Queensland

Transport (Rail Safety) Bill 2008

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Contents

2008

A Bill

for

An Act to provide for rail safety, and for related purposes

The Parliament of Queensland enacts—

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Transport (Rail Safety) Act 2008*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Division 2 Objects and application of Act

3 Objects

Having regard to the importance of ensuring rail safety and regulatory efficiency, the objects of this Act are—

(a) to provide for improvement of the safe carrying out of railway operations; and

(b) to provide for the management of risks associated with railway operations; and

(c) to make special provision for the control of particular risks arising from railway operations; and

(d) to promote public confidence in the safety of transport of passengers or freight by rail.

4 Ways this Act achieves its objects

(1) This section states the ways this Act achieves its objects.

(2) This Act, the Workplace Health and Safety Act and the Electrical Safety Act impose duties and obligations directed at ensuring rail safety on—

(a) rail transport operators and other persons carrying out railway operations; and

(b) rail safety workers.

Note—

The Workplace Health and Safety Act and the Electrical Safety Act also impose obligations on other persons whose activities could affect rail safety, including, for example—

(a) a person who conducts a business or undertaking involving—

(i) the commissioning of a thing that is to be used as or in connection with rail infrastructure or rolling stock; or

(ii) the decommissioning of rail infrastructure or rolling stock; and

(b) a person who designs, manufactures, supplies, installs or erects a thing that is to be used as or in connection with rail infrastructure or rolling stock.

(3) This Act also provides for a system of accreditation directed at ensuring rail transport operators have the competence and capacity to carry out particular railway operations safely that includes the following—

(a) a requirement to be accredited before carrying out the railway operations;

(b) criteria for deciding whether or not a rail transport operator is suitable for carrying out the railway operations;

(c) a requirement to have a safety management system for the railway operations that—

(i) is established and updated in consultation with persons who carry out work, or will carry out work, in relation to the railway operations; and

(ii) provides for the assessment, evaluation and control of all risks associated with the railway operations.

(4) This Act also provides for the following—

(a) the establishment and implementation of interface coordination plans to ensure an integrated approach to assessing, evaluating and controlling risks to safety of a rail transport operator's railway operations arising from the railway operations of another rail transport operator;

(b) the establishment and implementation of plans and programs to manage particular risks to the safety of railway operations arising from security incidents, emergencies, poor health and fitness of workers, fatigue of workers and the presence of alcohol and drugs in workers;

(c) measures for ensuring rail safety workers are competent and not impaired by the presence of alcohol or drugs;

(d) the reporting of information about, and the auditing, monitoring and investigation of, the carrying out of railway operations, including, in particular, reporting and investigation of notifiable occurrences and other occurrences that endanger or could endanger the safe operation of railway operations.

5 Application of Act generally

(1) This Act applies to railway operations, rail safety work and other activities associated with railway operations.

(2) However, this Act does not apply to railway operations, rail safety work or another activity relating to any of the following—

(a) a railway that—

(i) is part of, and used solely for, mining operations; and

(ii) is not connected to a railway used to transport passengers or freight;

(b) a slipway;

(c) a railway used only to guide a crane;

(d) an aerial cable operated system;

(e) a railway that—

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

(ii) is an amusement device required to be registered under the Workplace Health and Safety Act for its use; and

Editor's note—

See the *Workplace Health and Safety Regulation 1997*, part 2, division 2.

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

(f) a monorail;

(g) a cane railway;

(h) a railway, or a class of railway, prescribed under a transitional regulation to be a railway to which this Act does not apply.

(3) In this section—

cane railway means a railway that—

(a) is operated, entirely or partly, on an access right under the *Sugar Industry Act 1999*, chapter 2, part 4; and

(b) is used, or proposed to be used, to transport sugar cane, sugar or sugar cane by-products; and

(c) does not transport—

(i) passengers; or

(ii) freight other than sugar cane, sugar or sugar cane by-products.

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.

6 Application of Act to circumstances to which Electrical Safety Act applies

(1) This section applies if—

(a) this Act, in the absence of this section, would have application in particular circumstances; and

(b) the Electrical Safety Act also has application in the circumstances.

(2) This Act does not have application in the circumstances to the extent that the Electrical Safety Act has application.

(3) Without limiting subsection (2), to the extent that this Act would impose on a person a rail safety duty that is concurrent with an electrical safety obligation imposed on the person under the Electrical Safety Act, the rail safety duty does not apply to the person.

Example for subsection (3)—

Section 24 of this Act imposes a duty on a rail transport operator to ensure rail safety is not affected by the carrying out of the operator's railway operations. Under the Electrical Safety Act, an obligation is imposed on an employer to ensure the employer's business or undertaking is conducted in a way that is electrically safe. Accordingly, the duty under this Act of a rail transport operator to ensure rail safety is not affected by the carrying out of the operator's railway operations does not include a duty to ensure the railway operations are carried out in a way that is electrically safe.

Note—

See the Workplace Health and Safety Act, section 3A for a similar provision to this section.

7 Act binds all persons

This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.

Division 3 Interpretation

8 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

9 Meaning of *railway operations*

Each of the following are ***railway operations***—

(a) the construction of a railway, railway tracks and associated track structures or rolling stock;

(b) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure;

(c) the commissioning, maintenance, repair, modification or decommissioning of rolling stock;

(d) the operation or movement, or causing the operation or movement in any way, of rolling stock on a railway track, including for the construction or restoration of rail infrastructure or operating a railway service.

Note—

The commissioning, installation and decommissioning of rail infrastructure, and the commissioning and decommissioning of rolling stock, are railway operations for this Act. However, the Workplace Health and Safety Act and Electrical Safety Act impose obligations about the safety of the commissioning, installation and decommissioning. See section 6 and part 2 for the application of those Acts.

10 Meaning of *rail safety work*

(1) Work that is of any of the following classes is ***rail safety work***—

(a) driving or despatching rolling stock or another similar activity capable of controlling or affecting the movement of rolling stock;

(b) signalling, including signalling operations, receiving or relaying communications or another similar activity capable of controlling or affecting the movement of rolling stock;

(c) coupling or uncoupling rolling stock;

(d) maintaining, repairing, modifying, monitoring, inspecting or testing rolling stock, including checking that the rolling stock is working properly before being used;

(e) installation of components in relation to rolling stock;

(f) work on or about rail infrastructure relating to the design, construction, maintenance, repair, modification, monitoring, upgrading, inspection or testing of the rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used;

(g) installation or maintenance of—

(i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure; or

(ii) the way of supplying electricity directly to rail infrastructure, to rolling stock using rail infrastructure, or to a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure;

(h) work involving certification about the safety of rail infrastructure or rolling stock or a component of rail infrastructure or rolling stock;

(i) work involving the decommissioning of rail infrastructure or rolling stock or a component of rail infrastructure or rolling stock;

(j) work involving the development, management or monitoring of safe working systems for a railway;

(k) work involving the management or monitoring of the safety of passengers on or at a railway;

(l) any other work prescribed under a transitional regulation to be rail safety work.

(2) However, ***rail safety work*** does not include work prescribed under a transitional regulation not to be rail safety work.

Notes—

1 In this Act, the term rail safety work is used to describe work that could affect the safety of railways. It is not used to describe work that is directed at ensuring rail safety.

2 Work relating to the design of rail infrastructure or involving the decommissioning of rail infrastructure or rolling stock is rail safety work for this Act. However, the Workplace Health and Safety Act and Electrical Safety Act impose obligations about the safety of the design and decommissioning. See section 6 and part 2 for the application of those Acts.

11 Corresponding laws

For the purposes of corresponding laws—

(a) this Act is a ***rail safety law***; and

(b) the chief executive is the ***rail safety regulator*** for this Act.

Division 4 Ensuring rail safety

12 Ensuring rail safety

Rail safety is ensured when persons, including rail safety workers, passengers, other users of railways and the general public, are free from—

(a) death, injury or illness caused by railway operations, rail safety work or other activities associated with railway operations; and

(b) risk of death, injury or illness caused by railway operations, rail safety work or other activities associated with railway operations.

Part 2 Relationship with Workplace Health and Safety Act

13 Purpose of pt 2

The purpose of this part is to explain, in general terms, the operation of this Act in relation to the operation of the Workplace Health and Safety Act.

14 Application of this Act in circumstances to which Workplace Health and Safety Act applies

(1) This section applies if—

(a) this Act applies in particular circumstances; and

(b) the Workplace Health and Safety Act also has application in the circumstances.

Note—

Under section 3C of the Workplace Health and Safety Act, that Act does not apply to circumstances to which part 3, division 2 of this Act applies.

(2) The Workplace Health and Safety Act continues to apply, and must be complied with, in addition to this Act.

Notes—

1 See the *Acts Interpretation Act 1954*, section 45, for the prohibition on punishing a person more than once in relation to an act or omission constituting an offence under 2 or more laws.

2 See the Workplace Health and Safety Act, section 3, for the application of that Act, including the continued application of that Act even if another Act imposes a lesser standard for particular obligations about workplace health and safety.

(3) If this Act is inconsistent with the Workplace Health and Safety Act, the Workplace Health and Safety Act prevails to the extent of the inconsistency.

(4) However, this Act is not inconsistent with the Workplace Health and Safety Act only because it—

(a) imposes additional duties on a person on whom an obligation is imposed under the Workplace Health and Safety Act; or

(b) otherwise increases the standards of safety required for railway operations, rail safety work or another activity associated with railway operations.

(5) Without limiting subsection (2), (3) or (4)—

(a) if a provision of this Act deals with a particular matter and a provision of the Workplace Health and Safety Act deals with the same matter and it is impossible to comply with both provisions, a person must comply with the provision of the Workplace Health and Safety Act and not with the provision of this Act; and

(b) if a provision of this Act deals with a particular matter and a provision of the Workplace Health and Safety Act deals with the same matter and it is possible to comply with both provisions, a person must comply with both provisions.

15 Safety directions and relationship with Workplace Health and Safety Act

(1) It is a defence in a proceeding against a person for a safety direction contravention for the person to prove—

(a) the person committed the act or omission constituting the safety direction contravention as part of complying with the person's workplace health and safety obligations; and

(b) it was not reasonably practicable for the person to comply with the workplace health and safety obligations without committing the act or omission constituting the safety direction contravention; and

(c) in committing the act or omission constituting the safety direction contravention, the person did each of the following—

(i) chose an appropriate way to diminish the consequences of the safety direction contravention;

(ii) took reasonable precautions to diminish the consequences of the safety direction contravention;

(iii) exercised proper diligence to diminish the consequences of the safety direction contravention.

(2) In this section—

safety direction contravention means a contravention of an improvement notice or prohibition notice.

workplace health and safety obligations, of a person, means—

(a) the person's obligations under the Workplace Health and Safety Act, section 26 or part 3, divisions 2 and 3; or

(b) the person's duty to comply with a direction, notice or order under the Workplace Health and Safety Act, part 9, division 3.

16 Compliance with this Act is no defence for Workplace Health and Safety Act

Compliance with this Act, or a duty or requirement imposed under it, is not in itself a defence in a proceeding for an offence against the Workplace Health and Safety Act.

Note—

See the Workplace Health and Safety Act, section 3(3) for the requirement to discharge obligations under that Act even though another Act imposes similar obligations with a lower standard.

Part 3 Rail safety duties

Division 1 Preliminary matters

17 Duty applying to more than 1 person

If more than 1 person has a rail safety duty for a matter, each person—

(a) retains responsibility for the person's rail safety duty for the matter; and

(b) must discharge the person's rail safety duty to the extent the matter is within the person's control; and

(c) must consult, and cooperate, with all other persons who have a rail safety duty for the matter.

18 Person may owe rail safety duties in more than 1 capacity

A person on whom a rail safety duty is imposed may be subject to more than 1 rail safety duty.

Examples—

1 A person may manage rail infrastructure and operate or move rolling stock on the rail infrastructure and be subject to rail safety duties in both capacities.

2 A person may operate or move rolling stock on rail infrastructure and undertake to operate or move other rolling stock on the rail infrastructure for another person and be subject to rail safety duties in both capacities.

19 Civil liability not affected by this part

(1) This part does not—

(a) create a civil cause of action based on a contravention of a provision of this part; or

(b) affect a civil right or remedy existing apart from this part, whether at common law or otherwise.

(2) Without limiting subsection (1)(b), compliance with this part does not necessarily show that a civil obligation existing apart from this part has been satisfied or has not been breached.

(3) This section does not affect the interpretation of this Act other than this part.

Division 2 Rail transport operators and particular contractors

20 Explanation of div 2

(1) The object of this division is to ensure, so far as is reasonably practicable, rail safety is not affected by the carrying out of prescribed railway operations.

(2) The object is achieved by providing for the elimination or minimisation of risks to safety caused by prescribed railway operations so far as is reasonably practicable.

(3) This division acknowledges that to ensure the efficient, effective and safe carrying out of prescribed railway operations it is necessary—

(a) to provide for express and specific duties for ensuring rail safety is not affected by the carrying out of prescribed railway operations; and

(b) to ensure the duties mentioned in paragraph (a) are consistently imposed and applied nationally.

(4) This division seeks to strike an appropriate balance between—

(a) the need for nationally consistent duties and obligations for ensuring rail safety; and

(b) the need for consistency with the Workplace Health and Safety Act, which is the main Act that deals with the health and safety of people at work including people at work at railway premises or other premises where railway operations are carried out.

(5) To achieve the balance mentioned in subsection (4)—

(a) the duties imposed under this division are limited to prescribed railway operations; and

(b) workplace health and safety obligations under the Workplace Health and Safety Act continue to apply to other railway operations and to activities associated with railway operations.

Note—

See section 3C of the Workplace Health and Safety Act.

(6) For subsection (5)(a), prescribed railway operations are identified as requiring nationally consistent duties and requirements to ensure the effective and efficient carrying out of the prescribed railway operations across State borders.

21 Application of div 2

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

Note—

Under section 14, the Workplace Health and Safety Act continues to apply in relation to other railway operations.

Example—

A rail infrastructure manager whose railway operations include prescribed railway operations and the decommissioning of rail infrastructure or rolling stock is subject to a rail safety duty under section 24 in relation to the prescribed railway operations and a workplace health and safety obligation under the Workplace Health and Safety Act, section 28 in relation to the decommissioning.

22 Meaning of *prescribed railway operations*

(1) The following are ***prescribed railway operations***—

(a) the operation or movement of rolling stock on a railway track;

(b) an activity that affects the safe operation or movement of rolling stock on a railway track, as mentioned in subsection (2).

(2) For subsection (1)(b) and subject to subsection (3), the following are activities that affect the safe operation or movement of rolling stock on a railway track—

(a) constructing—

(i) a railway track; or

(ii) an associated track structure that is necessary to ensure the safe operation or movement of rolling stock on a railway track;

Examples of associated track structures necessary to ensure the safe operation or movement of rolling stock on a railway track—

bridge, cutting, drainage works, excavation, land fill, siding, track support earthworks, tunnel

(b) constructing any of the following if the construction is carried out on or in the immediate vicinity of a railway track—

(i) a signalling system, communications system or rolling stock control system associated with the operation or movement of rolling stock on the railway track;

(ii) an electrical traction system associated with the operation or movement of rolling stock on the railway track;

(iii) a part of a system mentioned in subparagraph (i) or (ii);

(c) maintaining, repairing or modifying any of the following if the activity is carried out on or in the immediate vicinity of a railway track—

(i) rail infrastructure mentioned in paragraph (a) or (b);

(ii) a data management system associated with the operation or movement of rolling stock on the railway track;

(iii) a notice or sign erected or placed on or in the immediate vicinity of the railway track;

(iv) plant, machinery or equipment associated with the operation or movement of rolling stock on the railway track;

Examples for subparagraph (iv)—

plant, machinery or equipment forming part of a level crossing, bridge or another structure used to cross over or under a railway

(v) rolling stock;

(d) operating any of the following to the extent the activity affects the operation or movement of rolling stock on a railway track—

(i) a signalling system, communications system, rolling stock control system or data management system;

(ii) an electrical traction system;

(iii) plant, machinery or equipment;

Examples for subparagraph (iii)—

plant, machinery or equipment forming part of a level crossing, bridge or another structure used to cross over or under a railway

(e) an activity that affects the safe operation or movement of rolling stock on a railway track and is prescribed under a transitional regulation for this section.

(3) Constructing, maintaining, repairing or modifying a platform, station, tram stop or similar structure or works are not activities that affect the safe operation or movement of rolling stock on a railway track.

Note—

Railway operations not mentioned in subsection (2) and railway operations mentioned in subsection (3) are not the subject of rail safety duties under this division. See the Workplace Health and Safety Act and Electrical Safety Act for obligations about safety for those railway operations.

23 Concept of ensuring rail safety is not affected by prescribed railway operations

(1) A duty imposed on a person under this division to ensure, so far as is reasonably practicable, rail safety is not affected by prescribed railway operations carried out by or on behalf of the person requires the person—

(a) to eliminate the risks to safety caused by the prescribed railway operations, so far as is reasonably practicable; or

(b) if it is not reasonably practicable to eliminate the risks to safety caused by the prescribed railway operations—to reduce the risks so far as is reasonably practicable.

(2) Subsection (3) states the matters to which regard must be had in deciding the following—

(a) whether or not it is reasonably practicable to eliminate a risk to safety caused by prescribed railway operations;

(b) the things that should be done or omitted to be done by a person to eliminate or reduce, so far as is reasonably practicable, a risk to safety caused by prescribed railway operations.

(3) The following are the matters to which regard must be had—

(a) the likelihood of the risk eventuating;

(b) the degree of harm that would result if the risk eventuated;

(c) what the person concerned knows or ought reasonably to know about the risk and any ways of eliminating or reducing the risk;

(d) the availability and suitability of ways to eliminate or reduce the risk;

(e) the cost of eliminating or reducing the risk.

24 Duty to ensure rail safety

A rail transport operator must ensure, so far as is reasonably practicable, rail safety is not affected by the carrying out of the operator's prescribed railway operations.

Maximum penalty—

(a) if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or

(b) if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or

(c) if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or

(d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or

(e) otherwise—500 penalty units or 6 months imprisonment.

25 When rail transport operator fails to discharge duty

(1) Without limiting section 24, a rail transport operator contravenes the section if the operator fails to do any of the following—

(a) develop and implement, so far as is reasonably practicable, safe working systems for carrying out the prescribed railway operations;

(b) ensure, so far as is reasonably practicable, that each rail safety worker who carries out rail safety work for the prescribed railway operations—

(i) is of sufficient good health and fitness to carry out the work safely; and

(ii) is competent to carry out the work;

(c) ensure, so far as is reasonably practicable, that each rail safety worker who is on duty for carrying out rail safety work for the prescribed railway operations—

(i) has less alcohol present in the worker's blood or breath than the concentration prescribed under a regulation; and

(ii) is not impaired by a drug;

(d) ensure, so far as is reasonably practicable, that each rail safety worker who carries out rail safety work for the prescribed railway operations complies with the operator's fatigue management program in force under section 66;

(e) provide, so far as is reasonably practicable, adequate facilities for the safety of persons at prescribed railway premises under the control or management of the operator;

(f) provide, so far as is reasonably practicable, each rail safety worker with the information, instruction, training and supervision that is necessary to ensure the worker's rail safety when carrying out rail safety work for the prescribed railway operations;

(g) provide, so far as is reasonably practicable, other rail transport operators and other persons at prescribed railway premises under the control or management of the operator with the information that is necessary to ensure the operators' and persons' rail safety.

(2) For subsection (1)(c), a rail safety worker is ***on duty*** for carrying out rail safety work if the worker—

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

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

(c) has just carried out the rail safety work.

26 When rail infrastructure manager fails to discharge duty

Without limiting section 24 or 25, a rail infrastructure manager contravenes section 24 if the manager fails to do any of the following—

(a) ensure, so far as is reasonably practicable, that the construction, maintenance, repair, modification or operation of the manager's rail infrastructure is done or carried out in a way that ensures rail safety is not affected by the prescribed railway operations;

Note—

This paragraph does not include a reference to the commissioning, decommissioning, design or installation of rail infrastructure because the duty imposed under section 24 does not apply to the commissioning, decommissioning, design or installation. See the Workplace Health and Safety Act and Electrical Safety Act for obligations about the safety of the commissioning, decommissioning, design or installation.

(b) establish, so far as is reasonably practicable, systems and procedures for the scheduling, control and monitoring of the prescribed railway operations that ensure rail safety is not affected by the railway operations.

27 When rolling stock operator fails to discharge duty

Without limiting section 24 or 25, a rolling stock operator contravenes section 24 if the operator fails to do any of the following—

(a) provide or maintain, for the prescribed railway operations, rolling stock that, so far as is reasonably practicable, is safe;

(b) ensure, so far as is reasonably practicable, that the maintenance, repair, modification, cleaning, operation or movement of rolling stock is done or carried out in a way that ensures rail safety is not affected by the prescribed railway operations;

Note—

This paragraph does not include a reference to the commissioning, decommissioning or design of rolling stock because the duty imposed under section 24 does not apply to the commissioning, decommissioning or design. See the Workplace Health and Safety Act and Electrical Safety Act for obligations about the safety of the commissioning, decommissioning or design.

(c) comply, so far as is reasonably practicable, with the systems and procedures for the scheduling, control and monitoring of rolling stock that have been established by a rail infrastructure manager for the use of the manager's rail infrastructure by the operator;

(d) so far as is reasonably practicable, establish and maintain equipment, systems and procedures to minimise risks to the safety of the prescribed railway operations;

(e) make arrangements for ensuring, so far as is reasonably practicable, rail safety in connection with the maintenance, repair, modification, operation and movement of the operator's rolling stock for the prescribed railway operations.

28 Duty of rail transport operator extends to contractors

(1) This section applies if a person (a ***contractor***) undertakes prescribed railway operations on behalf of a rail transport operator, other than as an employee of the operator.

(2) The duties under this division applying to the operator in relation to the prescribed railway operations apply to the contractor to the extent the duties relate to matters over which the operator has control or would have had control if not for an agreement purporting to limit or remove the control.

(3) The contractor must comply with the duties applying to the contractor under subsection (2) in relation to the operator's prescribed railway operations undertaken by the contractor.

Maximum penalty—

(a) if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or

(b) if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or

(c) if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or

(d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or

(e) otherwise—500 penalty units or 6 months imprisonment.

Division 3 Rail safety workers

Subdivision 1 Preliminary

29 Explanation of div 3

(1) The object of this division is to ensure rail safety is not affected by the activities of rail safety workers.

(2) The object is achieved by imposing duties on rail safety workers directed at ensuring the safety of the workers, and other persons at railway premises, is not affected by the workers' acts or omissions.

Note—

Under section 14, the Workplace Health and Safety Act continues to apply, and must be complied with, in addition to this Act.

30 Definition for div 3

In this division—

relevant operator, for rail safety work, means—

(a) if the rail safety work relates to railway operations carried out by a rail transport operator—the rail transport operator; or

(b) if the rail safety work relates to railway operations carried out by a person (***contractor***) who undertakes the railway operations on behalf of a rail transport operator, other than as an employee of the operator—the contractor and the rail transport operator.

31 Particular provisions of Criminal Code do not apply

The Criminal Code, sections 23 and 24 do not apply to an offence under this division.

Notes—

1 The Criminal Code, section 23 deals with a person's criminal responsibility for an act or omission that happens independently of the person's will or for an event that is accidental.

2 The Criminal Code, section 24 deals with a person's criminal responsibility for an act or omission done under an honest and reasonable, but mistaken, belief in the state of things.

Subdivision 2 Duties

32 Duty to take reasonable care for particular rail safety work

(1) A rail safety worker, when carrying out prescribed rail safety work, must—

(a) take reasonable care for the worker's own safety; and

(b) take reasonable care for the safety of persons who may be affected by the worker's acts or omissions.

Note—

Rail safety work that is not prescribed rail safety work is not the subject of a duty under this section. See the Workplace Health and Safety Act and Electrical Safety Act for obligations about safety for rail safety work that is not prescribed rail safety work.

Maximum penalty—

(a) if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or

(b) if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or

(c) if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or

(d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or

(e) otherwise—500 penalty units or 6 months imprisonment.

(2) For subsection (1)(a) or (b), in deciding whether a rail safety worker failed to take reasonable care, regard must be had to what the rail safety worker knew about the relevant circumstances.

(3) In this section—

prescribed rail safety work means rail safety work involving—

(a) rolling stock; or

(b) a railway track or associated track structure.

33 Duty to comply with relevant operator's instructions

(1) This section applies if—

(a) a relevant operator has given a rail safety worker who is carrying out, or is about to carry out, rail safety work an instruction relating to the way the rail safety work must be carried out; and

(b) the rail safety worker knows, or ought reasonably to know, the instruction is action, or a part of action, that is taken by the operator to comply with a requirement under this Act.

(2) The rail safety worker must comply with the instruction given by the relevant operator when carrying out the rail safety work.

Maximum penalty—

(a) if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or

(b) if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or

(c) if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or

(d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or

(e) otherwise—500 penalty units or 6 months imprisonment.

(3) In this section—

requirement includes rail safety duty.

34 Duty to not interfere with or misuse things provided by relevant operator

A rail safety worker, when carrying out rail safety work, must not, intentionally or recklessly, interfere with or misuse anything provided to the worker by the relevant operator for the work—

(a) in the interests of ensuring safety of persons; or

(b) under this Act.

Maximum penalty—

(a) if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or

(b) if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or

(c) if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or

(d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or

(e) otherwise—500 penalty units or 6 months imprisonment.

35 Duty to not place safety of others at risk

(1) This section applies to a rail safety worker carrying out rail safety work on or in the immediate vicinity of rail infrastructure.

(2) The rail safety worker must not, intentionally or recklessly, place at risk the safety of another person on or in the immediate vicinity of the rail infrastructure.

Maximum penalty—

(a) if the breach causes multiple deaths—2000 penalty units or 3 years imprisonment; or

(b) if the breach causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or

(c) if the breach causes bodily harm—750 penalty units or 1 year's imprisonment; or

(d) if the breach involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or

(e) otherwise—500 penalty units or 6 months imprisonment.

Subdivision 3 Defences

36 Compliance with regulation etc.

(1) It is a defence in a proceeding against a person for a contravention of a duty imposed on the person under this division for the person to prove—

(a) if a regulation makes provision in relation to preventing the contravention of the duty—that the person complied with the regulation to prevent the contravention; or

(b) if a compliance code has been made in relation to a duty stating a way or ways to prevent the contravention of the duty—

(i) that the person adopted and followed a stated way to prevent the contravention; or

(ii) that the person adopted and followed another way to comply with the duty and took reasonable precautions and exercised proper diligence to prevent the contravention; or

(c) if no regulation makes provision, and no compliance code has been made, in relation to preventing the contravention of the duty—that the person chose an appropriate way and took reasonable precautions and exercised proper diligence to prevent the contravention.

(2) In this section, a reference to a regulation or compliance code is a reference to the regulation or code in force at the time of the contravention.

37 Causes over which person has no control

It is a defence in a proceeding against a person for an offence against this division for the person to prove that the commission of the offence was due to causes over which the person had no control.

Part 4 Other requirements relating to safety of railway operations

Division 1 Preliminary

38 Civil liability not affected by this part

(1) This part does not—

(a) create a civil cause of action based on a contravention of a provision of this part; or

(b) affect a civil right or remedy that exists apart from this part, whether at common law or otherwise.

(2) Without limiting subsection (1)(b), compliance with this part does not necessarily show that a civil obligation that exists apart from this part has been satisfied or has not been breached.

(3) This section does not affect the interpretation of this Act other than this part.

