person complies with the compliance code to the extent that it makes that provision, then the person is taken to have complied with the requirement. This clause gives effect to model law section 155. It identifies the relevant provisions of compliance codes to which this section applies by using the test 'in relation to preventing a contravention of a requirement of this Act' rather than the model law which refers to 'provision for or with respect to a duty'. The above test matches the approach taken in clause 36 (defence for contravening rail safety duty).

Part 11 Internal and external review

Clause 249 provides that a person whose interests are affected by a decision described in schedule 2 may ask the chief executive to review the decision and the person is entitled to receive a statement of reasons for the original decision whether or not the provision of this Act under which the decision is made requires that the person be given a statement of reasons for the decision. It also provides that the *Transport Planning and Coordination Act 1994*, part 5, division 2 applies to the review and provides for the procedure for applying for the review and the way it is to be carried out and that the person may apply to the Queensland Civil and

Administrative Tribunal to have the original decision stayed. The model law allows for 'local variations' for review and appeal.

Clause 250 provides that if the chief executive's decision on the review under clause 249 is not the decision sought by the person for the review, the person may apply, as provided for under the *Queensland Civil and Administrative Tribunal Act* 2009, to the Queensland Civil and Administrative Tribunal for a review of the internal review decision.

Part 12 Legal proceedings

Division 1 Application

Clause 251 provides that part 12 applies to a proceeding under the Act. Queensland drafting precedents have been used in this part.

Division 2 Evidence

Clause 252 provides that a certificate, purporting to be signed by the chief executive and stating various matters authorised under the Act, kept in the records by the chief executive is evidence of the matter. This clause gives effect to model law section 124(1). This section has been moved to part 13 (General) because it was a record-keeping requirement, not a provision about evidence or legal proceedings generally. The list in this clause is more prescriptive than the model law given the status of these certificates and the potential Fundamental Legislative Principle breaches involved. This clause does not state that proof of the chief executive's signature is not necessary because that is achieved by clause 256. This clause does not state that the record on which the certificate is founded does not need to be produced because this is implied by the fact that the certificate is evidence of the matter.

Clause 253 provides that a certificate purporting to be signed by the chief executive and stating matters relating rail safety officers exercising powers, including reciprocal powers, is evidence of the matter.

Clause 254 provides that a certificate purporting to be signed by an official and that certifies particulars of matters that appear in or can be calculated from records that are kept or accessed by the official, for the administration or enforcement of this Bill or a corresponding law, is evidence of the matter and it defines 'official' for this clause. This clause gives effect to model law section 125. It expands the model law version by using paragraphing and clarifies that it applies to records kept or access ‘for the administration or enforcement of this Act or a corresponding law’. This precision and narrowing has been made to minimise the potential Fundamental Legislative Principles breach created by this section. This clause clarifies that it also applies to records kept or accessed by a corresponding rail

safety regulator or rail safety officer (the model law only refers to records kept or accessed by the chief executive). The use of the term 'official' means that each entity will prepare certificates in relation to records kept or accessed by that entity.

Clause 255 provides that for a proceeding under the Bill, the appointment of certain officials must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it. This clause gives effect to model law section 126(1). It provides that the appointment or authority is presumed only if the other party does not require proof of it. This clause also provides that the authority of the chief executive or a rail safety officer is to be presumed compared to the model law which only includes an equivalent to paragraph (a).

Clause 256 provides that a signature purporting to be the signature of certain officials is evidence of the signature it purports to be. This clause gives effect to model law section 126(2).

Division 3 Proceedings

Clause 257 provides that a proceeding for an offence against the Bill is to be taken in a summary way under the *Justices Act 1886* and must be started by complaint of the chief executive or someone else authorised by the Minister. The proceeding must start within the later of the following periods to end—

- one year after the commission of the offence
- 6 months after the complainant first obtains evidence of the commission of the offence considered reasonably sufficient by the complainant to warrant commencing proceedings, but within two years after the offence is committed.

It also provides that, a certificate purporting to have been issued by the complainant about the date when the complainant first obtained evidence considered reasonably sufficient by the complainant to warrant commencing proceedings is admissible in proceedings under this Bill and is evidence of the matters stated. This clause gives effect to model law section 121. Subclause (2)(b) links the 6 month period to the offence coming to the complainant's knowledge compared to model law which links it to from when the complainant "first obtains evidence of the commission of the offence considered reasonably sufficient by the

complainant to warrant commencing proceedings. Subclause (3) is linked to a statement in a complaint rather than a 'certificate purporting to have been issued by the complainant' and is linked to when the matter came to the complainant's knowledge (as a consequence of the change to subsection (2)(b)).

Section 122 of the model law (Authority to take proceedings) is a non-core provision and has not been included in this Bill. The section included a number of things that are not usually included in Queensland legislation (for example references to proceedings against the Crown) and a number of things that are dealt with by other Queensland legislation (for example the *Criminal Code Act 1899*). Provisions about indictable offences in the model law have not been carried across because no offences under this Bill are to be indictable.

Part 13 General

Division 1 Confidentiality

Clause 258 provides that the chief executive may, if asked by the Workplace Health and Safety chief executive, give the Workplace Health and Safety chief executive information held by the chief executive that will help the Workplace Health and Safety chief executive in the exercise of the Workplace Health and Safety chief executive's functions under the *Workplace Health and Safety Act 1995* and is not restricted information under clause 220. It also provides that a Workplace Health and Safety official who acquires information or accesses a document containing information given under this clause must not disclose to anyone else the information or the contents of or information contained in the document or give access to the document to anyone else. This does not apply to the disclosure of information, or the giving of access to a document, about a person, as required or authorised under an Act or with the written consent of the person to whom the information relates or for administering, monitoring or enforcing compliance, with the *Workplace Health and Safety Act 1995* or for the administration or enforcement of another Act or law, if the disclosure is in the interests of public safety or to a court or in

connection with legal proceedings or in a way authorised under a temporary regulation.

Clause 259 provides that if a person who is, or has been, a rail safety officer or a person acting under the direction of a rail safety officer or a person authorised by the chief executive or a rail safety officer to do something under the Bill or a delegate of the chief executive or a person employed by, or engaged to provide services to or on behalf of, the chief executive or a person employed by, or engaged to provide services to, an entity engaged to provide services to the chief executive ('prescribed person') and has, in the course of administering this Bill or because of an opportunity provided by involvement in administering this Bill:

- acquired information about someone else; or
- gained access to a document about someone else.

The person must not disclose to anyone else the information or the contents of or information contained in the document or give access to the document to anyone else. This clause does not apply to the disclosure of information, or the giving of access to a document, about a person:

- as required or authorised under an Act; or
- with the written consent of the person to whom the information relates; or
- for administering, monitoring or enforcing compliance, with this Act or a corresponding rail safety law; or
- for the administration or enforcement of another Act or law, if the disclosure is in the interests of public safety; or
- to a court or in connection with legal proceedings; or
- in a way authorised under a temporary regulation.

