

# TASMANIA

---

## RAIL SAFETY BILL 2009

---

### CONTENTS

#### **PART 1 – PRELIMINARY**

1. Short title
2. Commencement
3. Objects of Act
4. Interpretation
5. Railways to which this Act does not apply
6. What “ensuring safety” means
7. What “rail safety work” means
8. Act binds Crown
9. Examples
10. Notes

#### **PART 2 – RAIL SAFETY DUTIES**

11. Safety duties of rail transport operators
12. Duties of rail transport operators extend to contractors
13. Duties of designers, manufacturers, suppliers &c.

#### **PART 3 – ACCREDITATION**

##### ***Division 1 – Application for accreditation***

14. Purpose of accreditation
15. Accreditation required for railway operations

16. Accreditation not required for private sidings, but private sidings may be registered
17. Purpose for which accreditation may be granted
18. Application for accreditation
19. What applicant for accreditation must demonstrate
20. Rail Safety Regulator may direct applicants to coordinate and cooperate in applications
21. Coordination between Rail Safety Regulators
22. Determination of application
23. Prescribed conditions and restrictions
24. Offence of breach of condition or restriction

***Division 2 – Fees***

25. Minister to determine fees
26. Payment of annual accreditation and registration fees
27. Late payment fees
28. Waiver of fees

***Division 3 – Variation and ending of accreditation***

29. Surrender of accreditation
30. Revocation or suspension of accreditation
31. Immediate suspension of accreditation
32. Keeping and making available documents for public inspection
33. Application for variation of accreditation
34. Where application relates to cooperative railway operations or operations in another jurisdiction
35. Determination of application for variation
36. Prescribed conditions and restrictions
37. Variation of conditions and restrictions
38. Rail Safety Regulator may make changes to conditions or restrictions
39. Accreditation cannot be transferred or assigned
40. Sale or transfer of railway operations by accredited person

## **PART 4 – SAFETY MANAGEMENT**

### ***Division 1 – Safety management systems***

- 41. Safety management system
- 42. Rail transport operator to implement and comply with safety management system
- 43. Contractors to comply with safety management system
- 44. Review of safety management system
- 45. Rail Safety Regulator may direct amendment of a safety management system
- 46. Safety performance reports

### ***Division 2 – Interface coordination***

- 47. Interface co-ordination – rail transport operators
- 48. Interface co-ordination – rail infrastructure manager – public roads
- 49. Interface co-ordination – rail infrastructure manager – roads other than public roads
- 50. Interface co-ordination – road manager – public roads and other roads
- 51. Identification and assessment of risks
- 52. Interface agreements
- 53. Rail Safety Regulator may give directions
- 54. Register of interface agreements

## **PART 5 – PLANS, PROGRAMS AND DUTIES OF RAIL SAFETY WORKERS**

### ***Division 1 – Plans and programs***

- 55. Security management plan
- 56. Emergency management plan
- 57. Health and fitness management program
- 58. Alcohol and drug management program
- 59. Fatigue management program

### ***Division 2 – Rail safety workers***

- 60. Competence of rail safety workers to be assessed

- 61. Rail safety workers to have identification
- 62. Duties of rail safety workers

#### **PART 6 – DRUG AND ALCOHOL USE AND TESTING**

- 63. Use of alcohol and drugs by rail safety workers
- 64. Testing for drugs and alcohol

#### **PART 7 – INFORMATION, INVESTIGATION BY RAIL TRANSPORT OPERATORS AND AUDIT**

- 65. Rail transport operators to provide information
- 66. Notification of certain occurrences
- 67. Rail transport operators may be required to investigate notifiable occurrences
- 68. Audit by Rail Safety Regulator of railway operations

#### **PART 8 – INVESTIGATIONS**

- 69. Appointment of investigator
- 70. Conduct of investigation
- 71. Powers of investigator
- 72. Report of findings of investigator
- 73. Rights and obligations of persons in relation to investigations

#### **PART 9 – ENFORCEMENT**

##### ***Division 1 – Entry to places by rail safety officers***

- 74. Power to enter places
- 75. Limitation on entry powers – places used for residential purposes
- 76. Notice of entry

##### ***Division 2 – General enforcement powers***

- 77. General powers after entering a place
- 78. Use of assistants and equipment
- 79. Use of electronic equipment
- 80. Use of equipment to examine or process things
- 81. Securing a site

***Division 3 – Search warrants***

- 82. Search warrants
- 83. Warrants by telephone or other electronic means
- 84. Notice to be given of entry under warrant
- 85. Seizure of things not mentioned in warrant

***Division 4 – Powers to support seizure***

- 86. Directions relating to seizure
- 87. Rail safety officer may direct a thing's return
- 88. Receipt for seized things
- 89. Access to seized thing
- 90. Embargo notices

***Division 5 – Forfeiture***

- 91. Return of seized things
- 92. Forfeiture
- 93. Dealing with forfeited sample or thing

***Division 6 – Directions***

- 94. Directions to certain persons to give assistance
- 95. Directions to give name and address
- 96. Direction to produce documents

***Division 7 – Improvement notices***

- 97. Improvement notices
- 98. Contravention of improvement notice
- 99. Withdrawal or amendment of improvement notices
- 100. Proceedings for offences not affected by improvement notices
- 101. Rail Safety Regulator to arrange for rail safety work required by improvement notice to be carried out

***Division 8 – Prohibition notices***

- 102. Prohibition notice
- 103. Contravention of prohibition notice
- 104. Oral direction before prohibition notice served
- 105. Withdrawal or amendment of prohibition notice

106. Proceedings for offences not affected by prohibition notices

***Division 9 – Miscellaneous***

107. Directions may be given under more than one provision
108. Temporary closing of railway crossings, bridges, &c.
109. Restoring rail infrastructure and rolling stock &c. to original condition after action taken
110. Use of force
111. Power to use force against persons to be exercised only by police officers
112. Protection from incrimination

**PART 10 – REVIEW OF DECISIONS**

113. Reviewable decisions
114. Review by Rail Safety Regulator
115. Review by Magistrates Court (Administrative Appeals Division)

**PART 11 – GENERAL LIABILITY AND EVIDENTIARY PROVISIONS**

***Division 1 – General***

116. Period within which proceedings for offences may be commenced
117. Authority to take proceedings
118. Vicarious responsibility
119. Records and evidence from records
120. Certificate evidence
121. Proof of appointments and signatures unnecessary
122. Multiple offences
123. Offences by bodies corporate, partnerships, associations and employees

***Division 2 – Discrimination against employees***

124. Dismissal or other victimisation of employee
125. Defendant bears onus of proof
126. Order for damages or reinstatement

***Division 3 – False or misleading information***

- 127. False or misleading information provided to Rail Safety Regulator or officials

***Division 4 – Other offences***

- 128. Obstructing or hindering rail safety officers
- 129. Impersonation of rail safety officer
- 130. Interference with train, tram &c.
- 131. Applying brake or emergency device
- 132. Stopping train or tram

***Division 5 – Infringement notices***

- 133. Infringement notices

***Division 6 – Enforceable voluntary undertakings***

- 134. Rail Safety Regulator may accept undertakings
- 135. Enforcement of undertakings

***Division 7 – Court-based sanctions***

- 136. Daily penalty for continuing offences
- 137. Commercial benefits order
- 138. Supervisory intervention order
- 139. Contravention of supervisory intervention order
- 140. Exclusion orders
- 141. Contravention of exclusion order

**PART 12 – OCCUPATIONAL HEALTH AND SAFETY LEGISLATION**

- 142. Act adds to protection provided by OHS legislation
- 143. OHS legislation prevails
- 144. Compliance with this Act is no defence to prosecution under OHS legislation
- 145. Evidence of contravention under this Act is admissible in OHS legislation proceedings
- 146. No double jeopardy

## **PART 13 – ADMINISTRATION**

### ***Division 1 – Rail Safety Regulator***

- 147. Rail Safety Regulator
- 148. Functions
- 149. Annual reports
- 150. Delegation
- 151. Rail Safety Regulator may exercise functions of rail safety officers

### ***Division 2 – Rail safety officers***

- 152. Appointment
- 153. Reciprocal powers of rail safety officers
- 154. Identification cards for rail safety officers
- 155. Rail safety officer must not exercise functions without identification card
- 156. Display and production of identification card
- 157. Return of identification cards

## **PART 14 – MISCELLANEOUS**

### ***Division 1 – Confidentiality***

- 158. Confidentiality

### ***Division 2 – Civil liability***

- 159. Civil liability not affected by Part 2, 4 or 5
- 160. Exclusion of personal liability
- 161. Immunity for reporting unfit rail safety worker

### ***Division 3 – Compliance codes and guidelines***

- 162. Approval of compliance codes and guidelines
- 163. Effect of compliance code
- 164. Effect of complying with compliance code

### ***Division 4 – Other matters***

- 165. Exemptions
- 166. Recovery of certain costs
- 167. Recovery of amounts due



- 168. Compliance with conditions of accreditation
- 169. Prescribed persons
- 170. Contracting-out prohibited
- 171. Regulations
- 172. Administration of Act

#### **PART 15 – TRANSITIONAL**

- 173. Interpretation of this Part
- 174. Saving of appointment of Rail Safety Regulator
- 175. Saving of accreditation of persons under former Act
- 176. Registration of private sidings
- 177. Applications and administrative acts and decisions
- 178. Application of provisions in respect of existing operators

#### **PART 16 – ABT RAILWAY DEVELOPMENT ACT 1999 AMENDED**

- 179. Principal Act
- 180. Section 30 repealed

#### **PART 17 – EMU BAY RAILWAY (OPERATION AND ACQUISITION) ACT 2009 AMENDED**

- 181. Principal Act
- 182. Section 3 amended (Interpretation)
- 183. Section 4 amended (Authority of PN Tas (Operations) Pty Limited to operate rail business on Emu Bay Railway)

#### **PART 18 – LOCAL GOVERNMENT ACT 1993 AMENDED**

- 184. Principal Act
- 185. Section 87 amended (Exemption from rates)

#### **PART 19 – POLICE OFFENCES ACT 1935 AMENDED**

- 186. Principal Act
- 187. Section 3 amended (Interpretation)

#### **PART 20 – RAIL COMPANY ACT 2009 AMENDED**

- 188. Principal Act
- 189. Section 4 amended (Interpretation)

**PART 21 – RAIL INFRASTRUCTURE ACT 2007 AMENDED**

- 190. Principal Act
- 191. Section 3 amended (Interpretation)
- 192. Section 10 repealed

**PART 22 – LEGISLATION REPEALED AND RESCINDED**

- 193. Legislation repealed
- 194. Legislation rescinded

**PART 23 – FURTHER CONSEQUENTIAL AMENDMENTS**

- 195. Amendment of *Emu Bay Railway (Operation and Acquisition) Act 2009*
- 196. Amendment of *Boundary Fences Act 1908*

**SCHEDULE 1 – LEGISLATION REPEALED**

**SCHEDULE 2 – LEGISLATION RESCINDED**

# **RAIL SAFETY BILL 2009**

*(Brought in by the Minister for Infrastructure, the Honourable  
Graeme Lindsay Sturges)*

## **A BILL FOR**

**An Act to make provision for rail safety and other matters  
that form part of a system of nationally consistent rail  
safety laws, to repeal the *Rail Safety Act 1997* and for other  
purposes**

Be it enacted by His Excellency the Governor of Tasmania, by  
and with the advice and consent of the Legislative Council and  
House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Rail Safety Act 2009*.

### **2. Commencement**

- (1) The provisions of this Act, except Part 23, commence on a day or days to be proclaimed.
- (2) If this Act receives the Royal Assent before section 12 of, and Schedule 1 to, the *Emu Bay Railway (Operation and Acquisition) Act 2009* commence, section 195 commences on the day on which this Act receives the Royal Assent.

*Rail Safety Act 2009*  
*Act No. of*

s. 3

Part 1 – Preliminary

---

- (3) If this Act receives the Royal Assent after section 12 of, and Schedule 1 to, the *Emu Bay Railway (Operation and Acquisition) Act 2009* commence, section 196 commences on the day on which this Act receives the Royal Assent.

### 3. Objects of Act

Having regard to the importance of 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 persons or freight by rail.