Division 2 Accreditation requirement

Subdivision 1 Requirement to be accredited

39 Accreditation required for railway operations

(1) A person must not carry out, or cause or permit to be carried out, railway operations unless—

(a) the person is a rail transport operator who is accredited for the railway operations; or

(b) the person is exempt under this Act from the requirement to be accredited for the railway operations; or

(c) the person is, whether as an employee or otherwise, carrying out the railway operations, or causing or permitting the railway operations to be carried out, on behalf of another person who is—

(i) accredited for the railway operations; or

(ii) exempt under this Act from the requirement to be accredited for the railway operations.

Maximum penalty—500 penalty units.

(2) To remove any doubt, it is declared that a person is accredited for railway operations only if the accreditation for the railway

operations is in force and has not been suspended under this Act.

Subdivision 2 Exemption for related body corporate

40 Accreditation not required for related body corporate

(1) This section applies if—

(a) railway operations are carried out by or on behalf of both a corporation and a related body corporate of the corporation; and

(b) the corporation is accredited for the railway operations.

(2) The related body corporate is exempt from the requirement to be accredited for the railway operations.

Note—

See section 51 for the requirement to apply for an exemption notice.

(3) In this section—

related body corporate see the Corporations Act, section 50.

Subdivision 3 Exemption for private sidings

41 Accreditation not required for particular railway operations on or at private siding

A rail infrastructure manager of a private siding is exempt from the requirement to be accredited for the following railway operations carried out on or at the private siding by or on behalf of the manager—

(a) the construction of a railway, railway tracks and associated track structures;

(b) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure.

Notes—

1 See section 51 for the requirement to apply for an exemption notice.

2 This section refers to the commissioning, installation and decommissioning of rail infrastructure because, under this Act, accreditation is required for all railway operations. However, the Workplace Health and Safety Act and Electrical Safety Act impose obligations about the safety of the commissioning, installation and decommissioning. See section 6 and part 2 for the application of those Acts.

Subdivision 4 Provisions about particular private sidings

42 Application of sdiv 4

This subdivision applies to a private siding if rail infrastructure railway operations carried out on or at the private siding by or on behalf of the rail infrastructure manager of the private siding are not the subject of an accreditation.

43 Definitions for sdiv 4

In this subdivision—

accredited railway means a railway in relation to which an accreditation for rail infrastructure railway operations has been granted.

rail infrastructure railway operations means—

(a) the construction of a railway, railway tracks and associated track structures; or

(b) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure.

44 Connection or access between private siding and accredited railway

(1) This section applies if a rail infrastructure manager of a private siding and an accredited person for an accredited railway have entered into an agreement about the private siding's connection with, or access to, the accredited railway.

(2) The accredited person may—

(a) disconnect the private siding from the accredited railway; or

(b) close the connection between the private siding and the accredited railway.

(3) However, before taking action under subsection (2), the accredited person must—

(a) give at least 3 months notice of the proposed action to the rail infrastructure manager; or

(b) obtain written agreement to the proposed action from the rail infrastructure manager.

(4) If the accredited person acts under subsection (2), the accredited person may, by notice, require the rail infrastructure manager to remove any part of the private siding (the ***part***) that is on land managed by the accredited person.

(5) If the rail infrastructure manager does not remove the part within a reasonable time, the accredited person may remove it and recover the costs of the removal from the rail infrastructure manager as a debt.

(6) Subsections (2) to (5) are subject to the agreement between the rail infrastructure manager and the accredited person.

Note—

See section 38 for an explanation of the relationship between this part (including this section) and civil liability.

45 Particular private sidings required to be registered

(1) This section applies if a rail infrastructure manager of a private siding wishes the private siding—

(a) to be connected with, or to have access to, an accredited railway; or

(b) if, on the day subsections (1) to (8) start to apply under subsection (10), the private siding is connected with, or has access to, an accredited railway—to continue to be connected with, or have access to, the accredited railway.

(2) The manager must lodge with the chief executive a request for the registration of the private siding that—

(a) is in the approved form; and

(b) is accompanied by a document stating details of the interface coordination plan under section 49 applying to the private siding.

Note—

See also section 48(2).

(3) After receiving a request under subsection (2), the chief executive must, within a reasonable period—

(a) register the private siding, with or without conditions; and

(b) issue a notice of registration to the manager.

(4) For subsection (3)(a), the chief executive may impose a condition on the registration of a private siding about the safe construction, maintenance or operation of the private siding.

Note—

This subsection empowers the chief executive to impose conditions about the safe construction, maintenance or operation of a private siding because divisions 3 to 5 (which include requirements about safety management) do not apply to railway operations carried out on or at the private siding that are exempt from accreditation under section 41.

However, the rail infrastructure manager is also subject to rail safety duties under part 2, and obligations about safety under the Workplace

Health and Safety Act and Electrical Safety Act, in relation to railway operations carried out on or at the private siding.

(5) However, a condition imposed under subsection (4) can not apply to railway operations the subject of an accreditation.

(6) If the chief executive has imposed conditions on the registration, the notice of registration issued under subsection (3)(b) must—

(a) state the conditions; and

(b) be accompanied by an information notice for the decision to impose the conditions.

(7) The chief executive must make the registration particulars prescribed under a regulation available for inspection by the public during office hours on business days at the following places—

(a) each office of the department;

(b) each other place prescribed under a regulation.

(8) A rail infrastructure manager of a private siding must not allow the private siding to be connected with, or have access to, an accredited railway unless the manager has received a notice of registration for the private siding under this section.

Maximum penalty—80 penalty units.

(9) Subsection (8) applies despite any agreement mentioned in section 44(1).

(10) Subsections (1) to (9) do not apply until 3 years after the day this section commences.

(11) Subsection (10) and this subsection expire the day after the day subsections (1) to (8) start to apply under subsection (10).

46 Prescribed registration conditions

(1) A regulation may prescribe a condition (a ***prescribed registration condition***) about the safe construction, maintenance or operation of a private siding to which a person's registration of a private siding is subject.

(2) However, a condition prescribed under subsection (1) can not apply to railway operations the subject of an accreditation.

(3) If there is an inconsistency between a condition stated on a registration notice for a private siding and a prescribed registration condition applying to the registration of the private siding—

(a) the prescribed registration condition applies to the extent of the inconsistency; and

(b) the condition stated on the registration notice has no effect to the extent of the inconsistency.

(4) For the application of a prescribed registration condition to a person's registration of a private siding, it is irrelevant when the registration takes effect.

47 Compliance with registration conditions for private siding

(1) A person carrying out railway operations on or at a private siding registered under section 45 must not contravene a registration condition of the registration.

Maximum penalty—80 penalty units.

(2) In this section—

registration condition, of the registration of a private siding, means—

(a) a prescribed registration condition under section 46 to which the registration is subject; or

(b) a condition stated on the registration notice for the private siding.

48 Annual registration fees

(1) Subject to subsection (2), the rail infrastructure manager of a private siding registered under section 45 must pay the annual registration fee prescribed under a regulation by the date prescribed under the regulation.

Note—

If the rail infrastructure manager fails to pay an annual registration fee, the unpaid fee may be recovered under section 262.

(2) The annual registration fee payable for the first year of registration must accompany the request for registration lodged under section 45(2).

49 Interface coordination plan for private siding connected with or having access to accredited railway

(1) This section applies if a private siding is or will be connected with, or has or will have access to, an accredited railway.

(2) The rail infrastructure manager of the private siding and the accredited person for the accredited railway—

(a) must, so far as is reasonably practicable, identify—

(i) risks to the safety of persons arising, or potentially arising, from railway operations carried out by or on behalf of the manager that may be caused, wholly or partly, by railway operations carried out by or on behalf of the accredited person; and

(ii) risks to the safety of persons arising, or potentially arising, from railway operations carried out by or on behalf of the accredited person that may be caused, wholly or partly, by railway operations carried out by or on behalf of the manager; and

(b) must, in the way prescribed under a regulation, develop and, if necessary, implement 1 or more plans (***interface coordination plans***) for the coordination of the interface between the railway operations of the manager and the accredited person to minimise or eliminate the identified risks.

Maximum penalty—200 penalty units.

(3) The rail infrastructure manager must give the accredited person notice of any railway operations being, or about to be, carried out on or at the private siding that may affect the safety of persons on or at the accredited railway.

Maximum penalty—200 penalty units.

(4) The accredited person must give the rail infrastructure manager notice of any railway operations being, or about to be, carried out on or at the accredited railway that may affect the safety of persons on or at the private siding.

Maximum penalty—200 penalty units.

(5) A rail infrastructure manager of a private siding must prepare and keep a register of the current interface coordination plans developed by the manager under subsection (2)(b).

Maximum penalty—100 penalty units.

(6) An accredited person must include details of any interface coordination plan developed by the person under subsection (2)(b) in the register kept under section 61(2).

Maximum penalty—100 penalty units.

50 Chief executive may cancel registration of private siding

The chief executive may cancel the registration of a private siding under section 45 if—

(a) the private siding is not or is no longer connected with, or does not have or no longer has access to, an accredited railway; and

(b) the chief executive has obtained written agreement for the cancellation from the rail infrastructure manager of the private siding.

Subdivision 5 Exemption notices

51 Requirement to obtain exemption notice

(1) This section applies if this Act provides that a person is exempt from the requirement to be accredited for particular railway operations carried out by or on behalf of the person.

(2) The person must apply to the chief executive for the issue of an exemption notice under this section.

Note—

Under section 77, a rail transport operator who is exempt from the requirement to be accredited for particular railway operations must have the exemption notice for the exemption available for inspection.

(3) The chief executive must give the person an exemption notice for the railway operations immediately after receiving the application.

(4) In this section—

exemption notice, for railway operations carried out by or on behalf of a person, means a notice stating the person is exempt from the requirement to be accredited for the railway operations.

Division 3 Requirements about safety management

Subdivision 1 Application

52 Application of div 3

This division does not apply in relation to railway operations carried out by or on behalf of a rail transport operator for which the operator is exempt under this Act from the requirement to be accredited.

Subdivision 2 Safety management system

53 Requirement to have and implement safety management system

(1) A rail transport operator must have and implement a safety management system complying with this division for railway operations carried out by or on behalf of the operator.

Maximum penalty—200 penalty units.

(2) Subsection (3) applies if 2 or more rail transport operators have an interface coordination plan under section 61 relating to risks to the safety of persons arising, or potentially arising, from railway operations carried out by or on behalf of any of them.

(3) If the safety management systems of all of the rail transport operators, when taken as 1 system, comply with this division, each safety management system is taken to comply with this division.

54 General requirements for safety management system

(1) A rail transport operator's safety management system for railway operations must—

(a) be in the approved form; and

(b) comply with—

(i) the requirements prescribed under a regulation; and

(ii) the risk management principles, methods and procedures prescribed under a regulation; and

(c) identify and assess the risks to safety of persons arising or potentially arising from the carrying out of the railway operations; and

(d) state—

(i) the controls, including audits, expertise, resources and staff, that are to be used by the operator to manage risks to the safety of persons, and to monitor the safety of persons, in relation to the railway operations; and

(ii) the procedures for monitoring, reviewing and revising the adequacy of the controls mentioned in subparagraph (i); and

(e) include a copy of each of the following applying in relation to the railway operations—

(i) any interface coordination plan under section 49 or 61;

(ii) the operator's security management plan under section 62;

(iii) the operator's emergency management plan under section 63;

(iv) the operator's health and fitness management program under section 64;

(v) the operator's alcohol and drug management program under section 65;

(vi) the operator's fatigue management program under section 66.

(2) Also, a rail transport operator's safety management system for railway operations must identify—

(a) the person responsible for preparing each part of the safety management system; and

(b) the person, or class of persons, responsible for implementing the system.

55 Review of safety management system

(1) A rail transport operator must review the operator's safety management system in the way prescribed under a regulation—

(a) if a regulation prescribes when or the periods within which the review must be conducted—at the prescribed times or within the prescribed periods; or

(b) if paragraph (a) does not apply and the operator and chief executive have agreed when or the periods within which the review must be conducted—at the agreed times or within the agreed periods; or

(c) otherwise—at least yearly.

Maximum penalty—200 penalty units.

(2) This section is subject to section 270(3).

56 Consultation requirement

A rail transport operator, before establishing a safety management system for railway operations, or reviewing or varying a safety management system for railway operations, must, so far as is reasonably practicable, consult with—

(a) persons likely to be affected by the system or its review or variation who are persons—

(i) who carry out, or are likely to carry out, the railway operations; or

(ii) who work, or are likely to work, on or at the operator's railway premises; or

(iii) who work, or are likely to work, on or with the operator's rolling stock; and

(b) workplace health and safety representatives, within the meaning of the Workplace Health and Safety Act, representing any of the persons mentioned in paragraph (a); and

(c) unions representing any of the persons mentioned in paragraph (a); and

(d) any other rail transport operator with whom the operator has an interface coordination plan under section 49 or 61 relating to risks to the safety of persons arising, or potentially arising, from railway operations carried out by or on behalf of either of them; and

(e) the public, as appropriate.

57 Operator must not contravene safety management system

(1) A rail transport operator must not contravene the operator's safety management system for railway operations, unless the operator has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) It is a reasonable excuse for a rail transport operator contravening the safety management system if—

(a) the contravention can not be avoided without the operator contravening—

(i) an accreditation condition of the operator's accreditation for the railway operations; or

(ii) an improvement notice or prohibition notice; or

(b) without the contravention, the likelihood of a notifiable occurrence happening would increase.

(3) Subsection (2) does not limit the excuses that may be reasonable excuses for subsection (1).

58 Contractor must not contravene safety management system

(1) This section applies if a person (a ***contractor***) undertakes railway operations on behalf of a rail transport operator, other than as an employee of the operator.

(2) Before the contractor starts carrying out the railway operations, the rail transport operator must—

(a) give the contractor a notice stating where and when the contractor may inspect the parts of the operator's safety management system applying to the railway operations (the ***relevant parts***); and

(b) ensure the relevant parts are available for inspection by the contractor in the way stated in the notice.

Maximum penalty—200 penalty units.

(3) The contractor must not, unless the contractor has a reasonable excuse, contravene the rail transport operator's safety management system, to the extent the system applies to the railway operations undertaken by the contractor.

Maximum penalty—200 penalty units.

(4) It is a reasonable excuse for a person contravening the safety management system if—

(a) the contravention can not be avoided without the person contravening—

(i) an accreditation condition of the accreditation for the railway operations of the rail transport operator for whom the person is undertaking the railway operations; or

(ii) an improvement notice or prohibition notice; or

(b) without the contravention, the likelihood of a notifiable occurrence happening would increase; or

(c) the person complied with the parts of the safety management system that were made available to the person under subsection (2).

(5) Subsection (4) does not limit the excuses that may be reasonable excuses for subsection (3).

59 Chief executive may direct amendment of safety management system

(1) The chief executive may, by notice, direct a rail transport operator to amend the operator's safety management system within a stated period of at least 28 days after the direction is given.

(2) A notice giving a direction under subsection (1) must include, or be accompanied by, an information notice for the decision to give the direction.

(3) The rail transport operator must comply with the direction unless the operator has a reasonable excuse.

Maximum penalty for subsection (3)—200 penalty units.

Subdivision 3 Safety performance reports

60 Requirement to give safety performance report

(1) A rail transport operator must, for each reporting period, give the chief executive a safety performance report complying with subsection (2) within 6 months after the end of the period.

Maximum penalty—100 penalty units.

(2) The safety performance report must—

(a) be in the approved form; and

(b) comply with the requirements prescribed under a regulation; and

(c) include the following—

(i) a description and assessment of the safety performance of railway operations carried out by or on behalf of the rail transport operator;

(ii) comments on any deficiencies in, and any irregularities in, the railway operations that may be relevant to ensuring rail safety in relation to the railway operations;

(iii) a description of any initiatives undertaken in the reporting period, or proposed to be undertaken in the next reporting period, relating to the safety of persons in relation to the railway operations;

(iv) any other information or performance indicators prescribed under a regulation.

(3) In this section—

reporting period means a calendar year or, if the chief executive and rail transport operator have agreed on another period for this section, the other period.

Subdivision 4 Interface coordination

61 Requirements about interface coordination plan

(1) A rail transport operator—

(a) must identify, so far as is reasonably practicable, risks to the safety of persons arising, or potentially arising, from railway operations carried out by or on behalf of the operator that may be caused, wholly or partly, by railway operations carried out by or on behalf of another rail transport operator; and

(b) must, in the way prescribed under a regulation, develop and, if necessary, implement 1 or more plans (***interface coordination plans***) for the coordination of the interface between the railway operations of the operator and the other operator to minimise or eliminate the identified risks.

Maximum penalty—200 penalty units.

(2) A rail transport operator must prepare and keep a register of current interface coordination plans developed by the operator.

Maximum penalty—100 penalty units.

(3) A rail transport operator must give another rail transport operator (the ***other operator***) with whom the operator has an interface coordination plan under this section notice of any railway operations carried out by or on behalf of the operator that may affect the safety of railway operations carried out by or on behalf of the other operator.

Maximum penalty—200 penalty units.

(4) Subsections (1) to (3) do not apply until 1 year after the day this section commences.

(5) Subsection (4) and this subsection expire the day after the day subsections (1) to (3) start to apply under subsection (4).

Subdivision 5 Management plans

62 Requirement to have and implement security management plan

(1) A rail transport operator must have a security management plan complying with subsection (2) for railway operations carried out by or on behalf of the operator.

Maximum penalty—200 penalty units.

(2) The security management plan must—

(a) include measures to protect people from, and respond to acts of, theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and

(b) comply with the requirements prescribed under a regulation.

(3) A rail transport operator must ensure—

(a) the operator's security management plan is implemented; and

(b) the appropriate response measures of the operator's security management plan are implemented without delay if an incident of a type mentioned in subsection (2)(a) happens.

Maximum penalty—200 penalty units.

(4) However, if an incident of a type mentioned in subsection (2)(a) results in an emergency, subsection (3) does not apply to the extent that the implementation of the security management plan, or a response measure of the security management plan, is inconsistent with a response measure of the emergency management plan required to be implemented under section 63(4) for the emergency.

63 Requirement to have and implement emergency management plan

(1) A rail transport operator must have an emergency management plan complying with subsection (2) for railway operations carried out by or on behalf of the operator.

Maximum penalty—200 penalty units.

(2) An emergency management plan must—

(a) be prepared—

(i) in conjunction with each emergency service and each other entity prescribed under a regulation; and

(ii) in a way that complies with the requirements prescribed under a regulation; and

(b) provide for the matters prescribed under a regulation.

(3) A rail transport operator must ensure—

(a) the operator's emergency management plan is kept in a way that complies with the requirements prescribed under a regulation; and

(b) a copy of the operator's emergency management plan is given to each emergency service and each other person prescribed under a regulation; and

(c) the operator's emergency management plan is tested in the way prescribed under a regulation.

Maximum penalty—200 penalty units.

(4) A rail transport operator must ensure that the appropriate response measures of the operator's emergency management plan that the operator is required to take under the plan are implemented without delay if an emergency happens.

Maximum penalty—200 penalty units.

(5) In this section—

emergency service means the following—

(a) the Queensland Ambulance Service;

(b) the Queensland Fire and Rescue Service;

(c) the Queensland Police Service.

Subdivision 6 Management programs

64 Requirement to have and implement health and fitness management program

A rail transport operator must have and implement a health and fitness management program, complying with the requirements prescribed under a regulation, for rail safety workers who carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock.

Maximum penalty—200 penalty units.

65 Requirement to have and implement alcohol and drug management program

A rail transport operator must have and implement an alcohol and drug management program, complying with the requirements prescribed under a regulation, for rail safety workers who carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock.

Maximum penalty—200 penalty units.

66 Requirement to have and implement fatigue management program

A rail transport operator must have and implement a fatigue management program, complying with the requirements prescribed under a regulation, for rail safety workers who carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock.

Maximum penalty—200 penalty units.

Subdivision 7 Other requirements about safety management

67 Testing for presence of alcohol or drugs

(1) The chief executive may enter into an arrangement with a rail transport operator about the testing, in the way prescribed under a regulation, for the presence of alcohol or 1 or more other drugs in a rail safety worker who is on duty for carrying out rail safety work on or in relation to the operator's rail infrastructure or rolling stock.

(2) The rail transport operator must comply with the arrangement.

Note—

If the rail transport operator fails to comply with the arrangement, the chief executive may suspend or revoke the operator's accreditation for railway operations, wholly or partly, under section 90.

(3) For subsection (1), a rail safety worker is ***on duty*** for carrying out rail safety work if the worker—

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

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

(c) has just carried out the rail safety work.

68 Assessment of competence

(1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock has the competence to carry out the work.

Maximum penalty—500 penalty units.

(2) For subsection (1), the competence of a rail safety worker to carry out particular rail safety work must be assessed in the way prescribed under a regulation for the work.

Note—

If the rail transport operator fails to assess the competence of a rail safety worker to carry out particular rail safety work in the way prescribed under a regulation for the work, the chief executive may suspend or revoke the operator's accreditation for railway operations, wholly or partly, under section 90.

(3) This section does not prevent a rail transport operator from requiring a rail safety worker to undergo further training before carrying out rail safety work.

(4) A rail transport operator must keep a record, in the way prescribed under a regulation, of the competence of each rail safety worker who carries out rail safety work on or in relation to the operator's rail infrastructure or rolling stock.

Maximum penalty—100 penalty units.

(5) Subsections (1) to (4) do not apply until 2 years after the day this section commences.

(6) Subsection (5) and this subsection expire the day after the day subsections (1) to (4) start to apply under subsection (5).

69 Identification for rail safety workers

(1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock has identification that allows a rail safety officer to check the type of competence and training the worker has for the work.

Maximum penalty—40 penalty units.

(2) A rail safety worker who is on duty for carrying out rail safety work on or in relation to a rail transport operator's rail infrastructure or rolling stock must, if asked by a rail safety officer, produce for the officer's inspection the identification provided to the worker under subsection (1), unless the worker has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) For subsection (2), a rail safety worker is ***on duty*** for carrying out rail safety work if the worker—

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

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

(c) has just carried out the rail safety work.

(4) Subsections (1) to (3) do not apply until 2 years after the day this section commences.

(5) Subsection (4) and this subsection expire the day after the day subsections (1) to (3) start to apply under subsection (4).

Division 4 Information giving requirements

70 Application of div 4

This division does not apply in relation to railway operations carried out by or on behalf of a rail transport operator for which the operator is exempt under this Act from the requirement to be accredited.

71 Chief executive may require particular information

(1) The chief executive may, by notice, require a rail transport operator to give the chief executive, by a stated date and in the stated way, any or all of the following—

(a) information about measures taken by the operator to ensure rail safety;

(b) information the chief executive reasonably requires, for the administration of this Act, about rail safety or the operator's accreditation for railway operations, including information about the operator's financial capacity or insurance arrangements;

(c) information prescribed under a regulation for this subsection.

(2) A rail transport operator given a notice under subsection (1) must comply with the notice, unless the operator has a reasonable excuse.

Maximum penalty for subsection (2)—200 penalty units.

72 Requirement to give prescribed information

(1) A rail transport operator must, as provided under subsection (2), give the chief executive the information about safety, or the operator's accreditation for railway operations, that is prescribed under a regulation for this subsection.

Maximum penalty—200 penalty units.

(2) The information under subsection (1) must be given—

(a) in the way prescribed under a regulation; and

(b) within the time prescribed under a regulation; and

(c) for the periods prescribed under a regulation.

Division 5 Investigating and reporting requirements

73 Application of div 5

This division does not apply in relation to railway operations carried out by or on behalf of a rail transport operator for which the operator is exempt under this Act from the requirement to be accredited.

74 Notification of particular occurrences

(1) If a notifiable occurrence happens on or in relation to a rail transport operator's railway premises or railway operations, the operator must report the occurrence, within the period and in the way prescribed under a regulation, to—

(a) the chief executive; or

(b) if the chief executive has given the operator a notice nominating another entity to whom the report is to be given—the nominated entity.

Maximum penalty—200 penalty units.

(2) Two or more rail transport operators may, for complying with subsection (1), make a joint report about a notifiable occurrence affecting them.

(3) The chief executive may, by notice, require a rail transport operator to give to the chief executive, or another entity, a written report, complying with the requirements stated in the notice, about another occurrence or type of occurrence that endangers or could endanger the safe operation of railway operations carried out by or on behalf of the operator.

(4) The chief executive may, by notice, require a rail transport operator who has given a report under this section to verify information in the report by statutory declaration.

(5) A rail transport operator who is given a notice under subsection (3) or (4) must comply with the notice, unless the operator has a reasonable excuse.

Maximum penalty for subsection (5)—200 penalty units.

75 Investigation of particular occurrences

(1) The chief executive may, by notice, require a rail transport operator to investigate in the way stated in the notice—

(a) a notifiable occurrence that has happened on or in relation to the operator's railway premises or railway operations; or

(b) another occurrence that has endangered or could endanger the safe operation of the operator's railway operations.

(2) The chief executive must decide the level of investigation required under subsection (1) having regard to—

(a) the severity and potential consequences of the notifiable occurrence or other occurrence; and

(b) whether or not there have been any similar occurrences on or in relation to the operator's railway premises or railway operations.

(3) The chief executive must ensure the focus of an investigation required under subsection (1) is directed at identifying the cause of, and factors contributing to, the notifiable occurrence or other occurrence, rather than apportioning blame.

(4) The rail transport operator must, unless the operator has a reasonable excuse, ensure that the investigation is conducted in the way stated in the notice within—

(a) the period stated in the notice; or

(b) if the chief executive has extended the period mentioned in paragraph (a) by a later notice—the extended period mentioned in the later notice.

Maximum penalty for subsection (4)—200 penalty units.

76 Report of investigation under s 75

(1) This section applies if a rail transport operator has carried out an investigation under section 75.

(2) The rail transport operator must give the chief executive a report of the investigation, complying with the requirements stated in the notice given under section 75, within—

(a) the period stated in the notice; or

(b) if the chief executive has extended the period mentioned in paragraph (a) by a later notice—the extended period mentioned in the later notice.

Maximum penalty—200 penalty units.

(3) The following is not admissible in evidence against an individual in any civil or criminal proceeding—

(a) a report given under this section (***primary evidence***);

(b) any information, or document or other thing, obtained as a direct or indirect result of the report (***derived evidence***).

(4) Subsection (3) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

(5) Also, subsection (3) has no effect on the use or admissibility of the primary evidence or derived evidence in a coronial procedure.

Division 6 Keeping documents and making them available for inspection

77 Relevant documents must be kept and made available for inspection

(1) A rail transport operator must—

(a) keep each relevant document for the operator—

(i) at the relevant place for the operator; and

(ii) during the relevant times for the operator; and

(b) if asked by a rail safety officer, produce the document for the officer's inspection unless the operator has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) It is not a reasonable excuse for a rail transport operator to not produce an exemption notice in response to a request under subsection (1)(b) that the operator has not obtained the exemption notice under section 51.

(3) In this section—

relevant document, for a rail transport operator, means the following—

(a) if the operator is an accredited person for railway operations—the operator's accreditation notice for the accreditation for the railway operations;

(b) if the operator is exempt under this Act from the requirement to be accredited for railway operations—the exemption notice for the railway operations;

(c) if the operator is a rail infrastructure manager of a private siding registered with the chief executive—the operator's registration notice for the private siding;

(d) any other document prescribed under a regulation for the operator.

relevant place, for a rail transport operator, means the following—

(a) if the operator is a corporation—the operator's registered office; or

(b) otherwise—the operator's principal place of business or, if the chief executive approves another place nominated by the operator, the approved place.

relevant times, for a rail transport operator, means the following—

(a) if the operator is a corporation—office hours on business days; or

(b) otherwise—office hours on business days or, if the chief executive approves other periods nominated by the operator, the approved periods.