This clause does not prevent the chief executive or a corresponding rail safety regulator from using information to accumulate aggregate data or authorising the use of aggregate data for research or education. This clause gives effect to model law section 149. It is based on recent Queensland precedents with the list of persons in definition of ‘prescribed person’ and the list of exceptions in subsection (3) based on the model law provision. In the definition, the term ‘involved’ in the administration is used for consistency with the test in subsection (1). The model law uses ‘engaged’**.** Paragraph (e) replaces the phrase ‘person or body’ with ‘entity’. In subsection (3)(c), the model law wording which referred to ‘law

enforcement purposes, rail safety inquiries or public safety' has been replaced. It was considered that 'rail safety inquiries' should be caught by (b), 'law enforcement purposes' should be further clarified and the reason for this disclosure must be 'in the interests of the public safety'

Division 2 Protection from liability

Clause 260 provides that the chief executive, a rail safety officer and a person authorised by the chief executive, a rail safety officer, a corresponding rail safety regulator or an interstate rail safety officer to do something under the Act, is not civilly liable for an act done, or omission made, honestly and without negligence under the Bill. It also provides that if this clause prevents a civil liability attaching to a relevant person, the liability attaches instead to a number of entities contained in the clause. This clause gives effect to model law sections 151(1), (2) and (4). It also transfers liability for persons authorised to do something under the Bill by an interstate rail safety officer (under a prescribed corresponding law). In clause 261 (which reflects section 151(3) of the model law) another jurisdiction can do this in relation to persons authorised to do something under that jurisdiction's rail safety law by a rail safety officer appointed under the Queensland Bill and therefore an equivalent approach should be adopted for transfer of liability under this section. The model law provision applying to persons mentioned in subsection (1)(c) imposes the liability on the person's employer if section (3)(c)(i), (ii) and (iii) do not apply and the person was acting in the capacity of an employee of the employer. This has not been carried across to this Bill.

Clause 261 provides that if an authorised person does an act, or makes an omission, under a prescribed corresponding law and civil liability for the act or omission would attach to the authorised person and a provision of the prescribed corresponding law provides that civil liability for the act or omission attaches to the chief executive, the liability attaches to the State. This clause gives effect to model law sections 151(3) and (4).

Clause 262 provides that if -

- a person helps, or attempts to help, in a situation in which an accident or emergency on or in relation to railway premises or railway operations happens or is likely to happen; and

- the help, or attempt to help, is given honestly and without negligence; and
- the person does not obtain a fee, charge or other reward for the help, or attempt to help; and
- the accident or emergency, or likely accident or emergency, was not wholly or partly caused by the person.

The person is not civilly liable for the help or attempt to help and if this clause prevents civil liability attaching to a person, the liability attaches instead to the State although this clause section does not apply to a person to whom clause 261 or 262 applies. The model law does not contain an equivalent to this section.

Clause 263 provides that if a registered health practitioner acting honestly on reasonable grounds, gives information about a person's fitness for rail safety work to the chief executive, a rail transport operator, a registered health practitioner employed or engaged by the chief executive or a rail transport operator, the registered health practitioner is not liable, civilly, criminally or under an administrative process, for giving the information. It provides that in a proceeding for defamation, the registered health practitioner has a defence of absolute privilege for publishing the information and the registered health practitioner does not, by giving the information, contravene any Act, oath, rule of law or practice requiring the practitioner to maintain confidentiality of the information and is not liable for disciplinary action for giving the information. It also provides that merely because the registered health practitioner gives the information, the practitioner can not be held to have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct.

This clause gives effect to model law section 152, however it is based on Queensland precedents for provisions of this nature (which are more detailed than the model law). The test of 'good faith' in the model law provision is replaced with 'acting honestly on reasonable grounds'. By using the definition of 'information' in this clause, the two 'no liability' provisions of the model law have been combined. The tests mentioned in the definition of 'information', paragraph (a) are not linked to tests 'carried out under this Act' as there is no direct requirement under this Bill that the tests be carried out by the registered health practitioner.

Division 3 Compliance Codes

Clause 264 provides that the Minister may make a code of practice in relation to how persons who have rail safety duties under this Bill can prevent a contravention of the rail safety duties. The Minister must notify the making of a code of practice, a code of practice expires 10 years after its commencement and the Minister must ensure a copy of each code of practice, and any document applied, adopted or incorporated by the code of practice, is made available for inspection, free of charge, at each department office during office hours on business days. This clause gives effect to model law section 153. The provisions about codes of practice reflect the approach taken in the *Workplace Health and Safety Act 1995* (with the exception that they are given the name 'compliance code'). Notice should also be taken of *Workplace Health and Safety Act 1995* as amended by Act No.52 of 2007 entitled: "*Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2007*".

In comparison with the model law, under this section, the Minister 'makes' a compliance code as opposed to an order approving a compliance code under the model law. Under this clause, compliance codes are not subordinate legislation (only the notice notifying its making is). There was no need for an equivalent of the model law, section 156 (Disallowance of compliance codes) because of the *Statutory Instruments Act 1992*. Further, this clause does not include power to amend or withdraw a compliance code because of the operation of the *Acts Interpretation Act 1954*, section 24AA.

Clause 265 provides that compliance or non compliance with a compliance code does not create a civil cause of action or affect a civil right or remedy, whether at common law or otherwise and compliance with a compliance code does not necessarily show that a civil obligation has been satisfied or has not been breached. This clause gives effect to model law section 154 and it also reflects the *Transport Infrastructure Act 1994* section 120. The *Transport Infrastructure Act 1994* drafting of the provision is more detailed than the model law.

Clause 266 provides that in a proceeding under this Bill, a document purporting to be a compliance code is admissible as evidence of the code if the proceeding relates to a contravention of a rail safety duty and it is claimed the person contravened the duty and the code states a way or ways to prevent a contravention of the duty. The model law does not include a

provision equivalent to this clause, however it reflects the *Workplace Health and Safety Act 1995* section 42.

Division 4 Rail safety undertakings

Clause 267 provides the definition of a 'rail safety undertaking' as a written undertaking made by a person that recognises that the chief executive alleges that the identified person has contravened a provision of part 3 or clause 245(2), because of a corporation's contravention of a provision of part 3 and identifies facts and circumstances of the alleged contravention and includes an assurance from the identified person about the identified person's future behaviour. This section is based on the approach in *Workplace Health and Safety Act 1995* section 42D which provides more detail than the model law. The model law refers to these as an undertaking given by a person 'in connection with a matter relating to a contravention or alleged contravention by the person of this Act'.

Clause 268 provides that **t**he chief executive may, by notice given to an identified person for a rail safety undertaking, accept the rail safety undertaking. When the chief executive accepts the rail safety undertaking, the undertaking starts operating and becomes enforceable against the identified person. Also, an identified person may at any time with the agreement of the chief executive withdraw the undertaking or change the provisions of the undertaking however, the provisions of the undertaking can not be changed to provide for a different alleged contravention for the undertaking This clause gives effect to model law section 140. It reflects some changes to incorporate some components of the approach taken in the *Workplace Health and Safety Act 1995* sections 42H(2) and 43E(2). The two differences are that the model law does not provide for the matters mentioned in subclause (2) and does not limit the amendments of an undertaking in the way subclause (4) does.

Clause 269 provides that if the chief executive considers that an identified person for a rail safety undertaking has contravened the undertaking, the chief executive may apply to a Magistrates Court for an order under this section for the enforcement of the undertaking. If the court is satisfied that the person has contravened the undertaking, it may make an order that the person must comply with the undertaking or take stated action to comply with the undertaking or any other order the court considers appropriate. This clause gives effect to model law section 141.

Division 6 Miscellaneous

Clause 270 provides that the chief executive must keep certain records relating to accreditation of rail transport operators. This clause gives effect to model law section 124(1).

Section 157 of the model law concerning the recovery of costs has not been included in this Bill.

Clause 271 provides that a fee, charge or other amount payable under this Act is a debt due to the State and may be recovered by the chief executive. This clause gives effect to model law section 158 and also reflects the *Workplace Health and Safety Act 1995* section 169.

