



# **Rail Safety National Law (Queensland) Act 2017**

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Queensland

# Rail Safety National Law (Queensland) Act 2017

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# Rail Safety National Law (Queensland) Act 2017

**An Act to apply a national law that provides for a national system of rail safety**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Rail Safety National Law (Queensland) Act 2017*.

### 2 Commencement

This Act commences at the end of 30 June 2017.

### 3 Definitions

(1) In this Act—

*national law* means the Rail Safety National Law (Queensland).

*national regulation* means a regulation, or a provision of a regulation, made under the Rail Safety National Law (Queensland), section 264.

*Rail Safety National Law* means the Rail Safety National Law, as in force from time to time, set out in the schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA).

*Rail Safety National Law (Queensland)* means the provisions applying in this jurisdiction because of section 4.

(2) Terms used in this Act and also in the Rail Safety National Law have the same meanings in this Act as they have in that Law.

## Part 2    Application of Rail Safety National Law

### 4            Application as law of this jurisdiction

The Rail Safety National Law—

- (a) applies as a law of this jurisdiction with the modifications set out in this part; and
- (b) as so applying may be referred to as the Rail Safety National Law (Queensland); and
- (c) applies as if it were an Act.

*Editor's notes—*

- 1 See section 6 for Queensland legislation to which the Rail Safety National Law (Queensland) does not apply.
- 2 See section 7 for the relationship between the Rail Safety National Law (Queensland) and mining safety legislation.
- 3 See section 10 for the industrial relations status of ONRSR under the Rail Safety National Law (Queensland).
- 4 See sections 12 and 13 for the legal treatment of offences under the Rail Safety National Law (Queensland).
- 5 See section 14 for the requirement for Parliamentary scrutiny of national regulations made under the Rail Safety National Law (Queensland).

### 5            Meaning of generic terms in Rail Safety National Law for this jurisdiction

In the Rail Safety National Law (Queensland)—

**appeal** means, in part 7, to apply under the QCAT Act, section 18 for a review.

**court** means the following—

- (a) in part 5, division 6 and part 10, division 6—a Magistrates Court established under the *Justices Act 1886*;
- (b) in part 7—QCAT.

***emergency service*** means any of the following—

- (a) the Queensland Ambulance Service;
- (b) the Queensland Fire and Emergency Service;
- (c) the Queensland Police Service;
- (d) a person or body prescribed by regulation for this definition.

***gazette*** means the Queensland Government Gazette.

***Health Practitioner Regulation National Law*** means—

- (a) the Health Practitioner Regulation National Law—
  - (i) as in force from time to time, set out in the schedule of the *Health Practitioner Regulation National Law Act 2009*; and
  - (ii) as it applies as a law of Queensland or another State, with or without modification; or
- (b) the law of a State that substantially corresponds to the law mentioned in paragraph (a).

***magistrate*** means a magistrate appointed under the *Magistrates Act 1991*.

***mining operations*** means—

- (a) coal mining operations within the meaning of the *Coal Mining Safety and Health Act 1999*, schedule 3; or
- (b) operations within the meaning of the *Mining and Quarrying Safety and Health Act 1999*, section 10.

***Minister*** means the Minister administering the *Rail Safety National Law (Queensland) Act 2017*.

***over-track structure*** means an over-track structure used in connection with the carrying out of railway operations.

***police officer*** means a police officer within the meaning of the *Police Service Administration Act 1990*, section 1.4.

***private road*** means a road in private ownership.

**QCAT** means the Queensland Civil and Administrative Tribunal established under the QCAT Act.

**QCAT Act** means the *Queensland Civil and Administrative Tribunal Act 2009*.

**road** means—

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is developed for, or has as 1 of its main uses, the driving or riding of road vehicles or pedestrian traffic, whether the area is open to or used by the public or only for private purposes.

*Examples of an area of land that may be included in a road—*

- a bridge, culvert, ford, tunnel or viaduct
- a pedestrian or bicycle path

**road vehicle** means a vehicle designed to be driven or ridden on a road and includes a hovercraft but does not include a tram.

**shared path** see the Queensland Road Rules, section 242.

**State entity** means—

- (a) a public sector unit within the meaning of the *Acts Interpretation Act 1954*, schedule 1; or
- (b) a public service employee within the meaning of the *Public Service Act 2008*, section 9(1).

**this jurisdiction** means Queensland.

**under-track structure** means an under-track structure used in connection with the carrying out of railway operations.

## 6 Exclusion of legislation of this jurisdiction

- (1) The following Acts of this jurisdiction do not apply in relation to the Rail Safety National Law (Queensland) or instruments made under that Law, other than to the extent provided for in subsections (2) and (3) and section 14—
  - (a) the *Acts Interpretation Act 1954*;

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- (b) the *Auditor-General Act 2009*;
  - (c) the *Financial Accountability Act 2009*;
  - (d) the *Legislative Standards Act 1992*;
  - (e) the *Ombudsman Act 2001*;
  - (f) the *Public Records Act 2002*;
  - (g) the *Public Sector Ethics Act 1994*;
  - (h) the *Public Service Act 2008*;
  - (i) the *Right to Information Act 2009*;
  - (j) the *Statutory Bodies Financial Arrangements Act 1982*;
  - (k) the *Statutory Instruments Act 1992*.
- (2) The *Acts Interpretation Act 1954*, section 20C applies to the Rail Safety National Law (Queensland) and instruments made under that Law.
- (3) The Acts mentioned in subsection (1)(b), (c) and (e) to (j) apply to a State entity exercising functions under the Rail Safety National Law (Queensland).
- (4) For the purpose of this Act, the Rail Safety National Law (Queensland) and any other Act or law—
- (a) the Office of the National Rail Safety Regulator is not—
    - (i) a State entity; or
    - (ii) an agency or instrumentality of the State; and
  - (b) an employee of the Office of the National Rail Safety Regulator is not a public service employee within the meaning of the *Public Service Act 2008*, section 9(1).

*Editor's note—*

See also section 10 for the industrial relations status of ONRSR under the *Rail Safety National Law (Queensland)*.

## **7 Relationship with mining safety legislation**

- (1) This section applies if—

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- (a) the Rail Safety National Law (Queensland) applies to a mining railway; and
  - (b) the mining safety legislation would, in the absence of this section, also apply to the mining railway.
- (2) The mining safety legislation does not apply to the mining railway to the extent that the Rail Safety National Law (Queensland) applies.
- (3) In this section—

*mining railway* means a railway that is in a mine other than a railway mentioned in the Rail Safety National Law (Queensland), section 7(1)(a).

*mining safety legislation* means—

- (a) the *Coal Mining Safety and Health Act 1999*; or
- (b) the *Mining and Quarrying Safety and Health Act 1999*.

## **8 Modification of particular terms in Rail Safety National Law for this jurisdiction**

- (1) For the purposes of the Rail Safety National Law (Queensland), the definition of *authorised person* in the Rail Safety National Law, section 4(1) is taken to read—

*authorised person* means a person appointed under section 124;

- (2) For the purposes of the Rail Safety National Law (Queensland), the definition of *level crossing* in the Rail Safety National Law, section 4(1) is taken to read—

*level crossing* means—

- (a) an area where a road and a railway meet at substantially the same level, whether or not there is a level crossing sign on the road at all or any of the entrances to the area; or
- (b) an area where a road and tram tracks meet at substantially the same level and that has a

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level crossing sign on the road at each entrance to the area;

- (3) For the purposes of the Rail Safety National Law (Queensland), the laws prescribed for the definition of *occupational health and safety legislation* in the Rail Safety National Law, section 4(1) include the *Electrical Safety Act 2002*.
- (4) For the purposes of the Rail Safety National Law (Queensland), the definition of *rail or road crossing* in the Rail Safety National Law, section 4(1) is taken to read—

*rail or road crossing* includes each of the following—

  - (a) a railway crossing;
  - (b) a bridge carrying a road over a railway;
  - (c) a bridge carrying a railway over a road;
  - (d) a lane of a road on which rolling stock moves alongside road vehicles on the road;
- (5) For the purposes of the Rail Safety National Law (Queensland), the definitions of *railway* and *rolling stock* in the Rail Safety National Law, section 4(1) apply as if references in those definitions to a monorail were omitted.

## **9 Rail Safety National Law (Queensland) does not apply to monorails**

In addition to the railways mentioned in the Rail Safety National Law, section 7, the Rail Safety National Law (Queensland) does not apply to or in relation to a monorail.

## **10 Industrial relations status of ONRSR**

For the purposes of the Rail Safety National Law (Queensland), it is declared that—

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- (a) ONRSR is not a public sector employer for the purposes of the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*; and
- (b) it is the intention of the Parliament that ONRSR be a national system employer for the purposes of the *Fair Work Act 2009* (Cwlth).

*Editor's note—*

See also section 6(4)(b) for the status of ONRSR employees under the *Public Service Act 2008*.

## **11 Police officer can not be appointed as rail safety officer**

For the purposes of the Rail Safety National Law (Queensland), section 135, a police officer is not eligible to be appointed as a rail safety officer.

## **12 Offences against Rail Safety National Law (Queensland)**

- (1) An offence against the Rail Safety National Law (Queensland) that has a penalty of more than 3 years imprisonment is an indictable offence that is a misdemeanour.
- (2) A proceeding for an offence that is not an indictable offence is by way of summary proceedings under the *Justices Act 1886*.
- (3) A proceeding for an indictable offence may be taken, at the prosecution's election—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (4) A magistrate must not hear an indictable offence summarily—
  - (a) if, at the start of the hearing, the defendant asks that the charge be prosecuted on indictment; or
  - (b) if satisfied, at any stage of the hearing and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if



convicted, may not be adequately punished on summary conviction.

- (5) If subsection (4) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (4) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required under the *Justices Act 1886*, section 104(2)(b).
- (6) The maximum term of imprisonment that may be summarily imposed for an indictable offence is 3 years imprisonment.
- (7) A proceeding must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (8) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*, section 3.

*Editor's note—*

See also section 13 for the application of the double jeopardy rule for offences against the *Rail Safety National Law (Queensland)*.

### **13 No double jeopardy**

A person is not liable to be punished for an act or omission that is an offence against the Rail Safety National Law (Queensland) if—

- (a) the act or omission is also an offence against—
  - (i) another law of this jurisdiction; or
  - (ii) a law of another participating jurisdiction; and
- (b) the person has been punished for the offence mentioned in paragraph (a).

*Editor's note—*

See also section 12 for the legal treatment of offences against the Rail Safety National Law (Queensland).

### **14 Parliamentary scrutiny of national regulations**

- (1) The *Statutory Instruments Act 1992*, sections 49 to 51 apply to a national regulation as if—
  - (a) a reference in those sections to subordinate legislation were a reference to a national regulation; and
  - (b) the reference to notified under section 47 in section 49 of that Act were a reference to published as mentioned in the Rail Safety National Law, section 265(1).

*Note—*

Generally speaking, the *Statutory Instruments Act 1992*, sections 49 to 51 deal with the tabling and disallowance of subordinate legislation and the limited saving of the operation of subordinate legislation that ceases to have effect.

- (2) The *Legislative Standards Act 1992*, part 4 applies to a national regulation as if—
  - (a) a reference in that part to subordinate legislation were a reference to a national regulation; and
  - (b) the reference to the responsible Minister in section 22(2) of that Act were a reference to the Minister administering the *Rail Safety National Law (Queensland) Act 2017*.

*Note—*

Generally speaking, the *Legislative Standards Act 1992*, part 4 deals with the tabling and content of explanatory notes for Bills and subordinate legislation.

- (3) A committee of the Legislative Assembly may deal with a national regulation under the *Parliament of Queensland Act 2001* as if a reference in that Act to subordinate legislation, or an item of subordinate legislation, were a reference to a national regulation.
- (4) For subsection (3), the *Legislative Standards Act 1992*, section 4 applies to a national regulation as if a reference in that section to subordinate legislation were a reference to a national regulation.

*Note—*

Generally speaking, the *Legislative Standards Act 1992*, section 4 deals with the application of fundamental legislative principles to Bills and subordinate legislation.