### 4. Interpretation

In this Act –

“**accredited person**” means a rail transport operator who is accredited under this Act but does not include a person whose accreditation under this Act –

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

(a) has been surrendered or revoked or has otherwise ceased to have effect under this Act; or

(b) is suspended under this Act;

**“Australian rail safety laws”** means the rail safety law or a corresponding rail safety law;

**“Australian Rail Safety Regulator”** means the Rail Safety Regulator or a corresponding Rail Safety Regulator;

**“commercial benefits order”** means an order under section 137;

**“compliance code”** means a compliance code approved by the Minister under Division 3 of Part 14;

**“corresponding law”** means –

(a) the law of another jurisdiction corresponding, or substantially corresponding, to this Act; or

(b) a law of another jurisdiction that is declared under the regulations 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;

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

**“corresponding Rail Safety Regulator”**  
means –

- (a) the Rail Safety Regulator within the meaning of a corresponding rail safety law (except in the case of a jurisdiction for which a person is prescribed under paragraph (b)); or
- (b) a person prescribed as the corresponding Rail Safety Regulator for another jurisdiction for the purposes of this Act;

**“drug”** includes an illicit drug;

**“eligible person”**, in relation to a reviewable decision, has the meaning it has in section 113(2);

**“embargo notice”** means a notice under section 90;

**“emergency services”** means –

- (a) the State Emergency Service continued under section 25 of the *Emergency Management Act 2006*; or
- (b) the Tasmanian Ambulance Service established under the *Ambulance Service Act 1982*; or

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

- 
- (c) the Tasmanian Fire Service established under the *Fire Service Act 1979*; or
  - (d) the Police Service established under the *Police Service Act 2003*; or
  - (e) a council; or
  - (f) another body constituted under an Act or a Commonwealth Act, a Government agency or a part of a Government agency –
    - (i) whose role usually includes emergency management; or
    - (ii) which is, or may be, in a particular emergency, required to participate in emergency management; or
  - (g) a prescribed body;

**“employee”** means a person employed under a contract of employment or contract of training;

**“employer”** means a person who employs one or more other persons under contracts of employment or contracts of training;

**“exercise”** includes perform;

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

**“footpath”** means an area open to the public that is designated for, or has as one of its main uses, use by pedestrians;

**“function”** includes power, authority or duty;

**“guidelines”** means guidelines approved by the Minister under Division 3 of Part 14;

**“illicit drug”** has the same meaning as “prescribed illicit drug” has in the *Road Safety (Alcohol and Drugs) Act 1970*;

**“improvement notice”** means a notice under section 97;

**“infringement notice”** means a notice under Division 5 of Part 11;

**“interface agreement”** means an agreement, about managing risks to safety identified and assessed under Part 4, that includes provisions for –

- (a) implementing and maintaining measures to manage those risks; and
- (b) the evaluation, testing and, where appropriate, revision, of those measures; and
- (c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and



*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

- 
- (d) procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
  - (e) a process for keeping the agreement under review and the revision of the agreement;

**“investigator”** means a person appointed to be an investigator under section 69;

**“investigation”** means an investigation that an investigator is appointed to conduct under section 69;

**“jurisdiction”** means a State or Territory;

**“level crossing”** means –

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

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

**“notifiable occurrence”** means an accident, or incident, associated with railway operations –

(a) that has, or could have, caused –

(i) significant property damage; or

(ii) serious injury; or

(iii) death; or

(b) that is, or is of a class that is, prescribed to be a notifiable occurrence or class of notifiable occurrence –

but does not include an accident or incident, or class of accident or incident, that is prescribed not to be a notifiable occurrence;

**“occupational health and safety legislation”** means the *Workplace Health and Safety Act 1995* and regulations under that Act;

**“prescribed”** means prescribed by regulations made under this Act;

**“private siding”** means a siding that is managed, owned or controlled by a person (other than a person who manages the rail infrastructure with which the siding connects or to which it has access) but does not include –

(a) a marshalling yard; or

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

- 
- (b) a crossing loop; or
  - (c) a passenger terminal; or
  - (d) a freight terminal; or
  - (e) a siding, or a siding of a class, prescribed not to be a private siding;

**“prohibition notice”** means a notice under section 102;

**“public place”** means –

- (a) a place that –
  - (i) the public is entitled to use; or
  - (ii) is open to members of the public; or
  - (iii) is used by the public –  
whether or not on payment of money; or
- (b) a place that the occupier allows members of the public to enter, whether or not on payment of money;

**“public road”** means –

- (a) a road that –
  - (i) is open to members of the public or used by

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

members of the public;  
and

- (ii) the Crown, a council, an authority that is a single authority, controlling authority, or joint authority, established under Part 3 of the *Local Government Act 1993*, a statutory authority or a State-owned company is responsible for maintaining; and

(b) a road that –

- (i) is a forest road within the meaning of the *Forestry Act 1920*; and
- (ii) is open to members of the public or used by members of the public; and
- (iii) is constructed or maintained by the Forestry corporation within the meaning of that Act or by a person for the purpose of timber production; and

(c) a road that –

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

---

(i) is open to members of the public or used by members of the public; and

(ii) is constructed or maintained by the Corporation within the meaning of the *Hydro-Electric Corporation Act 1995*; and

(d) a road that is prescribed;

**“rail infrastructure”** means the facilities that are necessary to enable a railway to operate safely and includes, but is not limited to –

(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

(f) plant, machinery and equipment –

but does not include –

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

- (g) rolling stock; or
- (h) any facility, or facility of a class, that is prescribed not to be rail infrastructure;

**“rail infrastructure manager”**, in relation to rail infrastructure of a railway, means the person who has effective management and control of the rail infrastructure, whether or not the person –

- (a) owns the rail infrastructure; or
- (b) has a statutory or contractual right to use the rail infrastructure or to control, or provide, access to it;

**“rail or road crossing”** means a railway crossing, a bridge carrying a road over a railway or a bridge carrying a railway over a road;

**“rail safety law”** means this Act and the regulations or a provision of this Act or the regulations;

**“rail safety officer”** means a person appointed by the Rail Safety Regulator as a rail safety officer under Division 2 of Part 13;

**“Rail Safety Regulator”** means the person appointed under section 147 to be the Rail Safety Regulator;

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

---

**“rail safety work”** – see section 7;

**“rail safety worker”** means a natural person who has carried out, is carrying out or is about to carry out rail safety work;

**“rail transport operator”** means –

- (a) a rail infrastructure manager; or
- (b) a rolling stock operator; or
- (c) a person who is both a rail infrastructure manager and 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 600 millimetres 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

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

- (g) a private siding; and
- (h) a guided system, or guided system of a class, prescribed to be a railway;

**Note:** See section 5 for railways to which this Act does not apply.

**“railway crossing”** means –

- (a) a level crossing; or
- (b) any area where a footpath or shared path crosses a railway or tram tracks at substantially the same level;

**“railway operations”** means –

- (a) the construction of a railway, railway tracks and associated track structures or rolling stock; or
- (b) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure; or
- (c) the commissioning, maintenance, repair, modification or decommissioning of rolling stock; or



*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

- 
- (d) the operation or movement, or causing the operation or movement by any means, of rolling stock on a railway (including for the purposes of construction or restoration of rail infrastructure); or
  - (e) the movement, or causing the movement, of rolling stock for the purposes of operating a railway service;

**“railway premises”** means –

- (a) land (including any premises on land) on or in which is situated rail infrastructure; or
- (b) land (including any premises on land) on or in which is situated any over-track or under-track structure or part of an over-track or under-track structure; or
- (c) freight centres or depots used in connection with the carrying out of railway operations; or
- (d) workshops or maintenance depots used in connection with the carrying out of railway operations; or
- (e) premises, including an office, building and housing, used in

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

connection with the carrying out of railway operations; or

- (f) rolling stock or other vehicles associated with railway operations;

**“railway tracks and associated track structures”** means –

- (a) railway tracks and associated track structures and works, such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works; or
- (b) over-track structures and under-track structures, including tunnels under tracks;

**“regulations”** means regulations under this Act;

**“responsible road manager”**, in relation to a public road, means the Crown or a council, or another person for the time being responsible for maintaining the road;

**“reviewable decision”** has the meaning it has in section 113;

**“road”** means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

---

riding of motor vehicles, and includes a road-related area;

**“road infrastructure”** includes –

- (a) a road and its surface or pavement; and
- (b) anything under or supporting a road or its surface or pavement; and
- (c) safety barriers; and
- (d) drains and culverts; and
- (e) traffic lights and other traffic control devices (other than traffic control devices that are automatically activated by trains); and
- (f) traffic signs (other than level crossing signs located at or immediately next to level crossings); and
- (g) road markings; and
- (h) road lighting; and
- (i) pedestrian crossings and associated infrastructure; and
- (j) prescribed things;

**“road manager”** in relation to –

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

- (a) a public road, means the responsible road manager; or
- (b) a road other than a public road, means the owner of, or person responsible for, the road;

**“road-related area”** means –

- (a) an area that divides a road; or
- (b) a footpath or nature strip, whether or not adjacent to a road; or
- (c) an area that is not a road and that is open to the public and designated for use by cyclists or animals; or
- (d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles; or
- (e) a shoulder of a road; or
- (f) an area, or a class of area, that is prescribed to be a road-related area –

but does not include an area, or a class of area, that is prescribed not to be a road-related area;

**“road vehicle”** means –

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

- 
- (a) a motor vehicle within the meaning of the *Vehicle and Traffic Act 1999*; or
  - (b) a trailer within the meaning of the *Vehicle and Traffic Act 1999*;

**“rolling stock”** means a vehicle that operates on or uses a railway and includes –

- (a) a locomotive, carriage, rail car or rail motor; and
- (b) a light rail vehicle, a train or a tram; and
- (c) a light inspection vehicle, self-propelled infrastructure maintenance vehicle, trolley, wagon or monorail vehicle –

but does not include, when not operating on a railway, a vehicle designed to operate both on and off a railway;

**“rolling stock operator”** means a person who has effective management and control of the operation or movement of rolling stock on rail infrastructure for a particular railway, but does not include a person by reason only that the person drives the rolling stock or controls the network or the network signals;

**“running line”** means a railway used primarily for the through movement of trains;

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

**“safety”** means the safety of people, including rail safety workers, passengers, other users of railways, users of rail or road crossings and the general public;

**“safety management plan”** means a document describing a safety management system;

**“safety management system”** – see section 41;

**“search warrant”** means a search warrant issued under section 82 or 83;

**“security management plan”** – see section 55;

**“separated footpath”** means a length of footpath beginning at a separated footpath sign (being a sign, or road marking, that indicates that one side of the footpath is for pedestrian use and the other side is for the use of bicycles) and ending at the nearest of the following:

- (a) a sign, or road marking, that indicates the end of the separated footpath;
- (b) a sign, or road marking, that indicates a bicycle path;
- (c) a sign, or road marking, that indicates no bicycles are allowed;

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

- 
- (d) a road (except a road-related area);
  - (e) the end of the footpath;

**“service road”** means the part of a road that –

- (a) is separated from other parts of the road by a dividing strip that is not designed or developed, wholly or mainly, to separate vehicles travelling in opposite directions; and
- (b) is –
  - (i) designed or developed to be used, wholly or mainly, by traffic servicing adjacent land; or
  - (ii) indicated to be a service road by information on or with a traffic control device on the road;

**“shared path”** –

- (a) means an area open to the public (except a separated footpath) that is designated for, or has as one of its main uses, use by both the riders of bicycles and pedestrians; and
- (b) includes a length of path for use by both bicycles and pedestrians,

*Rail Safety Act 2009*  
*Act No. of*

s. 4

Part 1 – Preliminary

---

beginning at a sign, or road marking, that indicates the path is to be shared by bicycles and pedestrians and ending at the nearest of the following:

- (i) a sign, or road marking, that indicates the end of the shared path;
- (ii) a sign, or road marking, that indicates a bicycle path;
- (iii) a sign, or road marking, that indicates no bicycles are allowed;
- (iv) a road (except a road-related area);
- (v) the end of the path;

**“siding”** means a portion of railway track, connected by points to a running line or another siding, on which rolling stock can be placed clear of the running line;

**“State-owned company”** means a company incorporated under the Corporations Act that is controlled –

- (a) by the Crown, a Minister of the Crown, a Government Business Enterprise or a statutory authority; or



*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 4

- 
- (b) by another company that is so controlled;

**“statutory authority”** means a body or authority, whether incorporated or not, that is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another statutory authority;

**“substance”** means substance in any form (whether gaseous, liquid, solid or other) and includes material, preparation, extract and admixture;

**“supervisory intervention order”** means an order under section 138;

**“supply”**, in relation to –

- (a) goods, includes supply or resupply by way of sale, exchange, lease, hire or hire purchase, whether as principal or agent; and
- (b) services, includes provide, grant or confer, whether as principal or agent;

**“this jurisdiction”** means Tasmania;

**“train”** means –

*Rail Safety Act 2009*  
*Act No. of*

s. 5

Part 1 – Preliminary

---

- (a) 2 or more units of rolling stock coupled together, at least one 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;

**“tram tracks”** includes a rail designed for a light rail vehicle to run on;

**“volunteer”** means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

**5. Railways to which this Act does not apply**

- (1) This Act does not apply to –
  - (a) a railway with a track gauge less than 600 millimetres; and
  - (b) a railway used as a haulage way for operational and maintenance purposes in connection with the electricity supply industry within the meaning of the *Electricity Supply Industry Act 1995*; and
  - (c) a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations; and
  - (d) a slipway; and

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

**s. 6**

- 
- (e) a railway used only to guide a crane; and
  - (f) an aerial cable-operated system; and
  - (g) a railway that –
    - (i) is operated solely within an amusement or theme park; and
    - (ii) is required to be registered as an amusement structure under occupational health and safety legislation; and
    - (iii) does not operate on or across a public area or a road-related area in respect of a public road; and
  - (h) a railway, or class of railway, that is prescribed under subsection (2).