Clause 272 provides that a contract or agreement is void to the extent to which it is contrary to the Bill or purports to annul, exclude, restrict or otherwise change the effect of a provision of this Bill. However, this clause does not prevent the parties to a contract or agreement from including provisions in the contract or agreement that impose greater or more onerous obligations on an entity than are imposed under this Act. This clause gives effect to model law section 161 however it is based on Queensland precedents.

Clause 273 provides that the chief executive may approve forms for use under the Bill. The model law proposes to allow a regulation to provide for the approval of forms.

Clause 274 provides that the Governor in Council may make regulations under the Bill with respect to various relevant matters. This clause gives effect to model law section 162. The following matters in the model law provision are not included here because they are dealt with by the *Statutory Instruments Act 1992*:

- a regulation may provide for anything that the Act says the regulation can provide for or is necessary to give effect to the Act (section 22);
- a regulation may apply, adopt or incorporate another document (section 23);
- a regulation setting fees may also provide for the waiver of fees (section 30B);
- a regulation may be of general or specially limited application (section 24); and

- a regulation may differ according to differences in time, place or circumstances (see section 25);

The following matters in the model law provision are not included here because are implied by provisions of the *Statutory Instruments Act 1992*:

- a regulation may require a matter affected by it to be in accordance with a standard or requirement or approved by a stated person; and
- a regulation may exempt persons from compliance with the regulation.

The regulation-making power for exemptions from the Act has been recast as a temporary regulation-making power to make the potential Fundamental Legislative Principles breaches less objectionable. The regulation-making power for regulating trespassing has been removed because trespassing on railways is dealt with under the *Transport Infrastructure Act 1994* sections 257 and 377 and it is not intended to go further than that under this Bill. Subclause (2)(a) replaces section 162(2)(e) of the model law and is different in the following ways:

- the model law refers to imposing a duty on a specified person or a specified class of person whereas this Bill includes the words 'for ensuring safety of persons railway operations, rail safety work or another activity associated with rail infrastructure or rolling stock'. This then appropriately links the power to the subject matter of this Bill.
- the power under the model law to confer a 'discretionary authority' under a regulation has been removed.
- the power allows the imposition of 'obligations' given the use of 'duty or obligation' in this Bill. This will also allow regulation of trespassing for safety purposes (in case something is lost from the omission of that power).

Clause 275 provides that a temporary regulation may make provision about:

- exemptions, either absolute or conditional, from all or particular provisions of this Bill for a person, railway, part of a railway, railway operations or part of railway operations; or
- a matter for which a temporary regulation may provide under a provision of this Bill; or

- the preservation of a right or benefit a person has under a repealed provision immediately before the commencement of this section, with or without addition to allow the right or benefit to continue under this Bill, including by continuing the operation of a repealed provision.

However, a temporary regulation may make provision about a matter mentioned in this clause only if it is necessary to make the provision temporarily under a regulation to ensure consistency between this Act and corresponding rail safety laws. A temporary regulation expires 1 year after its commencement.

Part 14 -Transitional provisions

Division 1 Definitions

Clause 276 provides definitions, for this part for 'approved safety management system', 'commencement', 'complying safety management system', 'serious incident', 'TIA accreditation', 'TIA reviewable decision', 'transitioned approved safety management system', 'transition ending event', and 'unamended TIA'.

Division 2 Accreditation

Clause 277 provides that if a rail transport operator has an approved safety management system, that safety management system is taken to comply with this Bill until a transition ending event occurs for that operator. A transition ending event is the passing of 12 months after the commencement of this Bill or the rail transport operator establishes a new safety management system that complies with the requirements for a safety management system under part 4, division 3 or the operator varies the transitioned approved safety management system to comply with the requirements for a safety management system under part 4, division 3.

Clause 278 provides that if an application made under the unamended *Transport Infrastructure Act 1994* for an amendment of an approved safety management system is not decided before the commencement, the

application must be decided under the unamended *Transport Infrastructure Act 1994*, which, for that purpose, is taken to be in force as if this Bill had not been enacted. If the application is approved, the amended safety management system is taken to comply with this Bill until a transition ending event occurs for that rail transport operator. If the chief executive refuses the application, the rail transport operator may apply for a review as if this Bill had not been enacted.

Clause 279 provides if a rail transport operator has a transitioned approved safety management system, until the transition ending event occurs, a reference in this Bill to the safety management system of the operator is taken to refer to the transitioned approved safety management system. For the purposes of clause 56, the review must conducted when the transitioned approved safety management system would have been required to be reviewed under the unamended *Transport Infrastructure Act 1994*, section 135 if that section had still been in force.

Clause 280 provides that *Transport Infrastructure Act 1994* accreditation as a railway manager and a railway operator continues in force and is taken to be an accreditation granted under the Act and it provides for other matters relating to accreditation.

Clause 281 provides that an application for an accreditation as a railway manager or railway operator under the unamended *Transport Infrastructure Act 1994* that is not decided before the commencement is taken to be an application for accreditation made under this Bill.

Clause 282 provides that if before the commencement, the chief executive gave a person a notice under the unamended *Transport Infrastructure Act 1994* and at the commencement, the person has not paid the amount of the levy mentioned in the notice the person must pay the amount of the levy.

Clause 283 provides if an application is made under the *Transport Infrastructure Act 1994* unamended for an amendment of the conditions imposed on a person's accreditation pursuant to that Act, and the application is not decided before the commencement of this Bill, the application is taken to be an application for a variation of a condition of accreditation made under this Act. For applying clause 111(1)(a) of this Bill to the decision on the application, the applicant is taken to have met the part of the accreditation criteria for being accredited for railway operations relating to the preparation of the applicant's safety management system if the applicant has an approved safety management system.

Clause 284 continues in effect any notices concerning financial capacity or public risk insurance arrangements given by the chief executive pursuant to the *Transport Infrastructure Act 1994.*

Clause 285 continues the application of section 138 of the *Transport Infrastructure Act 1994* to an accreditation under that Act for a period of twelve months after the commencement of this Bill. Section 138, in turn, references section 126(3)(d) of the *Transport Infrastructure Act 1994.* Section 126(3)(d) provides the chief executive must accredit an applicant as a railway manager and operator for a railway if satisfied the applicant has an agreement with the railway's manager to operate particular rolling stock on the railway, and the agreement includes appropriate arrangements for the safe operation of the rolling stock.

Clause 286 provides if the chief executive has started considering whether or not to make a decision under section 139 of the *Transport Infrastructure Act 1994* but has not made a decision under that section at the commencement of this Bill, the chief executive may continue the consideration under clause 122 as if the consideration had started under this Bill. At the commencement of this Bill, a decision of the chief executive made under the unamended *Transport Infrastructure Act 1994*, section 139 is taken to have been made under clause 122.

Clause 287 provides guidelines developed under the unamended *Transport Infrastructure Act 1994*, section 139(6) and having effect immediately before the commencement of this Bill are taken to be guidelines developed under clause 122(6).