Part 5 Accreditation

Division 1 Preliminary

78 Purpose of accreditation

The purpose of accrediting a person for railway operations is to attest that the person has demonstrated to the chief executive that the person has the competence and capacity to manage risks to the safety of persons arising, or potentially arising, from the railway operations.

79 Accreditation criteria

The following are the accreditation criteria for a person for being accredited for railway operations—

(a) the railway operations relate to—

(i) rail infrastructure for which the person is or will be a rail infrastructure manager; or

(ii) proposed rail infrastructure for which the person will be a rail infrastructure manager; or

(iii) rolling stock for which the person is or will be a rolling stock operator; or

(iv) proposed rolling stock for which the person will be a rolling stock operator;

(b) the person has the competence and capacity to manage risks to the safety of persons arising, or potentially arising, from the railway operations;

(c) the person—

(i) has the competence and capacity to implement the person's safety management system for the railway operations; and

(ii) has the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the railway operations;

(d) the person has met the consultation requirements under this Act applying to the person's safety management system for the railway operations;

(e) the person is not disqualified, under section 90(3), from applying for accreditation for the railway operations;

(f) any other criteria prescribed under a transitional regulation.

80 Accreditation may be granted

(1) The chief executive may grant an accreditation for railway operations of a stated scope and nature.

(2) For subsection (1), the stated scope and nature of the railway operations includes—

(a) the railway operations for which accreditation is granted under subsection (3); and

(b) details of the nature of the railway operations mentioned in paragraph (a), including, for example—

(i) the location of the railway operations or the rail infrastructure to which the railway operations relate; and

(ii) for railway operations relating to rolling stock—the type of rolling stock that can be used for the railway operations or the type of traction system that can be used for the railway operations.

(3) An accreditation may be granted for 1 or more of the following—

(a) all or stated railway operations on or at—

(i) a stated railway or part of a railway; or

(ii) a railway, or a part of a railway, having a stated scope or stated characteristics;

(b) a service or aspect, or part of a service or aspect, of stated railway operations;

(c) construction of stated rail infrastructure;

(d) an activity that is a part of railway operations, including, for example, the following—

(i) site preparation;

(ii) restoration or repair work;

(iii) testing of a railway track or other rail infrastructure;

(iv) another activity considered appropriate by the chief executive.

Note—

An accredited person is given particular powers under the *Transport Infrastructure Act 1994*. See, for example, chapter 7, part 4 for powers for entering another person's land for carrying out particular railway operations.

(4) An accreditation may, on an applicant's request, be granted for a stated period only.

Division 2 Applying for accreditation

81 Application for accreditation

(1) A person may apply to the chief executive for accreditation for railway operations of a stated scope and nature that are proposed to be carried out by or on behalf of the person.

(2) The application for accreditation must—

(a) be made in the approved form; and

(b) state the following—

(i) the scope and nature of the railway operations for which accreditation is sought;

(ii) whether or not the applicant—

(A) is an accredited person for railway operations under a corresponding law (including a person whose accreditation for railway operations is suspended under a corresponding law); or

(B) has applied for accreditation for railway operations under a corresponding law;

(iii) if the applicant is an accredited person for railway operations under a corresponding law and the applicant's accreditation is suspended under the corresponding law—that the accreditation is suspended under the corresponding law; and

(c) include—

(i) the information or other items prescribed under a regulation; and

(ii) a safety management plan for the railway operations for which accreditation is sought; and

(d) be accompanied by the application fee prescribed under a regulation.

(3) The chief executive may, by notice, require the applicant—

(a) to supply further information; or

(b) to verify by statutory declaration any information supplied to the chief executive.

(4) In this section—

safety management plan, for railway operations, means a document describing the proposed safety management system for the railway operations.

82 What applicant for accreditation must demonstrate

The chief executive may grant an accreditation for railway operations to the applicant only if the chief executive is satisfied that the applicant—

(a) meets the accreditation criteria for being accredited for the railway operations for which accreditation is sought; and

(b) has complied with any other requirements prescribed under a regulation for this section.

83 Coordination of applications between operators

(1) This section applies if the chief executive—

(a) receives applications for accreditation for railway operations from 2 or more rail transport operators; and

(b) believes that coordinated preparation of the applications is necessary to ensure that the railway operations of the rail transport operators are carried out safely.

(2) The chief executive may give a written direction to the rail transport operators to coordinate their applications.

(3) Without limiting subsection (2), a direction under the subsection may require a rail transport operator the subject of

the direction to give another rail transport operator the subject of the direction information about the circumstances relating to the operator's railway operations that could constitute a risk to the safety of persons in relation to the other operator's railway operations.

(4) A rail transport operator who is given a direction under subsection (2) must comply with the direction, unless the operator has a reasonable excuse.

Maximum penalty—60 penalty units.

(5) A rail transport operator who has coordinated the preparation of an application for accreditation in compliance with a direction under this section must ensure the application is amended, after the coordination, to include details of the following—

(a) the information given, under the direction, by the rail transport operator to each other rail transport operator the subject of the direction;

(b) the information given, under the direction, to the rail transport operator by each other rail transport operator the subject of the direction.

Maximum penalty—60 penalty units.

(6) The rail transport operator must give the amended application to the chief executive.

(7) Subject to subsection (8), if the rail transport operator does not give the amended application to the chief executive within 6 months after the direction is given, the operator's application for accreditation lapses.

(8) The chief executive may, by notice to the rail transport operator, extend the period within which the amended application must be given.

(9) In this section—

rail transport operator includes a person who will be a rail transport operator.

84 Coordination of decisions between rail safety regulators

(1) This section applies if the chief executive receives an application for accreditation for railway operations that indicates that the applicant—

(a) is an accredited person for railway operations under a corresponding law (including a person whose accreditation for railway operations is suspended under the corresponding law); or

(b) has applied for accreditation for railway operations under a corresponding law.

(2) The chief executive must, as soon as possible and before deciding the application, consult with the relevant corresponding rail safety regulator about the application with a view to the chief executive's decision on the application being consistent with—

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

(b) if the applicant is applying for accreditation in another State—the decision of the relevant corresponding rail safety regulator on the application in the other State.

85 Considering application

(1) The chief executive must consider each application for accreditation for railway operations and—

(a) if the chief executive is satisfied the chief executive can grant the accreditation under section 82—grant the accreditation, with or without conditions; or

(b) otherwise—refuse the application.

(2) The chief executive must grant the accreditation, or refuse the application, before the latest of the following periods ends—

(a) 6 months after the application was received by the chief executive;

(b) if the applicant was required to coordinate the application with another rail transport operator under section 83—6 months after the chief executive receives the amended application after the coordination;

(c) if the chief executive requested further information in relation to the application—6 months, or another period agreed to by the chief executive and the applicant, after the chief executive receives the final information requested;

(d) if the chief executive, by notice to the applicant before the expiry of a period mentioned in paragraph (a), (b) or (c), nominates another period ending after the period mentioned in paragraph (a), (b) or (c)—the nominated period.

(3) If the chief executive gives a notice under subsection (2)(d), the notice must include, or be accompanied by, an information notice for the decision to extend the period mentioned in the subsection.

86 Steps after application decided

(1) If the chief executive grants an accreditation, the chief executive must give the applicant—

(a) a notice granting the accreditation and stating the matters mentioned in subsection (2); and

(b) if the chief executive has imposed a condition on the accreditation—an information notice for the decision to impose the condition.

(2) A notice under subsection (1)(a) must state the following—

(a) the details of the applicant prescribed under a regulation;

(b) the scope and nature of the railway operations for which the accreditation is granted;

(c) the way in which the railway operations for which the accreditation is granted are to be carried out;

(d) if the chief executive has imposed conditions on the accreditation—the conditions;

(e) any other information prescribed under a regulation.

(3) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision.

Division 3 Conditions of accreditation

87 Prescribed accreditation conditions

(1) A regulation may prescribe a condition (a ***prescribed accreditation condition***) to which a person's accreditation for railway operations is subject.

(2) If there is an inconsistency between a condition stated on an accreditation notice for an accreditation for railway operations and a prescribed accreditation condition applying to the accreditation—

(a) the prescribed accreditation condition applies to the extent of the inconsistency; and

(b) the condition stated on the accreditation notice has no effect to the extent of the inconsistency.

(3) For the application of a prescribed accreditation condition to a person's accreditation for railway operations, it is irrelevant when the accreditation was granted.

(4) Also, if a person's accreditation for railway operations is varied under this part, the accreditation as varied is subject to the prescribed accreditation conditions.

88 Breach of accreditation condition

A person carrying out railway operations the subject of an accreditation must not contravene an accreditation condition of the accreditation.

Maximum penalty—200 penalty units.

Division 4 Fees payable for accreditation

89 Annual accreditation fees

(1) An accredited person must pay the annual accreditation fee prescribed under a regulation by the date prescribed under the regulation.

(2) The chief executive may accept payment of an annual accreditation fee payable by an accredited person under an agreement made with the person, whether for payment by instalments or otherwise.

Note—

If the accredited person fails to pay an annual accreditation fee, the unpaid fee may be recovered under section 262. Also, the chief executive may suspend or revoke the accredited person's accreditation for railway operations, wholly or partly, under section 90.

Division 5 Suspending, revoking or varying accreditation

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

90 Grounds for suspending or revoking accreditation

(1) This section applies if—

(a) the chief executive reasonably considers an accredited person—

(i) no longer meets the accreditation criteria for being accredited for the railway operations the subject of the person's accreditation; or

(ii) is unable to carry out the railway operations the subject of the person's accreditation in a way that complies with the duties or requirements under this Act for the railway operations; or

(iii) is not managing rail infrastructure, or is not operating rolling stock, in relation to the railway operations the subject of the person's accreditation and has not done so for the previous year or longer; or

(b) an accredited person contravenes this Act.

(2) The chief executive may, by complying with section 91—

(a) suspend the person's accreditation wholly or partly, or in relation to stated railway operations, for a stated period; or

(b) revoke the person's accreditation wholly or partly, or in relation to stated railway operations, with immediate effect or with effect from a stated future date.

(3) If the chief executive revokes an accredited person's accreditation, the chief executive may declare that the person is disqualified from applying for accreditation, or accreditation for stated railway operations, for a stated period.

91 Procedure for suspending or revoking accreditation

(1) Before making a decision under section 90, the chief executive must—

(a) give the person a notice stating—

(i) that the chief executive is considering making a decision under section 90 of the type, and for the reasons, stated in the notice; and

(ii) that the person may, within the period of at least 28 days stated in the notice, make written representations to the chief executive showing cause why the decision should not be made; and

(b) consider any representations made under paragraph (a)(ii) that have not been withdrawn.

(2) If, after considering the written representations, the chief executive decides to act under section 90, the chief executive must give the applicant an information notice for the decision.

(3) If the chief executive decides to revoke the accreditation, the information notice must also include a direction to the accredited person to return the accreditation notice for the accreditation to the chief executive within 14 days after receiving the notice.

(4) A person who is directed under subsection (3) to return an accreditation notice must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) A decision under section 90 takes effect on the later of the following—

(a) the day the information notice is given to the accredited person;

(b) the day of effect stated in the information notice.

(6) If the chief executive decides to act under section 90 in relation to a person who is an accredited person under a corresponding law, including a person whose accreditation is suspended under the corresponding law, the chief executive must notify the relevant corresponding rail safety regulator of the decision.

(7) If, after considering the written representations, the chief executive decides action is no longer required under section 90 in relation to the accreditation, the chief executive must give the applicant notice of the decision.

92 Suspending accreditation immediately

(1) This section applies if the chief executive reasonably considers there is, or would be, an immediate and serious risk to the safety of persons if an accredited person's accreditation is not suspended immediately.

(2) The chief executive may, by notice given to the person and without complying with section 91, immediately suspend the person's accreditation—

(a) wholly or partly, or in relation to stated railway operations; and

(b) for a stated period not exceeding 6 weeks.

(3) The notice given under subsection (2) must include, or be accompanied by, an information notice.

(4) The chief executive may amend a suspension of a person's accreditation under this section to—

(a) reduce the period of suspension; or

(b) extend the period of suspension so long as the total suspension period does not exceed 6 weeks.

(5) Before amending a suspension of a person's accreditation under this section to extend the period of suspension, the chief executive must—

(a) give the person a notice stating—

(i) that the chief executive is considering extending the period of suspension for the reasons stated in the notice; and

(ii) that the person may, within the period of at least 7 days stated in the notice, make written representations to the chief executive showing cause why the suspension should not be extended; and

(b) consider any representations made under paragraph (a)(ii) that have not been withdrawn.

(6) If, after considering the written representations, the chief executive decides to amend the suspension of a person's accreditation to extend the period of suspension, the chief executive must give the person an information notice for the decision.

(7) If the chief executive decides to amend the suspension of a person's accreditation to reduce the period of suspension, the chief executive must give the person a notice stating the new period of suspension.

(8) If the chief executive decides to act under this section in relation to a person who is an accredited person under a corresponding law, including a person whose accreditation is suspended under the corresponding law, the chief executive must notify the relevant corresponding rail safety regulator of the decision.

93 Varying conditions of accreditation

(1) The chief executive may, at any time—

(a) vary or revoke a condition imposed by the chief executive on an accredited person's accreditation; or

(b) impose a new condition on an accredited person's accreditation.

(2) Before taking action under subsection (1), the chief executive must—

(a) give the accredited person notice of the action the chief executive proposes to take; and

(b) allow the accredited person to make written representations about the proposed action within 14 days or, if the chief executive and the accredited person have agreed on another period, the other period; and

(c) consider any representations made under paragraph (b) that have not been withdrawn.

(3) Subsection (2) does not apply if the chief executive reasonably considers it necessary to take immediate action in the interests of ensuring the safety of persons.

(4) If the chief executive decides to act under subsection (1), the chief executive must give the accredited person an information notice for the decision.

Subdivision 2 Variation of accreditation on application by accredited person

94 Application for variation of accreditation

(1) An accredited person may apply to the chief executive for a variation of the person's accreditation.

(2) An application for a variation of accreditation must—

(a) be in the approved form; and

(b) include the following—

(i) the details of the variation being sought;

(ii) the information or other items prescribed under a regulation.

(3) The chief executive may, by notice, require an applicant for a variation of an accreditation—

(a) to supply further information; or

(b) to verify by statutory declaration any information supplied to the chief executive.

95 Requirement to consult with affected rail transport operators

(1) This section applies if the applicant for a variation of accreditation is a person to whom a direction under section 83 (***coordination direction***) was given.

(2) The chief executive may give the applicant a written direction (***consultation direction***) to consult with 1 or more rail

transport operators who were the subject of the coordination direction.

(3) Without limiting subsection (2), a consultation direction may require the applicant to give another rail transport operator information about how the proposed variation may or will affect the railway operations of the other rail transport operator.

(4) A person given a consultation direction must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(5) An applicant for a variation of accreditation who has consulted with a rail transport operator in compliance with a consultation direction must ensure the application is amended, after the consultation, to include details of the following—

(a) the information given, under the consultation direction, by the applicant to the other rail transport operator;

(b) any information given to the applicant by the other rail transport operator in response to the information given to the operator under the consultation direction.

Maximum penalty—60 penalty units.

(6) The applicant must give the amended application to the chief executive.

(7) Subject to subsection (8), if the applicant does not give the amended application to the chief executive within 6 months after the consultation direction is given, the applicant's application for variation of accreditation lapses.

(8) The chief executive may, by notice to the applicant, extend the period within which the amended application must be given.

96 Coordination of decisions between rail safety regulators

(1) This section applies if the chief executive receives an application for a variation of accreditation that indicates that the applicant—

(a) is an accredited person for railway operations under a corresponding law (including a person whose accreditation for railway operations is suspended under a corresponding law); or

(b) has applied for accreditation for railway operations under a corresponding law.

(2) The chief executive must, as soon as possible and before deciding the application, consult with the relevant corresponding rail safety regulator in relation to the application with a view to the chief executive's decision on the application being consistent with—

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

(b) if the applicant is applying for accreditation under the corresponding law—the decision of the relevant corresponding rail safety regulator on the application.

97 Considering application for variation

(1) The chief executive must consider each application for a variation of accreditation and—

(a) if the chief executive is satisfied the applicant meets the accreditation criteria for being accredited for the railway operations the subject of the accreditation as varied by the proposed variation—vary the accreditation, with or without the imposition of new or varied conditions on the accreditation; or

(b) otherwise—refuse the application.

(2) The chief executive must vary the accreditation, or refuse the application, before the latest of the following periods ends—

(a) 6 months after the application was received by the chief executive;

(b) if the applicant was required to consult with other rail transport operators under section 95—6 months after the chief executive receives the amended application after the consultation;

(c) if the chief executive requested further information in relation to the application—6 months, or another period agreed between the chief executive and the applicant, after the chief executive receives the final information requested;

(d) if the chief executive, by notice to the applicant before the expiry of a period mentioned in paragraph (a), (b) or (c), nominates another period ending after the period mentioned in paragraph (a), (b) or (c)—the nominated period.

(3) If the chief executive gives a notice under subsection (2)(d), the notice must include, or be accompanied by, an information notice for the decision to extend the period in the way mentioned in the subsection.

98 Steps after application for variation decided

(1) If the chief executive decides to vary the accreditation, the chief executive must give the applicant—

(a) a notice varying the accreditation and stating the matters mentioned in subsection (2); and

(b) if the chief executive has imposed new or varied conditions on the accreditation—an information notice for the decision to impose the new or varied conditions.

(2) A notice under subsection (1)(a) must state the following—

(a) the details of the applicant prescribed under a regulation;

(b) details of the variation to the accreditation to the extent the variation applies to the scope and nature of the railway operations the subject of the accreditation, or the way in which the railway operations are to be carried out;

(c) if the chief executive has imposed new or varied conditions on the accreditation—the conditions of the accreditation after the variation;

(d) any other information prescribed under a regulation.

(3) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision.

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

99 Application for variation of conditions

(1) An accredited person may apply to the chief executive for a variation of a condition of the person's accreditation for railway operations imposed by the chief executive.

(2) An application for variation of a condition of accreditation must be made as if it were an application for a variation of accreditation.

Note—

See section 94(2) for the requirements for an application for a variation of accreditation.

(3) The chief executive may, by notice, require an applicant for a variation of a condition of accreditation—

(a) to supply further information; or

(b) to verify by statutory declaration any information supplied to the chief executive.

100 Requirement to consult with affected rail transport operators

(1) This section applies if the applicant for a variation of a condition of accreditation is a person to whom a direction under section 83 (***coordination direction***) was given.

(2) The chief executive may give the applicant a written direction (***consultation direction***) to consult with 1 or more rail transport operators who were the subject of the coordination direction.

(3) Without limiting subsection (2), a consultation direction may require the applicant to give another rail transport operator information about how the proposed variation may or will affect the railway operations of the other rail transport operator.

(4) A person given a consultation direction must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(5) An applicant for a variation of a condition of accreditation who has consulted with another rail transport operator in compliance with a consultation direction must ensure the application is amended, after the consultation, to include details of the following—

(a) the information given, under the consultation direction, by the applicant to the other rail transport operator;

(b) any information given to the applicant by the other rail transport operator in response to the information given to the operator under the consultation direction.

Maximum penalty—60 penalty units.

(6) The applicant must give the amended application to the chief executive.

(7) Subject to subsection (8), if the applicant does not give the amended application to the chief executive within 6 months after the consultation direction is given, the applicant's application for a variation of a condition of accreditation lapses.

(8) The chief executive may, by notice to the applicant, extend the period within which the amended application must be given.

101 Coordination of decisions between rail safety regulators

(1) This section applies if the chief executive receives an application for a variation of a condition of accreditation that indicates that the applicant—

(a) is an accredited person for railway operations under a corresponding law (including a person whose accreditation for railway operations is suspended under a corresponding law); or

(b) has applied for accreditation for railway operations under a corresponding law.

(2) The chief executive must, as soon as possible and before deciding the application, consult with the relevant corresponding rail safety regulator in relation to the application with a view to the chief executive's decision on the application being consistent with—

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

(b) if the applicant is applying for accreditation under the corresponding law—the decision of the relevant corresponding rail safety regulator on the application.

102 Considering application for variation of condition

(1) The chief executive must consider each application for a variation of a condition of accreditation and—

(a) if the chief executive is satisfied the applicant meets the accreditation criteria for being accredited for the railway operations the subject of the accreditation as varied by the proposed variation—vary the condition; or

(b) otherwise—refuse the application.

(2) The chief executive must vary the condition, or refuse the application, before the latest of the following periods ends—

(a) 6 months after the application was received by the chief executive;

(b) if the applicant was required to consult with other rail transport operators under section 100—6 months after the chief executive receives the amended application after the consultation;

(c) if the chief executive requested further information in relation to the application—6 months, or another period agreed between the chief executive and the applicant, after the chief executive receives the final information requested;

(d) if the chief executive, by notice to the applicant before the expiry of a period mentioned in paragraph (a), (b) or (c), nominates another period ending after the period mentioned in paragraph (a), (b) or (c)—the nominated period.

(3) If the chief executive gives a notice under subsection (2)(d), the notice must include, or be accompanied by, an information notice for the decision to extend the period in the way mentioned in the subsection.

103 Steps after application for variation of condition decided

(1) If the chief executive decides to vary the condition of the accreditation, the chief executive must give the applicant a notice varying the condition of the accreditation and stating the following—

(a) the details of the applicant prescribed under a regulation;

(b) details of the variation of the condition of the accreditation to the extent the variation applies to the scope and nature of the railway operations the subject of the accreditation, or the way in which the railway operations are to be carried out;

(c) the conditions of the accreditation after the variation;

(d) any other information prescribed under a regulation.

(2) If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision.

Division 6 Other provisions about accreditation

104 Consolidated accreditation notice

(1) This section applies if, under this part—

(a) a person's accreditation for railway operations is varied; or

(b) a condition of a person's accreditation for railway operations is varied.

(2) The chief executive must, immediately after the variation, issue the person a notice (a ***consolidated accreditation notice***) stating the matters mentioned in section 86(2) for the accreditation as applying after the variation.

(3) The consolidated accreditation notice must identify when each variation of the accreditation, or a condition of the accreditation, came into effect.

105 Surrender of accreditation

An accredited person may, in the way prescribed under a regulation, surrender the person's accreditation for railway operations.

106 Accreditation can not be transferred to or vested in another person

(1) An accreditation for railway operations granted to a person under this part can not—

(a) be transferred or otherwise similarly dealt with; or

(b) vest in another person by operation of law.

(2) A purported transfer of, or similar dealing with, an accreditation is of no effect.

(3) This section applies despite any other Act or law.

107 Applications for accreditation if railway operations sold or transferred by accredited person

(1) This section applies if—

(a) an accredited person proposes to sell or otherwise transfer the railway operations the subject of the person's accreditation to another person (the ***transferee***); and

(b) the transferee applies, or notifies the chief executive of the transferee's intent to apply, for accreditation for the railway operations; and

(c) the chief executive is satisfied that, in relation to the application or proposed application, the transferee—

(i) meets the accreditation criteria for being accredited for the railway operations; or

(ii) meets a part of the accreditation criteria for being accredited for the railway operations; and

(d) the chief executive is satisfied that, having regard to the matter mentioned in paragraph (c), it is not necessary to require the transferee to comply with a requirement under this part applying to the application.

(2) The chief executive may, by notice, waive compliance by the transferee with the requirement.

Examples for subsection (2)—

1 If the chief executive is satisfied the transferee has a safety management system for the railway operations and the transferee has the competence and capacity to implement the system, the chief executive may waive the requirement that the transferee's application for accreditation for the railway operations include a safety management plan for the operations.

2 If the chief executive is satisfied the transferee meets the criteria mentioned in section 79(b), (c) and (d) in relation to risks to the

safety of persons arising, or potentially arising, from the railway operations to an extent that a re-assessment of the transferee's ability to meet the requirements is not necessary, the chief executive may waive the application fee that must accompany the application.

(3) A waiver of compliance with a requirement under subsection (2) may be given subject to the conditions or restrictions the chief executive reasonably considers necessary.

Examples of conditions or restrictions under subsection (3)—

- a condition that the waiver only applies if the transferee's application for accreditation is for railway operations of the same scope and nature as the railway operations that are transferred
- a condition that the waiver only applies if the transferee's application for accreditation for railway operations is accompanied by documentary evidence that stated employees of the accredited person who were responsible for ensuring the safety of the accredited person's railway operations are, or will be, employees of the transferee and will be responsible for ensuring the safety of the transferee's railway operations the subject of the accreditation

Part 6 Administration

Division 1 Functions and powers of chief executive

Subdivision 1 General functions and powers

108 Functions of chief executive

(1) In addition to any other functions conferred on the chief executive under this Act, the chief executive has the following functions—

(a) to administer, audit and review the accreditation regime under this Act;

(b) to work with rail transport operators, rail safety workers, others involved in railway operations and corresponding rail safety regulators to improve the safety of railways in Queensland and nationally;

(c) to give information to corresponding rail safety regulators, including information about causal factors of notifiable occurrences, accreditation processes, investigation methods and risk assessment methodologies;

(d) to collect and publish information about the safety of railways;

(e) to give, or facilitate the giving of, advice, education and training about the safety of railways;

(f) to monitor, investigate and enforce compliance with this Act.

(2) The functions of the chief executive under this Act are in addition to the functions the chief executive has under any other Act or law.

109 Information to be included in annual reports

(1) The chief executive must ensure the department's annual report for a financial year includes the following—

(a) information about the developments in the safety of railways that happened in the year;

(b) information about any improvements and other important changes for the regulation of the safety of railways that happened in the year.

(2) In this section—

annual report means an annual report under the *Financial Administration and Audit Act 1977*.

110 Chief executive may exercise powers of rail safety officers

(1) The chief executive may exercise any power conferred on a rail safety officer under this Act.

(2) For subsection (1), in this Act, other than this part, a reference to a rail safety officer includes a reference to the chief executive.

Subdivision 2 Auditing railway operations

111 Audit of railway operations of rail transport operators

(1) The chief executive may—

(a) audit the railway operations of a rail transport operator; and

(b) prepare and implement a program (an ***audit program***), for each year, for inspecting the railway operations of rail transport operators; and

(c) for an audit, inspect the railway operations of a rail transport operator whether or not under an audit program.

(2) Without limiting subsection (1)(b), an audit program may focus on 1 or more of the following—

(a) particular rail transport operators;

(b) particular criteria relating to rail transport operators;

(c) particular aspects of the safety of railways;

(d) particular aspects of railway operations.

(3) Before inspecting the railway operations of a rail transport operator under this section, the chief executive must give the operator a notice about the proposed inspection at least 24 hours before the inspection is proposed to be carried out.

(4) A regulation may prescribe procedures for the conduct of audits under this section, including procedures to ensure the confidentiality of records.

(5) In this section—

rail transport operator includes a person who undertakes railway operations on behalf of a rail transport operator, other than as an employee of the operator.

Subdivision 3 Provisions about access disputes relating to rail safety

112 Definitions for sdiv 3

In this subdivision—

dispute matter see section 115(1)(a).

QCA means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*, section 7.

rail transport infrastructure has the meaning given by the *Transport Infrastructure Act 1994*, schedule 6.

safety matter see section 113(1).

safety matter direction see section 115(1)(c).

113 Chief executive may decide matters on request

(1) This section applies if parties to negotiations for a proposed agreement about access to rail transport infrastructure are unable to agree about a matter relating to rail safety (a ***safety matter***).

(2) The chief executive may make a decision about the safety matter if—

(a) the access is required to be given under an access undertaking and, under that undertaking, QCA asks the chief executive to make a decision about the safety matter; or

(b) there is no access undertaking but access is required to be given under the *Queensland Competition Authority Act 1997* and QCA asks the chief executive to make a decision about the safety matter; or

(c) the access is not required under an access undertaking or the *Queensland Competition Authority Act 1997*, but at least 1 of the parties to the negotiations asks the chief executive to make a decision about the safety matter and the chief executive reasonably considers it appropriate to make a decision.