- (2) The Minister may, by notice, prescribe a railway, or class of railway, to be a railway to which this Act does not apply.

**6. What “ensuring safety” means**

- (1) To avoid doubt, a duty imposed on a person, other than the Rail Safety Regulator, under the rail safety law to ensure, so far as is reasonably practicable, safety, requires the person –
  - (a) to eliminate risks to safety so far as is reasonably practicable; and

*Rail Safety Act 2009*  
*Act No. of*

s. 7

Part 1 – Preliminary

---

- (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of this Act and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety:
  - (a) the likelihood of the risk concerned 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 risks;
  - (e) the cost of eliminating or reducing the risk.

**7. What “rail safety work” means**

- (1) Subject to subsection (2), any of the following classes of work is rail safety work for the purposes of this Act:
  - (a) driving or despatching rolling stock or any other activity which is capable of

*Rail Safety Act 2009*  
*Act No. of*

Part 1 – Preliminary

s. 7

- 
- controlling or affecting the movement of rolling stock;
- (b) signalling (and signalling operations), receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
  - (c) coupling or uncoupling rolling stock;
  - (d) maintaining, repairing, modifying, monitoring, inspecting or testing –
    - (i) rolling stock, including checking that the rolling stock is working properly before being used; or
    - (ii) rail infrastructure;
  - (e) installing of components in relation to rolling stock;
  - (f) work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, 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) installing or maintaining –
    - (i) a telecommunication system relating to rail infrastructure or

*Rail Safety Act 2009*  
*Act No. of*

s. 7

Part 1 – Preliminary

---

used in connection with rail infrastructure; or

- (ii) the means of supplying electricity directly to rail infrastructure or to any rolling stock using rail infrastructure or to a telecommunications system;
  - (h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
  - (i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
  - (j) work involving the development, management or monitoring of safe working systems for railways;
  - (k) work involving the management or monitoring of passenger safety on, in or at any railway;
  - (l) any other work that is prescribed to be rail safety work.
- (2) Work, or any class of work, prescribed not to be rail safety work is not rail safety work for the purposes of this Act.

**8. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

**9. Examples**

- (1) An example (however expressed) in this Act is part of this Act.
- (2) If this Act includes an example (however expressed) of the operation of a provision of this Act –
  - (a) the example is not exhaustive; and
  - (b) the example does not limit, but may extend, the meaning of the provision.

**10. Notes**

A note in this Act is explanatory and is not part of this Act.

## **PART 2 – RAIL SAFETY DUTIES**

### **11. Safety duties of rail transport operators**

- (1) A rail transport operator must ensure, so far as is reasonably practicable, the safety of the operator's railway operations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or
  - (b) an individual, a fine not exceeding 400 penalty units.
- (2) Without limiting subsection (1), a rail transport operator contravenes that subsection if the operator fails to do any of the following:
- (a) develop and implement, so far as is reasonably practicable, safe systems for the carrying out of the operator's railway operations;
  - (b) ensure, so far as is reasonably practicable, that each rail safety worker who is to perform rail safety work in relation to the operator's railway operations –
    - (i) is of sufficient good health and fitness to carry out that work safely; and



*Rail Safety Act 2009*  
*Act No. of*

Part 2 – Rail Safety Duties

s. 11

---

- (ii) is competent to undertake that work;
- (c) ensure, so far as is reasonably practicable, that rail safety workers do not carry out rail safety work in relation to the operator's railway operations, and are not on duty, while –
  - (i) any alcohol is present in their blood or breath; or
  - (ii) a prescribed illicit drug is present in their oral fluid or blood; or
  - (iii) under the influence of any substance (other than a prescribed illicit drug) to the extent that they are incapable of effectively discharging a function or duty of a rail safety worker;
- (d) ensure, so far as is reasonably practicable, that rail safety workers who perform rail safety work in relation to the operator's railway operations comply with the operator's fatigue management program in force under section 59;
- (e) provide, so far as is reasonably practicable, adequate facilities for the safety of persons at any railway premises under the control or management of the operator;
- (f) provide, so far as is reasonably practicable –

*Rail Safety Act 2009*  
*Act No. of*

s. 11

Part 2 – Rail Safety Duties

---

- (i) the information and instruction to, and training and supervision of, rail safety workers that is necessary to enable those workers to perform rail safety work in relation to the operator's railway operations in a way that is safe; and
  - (ii) the information to rail transport operators and other persons on railway premises under the control or management of the operator that is necessary to enable those persons to ensure their safety.
- (3) Without limiting subsection (1), a rail infrastructure manager contravenes that subsection if the manager fails to do any of the following:
  - (a) ensure, so far as is reasonably practicable, that any design, construction, commissioning, use, installation, modification, maintenance, repair, or decommissioning, of rail infrastructure is done or carried out in a way that ensures, so far as is reasonably practicable, the safety of railway operations;
  - (b) establish, so far as is reasonably practicable, systems and procedures for the scheduling, control and monitoring of railway operations that ensure, so far as

*Rail Safety Act 2009*  
*Act No. of*

Part 2 – Rail Safety Duties

s. 11

---

is reasonably practicable, the safety of the manager's railway operations.

- (4) Without limiting subsection (1), a rolling stock operator contravenes that subsection if the rolling stock operator fails to do any of the following:
- (a) provide or maintain rolling stock that, so far as is reasonably practicable, is safe;
  - (b) ensure, so far as is reasonably practicable, that any design, construction, commissioning, use, modification, maintenance, repair, cleaning, or decommissioning, of rolling stock is done or carried out in a way that, so far as is reasonably practicable, ensures safety;
  - (c) comply, so far as is reasonably practicable, with rules and procedures for the scheduling, control and monitoring of rolling stock that have been established by a rail infrastructure manager in relation to the use of the manager's rail infrastructure by the rolling stock operator;
  - (d) so far as is reasonably practicable, establish and maintain equipment, procedures and systems to minimise risks to the safety of the operator's railway operations;
  - (e) make arrangements for ensuring, so far as is reasonably practicable, safety in

*Rail Safety Act 2009*  
*Act No. of*

s. 12

Part 2 – Rail Safety Duties

---

connection with the use, operation and maintenance of the operator's rolling stock.

**12. Duties of rail transport operators extend to contractors**

(1) The duties of a rail transport operator under section 11 extend to –

- (a) a person who, not being an employee employed to carry out railway operations, undertakes railway operations on or in relation to rail infrastructure or rolling stock of the operator; and
- (b) any employees of the person –

in relation to matters over which the operator has control or would have control if not for any agreement purporting to limit or remove that control.

(2) A person to whom the duties under section 11 extend by reason of subsection (1) must comply with those duties in respect of railway operations, referred to in that subsection, that are undertaken by the person.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or

- (b) an individual, a fine not exceeding 400 penalty units.

**13. Duties of designers, manufacturers, suppliers &c.**

(1) A person who –

- (a) designs, commissions, manufactures, supplies, installs or erects any thing; and
- (b) knows, or ought reasonably to know, that the thing is to be used as or in connection with rail infrastructure or rolling stock –

must –

- (c) ensure, so far as is reasonably practicable, that the thing is safe if it is used for a purpose for which it was designed, commissioned, manufactured, supplied, installed or erected; and
- (d) carry out, or arrange the carrying out of, the testing and examination of the thing that may be necessary for compliance with this section; and
- (e) take the action that is necessary to ensure, so far as is reasonably practicable, that there will be available in connection with the use of the thing adequate information about –
  - (i) the use for which the thing was designed, commissioned,

*Rail Safety Act 2009*  
*Act No. of*

s. 13

Part 2 – Rail Safety Duties

---

manufactured, supplied, installed or erected; and

(ii) the results of any testing or examination referred to in paragraph (d); and

(iii) any conditions necessary to ensure, so far as is reasonably practicable, the thing is safe if it is used for a purpose for which it was designed, commissioned, manufactured, supplied, installed or erected.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 2 000 penalty units; or

(b) an individual, a fine not exceeding 400 penalty units.

(2) A person who decommissions any rail infrastructure or rolling stock must –

(a) ensure, so far as is reasonably practicable, that the decommissioning is carried out safely; and

(b) carry out, or arrange the carrying out of, the testing and examination that may be necessary for compliance with this section.

Penalty: In the case of –

*Rail Safety Act 2009*  
*Act No. of*

Part 2 – Rail Safety Duties

s. 13

---

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (3) For the purposes of subsection (1), if the person who supplies the thing –
  - (a) carries on the business of financing the acquisition of the thing by customers; and
  - (b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
  - (c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer –

the reference in subsection (1) to the person who supplies that thing is instead taken to be a reference to the third person.

## **PART 3 – ACCREDITATION**

### ***Division 1 – Application for accreditation***

#### **14. Purpose of accreditation**

The purpose of accreditation of a rail transport operator in relation to railway operations is to attest that the rail transport operator has demonstrated to the Rail Safety Regulator the competence and capacity to manage risks to safety associated with those railway operations.

#### **15. Accreditation required for railway operations**

- (1) A person must not carry out, or cause or permit to be carried out, any railway operations unless the person –
  - (a) is a rail transport operator who –
    - (i) is accredited under this Part in relation to those operations; or
    - (ii) is exempt under this Act from compliance with this section in relation to those operations; or
  - (b) is carrying out those operations, or causing or permitting those operations to be carried out, for or on behalf of –
    - (i) a rail transport operator who is accredited under this Part in relation to those operations; or



*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

s. 15

- 
- (ii) a rail transport operator who is exempt under this Act from compliance with this section in relation to those operations; or
  - (c) is exempt under this Act from compliance with this section in relation to those operations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units; or
- (b) an individual, a fine not exceeding 400 penalty units.

**Note:** If a body corporate and related bodies corporate are involved, an exemption may be given so that only one of the bodies need be accredited (related body corporate meaning related by virtue of section 50 of the *Corporations Act 2001* of the Commonwealth).

- (2) Subsection (1) does not apply to a rail safety worker who –
  - (a) is not a rail transport operator; and
  - (b) is carrying out rail safety work for or on behalf of a rail transport operator who is –
    - (i) accredited under this Part in relation to that rail safety work; or

*Rail Safety Act 2009*  
*Act No. of*

**s. 16**

Part 3 – Accreditation

---

- (ii) exempt under this Act from compliance with this section in relation to that rail safety work.

**16. Accreditation not required for private sidings, but private sidings may be registered**

- (1) A rail infrastructure manager of a private siding –
  - (a) is not required to be accredited under this Part in respect of railway operations carried out in the private siding; and
  - (b) except to the extent that the regulations or a condition referred to in subsection (2) otherwise provide, is not required to comply with Part 4 or section 65, 66 or 67 in relation to the private siding.
- (2) However, if the rail infrastructure manager wishes the private siding to be (or to continue to be) connected with, or to have access to, a railway or siding of an accredited person, the rail infrastructure manager must –
  - (a) register the private siding with the Rail Safety Regulator and pay the annual registration fee for a siding determined under section 25; and
  - (b) comply with conditions that are –
    - (i) imposed by the Rail Safety Regulator from time to time; or

*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

**s. 16**

---

(ii) prescribed –

in relation to the safe construction, maintenance and operation of the private siding; and

- (c) comply with the provisions of section 47 in relation to the management of the interface with the railway of the accredited person; and
- (d) notify the accredited person in writing of any railway operations affecting or relating to the safety of the railway or siding of the accredited person.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (3) The Rail Safety Regulator must issue a notice of registration to a rail infrastructure manager who registers a private siding with the Rail Safety Regulator.
  - (4) If the regulations so prescribe, the Rail Safety Regulator must make prescribed particulars of a registration under subsection (2) available for public inspection at the Rail Safety Regulator's office, or a prescribed place, during ordinary business hours.