Clause 288 applies if before the commencement of this Bill, the chief executive is given a notice under the unamended *Transport Infrastructure Act 1994*, section 140(2) and reasonably considers it may be appropriate to give a safety direction under the unamended *Transport Infrastructure Act 1994*, chapter 7, part 3, division 4 about the matter stated in the notice as in dispute (the 'dispute matter') and has not given a safety direction under the unamended *Transport Infrastructure Act 1994* section 144(1) in relation to the dispute matter. If, at the commencement, the chief executive has not given a proposed safety direction under the unamended *Transport Infrastructure Act 1994*, section 142, the chief executive may deal with the dispute matter under this Act as if the notice was given under clause 123(2). If, before the commencement, the chief executive has given a proposed safety direction under the unamended *Transport Infrastructure Act 1994*, section 142 but has not taken action in relation to the dispute matter—at the commencement, the proposed safety direction is taken to

have been given under section clause 125 and the chief executive may deal with the dispute matter as if the proposed safety direction had been given under clause 125.

Clause 289 provides that a safety direction given by the chief executive under the unamended *Transport Infrastructure Act 1994,* or a safety direction given by a rail safety officer under the unamended *Transport Infrastructure Act 1994*, before the commencement and in force immediately before the commencement of this Bill, continues in force and the relevant provisions continue to apply in relation to the direction as if the Bill had not been enacted.

Clause 290 provides that the audit program prepared under the unamended *Transport Infrastructure Act 1994* and having effect immediately before the commencement is taken to be an audit program prepared under clause 120(1)(b).

Clause 291 provides that if before the commencement of this Bill, the chief executive has given notice under the unamended *Transport Infrastructure Act 1994* section 152 and at the commencement of this Bill, the person to whom the notice is given has not complied with the requirement in the notice as required under the unamended *Transport Infrastructure Act 1994*, section 153. That notice continues in force and the unamended *Transport Infrastructure Act 1994*, sections 152 and 153 continue to apply in relation to the notice as if this Bill had not been enacted.

Clause 292 provides that if before the commencement of this Bill, the chief executive has given notice under the unamended *Transport Infrastructure Act 1994* sections 156, 394(2) or 395(2) and at the commencement of this Bill, the chief executive has not finally dealt with the proposed action to which the notice relates, the chief executive may continue to consider the proposed action under the unamended *Transport Infrastructure Act 1994* as if this Act had not been enacted and, for that purpose, the relevant provisions continue to apply in relation to the proposed action as if this Act had not been enacted. If the chief executive's decision on the proposed action is to amend, suspend or cancel a person's *Transport Infrastructure Act 1994* accreditation, the amendment, suspension or cancellation has effect under this Bill as if it were an amendment, suspension or cancellation of the accreditation as continued under *Transport Infrastructure Act 1994* section 280**.** If the chief executive's decision on the proposed action is to direct a person to apply for an amendment of an approved safety management system for a railway, the decision is taken to

be a direction given under clause for the person's transitioned safety management system.

A person whose *Transport Infrastructure Act 1994* accreditation is amended, suspended or cancelled, or who is given a direction to apply for an amendment of the person's approved safety management system, under subsection (2) may apply for a review of the relevant decision under the unamended *Transport Infrastructure Act 1994* as if this Act had not been enacted. For subsection (5), the unamended *Transport Infrastructure Act 1994* continues to have effect as if this Bill had not been enacted.

Clause 293 provides that if before the commencement of this Bill, the chief executive has given notice under the unamended *Transport Infrastructure Act 1994* section 391. The notice continues in force and the unamended *Transport Infrastructure Act 1994* section 391 continues to apply as if this Bill had not been enacted.

Division 3 Administration, compliance and enforcement

Clause 294 provides that a person who, immediately before the commencement, was a rail safety officer under the unamended *Transport Infrastructure Act 1994* is taken to be appointed as a rail safety officer under clause 127 until the end of the term of appointment under the unamended *Transport Infrastructure Act 1994* and on the conditions of the appointment under the unamended *Transport Infrastructure Act 1994* that are consistent with this Bill. The chief executive must issue the rail safety officer an identity card under clause 129 as soon as possible after the commencement. This section does not apply to a police officer.

Clause 295 provides that a warrant issued under the unamended *Transport Infrastructure Act 1994* section 182 if, immediately before the commencement of this Bill, the warrant was in effect and had not been executed, the previous warrant continues to have effect according to its terms and is taken to be a warrant issued under clause 139.

Clause 296 applies to a sample or thing taken for analysis under the unamended *Transport Infrastructure Act 1994*, section 185(3)(d) that has not been finally dealt with under the unamended *Transport Infrastructure Act 1994*, chapter 7, part 5 before the commencement of this Bill. The

sample or thing is taken to have been be a sample or thing taken for analysis under clause 143(3)(d).

Clause 297 applies to a thing seized under the unamended *Transport Infrastructure Act 1994*, section 190 or 191 that has not been finally dealt with under the unamended *Transport Infrastructure Act 1994*, chapter 7, part 5 before the commencement of this Bill. The thing is taken to have been seized under clause 151 or 152 and a receipt given for the thing under the unamended *Transport Infrastructure Act 1994*, section 196 is taken to be a receipt given for the thing under clause 157. For applying this Bill to the seizure, the period of 6 months mentioned in clause 159 is taken to have started when the thing was seized under the unamended *Transport Infrastructure Act 1994*. If, before the commencement, a rail safety officer has secured the seized thing under the unamended *Transport Infrastructure Act 1994*, section 192, the thing is taken to have been secured under clause 153.

Clause 298 applies if a rail safety officer has made a requirement under the unamended *Transport Infrastructure Act 1994* section 194(1) or (3) or 195(1). That requirement continues in force and the unamended *Transport Infrastructure Act 1994* sections 194 and 195 continue to apply in relation to the requirement as if this Bill had not been enacted.

Clause 299 applies if, before the commencement of this Bill, the chief executive has made a requirement under the unamended *Transport Infrastructure Act 1994* section 215(2). The requirement continues in force and the unamended *Transport Infrastructure Act 1994* section 215 continues to apply in relation to the requirement as if this Bill had not been enacted.

Clause 300 provides that if, at the commencement of this Bill, an investigation about an incident had started but not been completed under the unamended *Transport Infrastructure Act 1994,* chapter 7, part 6, division 2 the investigation may be continued under part 7, division 7 as if it were a notifiable occurrence.

Clause 301 provides that if either a serious incident on or involving a railway happened before the commencement of this Bill, or the chief executive becomes aware that a serious incident, or an incident other than a serious incident, on or involving a railway may have happened before the commencement of this Bill, even if it has not been reported and at the commencement, an investigation about the incident had not been started under the unamended *Transport Infrastructure Act 1994*, the incident may

be investigated under part 7, division 7 as if the incident were a notifiable occurrence that happened on or after the commencement.

Clause 302 provides that if, at the commencement, an inquiry about an incident by a board of inquiry established or re-established under the unamended *Transport Infrastructure Act 1994* had started but not been completed the incident is taken to be an occurrence for which the Minister had established a board of inquiry under clause 201, the board may continue the inquiry under this Act as if the board had been established under clause 201 about the occurrence.

Clause 303 provides that if an incident on or involving a railway happened before the commencement and the Minister considers the incident was a serious incident under the unamended *Transport Infrastructure Act 1994* and at the commencement, a board of inquiry about the incident had not been established or re-established under the unamended *Transport Infrastructure Act 1994*, section 219, the Minister may establish a board of inquiry about the incident under clause 201 as if the incident were an occurrence that happened on or after the commencement.

Division 4 Restricted information

Clause 304 provides that any information or other thing that was restricted information under the unamended *Transport Infrastructure Act 1994* the information or other thing continues to be restricted information under the Act.

Clause 305 provides a certificate issued by the chief executive under the unamended *Transport Infrastructure Act 1994* section 239AF continues in force and is taken to have been issued under clause 230.