(3) If the chief executive makes a decision about a safety matter under subsection (2)(a), QCA in dealing with matters under the access undertaking that include the safety matter must not make a decision relating to the safety matter that is inconsistent with the chief executive's decision.

(4) If the chief executive makes a decision about a safety matter under subsection (2)(b), QCA must have regard to the decision when exercising a power under the *Queensland Competition Authority Act 1997* relating to the safety matter.

(5) If the chief executive makes a decision about a safety matter under subsection (2)(c), the decision is binding on the parties to the negotiations only if the parties agreed to be bound by the decision.

(6) The chief executive may develop guidelines for making decisions under subsection (2).

(7) The chief executive must ensure a copy of the guidelines mentioned in subsection (6) is available for inspection, free of charge, at each department office during office hours on business days.

(8) In this section—

access undertaking see the *Queensland Competition Authority Act 1997*, schedule.

114 Notice of dispute under agreement for access

(1) This section applies to a dispute under an agreement for accessing rail transport infrastructure if the dispute is about a safety matter, including, for example, the following agreements—

(a) an agreement mentioned in section 44(1);

(b) an access agreement.

(2) A person who gives notice of the dispute to another party to the agreement may give the chief executive a signed notice stating details of the dispute.

(3) Each rail transport operator who is a party to the agreement must give the chief executive a notice stating details of the resolution of the dispute within 14 days after the resolution.

Maximum penalty—10 penalty units.

(4) In this section—

access agreement see the *Queensland Competition Authority Act 1997*, schedule.

resolution, of a dispute, means the end of the dispute by—

(a) agreement of the parties to the dispute; or

(b) arbitration; or

(c) a decision of an expert under the agreement; or

(d) a decision of a court or QCA.

115 Safety matter directions for disputes under agreement for access

(1) This section applies if the chief executive—

(a) is given a notice under section 114(2) about a matter that is in dispute (***dispute matter***); and

(b) has taken steps the chief executive considers appropriate to become reasonably informed about the dispute matter; and

(c) reasonably considers that in relation to the dispute matter it is reasonable to give a rail transport operator a written direction (***safety matter direction***) to do or not to do a stated act.

(2) The chief executive may, by complying with section 116, give the rail transport operator the safety matter direction.

(3) For subsection (1)(b), the steps the chief executive takes may include consulting with 1 or more of the following persons about the dispute matter—

(a) each rail transport operator who is a party to the agreement;

(b) another person whom the chief executive reasonably believes may be able to help the chief executive in relation to the dispute matter, including, for example, QCA.

(4) For consulting with a rail transport operator, the chief executive may give a notice to the operator stating a reasonable time and place for a meeting with the operator.

(5) A rail transport operator given a notice under subsection (4) must attend the meeting at the time and place stated in the notice, unless the operator has a reasonable excuse.

Maximum penalty for subsection (5)—10 penalty units.

116 Procedure for giving safety matter direction

(1) If the chief executive proposes to give, under section 115, a rail transport operator a safety matter direction in relation to a dispute matter (the ***proposed action***), the chief executive must give each party to the agreement, and QCA, a notice stating the following—

(a) the proposed action;

(b) the grounds for the proposed action;

(c) an outline of the facts and circumstances forming the basis for the grounds;

(d) an invitation to each person given the notice to make written representations, within a stated period of at least

14 days, about why the proposed action should not be taken.

(2) The chief executive must consider any written representations made within the stated period.

(3) If, after considering any written representations made within the stated period, the chief executive still considers it is reasonable to give the safety matter direction, the chief executive may give the safety matter direction.

(4) The safety matter direction must—

(a) state the day by which the safety matter direction must be complied with, which must be reasonable having regard to the nature of the matters to be done under the safety matter direction; and

(b) include, or be accompanied by, an information notice about the chief executive's decision to give the safety matter direction.

(5) The chief executive must give a notice about the fact that a safety matter direction has been given to a rail transport operator under section 115 to each other person who was given a notice about the safety matter direction under subsection (1).

117 Compliance with safety matter direction

A person to whom a safety matter direction is given under section 115 must comply with the direction, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Division 2 Rail safety officers

118 Appointment of persons as rail safety officers

(1) The chief executive may appoint an officer of the department, or another person, as a rail safety officer.

(2) The chief executive may appoint a person as a rail safety officer only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

119 Appointment conditions and limit on powers

(1) A rail safety officer holds office on the conditions stated in—

(a) the officer's instrument of appointment; or

(b) a notice signed by the chief executive given to the officer; or

(c) a regulation.

Example for paragraph (a)—

The instrument of appointment of a rail safety officer who is an employee of a rail transport operator may provide the officer is appointed only to investigate, or may not investigate, a matter under section 164 about particular rail transport infrastructure or rolling stock.

(2) The instrument of appointment, the notice signed by the chief executive or a regulation may limit the officer's powers under this Act.

120 Issue of identity card

(1) The chief executive must issue an identity card to each rail safety officer.

(2) The identity card must—

(a) contain a recent photo of the officer; and

(b) contain a copy of the officer's signature; and

(c) identify the person as a rail safety officer under this Act; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

121 Production or display of identity card

(1) In exercising a power under this Act in relation to another person, a rail safety officer must—

(a) produce the officer's identity card for the other person's inspection before exercising the power; or

(b) have the officer's identity card displayed so that it is clearly visible to the other person when exercising the power.

(2) However, if it is not practical to comply with subsection (1), the officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

(3) For subsection (1), a rail safety officer does not exercise a power in relation to another person only because the officer has entered a place as mentioned in section 126(1)(b) or (2).

122 When rail safety officer ceases to hold office

(1) A rail safety officer ceases to hold office if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the officer ceases to hold office;

(c) the officer's resignation under section 123 takes effect.

(2) Subsection (1) does not limit the ways a rail safety officer may cease to hold office.

(3) In this section—

condition of office means a condition on which the rail safety officer holds office.

123 Resignation

A rail safety officer may resign by signed notice given to the chief executive.

124 Return of identity card

A person who ceases to be a rail safety officer must return the person's identity card to the chief executive within 21 days after ceasing to be a rail safety officer, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

Division 3 Reciprocal powers

125 Reciprocal powers of rail safety officers

(1) This section applies in relation to another State (the ***other State***) only if there is a provision corresponding to this section in force under the corresponding law of the other State.

(2) The Minister may enter into a written agreement, with the Minister responsible for administering the corresponding law of the other State, about—

(a) the exercise of powers under the corresponding law by Queensland rail safety officers; or

(b) the exercise of powers under this Act by interstate rail safety officers of the other State.

Note—

The *Acts Interpretation Act 1954*, section 24AA allows for the amendment or repeal of a written agreement under this section.

(3) To the extent provided for in an agreement under subsection (2)—

(a) a Queensland rail safety officer may, in Queensland or the other State, exercise powers conferred, under the corresponding law, on interstate rail safety officers of the other State; and

(b) an interstate rail safety officer of the other State may, in Queensland or the other State, exercise powers conferred, under this Act, on Queensland rail safety officers.

(4) An act or omission of a Queensland rail safety officer exercising a power under subsection (3) is taken to be an act or omission done or made under both this Act and the corresponding law.

(5) A regulation may provide for the way powers may be exercised under subsection (3).

(6) In this section—

Queensland rail safety officer means a rail safety officer appointed under part 6, division 2.

Part 7 Enforcement

Division 1 Entry to places by rail safety officers

126 Power to enter places

(1) A rail safety officer may enter a place if—

(a) an occupier of the place consents to the entry; or

(b) the place is a public place and the entry is made when it is open to the public; or

(c) the entry is authorised by a warrant; or

(d) the place is railway premises and the entry is made—

(i) when the place is open for carrying on activities for which the place is railway premises; or

(ii) when the place is required to be open for inspection under an accreditation; or

(iii) when the place is otherwise open for entry; or

(e) the place is railway premises that are not open as mentioned in paragraph (d)(i), (ii) or (iii) and the entry is urgently required to investigate the circumstances of a notifiable occurrence.

(2) For the purpose of asking the occupier of a place for consent to enter, a rail safety officer may, without the occupier's consent or a warrant—

(a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

(b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) A rail safety officer who enters railway premises under subsection (1)(d) or (e) must not unnecessarily impede any activities being conducted at the railway premises.

(4) Nothing in this part allows entry to a home without the occupier's consent or a warrant.

(5) In this section—

home means a building, caravan or other structure in which an individual lives.

notifiable occurrence means an accident or incident associated with railway operations that—

(a) has caused or could have caused—

(i) death; or

(ii) serious injury; or

(iii) significant property damage; and

(b) is not an accident or incident prescribed under a transitional regulation not to be a notifiable occurrence.

public place means—

(a) a place, or a part of a place, that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

(b) a place, or a part of a place, that the occupier allows members of the public to enter, whether or not on payment of money.

127 Procedure for entry with consent

(1) This section applies if a rail safety officer intends to ask the occupier of a place to consent to the officer or another person entering the place.

(2) Before asking for the consent, the officer must tell the occupier—

(a) the purpose of the entry; and

(b) that the occupier is not required to consent.

(3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

(a) that the occupier has been told—

(i) the purpose of the entry; and

(ii) that the occupier is not required to consent; and

(b) the purpose of the entry; and

(c) that the occupier gives the officer consent to enter the place and exercise powers under this part; and

(d) the date and time the consent was given.

(5) If the occupier signs an acknowledgment, the officer must immediately give a copy to the occupier.

(6) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

128 General procedure for other entries without warrant

(1) This section applies if a rail safety officer intends to enter railway premises under section 126(1)(d) or (e).

(2) The officer must give the occupier of the railway premises reasonable notice of the intention to enter unless—

(a) the giving of the notice would be reasonably likely to defeat the purpose for which it is intended to enter the railway premises; or

(b) entry is required in circumstances for which the officer reasonably believes there is an immediate risk to the safety of persons because of the carrying out of railway operations at the railway premises.

(3) If an occupier is present when the officer intends to enter the railway premises, the officer must, before entering the railway premises, tell, or make a reasonable attempt to tell, the occupier—

(a) the purpose of the entry; and

(b) that the officer is permitted under section 126(1)(d) or (e) to enter the railway premises without the occupier's consent or a warrant.

129 Application for warrant

(1) A rail safety officer may apply to a magistrate for a warrant for a place.

(2) The officer must prepare a written application that states the grounds on which the warrant is sought.

(3) The written application must be sworn.

(4) The magistrate may refuse to consider the application until the officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

130 Issue of warrant

(1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the ***evidence***) that may provide evidence of an offence against this Act; and

(b) the evidence is at the place or, within the next 7 days, will be at the place.

(2) The warrant must state—

(a) the place to which the warrant applies; and

(b) that a stated rail safety officer may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry to the place; and

(ii) exercise the officer's powers under this part; and

(c) particulars of the offence the magistrate considers appropriate in the circumstances; and

(d) the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and

(e) the evidence that may be seized under the warrant; and

(f) the hours of the day or night when the place may be entered; and

(g) the magistrate's name; and

(h) the date and time of the warrant's issue; and

(i) the date, within 14 days after the warrant's issue, the warrant ends.

131 Application by electronic communication and duplicate warrant

(1) An application under section 129 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if a rail safety officer reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the officer's remote location.

(2) The application—

(a) may not be made before the officer prepares the written application under section 129(2); but

(b) may be made before the written application is sworn.

(3) The magistrate may issue the warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under subsection (1); and

(b) the way the application was made under subsection (1) was appropriate.

(4) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the officer; or

(b) otherwise—

(i) the magistrate must tell the officer the date and time the warrant is issued and the other terms of the warrant; and

(ii) the officer must complete a form of warrant, including by writing on it—

(A) the magistrate's name; and

(B) the date and time the magistrate issued the warrant; and

(C) the other terms of the warrant.

(5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(6) The officer must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 129(2) and (3); and

(b) if the officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—

(a) attach the documents to the original warrant; and

(b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.

(8) Despite subsection (5), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

(9) This section does not limit section 129.

(10) In this section—

relevant magistrates court, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

132 Defect in relation to a warrant

(1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 129, 130 or 131, unless the defect affects the substance of the warrant in a material particular.

(2) In this section—

warrant includes a duplicate warrant mentioned in section 131(5).

133 Warrants—procedure before entry

(1) This section applies if a rail safety officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the officer's identity card or other document evidencing the appointment;

(b) give the person a copy of the warrant;

(c) tell the person the officer is permitted by the warrant to enter the place;

(d) give the person an opportunity to allow the officer immediate entry to the place without using force.

(3) However, the officer need not comply with subsection (2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

(4) In this section—

warrant includes a duplicate warrant mentioned in section 131(5).

Division 2 General enforcement powers

134 General powers after entering a place

(1) This section applies to a rail safety officer who enters a place under this part.

(2) However, if a rail safety officer enters a place to get the occupier's consent to enter a place, this section applies to the officer only if the consent is given or the entry is otherwise authorised.

(3) For compliance or investigative purposes, the officer may do any of the following—

(a) search any part of the place and any rail infrastructure, rolling stock, road vehicle or other thing at the place;

(b) enter or open, using reasonable force, rail infrastructure, rolling stock, a road vehicle or other thing at the place to examine the rail infrastructure, rolling stock, road vehicle or other thing;

(c) inspect, film, photograph, videotape or otherwise record an image of a document, structure, rail infrastructure, rolling stock, road vehicle or other thing at the place, including a document or other thing that is in rolling stock or a road vehicle at the place;

(d) take, or authorise another person to take, for analysis a thing, or a sample of or from a thing, at the place;

(e) mark, tag or otherwise identify rolling stock, a road vehicle or other thing at the place;

(f) take an extract from, or copy, a document at the place, including a document that is in rolling stock or a road vehicle at the place;

(g) examine, analyse or survey land or soil at the place and, for the examination, analysis or survey, dig trenches, break up soil or set posts, stakes or markers;

(h) test any part of rail infrastructure or rolling stock at the place, for identifying the quality of, or faults in, the rail infrastructure or rolling stock;

(i) take into the place the equipment, materials or persons the officer reasonably requires for exercising a power under this part;

(j) take a necessary step to allow a power under paragraph (a) to (i) to be exercised.

(4) If a rail safety officer takes, or authorises another person to take, a sample or thing for analysis under subsection (3)(d), the officer must—

(a) give a receipt for the sample or thing to the person in charge of the thing or the place from which it was taken; and

(b) for a sample or thing with an intrinsic value—at the end of 6 months after the sample or thing was taken, return it to the person who appears to be the owner of it or the person in charge of the thing or the place from which it was taken.

Note—

See section 154(1) for what happens if a sample or thing can not be returned to its owner or the owner can not be found.

(5) However, if for any reason it is not practicable to comply with subsection (4)(a), the officer must leave the receipt at the place in a conspicuous position and in a reasonably secure way.

(6) In this section—

enter includes re-enter.

135 Procedure before entering or opening rolling stock or road vehicle

(1) If a relevant person is present at rolling stock or a road vehicle, a rail safety officer must do or make a reasonable attempt to do the following before entering the rolling stock or vehicle under section 134—

(a) tell the relevant person the purpose of the entry;

(b) ask for the consent of the relevant person to the entry;

(c) tell the relevant person the officer is permitted under section 134 to enter the rolling stock or vehicle without consent;

(d) for a road vehicle—if the relevant person is not the owner of the vehicle, advise the vehicle's owner of the officer's intention to enter it.

(2) If a relevant person is not present at rolling stock or a road vehicle, before entering the rolling stock or vehicle, the officer must—

(a) take reasonable steps to find a relevant person for the rolling stock or vehicle; and

(b) comply with subsection (1)(a) to (c) for the relevant person if found.

(3) Subsections (1)(d) and (2) do not require the officer to take a step the officer reasonably believes may frustrate or otherwise hinder an inspection or investigation under this Act or the purpose of the intended entry.

(4) In this section—

relevant person means—

(a) for rolling stock—a person who is the driver or guard of, or engineer for, the rolling stock; or

(b) for a road vehicle—a person who appears to be the driver, or to be in control, of the vehicle.

136 Power to require reasonable help or information

(1) A rail safety officer may require the occupier of, or someone else at, a place entered under this part to give the officer—

(a) reasonable help to exercise a power under section 134; or

(b) information to help the officer ascertain whether this Act is being or has been complied with.

Example for subsection (1)—

When inspecting rolling stock in relation to which an accreditation applies, a rail safety officer may ask the driver of the rolling stock to accompany the officer or to explain how a piece of equipment is used as part of the accredited person's safety management system.

(2) When making a requirement under subsection (1), the officer must warn the person that it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) A person required to give reasonable help under subsection (1)(a), or give information under subsection (1)(b), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) It is a reasonable excuse for an individual to not comply with a requirement to give information under subsection (1)(b) if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

137 Power to stop or move rolling stock or a road vehicle that may be entered or opened

(1) If rolling stock or a road vehicle that a rail safety officer may enter or open under this part is moving or about to move, the officer may—

(a) require the rail transport operator who manages or controls the operation of the rolling stock or vehicle to—

(i) stop the rolling stock or vehicle at a stated place; or

(ii) not move the rolling stock or vehicle from a stated place; or

(iii) move the rolling stock or vehicle to a stated place; or

(b) ask or signal the person in control of the rolling stock or vehicle to—

(i) stop the rolling stock or vehicle at a stated place; or

(ii) not move the rolling stock or vehicle from a stated place.

(2) However—

(a) before making a request or giving a signal under subsection (1)(b) for rolling stock, the officer must consult with the train controller for the rolling stock about whether it is safe to stop the rolling stock at, or not move the rolling stock from, the place taking into account other rolling stock; and

(b) the request or signal must disrupt the operation of rolling stock only to the extent that is reasonably necessary.

(3) A rail transport operator of whom a requirement is made under subsection (1)(a) must comply with the requirement, unless the operator has a reasonable excuse.

Maximum penalty—200 penalty units.

(4) The person in control of rolling stock, or a road vehicle, to whom a request is made or signal given under subsection (1)(b) must comply with the request or signal, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) It is a reasonable excuse for the person in control of rolling stock or a road vehicle not to comply with the request or signal if—

(a) to immediately comply with the request or signal would—

(i) endanger the person or someone else; or

(ii) cause damage to rail infrastructure, rolling stock or a road vehicle; and

(b) the person complies with the request or signal as soon as is practicable to comply with it.

(6) In this section—

train controller, for rolling stock, means an individual who is in control of train control signalling and communication for the section of railway track on which the rolling stock is moving or stationary.

138 Other powers about rolling stock or road vehicles that may be entered

(1) If a rail safety officer enters or opens rolling stock or a road vehicle under this part, the officer may require the person in control of the rolling stock or vehicle—

(a) to give the officer reasonable help to enter or open the rolling stock or vehicle; or

(b) to bring the rolling stock or vehicle to a stated reasonable place and remain in control of the rolling stock or vehicle for a reasonable period to allow the officer to exercise a power under this part.

(2) When making a requirement under subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) A person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—100 penalty units.

139 Power to use electronic equipment at the place entered

(1) This section applies if—

(a) a thing found in or on rolling stock or a road vehicle, or at a place, is, or includes, a disk, tape or other device used for the storage of information; and

(b) equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other device.

(2) Without limiting section 134, a rail safety officer—

(a) may operate the equipment to access the information; and

(b) may seize the equipment to enable the officer to operate it to access the information.

(3) A rail safety officer may operate or seize equipment under subsection (2) only if the officer reasonably believes the operation or seizure can be carried out without damage to the equipment.

140 Power to use equipment at the place entered to examine or process things

(1) Without limiting section 134 or 139, a rail safety officer exercising a power under this part may operate equipment in or on rolling stock or a road vehicle, or at a place, to carry out the examination or processing of a thing found in or on the rolling stock or road vehicle, or at the place, in order to decide whether it is a thing that may be seized.

(2) However, subsection (1) applies only if the officer reasonably believes that—

(a) the equipment is suitable for the examination or the processing; and

(b) the examination or processing can be carried out without damage to the equipment.

141 Power to secure a site

(1) For protecting evidence that might be relevant for compliance or investigative purposes, a rail safety officer may secure a part of a place (the ***site***) entered under this part in the way the officer considers appropriate.

(2) A person must not, without the written approval of a rail safety officer or a reasonable excuse, enter or remain at the site.

Maximum penalty—40 penalty units.

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

(a) to ensure the safety of persons; or

(b) to remove deceased persons or animals from the site; or

(c) to move a road vehicle, or the wreckage of a road vehicle, to a safe place; or

(d) to protect the environment from significant damage or pollution.

Division 3 Seizing evidence

Subdivision 1 Powers to seize evidence

142 Seizing evidence at a place entered without consent or warrant

A rail safety officer who lawfully enters a place under this part without the consent of the occupier and without a warrant, may seize a thing at the place only if the officer reasonably believes—

(a) the thing is evidence of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being—

(i) destroyed, hidden or lost; or

(ii) used to commit, continue or repeat an offence against this Act.

143 Seizing evidence at a place entered with consent or warrant

(1) This section applies if—

(a) a rail safety officer is authorised to enter a place under this part only with the consent of the occupier or a warrant; and

(b) the officer enters the place after obtaining the necessary consent or warrant.

(2) If the officer enters the place with the occupier's consent, the officer may seize a thing at the place only if—

(a) the officer reasonably believes the thing is evidence of an offence against this Act; and

(b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(3) If the officer enters the place with a warrant, the officer may seize the evidence for which the warrant is issued.

(4) The officer may seize anything else at the place if the officer reasonably believes—

(a) the thing is evidence of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being—

(i) destroyed, hidden or lost; or

(ii) used to commit, continue or repeat an offence against this Act.

(5) Also, the officer may seize a thing at the place if the officer reasonably believes it has just been used in committing an offence against this Act.

Subdivision 2 Powers to support seizure

144 Securing seized things

Having seized a thing under this part, a rail safety officer may—

(a) move the thing from the place where it was seized (the ***place of seizure***); or

(b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

Examples of restricting access to a thing—

- marking, sealing, tagging or otherwise identifying the thing to show access to it is restricted
- sealing the entrance to a room where the thing is situated and marking the entrance to show access to the thing is restricted

(c) for equipment—make it inoperable.

Example of making equipment inoperable—

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

145 Tampering with seized thing

(1) If a rail safety officer restricts access to a seized thing under section 144, a person must not tamper with the thing, or something restricting access to the thing, without a rail safety officer's written approval.

Maximum penalty—200 penalty units.

(2) If a rail safety officer makes seized equipment inoperable under section 144, a person must not tamper with the equipment without a rail safety officer's written approval.

Maximum penalty—200 penalty units.

(3) In this section—

tamper includes attempt to tamper.

146 Powers to support seizure

(1) To enable a thing to be seized under this part, a rail safety officer may require the person in control of it—

(a) to take it to a stated reasonable place by a stated reasonable time; and

(b) if necessary, to remain in control of it at the stated place for a stated reasonable time.

(2) The requirement—

(a) must be made by notice; or

(b) if for any reason it is not practicable to give the notice, may be given orally and confirmed by notice as soon as is practicable.

(3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

Examples of a further requirement—

a requirement that the thing—

- be transported during stated off-peak hours
- be transported along a particular route
- be transported in a particular way

(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) Subject to section 189, the cost of complying with subsection (4) must be borne by the person.

(6) For this section, a person is ***in control*** of a thing if the person has, or reasonably appears to a rail safety officer to have, authority to exercise control over the thing.

147 Rail safety officer may require thing's return

(1) If a rail safety officer has required a person to take a thing to a stated reasonable place by a stated reasonable time under section 146(1), the officer may require the person to return the thing to the place from which it was taken.

(2) A person of whom a requirement is made under subsection (1) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) Subject to section 189, the cost of complying with subsection (2) must be borne by the person.

Subdivision 3 Other provisions about seizure

148 Receipt for seized things

(1) As soon as practicable after a rail safety officer seizes a thing under this part, the officer must give a receipt for it to the person from whom it was seized.

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

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

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

149 Access to seized thing

(1) Until a thing that has been seized under this part is forfeited or returned, a rail safety officer must allow its owner to inspect it and, if it is a document, to copy it.

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

150 Return of seized things

(1) If a thing has been seized by a rail safety officer under this part but not forfeited, the officer must return it to its owner—

(a) at the end of 6 months after the seizure; or

(b) if a proceeding for an offence involving the thing is started within 6 months after the seizure—at the end of the proceeding and any appeal from the proceeding; or

(c) if the officer stops being satisfied its continued retention as evidence is necessary—immediately.

(2) This section does not apply if the thing seized does not have any intrinsic value.

Division 4 Embargo notices for things that can not be seized

151 Application of div 4

This division applies if—

(a) a rail safety officer is authorised to seize a record, device or other thing under this part; and

(b) the record, device or other thing can not, or can not readily, be physically seized and removed.

152 Rail safety officer may issue embargo notice

(1) A rail safety officer may issue a notice (***embargo notice***) forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with a record, device or other thing, or any part of it, without the written approval of a rail safety officer or the chief executive.

(2) The embargo notice must state—

(a) a description of the thing to which the notice applies; and

(b) the activities that the notice forbids; and

(c) the particulars prescribed under a regulation; and

(d) the requirements under section 153 and the maximum penalties for failing to comply with the requirements.

(3) On issuing an embargo notice, a rail safety officer must—

(a) give a copy of the notice to the owner of the record, device or other thing; or

(b) if the owner can not be found after making reasonable inquiries, attach a copy of the notice to the record, device or other thing in a conspicuous position and in a reasonably secure way.

153 Contravening embargo notice

(1) A person must not knowingly do anything that is forbidden by an embargo notice.

Maximum penalty—60 penalty units.

(2) A person (***relevant person***) must not instruct or ask another person to do anything that the relevant person knows is forbidden by an embargo notice.

Maximum penalty—60 penalty units.

(3) It is a defence in a proceeding against a person for an offence against subsection (1) or (2) relating to the movement of a record, device or other thing, or a part of a record, device or other thing, for the person to prove that the person—

(a) moved, or instructed or asked another person to move, the record, device, other thing or part for the purpose of protecting or preserving it; and

(b) notified the rail safety officer who issued the embargo notice of the following, within 48 hours after the movement—

(i) the movement of the record, device, other thing or part;

(ii) the new location of the record, device, other thing or part.

(4) A person to whom a copy of an embargo notice is given under this division must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.

Maximum penalty—60 penalty units.

(5) Despite any other Act or law, a sale, lease, transfer or other dealing with a record, device or other thing, or a part of a record, device or other thing, in contravention of this section is void.

Division 5 Forfeiture

154 Forfeiture by rail safety officer

(1) A sample or thing taken for analysis, or a thing seized, under this part is forfeited to the State if the rail safety officer who took, or arranged the taking of, the sample or thing or who seized the thing—

(a) can not find its owner, after making reasonable inquiries; or

(b) can not return it to its owner, after making reasonable efforts; or

(c) reasonably considers that it is necessary to retain it to prevent the commission of an offence against this Act.

(2) In applying subsection (1)—

(a) subsection (1)(a) does not require the officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and

(b) subsection (1)(b) does not require the officer to make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner.

(3) If a sample or thing is forfeited to the State under subsection (1)(c), the rail safety officer who decided it is necessary to retain the sample or thing to prevent the commission of an offence against this Act must give the sample's or thing's owner an information notice for the decision.

(4) Subsection (3) does not apply if the officer can not find the owner after making reasonable enquiries.

(5) Regard must be had to a sample's or thing's nature, condition and value in deciding—

(a) whether it is reasonable to make inquiries or efforts; and

(b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

(6) In this section—

owner, of a sample or a thing taken for analysis, includes the person in charge of the thing or place from which the sample or thing was taken.