*Rail Safety Act 2009*  
*Act No. of*

**s. 17**

Part 3 – Accreditation

---

- (5) Conditions and regulations referred to in subsection (2) may establish requirements that are the same as, or similar to, any provisions of Part 4 or section 65, 66 or 67.

**17. Purpose for which accreditation may be granted**

- (1) An accreditation may be granted to a rail transport operator for any one or more of the following purposes:
  - (a) for the carrying out of railway operations for the part or parts of a railway designated in the notice of accreditation or having the scope or characteristics designated in that notice;
  - (b) for any service or aspect, or part of a service or aspect, of railway operations designated in the notice of accreditation;
  - (c) for specified railway operations to permit any one or more of the following:
    - (i) site preparation;
    - (ii) construction of rail infrastructure;
    - (iii) restoration or repair work;
    - (iv) testing of railway track or other infrastructure;
    - (v) other activities, relating to railway operations, considered appropriate by the Rail Safety

---

Regulator and designated in the  
notice of accreditation.

- (2) If the applicant requests, accreditation may be granted for a specified period only.

**18. Application for accreditation**

- (1) A rail transport operator may apply to the Rail Safety Regulator for accreditation in respect of specified railway operations carried out, or proposed to be carried out, by, or on behalf of, that operator.
- (2) An application must be made in the manner and form approved by the Rail Safety Regulator and must –
- (a) specify the scope and nature of the railway operations in respect of which accreditation is sought; and
  - (b) include a safety management plan relating to those railway operations; and
  - (c) specify whether or not the applicant is accredited, or has applied for accreditation, under a corresponding law; and
  - (d) contain the prescribed information; and
  - (e) be accompanied by the application fee determined under section 25.

*Rail Safety Act 2009*  
*Act No. of*

s. 19

Part 3 – Accreditation

---

- (3) The Rail Safety Regulator may require a rail transport operator who has applied for accreditation –
- (a) to supply further information requested by the Rail Safety Regulator; and
  - (b) to verify by statutory declaration any information supplied to the Rail Safety Regulator.

**19. What applicant for accreditation must demonstrate**

The Rail Safety Regulator must not grant accreditation to an applicant unless satisfied, having regard to any guidelines applicable to this section, that the applicant has demonstrated that –

- (a) the applicant is, or is to be, a rail infrastructure manager or rolling stock operator in relation to the railway operations for which accreditation is sought; and
- (b) the applicant has the competence and capacity to manage risks to safety associated with the railway operations for which accreditation is sought; and
- (c) the applicant –
  - (i) has the competence and capacity to implement the proposed safety management system; and

*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

s. 20

- 
- (ii) has the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the railway operations; and
  - (d) the applicant has consulted the persons that the person is required under section 41(2) to consult in relation to the applicant's safety management system; and
  - (e) the applicant has complied with the requirements (if any) prescribed for the purposes of this section.

**20. Rail Safety Regulator may direct applicants to coordinate and cooperate in applications**

- (1) If the Rail Safety Regulator –
  - (a) receives applications from 2 or more rail transport operators for accreditation; and
  - (b) believes that co-ordinated preparation of the applications is necessary to ensure that the railway operations of the applicants are carried out safely –

the Rail Safety Regulator may give a direction in writing to the rail transport operators to co-ordinate their applications.

- (2) A direction under subsection (1) may require each rail transport operator given a direction to

*Rail Safety Act 2009*  
*Act No. of*

s. 20

Part 3 – Accreditation

---

provide, to each other rail transport operator given the direction, information concerning any circumstances in relation to the carrying out of railway operations by the first-mentioned rail transport operator that could constitute a risk to safety in relation to the carrying out of rail operations by another rail transport operator to whom the direction is given.

- (3) A rail transport operator who is given a direction under subsection (1) must comply with the direction.

Penalty: Fine not exceeding 100 penalty units.

- (4) A rail transport operator who has co-ordinated the preparation of an application in accordance with this section must include in the application reference to –

- (a) information given by the rail transport operator to each other rail transport operator; and
- (b) information given to the rail transport operator by each other rail transport operator –

in accordance with a direction under subsection (1).

Penalty: Fine not exceeding 100 penalty units.



## **21. Coordination between Rail Safety Regulators**

- (1) This section applies if the Rail Safety Regulator receives an application –
  - (a) for accreditation; or
  - (b) for variation of accreditation or the conditions or restrictions of accreditation –

that indicates that the applicant is accredited, or is seeking accreditation, under a corresponding law of one or more other jurisdictions.
- (2) The Rail Safety Regulator must, as soon as possible and before deciding whether or not to grant the application, consult with the relevant corresponding Rail Safety Regulator, or Regulators, in relation to the application.
- (3) The consultation under subsection (2) is to be undertaken with a view to the outcome of the application being consistent with the outcome of applications made in the other jurisdiction or jurisdictions.
- (4) The Rail Safety Regulator, in complying with subsection (2), must take into account any guidelines applicable to this section.
- (5) If the Rail Safety Regulator does not, in relation to an application, act consistently with the guidelines, the Rail Safety Regulator must give to the applicant notice in writing setting out –
  - (a) the reasons for not so acting; and

- (b) information about the right of review under Part 10.

## **22. Determination of application**

- (1) Subject to this section, the Rail Safety Regulator must give to an applicant for accreditation, within the relevant period –
  - (a) if the Rail Safety Regulator is satisfied as to the matters referred to in section 19 (and, if applicable, section 20), notice in writing granting accreditation to the applicant with or without any conditions or restrictions; or
  - (b) if the Rail Safety Regulator is not so satisfied, notice in writing refusing the application.
- (2) A notice under subsection (1) granting an application must specify –
  - (a) the prescribed details of the applicant; and
  - (b) the scope and nature of the railway operations in respect of which the accreditation is granted; and
  - (c) any condition or restriction imposed by the Rail Safety Regulator on the grant of accreditation; and
  - (d) any other prescribed information.

*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

s. 22

- 
- (3) A notice –
- (a) under subsection (1) refusing an application, or imposing a condition or restriction, must include –
    - (i) the reasons for the decision to refuse to grant the application or impose the condition or restriction; and
    - (ii) information about the right of review under Part 10; or
  - (b) under subsection (4)(c) extending a period, must include information about the right of review under Part 10.
- (4) In this section, “**relevant period**”, in relation to an application, means –
- (a) 6 months after the application was received by the Rail Safety Regulator; or
  - (b) if the Rail Safety Regulator requested further information, 6 months (or another period agreed between the Rail Safety Regulator and the applicant) after the Rail Safety Regulator receives the last information so requested; or
  - (c) if the Rail Safety Regulator, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period –

whichever period is the longest.

*Rail Safety Act 2009*  
*Act No. of*

s. 23

Part 3 – Accreditation

---

**Note:** Reviews may only be made of conditions imposed under this section, not section 23.

**23. Prescribed conditions and restrictions**

Accreditation granted to a person under this Part is subject to any conditions or restrictions that are prescribed for the purposes of this section and are applicable to the grant of accreditation.

**24. Offence of breach of condition or restriction**

An accredited person must not fail to comply with a condition or restriction of the person's accreditation.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or
- (b) an individual, a fine not exceeding 400 penalty units.

***Division 2 – Fees***

**25. Minister to determine fees**

- (1) The Minister, by notice in the *Gazette*, may determine –
  - (a) the fee for an application under section 18; and

*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

s. 25

- 
- (b) the annual registration fee for a private siding under section 16; and
  - (c) the annual accreditation fee for the purposes of section 26; and
  - (d) the relevant application fee for the purposes of section 33; and
  - (e) fees for the late payment of fees determined under this section.
- (2) The Minister may, in a notice under subsection (1), fix –
- (a) different fees, or annual fees, for different kinds of applications or accreditations; and
  - (b) various methods for the calculation of various fees; and
  - (c) differential application fees, or differential annual registration fees or annual accreditation fees, on a basis determined by the Minister.
- (3) A fee for late payment of fees may be, but is not required to be, calculated on a daily basis.
- (4) A fee charged under this Act that is determined in accordance with a notice under subsection (1) includes the amount of any GST that is payable in relation to the fee.
- (5) For the avoidance of doubt, a notice under subsection (1) is a statutory rule for the purposes of the *Rules Publication Act 1953*.

**26. Payment of annual accreditation and registration fees**

- (1) Subject to this Part, it is a condition of accreditation that an accredited person must pay, within the period specified under subsection (2), the annual accreditation fee determined under section 25.
- (2) An accredited person must pay the annual accreditation fee –
  - (a) for the year in which the person is accredited, at the time the person is accredited; and
  - (b) in respect of each subsequent year, on or before a date in that year, determined by the Rail Safety Regulator, of which the person is notified in writing by the Rail Safety Regulator.
- (3) A rail infrastructure manager of a private siding that is registered under section 16 must pay the annual registration fee –
  - (a) for the year in which the siding is registered, at the time the siding is registered; and
  - (b) in respect of each subsequent year, on or before a date in that year, determined by the Rail Safety Regulator, of which the manager is notified in writing by the Rail Safety Regulator.

- (4) The Rail Safety Regulator may accept payment of an annual accreditation fee or registration fee due and payable by a person in accordance with an agreement made with the person, whether for payment by instalments or otherwise.

## **27. Late payment fees**

- (1) The Rail Safety Regulator may, by notice in writing to a person, impose a fee, specified in, or determined in accordance with, a notice under section 25, for failing to pay, by the due date for payment of the fee, an annual accreditation fee or annual registration fee.
- (2) It is a condition of accreditation that an accredited person must pay a late fee imposed on the person by a notice under subsection (1) by the date specified in the notice.
- (3) It is a condition of the registration of a siding that the rail infrastructure manager in relation to the siding must pay a late fee imposed on the manager by a notice under subsection (1) by the date specified in the notice.

## **28. Waiver of fees**

The Rail Safety Regulator may waive, or refund, the whole or part of any fee payable or paid under this Part.

***Division 3 – Variation and ending of accreditation***

**29. Surrender of accreditation**

An accredited person may, in accordance with the regulations, surrender the person's accreditation.

**30. Revocation or suspension of accreditation**

(1) This section applies in respect of an accredited person if –

(a) the Rail Safety Regulator considers that the accredited person –

(i) is no longer able to demonstrate to the satisfaction of the Rail Safety Regulator the matters referred to in section 19 or to satisfy the conditions, or to comply with the restrictions, to which the accreditation is subject; or

(ii) is not managing the rail infrastructure, or is not operating rolling stock in relation to any rail infrastructure, to which the accreditation relates and has not done so for at least the preceding 12 months; or

(b) the accredited person contravenes the rail safety law.



*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

s. 30

- 
- (2) The Rail Safety Regulator, by notice to an accredited person –
- (a) may suspend the accreditation, or part of the accreditation, of the accredited person for a period determined by the Rail Safety Regulator; or
  - (b) may revoke the accreditation of the accredited person wholly or in part, or in respect of particular railway operations specified in the notice, with immediate effect or with effect from a specified future date; or
  - (c) may impose conditions or restrictions on the accreditation; or
  - (d) may vary conditions or restrictions to which the accreditation is subject.
- (3) If the Rail Safety Regulator revokes the accreditation of an accredited person, the Rail Safety Regulator may, in the notice revoking the accreditation, declare that the accredited person is disqualified from applying for accreditation, or for accreditation in relation to specified railway operations, during a period specified in the notice.
- (4) Before making a decision under subsection (2) or (3), the Rail Safety Regulator –
- (a) must notify the person in writing –
    - (i) that the Rail Safety Regulator is considering making a decision

*Rail Safety Act 2009*  
*Act No. of*

s. 30

Part 3 – Accreditation

---

under that subsection of the kind,  
and for the reasons, specified in  
the notice; and

- (ii) that the person may, within 28 days or a longer period specified in the notice, make written representations to the Rail Safety Regulator showing cause why the decision should not be made; and

- (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.

- (5) If the Rail Safety Regulator suspends or revokes the accreditation of the accredited person wholly or in part, or in respect of specified railway operations, the Rail Safety Regulator must include in the notice of suspension or revocation –

- (a) the reasons for the suspension or revocation; and

- (b) information about the right of review under Part 10.

- (6) If the Rail Safety Regulator suspends or revokes the accreditation of a person who is accredited in another jurisdiction, the Rail Safety Regulator must give notice of the suspension or revocation to the relevant corresponding Rail Safety Regulator.

- (7) The Rail Safety Regulator may withdraw a suspension of the accreditation of a person under

---

subsection (2) by written notice given to the person.