- (5) If a national regulation ceases to have effect because of the operation of subsection (1), the national regulation ceases to have effect for the purposes of the Rail Safety National Law (Queensland), but the cessation does not affect the application of the regulation in another jurisdiction.

## **Part 3**                      **Drug and alcohol testing procedures**

### **Division 1**                **Interpretation**

#### **15**        **Definitions for part**

In this part—

*analysis* means a breath analysis or saliva analysis.

*analyst* means a person who carries out an analysis or laboratory test in a laboratory prescribed by regulation.

***analyst's certificate*** see section 46(2).

***authorised person*** has the same meaning as in the national law, section 4(1).

***breath analysing instrument*** means—

- (a) a breath analysing instrument as defined in the *Transport Operations (Road Use Management) Act 1995*, section 80(1); or
- (b) an instrument approved by regulation.

***breath analysis*** means an analysis of a specimen of breath by a breath analysing instrument.

***breath analysis certificate*** see section 39(1).

***health care professional*** means—

- (a) a doctor; or
- (b) a nurse; or
- (c) a qualified assistant.

***instrument operator***, in relation to a breath analysis, means the authorised person or police officer who operates, or is to operate, the breath analysing instrument under section 37.

***nurse*** means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the nursing profession, other than as a student; and
- (b) in the registered nurses division of that profession.

***preliminary breath test*** means a test to obtain an indication of the concentration of alcohol in a person's breath using a device approved by regulation.

***preliminary saliva test*** means a test to obtain an indication of the presence of a prescribed drug in a person's saliva using a device approved by regulation.

***preliminary test*** means a preliminary breath test or a preliminary saliva test.

***prescribed concentration of alcohol*** has the same meaning as in the national law, section 128(5).

***prescribed drug*** has the same meaning as in the national law, section 128(5).

***prescribed medical certificate*** means a certificate, in the approved form, from a doctor stating that—

- (a) because of a stated illness or disability, a rail safety worker is incapable of providing a specimen of breath or saliva, or both; or
- (b) providing a specimen of breath or saliva, or both, could adversely affect a rail safety worker's health.

***qualified assistant*** see section 16(1).

***saliva analysis*** means an analysis of a specimen of saliva by a laboratory test approved by regulation.

***specimen for analysis*** means a sufficient specimen of breath or saliva, or both, for analysis.

***specimen for preliminary testing*** means a sufficient specimen of breath or saliva, or both, for a preliminary test.

***sufficient specimen***, of breath or saliva for a preliminary test or for analysis, means a specimen of breath or saliva that—

- (a) is sufficient to enable the preliminary test or analysis to be carried out; and
- (b) is provided in a way that enables the objective of the preliminary test or analysis to be satisfactorily achieved.

## 16 Qualified assistants

- (1) For this part, a person is a ***qualified assistant*** if the person's duties include the taking of blood.
- (2) A qualified assistant may take a specimen of a rail safety worker's blood only if directed to take the specimen by a doctor or nurse.
- (3) In a proceeding for an offence against the national law, part 3, unless the contrary is proved, a qualified assistant who takes a

specimen of blood from a rail safety worker for a laboratory test is taken to have been directed by a doctor or nurse to take the specimen.

## **17 How to read particular references in national law, pt 3, div 9**

For the purposes of the national law, part 3, division 9—

- (a) a reference in that division to a drug screening test is taken to be a reference to a preliminary saliva test; and
- (b) a reference in that division to oral fluid is taken to be a reference to saliva; and
- (c) a reference in that division to an oral fluid analysis is taken to be a reference to a saliva analysis.

## **18 Using breath sample to find blood alcohol concentration**

- (1) For the national law, part 3 and this part, if the concentration of alcohol in a rail safety worker's breath is a particular number of grams of alcohol for each 210 litres of breath, the worker's blood alcohol concentration (**BAC**) is to be regarded as being that number of grams of alcohol for each 100 ml of blood.
- (2) A device used to conduct a preliminary breath test is taken to be for the purpose of providing an indication of a rail safety worker's BAC, or an indication of whether or not a rail safety worker has the prescribed concentration of alcohol, whether the device gives the indication directly or enables it to be derived under subsection (1).
- (3) A breath analysing instrument is taken to be for the purpose of ascertaining a rail safety worker's BAC by analysis of a sample of the worker's breath, whether the instrument gives the BAC directly as the analysis result or enables it to be derived under subsection (1).

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## **Division 2                      Application of national law, part 3, division 9 and this part**

### **19            Application of national law, ss 126 and 127**

The national law, sections 126 and 127 apply subject to this part.

### **20            Limitation on when authorised person may exercise powers in relation to train driver**

(1) An authorised person may not exercise a power under division 3 or 4 in relation to a train driver if a police officer is exercising a power under the *Transport Operations (Road Use Management) Act 1995*, section 80 in relation to the train driver.

(2) In this section—

*train driver* means a rail safety worker—

- (a) found by a police officer driving, attempting to put in motion, or in charge of, a train as mentioned in the *Transport Operations (Road Use Management) Act 1995*, section 80(2) or (2A); or
- (b) who a police officer reasonably suspects was driving, attempting to put in motion, or in charge of, a train in the circumstances mentioned in section 80(2) or (2A) of that Act.

## **Division 3                      Provision of specimens of breath or saliva for preliminary test**

### **21            Requirement to submit to preliminary test**

(1) An authorised person may require a rail safety worker to submit to 1 or both of the following—

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- (a) a preliminary breath test under the national law, section 126;
  - (b) a preliminary saliva test under the national law, section 127.
- (2) This division applies for the purpose of making the requirement.

## **22 Direction to provide specimen of breath or saliva**

The authorised person may direct the rail safety worker—

- (a) to provide in accordance with the requirement 1 or more specimens for preliminary testing; and
- (b) to comply with any reasonable requirement for the purpose of providing each of the specimens to which the direction is subject.

## **23 Direction to provide additional specimen of breath or saliva**

- (1) The authorised person may direct the rail safety worker to provide additional specimens for preliminary testing to enable the preliminary test to be carried out if—
- (a) the worker fails to provide a sufficient specimen for preliminary testing under section 22; or
  - (b) the worker provides a sufficient specimen for preliminary testing under section 22 but—
    - (i) the device used for the preliminary test is or becomes defective, precluding its satisfactory operation to analyse the specimen of breath or saliva; or
    - (ii) for any reason, it is not possible to use or continue using the device to conduct the preliminary test; or
    - (iii) for another reason, it is not possible to complete the preliminary test.



- 
- (2) The authorised person may direct the rail safety worker to comply with any reasonable requirement for the purpose of providing an additional specimen.

**24 Time limit on giving direction to provide specimen for preliminary testing**

- (1) This section applies if a rail safety worker is directed under section 22 or 23 to provide a specimen for preliminary testing.
- (2) The preliminary test must be commenced as soon as practicable and, in any event, within 3 hours after the relevant time.
- (3) For subsection (2), the preliminary test commences when the rail safety worker is first presented with the device used for the preliminary test for the purpose of providing the specimen.
- (4) In this section—  
*relevant time* means—
- (a) when the authorised person found the rail safety worker doing the thing mentioned in the national law, section 126(1)(a) to (e) or 127(1)(a) to (e); or
- (b) when the rail safety worker is reasonably suspected by the authorised person to have been doing the thing mentioned in the national law, section 126(1)(a) to (e) or 127(1)(a) to (e).

**25 Limitation on direction to provide specimen for preliminary testing—prescribed medical certificate**

- (1) This section applies if—
- (a) an authorised person directs a rail safety worker under section 22 or 23 to provide a specimen for preliminary testing; and
- (b) the worker gives the authorised person a prescribed medical certificate relating to providing that type of specimen.

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- (2) The authorised person must not require the rail safety worker to comply with the direction, but may instead give the worker a direction under section 22 or 23 to provide a specimen of the type to which the prescribed medical certificate does not relate.

## **Division 4                      Provision of specimens of breath or saliva for analysis or blood for testing**

### **26            Application of division**

This division applies if a rail safety worker is directed under division 3 by an authorised person to provide a specimen for preliminary testing and—

- (a) it appears to the authorised person, because of a preliminary test carried out by the authorised person on the specimen, that the worker is over the prescribed concentration of alcohol or that a prescribed drug is present in the worker's saliva; or
- (b) the worker—
  - (i) fails to comply with the direction; or
  - (ii) declines to wait for a reasonable time to enable the preliminary test to be carried out satisfactorily; or
- (c) the worker is not required to comply with the direction because the worker gives the authorised person a prescribed medical certificate relating to providing that type of specimen.

### **27            Requirement to submit to breath analysis, saliva analysis or blood test**

- (1) The authorised person who directed the rail safety worker to provide a specimen for preliminary testing may require the worker to submit to—

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- (a) if section 26(a) or (b) applies—1 or more of the following—
    - (i) a breath analysis under the national law, section 126;
    - (ii) a saliva analysis under the national law, section 127;
    - (iii) a blood test under the national law, section 127; or
  - (b) if section 26(c) applies—a blood test under the national law, section 127.
- (2) This division applies for the purpose of making the requirement.

## **28 Direction to provide specimen of breath, saliva or blood**

- (1) An authorised person may direct the rail safety worker—
- (a) to provide in accordance with the requirement, at a place and time stated by the authorised person, 1 or more of the following—
    - (i) a specimen of the worker’s breath for a breath analysis;
    - (ii) a specimen of the worker’s saliva for a saliva analysis;
    - (iii) a specimen of the worker’s blood for a laboratory test; and
  - (b) to comply with any reasonable requirement for the purpose of providing each of the specimens to which the direction relates.
- (2) This section does not limit section 34 or 35.

*Note—*

See also sections 34 to 36 and 56 and the national law, sections 126(3) and 127(3) for provisions about compliance with a direction given under this section.

**29 Direction to provide additional specimens of breath, saliva or blood**

- (1) Subsection (2) applies if the rail safety worker is directed under section 28(1) by an authorised person to provide a specimen of the worker's breath or saliva for analysis.
- (2) The authorised person may direct the rail safety worker to provide additional specimens of breath or saliva to enable the analysis to be carried out if—
  - (a) the worker fails to provide a sufficient specimen for analysis; or
  - (b) the worker provides a sufficient specimen for analysis but—
    - (i) the instrument used for the analysis is or becomes defective precluding its satisfactory operation to analyse the specimen of breath or saliva; or
    - (ii) for any reason, it is not possible to use or continue using the instrument to conduct the analysis; or
    - (iii) if the worker provides a specimen of breath—the instrument indicates the presence of alcohol or some other substance in the worker's mouth; or
    - (iv) for any other reason, it is not possible to complete the analysis.
- (3) Subsection (4) applies if the rail safety worker is directed under section 28(1) by an authorised person to provide a specimen of the worker's blood for a laboratory test.
- (4) The authorised person may direct the rail safety worker to provide additional specimens of blood to enable the laboratory test to be carried out if the worker fails to provide the specimen required for the test.
- (5) The authorised person may direct the rail safety worker to comply with any reasonable requirement for the purpose of providing an additional specimen under subsection (2) or (4).
- (6) This section does not limit section 34 or 35.

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*Note—*

See also sections 34 to 36 and 56 and the national law, sections 126(3) and 127(3) for provisions about compliance with a direction given under this section.

### **30 Direction to provide specimen of breath at police station**

- (1) This section applies if the rail safety worker is directed under section 28 or 29 to provide a specimen of breath for analysis at a police station.
- (2) A police officer who carries out a breath analysis on a specimen of breath provided by the rail safety worker at the police station is taken to be an instrument operator for the purposes of this part.

### **31 Time limit on commencing breath or saliva analysis or blood test**

- (1) This section applies if the rail safety worker is directed under section 28 or 29 to provide a specimen of breath or saliva for analysis or a specimen of blood for a laboratory test.
- (2) The breath analysis, saliva analysis or blood test must be commenced as soon as practicable and, in any event, within 3 hours after the relevant time.
- (3) For subsection (2), the breath analysis commences when the rail safety worker is first presented with the breath analysing instrument for the purpose of providing the specimen of breath.
- (4) For subsection (2), the saliva analysis or blood test commences when the rail safety worker is first directed to provide the specimen of saliva or blood.
- (5) In this section—  
*relevant time* means—
  - (a) when an authorised person found the rail safety worker doing the thing mentioned in the national law, section 126(1)(a) to (e) or 127(1)(a) to (e); or

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- (b) when the rail safety worker is reasonably suspected by an authorised person to have been doing the thing mentioned in the national law, section 126(1)(a) to (e) or 127(1)(a) to (e).