155 Forfeiture on conviction

(1) On conviction of a person for an offence against this Act, a court may order the forfeiture to the State of anything owned by the person and seized under this part.

(2) The court may make any order to enforce the forfeiture it considers appropriate.

(3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

156 Dealing with forfeited sample or thing

(1) On forfeiture of a sample or thing to the State, the sample or thing becomes the State's property and may be dealt with by the chief executive in a way the chief executive reasonably believes is appropriate.

(2) Without limiting subsection (1), the chief executive may destroy or dispose of the sample or thing.

Division 6 Other powers

157 Power to require name and address

(1) This section applies if—

(a) a rail safety officer finds a person committing an offence against this Act; or

(b) a rail safety officer finds a person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has committed an offence against this Act; or

(c) a rail safety officer finds a person at railway premises and—

(i) reasonably believes the person is carrying out railway operations on behalf of a rail transport operator; and

(ii) reasonably considers that it is necessary for this Act to know the person's name and residential or business address.

(2) The officer may require the person to state the person's name and residential or business address.

(3) When making a requirement under subsection (2), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(4) The officer may also require the person to give the officer evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address to be false.

158 Failure to give name or address

(1) A person of whom a requirement is made under section 157(2) or (4) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) A person does not commit an offence against subsection (1) if—

(a) the person was required to state the person's name and residential or business address by a rail safety officer who suspected the person had committed an offence against this Act; and

(b) the person is not proved to have committed the offence.

(3) It is not a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

Note—

Subsection (3) and other similar provisions in this Act refer to only an individual on the basis that the privilege to which the subsection or provision refers applies only to individuals.

159 Power to require production of documents

(1) A rail safety officer may require a person carrying out railway operations to make available for inspection by the officer, or produce to the officer for inspection, at a reasonable time and place nominated by the officer—

(a) a document that the person is required to keep under this Act, including a document the person is required to prepare and implement for the railway operations; or

Examples of documents a person may be required to prepare and implement for railway operations—

safety management system, emergency management plan

(b) a document that—

(i) is prepared by the person in relation to a document mentioned in paragraph (a); and

(ii) the officer reasonably believes is necessary for the officer to consider to understand or verify the document mentioned in paragraph (a); or

Example—

A safety management system may require testing of equipment as part of a scheduled maintenance program and a documented record of the results of the test to be kept. If an item of equipment is tested under the safety management system, the document stating the results of the test is a document prepared in relation to the safety management system.

(c) another document kept by, or otherwise under the control of, the person if the document is relevant to carrying out the railway operations.

Example for paragraph (c)—

a document about a person's financial capacity, or public risk insurance arrangements, for meeting potential accident liabilities arising from railway operations

(2) When making a requirement under subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(3) The officer may keep the document to copy it but must return the document to the person after copying it.

160 Failure to produce document

(1) A person of whom a requirement is made under section 159 must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(2) It is not a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

161 Use of particular evidence in proceedings

(1) This section applies to the following (***primary evidence***)—

(a) any answer given by an individual in response to a requirement under section 157(2) or (4);

(b) any document mentioned in section 159(1) produced by an individual to a rail safety officer, and the fact of that production, in response to a requirement under section 159(1).

(2) The following is not admissible in evidence against an individual in any civil or criminal proceeding—

(a) primary evidence;

(b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (***derived evidence***).

(3) Subsection (2) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

162 Power to require information about contravention

(1) This section applies if a rail safety officer reasonably believes—

(a) a provision of this Act has been contravened; and

(b) a person may be able to give information about the contravention.

(2) The officer may require the person to give information within the person's knowledge about the contravention in a stated reasonable time and in a stated reasonable way.

(3) When making a requirement under subsection (2), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

163 Failure to give information about contravention

(1) A person of whom a requirement is made under section 162 must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(2) It is a reasonable excuse for an individual to not comply with the requirement if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

Division 7 Investigation of notifiable and other occurrences

Subdivision 1 Investigation and report

164 Chief executive may require investigation by rail safety officer

(1) This section applies if—

(a) a notifiable occurrence happens; or

(b) the chief executive becomes aware that a notifiable occurrence, or another occurrence that endangers or could endanger the safe operation of railway operations, may have happened, even if it has not been reported.

(2) The chief executive may require a rail safety officer to investigate the matter.

(3) If a report has been given to the chief executive about the occurrence under section 74, the chief executive may require the officer to investigate the matter by reviewing the report.

165 Report of investigation

(1) After a rail safety officer finishes an investigation under section 164, the officer must give a report of the results of the investigation (***RSO report***) to the chief executive, including—

(a) whether or not the officer reasonably considers the occurrence being investigated to be a notifiable occurrence; and

(b) if the officer considers the occurrence being investigated to be a notifiable occurrence—the reasons for considering the occurrence to be a notifiable occurrence.

(2) The chief executive must give the Minister a copy of the RSO report within 14 days after receiving the report.

(3) The Minister must table in the Legislative Assembly a copy of the RSO report within 14 days after receiving the report.

(4) The following is not admissible in evidence in any civil or criminal proceeding—

(a) the RSO report;

(b) any report prepared by the officer as an interim RSO report;

(c) any report prepared by the officer as a draft RSO report for the purposes of consultation.

(5) However, subsection (4) has no effect on the use or admissibility of any type of report mentioned in the subsection in a coronial procedure.

Subdivision 2 Powers of rail safety officer conducting investigation

166 Definition for sdiv 2

In this subdivision—

alcohol test includes—

(a) a preliminary test to give an indication of the presence or absence of alcohol in a person's breath; and

(b) a test to analyse a person's blood or breath to determine the person's blood alcohol concentration.

167 Application of sdiv 2

This subdivision applies if—

(a) a notifiable occurrence has happened or a notifiable occurrence, or another occurrence that endangers or could endanger the safe operation of railway operations, may have happened; and

(b) a rail safety officer is investigating the occurrence, whether or not at the chief executive's request.

168 Power to require help

(1) If the rail safety officer reasonably needs help in investigating the occurrence, the officer may require a person to give the officer reasonable help in the investigation.

(2) A requirement may only be made of a person whom the rail safety officer reasonably believes is competent to give the help.

169 Power to require answers to questions or production of document or other thing

If the rail safety officer reasonably believes it necessary for the purposes of the investigation, the officer may require a person to—

(a) answer questions relevant to the occurrence; or

(b) produce documents or other things relevant to the occurrence.

170 Power to require alcohol or drug test or examination

(1) The rail safety officer may require a person carrying out rail safety work on or in relation to a rail transport operator's rail infrastructure or rolling stock to take an alcohol test, drug test or medical examination if the officer reasonably suspects—

(a) the person caused, or was directly involved in, the occurrence; and

(b) the result of the test or examination may help in deciding the circumstances and probable causes of the occurrence.

(2) The test mentioned in subsection (1) must take place within 2 hours after the occurrence happens.

(3) The medical examination mentioned in subsection (1) must take place within a reasonable time after the officer forms the reasonable suspicions about the person under the subsection.

(4) The cost of a test or examination under this section must be borne by the rail transport operator.

(5) If the person refuses to take a test mentioned in subsection (1), the person may be taken, for a purpose prescribed under a regulation, to have been under the influence of alcohol or a drug when the occurrence happened, in the absence of evidence to the contrary.

171 Requirement to give warning when making requirement of individual

When making a requirement of an individual under this subdivision, a rail safety officer must—

(a) warn the individual it is an offence to fail to comply with the requirement unless the individual has a reasonable excuse; and

(b) advise the individual that—

(i) it is not a reasonable excuse that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty; and

(ii) if the individual is not an accredited person—anything obtained under the requirement, and any evidence derived directly or indirectly from anything obtained under the requirement, is not admissible in evidence against the individual in any civil or criminal proceeding.

172 Failure to comply with requirement

(1) A person of whom a requirement is made under this subdivision must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) It is not a reasonable excuse for an individual to fail to comply with the requirement that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

173 Use of particular evidence in proceedings

(1) The following (***primary evidence***) is not admissible in evidence against an individual in any civil or criminal proceeding—

(a) any help given by the individual to a rail safety officer in investigating an occurrence in response to a requirement under section 168;

(b) any answer given by the individual to a question mentioned in section 169(a) to a rail safety officer in investigating an occurrence in response to a requirement under section 169(a);

(c) a document or other thing mentioned in section 169(b) produced by the individual to a rail safety officer in investigating an occurrence, and the fact of that production, in response to a requirement under section 169(b);

(d) the results of an alcohol test, drug test or medical examination of the individual mentioned in section 170.

(2) Also, any information, or document or other thing, obtained as a direct or indirect result of primary evidence (***derived evidence***), is not admissible in evidence against the individual in any civil or criminal proceeding.

(3) Subsections (1) and (2) do not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

(4) In this section—

individual does not include an individual who is an accredited person.

Division 8 Improvement notices

174 Rail safety officer may give improvement notice

(1) This section applies if a rail safety officer reasonably believes—

(a) a person is contravening a provision of this Act; or

(b) a person has contravened a provision of this Act and it is likely that the contravention will continue or be repeated; or

(c) a person is carrying out or has carried out railway operations that threaten rail safety.

(2) The officer may give the person a notice (an ***improvement notice***) stating the person must, within the period of at least 7 days stated in the notice—

(a) if subsection (1)(a) or (b) applies—carry out rail safety work, or do another thing, to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention; or

(b) if subsection (1)(c) applies—carry out the railway operations in a way that ensures rail safety is not threatened.

175 What improvement notice may require

(1) An improvement notice given to a person on a ground mentioned in section 174(1)(a) or (b) may state—

(a) the way in which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, must be remedied; or

(b) a choice of ways in which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, may be remedied; or

(c) that the person to whom the notice is given must give the chief executive a program of rail safety work the person proposes to carry out to remedy the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention.

(2) An improvement notice given to a person on the ground mentioned in section 174(1)(c) may state—

(a) the way in which the railway operations may be carried out to ensure rail safety is not threatened; or

(b) a choice of ways in which the railway operations may be carried out to ensure rail safety is not threatened; or

(c) that the person to whom the notice is given must give the chief executive a program of the railway operations the person proposes to carry out to remedy the threat to rail safety.

(3) The improvement notice may state that a program mentioned in subsection (1)(c) or (2)(c) must include a timetable for the completion of the program.

(4) This section does not limit section 174.

176 What improvement notice must state

An improvement notice given by a rail safety officer must state the following—

(a) the reasons for the decision to give the notice;

(b) for an improvement notice given on the basis a person is reasonably believed to be contravening, have contravened, or be likely to further contravene a provision of this Act—the provision of this Act in relation to which the belief is held;

(c) for an improvement notice given on the basis a person is reasonably believed to be carrying out or have carried out railway operations that threaten rail safety—the railway operations in relation to which the belief is held;

(d) the penalty for failing to comply with the notice;

(e) the effect of section 179;

(f) that the notice is given under this section;

(g) the review and appeal information for the decision to give the notice.

177 Compliance with improvement notice

(1) A person to whom an improvement notice has been given must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty—150 penalty units.

(2) It is a defence in a proceeding against a person for an offence against subsection (1) for the person to prove that—

(a) for an improvement notice given on a ground mentioned in section 174(1)(a) or (b)—the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, were remedied within the period stated in the notice, though in a way different from that stated in the notice; or

(b) for an improvement notice given on the ground stated in section 174(1)(c)—the threat to rail safety was removed within the period stated in the notice, though in a way different from that stated in the notice.

Editor's note—

See also section 15.

178 Amendment of improvement notice

(1) An amendment of an improvement notice given to a person is ineffective to the extent it purports to deal with a contravention of a different provision of this Act from that dealt with in the improvement notice when first given.

(2) To remove any doubt, it is declared that if the chief executive decides to amend an improvement notice given to a person, the chief executive must give the person an information notice for the decision.

Note—

The *Acts Interpretation Act 1954*, section 24AA allows for the amendment or repeal of an improvement notice.

179 Proceedings for offences not affected by improvement notice

The giving, amendment or repeal of an improvement notice does not affect any proceedings for an offence against this Act, or the Workplace Health and Safety Act, in connection with any matter in relation to which the improvement notice was given.

180 Chief executive may arrange for rail safety work not carried out

(1) This section applies if a person fails to comply with an improvement notice given to the person on a ground mentioned in section 174(1)(a) or (b) requiring the person to carry out rail safety work to remedy—

(a) the alleged contravention or likely contravention; or

(b) the matters or activities occasioning the alleged contravention or likely contravention.

(2) The chief executive may arrange for the rail safety work to be carried out.

(3) The chief executive may recover from the person given the improvement notice the reasonable costs and expenses incurred by the chief executive for the carrying out of the rail safety work as a debt.

Division 9 Prohibition notices

181 Rail safety officer may give prohibition notice

(1) This section applies if a rail safety officer reasonably believes—

(a) an activity happening in relation to railway operations or railway premises involves or is likely to involve an immediate risk to the safety of persons; or

(b) an activity may happen in relation to railway operations or railway premises and, if it happens, the activity will involve or is likely to involve an immediate risk to the safety of persons; or

(c) an activity may happen at, on, or in the immediate vicinity of, rail infrastructure or rolling stock and, if it happens, the activity will involve or is likely to involve an immediate risk to the safety of persons.

(2) The officer may give a person who has or appears to have control over the activity a notice (a ***prohibition notice***) stating that either of the following is prohibited until the officer has certified in writing that the matters that give or are likely to give rise to the risk have been remedied—

(a) the carrying on of the activity;

(b) the carrying on of the activity in a stated way.

(3) A prohibition notice under subsection (2)(b) may state that the carrying on of an activity in a stated way is prohibited by stating 1 or more of the following—

(a) a place, or part of a place, at which the activity must not be carried on;

(b) a thing that must not be used in connection with the activity;

(c) a procedure that must not be followed in connection with the activity.

(4) A prohibition notice takes effect when it is given or, if the notice states a later date, on the stated later date.

182 What prohibition notice may require

(1) A prohibition notice may state a requirement about the measures that must be taken to minimise or eliminate—

(a) the risk to safety to which the notice relates; or

(b) the activity causing, or likely to cause, the risk to safety to which the notice relates; or

(c) the matters that give, or are likely to give, rise to the risk to safety to which the notice relates; or

(d) if the officer believes the activity to which the notice relates involves a contravention or likely contravention of this Act—the contravention or likely contravention.

(2) For subsection (1), a requirement in a prohibition notice may—

(a) require measures be taken in a way stated in a compliance code; or

(b) state a choice of ways in which the person to whom the notice is given may minimise or eliminate the risk, activity, matters, contravention or likely contravention mentioned in subsection (1).

183 What prohibition notice must state

A prohibition notice given by a rail safety officer must state the following—

(a) the reasons for the decision to give the notice;

(b) the activity that the officer believes involves or is likely to involve the risk to safety to which the notice relates, and the matters that give, or are likely to give, rise to the risk;

(c) if the officer believes that the activity involves a contravention or likely contravention of a provision of this Act, the provision and the basis for the belief;

(d) the penalty for failing to comply with the notice;

(e) the effect of section 187;

(f) that the notice is given under this section;

(g) the review and appeal information for the decision to give the notice.

184 Compliance with prohibition notice

A person to whom a prohibition notice is given must comply with the notice, unless the person has a reasonable excuse.

Editor's note—

See, however, section 15.

Maximum penalty—150 penalty units.

185 Oral direction before prohibition notice given

(1) This section applies if a rail safety officer reasonably believes—

(a) an activity mentioned in section 181(1) is happening or may happen; and

(b) it is not possible or reasonable to give a prohibition notice under that section immediately.

(2) The officer may direct a person who has or appears to have control over the activity to do or not to do a stated act by telling the person—

(a) to do or not to do the stated act; and

(b) the reason for the officer giving the direction.

(3) When giving the direction, the officer must warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse.

(4) A person to whom a direction is given under subsection (2) must comply with it, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(5) A direction given under subsection (2) ceases to have effect if the officer does not, within 5 days after giving the direction, give the person to whom the direction is given a prohibition notice in relation to the activity.

186 Amendment of prohibition notice

(1) An amendment of a prohibition notice given to a person is ineffective to the extent it purports to deal with a contravention of a different provision of this Act from that dealt with in the prohibition notice when first given.

(2) To remove any doubt, it is declared that if the chief executive decides to amend a prohibition notice given to a person, the chief executive must give the person an information notice for the decision.

Note—

The *Acts Interpretation Act 1954*, section 24AA allows for the amendment or repeal of a prohibition notice.

187 Proceedings for offences not affected by prohibition notice

The giving, amendment or repeal of a prohibition notice does not affect any proceedings for an offence against this Act, or the Workplace Health and Safety Act, in connection with any matter in relation to which the prohibition notice was given.

Division 10 Damage to property in exercising powers under this part

188 Notice of damage

(1) This section applies if—

(a) a rail safety officer damages property when exercising or purporting to exercise a power under this part; or

(b) a person (the ***other person***) acting under the direction or authority of a rail safety officer damages property.

(2) The officer must immediately give a notice to the person who appears to the officer to be the owner of the property stating—

(a) the particulars of the damage; and

(b) that the person who suffered the damage may claim compensation under section 189.

(3) If the officer believes the damage was caused by a latent defect in the property or circumstances beyond the officer's or other person's control, the officer may state the belief in the notice.

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

(5) This section does not apply to damage the officer reasonably believes is trivial.

(6) In this section—

owner, of property, includes the person in possession or control of it.

189 Compensation

(1) This section applies if a person incurs loss or expense because of the exercise or purported exercise of a power under this part by a rail safety officer, other than because of a forfeiture under section 154 or 155.

(2) If the power was exercised or purportedly exercised under division 7, the person may claim compensation for the loss or expense from the officer's employing authority.

(3) If subsection (2) does not apply, the person is entitled to be paid the reasonable compensation because of the loss or expense that is agreed between the chief executive and the person, or failing agreement, decided by a court.

(4) Payment of compensation may be claimed and ordered in a proceeding—

(a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

(b) for an offence against this Act brought against the person claiming compensation.

(5) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

(6) A regulation may prescribe matters that may, or must, be taken into account by the court in considering whether it is just to make the order.

(7) In this section—

employing authority, of a rail safety officer, means—

(a) if the officer is an employee of an accredited person—the accredited person; or

(b) otherwise—the State.

Division 11 Miscellaneous

190 Only reasonable force may be used

A power under this part to enter a place, or to do anything in or on a place, may be exercised only if the person proposing to exercise the power uses no more force than is reasonably necessary to exercise the power.

191 Only police officers may use force against a person

A provision of this part authorising a person to use reasonable force does not authorise a person who is not a police officer to use force against another person.

Part 8 Boards of inquiry

Division 1 General

192 Minister may establish or re-establish board

(1) The Minister may, by gazette notice, establish or re-establish a board of inquiry about an occurrence that—

(a) has happened on or in relation to railway premises or railway operations; and

(b) the Minister considers is a notifiable occurrence.

(2) The gazette notice, or a subsequent gazette notice, may state matters relevant to the board of inquiry, including, for example, the membership of the board and its terms of reference.

(3) The Minister may exercise powers under this section for an occurrence—

(a) whether or not the occurrence has been investigated by a rail safety officer; and

(b) whether or not a board of inquiry has previously inquired into the occurrence.

193 Role of board

(1) The board of inquiry must—

(a) inquire into the circumstances and probable causes of the relevant occurrence; and

(b) give the Minister a written report of the board's findings.

(2) The report may contain the recommendations the board considers appropriate and other relevant matters.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(4) However, if the board gives the Minister a separate report of matters that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

(5) The following is not admissible in evidence in any civil or criminal proceeding—

(a) a report under this section;

(b) any report prepared by the board as an interim report under this section;

(c) any report prepared by the board as a draft report under this section for consultation purposes.

(6) However, subsection (5) has no effect on the use or admissibility of any type of report mentioned in the subsection in a coronial procedure.

194 Conditions of appointment of members

(1) Members of the board of inquiry are entitled to be paid the fees and allowances that may be decided by the Minister.

(2) The members' terms of office are the terms provided by this Act and any other terms decided by the Minister.

195 Chief executive to arrange for services of staff and financial matters for board

As soon as practicable after the board of inquiry is established or re-established, the chief executive must consult with the chairperson of the board and arrange for the following—

(a) the services of officers and employees of the department, rail safety officers and other persons to be made available to the board for the conduct of the inquiry;

(b) financial matters relevant to the board.

196 Rail safety officer may exercise powers for inquiry

(1) This section applies to a rail safety officer whose services have been made available to the board of inquiry.

(2) The officer may exercise powers under part 7 for the occurrence the subject of the board's inquiry.

Division 2 Conduct of inquiry

197 Procedure

(1) In conducting its inquiry, the board of inquiry—

(a) must observe natural justice; and

(b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

(2) In conducting the inquiry, the board—

(a) is not bound by the rules of evidence; and

(b) may inform itself in any way it considers appropriate, including, for example, by holding hearings; and

(c) may decide the procedures to be followed for the inquiry.

(3) However, the board must comply with this division and any procedural rules prescribed under a regulation.

(4) The chairperson of the board presides at the inquiry.

198 Notice of inquiry

The chairperson of the board of inquiry must give at least 14 days notice of the time and place of its inquiry to anyone who the chairperson has reason to believe should be given the opportunity to appear at the inquiry.

199 Inquiry to be held in public other than in special circumstances

(1) The board of inquiry's inquiry must be held in public.

(2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.

(3) The board may give a direction under subsection (2) only if it is satisfied it is appropriate to make the direction in the special circumstances of the inquiry.

200 Protection of members, legal representatives and witnesses

(1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a judge of the Supreme Court.

(2) A lawyer or other person appearing before the board for someone else has the same protection and immunity as a lawyer appearing for a party in a proceeding in the Supreme Court.

(3) A person summoned to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

201 Record of proceedings to be kept

The board of inquiry must keep a record of its proceedings.

202 Procedural fairness and representation

In conducting its inquiry, the board of inquiry must give anyone directly concerned in the occurrence the subject of the inquiry the opportunity of making a defence to all claims made against the person either in person or by lawyer or agent.

203 Board's powers on inquiry

(1) In conducting its inquiry, the board of inquiry may—

(a) act in the absence of any person who has been given a notice under section 198 or some other reasonable notice; and

(b) receive evidence on oath or affirmation or by statutory declaration; and

(c) adjourn the inquiry; and

(d) disregard any defect, error, omission or insufficiency in a document; and

(e) permit or refuse to permit a person, including a lawyer, to represent someone else at the inquiry.

(2) A member of the board may administer an oath or affirmation to a person appearing as a witness before the inquiry.

204 Notice to witness

(1) The chairperson of the board of inquiry may, by notice given to a person, require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things.

(2) A person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

205 Inspection of documents or things

(1) If a document or other thing is produced to the board of inquiry at its inquiry, the board may—

(a) inspect the document or other thing; and

(b) make copies of, photograph, or take extracts from, the document or other thing if it is relevant to the inquiry.

(2) The board may also take possession of the document or other thing, and keep it while it is necessary for the inquiry.

(3) While the board keeps a document or other thing under this section, the board must permit a person otherwise entitled to possession of the document or other thing to inspect it, make copies of it, photograph it, or take extracts from it, at a reasonable place and time the board decides.

206 Inquiry may continue despite court proceedings unless otherwise ordered

The inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

207 Offences by witnesses

(1) A person given a notice under section 204 must not—

(a) fail, without reasonable excuse, to attend as required by the notice; or

(b) fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—60 penalty units.

(2) A person appearing as a witness at the board's inquiry must not—

(a) fail to take an oath or make an affirmation when required by the chairperson of the board; or

(b) fail, without reasonable excuse, to answer a question the person is required to answer by a member of the board; or

(c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 204.

Maximum penalty—60 penalty units.

208 Self-incrimination

(1) An individual appearing as a witness at the board of inquiry's inquiry is not excused from—

(a) answering a question put to the individual at the inquiry; or

(b) producing a document or other thing at the inquiry;

on the ground that the answer or the production of the document or other thing might tend to incriminate the individual or make the individual liable to a penalty.

(2) The following is not admissible in evidence against an individual in any civil or criminal proceeding—

(a) any answer given at the inquiry by the individual, and any document or other thing produced at the inquiry by the individual and the fact of that production, in response to a requirement under this division (***primary evidence***);

(b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (***derived evidence***).

(3) Subsection (2) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.

(4) In this section—

individual does not include an individual who is an accredited person.

209 Contempt of board

A person must not—

(a) insult the board of inquiry; or

(b) deliberately interrupt the board's inquiry; or

(c) create or continue, or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or

(d) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—60 penalty units.

210 Change of membership of board

The inquiry of the board of inquiry is not affected by a change in its membership.

Part 9 Provisions about particular investigations or inquiries

Division 1 Interpretation

211 Definitions for pt 9

In this part—

commencement means commencement of this section.

court includes any tribunal, authority, person or body that has power to require the production of documents or answering of questions, but does not include the Legislative Assembly or a commission of inquiry under the *Commissions of Inquiry Act 1950*.

data logger recording means a recording from a device installed on a self-propelled rolling stock that records rolling stock event data related to operational performance of the rolling stock.

data logger recording information means—

(a) a data logger recording or part of a data logger recording; or

(b) a copy or printout of all or part of a data logger recording; or

(c) any information obtained from a data logger recording or part of a data logger recording.

inquiry means an inquiry conducted by a board of inquiry under this Act.

investigation means an investigation of an occurrence under part 7, division 7.

relevant person see section 212.

restricted information means any of the following, other than data logger recording information—

(a) a statement, whether oral or in writing, obtained from a person in the course of an investigation or inquiry, including any record of the statement;

(b) all information recorded in the course of an investigation or inquiry;

(c) all communications in the course of an investigation or inquiry with a person involved in the operation of rolling stock that is or was the subject of an investigation or inquiry;

(d) medical or private information regarding persons, including deceased persons, involved in an occurrence that is being or has been investigated or that is or has been the subject of an inquiry;

(e) in relation to rolling stock that is or was the subject of an investigation or inquiry—information recorded for the purposes of monitoring or directing the progress of the rolling stock from 1 place to another or information recorded about the operation of the rolling stock;

(f) records of the analysis of information or anything else obtained in the course of an investigation or inquiry, including opinions expressed by a person in that analysis;

(g) information contained in a document that is given to a rail safety officer or board of inquiry in connection with an investigation or inquiry.

212 Meaning of *relevant person*

A ***relevant person*** is any of the following—

(a) the chief executive;

(b) a rail safety officer—

(i) who is required to investigate a matter under section 164(2); or

(ii) who is not required to investigate a matter under section 164(2) but who is investigating a notifiable occurrence, or another occurrence that endangers or could endanger the safe operation of railway operations, for the purpose of finding out its cause as opposed to finding evidence of a suspected offence; or

(iii) whose services are made available to a board of inquiry under section 195;

(c) another person made available to help a board of inquiry in any capacity.

Division 2 Protection of particular information

Subdivision 1 Limitations on disclosure etc. of restricted information

213 Prohibition on recording or disclosure of restricted information by relevant persons

(1) A person who is or has been a relevant person must not make a record of restricted information.

Maximum penalty—2 years imprisonment.

(2) A person who is or has been a relevant person must not disclose restricted information to any person or to a court.

Maximum penalty—2 years imprisonment.

(3) This section is subject to section 215.

214 Prohibition on recording or disclosure of restricted information by other persons

(1) A person who has, or had, access to restricted information under section 220 must not—

(a) make a record of the information; or

(b) disclose the information to any person or to a court.

Maximum penalty—2 years imprisonment.

(2) This section is subject to section 215.