**31. Immediate suspension of accreditation**

- (1) If the Rail Safety Regulator considers that there is, or would be, an immediate and serious risk to safety unless an accreditation is suspended immediately, the Rail Safety Regulator may, without complying with section 30(4), by written notice given to the accredited person, immediately suspend the accreditation of the person –
  - (a) wholly or in part, or in respect of particular railway operations specified in the notice; and
  - (b) for a period, of not more than 6 weeks, specified in the notice.
- (2) The Rail Safety Regulator may, by notice in writing given to a person whose accreditation is suspended wholly or in part or in respect of specified railway operations –
  - (a) reduce the period of suspension specified in a notice under subsection (1); or
  - (b) extend the period of suspension specified in a notice under subsection (1) but not so that the suspension continues for more than 6 weeks after the date of the notice under that subsection.

*Rail Safety Act 2009*  
*Act No. of*

s. 31

Part 3 – Accreditation

---

- (3) Before making a decision under subsection (2)(b) to extend a period of suspension, the Rail Safety Regulator –
- (a) must notify the person in writing –
    - (i) that the Rail Safety Regulator is considering extending the period of suspension for the reasons specified in the notice; and
    - (ii) that the person may, within 7 days or a longer period specified in the notice, make written representations to the Rail Safety Regulator showing cause why the suspension should not be extended; and
  - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (4) If the Rail Safety Regulator –
- (a) issues a notice under subsection (1) suspending accreditation; or
  - (b) issues a notice under subsection (2)(b) extending the suspension of a person –

the Rail Safety Regulator must include in the notice the reasons for the notice being issued and information about the right of review under Part 10.

*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

**s. 32**

- 
- (5) The Rail Safety Regulator may withdraw a suspension of the accreditation of a person under subsection (2)(b) by written notice given to the person.

**32. Keeping and making available documents for public inspection**

- (1) A rail transport operator must ensure that the following are available for inspection at a place and time determined in accordance with subsection (2):
- (a) if the operator is an accredited person or has an exemption under this Part, the current notice of accreditation or exemption under this Part;
  - (b) if the operator is a rail infrastructure manager of a private siding registered with the Rail Safety Regulator, the notice of registration;
  - (c) any other document prescribed for the purposes of this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 20 penalty units; or
  - (b) an individual, a fine not exceeding 4 penalty units.
- (2) For the purposes of subsection (1), the notice or document is to be available for inspection –

*Rail Safety Act 2009*  
*Act No. of*

**s. 33**

Part 3 – Accreditation

---

- (a) if the operator is a body corporate, at the operator's registered office during ordinary business hours; or
- (b) if the operator is not a body corporate –
  - (i) at the operator's principal place of business during ordinary business hours; or
  - (ii) if the Rail Safety Regulator approves another place and time, at that place and time.

**33. Application for variation of accreditation**

- (1) An accredited person may apply to the Rail Safety Regulator, in the manner and form approved by the Rail Safety Regulator, for a variation of the accreditation.
- (2) An application for variation –
  - (a) must specify the details of the variation being sought; and
  - (b) must contain the prescribed information; and
  - (c) must be accompanied by the relevant application fee.
- (3) The Rail Safety Regulator may require an accredited person who has applied for a variation –

- (a) to supply further information requested by the Rail Safety Regulator; or
- (b) to verify by statutory declaration any information supplied to the Rail Safety Regulator.

**34. Where application relates to cooperative railway operations or operations in another jurisdiction**

Sections 20 and 21 apply to an application for variation as if a reference in those sections to accreditation were a reference to variation of accreditation.

**35. Determination of application for variation**

- (1) Subject to this section, the Rail Safety Regulator must, within the relevant period, give to an applicant for variation of an accreditation –
  - (a) if the Rail Safety Regulator is satisfied as to the matters referred to in sections 19 and 20 so far as they are applicable to the proposed variation, notice in writing varying the accreditation, with or without any conditions or restrictions; or
  - (b) if the Rail Safety Regulator is not so satisfied, notice in writing refusing the application.
- (2) A notice under subsection (1) varying an accreditation must –

*Rail Safety Act 2009*  
*Act No. of*

s. 35

Part 3 – Accreditation

---

- (a) specify the prescribed details of the applicant; and
  - (b) specify the variation to the accreditation so far as it applies to the scope and nature of the railway operations or the manner in which they are to be carried out; and
  - (c) specify any conditions and restrictions imposed by the Rail Safety Regulator on the accreditation as varied; and
  - (d) specify any other prescribed information.
- (3) A notice –
  - (a) under subsection (1) refusing an application, or imposing a condition or restriction, must include –
    - (i) the reasons for the decision to refuse to grant the application for variation or imposing the condition or restriction; and
    - (ii) information about the right of review under Part 10; and
  - (b) under subsection (4)(c) extending a period, must include information about the right of review under Part 10.
- (4) In this section, “**relevant period**”, in relation to an application, means –
  - (a) 6 months after the application was received by the Rail Safety Regulator; or



- (b) if the Rail Safety Regulator requested further information, 6 months (or another period agreed between the Rail Safety Regulator and the applicant) after the Rail Safety Regulator receives the last information so requested; or
- (c) if the Rail Safety Regulator, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period –

whichever period is the longest.

### **36. Prescribed conditions and restrictions**

The accreditation of a person that is varied under this Part is subject to any prescribed conditions, or prescribed restrictions, that apply to the accreditation as varied.

### **37. Variation of conditions and restrictions**

- (1) An accredited person may apply to the Rail Safety Regulator for a variation of any condition or restriction to which the accreditation is subject that was imposed by the Rail Safety Regulator.
- (2) An application for variation of a condition or restriction must be made as if it were an application for variation of accreditation, and section 33 applies accordingly.

*Rail Safety Act 2009*  
*Act No. of*

s. 38

Part 3 – Accreditation

---

- (3) The Rail Safety Regulator –
- (a) must consider the application; and
  - (b) if satisfied as to the matters referred to in sections 19 and 20 so far as they are applicable to the proposed variation, may –
    - (i) by notice in writing given to the accredited person; and
    - (ii) in accordance with the provisions of this Part so far as they are applicable –
- grant, or refuse to grant, the variation.
- (4) A notice under subsection (3) refusing to grant a variation of a condition or restriction must include the reasons for the decision and information about the right of review under Part 10.

**38. Rail Safety Regulator may make changes to conditions or restrictions**

- (1) The Rail Safety Regulator may, subject to this section, at any time, and at the discretion of the Rail Safety Regulator –
- (a) vary or revoke a condition or restriction imposed by the Rail Safety Regulator to which the accreditation of an accredited person is subject; or

*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

s. 38

---

- (b) impose a new condition or restriction.
- (2) Before taking action under this section, the Rail Safety Regulator must –
  - (a) give the accredited person written notice of the action that the Rail Safety Regulator proposes to take; and
  - (b) allow the accredited person to make written representations about the intended action within 14 days or any other period that the Rail Safety Regulator and the accredited person agree upon; and
  - (c) consider any representations made under paragraph (b) and not withdrawn.
- (3) Subsection (2) does not apply if the Rail Safety Regulator considers it necessary to take immediate action in the interests of safety.
- (4) The Rail Safety Regulator must –
  - (a) give in writing to the accredited person –
    - (i) details of any action taken under subsection (1); and
    - (ii) a statement of reasons for any action taken under subsection (1); and
  - (b) notify in writing the accredited person that the person has a right of review of the decision under Part 10.

*Rail Safety Act 2009*  
*Act No. of*

s. 39

Part 3 – Accreditation

---

**39. Accreditation cannot be transferred or assigned**

- (1) An accreditation –
  - (a) is personal to the person who holds it; and
  - (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it; and
  - (c) does not vest by operation of law in any other person.
- (2) A purported transfer or assignment of an accreditation or any other purported dealing with an accreditation by the person who holds it is of no effect.
- (3) This section has effect despite anything in any Act or rule of law to the contrary.

**40. Sale or transfer of railway operations by accredited person**

- (1) If an accredited person proposes to sell or otherwise transfer any railway operations for which the person is accredited, the Rail Safety Regulator may, on an application for accreditation under this Part being made by the proposed transferee, waive compliance by the proposed transferee with any requirement of this Division.

*Rail Safety Act 2009*  
*Act No. of*

Part 3 – Accreditation

s. 40

- 
- (2) The Rail Safety Regulator is not to waive compliance with any requirement of this Division unless the proposed transferee demonstrates, to the satisfaction of the Rail Safety Regulator, that the proposed transferee has the competence and capacity to comply with the relevant requirements of this Division that apply to applications for accreditation of the appropriate kind.
- (3) A waiver of compliance with requirements may be given subject to the conditions and restrictions (if any) that appear to the Rail Safety Regulator to be necessary.

## **PART 4 – SAFETY MANAGEMENT**

### ***Division 1 – Safety management systems***

#### **41. Safety management system**

- (1) A rail transport operator must have a safety management system for railway operations (other than railway operations in respect of which the operator is not required to be accredited), carried out on or in relation to the rail transport operator's rail infrastructure or rolling stock, that –
- (a) is in a form approved by the Rail Safety Regulator; and
  - (b) complies with the relevant prescribed requirements and the prescribed risk management principles, methods and procedures; and
  - (c) identifies and assesses any risks to safety that have arisen or may arise from the carrying out of railway operations on or in relation to the rail transport operator's rail infrastructure or rolling stock; and
  - (d) specifies the controls (including audits, expertise, resources and staff) that are to be used by the rail transport operator to manage risks to safety and to monitor safety in relation to those railway operations; and

*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

**s. 41**

- 
- (e) includes procedures for monitoring, reviewing and revising the adequacy of those controls; and
  - (f) includes –
    - (i) measures to manage risks to safety identified under section 47, 48 or 49; and
    - (ii) a security management plan in accordance with section 55; and
    - (iii) an emergency management plan in accordance with section 56; and
    - (iv) a health and fitness management program in accordance with section 57; and
    - (v) an alcohol and drug management program in accordance with section 58; and
    - (vi) a fatigue management program in accordance with section 59.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units; or
- (b) an individual, a fine not exceeding 400 penalty units.

(2) A rail transport operator must, before –

*Rail Safety Act 2009*  
*Act No. of*

s. 41

Part 4 – Safety Management

---

- (a) establishing a safety management system in relation to railway operations in respect of which the operator is required to be accredited; or
- (b) reviewing or varying such a safety management system –

consult, so far as is reasonably practicable, with the following:

- (c) persons likely to be affected by the safety management system or its review or variation, being persons who carry out those railway operations or work on or at the rail transport operator's railway premises or with the rail transport operator's rolling stock;
- (d) health and safety representatives within the meaning of the occupational health and safety legislation representing any of the persons referred to in paragraph (c);
- (e) any union representing any of the persons referred to in paragraph (c);
- (f) any other rail transport operator with whom the first-mentioned operator has an interface agreement under section 47 relating to risks to safety of railway operations carried out by or on behalf of either of them;
- (g) the public, as appropriate.



*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

**s. 41**

- 
- (3) If the safety management system of a rail transport operator and the safety management system of another rail transport operator who has an agreement referred to in subsection (2)(f) with the first-mentioned rail transport operator, when taken as one system, comply with this Act, both safety management systems are taken to comply with this Act.
- (4) A safety management system must be evidenced in writing.
- (5) A safety management system –
- (a) must identify each person responsible for preparing any part of the safety management system; and
  - (b) must identify the person, or class of persons, responsible for implementing the system.
- (6) A rail transport operator must provide to the Rail Safety Regulator a copy of any document that constitutes –
- (a) a variation of a safety management system; or
  - (b) a safety management system as varied by the rail transport operator –

as soon as practicable after being requested to do so by the Rail Safety Regulator.

Penalty: In the case of –

*Rail Safety Act 2009*  
*Act No. of*

s. 42

Part 4 – Safety Management

---

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 40 penalty units.

**42. Rail transport operator to implement and comply with safety management system**

- (1) A rail transport operator must implement the rail transport operator's safety management system.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units; or
- (b) an individual, a fine not exceeding 400 penalty units.

- (2) A rail transport operator must not, without reasonable excuse, fail to comply with the rail transport operator's safety management system for the rail transport operator's railway operations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units; or
- (b) an individual, a fine not exceeding 400 penalty units.

*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

s. 43

- 
- (3) It is a reasonable excuse for the purposes of subsection (2) if the rail transport operator –
- (a) complies with the safety management system to the extent practicable while complying with a condition or restriction of accreditation; or
  - (b) demonstrates that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening.
- (4) Subsection (3) does not limit the excuses that may be reasonable excuses.

**43. Contractors to comply with safety management system**

A person (not being an employee employed to carry out railway operations) who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator must comply with the safety management system of the rail transport operator, to the extent that it applies to those railway operations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or
- (b) an individual, a fine not exceeding 400 penalty units.