Division 5 Internal and external reviews

Subdivision 1 Internal and external reviews relating to access to rail transport infrastructure

Clause 306 provides that if an application has been made under the unamended *Transport Infrastructure Act 1994* for a review of a decision (the 'original decision') of the chief executive under the unamended *Transport Infrastructure Act 1994*, section 139(2) and a decision on the application for review has not been made before the commencement. A decision on the application for review must be made under this Bill as if the original decision was made under clause 122. If immediately before the commencement of this Bill, a person could have applied under the unamended *Transport Infrastructure Act 1994* for a review of a decision of the chief executive under the unamended *Transport Infrastructure Act 1994*, section 139(2) and the person has not made the application before the commencement of this Bill, the person may apply to the chief executive for a review of the original decision under this Bill as if the original decision was made under clause 122.

Clause 307 provides that if a person has applied to the Queensland Civil and Administrative Tribunal under the unamended *Transport Infrastructure Act 1994* for a review of a decision of the chief executive confirming a decision made under the unamended *Transport Infrastructure Act 1994*, section 139(2) and the decision on the application for review has not been made before the commencement, the Queensland Civil and Administrative Tribunal must deal with the application under the unamended *Transport Infrastructure Act 1994.* However, the Queensland Civil and Administrative Tribunal's decision is taken to be a decision made under clause 250 and this Bill applies in relation to the Queensland Civil and Administrative Tribunal's decision as if it had been made under clause 250 about a decision of the chief executive confirming a decision made under clause 122. Subclause (5) applies if immediately before the commencement, a person could have a applied to the Queensland Civil and Administrative Tribunal under the unamended *Transport Infrastructure Act 1994* for a review of a decision *(the review decision*) of the chief executive confirming a decision made under the unamended *Transport Infrastructure Act 1994*, section 139(2) and the person has not applied before the

commencement. The person may apply to the Queensland Civil and Administrative Tribunal under this Bill as if the review decision was made under clause 249, and the Queensland Civil and Administrative Tribunal must deal with the application as if the internal review decision was made under clause 249. For subsection (2), the unamended *Transport Infrastructure Act 1994* continues to have effect as if this Act had not been enacted.

Subdivision 2 Other reviews and appeals

Clause 308 provides that if a person has made an application under the unamended *Transport Infrastructure Act 1994* for a review of a decision and a decision on the application for review has not been made before the commencement of this Bill, a decision on the application for review must be made under the unamended *Transport Infrastructure Act 1994.* If immediately before the commencement, a person could have applied under the unamended *Transport Infrastructure Act 1994* for a review of a *Transport Infrastructure Act 1994* reviewable decision; and the person has not made the application before the commencement then pursuant to subclause (5) the person may apply to the chief executive for a review of the decision as provided under the unamended *Transport Infrastructure Act 1994* and the chief executive's decision on that application must be made under the unamended *Transport Infrastructure Act 1994*.

Clause 309 provides that if, after the commencement of this Bill, the chief executive makes a decision ('review decision') is made on an application for review of a decision ('original decision') mentioned in clauses 308(1)(a), (3)(a) or (4) and if the review decision is an amendment or substitution of the original decision, the review decision must be given effect under the unamended *Transport Infrastructure Act 1994*. If the review decision is a confirmation of the original decision, despite the amendment of the *Transport Infrastructure Act 1994* by this Bill the matter to which the original decision relates continues to be a matter to be dealt with under the unamended *Transport Infrastructure Act 1994*; and any further decision about the matter must be made under the unamended *Transport Infrastructure Act 1994* and the person in relation to whom the review decision is made may appeal against the review decision under the unamended *Transport Infrastructure Act 1994* For subclauses (2), and (3), the unamended *Transport Infrastructure Act 1994* continues to have effect

as if this Act had not been enacted. This clause is subject to clauses 312 to 316.

Clause 310 provides that if a person has applied to the Queensland Civil and Administrative Tribunal under the unamended *Transport Infrastructure Act 1994* for a review of a decision of the chief executive confirming a *Transport Infrastructure Act 1994* reviewable decision; and a decision on the application has not been made before the commencement, the Queensland Civil and Administrative Tribunal must deal with the application under the unamended *Transport Infrastructure Act 1994*. Subclause (5) applies if immediately before the commencement, a person could have applied to the Queensland Civil and Administrative Tribunal under the unamended *Transport Infrastructure Act 1994* against a decision mentioned in subclause (1)(a); and the person has not made the application before the commencement. Subclause (5) also applies to an internal review decision mentioned in clause 309(3)(c). The person may apply to the Queensland Civil and Administrative Tribunal as provided under the unamended *Transport Infrastructure Act 1994*, and the Queensland Civil and Administrative Tribunal must deal with the application under the unamended *Transport Infrastructure Act 1994.* For subclauses (2) and (5), the unamended *Transport Infrastructure Act 1994* continues to have effect as if this Bill had not been enacted.

Clause 311 provides that if, after the commencement of this Bill, the Queensland Civil and Administrative Tribunal decides an application for a review of a decision mentioned in clauses 310(1)(a),(3)(a) or(4). If the Queensland Civil and Administrative Tribunal amends the decision, or sets the decision aside and substitutes its own decision, the chief executive must give effect to the Queensland Civil and Administrative Tribunal's decision under the unamended *Transport Infrastructure Act 1994.* If the Queensland Civil and Administrative Tribunal refers the matter to the chief executive with directions the matter must be dealt with under the unamended *Transport Infrastructure Act 1994* and the chief executive must follow the Queensland Civil and Administrative Tribunal's directions to the extent possible. If the Queensland Civil and Administrative Tribunal confirms the decision being reviewed, despite the amendment of the *Transport Infrastructure Act 1994* by this Act the matter to which the decision relates continues to be a matter to be dealt with under the unamended *Transport Infrastructure Act 1994*; and any further decision about the matter must be made under the unamended *Transport Infrastructure Act 1994.* For subsections (2), (3) and (4), the unamended *Transport Infrastructure Act*

1994 continues to have effect as if this Bill had not been enacted. This clause is subject to clauses 312 to 316.

Clause 312 provides for further effects of internal or external review decisions about approved safety management systems. This clause applies if after the commencement the chief executive makes a decision ('internal review decision') on an application for a review of a safety management system approval decision; or the Queensland Civil and Administrative Tribunal makes a decision ('external review decision') on an application for a review of a decision of the chief executive confirming an safety management system approval decision; and the effect of the internal review decision or external review decision is that the approval the subject of the review or appeal must be given, and the chief executive gives the approval under the unamended *Transport Infrastructure Act 1994* as provided for under clauses 309 or 311. The rail transport operator's approved safety management system after the approval is effected is taken to be complying safety management system until a transition ending event happens for the operator. In this clause 'SMS approval decision' means a decision of the chief executive to refuse to approve an amendment of a rail transport operator's approved safety management system under the unamended *Transport Infrastructure Act 1994*, section 133 or a decision of the chief executive to refuse to approve a rail transport operator's proposed safety management system under the unamended *Transport Infrastructure Act 1994* section 136, or a decision of the chief executive mentioned in section 278(3) or (6).

Clause 313 provides for the further effect of internal or external review decisions about the amendment of accreditation. This clause applies if after the commencement. the chief executive makes a decision ('internal review decision') on an application for a review of an accreditation amendment application decision; or the Queensland Civil and Administrative Tribunal makes a decision ('external review decision') on an application for review of a decision of the chief executive confirming an accreditation amendment application decision; and the effect of the internal review decision or external review decision is that the amendment the subject of the review must be made. The chief executive must, under this Bill, amend the accreditation as continued under clause 280 in accordance with the internal review decision or external review decision. In this clause 'accreditation amendment application decision' means a decision of the chief executive to refuse to amend the conditions of an accreditation under the unamended *Transport Infrastructure Act 1994* sections 132 or 393.