215 Exceptions to prohibitions on recording or disclosure of restricted information

(1) Sections 213(1) and (2) and 214(1) do not apply to—

(a) anything done by a person in performing functions under this Act or in connection with this Act; or

(b) without limiting paragraph (a), disclosure to any board of inquiry; or

(c) disclosure to a court in criminal proceedings for an offence against this part, part 7, division 7 or part 8; or

(d) disclosure of restricted information to a court in civil proceedings if—

(i) the chief executive has issued a certificate stating that the disclosure of the information is not likely to interfere with any current or future investigation or inquiry; and

(ii) the court makes an order under subsection (2) in relation to the disclosure.

(2) If a court in civil proceedings is satisfied that any adverse domestic and international impact that the disclosure of restricted information might have on any current or future investigations or inquiries is outweighed by the public interest in the administration of justice, the court may order the disclosure.

(3) In a proceeding for an offence against section 213(1) or (2) or 214(1), the onus is on the defendant to adduce or point to evidence that suggests a reasonable possibility that subsection (1) applies.

216 Court can not require disclosure of restricted information

If a person is prohibited by this subdivision from disclosing restricted information—

(a) the person can not be required by a court to disclose the information; and

(b) any information disclosed by the person in contravention of this section is not admissible in any civil or criminal proceeding, other than a proceeding against the person under this subdivision.

217 Court may direct no publication or communication of restricted information

A court in which a disclosure mentioned in section 215(1)(c) or (d) is made may direct that the restricted information, or any information obtained from the restricted information, must not—

(a) be published or communicated to any person; or

(b) be published or communicated other than in the way, and to the persons, the court states.

Subdivision 2 Particular disclosure etc. of restricted information authorised

218 Release of restricted information for ensuring rail safety

(1) The chief executive may disclose restricted information to any person if the chief executive considers that the disclosure is necessary or desirable for the purposes of ensuring rail safety.

(2) However, the chief executive may only disclose restricted information that is, or that contains, personal information in the circumstances prescribed under a regulation.

(3) In this section—

individual does not include an individual who is an accredited person.

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 ascertained, from the information or opinion.

219 Authorisation of coroner to have access to restricted information

(1) This section applies if a coroner requests or requires the chief executive to give restricted information to the coroner.

(2) The chief executive must give the restricted information to the coroner.

220 Chief executive may authorise persons to have access to restricted information

The chief executive may authorise someone other than a relevant person to have access to restricted information if the chief executive considers that it is necessary or desirable to do so.

Division 3 Provisions about relevant persons

221 Certification by chief executive of relevant person's involvement in investigation or inquiry

The chief executive may issue a certificate stating that a stated person who is or has been a relevant person is involved, or has been involved, in an investigation or inquiry about a stated occurrence.

222 Relevant persons not compellable as witnesses

(1) A person who is or has been a relevant person is not obliged to comply with a subpoena or similar direction of a court to attend and answer questions about an occurrence if the chief executive has issued a certificate under section 221 for the person in relation to the occurrence.

(2) A relevant person is not compellable to give an expert opinion in any civil or criminal proceeding in relation to rail safety.

(3) This section does not apply to—

(a) an inquiry; or

(b) an inquiry conducted by a board of inquiry established or re-established under the *Transport Infrastructure Act 1994*, section 219 as in force from time to time before the commencement; or

(c) a coronial inquest.

(4) In this section—

expert opinion means an opinion that requires specialised knowledge based on training, study or experience.

Part 10 Other offences and provisions about liability for offences

Division 1 Offence about discrimination or victimisation

223 Discrimination against or victimisation of employees

(1) An employer must not dismiss an employee, or otherwise prejudice an employee in the employee's employment, for the dominant or substantial reason that the employee—

(a) has helped or given information to a public agency in relation to a breach or alleged breach of an Australian rail safety law; or

(b) has made a complaint about a breach or alleged breach of an Australian rail safety law to an employer, former employer, fellow employee, former fellow employee, union or public agency.

Examples of prejudicial conduct in relation to an employee's employment—

- demotion of the employee
- unwarranted transfer of the employee
- reducing the employee's terms of employment

Maximum penalty—40 penalty units.

(2) An employer must not fail to offer employment to a prospective employee, or in offering employment to a prospective employee treat the prospective employee less favourably than another prospective employee would be treated in similar circumstances, for the dominant or substantial reason that the prospective employee—

(a) has helped or given information to a public agency in relation to a breach or alleged breach of an Australian rail safety law; or

(b) has made a complaint about a breach or alleged breach of an Australian rail safety law to an employer, former employer, fellow employee, former fellow employee, union or public agency.

Maximum penalty—40 penalty units.

(3) In this section—

Australian rail safety law means this Act or a corresponding rail safety law.

employee includes an individual who works under a contract for services.

employer, of a prospective employee, includes a prospective employer of the employee.

public agency means a public agency of any jurisdiction and includes the following—

(a) the chief executive;

(b) a rail safety officer;

(c) a police officer;

(d) a corresponding rail safety regulator;

(e) an interstate rail safety officer;

(f) a police officer of another State.

224 Order for damages or reinstatement

(1) This section applies if an employer is convicted of an offence against section 223 in relation to an employee or prospective employee.

(2) In addition to imposing a penalty, a court may make 1 or more of the following orders—

(a) an order that the employer pay, within a stated period, the employee or prospective employee the damages the court considers appropriate to compensate the employee or prospective employee;

(b) for an employee—an order that the employee be reinstated or re-employed in the employee's former position or, if that position is not available, in a similar position;

(c) for a prospective employee—an order that the prospective employee be employed in the position for which the prospective employee applied, or a similar position.

(3) In this section—

employee includes an individual who works under a contract for services.

employer, of a prospective employee, includes a prospective employer of the employee.

Division 2 Offences about false or misleading information

225 False or misleading statements

(1) A person must not state anything to an official that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the statement made was 'false or misleading', without specifying which.

226 False or misleading documents

(1) A person must not give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply if the person, when giving the document—

(a) tells the official, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the document was 'false or misleading', without specifying which.

Division 3 Other offences

227 Obstruction of officials

(1) A person must not obstruct an official in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) If a person has obstructed an official and the official decides to proceed with the exercise of the power, the official must warn the person that—

(a) it is an offence to obstruct the official, unless the person has a reasonable excuse; and

(b) the official considers the person's conduct is an obstruction.

(3) In this section—

obstruct includes—

(a) assault, hinder, intimidate and resist; and

(b) attempt or threaten to obstruct.

official means—

(a) the chief executive; or

(b) a rail safety officer; or

(c) an interstate rail safety officer exercising a power under this Act as provided for in a reciprocal powers agreement; or

(d) a person acting under the direction of a person mentioned in paragraph (a), (b) or (c), in the exercise of a power under this Act.

228 Concealing document or other thing

A person must not intentionally conceal the location or existence of a document or other thing from an official in the exercise of a power under this Act.

Maximum penalty—200 penalty units.

229 Impersonating a rail safety officer

A person must not pretend to be a rail safety officer.

Maximum penalty—100 penalty units.

230 Interfering with equipment, rail infrastructure or rolling stock

(1) A person must not interfere with equipment, rail infrastructure or rolling stock unless—

(a) the interference is permitted or authorised—

(i) by an authorised person for the equipment, rail infrastructure or rolling stock; or

(ii) under the *Transport Infrastructure Act 1994,* section 253; or

(b) the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who carries out urgent maintenance of equipment, rail infrastructure or rolling stock.

(3) In this section—

authorised person, for equipment, rail infrastructure or rolling stock, means—

(a) the rail transport operator who has the effective management and control of the equipment, rail infrastructure or rolling stock; or

(b) a rail safety officer.

interfere with, equipment, rail infrastructure or rolling stock, includes—

(a) disable, move or operate the equipment, rail infrastructure or rolling stock; and

(b) attempt to interfere with the equipment, rail infrastructure or rolling stock.

231 Using brake or emergency device

(1) A person must not, unless the person has a reasonable excuse—

(a) apply a brake, or use an emergency device, fitted to a train or tram; or

(b) use an emergency device on railway premises.

Example of emergency device—

emergency button on a station communication board or on an escalator

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to—

(a) a person who has lawful control of the train or tram; or

(b) a person who is using a brake or emergency device on the train or tram, or an emergency device on railway premises, and has lawful authority to use the brake or device.

232 Stopping a train or tram

(1) A person must not, unless the person has a reasonable excuse, cause, or attempt to cause, a train or tram in motion to stop.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to—

(a) a person who has lawful control of the train or tram; or

(b) a person who is using a brake or emergency device on the train or tram, or an emergency device on railway premises, and has lawful authority to use the brake or device.

233 Notification requirement for prescribed persons

(1) This section applies if—

(a) a person prescribed under a regulation for this section carries out, or intends to carry out, an operation or activity prescribed under a regulation for this section; and

(b) the operation or activity could adversely affect the safety of a rail transport operator's rail infrastructure or rolling stock.

(2) The person must, within the period prescribed under a regulation, notify the rail transport operator, in the approved form, of the following—

(a) the commencement of the operation or activity;

(b) any discontinuation or recommencement of the operation or activity;

(c) the completion of the operation or activity.

Maximum penalty—200 penalty units.

Division 4 Provisions about liability for offences

234 Multiple offences

Despite any Act or other law, a person may be punished for more than 1 breach of a requirement of this Act if the breaches relate to different parts of the same railway premises, rail infrastructure or rolling stock.

235 Responsibility for acts or omissions of representative

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

representative means—

(a) for a corporation—an executive officer, employee or agent of the corporation; or

(b) for an individual—an employee or agent of the individual.

state of mind of a person includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

236 Executive officers must ensure corporation complies with Act

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for a contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

(a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or

(b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

(5) This section does not apply to an executive officer acting on a voluntary basis, whether or not the officer is reimbursed for

the expenses incurred by the officer for carrying out activities for the corporation.

237 Daily penalty for continuing offences

(1) This section applies to a person who commits an offence against this Act that requires the person to do something or not do something.

(2) The offence is a continuing offence and may be charged in 1 or more complaints for periods for which the offence continues.

Maximum penalty for each day the offence continues after the person is convicted of the offence—$^{1}/_{5}$ of the maximum penalty for the offence.

(3) For the penalty under subsection (2), an offence that continues for a part of a day is taken to have continued for the entire day.

238 Compliance with conditions of accreditation

(1) This section applies if an accreditation condition of a person's accreditation makes provision in relation to preventing a contravention of a requirement of this Act.

(2) If the person complies with the condition to the extent that it makes that provision, the person is taken to have complied with the requirement.

(3) In this section—

requirement includes rail safety duty.

239 Compliance with compliance code

(1) This section applies if—

(a) a compliance code makes provision in relation to preventing a contravention of a requirement of this Act; and

(b) a person complies with the compliance code to the extent that it makes that provision.

(2) The person is taken to have complied with the requirement.

(3) In this section—

requirement includes rail safety duty.

Part 11 Review and appeal

240 Review of original decision

(1) A person whose interests are affected by a decision described in schedule 2 (the ***original decision***) may ask the chief executive to review the decision.

(2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision of this Act under which the decision is made requires that the person be given a statement of reasons for the decision.

(3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—

(a) applies to the review; and

(b) provides—

(i) for the procedure for applying for the review and the way it is to be carried out; and

(ii) that the original decision may be stayed by the person by applying to the court stated in schedule 2 for the decision.

241 Appeal against reviewed decision

(1) This section applies if the chief executive conducting a review under section 240 confirms or amends an original decision affecting a person or substitutes another decision.

(2) The person may appeal against the confirmed, amended or substituted decision (the ***reviewed decision***) to the court stated in schedule 2 for the decision.

(3) If schedule 2 indicates that an appeal may be made to the District Court or to a Magistrates Court, the appeal is to be made—

(a) if the amount involved exceeds $50000—to the District Court; or

(b) otherwise—to a Magistrates Court.

(4) The *Transport Planning and Coordination Act 1994*, part 5, division 3—

(a) applies to the appeal; and

(b) provides—

(i) for the procedure for the appeal and the way it is to be disposed of; and

(ii) that the reviewed decision may be stayed by the person by applying to the court that is to hear the appeal.

Part 12 Legal proceedings

Division 1 Application

242 Application of pt 12

This part applies to a proceeding under this Act.

Division 2 Evidence

243 Evidence from records required to be kept under Act

A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

(a) a stated document is a record, or an extract from a record, kept under section 261;

(b) a stated document is a copy of a record or extract mentioned in paragraph (a);

(c) on a stated day, or for a stated period, an accreditation was, or was not, in force for a stated person;

(d) on a stated day, or for a stated period, a stated condition applied, or did not apply, to an accreditation in force for a stated person;

(e) on a stated day, or for a stated period, an accreditation for a stated person was suspended;

(f) on a stated day, an accreditation for a stated person was revoked or surrendered;

(g) on a stated day, a stated person was given an improvement notice, or a notice amending an improvement notice, and the requirements applying to the person under the improvement notice, or the improvement notice as amended;

(h) on a stated day, a stated person was given a prohibition notice, or a notice amending a prohibition notice, and the requirements applying to the person under the prohibition notice, or the prohibition notice as amended.

244 Evidence about reciprocal powers agreement

A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

(a) on a stated day, or during a stated period, a rail safety officer was exercising, or purportedly exercising, powers under a stated provision of a stated reciprocal powers agreement;

(b) on a stated day, or during a stated period, an interstate rail safety officer was exercising, or purportedly exercising, powers under a stated provision of a stated reciprocal powers agreement;

(c) a stated document is a copy of a stated reciprocal powers agreement;

(d) a stated document is a copy of an extract from a stated reciprocal powers agreement.

245 Evidence of other matters

(1) A certificate purporting to be signed by an official and stating any of the following matters is evidence of the matter—

(a) a stated matter appears in a stated record kept by the official for the administration or enforcement of this Act or a corresponding law;

(b) a stated matter appears in a stated record accessed by the official for the administration or enforcement of this Act or a corresponding law.

(2) A certificate purporting to be signed by an official stating a matter that has been worked out from either of the following is evidence of the matter—

(a) a stated record kept by the official for the administration or enforcement of this Act or a corresponding law;

(b) a stated record accessed by the official for the administration or enforcement of this Act or a corresponding law.

(3) In this section—

official means—

(a) the chief executive; or

(b) a rail safety officer; or

(c) a corresponding rail safety regulator.

246 Proof of appointment and authority unnecessary

(1) For a proceeding under this Act, the following must be presumed unless a party to the proceeding, by prescribed notice, requires proof of it—

(a) the appointment of any of the following—

(i) the chief executive;

(ii) a rail safety officer;

(iii) a corresponding rail safety regulator;

(iv) an interstate rail safety officer;

(v) a police officer of another State;

(vi) the head of the police force or police service of another State;

(b) the authority of the chief executive or a rail safety officer to do anything under this Act.

(2) In this section—

prescribed notice, for a proceeding under this Act, means notice at least 14 days before the day a court starts to hear the proceeding.

247 Proof of signature unnecessary

A signature purporting to be the signature of any of the following is evidence of the signature it purports to be—

(a) the chief executive;

(b) a rail safety officer;

(c) a corresponding rail safety regulator;

(d) an interstate rail safety officer;

(e) a police officer of another State;

(f) the head of the police force or police service of another State.

Division 3 Proceedings

248 Proceedings for offences

(1) A proceeding for an offence against this Act—

(a) is to be taken in a summary way under the *Justices Act 1886*; and

(b) must be started by complaint of—

(i) the chief executive; or

(ii) someone else authorised by the Minister.

(2) The proceeding must start within the later of the following periods to end—

(a) 1 year after the commission of the offence;

(b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

(3) A statement in a complaint for an offence against this Act that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

Part 13 General

Division 1 Confidentiality

249 Giving information to WHS chief executive

(1) The chief executive may, if asked by the WHS chief executive under an arrangement, give the WHS chief executive information held by the chief executive that—

(a) the chief executive is satisfied will help the WHS chief executive in the exercise of the WHS chief executive's functions under the Workplace Health and Safety Act; and

(b) is not restricted information under section 211.

(2) A WHS official who acquires information or accesses a document containing information given under subsection (1) must not do either of the following—

(a) disclose to anyone else—

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else.

Maximum penalty—100 penalty units.

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document—

(a) if the information or document is about a person—with the person's consent; or

(b) for administering, or monitoring or enforcing compliance with, the Workplace Health and Safety Act; or

(c) for the administration or enforcement of another Act or law, if the disclosure or access is in the interests of public safety; or

(d) in a proceeding before a court, or before an entity carrying out functions under the Workplace Health and Safety Act, in which the information is relevant to the issue before the court or entity; or

(e) as required or authorised under an Act; or

(f) in a way authorised under a transitional regulation.

(4) Subsection (1) applies despite section 250.

(5) In this section—

WHS chief executive means the chief executive of the department in which the Workplace Health and Safety Act is administered.

WHS official means a person who is, or has been—

(a) the WHS chief executive or a delegate of the WHS chief executive; or

(b) an inspector under the Workplace Health and Safety Act or a person acting under the direction of the inspector; or

(c) another person involved in the administration of the Workplace Health and Safety Act.

250 Confidentiality

(1) This section applies to a prescribed person who has, in the course of administering this Act or because of an opportunity provided by involvement in administering this Act—

(a) acquired information about someone else; or

(b) gained access to a document about someone else.

(2) The prescribed person must not do either of the following—

(a) disclose to anyone else—

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else.

Maximum penalty—100 penalty units.

(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document, about a person—

(a) with the person's consent; or

(b) for administering, or monitoring or enforcing compliance with, this Act or a corresponding rail safety law; or

(c) for the administration or enforcement of another Act or law, if the disclosure or access is in the interests of public safety; or

(d) in a proceeding before a court, or before an entity carrying out functions under this Act or a corresponding rail safety law, in which the information is relevant to the issue before the court or entity; or

(e) as required or authorised under an Act; or

(f) in a way authorised under a transitional regulation.

(4) This section does not prevent the chief executive or a corresponding rail safety regulator from—

(a) using information to accumulate aggregate data; or

(b) authorising the use of aggregate data for research or education.

(5) In this section—

prescribed person means a person who is or has been involved in the administration of this Act, including a person who is or has been any of the following—

(a) a rail safety officer or a person acting under the direction of a rail safety officer;

(b) a person authorised by the chief executive or a rail safety officer to do something under this Act;

(c) a delegate of the chief executive;

(d) a person employed by, or engaged to provide services to or on behalf of, the chief executive;

(e) a person employed by, or engaged to provide services to, an entity engaged to provide services to the chief executive.

Division 2 Protection from liability

251 Particular persons acting under this Act

(1) This section applies to each of the following persons (a ***relevant person***)—

(a) the chief executive;

(b) a rail safety officer;

(c) a person authorised by the chief executive, a rail safety officer, a corresponding rail safety regulator or an interstate rail safety officer to do something under this Act.

(2) A relevant person is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(3) If subsection (2) prevents civil liability attaching to a relevant person, the liability attaches instead to—

(a) for the chief executive—the State; or

(b) for a relevant person who is a rail safety officer—

(i) if the officer is an employee of an accredited person and the officer's act or omission related to an occurrence on or in relation to the accredited person's railway premises or railway operations—the accredited person; or

(ii) otherwise—the State; or

(c) for a relevant person mentioned in subsection (1)(c)—

(i) if the person was authorised by the chief executive and was acting under the control or direction of the chief executive—the State; or

(ii) if the person was authorised by a rail safety officer and was acting under the control or direction of the officer—the entity to whom the liability would attach under paragraph (b) if the officer had done the act or made the omission; or

(iii) if the person was authorised by a corresponding rail safety regulator or an interstate rail safety officer and was acting under the control or direction of the corresponding rail safety regulator or interstate rail safety officer—the corresponding rail safety regulator.

(4) In this section—

corresponding rail safety regulator means a rail safety regulator under a prescribed corresponding law.

interstate rail safety officer means an interstate rail safety officer under a prescribed corresponding law.

prescribed corresponding law means a corresponding law prescribed under a regulation for this section.

252 Particular persons acting under prescribed corresponding law

(1) This section applies if—

(a) an authorised person does an act, or makes an omission, in the exercise of a power conferred under a prescribed corresponding law; and

(b) when the authorised person does the act or makes the omission, the authorised person is acting under the control and direction of the chief executive in relation to the exercise of the power mentioned in paragraph (a); and

(c) civil liability for the act or omission would attach to the authorised person, apart from the provision mentioned in paragraph (d); and

(d) a provision of the prescribed corresponding law provides that civil liability for the act or omission attaches to the chief executive.

(2) The liability attaches to the State.

(3) In this section—

authorised person means—

(a) a rail safety officer; or

(b) a person authorised by the chief executive or a rail safety officer to do something under a prescribed corresponding law.

prescribed corresponding law means a corresponding law prescribed under a regulation for this section.

253 Persons helping in accidents or emergencies

(1) This section applies if—

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

(b) the help, or attempt to help, is given honestly and without negligence; and

(c) the person does not obtain a fee, charge or other reward for the help, or attempt to help; and

(d) the accident or emergency, or likely accident or emergency, was not wholly or partly caused by the person.

(2) The person is not civilly liable for the help or attempt to help.

(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

(4) This section does not apply to a person to whom section 251 or 252 applies.

254 Registered health practitioners advising on fitness of rail safety worker

(1) This section applies to a registered health practitioner who, acting honestly on reasonable grounds, gives information about a person's fitness for rail safety work to any of the following persons—

(a) the chief executive;

(b) a rail transport operator;

(c) a registered health practitioner employed or engaged by the chief executive or a rail transport operator.

(2) The registered health practitioner is not liable, civilly, criminally or under an administrative process, for giving the information.

(3) Without limiting subsection (2)—

(a) in a proceeding for defamation, the registered health practitioner has a defence of absolute privilege for publishing the information; and

(b) the registered health practitioner—

(i) does not, by giving the information, contravene any Act, oath, rule of law or practice requiring the practitioner to maintain confidentiality of the information; and

(ii) is not liable for disciplinary action for giving the information.

(4) Also, merely because the registered health practitioner gives the information, the practitioner can not be held to have—

(a) breached any code of professional etiquette or ethics; or

(b) departed from accepted standards of professional conduct.

(5) In this section—

information, about a person's fitness for rail safety work, includes—

(a) the results of a test or examination relevant to the person's fitness for the work; and

(b) an opinion about the person's fitness for the work formed on the basis of the results mentioned in paragraph (a); and

(c) an opinion about whether it may be dangerous to allow the person to perform the work.

registered health practitioner means a person registered under—

(a) the *Medical Practitioners Registration Act 2001*, part 3; or

(b) the *Optometrists Registration Act 2001*, part 3; or

(c) the *Physiotherapists Registration Act 2001*, part 3.

Division 3 Compliance codes

255 Making compliance codes

(1) The Minister may make a code of practice in relation to how persons who have duties under this Act can prevent a contravention of a requirement under this Act.

(2) A code of practice, or an instrument amending or repealing a code of practice, has no effect unless the Minister gives notice of its making.

(3) A notice under subsection (2) is subordinate legislation.

(4) A code of practice, or an instrument amending or repealing a code of practice, commences on the later of the following—

(a) the day the notice under subsection (2) commences; or

(b) the day the code or instrument provides that it commences.

(5) A code of practice expires 10 years after its commencement.

(6) The Minister must ensure a copy of each code of practice as in force from time to time, and any document applied, adopted or incorporated by the code of practice, is made available for inspection, free of charge, at each department office during office hours on business days.

(7) A code of practice may be made available in written or electronic form.

(8) In this section—

requirement includes rail safety duty.

256 Civil liability not affected by compliance code

(1) Compliance or noncompliance with a compliance code does not—

(a) create a civil cause of action; or

(b) affect a civil right or remedy, whether at common law or otherwise.

(2) Without limiting subsection (1)(b), compliance with a compliance code does not necessarily show that a civil obligation has been satisfied or has not been breached.

257 Use of compliance code in proceedings

(1) In a proceeding under this Act, a document purporting to be a compliance code is admissible as evidence of the code if—

(a) the proceeding relates to a contravention of a requirement of this Act; and

(b) it is claimed the person contravened the requirement; and

(c) the code states a way or ways to prevent a contravention of the requirement.

(2) In this section—

requirement includes rail safety duty.

Division 4 Rail safety undertakings

258 Meaning of *rail safety undertaking*

A ***rail safety undertaking*** is a written undertaking made by a person (the ***identified person*** for the undertaking) that—

(a) recognises that the chief executive alleges (the ***alleged contravention*** for the undertaking) that the identified person has contravened—

(i) a provision of part 3; or

(ii) section 236(2), because of a corporation's contravention of a provision of part 3; and

(b) identifies the facts and circumstances of the alleged contravention; and

(c) includes an assurance from the identified person about the identified person's future behaviour.

259 Chief executive may accept undertakings

(1) The chief executive may, by notice given to the identified person for a rail safety undertaking, accept the rail safety undertaking.

(2) When the chief executive accepts the rail safety undertaking, the undertaking—

(a) starts operating; and

(b) becomes enforceable against the identified person.

(3) The identified person may at any time with the agreement of the chief executive—

(a) withdraw the undertaking; or

(b) change the provisions of the undertaking.

(4) However, the provisions of the undertaking can not be changed to provide for a different alleged contravention for the undertaking.

(5) Proceedings can not be brought for an offence against this Act constituted by the contravention or alleged contravention to which the undertaking relates.

260 Enforcement of undertakings

(1) If the chief executive considers that an identified person for a rail safety undertaking has contravened the undertaking, the chief executive may apply to a Magistrates Court for an order under this section for the enforcement of the undertaking.

(2) If the court is satisfied that the person has contravened the undertaking, it may make—

(a) an order that the person must comply with the undertaking or take stated action to comply with the undertaking; or

(b) any other order the court considers appropriate.

Division 5 Miscellaneous

261 Records to be kept by chief executive

The chief executive must keep a record of the following—

(a) the grant of an accreditation;

(b) a refusal of an application for accreditation;

(c) the conditions imposed by the chief executive on the grant of an accreditation;

(d) the variation of an accreditation;

(e) the variation of a condition of accreditation imposed by the chief executive;

(f) the suspension or revocation of an accreditation;

(g) the surrender of an accreditation;

(h) the issue of an improvement notice, and any amendment of the notice;

(i) the issue of a prohibition notice, and any amendment of the notice.

262 Recovery of amounts payable under Act

(1) A fee, charge or other amount payable under this Act 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 of competent jurisdiction.

(2) A fee, charge or other amount payable under this Act may also be recovered in a proceeding for an offence against this Act.

(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) If an order is made under subsection (2)—

(a) the order 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.

263 Contracting out prohibited

(1) A contract is void to the extent to which it—

(a) is contrary to this Act; or

(b) purports to annul, exclude, restrict or otherwise change the effect of a provision of this Act.

(2) This section does not prevent the parties to a contract from including provisions in the contract that impose greater or more onerous obligations on an entity than are imposed by the requirements of this Act.

(3) This section applies to contracts entered into before or after the commencement of this section.

(4) In this section—

contract includes agreement.

requirement includes rail safety duty.

264 Approval of forms

The chief executive may approve forms for use under this Act.

265 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation made under this Act may—

(a) impose duties or requirements on persons for ensuring safety of persons in relation to railway operations, rail safety work or another activity associated with railway operations; or

(b) impose a penalty of not more than 20 penalty units for a contravention of a provision of the regulation; or

(c) prescribe fees payable under this Act; or

(d) provide for the review or appeal of decisions made under the regulation.

(3) Also, for section 36(1)(a), a regulation made under this Act may make provision in relation to preventing a contravention of a duty imposed under part 3, division 3.

266 Transitional regulation-making power

(1) A regulation (a ***transitional regulation***) may make provision about—

(a) exemptions, either absolute or conditional, from all or particular provisions of this Act for a person, railway, part of a railway, railway operations or part of railway operations; or

(b) a matter for which a transitional regulation may provide under a provision of this Act; or

(c) to the extent that this Act does not provide or sufficiently provide for the preservation of an existing right or benefit, the preservation of the existing right or benefit with or without modification to allow it to continue under this Act, including by continuing the operation of a repealed provision.