### **32 Limitation on direction to provide specimen of breath or saliva for analysis—prescribed medical certificate**

An authorised person must not direct the rail safety worker under section 28 or 29 to provide a specimen of breath or saliva for analysis if—

- (a) the worker gives the authorised person a prescribed medical certificate relating to providing that type of specimen; or
- (b) the worker was not required to comply with a direction under division 3 to provide a specimen of that type for preliminary testing because the worker gave the authorised person who directed the worker under division 3 a prescribed medical certificate relating to providing that type of specimen.

### **33 Rail safety worker may request duplicate specimen of saliva or blood**

- (1) This section applies if the rail safety worker is directed under section 28(1) or 29(2) by an authorised person to provide—
  - (a) a specimen of saliva for a saliva analysis; or
  - (b) a specimen of blood for a laboratory test.
- (2) The rail safety worker may, when or immediately after the specimen of saliva or blood is provided, ask the relevant person to provide the worker with a duplicate specimen.
- (3) The relevant person must, subject to the rail safety worker providing the duplicate specimen, comply with a request under subsection (2).

*Note—*

See also section 57 in relation to subsection (3).

(4) In this section—

*duplicate specimen* means a second specimen of saliva or blood (as applicable).

*relevant person* means the authorised person or health care professional who is taking or took the specimen of saliva or blood mentioned in subsection (1).

### **34 Requirements for providing specimen of breath or saliva for analysis**

- (1) A regulation may prescribe requirements about how a specimen of breath or saliva for analysis must be provided.
- (2) To comply with a direction under this part to provide a specimen of breath or saliva for analysis, a rail safety worker must comply with the prescribed requirements.

### **35 Compliance with direction to provide specimen of blood for laboratory test**

- (1) This section applies if a rail safety worker is directed under this part by an authorised person to provide a specimen of the worker's blood for a laboratory test.
- (2) To comply with the direction, the rail safety worker must allow a health care professional to take the specimen when, and in the manner, directed by the health care professional.

### **36 Health care professional may take specimen of blood without consent**

It is lawful for a health care professional to take a specimen of a rail safety worker's blood under this part even though the rail safety worker has not consented to the taking.

## **Division 5                      Conduct of analysis and testing of specimens**

### **37            Who may operate breath analysing instrument**

- (1) A breath analysing instrument must be operated by—
  - (a) an authorised person; or
  - (b) a police officer who is an instrument operator under section 30.
- (2) Despite subsection (1), a police officer may operate a breath analysing instrument only if the police officer is authorised by the commissioner under the *Transport Operations (Road Use Management) Act 1995*, section 80(8G) to operate the instrument.
- (3) A certificate mentioned in the *Transport Operations (Road Use Management) Act 1995*, section 80(8I) is, unless the contrary is proved, conclusive evidence that the police officer named in the certificate is authorised for the purposes of subsection (2).

### **38            Delivery of specimen to laboratory**

- (1) This section applies if a specimen of saliva or blood is provided as directed under this part.
- (2) As soon as practicable after the specimen is provided, the authorised person who gave the direction must ensure the specimen is delivered, in the way prescribed by regulation, to the laboratory of an analyst.
- (3) In a proceeding, each of the following is sufficient evidence of compliance with subsection (2)—
  - (a) evidence given by the authorised person, or a person who delivered the specimen for the authorised person, of the delivery of the specimen to the laboratory in a way prescribed by regulation;



- (b) the production in evidence of an analyst's certificate stating the specimen was delivered to the laboratory by or for the authorised person.

## Division 6                    Evidentiary matters

### Subdivision 1            Evidence of breath analysis

#### 39            Breath analysis certificate

- (1) As soon as practicable after a specimen of breath provided as directed under this part has been analysed, the instrument operator must—
  - (a) sign 2 copies of a certificate (a *breath analysis certificate*) in writing stating—
    - (i) the concentration of alcohol indicated by the analysis to be present in the blood or breath of the rail safety worker whose breath has been analysed; and
    - (ii) the date and time the analysis was made; and
  - (b) give 1 copy of the certificate to—
    - (i) the worker; or
    - (ii) if requested by the worker—another person on the worker's behalf; and
  - (c) either—
    - (i) if the operator is the authorised person who gave the direction—retain 1 copy of the certificate; or
    - (ii) otherwise—give 1 copy of the certificate to the authorised person who gave the direction.
- (2) A copy of a breath analysis certificate is—

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- (a) evidence that the instrument used to analyse the specimen of breath to which the certificate relates was a breath analysing instrument; and
- (b) evidence that that instrument was in proper working order and properly operated by the instrument operator; and
- (c) evidence that all requirements prescribed by regulation relating to breath analysing instruments were complied with in relation to that instrument; and
- (d) presumed to have been given to the rail safety worker to whom the certificate relates, unless the contrary is proved.

#### **40 Evidence from breath analysing instrument**

- (1) This section applies to evidence of the concentration of alcohol indicated to be present in the blood or breath of a rail safety worker by a breath analysing instrument that is given by—
  - (a) the instrument operator; or
  - (b) a copy of a breath analysis certificate purporting to be signed by the operator.
- (2) Subject to subsection (3), the evidence is conclusive evidence of the concentration of alcohol present in the blood or breath of the rail safety worker at all material times.
- (3) The rail safety worker may negative the evidence by proving that, at the time of its operation, the breath analysing instrument was not in proper working order or was not properly operated.
- (4) In this section—

***material times*** means—

  - (a) when the rail safety worker provided the specimen of breath; and

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- (b) any time during the 3-hour period ending at the time the worker provided the specimen.

## **Subdivision 2 Evidence about submission to breath analysis, saliva analysis or blood test**

### **41 Certificate about requirement to submit to breath analysis, saliva analysis or blood test**

- (1) This section applies if a rail safety worker is required under this part by an authorised person to submit to a breath analysis, saliva analysis or blood test.
- (2) As soon as practicable after making the requirement, the authorised person must sign 2 copies of a certificate in writing stating each of the following—
- (a) the name of the rail safety worker;
  - (b) the name of the authorised person;
  - (c) the date on which, and the place and time at which, the requirement was made;
  - (d) whether the requirement was to submit to a breath analysis, saliva analysis or blood test;
  - (e) in relation to the direction to provide a specimen for preliminary testing given under division 3 before the requirement was made—
    - (i) the date on which, and the place and time at which, the direction was given; and
    - (ii) whether the direction was to provide a specimen of breath or saliva, or both, for a preliminary test;
  - (f) the reason, as mentioned in section 26(a) to (c), that the requirement was made.

## **42 Certificate about failure to provide specimen of breath or saliva for analysis**

- (1) This section applies if—
  - (a) a rail safety worker is directed under this part to provide a specimen of the worker’s breath or saliva for analysis; and
  - (b) the worker fails to provide a specimen for analysis as directed; and
  - (c) the instrument operator—
    - (i) is the authorised person who gave the direction; or
    - (ii) witnessed the giving of the direction.
- (2) As soon as practicable after the rail safety worker fails to provide the specimen, the instrument operator must sign 2 copies of a certificate in writing stating each of the following—
  - (a) the name of the rail safety worker;
  - (b) the name of the authorised person who gave the direction;
  - (c) the name of the operator;
  - (d) if the operator is not the authorised person mentioned in paragraph (b)—that the operator witnessed the giving of the direction to the worker;
  - (e) whether the direction was to provide a specimen of breath or saliva;
  - (f) the name and patent number, or name and model number, appearing on the breath analysing instrument;
  - (g) that the worker failed to provide a specimen of breath or saliva for analysis as directed;
  - (h) details of the worker’s failure to provide a specimen.

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**43 Certificate about failure to allow health care professional to take specimen of blood**

- (1) This section applies if—
- (a) a rail safety worker is directed under this part to provide a specimen of the worker's blood for a laboratory test; and
  - (b) the worker fails to allow a health care professional to take the specimen as required under section 35; and
  - (c) the health care professional witnessed the giving of the direction.
- (2) As soon as practicable after the rail safety worker fails to provide the specimen, the health care professional must sign 2 copies of a certificate in writing stating each of the following—
- (a) the name of the rail safety worker;
  - (b) the name of the authorised person who gave the direction;
  - (c) the name of the health care professional;
  - (d) that the health care professional witnessed the giving of the direction;
  - (e) that the worker failed to allow the health care professional to take the specimen;
  - (f) details of the worker's failure to allow the health care professional to take the specimen.

**44 Requirement to give certificate to rail safety worker and authorised person**

As soon as practicable after signing a certificate under this subdivision about a rail safety worker, a person must—

- (a) give 1 copy of the certificate to—
  - (i) the rail safety worker; or

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- (ii) if requested by the worker—another person on the worker’s behalf; and
- (b) either—
  - (i) if the person is the authorised person who gave the direction—retain 1 copy of the certificate; or
  - (ii) otherwise—give 1 copy of the certificate to the authorised person who gave the direction.

## **45 Certificate evidence**

- (1) A certificate signed under section 41 is, unless the contrary is proved, conclusive evidence of each of the following—
  - (a) a requirement to submit to a breath analysis, saliva analysis or blood test was made under this part of the rail safety worker named in the certificate by the authorised person named in the certificate;
  - (b) before the requirement mentioned in paragraph (a) was made, a direction to provide a specimen for preliminary testing was given under division 3 to the rail safety worker named in the certificate by the authorised person named in the certificate;
  - (c) the reason, as mentioned in section 26(a) to (c), that the requirement mentioned in paragraph (a) was made.
- (2) A certificate signed under section 42 is, unless the contrary is proved, conclusive evidence of each of the following—
  - (a) a direction to provide a specimen of breath or saliva for analysis was given under this part to the rail safety worker named in the certificate by the authorised person named in the certificate;
  - (b) the worker failed to comply with the direction;
  - (c) if the direction was to provide a specimen of breath for analysis—a breath analysing instrument was available at the place and time at which the worker was to have provided the specimen in compliance with the direction.

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- (3) A certificate signed under section 43 is, unless the contrary is proved, conclusive evidence of each of the following—
- (a) a direction to provide a specimen of blood for a laboratory test was given under this part to the rail safety worker named in the certificate by the authorised person named in the certificate;
  - (b) the worker failed to comply with the direction.

### **Subdivision 3 Evidence about laboratory testing**

#### **46 Analyst's certificate**

- (1) This section applies if an analyst carries out a laboratory test on a specimen of saliva or blood obtained under this part (the *delivered specimen*).
- (2) As soon as practicable after carrying out the test, the analyst must sign a certificate (an *analyst's certificate*) stating each of the following—
- (a) that the delivered specimen was received at the laboratory of the analyst;
  - (b) the name of the rail safety worker from whom the delivered specimen was obtained;
  - (c) the date on which, and the place and time at which, the delivered specimen was obtained from the rail safety worker;
  - (d) the name of the authorised person from whom the delivered specimen was received;
  - (e) whether the delivered specimen is a specimen of saliva or blood;
  - (f) the date on which, and the place at which, the analyst or another analyst carried out the laboratory test;
  - (g) if the laboratory test was carried out by another analyst—that the analyst who signed the certificate—

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- (i) examined the laboratory's records about the receipt, storage and testing of the delivered specimen; and
  - (ii) confirms that the records show that all quality assurance procedures for the receipt, storage and testing of the delivered specimen in place in the laboratory at the time of the test were complied with;
- (h) if the delivered specimen was a specimen of saliva—whether any drug or metabolite of any drug was indicated by the test to be present in the worker's saliva and, if so, the name of the drug;
- (i) if the delivered specimen was a specimen of blood—
- (i) the concentration of alcohol in the worker's blood indicated by the test; and
  - (ii) whether any drug or metabolite of any drug was indicated by the test to be present in the worker's blood and, if so, the name of the drug.