Clause 314 provides for the further effect of internal or external review decisions about the imposition of conditions on accreditation. This clause applies if after the commencement the chief executive makes a decision ('internal review decision') on an application for a review of an accreditation condition decision; or the Queensland Civil and Administrative Tribunal makes a decision ('external review decision') on an application for a review of a decision of the chief executive confirming an accreditation condition decision; and the effect of the internal review decision or external review decision is that the accreditation the subject of the review must be granted without conditions or with varied conditions. The chief executive must, under this Bill amend the accreditation as continued under clause 280 to remove or vary the conditions imposed on the accreditation in accordance with the internal review decision or external review decision. In this clause 'accreditation condition decision' means a decision of the chief executive to impose conditions on an accreditation granted under the unamended *Transport Infrastructure Act 1994*, section 126 or 388.

Clause 315 provides for the further effects of internal or external review decisions about the direction to amend a safety management system. This clause applies if after the commencement of this Bill, the chief executive makes a decision ('internal review decision') on an application for a review of a safety management system direction decision or the Queensland Civil and Administrative Tribunal makes a decision ('external review decision') on an application for a review of a decision of the chief executive confirming a safety management system direction decision; and the effect of the internal review decision or external review decision is to confirm the safety management system direction decision. Clause 277(2) does not or ceases to apply to a rail transport operator's approved safety management system to which the direction the subject of the review relates. If the operator's approved safety management system is or has been amended as required under the direction, the operator's approved safety management system as amended is taken to be a complying safety management system until a transition event happens for the operator. In this clause, 'SMS direction decision' means a decision of the chief executive to give a direction mentioned in the unamended *Transport Infrastructure Act 1994*, section 159(2)(a).

Clause 316 provides for the further effects of internal or external review decisions about amendment, suspension or cancellation of accreditation. This clause applies if after the commencement the chief executive makes a decision ('review decision') on an application for a review of a disciplinary

decision or the Queensland Civil and Administrative Tribunal makes a decision ('external review decision') on an application for a review of a decision of the chief executive confirming a disciplinary decision; and the effect of the internal review decision or external review decision is to confirm the disciplinary decision. The disciplinary decision has effect under this Act as if it had been made under this Act in relation to the accreditation as continued under clause 280. In this section 'disciplinary decision' means a decision of the chief executive to amend, suspend or cancel an accreditation under the unamended *Transport Infrastructure Act 1994*, sections 158(2), 159(2), 394(3), 394(8), 395(3), 395(6) or 396(2).

Division 6 Other transitional provision

Clause 317 provides for Transitional regulation-making power. Transitional regulations set out a number of provisions for the transitional and consequential arrangements to support the enactment of the main act.

Part 15 Amendment of this Act

Clause 318 states that this part amends this Act**.**

Clause 319 amends the long title of this Act.

Part 16 Amendment of the Transport Infrastructure Act 1994

Clause 320 states that this part amends the *Transport Infrastructure Act 1994.*

Clause 321 amends the *Transport Infrastructure Act 1994* section 2 (Objectives of the Act) by-

- deleting section 2(2)(d)(ii) and inserting ‘(ii) provides for the safety of railways and persons at, on or near railways; and’.

- deleting section 2(2)(h) and inserting '(iii) safely constructed, managed and operated infrastructure; and'.
- deleting section 2(2)(i)(ii).
- renumbering section 2(2)(i)(iii) to (ix) as section 2(2)(i)(ii) to (viii).
- inserting at section 2(2)(j) '(iii) the safety of light rail, light rail land, light rail transport infrastructure and persons at, on or near light rail, light rail land or light rail transport infrastructure.'.

Clause 322 amends section 106 (Ways of achieving objectives) by deleting 'section 106(c)' and inserting '(c) providing for the safety of railways and persons at, on or near railways by imposing requirements directed at ensuring the safety.'

Clause 323 amends section 107 (Scope of chapter) by inserting '(3) In this section—'amusement railway' means—

(a) a railway that—

(i) is operated solely within an amusement or theme park; and

(ii) is an amusement device required to be registered under the *Workplace Health and Safety Act 1995*; and

Note – See the Workplace Health and Safety Regulation 2008, part 2, division 1.

(iii) does not operate on or across a road; or

(b) a railway that operates on a track with a gauge of less than 600mm on a place other than a road.'.

Clause 324 deletes Chapter 7, part 3 (Accreditation).

Clause 325 amends section 169 (Closing railway crossings) by inserting '(3) In this section—'railway crossing' means a level crossing, bridge or another structure used to cross over or under a railway.'.

Clause 326 deletes Chapter 7, parts 5 (Rail safety officers) and 6 (Railway incidents).

Clause 327 amends section 243 (Status of railway land) by deleting subsection (2), definition 'railway manager' and inserting 'railway manager, for corridor land, means the person who is an accredited rail infrastructure manager in relation to a railway or proposed railway on or proposed to be on the corridor land.'.

Clause 328 amends section 255(1)(b) (Interfering with railway) by deleting, 'a railway provision' and inserting 'the Rail Safety Act'.

Clause 329 amends section 257 (Trespassing on railway) by deleting 'wilfully' and inserting 'deliberately or recklessly'.

Clause 330 deletes section 261 (Non-accredited railways).

Clause 331 deletes sections 263 (Limitation of liability for chief executive and rail safety officers) and 264 (Helping in accidents or emergencies).

Clause 332 amends section 347 (Ways of achieving light rail objectives) by inserting '(c) providing for the safety of the following by imposing requirements directed at ensuring the safety—

(i) light rail, light rail land and light rail transport infrastructure;

(ii) persons at, on or near light rail, light rail land or light rail transport infrastructure.'.

Clause 333 deletes section 348(d) (Functions) and renumbers section 348(e) as section 348(d).

Clause 334 amends section 358 (Permitted construction by local government of roads over or under light rail land) by inserting'(7) In this section — 'light rail operator, for a light rail, means a railway operator who is an accredited person in relation to railway operations relating to the light rail.'.

Clause 335 deletes chapter 10, parts 5 (Accreditation provisions for light rail) and 6 (Light rail incidents).

Clause 336 amends section 481 (No need to prove appointments) by deleting section 481(b) and renumbering section 481(c) as section 481(b).

Clause 337 amends section 487 (Altering watercourse to adversely affect transport route) by deleting section 487(8), definition chief executive, and inserting 'chief executive, in relation to a railway, includes an accredited rail infrastructure manager for railway operations relating to the railway if the manager's accreditation states that the person may act under this section.'.

Clause 338 amends section 488 (Altering materials etc.) by deleting section 488(2) 'chief executive' and inserting 'relevant person' and by deleting section 488(3), definition chief executive and inserting definition for 'relevant person means-(a) for a busway-the chief executive; or (b) for a

railway-(i) the chief executive; or (ii) an accredited rail infrastructure manager for railway operations relating to the railway.'.

Clause 339 amends section 489 (Recovery of cost of damage) by deleting section 489(2), 'chief executive', and inserting 'relevant person' and by deleting section 489(6) definition of 'chief executive' and inserting definition for 'relevant person' means-(a) for damage to works on a busway-the chief executive; (b) for damage to works on a railway-(i) if the works are or were carried out by or on behalf of an accredited rail infrastructure manager for railway operations relating to the railway-the rail infrastructure manager; or (ii) otherwise-the chief executive'.