**44. Review of safety management system**

A rail transport operator must review the rail transport operator's safety management system in accordance with the regulations –

- (a) at the times, or within the periods, that are prescribed; or
- (b) if no times or periods are prescribed, at least once each year or at another time agreed between the rail transport operator and the Rail Safety Regulator.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

**45. Rail Safety Regulator may direct amendment of a safety management system**

- (1) The Rail Safety Regulator may direct a rail transport operator, by notice in writing, to amend the operator's safety management system within a period, specified in the notice, that is not less than 28 days after the giving of the direction.
- (2) A direction under subsection (1) must –
  - (a) state the reasons why the Rail Safety Regulator considers it is necessary for

*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

s. 46

---

the rail transport operator to amend the safety management system; and

(b) include information about the right of review under Part 10.

(3) The rail transport operator must not, without reasonable excuse, fail to comply with a direction under subsection (1).

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 1 000 penalty units;  
or

(b) an individual, a fine not exceeding 200 penalty units.

**46. Safety performance reports**

(1) A rail transport operator must give the Rail Safety Regulator a safety performance report in respect of each reporting period that –

(a) is in a form approved by the Rail Safety Regulator; and

(b) complies with the requirements (if any) prescribed for the purposes of this section; and

(c) contains –

(i) a description and assessment of the safety performance of the rail

*Rail Safety Act 2009*  
*Act No. of*

s. 46

Part 4 – Safety Management

---

transport operator's railway operations; and

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

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

(iv) any other information or performance indicators prescribed for the purpose of this section.

(2) A rail transport operator must submit a report in accordance with this section within 6 months after the end of each reporting period.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 500 penalty units; or

(b) an individual, a fine not exceeding 100 penalty units.

(3) In this section –

**“reporting period”** means –

(a) a calendar year; or

*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

s. 47

- (b) another period agreed from time to time by the Rail Safety Regulator and the rail transport operator.

***Division 2 – Interface coordination***

**47. Interface co-ordination – rail transport operators**

- (1) A rail transport operator –
  - (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out by or on behalf of the operator because of, or partly because of, railway operations carried out by or on behalf of any other rail transport operator; and
  - (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) must, for the purposes of managing those risks, seek to enter into an interface agreement with the other rail transport operator or rail transport operators.
- (2) Except to the extent that the regulations otherwise provide, subsection (1)(c) does not apply if none of the rail transport operators is a rail infrastructure manager.

**48. Interface co-ordination – rail infrastructure manager – public roads**

A rail infrastructure manager –

- (a) must identify and assess, so far as is reasonably practicable, risks to safety that –
  - (i) may arise from railway operations carried out on or in relation to the manager's rail infrastructure; and
  - (ii) may so arise because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any public road; and
- (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
- (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the responsible road manager in relation to that road.

**49. Interface co-ordination – rail infrastructure manager – roads other than public roads**

A rail infrastructure manager –



*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

s. 49

- 
- (a) must identify and assess, so far as is reasonably practicable, risks to safety that –
- (i) may arise from railway operations carried out on or in relation to the manager's rail infrastructure; and
  - (ii) may so arise because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any road, other than a public road; and
- (b) must consider whether it is necessary to manage those risks in conjunction with the road manager in relation to that road; and
- (c) if the rail infrastructure manager is of the opinion that –
- (i) it is necessary that those risks be managed in conjunction with the road manager, must give written notice of that opinion to the road manager and determine measures to manage, so far as is reasonably practicable, those risks; or
  - (ii) the management of those risks does not need to be carried out in conjunction with the road manager, must keep a written record of that opinion; and

*Rail Safety Act 2009*  
*Act No. of*

s. 50

Part 4 – Safety Management

---

- (d) unless paragraph (c)(ii) applies, must, for the purpose of managing those risks, seek to enter into an interface agreement with the road manager in relation to that road.

**50. Interface co-ordination – road manager – public roads and other roads**

- (1) The responsible road manager in relation to a public road –
  - (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of that public road because of, or partly because of, railway operations carried out on or in relation to rail infrastructure; and
  - (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the rail infrastructure manager of the rail infrastructure.
- (2) If, under section 49(c)(i), a rail infrastructure manager gives a written notice to a road manager, in relation to a road that is not a public road, of an opinion that certain risks need to be

*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

**s. 51**

---

managed in conjunction with the road manager,  
the road manager –

- (a) must identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of the road because of, or partly because of, railway operations; and
  - (b) must determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) must, for the purpose of managing those risks, seek to enter into an interface agreement with the rail infrastructure manager.
- (3) Nothing in this section authorises or requires a road manager to act inconsistently with, or without regard to, the functions, obligations or powers conferred on the road manager by or under an Act other than this Act.
- (4) Nothing in this Division affects the operation of the *Civil Liability Act 2002* in respect of a public or other authority responsible for carrying out road work.

**51. Identification and assessment of risks**

A rail transport operator, rail infrastructure manager or road manager who or that is required

*Rail Safety Act 2009*  
*Act No. of*

**s. 52**

Part 4 – Safety Management

---

under section 47, 48, 49 or 50 to identify and assess risks to safety that may arise from operations carried out by another person may do so –

- (a) by identifying and assessing those risks;  
or
- (b) by identifying and assessing those risks jointly with the other person; or
- (c) by adopting the identification and assessment of those risks carried out by the other person.

**52. Interface agreements**

An interface agreement under this Division –

- (a) may be entered into by 2 or more rail transport operators or by one or more rail transport operators and one or more road managers; and
- (b) may include measures to manage any number of risks to safety that may arise because of, or partly because of, any railway operations; and
- (c) may include measures to manage any number of risks to safety that may arise from any railway operations because of, or partly because of, the existence or use of any road infrastructure; and

- (d) may make provision for or in relation to any matter by applying, adopting or incorporating any matter contained in any document; and
- (e) may consist of 2 or more documents.

**53. Rail Safety Regulator may give directions**

- (1) This section applies if the Rail Safety Regulator is satisfied that a rail transport operator, rail infrastructure manager or road manager referred to in section 47, 48, 49 or 50 –
  - (a) is unreasonably refusing or failing to enter into an interface agreement with another person as required under this Division; or
  - (b) is unreasonably delaying the negotiation of such an agreement.
- (2) The Rail Safety Regulator may issue a written notice to the rail transport operator, the rail infrastructure manager or the road manager, as the case requires, and the other person with whom an interface agreement is required to be entered into, that –
  - (a) warns of the Rail Safety Regulator's powers under this section, including the power to issue a direction under subsection (3) at any time after a specified date; and
  - (b) includes a copy of this section; and

*Rail Safety Act 2009*  
*Act No. of*

**s. 53**

Part 4 – Safety Management

---

- (c) may contain suggested terms for inclusion in an interface agreement.
- (3) If the Rail Safety Regulator issues a notice under subsection (2) to a rail transport operator, rail infrastructure manager or road manager, the Rail Safety Regulator may, in writing, request the operator or manager to provide the information that the Rail Safety Regulator reasonably requires for the purposes of making a direction under subsection (4).
- (4) If a notice is issued under subsection (2) and an interface agreement has not been entered into by or on the date specified in the notice, the Rail Safety Regulator –
  - (a) may determine the arrangements that are to apply in relation to the management of risks to safety referred to in section 47, 48, 49 or 50, as the case requires; and
  - (b) may direct either or both persons to whom the notice is issued to give effect to those arrangements; and
  - (c) must specify by when a direction must be complied with.
- (5) A direction under subsection (4) –
  - (a) must be in writing; and
  - (b) must set out any arrangements determined by the Rail Safety Regulator under that subsection.

*Rail Safety Act 2009*  
*Act No. of*

Part 4 – Safety Management

**s. 54**

- 
- (6) A person to whom a direction under subsection (4) is given must comply with the direction.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

**54. Register of interface agreements**

- (1) A rail transport operator must maintain a register of –

- (a) interface agreements to which the operator is a party; and
- (b) arrangements determined by the Rail Safety Regulator under section 53 –

that are applicable to the operator's railway operations.

- (2) A road manager must maintain a register of –

- (a) interface agreements to which the manager is a party; and
- (b) arrangements determined by the Rail Safety Regulator under section 53 –

that are applicable to any road in relation to which the manager is the road manager.

*Rail Safety Act 2009*  
*Act No. of*

**s. 54**

Part 4 – Safety Management

---

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.



---

**PART 5 – PLANS, PROGRAMS AND DUTIES OF RAIL  
SAFETY WORKERS**

***Division 1 – Plans and programs***

**55. Security management plan**

A rail transport operator –

- (a) must have a security management plan, for railway operations carried out by or on behalf of the operator on or in relation to the operator's rail infrastructure or rolling stock, that –
  - (i) incorporates measures to protect people and property from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and
  - (ii) complies with this Act and the regulations; and
- (b) must ensure that the security management plan is implemented; and
- (c) must ensure that the appropriate response measures of the security management plan are implemented without delay if an incident of a kind referred to in paragraph (a)(i) occurs.

Penalty: In the case of –

*Rail Safety Act 2009*  
*Act No. of*

**s. 56**

Part 5 – Plans, Programs and Duties of Rail Safety Workers

---

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

**56. Emergency management plan**

- (1) A rail transport operator must have an emergency management plan, which complies with subsection (2), for railway operations carried out by or on behalf of the operator on or in relation to the operator's railway operations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units; or
  - (b) an individual, a fine not exceeding 400 penalty units.
- (2) The emergency management plan must –
    - (a) address and include the matters that are prescribed; and
    - (b) be prepared –
      - (i) in conjunction with emergency services and any other person who is prescribed; and
      - (ii) in accordance with the prescribed requirements; and

*Rail Safety Act 2009*  
*Act No. of*

Part 5 – Plans, Programs and Duties of Rail Safety Workers

**s. 57**

- 
- (c) be kept and maintained as prescribed;  
and
  - (d) be provided to the emergency services  
and any other person who is prescribed;  
and
  - (e) be tested as prescribed.
- (3) A rail transport operator must ensure that the appropriate response measures of the emergency management plan are implemented if an emergency occurs.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or
- (b) an individual, a fine not exceeding 400 penalty units.

**57. Health and fitness management program**

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

Penalty: In the case of –

*Rail Safety Act 2009*  
*Act No. of*

**s. 58**

Part 5 – Plans, Programs and Duties of Rail Safety Workers

---

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 40 penalty units.

**58. Alcohol and drug management program**

A rail transport operator must prepare and implement, for rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock, an alcohol and drug management program that complies with this Act and the regulations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 40 penalty units.

**59. Fatigue management program**

A rail transport operator must prepare and implement a program, in accordance with the prescribed requirements, for the management of fatigue of rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock.

Penalty: In the case of –

*Rail Safety Act 2009*  
*Act No. of*

Part 5 – Plans, Programs and Duties of Rail Safety Workers

**s. 60**

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 40 penalty units.

***Division 2 – Rail safety workers***

**60. Competence of rail safety workers to be assessed**

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

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (2) For the purposes of subsection (1), the competence of a rail safety worker to carry out particular rail safety work –
    - (a) must, unless the rail safety operator is exempt under this Act from compliance with this paragraph in relation to that rail safety work, be assessed by reference to –
      - (i) any qualification and any units of competency recognised under the

*Rail Safety Act 2009*  
*Act No. of*

**s. 60**

Part 5 – Plans, Programs and Duties of Rail Safety Workers

---

Australian Quality Training Framework within the meaning of the *Skilling Australia's Workforce Act 2005* of the Commonwealth applicable to that rail safety work; or

- (ii) if subparagraph (i) does not apply, the applicable prescribed provisions; and
- (b) must be assessed by reference to the knowledge and skills of the rail safety worker that would enable the worker to carry out the rail safety work safely.
- (3) A certificate purporting to have been issued under the Australian Quality Training Framework to a rail safety worker certifying that the worker has certain qualifications or units of competence is evidence that the worker has those qualifications or units of competence.
- (4) Nothing in this section prevents a rail transport operator from requiring a rail safety worker to undertake further training before carrying out rail safety work.
- (5) A rail transport operator must maintain, in accordance with the prescribed requirements, records of the competency of rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock.

Penalty: In the case of –

*Rail Safety Act 2009*  
*Act No. of*

Part 5 – Plans, Programs and Duties of Rail Safety Workers

**s. 61**

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 40 penalty units.

**61. Rail safety workers to have identification**

- (1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's railway operations has a form of identification that is sufficient to enable the type of competency and training of the rail safety worker for that rail safety work to be checked by a rail safety officer.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
  - (b) an individual, a fine not exceeding 40 penalty units.
- (2) A rail safety worker who is carrying out rail safety work must, when requested by a rail safety officer to do so, show to the rail safety officer the identification provided in accordance with subsection (1).