#### **47 Requirement to give analyst's certificate to authorised person and rail safety worker**

- (1) As soon as practicable after signing an analyst's certificate under section 46 about a specimen provided by a rail safety worker as directed under this part, an analyst must give 2 copies of the certificate to the authorised person who gave the direction.
- (2) As soon as practicable after being given the copies of the analyst's certificate, the authorised person must give 1 copy to the rail safety worker, either personally or by registered post.

#### **48 Evidence from laboratory test**

- (1) This section applies to evidence given by an analyst or analyst's certificate of—



- (a) the concentration of alcohol indicated by a laboratory test to be present in a rail safety worker's blood; or
  - (b) the presence of a prescribed drug or a metabolite of a prescribed drug, as indicated by a laboratory test, in a rail safety worker's saliva or blood; or
  - (c) the presence of a drug other than a prescribed drug or a metabolite of a drug other than a prescribed drug, as indicated by a laboratory test, in a rail safety worker's blood.
- (2) Subject to subsection (5), evidence mentioned in subsection (1)(a) is conclusive evidence of the concentration of alcohol present in the rail safety worker's blood at all material times.
- (3) Subject to subsection (5), evidence mentioned in subsection (1)(b) is conclusive evidence of the presence of a prescribed drug or a metabolite of a prescribed drug in the rail safety worker's saliva or blood at all material times.
- (4) Subject to subsection (5), evidence mentioned in subsection (1)(c) is conclusive evidence of the presence of a drug other than a prescribed drug or a metabolite of a drug other than a prescribed drug in the rail safety worker's blood at all material times.
- (5) The rail safety worker may negative evidence mentioned in subsection (1) by proving the result of the laboratory test was not correct.
- (6) In this section—
- material times*** means—
- (a) when the rail safety worker provided the specimen of saliva or blood; and
  - (b) any time during the 3-hour period ending at the time the worker provided the specimen.

## **49 Production of analyst's certificate**

- (1) This section applies if a laboratory test has been conducted under this part on a specimen of a rail safety worker's saliva or blood.
- (2) A court dealing with a charge against the rail safety worker for an offence against the national law, part 3 must adjourn the hearing as required to—
  - (a) enable the production in evidence of the analyst's certificate about the specimen; and
  - (b) if a copy of the certificate has not been given to the worker under section 47(2)—ensure a copy of the certificate is given to the worker at least 3 days before the certificate is produced in evidence.
- (3) This section does not prevent the court, in its discretion, dealing with the charge for the offence before the result of the laboratory test of the specimen is known if—
  - (a) the rail safety worker applies to the court for it to deal with the charge under this subsection; and
  - (b) the worker pleads guilty to the offence; and
  - (c) the court is satisfied that the facts available to be put forward by the prosecution, and unchallenged by the worker, are sufficient to enable it to properly deal with the matter.

## **50 Evidentiary provision for laboratory equipment**

In a proceeding for an offence against the national law, part 3, unless the contrary is proved, equipment used in a laboratory test of a specimen of saliva or blood is to be taken to have given accurate results.

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## **Subdivision 4 Other evidentiary matters**

### **51 Certificate by health care professional about taking of specimen**

- (1) This section applies if a health care professional takes a specimen of saliva for analysis, or a specimen of blood for a laboratory test, under this part.
- (2) The health care professional must sign a certificate in writing stating—
  - (a) that the health care professional took a specimen of saliva for analysis, or a specimen of blood for a laboratory test, from a rail safety worker; and
  - (b) the name of the worker; and
  - (c) the date on which, and the place and time at which, the specimen was taken.

### **52 Certificate by particular person is evidence of matters relating to that person**

- (1) This section applies to a certificate that is or purports to be signed by any of the following—
  - (a) an instrument operator under subdivision 1 or 2;
  - (b) a health care professional under subdivision 2 or section 51;
  - (c) an analyst under section 46.
- (2) The certificate is, unless the contrary is proved, conclusive evidence—
  - (a) that the signature on the certificate is the signature of the person by whom the certificate purports to be made; and
  - (b) of all matters stated in the certificate, including the status, authority or qualification of the person by whom the certificate purports to be made.
- (3) This section does not limit section 39 or 45.

## **Division 7**                      **Provisions about particular types of evidence obtained under this part**

### **53**            **Admissibility of evidence of alcohol or drug in proceedings for particular offences**

- (1) This section applies to evidence obtained under this part of any or all of the following—
  - (a) the concentration of alcohol in a rail safety worker's breath or blood at a time material to the time of a relevant offence;
  - (b) the presence of a prescribed drug or a metabolite of a prescribed drug in a rail safety worker's saliva or blood at a time material to the time of a relevant offence;
  - (c) the presence of a drug other than a prescribed drug or a metabolite of a drug other than a prescribed drug in a rail safety worker's blood at a time material to the time of a relevant offence.
- (2) The evidence—
  - (a) is admissible in a proceeding against the rail safety worker for the relevant offence, whether—
    - (i) by way of summary proceedings under the *Justices Act 1886*; or
    - (ii) on indictment; and
  - (b) must not be excluded from a proceeding mentioned in paragraph (a) because the evidence was obtained under this part.
- (3) In a proceeding mentioned in subsection (2), the evidence—
  - (a) may be given in the same manner, whether by a witness or by a certificate, as it may be given under this part in another proceeding; and
  - (b) is admissible in the same circumstances and to the same extent as it would be admissible under this part in another proceeding; and

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- (c) has the same evidentiary value in relation to the same matters and times provided for under this part as in another proceeding.
  - (4) In this section—
    - relevant offence* means—
      - (a) an offence against the national law, section 58 or 128; or
      - (b) an indictable offence in connection with a prescribed notifiable occurrence.

#### **54 Defendant to give notice of intention to lead evidence of particular matters**

- (1) This section applies if, in a proceeding, a defendant proposes to lead evidence—
  - (a) under section 40(3) that, at the time of the operation of a breath analysing instrument, it was not in proper working order or was not properly operated; or
  - (b) under section 48(5) that the result of a laboratory test of saliva or blood was not correct; or
  - (c) under section 52(2) in relation to a certificate mentioned in section 52(1) that—
    - (i) the signature on the certificate is not the signature of the person by whom the certificate purports to be made; or
    - (ii) a matter stated in a certificate mentioned in section 52(1) is not correct.
- (2) The defendant must give the prosecution at least 14 clear days' notice of the defendant's proposal to lead the evidence.
- (3) For subsection (2), the notice must—
  - (a) be in writing signed by the defendant or the defendant's solicitor; and
  - (b) if it is for evidence mentioned in subsection (1)(a)—state the grounds on which the defendant intends to rely

to prove the breath analysing instrument was not in proper working order or was not properly operated; and

*Example for paragraph (b)—*

a claim that the breath analysing instrument was not in proper working order because it mistook the presence of mouthwash in the defendant's mouth for the presence of alcohol in the defendant's blood

- (c) if it is for evidence mentioned in subsection (1)(b)—state the grounds on which the defendant intends to rely to prove the result of the laboratory test of saliva or blood was not correct.

## **55 Particular persons may be required to attend hearing with leave of court**

- (1) This section applies if, in a proceeding, a defendant gives a notice under section 54(2) for evidence mentioned in section 54(1)(b).
- (2) The defendant may, with leave of the court, require a person who was involved in the taking, receipt, storage or testing of the specimen of saliva or blood to attend the hearing of the proceeding to give evidence.
- (3) The court may grant leave if satisfied—
- (a) there is a reasonable possibility that an irregularity or defect exists in relation to the taking, receipt, storage or testing of the specimen of saliva or blood about which the person is able to give evidence; or
- (b) it is otherwise in the interests of justice that the person be required to attend the hearing to give evidence relevant to the proceeding.

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## **Division 8                      Miscellaneous**

### **56            Defence to prosecution for offence against national law, s 126(3) or 127(3)**

- (1) It is a defence to the prosecution of a rail safety worker for an offence against the national law, section 126(3) or 127(3) in relation to a direction given by an authorised person under section 126(2) or 127(2) of that law or this part for the worker to prove that—
- (a) the direction was not lawfully given; or
  - (b) if the direction was to provide a specimen of breath or saliva—immediately after the direction was given, the worker gave the authorised person a prescribed medical certificate relating to providing that type of specimen; or
  - (c) the worker had another reasonable excuse.
- (2) For subsection (1)(c), it is not a reasonable excuse that complying with the direction might tend to incriminate the rail safety worker.

### **57            Omission is not an offence**

To remove any doubt, it is declared that a person does not commit an offence against this or another Act only because the person omits to do an act required under—

- (a) section 33(3); or
- (b) division 5 or 6.

## Part 4 Funding for Australian Transport Safety Bureau under Transport Safety Investigation Act 2003 (Cwlth)

### 58 Definition for part

In this part—

*rail safety investigation fee* see section 59(1).

### 59 Rail safety investigation fees

- (1) An accredited person prescribed by regulation must pay, for the period prescribed by regulation, the fee (a *rail safety investigation fee*) prescribed by regulation to provide funding for the Australian Transport Safety Bureau to carry out its functions under the *Transport Safety Investigation Act 2003* (Cwlth) in relation to transport safety matters relating to rail vehicles in the State.
- (2) A rail safety investigation fee must be paid to the chief executive on or before the date prescribed by regulation.
- (3) The chief executive may accept payment of a rail safety investigation fee payable by an accredited person under an agreement made with the person, whether by payment of instalments or otherwise.
- (4) The chief executive may—
  - (a) waive payment of the whole or part of a rail safety investigation fee payable by an accredited person; or
  - (b) refund the whole or part of a rail safety investigation fee paid by an accredited person.

### 60 Requirement to give chief executive information

- (1) If requested by the chief executive, an accredited person must, as provided by subsection (2), give the chief executive the



information prescribed by regulation for the purpose of calculating, administering and collecting a rail safety investigation fee.

Maximum penalty—200 penalty units.

- (2) The information under subsection (1) must be given—
  - (a) in the way prescribed by regulation; and
  - (b) within the period prescribed by regulation; and
  - (c) for the periods prescribed by regulation.

## **61 Recovery of rail safety investigation fees**

- (1) A rail safety investigation fee payable under section 59 is a debt due to the State and may be recovered—
  - (a) in summary proceedings under the *Justices Act 1886*; or
  - (b) by action for a debt in a court with jurisdiction for the recovery of the amount claimed.
- (2) A rail safety investigation fee payable under section 59 may also be recovered in a proceeding for an offence against this Act or the national law.
- (3) An order made under subsection (2) is enforceable under the *Justices Act 1886* as an order for payment of money made by a magistrate under that Act.
- (4) An order made under subsection (2)—
  - (a) may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*; and
  - (b) on being filed, is taken to be an order made by a Magistrates Court constituted under that Act and may be enforced accordingly.
- (5) Before taking any steps under this section to recover a rail safety investigation fee payable under section 59 by an accredited person, the chief executive must give the person a written notice stating—
  - (a) the amount the chief executive seeks to recover; and

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- (b) that, if the accredited person does not pay the amount, or enter into an arrangement to pay the amount, on or before the date specified in the notice, the chief executive may take steps to recover the amount.

## **Part 5                      Miscellaneous**

### **62            Provision of information or assistance by chief executive or ONRSR**

- (1) Despite any other Act or law, the chief executive is authorised, on the chief executive's own initiative or at the request of ONRSR, to provide ONRSR with—
  - (a) any information (including personal information and information given in confidence) in the possession or control of the chief executive reasonably required by ONRSR for administering this Act or the national law; and
  - (b) any other assistance reasonably required by ONRSR to perform a function, or exercise a power, under this Act or that law.
- (2) Despite any other Act or law, the chief executive may authorise ONRSR to disclose information provided under subsection (1) even if the information was given to the chief executive in confidence.
- (3) Despite any other Act or law, ONRSR is authorised, on ONRSR's own initiative or at the request of the chief executive, to provide the chief executive with—
  - (a) any information (including personal information and information given in confidence) in the possession or control of ONRSR reasonably required by the chief executive for administering this Act; and
  - (b) any other assistance reasonably required by the chief executive to perform a function, or exercise a power, under this Act.