Clause 340 amends schedule 1 (Subject matter for regulations) –

- by deleting item 10 and inserting '10 regulation of the safety of railways and persons at, on or near railways by imposing requirements directed at ensuring safety.'.
- by deleting item 11 (Conditions to which an accreditation is subject)
- by deleting from item 16, 'sections' and inserting 'items'.
- by deleting from item 17, 'a rail safety officer or'.
- by deleting item 23 (The suspension or cancellation of an accreditation for non-payment of a levy).

Clause 341 amends schedule 3 (Reviews and appeals) by deleting from first entry for section 126 to entry for section 159(2) and from first entry for section 388 to entry for section 396(2).

Clause 342 amends schedule 6 (Dictionary) by deleting numerous definitions that only relate to rail safety, relocating the definitions for 'accreditation' and 'accredited person' to section 521, inserting definitions for 'accreditation', 'accredited person', 'accredited rail infrastructure manager', 'employee', 'light rail manager', 'Rail Safety Act', and railway manager and amending the definitions of 'cane railway', 'approved safety management system', 'regulation condition', 'certificate of accreditation' and 'railway'.

Part 17 Amendment of Workplace Health and Safety Act 1995

Clause 343 provides that this part amends the *Workplace Health and Safety Act 1995*.

Clause 344 amends section 3(2) (Application of Act) by inserting *'Transport (Rail Safety) Act 2010'*.

Clause 345 inserts a new section 3C which details the relationship between the *Workplace Health and Safety Act 1995* and the *'Transport (Rail Safety) Act 2010'*. This clause details the circumstances in which the *Workplace Health and Safety Act 1995* does not have application in the circumstances to the extent that the *Transport (Rail Safety) Act 2010*, part 3, division 2 has application.

Clause 346 inserts a new section 185E. This new section authorises the chief executive to provide information, if asked, to the rail safety chief executive. The chief executive may give the rail safety chief executive information held by the chief executive that will help the rail safety chief executive in the exercise of the rail safety chief executive's functions under the Rail Safety Act. It also contains the provisions and restrictions for the giving of this information and defines 'Rail Safety Act', 'rail safety chief executive', 'rail safety officer' and 'rail safety official'.

Part 18 Amendment of other Acts

Clause 348 provides that Schedule 1 amends the Acts it mentions.

Schedule 1 Amendment of particular Acts

Coroners Act 2003

1 amends the definition of 'coroner' in section 52(1)(e).

Local Government Act 1993

1 amends the definition of 'Kuranda rail operator' in section 955A.

Queensland Competition Authority Act 1997

1 amends section 187(3)(h) to refer to the *Transport (Rail Safety) Act 2010*.

2 amends section 239(2)(f) to refer to the *Transport (Rail Safety) Act 2010*.

Right to Information Act

1 amends Schedule 3, section 12(1), third last point omit, insert 'Transport (rail Safety) Act 2010, part 9, division 2'

Transport Operations (Passenger Transport) Act 1994

1 amends section 36G, by deleting from '*Transport*' to 'section 139(2)' and inserting '*Transport (Rail Safety) Act 2010*, section 122(2)'.

2 amends section 110, definition *relevant transport legislation*, paragraph (b), from 'chapter'- by deleting and inserting 'chapter 14; or'.

3 amends section 110, definition *relevant transport legislation* by inserting new paragraphs '(d) the Transport (Rail Safety) Act 2010, part 7 or 8; or' and '(e) a regulation made under the Transport (Rail Safety) Act 2010.'.

4 amends section 143AHA(3) by inserting '(e) the *Transport (Rail Safety) Act 2010*, section 239.'.

5 amends section 154K(1)(a)(ii) by deleting and inserting '(ii) a railway operator who is accredited under the *Transport (Rail Safety) Act 2010* who is accredited under that Act; or'.

Transport Planning and Coordination Act 1994

1 amends the paragraph (b)(iii) by deleting and inserting '(iii) the operations of a rail infrastructure manager as defined under the *Transport (Rail Safety) Act 2010* who is accredited under that Act; or'.

Schedule 2 Internal and external reviews

This schedule provides internal and external review procedures (section of Act, type of decision,) for clauses 249 and 250.

Schedule 3 Dictionary

This schedule contains the Dictionary (clause 8) of definitions used in the Bill. By comparison between the model law and this Bill, a number of definitions in this schedule are different to the model law as a consequence of changes to the model law made in this Bill. Those definitions which differ are detailed in these notes. For example, the term 'compliance code' is defined by reference to a code of practice 'made by the Minister'. The comment for clause 264 already states that this Bill refers to codes of practice 'made by the Minister' compared with the model law reference to 'approved by the Minister' and therefore another comment of this nature is not made for the definition of 'compliance code'. Also, this schedule includes a number of definitions that are not in the model law because they appear in provisions that are not in the model law (for example, provisions about boards of inquiry). No comparative comment is included for those definitions. Some definitions in section 4 of the model law have been converted to sectional definitions because they only appeared in one section (for example, 'Australian rail safety law', 'public place', 'relevant concentration of alcohol', 'safety management plan' and 'supply').

Definitions in model law not included in this Bill because term not used in this Bill—

- 'Australian rail safety law regulator' – the term is not used in this Bill because the concept of 'the chief executive or a corresponding rail safety regulator' is used in its place.
- 'chief commissioner of police'
- 'commercial benefits order'
- 'infringement notice'
- 'supervisory intervention order'
- 'tribunal'

Definitions in model law not included in this Bill for other reasons—

- 'exercise' and 'function' - the term 'function' is not defined to include 'power' and all references to 'function' were checked and replaced with 'power' when necessary and the *Acts Interpretation Act 1954* is relied upon to ensure that 'function' included 'duty' and 'power' included 'authority'. As a consequence 'exercise' was not defined (because we only speak of 'exercise a power' or 'perform a function').

- 'Government Gazette' – the Queensland equivalent already defined in the *Acts Interpretation Act 1954*
- 'jurisdiction' - replaced with 'State' which is defined in the *Acts Interpretation Act 1954*
- 'police officer' - defined in the *Acts Interpretation Act 1954*
- 'railway tracks and associated track structures' - replaced with a defined term for ‘associated track structure’.
- 'regulations' - not current drafting practice
- 'this jurisdiction' - not current drafting practice

Paragraph (b) of the definition of 'accreditation condition' reflects the position under section 129(2) of the *Transport Infrastructure Act 1994* which clarifies that the prescribed accreditation conditions prevail over the conditions stated on the notice.

The definition of 'accreditation notice' is not defined in the model law but the term ‘notice of accreditation’ is referenced in it. It appeared that a definition should be inserted particularly because the references to the term are in provisions forming an offence. Consolidated accreditation notices issued by the chief executive are taken to be the accreditation notice (despite the ‘National Rail Safety Guideline - Uniform Administration and Accreditation’) which provides these are not the legal instrument.

The definition of 'accredited person' does not specifically provide that an accredited person does not include a person whose accreditation has been surrendered, revoked or otherwise ceased to have effect. This definition provides that an accredited person includes a person who is accredited whether or not the accreditation is wholly or partly suspended, whereas the model law provides that the term does not include these persons. This is because after a consideration of the references to ‘accredited person’ it could be seen that the only place where suspended accreditation was not required was the requirement to not carry out railway operations unless the operator is accredited. In that section, the section only picks up current accreditations.