Penalty: Fine not exceeding 5 penalty units.

*Rail Safety Act 2009*  
*Act No. of*

**s. 62**

Part 5 – Plans, Programs and Duties of Rail Safety Workers

---

**62. Duties of rail safety workers**

- (1) A rail safety worker, when carrying out rail safety work must –
- (a) take reasonable care for his or her own safety; and
  - (b) take reasonable care for the safety of persons who may be affected by the rail safety worker's acts or omissions; and
  - (c) co-operate with the rail transport operator in respect of any action taken by the rail transport operator to comply with a requirement imposed by or under the rail safety law.

Penalty: Fine not exceeding 250 penalty units.

- (2) 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 rail transport operator –
- (a) in the interests of safety; or
  - (b) under the rail safety law.

Penalty: Fine not exceeding 250 penalty units.

- (3) A rail safety worker, when carrying out rail safety work, must not wilfully or recklessly place at risk the safety of another person on or in the immediate vicinity of rail infrastructure.

Penalty: Fine not exceeding 250 penalty units.



*Rail Safety Act 2009*  
*Act No. of*

Part 5 – Plans, Programs and Duties of Rail Safety Workers

**s. 62**

- 
- (4) For the purposes of subsection (1)(a) or (b), in determining 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.

## **PART 6 – DRUG AND ALCOHOL USE AND TESTING**

### **63. Use of alcohol and drugs by rail safety workers**

A rail safety worker must not be on duty or carry out, or attempt to carry out, rail safety work –

- (a) while any alcohol is present in his or her blood or breath; or
- (b) while a prescribed illicit drug is present in his or her oral fluid or blood; or
- (c) while under the influence of any substance (other than a prescribed illicit drug) to the extent that he or she is incapable of effectively discharging a function or duty of a rail safety worker.

Penalty: Fine not exceeding 100 penalty units.

### **64. Testing for drugs and alcohol**

- (1) For the purposes of this section –

**“applicable provisions”** means –

- (a) Part I of the *Road Safety (Alcohol and Drugs) Act 1970*; and
- (b) Part II, Division 2 (including section 14) of that Act; and
- (c) Part III of that Act –

*Rail Safety Act 2009*  
*Act No. of*

Part 6 – Drug and Alcohol Use and Testing

**s. 64**

---

as in force from time to time.

- (2) Without limiting the application of the *Road Safety (Alcohol and Drugs) Act 1970* to a rail safety worker otherwise than by virtue of this section, the applicable provisions of the *Road Safety (Alcohol and Drugs) Act 1970*, with the appropriate modifications, apply to, and in relation to, a rail safety worker on duty or carrying out, or attempting to carry out, rail safety work.
- (3) The appropriate modifications of the applicable provisions of the *Road Safety (Alcohol and Drugs) Act 1970* are as follows:
  - (a) in section 2(1) of those provisions, in the definition of “prescribed concentration”, the words “0.05 of a gram” are to be taken to be the words “0.00 of a gram”;
  - (b) a reference in the applicable provisions, in relation to a person, to the relevant time in relation to a test, an examination or requirement or direction to submit to the taking of a sample is to be taken, despite section 2(3A) of those provisions, to be a reference to the time the person was required or directed to undertake the test, medical examination or to submit to the taking of the sample;
  - (c) a reference in the applicable provisions to –
    - (i) a driver; or

*Rail Safety Act 2009*  
*Act No. of*

**s. 64**

Part 6 – Drug and Alcohol Use and Testing

---

(ii) the driving of a vehicle or a motor vehicle; or

(iii) a person driving, who drove, or who has driven, a motor vehicle on a public street –

is to be taken to be a reference to a rail safety worker on duty or carrying out, or attempting to carry out, rail safety work;

(d) a reference in the applicable provisions, (apart from section 10) to a police officer or an approved operator is to be taken to include a reference to a rail safety officer;

(e) a matter, thing or person that or who is prescribed or approved for the purposes of that Act is to be taken to be prescribed or approved, respectively, for the purposes of the applicable provisions as they apply by virtue of this section;

(f) sections 7D, 8 and 8A of the applicable provisions do not, by reason only of this section, apply to a rail safety worker on duty or carrying out, or attempting to carry out, rail safety work;

(g) in section 9(1) of the applicable provisions, the words “a person drove a motor vehicle in a public street while he was in such a condition as to be incapable of driving that vehicle without risk of danger to other persons” are to be taken to be the words “a rail safety

*Rail Safety Act 2009*  
*Act No. of*

Part 6 – Drug and Alcohol Use and Testing

**s. 64**

---

worker on duty or carrying out, or attempting to carry out, rail safety work is incapable of undertaking a function or duty of a rail safety worker”;

- (h) section 10(8) of the applicable provisions does not, by reason only of this section, apply to a rail safety worker attending his or her work as a rail safety worker;
- (i) in section 10A(1) of the applicable provisions, the words “driver of a vehicle” are to be taken to be omitted;
- (j) section 10A(1A) of the applicable provisions does not, by reason only of this section, apply to a rail safety worker attending his or her work as a rail safety worker;
- (k) section 22(2) of the applicable provisions is to be taken to include a reference to all offences under this Act.

*Rail Safety Act 2009*  
*Act No. of*

**s. 65**      Part 7 – Information, Investigation by Rail Transport Operators and Audit

---

**PART 7 – INFORMATION, INVESTIGATION BY RAIL  
TRANSPORT OPERATORS AND AUDIT**

**65. Rail transport operators to provide information**

- (1) The Rail Safety Regulator may, by notice in writing given to a rail transport operator, require the operator to provide to the Rail Safety Regulator on or before a specified date and in a manner and form approved by the Rail Safety Regulator, any or all of the following:
  - (a) information concerning measures taken by the rail transport operator to promote rail safety;
  - (b) information concerning matters, including matters relating to the financial capacity or insurance arrangements of the rail transport operator, relating to rail safety or the accreditation of the rail transport operator that the Rail Safety Regulator reasonably requires;
  - (c) the information prescribed for the purposes of this subsection.
- (2) The rail transport operator must comply with a notice given to the operator under subsection (1).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or

*Rail Safety Act 2009*  
*Act No. of*

- (b) an individual, a fine not exceeding 40 penalty units.

- (3) A rail transport operator must provide to the Rail Safety Regulator –

- (a) in a manner and form approved by the Rail Safety Regulator; and
- (b) at the prescribed times and in respect of the prescribed periods –

information prescribed for the purposes of this subsection relating to rail safety or accreditation.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
- (b) an individual, a fine not exceeding 40 penalty units.

**66. Notification of certain occurrences**

- (1) A rail transport operator must report to the Rail Safety Regulator or another authority specified by the Rail Safety Regulator –
  - (a) within the prescribed time; and
  - (b) in the prescribed manner –

all notifiable occurrences that happen on, or in relation to, the rail transport operator's railway premises or railway operations.

*Rail Safety Act 2009*  
*Act No. of*

**s. 66**      Part 7 – Information, Investigation by Rail Transport Operators and Audit

---

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 80 penalty units.
- (2) Two or more rail transport operators may make a joint report in respect of a notifiable occurrence affecting them.
- (3) In addition to the matters specified in subsection (1), the Rail Safety Regulator may, by notice in writing, require a rail transport operator to report to –
  - (a) the Rail Safety Regulator; or
  - (b) another authority specified by the Rail Safety Regulator –any other occurrence or type of occurrence which endangers, or could endanger, the safe operation of any railway operations.
- (4) The Rail Safety Regulator may require information in a report under this section to be verified by statutory declaration.
- (5) A rail transport operator to whom a requirement under subsection (3) applies must comply with the requirement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or



*Rail Safety Act 2009*  
*Act No. of*

- (b) an individual, a fine not exceeding 80 penalty units.

**67. Rail transport operators may be required to investigate notifiable occurrences**

- (1) The Rail Safety Regulator may, by written notice to a rail transport operator, require the rail transport operator to investigate –
  - (a) notifiable occurrences; or
  - (b) any other occurrences that have endangered, or that may endanger, the safe operation of the railway operations carried out by the rail transport operator.
- (2) The level of investigation is to be determined by the severity and potential consequences of the occurrences and of other similar occurrences.
- (3) The focus of the investigation should be to determine the cause and contributing factors, rather than to apportion blame.
- (4) The rail transport operator must ensure that the investigation is conducted –
  - (a) in a manner approved by the Rail Safety Regulator; and
  - (b) within the period specified by the Rail Safety Regulator.

Penalty: In the case of –

*Rail Safety Act 2009*  
*Act No. of*

**s. 68**      Part 7 – Information, Investigation by Rail Transport Operators and Audit

---

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 80 penalty units.
- (5) A rail transport operator who has carried out an investigation under this section must report to the Rail Safety Regulator on the investigation within the period specified by the Rail Safety Regulator.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 80 penalty units.

**68. Audit by Rail Safety Regulator of railway operations**

- (1) The Rail Safety Regulator –
  - (a) may audit the railway operations of a rail transport operator; and
  - (b) may prepare and implement a program (in this section referred to as “**an audit program**”) for each year for inspecting the railway operations of rail transport operators; and
  - (c) may, for the purposes of an audit, inspect the railway operations of a rail transport

*Rail Safety Act 2009*  
*Act No. of*

operator whether or not the inspection  
takes place under an audit program.

- (2) Without limiting subsection (1)(b), an audit program may focus on one or more of the following:
  - (a) particular rail transport operators;
  - (b) particular criteria relating to rail transport operators;
  - (c) particular aspects of rail safety;
  - (d) particular aspects of railway operations.
- (3) The Rail Safety Regulator must give not less than 24 hours' notice in writing to a rail transport operator before inspecting the operator's railway operations under this section.
- (4) The regulations may establish 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, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator.

## **PART 8 – INVESTIGATIONS**

### **69. Appointment of investigator**

(1) The Secretary of the Department –

(a) may, on his or her own initiative or at the request of a person; and

(b) must, at the request of the Minister –

appoint one or more independent investigators to investigate and report on an accident, or other incident, that is on, associated with or involves a railway.

(2) A person may only be appointed an investigator under subsection (1) if the Secretary of the Department is satisfied that the person is suitably qualified, by virtue of the person's qualifications or experience, to conduct an independent investigation.

(3) Before appointing an investigator under subsection (1), the Secretary of the Department is to consult with the Minister, and any person who is an accredited person in respect of the railway to which the proposed investigation relates, about –

(a) which person or persons are to be appointed as an investigator; and

(b) the matter or matters to be inquired into by the investigator; and

*Rail Safety Act 2009*  
*Act No. of*

Part 8 – Investigations

s. 70

---

(c) reporting arrangements once the investigation is completed.

(4) An investigator may be appointed under subsection (1) in relation to an accident or incident, and an investigator may continue to carry out an investigation in relation to an accident or incident, even though –

(a) a court or Tribunal is conducting proceedings in relation to the accident or incident; or

(b) another person or body is investigating the accident or incident –

unless a court, or Tribunal, that has jurisdiction to do so, orders the investigator to cease to conduct the investigation.

(5) An investigator is to be appointed on the terms and conditions agreed between the Secretary of the Department and the investigator.

**70. Conduct of investigation**

(1) In conducting an investigation, an investigator –

(a) is to attempt to determine the circumstances surrounding any accident or incident so as to prevent the future occurrence of accidents and incidents; and

*Rail Safety Act 2009*  
*Act No. of*

s. 71

Part 8 – Investigations

---

- (b) is not to apportion blame for the occurrence of accidents and incidents; and
  - (c) is not to determine the liability of any person in respect of any accident or incident.
- (2) An investigator is to conduct an investigation as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- (3) An investigator is not, in conducting an investigation, bound by the rules of evidence, but may inform himself or herself on a matter as the investigator thinks fit.

**71. Powers of investigator**

- (1) Except as provided by this section, an investigator may conduct an investigation in the manner determined by the investigator.
- (2) An investigator may, for the purposes of an investigation, by summons signed by the investigator –
  - (a) require a person to attend before the investigator; or
  - (b) require a person to produce to the investigator any document, object, material or information.