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- (4) Despite any other Act or law, ONRSR may authorise the chief executive to disclose information provided under subsection (3) even if the information was given to ONRSR in confidence.
- (5) Nothing done, or authorised to be done, by the chief executive in acting under subsection (1) or (2) or ONRSR in acting under subsection (3) or (4)—
- (a) constitutes a breach of, or default under, an Act or other law; or
  - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
  - (c) constitutes a breach of a duty of confidence, whether arising by contract, in equity or by custom or in any other way; or
  - (d) constitutes a civil or criminal wrong; or
  - (e) terminates an agreement or obligation, or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
  - (f) releases a surety or any other obligee wholly or in part from an obligation.
- (6) In this section—

*personal information* means information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be found out, from the information or opinion.

## 63 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may modify the application of a national regulation in this jurisdiction.

## **Part 6**                      **Repeal and transitional provisions**

### **Division 1**                      **Repeal of Transport (Rail Safety) Act 2010**

#### **64**      **Repeal**

The Transport (Rail Safety) Act 2010, No. 6 is repealed.

### **Division 2**                      **Transitional provisions**

#### **Subdivision 1**              **Preliminary**

#### **65**      **Definition for division**

In this division—

*repealed Act* means the repealed *Transport (Rail Safety) Act 2010*.

#### **Subdivision 2**              **Applicable railway operations**

#### **66**      **Railway operations to which repealed Act did not apply**

- (1) This section applies to a person who—
  - (a) immediately before the commencement, was carrying out, or causing or permitting to be carried out, railway operations to which the repealed Act did not apply; and
  - (b) continues to carry out, or cause or permit to be carried out, the railway operations on and after the commencement.

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- (2) The person can not be prosecuted for an offence against the national law, section 62(1) in respect of the railway operations if the act or omission constituting the offence—
- (a) occurs during the transitional period; and
  - (b) had it occurred before the commencement, would not have constituted an offence against the repealed Act, section 39(1).
- (3) In this section—
- transitional period* means the period starting on the commencement and ending on the earlier of the following—
- (a) when the person is granted in respect of the railway operations—
    - (i) accreditation under the national law, part 3, division 4; or
    - (ii) an exemption under the national law, part 6, division 1 or 2 from compliance with section 62(1) of that law;
  - (b) 3 years after the commencement.

## Subdivision 3 Exemptions

### 67 Exemption for related bodies corporate

- (1) This section applies if—
- (a) immediately before the commencement, a related body corporate of a corporation was exempt under the repealed Act, section 40(2) from the requirement to be accredited for railway operations because—
    - (i) the operations were being carried out by or on behalf of both the corporation and the related body corporate; and
    - (ii) the corporation was accredited for the operations; and

- (b) the operations are continuing to be carried out by or on behalf of both the corporation and the related body corporate on and after the commencement.
- (2) The related body corporate can not be prosecuted for an offence against the national law, section 62(1) if the act or omission constituting the offence—
- (a) occurs during the transitional period; and
  - (b) had it occurred before the commencement, would not have constituted an offence against the repealed Act, section 39(1).
- (3) In this section—
- transitional period* means the period starting on the commencement and ending on the earlier of the following—
- (a) when the related body corporate is granted in respect of the railway operations—
    - (i) accreditation under the national law, part 3, division 4; or
    - (ii) an exemption under the national law, part 6, division 1 or 2 from compliance with section 62(1) of that law;
  - (b) 2 years after the commencement.

## **68 Exemption for particular railway operations**

- (1) A person who, immediately before the commencement, was exempt under the repealed Act, part 4, division 2, subdivision 4 from the requirements to be accredited for railway operations of a stated scope and nature is taken to be exempt under the national law, part 6, division 2 from the provisions of part 3, division 4 of that law in respect of the railway operations until the transitional period ends.
- (2) Subsection (3) applies if, immediately before the commencement, the exemption was subject to a condition (including a restriction) imposed by the chief executive.

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- (3) The exemption under the repealed Act is taken to be subject to the same condition as if it had been imposed by the Regulator.
- (4) In this section—
- transitional period* means the period starting on the commencement and ending on the earlier of the following—
- (a) when the person is granted in respect of the railway operations—
    - (i) accreditation under the national law, part 3, division 4; or
    - (ii) an exemption under the national law, part 6 from compliance with section 62(1) of that law;
  - (b) 3 years after the commencement.

## 69 Compliance with registration conditions

- (1) A rail transport operator to whom section 68(1) of this Act applies can not be prosecuted for an offence against the national law, section 214 if the act or omission constituting the offence—
- (a) occurs during the transitional period; and
  - (b) had it occurred before the commencement, would not have constituted an offence against the repealed Act, section 48(2).
- (2) In this section—
- transitional period* means the period starting on the commencement and ending 3 years later.

## 70 Application for exemption

- (1) This section applies if, immediately before the commencement—
- (a) a person had applied under the repealed Act, section 43 to the chief executive to exempt the person from the requirement under the repealed Act, section 39(1) to be

accredited for railway operations, on or at a low risk railway, of a stated scope and nature; but

- (b) the chief executive had not decided the application.
- (2) The application is taken to be an application made by the person to the Regulator under the national law, section 205 to exempt the person from the requirement under section 62(1) of that law to be accredited for the railway operations.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive had given the applicant for the application a notice under the repealed Act, section 43(3) requiring the applicant to supply further information or verify information supplied; but
  - (b) the applicant had not complied with the notice.
- (4) The notice is taken to be a notice given by the Regulator to the applicant under the national law, section 205(3).

## **71 Consideration of and decision on application**

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) the chief executive and the applicant for an exemption had agreed under the repealed Act, section 45(3)(b) the period within which the application was required to be decided; but
  - (b) the chief executive had not decided the application.
- (2) For paragraph (b) of the definition of *relevant period* in the national law, section 207(4), the Regulator and the applicant are taken to have agreed the same period.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive had given the applicant for an exemption a notice under the repealed Act, section 45(3)(c) nominating the period within which the



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application was required to be decided under that section; but

- (b) the chief executive had not decided the application.
- (4) For paragraph (c) of the definition of *relevant period* in the national law, section 207(4), the Regulator is taken to have specified the same period.
- (5) A notice given by the chief executive under the repealed Act, section 46 to the applicant for an exemption notifying the applicant of the chief executive's decision on the application is taken to be a notice given by the Regulator to the applicant under the national law, section 207(1).

## **72 Variation, suspension or revocation of exemption**

- (1) Subsection (2) applies if—
  - (a) immediately before the commencement, an exemption from the requirement to be accredited for railway operations was subject to a decision of the chief executive under the repealed Act, section 49(2) to vary the exemption; and
  - (b) the variation would have taken effect at a particular time on or after the commencement.
- (2) The decision is taken to be a decision of the Regulator under the national law, section 213(2) to vary the exemption that takes effect at the same time.
- (3) Subsection (4) applies if—
  - (a) immediately before the commencement, an exemption from the requirement to be accredited for railway operations was subject to a decision of the chief executive under the repealed Act, section 49(2) to suspend the exemption; and
  - (b) the suspension was for a period that would have ended at a particular time on or after the commencement, whether or not the suspension took effect before the commencement.

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- (4) The decision is taken to be a decision of the Regulator under the national law, section 213(2) to suspend the exemption for the same period.
- (5) Subsection (6) applies if—
  - (a) immediately before the commencement, an exemption from the requirement to be accredited for railway operations was subject to a decision of the Regulator under the repealed Act, section 49(2) to revoke the exemption; and
  - (b) the revocation would have taken effect at a particular time on or after the commencement.
- (6) The revocation is taken to be a decision of the Regulator under the national law, section 213(2) to cancel the exemption that takes effect at the same time.

### **73 Procedure for varying, suspending or revoking exemption**

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) the chief executive had given a person a notice under the repealed Act, section 50(1) stating that the chief executive was considering making a decision under section 49 of that Act of the type and for the reasons stated in the notice in relation to the person's exemption; but
  - (b) the chief executive had not made a decision under section 49 of that Act in relation to the exemption.
- (2) The notice is taken to be a notice given by the Regulator to the person under the national law, section 213(3) stating that the Regulator is considering making a decision under section 213(2) of that law of the same kind and for the same reasons in relation to the exemption.
- (3) Subsection (4) applies if, immediately before the commencement—

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- (a) a person had made written representations under the repealed Act, section 50(1)(a)(ii) showing cause why the chief executive should not make a decision under section 49 of that Act in relation to the person's exemption; and
  - (b) the person had not withdrawn the representations; and
  - (c) the chief executive had not made a decision under section 49 of that Act in relation to the exemption.
- (4) The representations are taken to be written representations made by the person to the Regulator under the national law, section 213(3)(a)(ii).
- (5) A notice given by the chief executive under the repealed Act, section 50 notifying a person of the chief executive's decision under section 49 of that Act in relation to the person's exemption is taken to be a notice given by the Regulator to the person under the national law, section 213.

## **Subdivision 4 Private sidings**

### **74 Connection between private siding and accredited railway**

- (1) This section applies if, immediately before the commencement—
- (a) an accredited person for an accredited railway and a rail infrastructure manager of a private siding had entered into an agreement mentioned in the repealed Act, section 54(1) about the siding's connection with, or access to, the railway; and
  - (b) either—
    - (i) the accredited person had given the manager notice under the repealed Act, section 54(3)(a) of proposed action to disconnect the siding from the railway or close the connection between the siding and the railway; or

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- (ii) the accredited person had obtained written agreement from the manager as mentioned in the repealed Act, section 54(3)(b) to proposed action to disconnect the siding from the railway or close the connection between the siding and the railway; and
  - (c) the proposed action had not been started or had been started but had not been finished.
- (2) Despite the repeal of the repealed Act, section 54 of that Act continues to apply in relation to the proposed action.

## **75 Registration**

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) a rail infrastructure manager had lodged with the chief executive a request under the repealed Act, section 55 for the registration of a private siding; but
  - (b) the chief executive had not decided the request.
- (2) The request is taken to be an application made by the rail infrastructure manager to the Regulator under the national law, section 84 for registration of the manager in respect of the private siding.
- (3) Subsection (4) applies if, immediately before the commencement, a private siding was registered under the repealed Act, section 55(3).
- (4) The rail infrastructure manager of the private siding is taken to be registered under the national law, section 86(1) in respect of the siding.
- (5) Subsection (6) applies if, immediately before the commencement, the private siding's registration under the repealed Act was subject to a condition (including a restriction) imposed by the chief executive.

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- (6) The rail infrastructure manager's registration under the national law is taken to be subject to the same condition as if it had been imposed by the Regulator.

## **76 Compliance with registration conditions**

- (1) A rail infrastructure manager to whom section 75(4) of this Act applies can not be prosecuted for an offence against the national law, section 98(1) if the act or omission constituting the offence—
- (a) occurs during the transitional period; and
  - (b) had it occurred before the commencement, would not have constituted an offence against the repealed Act, section 57.
- (2) In this section—
- transitional period* means the period starting on the commencement and ending 2 years later.

## **77 Annual registration fee**

If the annual registration fee in respect of the registration of a private siding for the financial year in which the commencement happens has been paid under the repealed Act, section 58, the annual registration fee in respect of the registration of the railway infrastructure manager of the private siding for that financial year is taken to have been paid under the national law, section 95.