The term 'associated track structure is used in this Bill'. The model law defines the term ‘railway track and associated track structures’. The term is only used in the definition of ‘rail infrastructure’ and ‘railway operations’. The ‘associated structure’ is linked to a ‘railway track’ rather than a ‘railway’. The model law section has been combined because the 2 paragraphs in the model law overlap. The examples mentioned in

paragraph (a) of the model law have been included as example rather than part of the substance of definition.

The definition of 'compliance or investigative purposes' gives effect to model law section 76(3). In comparison with the model law, this definition in paragraph (a) also refers to an offence ‘is being’ committed against the Act as an example.

The use of the term ‘accreditation condition’ and its definition clarifies that this definition applies to conditions stated on the accreditation as well as prescribed accreditation conditions.

The definition of 'condition' includes a restriction or term applying to the accreditation or registration to avoid having to say ‘condition or restriction’, or ‘term, condition or restriction’ as mentioned in the model law.

The term 'drug' has the meaning given by the *Transport Operations (Road Use Management) Act 1995*, schedule 4. In comparison with the model law, the model law definition of ‘drug’ is similar to the *Transport Operations (Road Use Management) Act 1995* definition, with the exception that the Minister can declare substances to be a ‘drug’ under a gazette notice under section 5 of model law, which is subject to local variations. The ‘local variation’ was to declare the substance by regulation meaning that the definition under this Bill is the same as the *Transport Operations (Road Use Management) Act 1995* definition. That definition is picked up by cross-reference rather than re-defined. The effect of the above means that section 5 of the model law is not carried across to this Bill.

The term 'enter' is not defined in the model law. This definition is taken from the *Transport Infrastructure Act 1994* provisions on which the rail safety officer powers are based.

The term 'interstate rail safety officer' is not defined in the model law.

The term 'notifiable occurrence' as defined in this Bill should be compared with the model law which adds the exclusion in paragraph 2 as a run-on. Also, in comparison with the model law, the exclusion of accidents or incidents from the definition is to be achieved by a temporary regulation rather than an ordinary regulation to make the potential breach of Fundamental Legislative Principles less objectionable. In paragraph 1(b) and 2, the references to the prescription of classes of accidents or incidents have been removed because this can be done under the *Statutory Instruments Act 1992*, section 24(b).

The term 'place' is not defined in the model law. This definition is the updated Queensland version of the definition in the *Transport Infrastructure Act 1994* provisions on which the rail safety officer powers are based.

The term 'private siding' is defined differently to the model law. The first part of definition is recast to refer to the rail infrastructure manager of the rail infrastructure with which the siding connects rather than the ‘person who manages’ that rail infrastructure. This is for consistency with the definition of ‘rail infrastructure manager’ which refers to a person who has effective management or control. The exclusion of sidings from the definition is to be achieved by a temporary regulation rather than an ordinary regulation to make the potential breach of Fundamental Legislative Principles less objectionable. In paragraph (e), reference to the prescription of classes of sidings has been removed because this can be done under the *Statutory Instruments Act 1992* section 24(b).

The term 'rail infrastructure' is defined differently to the model law. The definition is in 2 paragraphs as compared to the model law which adds the exclusions in paragraph 2 as a run-on. The exclusion of facilities from the definition is to be achieved by a temporary regulation rather than an ordinary regulation to make the potential breach of Fundamental Legislative Principles less objectionable. In paragraph 2, the reference to the prescription of classes of facilities has been removed because this can be done under the *Statutory Instruments Act 1992* section 24(b).

The term 'rail infrastructure manager' is defined differently to the model law. The lead-in words ‘a person who has effective management and control of rail infrastructure’ replace the model law wording ‘in relation to rail infrastructure of a railway, means a person who has effective management and control of the rail infrastructure’ This is to achieve consistency with the definitions of ‘rail transport operator’ and ‘rolling stock operator’ and because the term is not used in this Bill by reference to ‘a railway’.

The term 'rail safety worker' is drafted in only the present tense compared with the model law which drafts the definition in the past, present and future tense. This is because all references in this Bill that refer to rail safety work include a tense in the reference. The definition clarifies that a rail safety officer carrying out functions under the Act is not a rail safety worker.

The term ‘rail or road crossing’ has been defined using the word ‘cross’ rather than meets. The definition of ‘level crossing’ in the Queensland Road Rules refers to ‘meets’. The word ‘cross’ has been used to take into account those level crossings which do not actually meet but cross each other by means of a bridge or a lane of the road on which rolling stock moves alongside road vehicles on the road.

The term 'railway' has been defined so that the prescription of other things as railways is to be achieved by a temporary regulation rather than an ordinary regulation to make the potential breach of Fundamental Legislative Principles less objectionable. In paragraph (h), the reference to the prescription of classes of systems has been removed because this can be done under the *Statutory Instruments Act 1992*, section 24(b).

The term 'railway premises' is defined differently to the model law. Paragraph (a) reflects paragraphs (a) to (d) of the model law definition. Specifically, the changes are as follows:

- paragraph (a)(i) combines (a) and (b) of the model law definition because over-track and under-track structures are rail infrastructure; and
- paragraph (a)(ii) and (iii) are linked to ‘land, or premises on land’ for consistency with (a)(i).

This definition does not include ‘rolling stock or other vehicles associated with railway operations’ as in places where the clause is intended to apply to ‘rolling stock’, there is already a specific mention of ‘rolling stock’. There were no ‘other vehicles’ that needed to be caught by the references (except where ‘rolling stock’ was specifically mentioned and in those cases there is only need to capture vehicles that are caught by the definition of ‘rolling stock’).

- The definition for the term 'road vehicle' does not appear in the model law as it is left to jurisdictions to enact local variations.
- The term 'rolling stock' is defined differently to the model law. Those differences are as follows:
- The definition is split into two paragraphs compared to model law which includes the exclusions in paragraph two as a run-on.
- The statement in paragraph 1 also refers to ‘designed’ as is used in paragraph 2 compared with model law which only refers to ‘design’ in the second statement.

- The reference to ‘move’ in paragraph 1 replaces reference to ‘use’ for consistency with other references to ‘rolling stock’.
- The reference to ‘railway track’ replaces reference to ‘railway’ because ‘railway track’ is more correct and avoids circularity because ‘railway’ is defined to include the system’s rolling stock.
- The reference to ‘train’ in the examples in paragraph 1 has been omitted as the definition of ‘train’ means that it would be caught by the term ‘rolling stock’ without specific inclusion.
- Paragraph 2(b) has been added because there are some references to ‘rolling stock’ in this Bill where the types of vehicles to which paragraph 2 applies are intended to be caught (in the circumstances mentioned in the paragraph) even when they are not being operated or moved on a railway track

The term 'rolling stock operator' is defined differently to the model law. The reference to ‘railway track’ replaces reference to ‘railway’ because ‘railway track’ is more correct and avoids circularity because ‘railway’ is defined to include the system’s rolling stock. The words ‘that affect the operation or movement of the rolling stock’ have been added to the end of the definition to clarify what is meant by “the network or network signals”.

The term 'safety' is drafted by reference to safety ‘of persons’ because this Bill refers to safety in relation to other things (for example rail infrastructure and rolling stock) to which the defined term does not apply and when this Bill refers to safety in a way that is intended to pick up this definition, the reference is to ‘safety of persons”.

The term 'substance' is only used in the penalties for rail safety duties (that is, it is not used in the same way as the model law) which reflects the Workplace Health and Safety Act 1995 and therefore the defined term from that Act has been adopted.

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