(2) However, a transitional regulation may make provision about a matter mentioned in subsection (1)(a) or (b) only if it is necessary to make the provision temporarily under a regulation to ensure consistency between this Act and corresponding rail safety laws.

(3) A transitional regulation must declare it is a transitional regulation.

(4) A provision of a transitional regulation providing for a matter mentioned in subsection (1)(a) or (b) expires 1 year after its commencement.

(5) The saving provisions expire at the end of 2 years after the commencement of this section.

(6) In this section—

existing right or benefit means a right or benefit that a person has under a repealed provision immediately before the commencement of this section.

repealed provision means a provision of the *Transport Infrastructure Act 1994* that has been repealed by this Act.

saving provisions means—

(a) subsections (1)(c), (5) and (6); and

(b) any provision of a transitional regulation providing for a matter mentioned in subsection (1)(c).

Part 14 Transitional provisions

Division 1 Definitions

267 Definitions for pt 14

In this part—

approved safety management system means a safety management system that was, immediately before the commencement, an approved safety management system under the unamended TIA, section 122.

commencement means the commencement of this section.

complying safety management system means a safety management system complying with the requirements for a safety management system under part 4, division 3.

serious incident has the meaning given by the unamended TIA.

TIA accreditation means accreditation under the unamended TIA, chapter 7, part 3, or chapter 10, part 5, that was in force immediately before the commencement, or is granted under section 300 or 302.

TIA reviewable decision means any of the following—

(a) a decision of the chief executive—

(i) to refuse to grant an accreditation under the unamended TIA, section 126 or 388; or

(ii) to refuse to amend the conditions of an accreditation under the unamended TIA, section 132 or 393;

(b) a decision of the chief executive to impose conditions on an accreditation granted under the unamended TIA, section 126 or 388;

(c) a decision of the chief executive—

(i) to refuse to approve an amendment of a rail transport operator's approved safety management system under the unamended TIA, section 133; or

(ii) to refuse to approve a rail transport operator's proposed safety management system under the unamended TIA, section 136;

(d) a decision of the chief executive to give a safety direction under the unamended TIA, section 144(1);

(e) a decision of a rail safety officer to give a safety direction under the unamended TIA, section 146(1) or 147(1);

(f) a decision of the chief executive to give a direction mentioned in the unamended TIA, section 159(2)(a);

(g) a decision of the chief executive to amend, suspend or cancel an accreditation under the unamended TIA, section 158(2), 159(2), 394(3), 394(8), 395(3), 395(6) or 396(2).

transitioned approved safety management system means a safety management system taken to be a complying safety management system under section 268(2), 269(2) or (5), 303(2) or 306(3).

transition ending event, for a rail transport operator who has a transitioned approved safety management system, means—

(a) the passing of 12 months after the commencement; or

(b) the operator establishes a new safety management system that complies with the requirements for a safety management system under part 4, division 3; or

(c) the operator varies the transitioned approved safety management system to comply with the requirements for a safety management system under part 4, division 3.

unamended TIA means the *Transport Infrastructure Act 1994* as in force from time to time before the commencement.

Division 2 Accreditation

268 Approved safety management system

(1) This section applies if a rail transport operator has an approved safety management system.

(2) The approved safety management system is taken to be a complying safety management system until a transition ending event happens for the operator.

Note—

See, however, section 306(2).

269 Changes to approved safety management system

(1) If a rail transport operator's application for an amendment of an approved safety management system is made but not decided before the commencement, the application must be decided under the unamended TIA, section 133 and, for that purpose, the unamended TIA continues to have effect as if this Act had not been enacted.

(2) If the chief executive approves the proposed amendment, the operator's approved safety management system with the incorporated amendment is taken to be a complying safety management system until a transition ending event happens for the operator.

(3) If the chief executive refuses to approve the proposed amendment, the operator may apply for a review of the decision under the unamended TIA as if this Act had not been enacted.

(4) If a rail transport operator's application for an approval of a proposed safety management system under the unamended TIA, section 136 is made but not decided before the commencement, the application must be decided under the unamended TIA, section 136 and, for that purpose, the unamended TIA continues to have effect as if this Act had not been enacted.

(5) If the chief executive approves the proposed safety management system under the unamended TIA, section 136, the operator's proposed safety management system the subject of the approval is taken to be a complying safety management system until a transition ending event happens for the operator.

(6) If the chief executive refuses to approve the proposed safety management system, the operator may apply for a review of the decision under the unamended TIA as if this Act had not been enacted.

Note—

See section 299 in relation to a review of a decision mentioned in subsection (3) or (6).

270 Application of Act to transitioned approved safety management system

(1) This section applies if a rail transport operator has a transitioned approved safety management system.

(2) Until a transition ending event happens for the operator, a reference in this Act to the safety management system of the operator is taken to be a reference to the operator's transitioned approved safety management system.

(3) For section 55, the review of the operator's safety management system required under that section must be conducted when the transitioned approved safety management system would have been required to be reviewed under the unamended TIA, section 135 if that section had still been in force.

(4) Subsection (3) stops having effect when the transition ending event happens.

271 Continuing effect of existing accreditations

(1) A TIA accreditation—

(a) continues in force; and

(b) is taken to be an accreditation granted under this Act for the following—

(i) for a TIA accreditation for a railway—railway operations relating to the railway that are within the scope of the TIA accreditation;

(ii) for a TIA accreditation for a light rail—railway operations relating to the light rail that are within the scope of the TIA accreditation; and

(c) is subject to—

(i) the conditions imposed on the TIA accreditation by the chief executive under the unamended TIA; and

(ii) regulation conditions within the meaning of the unamended TIA, section 129 applying to the accreditation.

(2) If, at the commencement, an accreditation under the unamended TIA, chapter 7, part 3, or chapter 10, part 5, is subject to a suspension under the unamended TIA, the accreditation is taken to continue in force under subsection (1) but remains subject to the suspension until the end of the suspension period applying under the unamended TIA.

(3) The chief executive must give the person to whom the TIA accreditation was granted a notice stating the matters mentioned in section 86(2)—

(a) for an accreditation in force under the unamended TIA, chapter 7, part 3, or chapter 10, part 5, immediately before the commencement or an accreditation mentioned in subsection (2)—as soon as practicable but within 6 months after the commencement; or

(b) for an accreditation granted under section 300 or 302—when the accreditation is granted.

(4) For an accreditation mentioned in subsection (3)(a), the notice given for the accreditation under the unamended TIA, section 126(6) or 388(7) is taken to be the accreditation notice for the accreditation for railway operations as continued in force

under this Act, until the chief executive gives the notice mentioned in subsection (3)(a) for the accreditation.

Note—

Under section 77, a rail transport operator who is an accredited person for railway operations is required to keep the person's accreditation notice for the railway operations at a particular place and to produce it to a rail safety officer who requests it.

(5) In this section—

scope, of a TIA accreditation, means the scope of the accreditation as stated in—

(a) for a TIA accreditation for a railway—the notice given by the chief executive under the unamended TIA, section 126(6); or

(b) for a TIA accreditation for a light rail—the notice given by the chief executive under the unamended TIA, section 388(7).

272 Existing applications for accreditation

(1) An application (***TIA application***) for an accreditation under the unamended TIA that is not decided before the commencement is taken to be an application for accreditation for the following made under this Act—

(a) if the TIA application relates to a railway—accreditation for railway operations relating to the railway of the scope and nature stated in the application;

(b) if the TIA application relates to a light rail—accreditation for railway operations relating to the light rail of the scope and nature stated in the application.

(2) For applying this Act to an application mentioned in subsection (1), a notice given by the chief executive under the unamended TIA, section 125 or 387 is taken to be a notice given under section 81(3).

273 Unpaid annual levy

(1) This section applies if—

(a) before the commencement, the chief executive gave a person a notice under the unamended TIA, section 127(3) or 389(2); and

(b) at the commencement, the person has not paid the amount of the levy mentioned in the notice, whether or not the date stated in the notice by which the amount must be paid is on or after the commencement.

(2) The person must pay the amount of the levy—

(a) if the date stated in the notice is on or before the commencement—immediately; or

(b) otherwise—before the date stated in the notice.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20 or 20A.

274 Existing applications for amendment of conditions of accreditation

(1) This section applies to an application made under the unamended TIA for an amendment of the conditions imposed on a person's TIA accreditation.

(2) If the application is not decided before the commencement, the application is taken to be an application for a variation of a condition of accreditation made under this Act.

(3) For applying section 102(1)(a) to the decision on the application, the applicant is taken to have met the part of the accreditation criteria for being accredited for railway operations relating to the preparation of the applicant's safety management system if the applicant has an approved safety management system.

275 Notices about financial capacity or public risk insurance arrangements

(1) This section applies if the chief executive has given a notice under the unamended TIA, section 137(3) before the commencement.

(2) The notice continues in force and the unamended TIA, section 137(3) and (4) continue to apply in relation to the notice as if this Act had not been enacted.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20 or 20A.

276 Requirement to notify cancellations etc. of particular agreements

(1) The unamended TIA, section 138 continues to apply in relation to a TIA accreditation as if this Act had not been enacted.

(2) Subsection (1) stops having effect 1 year after the commencement.

277 Decisions about matters relating to access to rail transport infrastructure

(1) If the chief executive has started considering whether or not to make a decision under the unamended TIA, section 139 but has not made a decision under that section at the commencement, the chief executive may continue the consideration under section 113 as if the consideration had started under this Act.

(2) At the commencement, a decision of the chief executive made under the unamended TIA, section 139 is taken to have been made under section 113.

278 Existing guidelines about matters relating to access to rail transport infrastructure

Guidelines developed under the unamended TIA, section 139(6) and having effect immediately before the commencement are taken to be guidelines developed under section 113(6).

279 Dealing with disputes about access to rail transport infrastructure if no safety direction given

(1) This section applies if—

(a) before the commencement, the chief executive is given a notice under the unamended TIA, section 140(2); and

(b) the chief executive reasonably considers it may be appropriate to give a safety direction under the unamended TIA, chapter 7, part 3, division 4 about the matter stated in the notice as in dispute (the ***dispute matter***); and

(c) the chief executive has not given a safety direction under the unamended TIA, section 144(1) in relation to the dispute matter.

(2) If, at the commencement, the chief executive has not given a proposed safety direction under the unamended TIA, section 142, the chief executive may deal with the dispute matter under this Act as if the notice was given under section 114(2).

(3) If, before the commencement, the chief executive has given a proposed safety direction under the unamended TIA, section 142 but has not taken action in relation to the dispute matter under the unamended TIA, section 144—

(a) at the commencement, the proposed safety direction is taken to have been given under section 116; and

(b) the chief executive may deal with the dispute matter under this Act as if the proposed safety direction had been given under section 116.

280 Continuing effect of safety directions

(1) This section applies to either of the following given before the commencement and in force immediately before the commencement—

(a) a safety direction given by the chief executive under the unamended TIA, section 144(1);

(b) a safety direction given by a rail safety officer under the unamended TIA, section 146(1) or 147(1).

(2) The safety direction continues in force and the relevant provisions continue to apply in relation to the direction as if this Act had not been enacted.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20 or 20A.

(4) In this section—

relevant provisions means—

(a) for a safety direction given by the chief executive under the unamended TIA, section 144(1)—the unamended TIA, sections 144 and 149; or

(b) for a safety direction given by a rail safety officer under the unamended TIA, section 146(1)—the unamended TIA, sections 146 and 149; or

(c) for a safety direction given by a rail safety officer under the unamended TIA, section 147(1)—the unamended TIA, sections 147 and 149.

281 Existing audit program

An audit program prepared under the unamended TIA, section 150 and having effect immediately before the commencement is taken to be an audit program prepared under section 111(1)(b).

282 Existing inspections under audit program

(1) This section applies if—

(a) before the commencement, the chief executive has given a notice under the unamended TIA, section 152; and

(b) at the commencement, the person to whom the notice is given has not complied with the requirement in the notice as required under the unamended TIA, section 153.

(2) The notice continues in force and the unamended TIA, sections 152 and 153 continue to apply in relation to the notice as if this Act had not been enacted.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20 or 20A.

283 Disciplinary action against accredited persons

(1) This section applies if—

(a) before the commencement, the chief executive has given a notice under the unamended TIA, section 156, 394(2) or 395(2) (the ***show cause notice***); and

(b) at the commencement, the chief executive has not finally dealt with the proposed action to which the notice relates.

(2) The chief executive may continue to consider the proposed action under the unamended TIA as if this Act had not been enacted and, for that purpose, the relevant provisions continue to apply in relation to the proposed action as if this Act had not been enacted.

(3) If the chief executive's decision on the proposed action is to amend, suspend or cancel a person's TIA accreditation, the amendment, suspension or cancellation has effect under this Act as if it were an amendment, suspension or cancellation of the accreditation as continued under section 271.

(4) If the chief executive's decision on the proposed action is to direct a person to apply for an amendment of an approved safety management system for a railway, the decision is taken to be a direction given under section 59 for the person's transitioned safety management system.

(5) If, under subsection (2), a person's TIA accreditation is amended, suspended or cancelled, or a person is given a direction to apply for an amendment of the person's approved safety management system, the person may apply for a review of the relevant decision under the unamended TIA as if this Act had not been enacted.

(6) Subsection (5) applies despite subsections (3) and (4).

(7) For subsection (5), the unamended TIA continues to have effect as if this Act had not been enacted.

Note—

See section 299 in relation to a review mentioned in subsection (5).

(8) In this section—

relevant provisions means—

(a) for a proposed action relating to a railway—the unamended TIA, sections 157, 159 and 160; or

(b) for a proposed action relating to light rail—the unamended TIA, sections 394, 395 and 397.

284 Requirement about remedying breach of accreditation condition

(1) This section applies if, before the commencement, the chief executive has given a notice under the unamended TIA, section 391(2).

(2) The notice continues in force and the unamended TIA, section 391 continues to apply in relation to the requirement as if this Act had not been enacted.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20 or 20A.

Division 3 Administration, compliance and enforcement

285 Rail safety officers

(1) A person who, immediately before the commencement, was a rail safety officer under the unamended TIA is taken to be appointed as a rail safety officer under section 118—

(a) until the end of the term of appointment under the unamended TIA; and

(b) on the conditions of the appointment under the unamended TIA that are consistent with this Act.

(2) The chief executive must issue the rail safety officer an identity card under section 120 as soon as possible after the commencement.

(3) This section does not apply to a police officer.

286 Existing warrants

(1) This section applies to a warrant issued under the unamended TIA, section 182 (the ***previous warrant***) if, immediately before the commencement, the warrant was in effect and had not been executed.

(2) The previous warrant—

(a) continues to have effect according to its terms; and

(b) is taken to be a warrant issued under section 130.

287 Sample or thing taken for analysis

(1) This section applies to a sample or thing taken for analysis under the unamended TIA, section 185(3)(d) that has not been finally dealt with under the unamended TIA, chapter 7, part 5 before the commencement.

(2) The sample or thing is taken to be a sample or thing taken for analysis under section 134(3)(d).

Note—

A thing to which this section applies may be forfeited under section 154.

288 Dealing with seized property

(1) This section applies to a thing seized under the unamended TIA, section 190 or 191 that has not been finally dealt with under the unamended TIA, chapter 7, part 5 before the commencement.

(2) The thing is taken to have been seized under—

(a) for a thing seized under the unamended TIA, section 190—section 142; or

(b) for a thing seized under the unamended TIA, section 191—section 143.

(3) A receipt given for the thing under the unamended TIA, section 196 is taken to be a receipt given for the thing under section 148.

Note—

A thing to which this section applies may be returned under section 150 or forfeited under section 154 or 155.

(4) For applying this Act to the seizure, the period of 6 months mentioned in section 150 is taken to have started when the thing was seized under the unamended TIA.

(5) If, before the commencement, a rail safety officer has secured the seized thing under the unamended TIA, section 192, the thing is taken to have been secured under section 144.

289 Requirements about moving things

(1) This section applies if a rail safety officer has made a requirement under the unamended TIA, section 194(1) or (3) or 195(1).

(2) The requirement continues in force and the unamended TIA, sections 194 and 195 continue to apply in relation to the requirement as if this Act had not been enacted.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20 or 20A.

290 Request for report or incident details

(1) This section applies if, before the commencement, the chief executive has made a requirement under the unamended TIA, section 215(2).

(2) The requirement continues in force and the unamended TIA, section 215 continues to apply in relation to the requirement as if this Act had not been enacted.

(3) This section does not limit the *Acts Interpretation Act 1954*, section 20 or 20A.

291 Existing investigations about particular incidents

(1) This section applies if, at the commencement, an investigation about an incident had started but not been completed under the unamended TIA, chapter 7, part 6, division 2 or section 400.

(2) The investigation may be continued under part 7, division 7 as if it were a notifiable occurrence.

(3) For subsection (2)—

(a) a requirement made by a rail safety officer under the unamended TIA, section 217(2) is taken to be a requirement made under section 168; and

(b) a requirement made by a rail safety officer under the unamended TIA, section 217(4) is taken to be a requirement made under section 169; and

(c) a requirement made by a rail safety officer under the unamended TIA, section 217(5) is taken to be a requirement made under section 170.

(4) In this section—

incident means a serious incident, or an incident other than a serious incident, on or involving a railway.

292 Uncommenced investigations about particular incidents

(1) This section applies if—

(a) either—

(i) a serious incident on or involving a railway happened before the commencement; or

(ii) the chief executive is aware that a serious incident, or an incident other than a serious incident, on or involving a railway may have happened before the commencement, even if it has not been reported; and

(b) at the commencement, an investigation about the incident had not been started under the unamended TIA, chapter 7, part 6, division 2 or section 400.

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

293 Existing inquiries about particular incidents

(1) This section applies if, at the commencement, an inquiry about an incident by a board of inquiry established or re-established under the unamended TIA, section 219 (***the board***) had started but not been completed.

(2) The incident is taken to be an occurrence for which the Minister had established a board of inquiry under section 192.

(3) The board may continue the inquiry under this Act as if—

(a) the board had been established under section 192 about the occurrence; and

(b) anything done or existing in relation to the inquiry under the unamended TIA had been done or existing in relation to the inquiry under this Act.

294 Uncommenced inquiries about particular incidents

(1) This section applies if—

(a) an incident happened on or involving a railway before the commencement; and

(b) the Minister considers the incident was a serious incident; and

(c) at the commencement, a board of inquiry about the incident had not been established or re-established under the unamended TIA, section 219.

(2) The Minister may establish a board of inquiry about the incident under section 192 as if the incident were an occurrence mentioned in that section.

Division 4 Restricted information

295 Restricted information

(1) This section applies to any information or other thing that was restricted information under the unamended TIA.

(2) The information or other thing continues to be restricted information under this Act.

(3) For applying part 9 to the information or other thing—

(a) in part 9—

(i) a reference to a relevant person is taken to include a reference to a person who is a relevant person under the unamended TIA, section 239AE; and

(ii) a reference to a board of inquiry is taken to include a reference to a board of inquiry established or re-established under the unamended TIA, section 219; and

(iii) a reference to an investigation is taken to include a reference to an investigation under the unamended TIA, chapter 7, part 6; and

(b) in section 214(1), the reference to a person who has, or had, access to restricted information under section 220 is taken to include a reference to a person who has, or had, access to restricted information under the unamended TIA, section 239AD; and

(c) section 215(1) is taken to also provide that sections 213(1) and (2) and 214(1) do not apply to an act or disclosure mentioned in the unamended TIA, section 239AA(4).

296 Certificates of relevant person's involvement in investigation

A certificate issued by the chief executive under the unamended TIA, section 239AF continues in force and is taken to have been issued under section 221.

Division 5 Reviews and appeals

Subdivision 1 Reviews and appeals relating to access to rail transport infrastructure

297 Reviews about decisions relating to access to rail transport infrastructure

(1) Subsection (2) applies if—

(a) a person has made an application under the unamended TIA for a review of a decision (the ***original decision***) of the chief executive under the unamended TIA, section 139(2); and

(b) a decision on the application for review has not been made before the commencement.

(2) A decision on the application for review must be made under this Act as if the original decision was made under section 113.

(3) Subsection (4) applies if—

(a) immediately before the commencement, a person could have applied under the unamended TIA for a review of a decision (also an ***original decision***) of the chief executive under the unamended TIA, section 139(2); and

(b) the person has not made the application before the commencement.

(4) The person may apply to the chief executive for a review of the original decision under this Act as if the original decision was made under section 113.

298 Appeals about decisions relating to access to rail transport infrastructure

(1) Subsection (2) applies if—

(a) a person has appealed to a court under the unamended TIA against a decision of the chief executive confirming a decision made under the unamended TIA, section 139(2); and

(b) the appeal has not been decided before the commencement.

(2) The court must hear, or continue to hear, and decide the appeal under the unamended TIA.

(3) However, the court's decision is taken to be a decision made under section 241 and this Act applies in relation to the court's decision as if it had been made under section 241 about a decision of the chief executive confirming a decision made under section 113.

(4) Subsection (5) applies if—

(a) immediately before the commencement, a person could have appealed to a court under the unamended TIA against a decision (the ***review decision***) of the chief executive confirming a decision made under the unamended TIA, section 139(2); and

(b) the person has not appealed before the commencement.

(5) The person may appeal to the court under this Act as if the review decision was made under section 240, and the court must hear and decide the appeal as if the review decision was made under section 240.

(6) For subsection (2), the unamended TIA continues to have effect as if this Act had not been enacted.

Subdivision 2 Other reviews and appeals

299 Reviews about particular decisions

(1) Subsection (2) applies if—

(a) a person has made an application under the unamended TIA for a review of a TIA reviewable decision; and

(b) a decision on the application for review has not been made before the commencement.

(2) A decision on the application for review must be made under the unamended TIA.

(3) Subsection (5) applies if—

(a) immediately before the commencement, a person could have applied under the unamended TIA for a review of a TIA reviewable decision; and

(b) the person has not made the application before the commencement.

(4) Subsection (5) also applies to a decision mentioned in section 269(3) or (6) or section 283(5).

(5) The person may apply to the chief executive for a review of the decision as provided under the unamended TIA, and the chief executive's decision on that application must be made under the unamended TIA.

(6) For subsections (2) and (5), the unamended TIA continues to have effect as if this Act had not been enacted.

300 Effect of review decision generally

(1) This section applies if, after the commencement, a decision (***review decision***) is made on an application for review of a decision (***original decision***) mentioned in section 299(1)(a), (3)(a) or (4).

(2) If the review decision is an amendment or substitution of the original decision, the review decision must be given effect under the unamended TIA.

Example—

If the effect of a review decision about the chief executive's refusal to grant an accreditation is that the accreditation must be granted, the accreditation must be granted under the unamended TIA.

(3) If the review decision is a confirmation of the original decision, despite the amendment of the *Transport Infrastructure Act 1994* by this Act—

(a) the matter to which the original decision relates continues to be a matter to be dealt with under the unamended TIA; and

Example—

If the original decision relates to an application for accreditation, the application continues to be an application for accreditation under the unamended TIA.

(b) any further decision about the matter must be made under the unamended TIA; and

(c) the person in relation to whom the review decision is made may appeal against the review decision under the unamended TIA.

(4) For subsections (2) and (3), the unamended TIA continues to have effect as if this Act had not been enacted.

(5) This section is subject to sections 303 to 307.

301 Appeals about particular decisions

(1) Subsection (2) applies if—

(a) a person has appealed to a court under the unamended TIA against a decision of the chief executive confirming a TIA reviewable decision; and

(b) the appeal has not been decided before the commencement.

(2) The court must hear, or continue to hear, and decide the appeal under the unamended TIA.

(3) Subsection (5) applies if—

(a) immediately before the commencement, a person could have appealed to a court under the unamended TIA against a decision mentioned in subsection (1)(a); and

(b) the person has not appealed before the commencement.

(4) Subsection (5) also applies to a review decision mentioned in section 300(3)(c).

(5) The person may appeal to the court as provided under the unamended TIA, and the court must hear and decide the appeal under the unamended TIA.

(6) For subsections (2) and (5), the unamended TIA continues to have effect as if this Act had not been enacted.

302 Effect of appeal decision generally

(1) This section applies if, after the commencement, a court decides an appeal against a decision mentioned in section 301(1)(a), (3)(a) or (4).

(2) If the court decides in favour of the appellant, the chief executive must give effect to the court's decision under the unamended TIA.

Example—

If the court decides that an accreditation the subject of the appeal must be granted, the accreditation must be granted under the unamended TIA.

(3) If the court refers the matter to the chief executive with directions—

(a) the matter must be dealt with under the unamended TIA; and

(b) the chief executive must follow the court's directions to the extent possible.

(4) If the court confirms the decision being appealed against, despite the amendment of the *Transport Infrastructure Act 1994* by this Act—

(a) the matter to which the decision relates continues to be a matter to be dealt with under the unamended TIA; and

Example—

If the decision being appealed against relates to an application for accreditation, the application continues to be an application for accreditation under the unamended TIA.

(b) any further decision about the matter must be made under the unamended TIA.

(5) For subsections (2), (3) and (4), the unamended TIA continues to have effect as if this Act had not been enacted.

(6) This section is subject to sections 303 to 307.

303 Further effect of review or appeal decision about approved safety management systems

(1) This section applies if—

(a) after the commencement—

(i) the chief executive makes a decision (***review decision***) on an application for a review of an SMS approval decision; or

(ii) a court makes a decision (***appeal decision***) on an appeal against a decision of the chief executive confirming an SMS approval decision; and

(b) the effect of the review decision or appeal decision is that the approval the subject of the review or appeal must be given; and

(c) the chief executive gives the approval under the unamended TIA as provided for under section 300 or 302.

(2) The rail transport operator's approved safety management system after the approval is given effect by the operator is taken to be a complying safety management system until a transition ending event happens for the operator.

(3) In this section—

SMS approval decision means any of the following—

(a) a decision of the chief executive to refuse to approve an amendment of a rail transport operator's approved safety management system under the unamended TIA, section 133;

(b) a decision of the chief executive to refuse to approve a rail transport operator's proposed safety management system under the unamended TIA, section 136;

(c) a decision of the chief executive mentioned in section 269(3) or (6).

304 Further effect of review or appeal decision about amendment of accreditation

(1) This section applies if—

(a) after the commencement—

(i) the chief executive makes a decision (***review decision***) on an application for a review of an accreditation amendment application decision; or

(ii) a court makes a decision (***appeal decision***) on an appeal against a decision of the chief executive confirming an accreditation amendment application decision; and

(b) the effect of the review decision or appeal decision is that the amendment the subject of the review or appeal must be made.

(2) The chief executive must, under this Act, amend the accreditation as continued under section 271 in accordance with the review decision or appeal decision.

(3) In this section—

accreditation amendment application decision means a decision of the chief executive to refuse to amend the conditions of an accreditation under the unamended TIA, section 132 or 393.

305 Further effect of review or appeal decision about imposition of conditions on accreditation

(1) This section applies if—

(a) after the commencement—

(i) the chief executive makes a decision (***review decision***) on an application for a review of an accreditation condition decision; or

(ii) a court makes a decision (***appeal decision***) on an appeal against a decision of the chief executive confirming an accreditation condition decision; and

(b) the effect of the review decision or appeal decision is that the accreditation the subject of the review or appeal must be granted without conditions or with varied conditions.

(2) The chief executive must, under this Act, amend the accreditation as continued under section 271 to remove or vary the conditions imposed on the accreditation in accordance with the review or appeal decision.

(3) In this section—

accreditation condition decision means a decision of the chief executive to impose conditions on an accreditation granted under the unamended TIA, section 126 or 388.