## **78 Interface coordination for registered private siding**

- (1) An interface agreement that, immediately before the commencement, was in force under the repealed Act, section 59 is taken to be an interface agreement under the national law, section 83(2).
- (2) Subsection (3) applies if, immediately before the commencement—

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- (a) the chief executive had given the railway infrastructure manager of a private siding and the accredited person for an accredited railway a preliminary notice under the applied Act, section 77(2); and
  - (b) the manager and the accredited person had not entered into an interface agreement under the repealed Act, section 59(2) or (4) (as applicable); and
  - (c) the chief executive had not given the manager and the accredited person a direction under the applied Act, section 78(2)(b) to implement arrangements that are to apply in relation to the management of the risks mentioned in the repealed Act, section 59(2) or (4) (as applicable).
- (3) The preliminary notice is taken to be a notice given by the Regulator to the manager and the accredited person under the applied law, section 110(2) in relation to their entry into an interface agreement under the national law, section 83(2).
- (4) Subsection (5) applies if, immediately before the commencement—
- (a) the chief executive had given the railway infrastructure manager for a private siding or the accredited person for an accredited railway a notice under the applied Act, section 77(3) asking for information; but
  - (b) the manager or accredited person had not complied with the notice.
- (5) The notice is taken to be a notice given by the Regulator to the manager or accredited person under the applied law, section 110(3).
- (6) Subsection (7) applies if, immediately before the commencement—
- (a) the chief executive had given the railway infrastructure manager for a private siding or the accredited person for an accredited railway a direction under the applied Act, section 78(2)(b) to implement arrangements that are to apply in relation to the management of the risks

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mentioned in the repealed Act, section 59(2) or (4) (as applicable); but

- (b) the manager or accredited person had not complied with the direction.
- (7) The direction is taken to be a direction given by the Regulator to the manager or accredited person under the applied law, section 110(4)(b) to give effect to arrangements that are to apply in relation to the risks mentioned in the applied law, section 106(a).
- (8) A register of interface agreements and interface directions that, immediately before the commencement, was maintained by the railway infrastructure manager of a private siding under the repealed Act, section 59(10) is taken to be a register of interface agreements and arrangements maintained by the manager under the applied law, section 111(1).
- (9) In this section—

*applied Act*, followed by a provision number, means the provision of the repealed Act with that number as applied by section 59(7) of that Act.

*applied law*, followed by a provision number, means the provision of the national law with that number as applied by section 83(2)(a) of that law.

## **Subdivision 5      Safety management systems and safety performance reports**

### **79      Compliant safety management system**

- (1) A safety management system that, immediately before the commencement, complied with the repealed Act, part 4, division 3, subdivision 2 is taken to be a safety management system that complies with the national law, part 3, division 6.
- (2) Subsection (1) applies only during the transitional period.
- (3) In this section—

*transitional period* means the period starting on the commencement and ending 2 years later.

**80 Agreement about timing of review of safety management system**

If, immediately before the commencement, the chief executive and a rail transport operator had agreed times or periods for review under the repealed Act, section 65, the Regulator and the operator are taken to have agreed the same times or periods for review under the national law, section 102.

**81 Requirement to give safety performance report**

If, immediately before the commencement, the chief executive and a rail transport operator had agreed a reporting period for the repealed Act, section 70, the Regulator and the operator are taken to have agreed the same period for the national law, section 103.

## **Subdivision 6 Interface coordination**

**82 Definitions for subdivision**

In this subdivision—

*relevant provision of the national law* means the national law, section 106(1), 107(1) or (2) or 108(1) or (2) (as applicable).

*relevant provision of the repealed Act* means the repealed Act, section 72(1), 73(1), 74(1), 75(1) or 76(2) (as applicable).

**83 Interface agreements**

An interface agreement that, immediately before the commencement, was in force under the repealed Act, part 4,



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division 3, subdivision 4 is taken to be an interface agreement under the national law, part 3, division 6, subdivision 2.

**84 Rail infrastructure manager's obligation relating to rail or road crossing for private road**

- (1) This section applies if, immediately before the commencement—
- (a) a rail infrastructure manager had given a road manager for a private road a notice under the repealed Act, section 74(1)(d); but
  - (b) the road manager had not complied with section 76(2) of that Act in response to the notice.
- (2) The notice is taken to be a notice given by the rail infrastructure manager to the road manager under the national law, section 108(1)(c)(i).

**85 Chief executive's notice about failure to enter into interface agreement**

- (1) Subsection (2) applies if, immediately before the commencement—
- (a) the chief executive had given a rail transport operator, rail infrastructure manager or road manager, and another person, a preliminary notice under the repealed Act, section 77(2); and
  - (b) the operator or manager and the other person had not entered into an interface agreement under the relevant provision of the repealed Act; and
  - (c) the chief executive had not given the operator or manager or the other person a direction under the repealed Act, section 78(2)(b) to implement arrangements that are to apply in relation to the management of the risks mentioned in that relevant provision.

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- (2) The preliminary notice is taken to be a notice given by the Regulator to the operator or manager and the other person under the national law, section 110(2) in relation to their entry into an interface agreement under the relevant provision of that law.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive had given a person a notice under the repealed Act, section 77(3) asking for information; but
  - (b) the person had not complied with the notice.
- (4) The notice is taken to be a notice given by the Regulator to the person under the national law, section 110(3).

## **86 Chief executive's direction about arrangement that is to apply**

- (1) This section applies if, immediately before the commencement—
  - (a) the chief executive had given a person a direction under the repealed Act, section 78(2)(b) to implement arrangements that are to apply in relation to the management of the risks mentioned in the relevant provision of the repealed Act; but
  - (b) the person had not complied with the direction.
- (2) The direction is taken to be a direction given by the Regulator to the person under the national law, section 110(4)(b) to give effect to arrangements that are to apply in relation to the management of the risks mentioned in the relevant provision of that law.

## **87 Register of interface arrangements**

- (1) A register of interface arrangements and interface directions that, immediately before the commencement, was maintained by a rail transport operator under the repealed Act, section 79(1), or by a rail infrastructure manager under the repealed

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Act, section 79(2), is taken to be a register of interface agreements and arrangements maintained by the operator or manager under the national law, section 111(1).

- (2) A register of interface arrangements and interface directions that, immediately before the commencement, was maintained by a road manager under the repealed Act, section 79(3) is taken to be a register of interface agreements and arrangements maintained by the road manager under the national law, section 111(2).

## **Subdivision 7      Management plans and programs**

### **88      Compliant security management plan**

- (1) A security management plan that, immediately before the commencement, complied with the repealed Act, section 81 is taken to be a security management plan that complies with the national law, section 112.
- (2) Subsection (1) applies only during the transitional period.
- (3) In this section—
- transitional period* means the period starting on the commencement and ending 2 years later.

### **89      Compliant emergency management plan**

- (1) An emergency management plan that, immediately before the commencement, complied with the repealed Act, section 82 is taken to be an emergency management plan that complies with the national law, section 113.
- (2) Subsection (1) applies only during the transitional period.
- (3) In this section—
- transitional period* means the period starting on the commencement and ending 2 years later.

## **90 Compliant health and fitness management program**

- (1) A health and fitness management program that, immediately before the commencement, complied with the repealed Act, section 83 is taken to be a health and fitness program that complies with the national law, section 114.
- (2) Subsection (1) applies only during the transitional period.
- (3) In this section—  
*transitional period* means the period starting on the commencement and ending 2 years later.

## **91 Compliant alcohol and drug management program**

- (1) An alcohol and drug management program that, immediately before the commencement, complied with the repealed Act, section 84 is taken to be a drug and alcohol management program that complies with the national law, section 115.
- (2) Subsection (1) applies only during the transitional period.
- (3) In this section—  
*transitional period* means the period starting on the commencement and ending 2 years later.

## **92 Compliant fatigue management program**

- (1) Despite the repeal of the repealed Act, the repealed fatigue management provisions are taken to be prescribed requirements under the national law, section 116 relating to fatigue risk management programs, but only until a relevant national regulation commences.
- (2) For the purposes of subsection (1), a reference in the repealed fatigue management provisions to the chief executive is taken to be a reference to the Regulator.
- (3) A program that, immediately before a relevant national regulation commences, complies with the repealed fatigue management provisions is taken to be a fatigue risk

management program that complies with the national law, section 116.

- (4) Subsection (3) applies only during the transitional period.
- (5) In this section—

***relevant national regulation*** means a national regulation prescribing the maximum work hours and minimum rest periods applying to rail safety workers who drive trains while carrying out rail safety work for the purposes of railway operations in the State.

***repealed fatigue management provisions*** means the provisions of the repealed *Transport (Rail Safety) Regulation 2010* in force under the repealed Act, section 85 immediately before the commencement.

*Note—*

The provisions include part 3, divisions 7A and 8A, parts 7 and 8 and schedule 4.

***transitional period***, in relation to a program to which subsection (3) applies, means the period starting when the relevant national regulation commences and ending on the earlier of the following—

- (a) when the rail transport operator in relation to whose railway operations the program applies is granted an exemption under the national law, part 6 from compliance with section 116 of that law;
- (b) 2 years after the relevant national regulation commences.

## **Subdivision 8      Competence and identification of rail safety workers**

### **93      Compliance with requirements for assessment of competence**

- (1) A rail transport operator can not be prosecuted for an offence against the national law, section 117(1) if the act or omission constituting the offence—
  - (a) occurs during the transitional period; and
  - (b) had it occurred before the commencement, would not have constituted an offence against the repealed Act, section 87(1).
- (2) A rail transport operator can not be prosecuted for an offence against the national law, section 117(6) if the act or omission constituting the offence—
  - (a) occurs during the transitional period; and
  - (b) had it occurred before the commencement, would not have constituted an offence against the repealed Act, section 87(4).
- (3) In this section—

*transitional period* means the period starting on the commencement and ending 2 years later.

### **94      Identification for rail safety workers**

Identification that, immediately before the commencement, had been provided to a rail safety worker under the repealed Act, section 88(1) is taken to be identification provided to the worker in accordance with the national law, section 118(1).

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## **Subdivision 9      Investigating and reporting requirements**

### **95      Notification of particular occurrence**

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) a rail transport operator was required under the repealed Act, section 93(1) to report a notifiable occurrence; but
  - (b) the operator had not reported the occurrence.
- (2) The requirement to report the notifiable occurrence is taken to be a requirement under the national law, section 121(1) to report the occurrence.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive had given a rail transport operator a notice under the repealed Act, section 93(3) for an occurrence or type of occurrence that is not a notifiable occurrence; and
  - (b) the operator had not complied with the notice and did not have a reasonable excuse for the noncompliance.
- (4) The notice is taken to be a notice given by the Regulator to the rail transport operator under the national law, section 121(3) for the occurrence or type of occurrence.

### **96      Investigation of particular occurrence**

- (1) This section applies if, immediately before the commencement—
  - (a) the chief executive had given a rail transport operator a notice under the repealed Act, section 94(1) requiring the operator to investigate a notifiable occurrence or another occurrence; but

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- (b) the operator had not given the chief executive a report of the investigation as required under the repealed Act, section 95(2).
- (2) The notice is taken to be a notice given by the Regulator to the rail transport operator under the national law, section 122(1) for the occurrence.

## **Subdivision 10 Accreditation**

### **97 Accreditation for railway operations**

- (1) A person who, immediately before the commencement, was accredited under the repealed Act, part 5 for railway operations of a stated scope and nature is taken to be accredited under the national law, part 3, division 4 for the railway operations.
- (2) Subsection (3) applies if, immediately before the commencement, the accreditation was subject to a condition (including a restriction) imposed by the chief executive.
- (3) The accreditation under the national law is taken to be subject to the same condition as if it had been imposed by the Regulator.

### **98 Application for accreditation**

- (1) This section applies if, immediately before the commencement—
  - (a) a person—
    - (i) had applied under the repealed Act, section 100 for accreditation for railway operations of a stated scope and nature; or
    - (ii) had given the chief executive an amended application under section 102(6) of that Act for accreditation for railway operations; but
  - (b) the chief executive had not decided the application.



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- (2) The application is taken to be an application made by the person to the Regulator under the national law, section 64 for accreditation for the railway operations.
  - (3) If the application fee for the application has been paid under the repealed Act, section 100(2)(d), the prescribed application fee for the application is taken to have been paid under the national law, section 64(2)(d).
  - (4) Subsection (5) applies if, immediately before the commencement—
    - (a) the chief executive had given the applicant for the application a notice under the repealed Act, section 100(3) requiring the applicant to supply further information or verify information supplied; but
    - (b) the applicant had not complied with the notice.
  - (5) The notice is taken to be a notice given by the Regulator to the applicant under the national law, section 64(3).

## **99 Coordination of application between rail transport operators**

- (1) This section applies if, immediately before the commencement—
  - (a) the chief executive had given a rail transport operator a direction under the repealed Act, section 102(2) to coordinate the operator's application for accreditation with another rail transport operator's application; and
  - (b) the operator had not complied with the direction.
- (2) The direction is taken to be a coordination direction given by the Regulator to the operator under the national law, section 66(1).

## **100 Consideration of and decision on application**

- (1) Subsection (2) applies if, immediately before the commencement—

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- (a) the chief executive and an applicant for accreditation had agreed under the repealed Act, section 104(2)(c) the period within which the application was required to be decided; but
  - (b) the chief executive had not decided the application.
- (2) For paragraph (b) of the definition of *relevant period* in the national law, section 67(5), the Regulator and the applicant are taken to have agreed the same period.
- (3) Subsection (4) applies if, immediately before the commencement—
- (a) the chief executive had given an applicant for accreditation a notice under the repealed Act, section 104(2)(d) nominating the period within which the application was required to be decided under that section; but
  - (b) the chief executive had not decided the application.
- (4) For paragraph (c) of the definition of *relevant period* in the national law, section 67(5), the Regulator is taken to have specified the same period.
- (5) A notice given by the chief executive under the repealed Act, section 105 to an applicant for accreditation notifying the applicant of the chief executive's decision on the application is taken to be a notice given by the Regulator to the applicant under the national law, section 67(1).

## **101 Compliance with accreditation conditions**

- (1) A person to whom section 97(1) of this Act applies can not be prosecuted for an offence against the national law, section 78 if the act or omission constituting the offence—
- (a) occurs during the transitional period; and
  - (b) had it occurred before the commencement, would not have constituted an offence against the repealed Act, section 107.
- (2) In this section—

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*transitional period* means the period starting on the commencement and ending 2 years later.

## **102 Annual accreditation fee**

If the annual accreditation fee in respect of an accreditation to which section 97 of this Act applies for the financial year in which the commencement happens has been paid under the repealed Act, section 108—

- (a) the rail safety investigation fee payable by the accredited person for that financial year is taken to have been paid under section 59 of this Act; and
- (b) the annual fee payable in respect of the accreditation for that financial year is taken to have been paid under the national law, section 76.

*Note—*

Under the repealed Act, the annual accreditation fee charged and collected by the chief executive had a regulatory component and a rail safety investigation component. Under the national law, only the regulatory component is charged and collected by the Regulator. The rail safety component continues to be charged and collected by the chief executive under this Act.

## **103 Suspension for non-payment of fee**

- (1) Subsection (2) applies if—
  - (a) an accreditation was suspended under the repealed Act, section 109(2)(a) for failure to pay an annual accreditation fee; and
  - (b) the suspension was in force immediately before the commencement.
- (2) The suspension is taken to be a suspension of the accreditation by the Regulator under the national law, section 76(3a) for failure to pay the fee.
- (3) Subsection (4) applies if, immediately before the commencement—

- (a) the chief executive had given an accredited person a notice under the repealed Act, section 110(1)(a) stating that the chief executive was considering suspending the person's accreditation for failure to pay an annual accreditation fee; but
  - (b) the chief executive had not made a decision under section 109(2)(a) of that Act in relation to the accreditation.
- (4) The notice is taken to be a notice given by the Regulator to the person under the national law, section 76(3b) stating that the Regulator is considering suspending the accreditation for the failure.
- (5) Subsection (6) applies if, immediately before the commencement—
- (a) a person had made written representations under the repealed Act, section 110(1)(a)(ii) showing cause why the chief executive should not suspend the person's accreditation under section 109(2)(a) of that Act for failure to pay an annual accreditation fee; and
  - (b) the person had not withdrawn the representations; and
  - (c) the chief executive had not made a decision under section 109(2)(a) of that Act in relation to the accreditation.
- (6) The representations are taken to be written representations made by the person to the Regulator and must be considered by the Regulator before making a decision under the national law, section 76(3a) in relation to the accreditation.

## **104 Suspension or revocation of accreditation**

- (1) Subsection (2) applies if—
- (a) immediately before the commencement, an accreditation for railway operations was subject to a decision of the chief executive under the repealed Act, section 109(2) to suspend the accreditation; and

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- (b) the suspension was for a period that would have ended at a particular time on or after the commencement, whether or not the suspension took effect before the commencement.
  - (2) The decision is taken to be a decision of the Regulator under the national law, section 73(2) to suspend the accreditation for the same period.
  - (3) Subsection (4) applies if—
    - (a) immediately before the commencement, an accreditation for railway operations was subject to a decision of the chief executive under the repealed Act, section 109(2) to revoke the accreditation; and
    - (b) the revocation would have taken effect at a particular time on or after the commencement.
  - (4) The decision is taken to be a decision of the Regulator under the national law, section 73(2) to cancel the accreditation that takes effect at the same time.
  - (5) A declaration that, immediately before the commencement, was in force under the repealed Act, section 109(3) is taken to be a declaration under the national law, section 73(2).

## **105 Procedure for suspending or revoking accreditation**

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) the chief executive had given a person a notice under the repealed Act, section 110(1) stating that the chief executive was considering making a decision under section 109 of that Act of the type, and for the reasons, stated in the notice in relation to the person's accreditation; but
  - (b) the chief executive had not made a decision under section 109 of that Act in relation to the accreditation.
- (2) The notice is taken to be a notice given by the Regulator to the person under the national law, section 73(3) stating that the

Regulator is considering making a decision under section 73(2) of that law of the same kind and for the same reasons in relation to the accreditation.

- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) a person had made written representations under the repealed Act, section 110(1)(a)(ii) showing cause why the chief executive should not make a decision under section 109(2) or (3) of that Act in relation to the person's accreditation; and
  - (b) the person had not withdrawn the representations; and
  - (c) the chief executive had not made a decision under section 109 of that Act in relation to the accreditation.
- (4) The representations are taken to be written representations made by the person to the Regulator under the national law, section 73(3)(a)(ii).
- (5) A notice given by the chief executive under the repealed Act, section 110 notifying a person of the chief executive's decision under section 109(2) or (3) in relation to the person's accreditation is taken to be a notice given by the Regulator to the person under the national law, section 73(4).

## **106 Immediate suspension of accreditation**

- (1) Subsection (2) applies if—
  - (a) immediately before the commencement, an accreditation was suspended under the repealed Act, section 111(2); and
  - (b) the suspension was for a period that would have ended at a particular time on or after the commencement.
- (2) The suspension is taken to be a suspension of the accreditation by the Regulator under the national law, section 74(1) for the same period.
- (3) Subsection (4) applies if, immediately before the commencement—

- (a) the chief executive had given a person a notice under the repealed Act, section 111(5) stating that the chief executive was considering making a decision under section 111(4)(b) of that Act to extend the period of a suspension of the person's accreditation for the reasons stated in the notice; but
  - (b) the chief executive had not made a decision under section 111(4) of that Act in relation to the suspension.
- (4) The notice is taken to be a notice given by the Regulator to the person under the national law, section 74(4) stating that the Regulator is considering making a decision under section 74(2)(b) of that law to extend the period of the suspension for the same reasons.
- (5) Subsection (6) applies if, immediately before the commencement—
- (a) a person had made written representations under the repealed Act, section 111(5)(a)(ii) showing cause why the chief executive should not make a decision under section 111(4)(b) of that Act extending the period of a suspension of the person's accreditation; and
  - (b) the person had not withdrawn the representations; and
  - (c) the chief executive had not made a decision under section 111(4)(b) of that Act in relation to the suspension.
- (6) The representations are taken to be written representations made by the person to the Regulator under the national law, section 74(4)(a)(ii).
- (7) A notice given by the chief executive under the repealed Act, section 111(6) notifying a person of the chief executive's decision under section 111(4)(b) of that Act to extend a suspension of the person's accreditation is taken to be a notice given by the Regulator to the person under the national law, section 74(5).

## **107 Variation of conditions on Regulator's initiative**

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) the chief executive had given an accredited person a notice under the repealed Act, section 112(2)(a) stating that the chief executive was proposing to take action under section 112(1) of that Act of the type stated in the notice in relation to the person's accreditation; but
  - (b) the chief executive had not made a decision about acting under section 112(1) of that Act in relation to the accreditation.
- (2) The notice is taken to be a notice given by the Regulator to the person under the national law, section 72(2) stating that the Regulator is proposing to take action under section 72(1) of that law of the same type in relation to the accreditation.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive and an accredited person had agreed under the repealed Act, section 112(2)(b) the period within which the person was allowed to make written representations about proposed action; and
  - (b) the period agreed had not expired.
- (4) The Regulator and the accredited person are taken to have agreed under the national law, section 72(2)(b) the same period.
- (5) Subsection (6) applies if, immediately before the commencement—
  - (a) a person made written representations under the repealed Act, section 112(2)(b) showing cause why the chief executive should not take proposed action under section 112(1) of that Act in relation to the person's accreditation; and
  - (b) the person had not withdrawn the representations; and



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- (c) the chief executive had not made a decision about acting under section 112(1) of that Act in relation to the accreditation.
  - (6) The representations are taken to be written representations made by the person to the Regulator under the national law, section 72(2)(b).
  - (7) A notice given by the chief executive under the repealed Act, section 112(4) notifying a person of the chief executive's decision to act under section 112(1) of that Act in relation to the person's accreditation is taken to be a notice given by the Regulator to the person under the national law, section 72(4).

## **108 Application for variation of accreditation**

- (1) This section applies if, immediately before the commencement—
  - (a) an accredited person—
    - (i) had applied under the repealed Act, section 113 for a variation of the person's accreditation; or
    - (ii) had given to the chief executive an amended application under section 114(6) of that Act for a variation of the person's accreditation; but
  - (b) the chief executive had not decided the application.
- (2) The application is taken to be an application made by the person to the Regulator under the national law, section 68 for a variation of the accreditation.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive had given the applicant for the application a notice under the repealed Act, section 113(3) requiring the applicant to supply further information or verify information supplied; but
  - (b) the applicant had not complied with the notice.

- (4) The notice is taken to be a notice given by the Regulator to the applicant under the national law, section 68(4).

### **109 Consultation with affected rail transport operators**

- (1) This section applies if, immediately before the commencement—
- (a) the chief executive had given the applicant for the variation of an accreditation a direction under the repealed Act, section 114(2) to consult a rail transport operator; but
  - (b) the applicant had not complied with the direction.
- (2) The direction is taken to be a direction given by the Regulator to the applicant under the national law, section 66(1) as applied by section 68(5) of that law.

### **110 Consideration of and decision on application for variation of accreditation**

- (1) Subsection (2) applies if, immediately before the commencement—
- (a) the chief executive and an applicant for the variation of an accreditation had agreed under the repealed Act, section 116(2)(c) the period within which the application was required to be decided; but
  - (b) the chief executive had not decided the application.
- (2) For paragraph (b) of the definition of *relevant period* in the national law, section 69(3), the Regulator and the applicant are taken to have agreed the same period.
- (3) Subsection (4) applies if, immediately before the commencement—
- (a) the chief executive had given an applicant for the variation of an accreditation a notice under the repealed Act, section 116(2)(d) nominating the period within which the application was required to be decided; but

- (b) the chief executive had not decided the application.
- (4) For paragraph (c) of the definition of *relevant period* in the national law, section 69(3), the Regulator is taken to have specified the same period.
- (5) A notice given by the chief executive to an applicant under the repealed Act, section 117 for the variation of an accreditation notifying the applicant of the chief executive's decision on the application is taken to be a notice given by the Regulator to the applicant under the national law, section 69(1).

## **111 Application for variation of conditions**

- (1) This section applies if, immediately before the commencement—
  - (a) an accredited person—
    - (i) had applied under the repealed Act, section 118 for a variation of a condition of the person's accreditation; or
    - (ii) had given to the chief executive an amended application under the repealed Act, section 119(6); but
  - (b) the chief executive had not decided the application.
- (2) The application is taken to be an application made by the person to the Regulator under the national law, section 71 for a variation of the condition.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive had given the applicant for the application a notice under the repealed Act, section 118(3) requiring the applicant to supply further information or verify information supplied; but
  - (b) the applicant had not complied with the notice.

- (4) The notice is taken to be a notice given by the Regulator to the applicant under the national law, section 68(4) as applied by section 71(2) of that law.

## **112 Consultation with affected rail transport operators**

- (1) This section applies if, immediately before the commencement—
  - (a) the chief executive had given the applicant for the variation of a condition of an accreditation a direction under the repealed Act, section 119(2) to consult with a rail transport operator; but
  - (b) the applicant had not complied with the direction.
- (2) The direction is taken to be a direction given by the Regulator to the applicant under the national law, section 66(1) as applied by section 71(2) of that law.