306 Further effect of review or appeal decision about direction to amend safety management system

(1) This section applies if—

(a) after the commencement—

(i) the chief executive makes a decision (***review decision***) on an application for a review of an SMS direction decision; or

(ii) a court makes a decision (***appeal decision***) on an appeal against a decision of the chief executive confirming an SMS direction decision; and

(b) the effect of the review decision or appeal decision is to confirm the SMS direction decision.

(2) Section 268(2) does not or ceases to apply to a rail transport operator's approved safety management system to which the direction the subject of the review or appeal relates.

(3) If the rail transport operator's approved safety management system is or has been amended as required under the direction, the operator's approved safety management system as amended is taken to be a complying safety management system until a transition event happens for the operator.

(4) In this section—

SMS direction decision means a decision of the chief executive to give a direction mentioned in the unamended TIA, section 159(2)(a).

307 Further effect of review or appeal decision about amendment, suspension or cancellation of accreditation

(1) This section applies if—

(a) after the commencement—

(i) the chief executive makes a decision (***review decision***) on an application for a review of a disciplinary decision; or

(ii) a court makes a decision (***appeal decision***) on an appeal against a decision of the chief executive confirming a disciplinary decision; and

(b) the effect of the review decision or appeal decision is to confirm the disciplinary decision.

(2) The disciplinary decision has effect under this Act as if it had been made under this Act in relation to the accreditation as continued under section 271.

Example—

If the disciplinary decision is a decision to suspend a TIA accreditation for a stated period, the accreditation as continued under section 271 is suspended under this Act for the stated period.

(3) In this section—

disciplinary decision means a decision of the chief executive to amend, suspend or cancel an accreditation under the unamended TIA, section 158(2), 159(2), 394(3), 394(8), 395(3), 395(6) or 396(2).

Part 15 Amendment of Transport Infrastructure Act 1994

308 Act amended in pt 15

This part amends the *Transport Infrastructure Act 1994.*

309 Amendment of s 2 (Objectives of this Act)

(1) Section 2(2)(d)(ii)—

omit, insert—

‘(ii) provides for the safety of railways and persons at, on or near railways; and’.

(2) Section 2(2)(h)(ii)—

omit.

(3) Section 2(2)(h)(iii) to (ix)—

renumber as section 2(2)(h)(ii) to (viii).

(4) Section 2(2)(i)—

renumber as section 2(2)(j).

(5) Section 2(2)—

insert—

'(i) for busways—to establish a regime that provides for safely constructed, managed and operated infrastructure; and'.

(6) Section 2(2)(j), as renumbered—

insert—

'(iii) the safety of light rail, light rail land, light rail transport infrastructure and persons at, on or near light rail, light rail land or light rail transport infrastructure.'.

310 Amendment of s 105B (Definitions for pt 8)

Section 105B, definition *final notice*, 'section 105GF(3)'—

omit, insert—

'section 105GE(4)'.

311 Amendment of s 106 (Ways of achieving objectives)

Section 106(c)—

omit, insert—

'(c) providing for the safety of railways and persons at, on or near railways by imposing requirements directed at ensuring the safety.'.

312 Amendment of s 107 (Scope of chapter)

Section 107—

insert—

‘(3) In this section—

amusement railway means—

(a) a railway that—

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

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

Editor’s note—

See the *Workplace Health and Safety Regulation 1997*, part 2, division 2.

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

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

313 Omission of ch 7, pt 3

Chapter 7, part 3—

omit.

314 Amendment of s 169 (Closing railway crossings)

Section 169—

insert—

‘(3) In this section—

railway crossing means a level crossing, bridge or another structure used to cross over or under a railway.’.

315 Omission of ch 7, pts 5 and 6

Chapter 7, parts 5 and 6—

omit.

316 Amendment of s 243 (Status of railway land)

Section 243(2), definition *railway manager*—

omit, insert—

'***railway manager***, for corridor land, means the person who is an accredited rail infrastructure manager in relation to railway operations for the railway or proposed railway on or proposed to be on the corridor land.'.

317 Amendment of s 255 (Interfering with railway)

Section 255(1)(b), 'a railway provision'—

omit, insert—

'the Rail Safety Act'.

318 Amendment of s 257 (Trespassing on railway)

Section 257, 'wilfully'—

omit, insert—

'intentionally or recklessly'.

319 Omission of s 261 (Non-accredited railways)

Section 261—

omit.

320 Omission of ss 263 and 264

Sections 263 and 264—

omit.

321 Amendment of s 347 (Ways of achieving light rail objectives)

Section 347—

insert—

‘(c) providing for the safety of the following by imposing requirements directed at ensuring the safety—

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

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

322 Amendment of s 348 (Functions)

(1) Section 348(d)—

omit.

(2) Section 348(e)—

renumber as section 348(d).

323 Amendment of s 358 (Permitted construction by local government of roads over or under light rail land)

Section 358—

insert—

‘(7) In this section—

‘***light rail operator***, for a light rail, means a railway operator who is an accredited person in relation to railway operations relating to the light rail.’.

324 Omission of ch 10, pts 5 and 6

Chapter 10, parts 5 and 6—

omit.

325 Amendment of s 480 (Disposal of fees, penalties etc.)

(1) Section 480(4)(b), 'item 21'—

omit, insert—

'item 20'.

(2) Section 480(8), definition *declared amount*, paragraph (c), 'item 21'—

omit, insert—

'item 20'.

326 Amendment of s 481 (No need to prove appointments)

(1) Section 481(d)—

omit.

(2) Section 481(e)—

renumber as section 481(b).

327 Amendment of s 487 (Altering watercourse to adversely affect transport route)

Section 487(8), definition *chief executive*—

omit, insert—

'***chief executive***, in relation to a railway, includes a person who is an accredited person in relation to railway operations relating to the railway.'.

328 Amendment of s 488 (Altering materials etc.)

Section 488(3), definition *chief executive*—

omit, insert—

'***chief executive***, in relation to a railway, includes a person who is an accredited person in relation to railway operations relating to the railway.'.

329 Amendment of s 489 (Recovery of cost of damage)

Section 489(6), definition *chief executive*—

omit, insert—

'***chief executive***, in relation to a railway, includes a person who is an accredited person in relation to railway operations relating to the railway.'.

330 Amendment of sch 1 (Subject matter for regulations)

(1) Schedule 1, item 10—

omit, insert—

'10 Regulation of the safety of railways and persons at, on or near railways by imposing requirements directed at ensuring safety.'.

(2) Schedule 1, item 11—

omit.

(3) Schedule 1, item 16, 'sections 14 and 15'—

omit, insert—

'items 13 and 14'.

(4) Schedule 1, item 17, 'a rail safety officer or'—

omit.

(5) Schedule 1, item 23—

omit.

(6) Schedule 1, item 12 to 25—

renumber as items 11 to 23.

331 Amendment of sch 3 (Reviews and appeals)

(1) Schedule 3, from first entry for section 126 to entry for section 159(2)—

omit.

(2) Schedule 3, from first entry for section 388 to entry for section 396(2)—

omit.

332 Amendment of sch 6 (Dictionary)

(1) Schedule 6, definitions *accepted representations*, *amusement railway, audit program, civil or criminal proceeding, coronial procedure, disciplinary action, dispute matter, employee, enter, imposed condition, incident, individual, inquiry, interim minor amendment, investigation, light rail manager, light rail operator, place, proposed action, public place, Queensland Competition Authority, rail safety officer, railway crossing, railway manager, railway offence, railway provision, railway workplace, relevant person, representation period, restricted information, safety direction, serious incident, show cause notice, show cause period* and *suspend*—

omit.

(2) Schedule 6, definitions *accreditation* and *accredited person*—

relocate to section 521.

(3) Schedule 6—

insert—

'***accreditation***, for chapter 18, part 3, see section 521.

accredited person—

(a) if paragraph (b) does not apply—means a rail transport operator under the Rail Safety Act who is an accredited person under that Act; or

(b) for chapter 18, part 3—see section 521.

accredited rail infrastructure manager means a rail infrastructure manager under the Rail Safety Act who is an accredited person under that Act.

employee, of a railway manager or railway operator, means—

(a) an employee of, or a contractor for, the manager or operator; or

(b) an employee of a contractor mentioned in paragraph (a); or

(c) an individual who performs work for the manager or operator without payment, while the individual is performing that work.

Example for paragraph (c)—

An individual does work as a volunteer for an organisation of which the individual is a member. The organisation is a railway manager. The volunteer is an employee of the railway manager while the volunteer is performing work for the manager.

light rail manager, for a light rail, means a person who is an accredited rail infrastructure manager in relation to railway operations for the light rail.

Rail Safety Act means the *Transport (Rail Safety) Act 2008*.

railway manager means—

(a) for a railway—the person who is an accredited rail infrastructure manager in relation to railway operations relating to the railway; or

(b) for rail corridor land—the person who is an accredited rail infrastructure manager in relation to railway operations relating to the railway or proposed railway on or proposed to be on the rail corridor land.’.

(4) Schedule 6, definition *cane railway*, paragraph (a)—

omit, insert—

‘(a) operated, entirely or partly, on an access right under the *Sugar Industry Act 1999*, chapter 2, part 4; and’.

(5) Schedule 6, definitions *approved safety management system* and *regulation condition*, ‘, for chapter 7, part 3,’—

omit.

(6) Schedule 6, definition *certificate of accreditation* ‘chapter 7, part 3 and’—

omit.

(7) Schedule 6, definition *railway*, from ', and' to 'section 121'—

omit.

Part 16 Amendment of Workplace Health and Safety Act 1995

333 Act amended in pt 16

This part amends the *Workplace Health and Safety Act 1995*.

334 Amendment of s 3 (Application of Act)

Section 3(2)—

insert—

'• *Transport (Rail Safety) Act 2008*'.

335 Insertion of new s 3C

After section 3B—

insert—

'3C Relationship with Transport (Rail Safety) Act 2008

'(1) This section applies if—

(a) this Act, in the absence of this section, would have application in particular circumstances; and

(b) the *Transport (Rail Safety) Act 2008*, part 3, division 2 also has application in the circumstances.

'(2) This Act does not have application in the circumstances to the extent that the *Transport (Rail Safety) Act 2008*, part 3, division 2 has application.

Note—

See the *Transport (Rail Safety) Act 2008*, part 2 for an explanation of the operation of that Act and this Act in circumstances in which both that Act and this Act apply.

‘(3) Without limiting subsection (2), to the extent that this Act would impose on a person a workplace health and safety obligation that is concurrent with a rail safety duty imposed on the person under the *Transport (Rail Safety) Act 2008*, part 3, division 2, the workplace health and safety obligation does not apply to the person.

Example for subsection (3)—

Section 28 of this Act imposes an obligation on a person who conducts a business or undertaking to ensure that each person who performs a work activity for the purposes of the business or undertaking is not exposed to risks to their health and safety arising out of the conduct of the business or undertaking.

Under the *Transport (Rail Safety) Act 2008*, part 3, division 2, a duty is imposed on a rail transport operator to ensure, so far as is reasonably practicable, that rail safety is not affected by the carrying out of the operator’s prescribed railway operations.

Accordingly, the obligation under this Act of a rail transport operator who conducts a business or undertaking does not include a duty to ensure, so far as is reasonably practicable, that rail safety is not affected by the carrying out of the operator’s prescribed railway operations.’.

336 Insertion of new s 185E

After section 185D—

insert—

‘185E Giving information to rail safety chief executive

‘(1) The chief executive may, if asked by the rail safety chief executive under an arrangement, give the rail safety chief executive information held by the chief executive that the chief executive is satisfied will help the rail safety chief executive in the exercise of the rail safety chief executive’s functions under the Rail Safety Act.

‘(2) A rail safety official who acquires information or accesses a document containing information given under subsection (1) must not do either of the following—

(a) disclose to anyone else—

(i) the information; or

(ii) the contents of or information contained in the document;

(b) give access to the document to anyone else.

Maximum penalty—100 penalty units.

‘(3) Subsection (2) does not apply to the disclosure of information, or the giving of access to a document—

(a) if the information or document is about a person—with the person’s consent; or

(b) for administering, or monitoring or enforcing compliance with, the Rail Safety Act; or

(c) for the administration or enforcement of another Act or law, if the disclosure or access is in the interests of public safety; or

(d) in a proceeding before a court, or before an entity carrying out functions under the Rail Safety Act, in which the information is relevant to the issue before the court or entity; or

(e) as required or authorised under an Act; or

(f) in a way authorised under a regulation.

‘(4) A regulation may be made under subsection (3)(f) to authorise the disclosure of information, or the giving of access to a document, only if it is necessary for the authorisation to be given temporarily under a regulation to ensure consistency between this Act and the Rail Safety Act.

‘(5) A regulation made under subsection (3)(f) expires 12 months after its commencement.

‘(6) Subsection (1) applies despite section 185C.

‘(7) In this section—

Rail Safety Act means the *Transport (Rail Safety) Act 2008.*

rail safety chief executive means the chief executive of the department in which the Rail Safety Act is administered.

rail safety officer has the meaning given by the Rail Safety Act.

rail safety official means a person who is or has been involved in the administration of the Rail Safety Act, including a person who is or has been any of the following—

(a) a rail safety officer or a person acting under the direction of a rail safety officer;

(b) a person authorised by the rail safety chief executive or a rail safety officer to do something under the Rail Safety Act;

(c) a delegate of the rail safety chief executive;

(d) a person employed by, or engaged to provide services to or on behalf of, the rail safety chief executive;

(e) a person employed by, or engaged to provide services to, an entity engaged to provide services to the rail safety chief executive.’.

Part 17 Amendment of other Acts

337 Acts amended in sch 1

Schedule 1 amends the Acts it mentions.

Schedule 1 Amendment of particular Acts

section 337

Coroners Act 2003

1 Section 52(1)(e), from 'coroner'—

omit, insert—

'coroner—

(i) under the *Transport (Rail Safety) Act 2008*, section 219; or

(ii) under the *Transport Infrastructure Act 1994*, section 239AC, as in force before its repeal.'.

Freedom of Information Act 1992

1 Schedule 1, entry for *Transport Infrastructure Act 1994*—

omit, insert—

'*Transport (Rail Safety) Act 2008*, part 9, division 2'.

Local Government Act 1993

1 Section 955A, definition *Kuranda rail operator*—

omit, insert—

'***Kuranda rail operator*** means a rail transport operator within the meaning of the *Transport (Rail Safety) Act 2008* who is accredited under that Act for the operation or movement of rolling stock on the Kuranda rail line.’.

Queensland Competition Authority Act 1997

1 Section 187(3)(h)—

omit, insert—

‘(h) the chief executive of the department in which the *Transport (Rail Safety) Act 2008* is administered, to facilitate the exercise of that chief executive’s powers mentioned in part 6, division 1, subdivision 3 of that Act; or’.

2 Section 239(2)(f)—

omit, insert—

‘(f) the chief executive of the department in which the *Transport (Rail Safety) Act 2008* is administered, to facilitate the exercise of that chief executive’s powers mentioned in part 6, division 1, subdivision 3 of that Act; or’.

Transport Operations (Passenger Transport) Act 1994

1 Section 110, definition *relevant transport legislation*, paragraph (b), from ‘chapter’—

omit, insert—

‘chapter 14; or’.

2 Section 110, definition *relevant transport legislation*—

insert—

‘(d) the *Transport (Rail Safety) Act 2008,* part 7 or 8; or

(e) a regulation made under the *Transport (Rail Safety) Act 2008*.’.

3 Section 143AHA(1)(a), from ‘against’—

omit, insert—

‘against—

(i) section 143AC or 143AF; or

(ii) the *Transport Infrastructure Act 1994*, section 255 or 257; or

(iii) the *Transport (Rail Safety) Act 2008*, section 230; and’.

4 Section 154K(1)(a)(ii)—

omit, insert—

‘(ii) a railway operator who is accredited under the *Transport (Rail Safety) Act 2008* for railway operations relating to the railway; or’.

Transport Planning and Coordination Act 1994

1 Section 3, definition *transport land,* paragraph (b)(iii)—

omit, insert—

‘(iii) the operations of a rail infrastructure manager as defined under the *Transport (Rail Safety) Act 2008* who is accredited under that Act; or’.

2 Section 30, definition ***appeal court***, ‘section 29(1)’—

omit, insert—

‘section 29(b)’.

3 Section 30, definition ***original decision***, ‘section 29(1)’—

omit, insert—

‘section 29(a)’.

Schedule 2 Reviews and appeals

sections 240 and 241

Section of Act	Description of decision	Court
section 45(4)	Decision of chief executive to impose condition on registration of private siding	District Court
section 59(1)	Decision of chief executive to give direction to amend safety management system	District Court
section 85(1)(a)	Decision of chief executive to impose conditions on accreditation	District Court
section 85(1)(b)	Decision of chief executive to refuse application for accreditation	District Court
section 85(2)(d)	Decision of chief executive to extend the period for deciding an application for accreditation	Magistrates Court
section 90(2)	Decision of chief executive to suspend or revoke accreditation	District Court
section 90(3)	Decision of chief executive to declare that a person is disqualified from applying for accreditation, or accreditation for stated railway operations, for a stated period	District Court
section 92	Decision of chief executive to immediately suspend accreditation, or extend period of immediate suspension of accreditation	District Court
section 93(1)	Decision of chief executive to vary or revoke a condition, or impose a new condition, on an accreditation	District Court
section 97(1)(a)	Decision of chief executive to impose a new condition or vary a condition on a variation of accreditation	District Court or Magistrates Court
section 97(1)(b)	Decision of chief executive to refuse application for variation of accreditation	District Court or Magistrates Court

Section of Act	Description of decision	Court
section 97(2)(d)	Decision of chief executive to extend the period for deciding an application for variation of accreditation	Magistrates Court
section 102(1)(b)	Decision of chief executive to refuse application for variation of condition of accreditation	District Court or Magistrates Court
section 102(2)(d)	Decision of chief executive to extend the period for deciding an application for variation of condition of accreditation	Magistrates Court
section 115(2)	Decision of chief executive to give safety matter direction	District Court
section 154(1)(c)	Decision of rail safety officer to retain a sample or thing taken for analysis, or a thing seized, under part 7 to prevent commission of offence	District Court or Magistrates Court
section 174	Decision of rail safety officer to give an improvement notice, or amend an improvement notice	District Court or Magistrates Court
section 181	Decision of rail safety officer to give a prohibition notice, or amend a prohibition notice	District Court or Magistrates Court

Schedule 3 Dictionary

section 8

accreditation condition, of an accreditation for railway operations, means—

(a) a prescribed accreditation condition to which the accreditation is subject; or

(b) a condition stated on the accreditation notice for the accreditation.

Note—

See section 87 for the relationship between prescribed accreditation conditions and conditions stated on an accreditation notice for an accreditation.

accreditation criteria see section 79.

accreditation notice, for an accreditation, means—

(a) if the chief executive has issued a consolidated accreditation notice under section 104 for the accreditation—the consolidated accreditation notice; or

(b) otherwise—a notice given by the chief executive stating the matters mentioned in section 86(2) for the accreditation.

accredited means accredited under part 5.

accredited person means a rail transport operator who is accredited, whether or not the operator's accreditation is wholly or partly suspended.

accredited railway, for part 4, division 2, subdivision 4, see section 43.

alcohol test, for part 7, division 7, subdivision 2, see section 166.

approved form means a form approved under section 264.

associated track structure means a structure, including a structure over or under a railway track, and works associated with a railway track.

Examples—

bridge, cutting, drainage works, excavation, land fill, platform, siding, station, tram stop, track support earthworks, tunnel

board of inquiry means a board of inquiry established or re-established under section 192.

civil or criminal proceeding includes an administrative proceeding for the discipline of an individual.

commencement, for part 9, see section 211.

compliance code means a code of practice made by the Minister under section 255.

compliance or investigative purposes includes—

(a) purposes related to ascertaining whether this Act has been or is being complied with, including whether an offence has been, or is being, committed against this Act; and

(b) purposes related to ascertaining whether an accreditation condition of an accreditation has been or is being complied with.

condition, of an accreditation or the registration of a private siding, includes a restriction or term applying to the accreditation or registration.

convicting a person includes a court finding the person guilty, or the person pleading guilty, whether or not a conviction is recorded.

coronial procedure means any of the following under the *Coroners Act 2003*—

(a) the making of a decision for section 30 of that Act;

(b) an inquest;

(c) an investigation;

(d) a conference under section 34 of that Act.

corresponding law, of another State, means—

(a) a law of the other State corresponding, or substantially corresponding, to this Act; or

(b) a law of the other State that is declared under a regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act.

corresponding rail safety law means a rail safety law as defined in a corresponding law.

corresponding rail safety regulator means—

(a) a person who is a rail safety regulator within the meaning of a corresponding rail safety law of another State other than a State for which the corresponding rail safety regulator is prescribed under a regulation under paragraph (b); or

(b) a person prescribed under a regulation as the corresponding rail safety regulator for another State for the purposes of this Act.

court, for part 9, see section 211.

data logger recording, for part 9, see section 211.

data logger recording information, for part 9, see section 211.

dispute matter, for part 6, division 1, subdivision 3, see section 115(1)(a).

drug see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

Electrical Safety Act means the *Electrical Safety Act 2002.*

embargo notice means a notice under section 152.

employee means a person employed under a contract of employment or contract of training.

employer means a person who employs 1 or more other persons under contracts of employment or contracts of training.

enter, rolling stock, includes board rolling stock.

executive officer, of a corporation, means any person, by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation.

exemption notice see section 51.

identified person, for a rail safety undertaking, see section 258(1).

improvement notice means a notice under section 174.

information notice, for a decision, means a notice stating the following—

(a) the decision;

(b) reasons for the decision;

(c) the review and appeal information for the decision.

inquiry, for part 9, see section 211.

interstate rail safety officer means a person appointed under a corresponding law as a rail safety officer under that law.

investigation, for part 9, see section 211.

notice means written notice.

notifiable occurrence—

1 A ***notifiable occurrence*** is an accident or incident associated with railway operations that—

(a) has caused or could have caused—

(i) significant property damage; or

(ii) serious injury; or

(iii) death; or

(b) is prescribed under a regulation to be a notifiable occurrence.

2 A ***notifiable occurrence*** does not include an accident or incident prescribed under a transitional regulation not to be a notifiable occurrence.

official means—

(a) the chief executive; or

(b) a rail safety officer; or

(c) an interstate rail safety officer exercising a power under this Act as provided for in a reciprocal powers agreement; or

(d) a person acting under the direction of a person mentioned in paragraph (a), (b) or (c) in the exercise of a power under this Act; or

(e) a board of inquiry.

place includes premises and vacant land.

prescribed accreditation condition see section 87(1).

prescribed railway operations see section 22.

private siding means a siding that is owned, managed or controlled by a person other than the rail infrastructure manager for the rail infrastructure with which the siding connects or to which it has access, but does not include the following—

(a) a marshalling yard;

(b) a crossing loop;

(c) a passenger terminal;

(d) a freight terminal;

(e) a siding prescribed under a transitional regulation not to be a private siding.

prohibition notice means a notice under section 181.

QCA, for part 6, division 1, subdivision 3, see section 112.

rail infrastructure—

1 ***Rail infrastructure*** is a facility that is necessary to enable a railway to operate safely and includes, for example—

(a) railway tracks and associated track structures; and

(b) service roads, signalling systems, communications systems, rolling stock control systems and data management systems; and

(c) notices and signs; and

(d) electrical power supply and electric traction systems; and

(e) associated buildings, workshops, depots and yards; and

Examples—

freight centres or depots, maintenance depots, office buildings or housing, workshops

(f) plant, machinery and equipment.

2 ***Rail infrastructure*** does not include—

(a) rolling stock; or

(b) a facility prescribed under a transitional regulation not to be rail infrastructure.

rail infrastructure manager means a person who has effective management and control of rail infrastructure or proposed rail infrastructure, whether or not the person—

(a) owns or will own the rail infrastructure; or

(b) has or will have a statutory or contractual right to use the rail infrastructure or to control, or provide, access to it.

rail infrastructure railway operations, for part 4, division 2, subdivision 4, see section 43.

rail safety see section 12.

rail safety duty means a duty imposed under part 3.

rail safety law see section 11(a).

rail safety officer means a person appointed as a rail safety officer under part 6, division 2.

rail safety regulator see section 11(b).

rail safety undertaking see section 258.

rail safety work see section 10.

rail safety worker means an individual who carries out rail safety work but does not include a rail safety officer carrying out functions or exercising powers under this Act.

rail transport infrastructure, for part 6, division 1, subdivision 3, see section 112.

rail transport operator means a person who is either or both of the following—

(a) a rail infrastructure manager;

(b) a rolling stock operator.

railway means a guided system, or proposed guided system, designed for the movement of rolling stock having the capability of transporting passengers or freight, or both, on a railway track with a gauge of 600mm or more, together with its rail infrastructure and rolling stock, and includes—

(a) a heavy railway; and

(b) a light railway; and

(c) a monorail; and

(d) an inclined railway; and

(e) a tramway; and

(f) a railway within a marshalling yard or a passenger or freight terminal; and

(g) a private siding; and

(h) a guided system prescribed under a transitional regulation to be a railway.

Note—

See sections 5 and 6 for the application of this Act to railways.

railway operations see section 9.

railway premises means—

(a) land, or premises on land, on or in which 1 or more of the following is situated—

(i) rail infrastructure, including, for example, an over-track or under-track structure or part of an over-track or under-track structure;

(ii) a freight centre or depot used in connection with the carrying out of railway operations;

(iii) a workshop or maintenance depot used in connection with the carrying out of railway operations; or

(b) other premises, including an office, building or housing, used in connection with the carrying out of railway operations.

reasonably means on grounds that are reasonable in all the circumstances.

reciprocal powers agreement means an agreement entered into under section 125.

registration notice, for a private siding, means the notice of registration for the private siding issued by the chief executive under section 45.

relevant operator, for part 3, division 3, see section 30.

relevant person, for part 9, see section 212.

restricted information, for part 9, see section 211.

review and appeal information, for a decision, means the following information—

(a) all rights of review or appeal under this Act for the decision;

(b) the period in which the review or appeal must be started;

(c) how the rights of review or appeal are to be exercised;

(d) that a person applying for a review of the decision may also apply for a stay of the decision.

road see the *Transport Operations (Road Use Management) Act 1995,* schedule 4.

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

rolling stock—

1 ***Rolling stock*** is a vehicle designed to operate or move on a railway track and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, tram, light inspection vehicle, self-propelled infrastructure maintenance vehicle, trolley, wagon or monorail vehicle.

2 A vehicle designed to operate both on and off a railway track is ***rolling stock*** when the vehicle is being—

(a) operated or moved on a railway track; or

(b) maintained, repaired or modified in relation to the operation or movement of the vehicle on a railway track.

rolling stock operator means a person who has effective management and control of the operation or movement of rolling stock or proposed rolling stock on a railway track, but does not include a person only because that person drives the rolling stock or controls the network or network signals that affect the operation or movement of the rolling stock.

safety, of persons, means safety of all persons, including rail safety workers, passengers, other users of railways and the general public.

safety management system means a document prepared and implemented under section 53.

safety matter, for part 6, division 1, subdivision 3, see section 113(1).

safety matter direction, for part 6, division 1, subdivision 3, see section 115(1)(c).

scope and nature, of railway operations, in relation to an accreditation or application for accreditation, see section 80.

siding means a part of a railway track, connected by points to a running line or another siding, on which rolling stock can be placed clear of the running line.

state, in relation to a document, includes specify.

substance means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour.

train means—

(a) 2 or more units of rolling stock coupled together, at least 1 of which is a locomotive or other self-propelled unit; or

(b) a unit of rolling stock that is a locomotive or other self-propelled unit.

transitional regulation means a regulation made under section 266.

union means an employee organisation under the *Industrial Relations Act 1999.*

Workplace Health and Safety Act means the *Workplace Health and Safety Act 1995*.