## **113 Consideration of and decision on application for variation of condition**

- (1) Subsection (2) applies if—
  - (a) the chief executive and an applicant for the variation of a condition of an accreditation had agreed under the repealed Act, section 121(2)(c) the period within which the application was required to be decided; but
  - (b) the chief executive had not decided the application.
- (2) For paragraph (b) of the definition of *relevant period* in the national law, section 69(3) as applied by section 71(2) of that law, the Regulator and the applicant are taken to have agreed the same period.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) the chief executive had given an applicant for the variation of a condition of an accreditation a notice under the repealed Act, section 121(2)(d) nominating

the period within which the application was required to be decided; but

- (b) the chief executive had not decided the application.
- (4) For paragraph (c) of the definition of *relevant period* in the national law, section 69(3) as applied by section 71(2) of that law, the Regulator is taken to have specified the same period.
- (5) A notice given by the chief executive under the repealed Act, section 117 to an applicant for the variation of an accreditation notifying the applicant of the chief executive's decision on the application is taken to be a notice given by the Regulator to the applicant under the national law, section 71(3).

#### **114 Surrender of accreditation**

- (1) This section applies if—
  - (a) immediately before the commencement, an accredited person had, for the purposes of the repealed Act, section 124, given the chief executive a notice of surrender for the person's accreditation; and
  - (b) the surrender would have taken effect on a day after the day of the commencement.
- (2) The surrender takes effect on the day mentioned in subsection (1)(b) and the national law, section 75 does not apply.

### **Subdivision 11 Access disputes relating to rail safety**

#### **115 Request for chief executive to decide safety matter**

- (1) This section applies if, immediately before the commencement—
  - (a) the chief executive had been asked to make a decision under the repealed Act, section 132(2) about a safety matter; but

- (b) the chief executive had not made the decision.
- (2) Despite the repeal of the repealed Act, section 132 of that Act continues to apply in relation to the request.

### **116 Chief executive given notice about dispute matter**

- (1) This section applies if, immediately before the commencement—
  - (a) the chief executive had been given a notice under the repealed Act, section 133(2) about a dispute matter; but
  - (b) the chief executive had not decided whether or not to give a safety matter direction under the repealed Act, section 134(2) in relation to the dispute matter.
- (2) Despite the repeal of the repealed Act, sections 133 to 136 and part 11 of that Act continue to apply in relation to the dispute matter.

### **117 Compliance with safety matter direction**

- (1) This section applies if, immediately before the commencement—
  - (a) a person had been given a safety matter direction under the repealed Act, section 134; and
  - (b) the person had not complied with the direction; and
  - (c) the day by which the person was to have complied with the direction would have been a day after the day of the commencement.
- (2) Despite the repeal of the repealed Act, the safety matter direction continues in force and section 136 of that Act continues to apply to the person.

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## **Subdivision 12 Rail safety officers**

### **118 Appointments**

- (1) This section applies to a person—
  - (a) who, immediately before the commencement, held an appointment as a rail safety officer under the repealed Act, section 137(1); and
  - (b) who, on and from the commencement, is appointed to be a rail safety officer under the national law, section 135(1).
- (2) The person is taken to hold the appointment under the national law on the same conditions (including any condition about the term of the appointment) that applied to the person immediately before the commencement.

### **119 Identity cards**

- (1) Subsection (2) applies if, immediately before the commencement, a rail safety officer to whom section 118 of this Act applies had been issued with an identity card under the repealed Act, section 139(1).
- (2) The identity card is taken to be an identity card given by the Regulator to the rail safety officer under the national law, section 136(1), but only until the Regulator gives the officer another identity card under that section.
- (3) The Regulator must give a rail safety officer to whom section 118 of this Act applies an identity card under the national law, section 136(1) as soon as practicable.

## **Subdivision 13 Enforcement**

### **120 Continuation of repealed Act for compliance or investigative purposes**

Despite the repeal of the repealed Act, that Act continues to apply for compliance or investigative purposes under that Act in relation to any matter or thing arising before the commencement.

### **121 Completion of investigations required by chief executive to be investigated**

- (1) This section applies if, immediately before the commencement—
  - (a) a rail safety officer was required under the repealed Act, section 183 to investigate a notifiable occurrence or other occurrence; and
  - (b) 1 of the following applies—
    - (i) the rail safety officer had not given the chief executive the RSO report for the investigation as required under the repealed Act, section 184(1);
    - (ii) the chief executive had received from the rail safety officer the RSO report for the investigation but had not given a copy of it to the Minister as required under the repealed Act, section 184(2);
    - (iii) the Minister had received from the chief executive a copy of the RSO report for the investigation but had not tabled it as required under the repealed Act, section 184(3).
- (2) Despite the repeal of the repealed Act, that Act continues to apply in relation to the investigation.



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## **122 Completion of other investigations**

- (1) This section applies if, immediately before the commencement, a rail safety officer was investigating under the repealed Act a notifiable occurrence or other occurrence other than an occurrence to which section 121 of this Act applies, but had not completed the investigation.
- (2) Despite the repeal of the repealed Act, that Act continues to apply in relation to the investigation.

## **123 Improvement notices**

- (1) This section applies if, immediately before the commencement—
  - (a) a rail safety officer had given a person an improvement notice, or an amendment to an improvement notice, under the repealed Act, section 193(2); but
  - (b) the person had not complied with the notice or amended notice.
- (2) The improvement notice or amended improvement notice is taken to be an improvement notice issued by a rail safety officer to the person under the national law, section 175(2).

## **124 Prohibition notices**

A prohibition notice (including an amended prohibition notice) that, immediately before the commencement, was in force under the repealed Act, section 200(2) is taken to be a prohibition notice under the national law, section 179(2).

## **Subdivision 14 Boards of inquiry**

### **125 Completion of inquiries**

- (1) This section applies if, immediately before the commencement—

- (a) a board of inquiry had been established or re-established under the repealed Act, part 8; and
  - (b) either—
    - (i) the board had not given the Minister a report of the board's findings as required under the repealed Act, section 212(1)(b); or
    - (ii) the Minister had received from the board the report of the board's findings but had not tabled a copy of it as required under the repealed Act, section 212(3).
- (2) Despite the repeal of the repealed Act, part 8 of that Act continues to apply in relation to the board of inquiry.

## **Subdivision 15 Provisions about particular investigations or inquiries**

### **126 Restricted information**

- (1) Despite the repeal of the repealed Act, part 9, division 2 of that Act continues to apply in relation to restricted information.

- (2) In this section—

*restricted information* means any information or other thing that, immediately before the commencement, was restricted information under the repealed Act, including because of section 314 of that Act.

### **127 Certificates of relevant person's involvement in investigation**

- (1) Despite the repeal of the repealed Act, section 241(1) of that Act continues to apply to a person to whom a certificate relates.

- (2) In this section—

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*certificate* means a certificate that, immediately before the commencement, was in force under the repealed Act, section 240, including because of section 315 of that Act.

## Subdivision 16 Internal and external review

### 128 Internal review of decisions

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) an original decision had been made under the repealed Act; and
  - (b) the period within which a person could have applied for a review of the decision under the *Transport Planning and Coordination Act 1994*, section 31 had not expired.
- (2) The person may, before that period expires, apply under the national law, section 216(1) for a review of the original decision as if the decision had been made by the Regulator under that law.
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) a person had applied under the *Transport Planning and Coordination Act 1994*, section 31 for a review of an original decision; but
  - (b) the chief executive had not decided the application.
- (4) The application is taken to be an application made by the person under the national law, section 216 for a review of the original decision as if the decision had been made by the Regulator under that law.
- (5) Subsection (6) applies if, immediately before the commencement—
  - (a) a person had applied under the *Transport Planning and Coordination Act 1994*, section 32(1) for a stay of an original decision; but

- (b) QCAT had not decided the application.
- (6) Despite the repeal of the repealed Act, the *Transport Planning and Coordination Act 1994*, section 32 continues to apply in relation to the application for a stay.
- (7) Subsection (8) applies if, immediately before the commencement—
  - (a) a decision had been made under the *Transport Planning and Coordination Act 1994*, section 32(2) or 34(1) in relation to an original decision; but
  - (b) the decision had not been given, or had not taken, effect.
- (8) The decision under the *Transport Planning and Coordination Act 1994*—
  - (a) is taken to have been made under the national law, section 216 as if the decision had been made by the Regulator under the national law; and
  - (b) must be given or takes effect accordingly.
- (9) In this section—

**original decision** has the same meaning as in the repealed Act, section 259.

## 129 External review of decisions

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) an internal review decision had been made under the *Transport Planning and Coordination Act 1994*, section 34(1); and
  - (b) the period within which a person could have applied for a review of the decision under the repealed Act, section 260(2) had not expired.
- (2) The person may, before that period expires, apply under the national law, section 217(1) for a review of the decision as if the decision had been made by the Regulator under section 216(4) of that law.

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- (3) Subsection (4) applies if, immediately before the commencement—
- (a) a person had applied under the repealed Act, section 260(2) for a review of an internal review decision; but
  - (b) QCAT had not decided the application.
- (4) The application is taken to be an application made by the person under the national law, section 217(1) for a review of the internal review decision as if the decision had been made by the Regulator under section 216(4) of that law.
- (5) Subsection (6) applies if, immediately before the commencement—
- (a) a person had applied under the QCAT Act, section 22(3) for a stay of an internal review decision to which subsection (4) of this section applies; but
  - (b) QCAT had not decided the application.
- (6) The application is taken to be an application made by the person under the QCAT Act, section 22(3) for a stay of the internal review decision as if the decision had been made by the Regulator under the national law, section 216(4).
- (7) Subsection (8) applies if, immediately before the commencement—
- (a) QCAT had made a decision under the QCAT Act, section 22(3) or 24(1) in relation to an internal review decision; but
  - (b) the decision had not been given, or had not taken, effect.
- (8) The decision under the QCAT Act—
- (a) is taken to have been made under that Act as if the internal review decision had been made by the Regulator under the national law; and
  - (b) must be given or takes effect accordingly.
- (9) In this section—

*internal review decision* has the same meaning as in the repealed Act, section 260.

## **Subdivision 17 Matters under repealed Act, part 13**

### **130 Rail safety undertakings**

- (1) Subsection (2) applies if, immediately before the commencement—
  - (a) the chief executive had accepted a rail safety undertaking by a person under the repealed Act, section 278(1); and
  - (b) the undertaking had not been withdrawn.
- (2) The rail safety undertaking is taken to be a rail safety undertaking accepted by the Regulator under the national law, section 251(1).
- (3) Subsection (4) applies if, immediately before the commencement—
  - (a) a person applied to the chief executive to withdraw, or change the provisions of, a rail safety undertaking under the repealed Act, section 278(3); but
  - (b) the chief executive had not decided the application.
- (4) The application is taken to be an application made by the person to the Regulator under the national law, section 256 to withdraw or vary the undertaking.

### **131 Recovery of amounts payable under repealed Act**

Despite the repeal of the repealed Act, section 281 of that Act continues to apply to a fee, charge or other amount that, immediately before the commencement, was payable under the repealed Act.

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## Subdivision 18 Miscellaneous

### 132 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature—
  - (a) for which it is necessary to make provision to allow or facilitate the change from the operation of the provisions of the repealed Act to the operation of the provisions of the national law; and
  - (b) for which this Act or the national law does not make provision or sufficient provision.
- (2) A transitional regulation may continue the operation of a provision of the repealed Act.
- (3) A transitional regulation may have retrospective operation to not earlier than the commencement.
- (4) To the extent to which a provision takes effect under subsection (3) from a day earlier than the day of the regulation's notification in the gazette, the provision does not operate to the disadvantage of a person by—
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (5) A transitional regulation must declare it is a transitional regulation.
- (6) A transitional regulation may only be made within 2 years after the commencement.
- (7) This section and a transitional regulation expire 3 years after the commencement.

### 133 Acts Interpretation Act 1954 not affected

Except to the extent this part or a regulation made under section 132 expressly provides differently, the *Acts Interpretation Act 1954* applies in relation to the repeal of the repealed Act.