*Rail Safety Act 2009*  
*Act No. of*

Part 8 – Investigations

s. 71

- 
- (3) An investigator may, for the purposes of an investigation, require a person summoned to attend before the investigator –
- (a) to answer relevant questions or to provide information; and
  - (b) to make an oath or affirmation to answer questions put by the investigator.
- (4) Subject to subsection (5), Part 9 applies to, and in relation to, an investigator conducting an investigation, as if –
- (a) a reference in that Part to a rail safety officer were a reference to an investigator; and
  - (b) in section 74, for the words “investigative purposes” there were substituted the words “an investigation being conducted by the investigator”; and
  - (c) in section 82(2) and (3) and section 85(a)(ii), for the words “evidence of the commission of an offence against the rail safety law” there were substituted the words “evidence that may be relevant to an investigation being conducted by an investigator”; and
  - (d) in section 85(b), for the words “in the commission of an offence against the rail safety law” there were substituted the words “evidence that may be relevant to an investigation being conducted by an investigator”; and

*Rail Safety Act 2009*  
*Act No. of*

s. 71

Part 8 – Investigations

---

- (e) in section 91(1)(a), for the words “evidence in proceedings, that have been or may be commenced, for an offence against the rail safety law”, there were substituted the words “evidence for the purposes of an investigation”; and
  - (f) in section 92(1), for the words “to prevent the commission of an offence against the rail safety law” there were substituted the words “as evidence for the purposes of an investigation”.
- (5) Divisions 7 and 8 of Part 9 do not apply to, or in relation to, an investigator conducting an investigation under this Part.
- (6) If a document, object or material is produced to an investigator under this section (other than under Part 9 as applied by this section), the investigator may do all or any of the following:
  - (a) inspect it;
  - (b) make copies of, photograph, take extracts from or test it;
  - (c) take possession of it and keep it while it is necessary for the investigation.
- (7) An investigator may appoint a person or persons to assist him or her in an investigation.



**72. Report of findings of investigator**

- (1) An investigator, after completing an investigation, must prepare a report in relation to the investigation (in this section referred to as the “investigator’s report”).
- (2) An investigator’s report may contain –
  - (a) any recommendations that the investigator thinks fit; and
  - (b) other relevant matters that the investigator thinks fit.
- (3) Before finalising an investigator’s report, the investigator is to circulate a confidential draft of the proposed report to those persons that the investigator considers ought to be given the opportunity to comment on the report before it is finalised.
- (4) The investigator must provide a copy of the investigator’s report to the Secretary of the Department and the Minister.
- (5) The Secretary of the Department is to ensure that a copy of the final report is published within 28 days after it is provided to him or her under subsection (4).
- (6) A report is taken to be published under subsection (5) if it is –
  - (a) placed on a website of the Department for a period of at least 60 days; and

*Rail Safety Act 2009*  
*Act No. of*

**s. 73**

Part 8 – Investigations

---

- (b) made available for viewing or purchase, at a reasonable cost, at a place specified in a notice on the website.

**73. Rights and obligations of persons in relation to investigations**

- (1) A person who has been served with a summons under section 71(2) must not fail without reasonable excuse –
  - (a) to attend before the investigator in accordance with the summons; or
  - (b) to produce a document, object or material, or provide information, in accordance with the summons.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (2) A person must not refuse, without reasonable excuse, to answer a relevant question when required to do so under this Part.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 000 penalty units; or

*Rail Safety Act 2009*  
*Act No. of*

Part 8 – Investigations

s. 73

(b) an individual, a fine not exceeding 200 penalty units.

- (3) A person must not refuse to be sworn or to affirm when required to do so under this Part.

Penalty: Fine not exceeding 200 penalty units.

- (4) A person must not, without reasonable excuse, hinder or obstruct an investigator in the exercise of powers under this Part or fail to obey any other requirement imposed by an investigator under this Part.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 1 000 penalty units;  
or

(b) an individual, a fine not exceeding 200 penalty units.

- (5) A person is not excused from answering a question, producing any document, object or material, or providing information, under this Part, on the ground that to do so might tend to incriminate the person or make the person liable to a penalty.

- (6) Any answer or information given, or any document, object or material produced, in accordance with a requirement under this Part is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement) –

*Rail Safety Act 2009*  
*Act No. of*

**s. 73**

Part 8 – Investigations

---

- (a) if the person claims, before giving the answer or information, or producing the document, object or material, that the answer, information, document, object or material might tend to incriminate the person or make the person liable to a penalty; or
  - (b) if the person was not, before giving the answer or information, or producing the document, object or material, informed that he or she was entitled to make a claim of the kind referred to in paragraph (a).
- (7) A person is not obliged to provide information that is privileged on the grounds of legal professional privilege.
- (8) Except as provided in subsection (6) or (7), any information given, or document produced, by a natural person as a direct result of the compliance with the direction may be used in evidence in any criminal or civil proceedings against the person.

## **PART 9 – ENFORCEMENT**

### ***Division 1 – Entry to places by rail safety officers***

#### **74. Power to enter places**

- (1) A rail safety officer may, for compliance and investigative purposes or in an emergency, enter a place if –
- (a) the place is a public place and the entry is made when the place is open to the public; or
  - (b) the occupier of the place consents to the entry; or
  - (c) the entry to the place is authorised by a search warrant; or
  - (d) the place is railway premises and the entry is made –
    - (i) when the place is open for carrying on activities by reason of which the place is railway premises; or
    - (ii) when the place is otherwise open for entry; or
    - (iii) if the place is not open as mentioned in subparagraphs (i) and (ii), but the entry is urgently required to investigate the circumstances of a notifiable

*Rail Safety Act 2009*  
*Act No. of*

s. 75

Part 9 – Enforcement

---

occurrence, at any time during which railway operations are being carried out or are usually carried out.

(2) A rail safety officer who enters railway premises under subsection (1)(d) must not unnecessarily impede any activities being conducted at the premises.

(3) In this section –

**“compliance and investigative purposes”**  
includes purposes –

(a) related to ascertaining whether the rail safety law has been or is being complied with, including whether an offence has been committed against the rail safety law; and

(b) related to ascertaining whether the terms of, or a condition or restriction of, an accreditation has been or is being complied with.

**75. Limitation on entry powers – places used for residential purposes**

Despite anything to the contrary in this Part, the powers of a rail safety officer under this Part in relation to entering a place are not exercisable in respect of any place that is used only for residential purposes, except –

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 76**

---

- (a) with the consent of the occupier of the place; or
- (b) under the authority conferred by a search warrant.

**76. Notice of entry**

Before a rail safety officer enters railway premises (not being a public place) under section 74, the rail safety 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 premises; or
- (b) entry to the premises is made with the consent of the occupier of the premises; or
- (c) entry is required in circumstances where the rail safety officer reasonably believes there is an immediate risk to safety because of the carrying out of railway operations at the premises; or
- (d) entry is authorised by a search warrant.

***Division 2 – General enforcement powers***

**77. General powers after entering a place**

- (1) A rail safety officer who enters a place under this Part, may do any of the following:
- (a) search and inspect any part of the place and any rail infrastructure, rolling stock or road vehicle or any 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 structure, rolling stock, road vehicle or other thing;
  - (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers;
  - (d) test any part of rail infrastructure or rolling stock for the purpose of identifying quality or faults;
  - (e) inspect, film, photograph, videotape or otherwise record an image of –
    - (i) rail infrastructure or rolling stock, or a road vehicle or other thing, at the place; and
    - (ii) a document or record at the place or in rolling stock or a road vehicle at the place;



*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

s. 77

- 
- (f) take, or authorise another person to take, for analysis, a thing, or a sample of or from the thing, at the place;
  - (g) seize any thing that the rail safety officer suspects on reasonable grounds is connected with an offence against the rail safety law or to secure any such thing against interference;
  - (h) require any person at the place to answer questions or otherwise give information in relation to a suspected offence against the rail safety law;
  - (i) mark, tag or otherwise identify rolling stock, a road vehicle or other thing at the place;
  - (j) take a copy of the whole or any part of a document at the place or in rolling stock or a road vehicle at the place;
  - (k) take all necessary steps to allow a power under paragraph (a) to paragraph (j) (inclusive) to be exercised.
- (2) A film, photograph, videotape or image taken under subsection (1)(e) of rail infrastructure, any part of rail infrastructure, rolling stock, a road vehicle, or any other thing, is not inadmissible as evidence by reason only of the fact that it includes the likeness of one or more persons, if the capturing of that likeness does not appear to have been the main reason for the taking of the film, photograph, videotape or image.

**78. Use of assistants and equipment**

- (1) A rail safety officer may exercise powers under this Part with the aid of the assistants and equipment that the officer considers reasonably necessary in the circumstances.
- (2) Powers that may be exercised by a rail safety officer under this Part may be exercised by an assistant authorised and supervised by the officer, but only if the officer considers that it is reasonably necessary in the circumstances that the powers be exercised by an assistant.

**79. Use of electronic equipment**

- (1) Without limiting section 77, if, in the exercise of a power under this Part –
  - (a) a thing is found in or on rolling stock or a road vehicle, or at a place, and the thing is, or includes, a disk, tape or other device for the storage of information; and
  - (b) the equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other device –

the rail safety officer, or a person assisting the officer, may operate the equipment, or seize and operate the equipment, to access the information.

- (2) A rail safety officer, or a person assisting an officer, must not operate or seize equipment for the purpose mentioned in this section unless the officer or person assisting believes on reasonable

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 80**

---

grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

**80. Use of equipment to examine or process things**

- (1) Without limiting section 78, a rail safety officer exercising a power under this Part may bring to, onto, or into –

- (a) rolling stock; or
- (b) a road vehicle; or
- (c) a place –

any equipment reasonably necessary for the examination or processing of things found at, on or in the rolling stock, road vehicle or place in order to determine whether they are things that may be seized.

- (2) The rail safety officer, or a person assisting the officer, may operate equipment already –

- (a) in or on the rolling stock or road vehicle;  
or
- (b) at the 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 determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that –

*Rail Safety Act 2009*  
*Act No. of*

**s. 81**

Part 9 – Enforcement

---

- (c) the equipment is suitable for the examination or the processing; and
- (d) the examination or processing can be carried out without damage to the equipment.

**81. Securing a site**

- (1) For the purpose of protecting evidence that might be relevant for compliance or investigative purposes under the rail safety law, a rail safety officer may secure the perimeter of any site at a place by whatever means the rail safety officer considers appropriate.
- (2) A person other than a rail safety officer must not, without the permission of a rail safety officer, enter, or remain at, a site the perimeter of which is secured under this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) an individual, a fine not exceeding 20 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

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

s. 82

---

- (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.
- (4) If a rail safety officer unreasonably withholds a permission referred to in subsection (2), the permission is to be taken to have been given.

***Division 3 – Search warrants***

**82. Search warrants**

- (1) A rail safety officer may apply to a magistrate for the issue of a search warrant in relation to particular railway premises or residential premises.
- (2) An application may only be made under subsection (1) if the rail safety officer believes on reasonable grounds that there is, or may be within the next 72 hours, in, or on, the railway premises or residential premises, a thing or things of a kind that may be evidence of the commission of an offence against the rail safety law.
- (3) If a magistrate is satisfied that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, in, or on, the railway premises or residential premises evidence of the commission of an offence against the rail safety law, the magistrate may issue a search warrant.

*Rail Safety Act 2009*  
*Act No. of*

s. 82

Part 9 – Enforcement

---

- (4) A search warrant issued under this section or section 83 authorises a rail safety officer named in the warrant and any assistants the rail safety officer considers necessary –
  - (a) to enter the railway premises or residential premises named or described in the warrant; and
  - (b) to search for and seize any thing named or described in the warrant.
- (5) In addition to any other requirement, a search warrant must state –
  - (a) the offence suspected; and
  - (b) the railway premises or residential premises to be searched; and
  - (c) a description of the thing for which the search is to be made; and
  - (d) any conditions to which the warrant is subject; and
  - (e) whether entry is authorised to be made at any time or during stated hours; and
  - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (6) A magistrate who issues a search warrant is to cause a record to be made of all relevant particulars of the grounds the magistrate has relied on to justify the issue of the search warrant.

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 83**

- 
- (7) A search warrant is not invalidated by any defect, other than a defect that affects the substance of the search warrant in a material particular.

**83. Warrants by telephone or other electronic means**

- (1) A rail safety officer may make an application to a magistrate for a search warrant by telephone, telex, facsimile or other electronic means –
- (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.
- (3) An application under this section is to include all information required to be provided in an application for a search warrant under section 82, but the application may, if necessary, be made before the information is sworn.
- (4) If an application is made to a magistrate under this section and, after considering the information and having received and considered the further information (if any) that he or she required, the magistrate is satisfied that –
- (a) a search warrant in the terms of the application should be issued urgently; or

*Rail Safety Act 2009*  
*Act No. of*

s. 83

Part 9 – Enforcement

---

- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the search warrant –

the magistrate may complete and sign the same form of warrant that would be issued under section 82.

- (5) If the magistrate decides to issue the search warrant, the magistrate is to inform the applicant, by telephone, telex, facsimile or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (6) The applicant is to then complete a form of search warrant in terms substantially corresponding to those given by the magistrate, stating on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The applicant, not later than the day after the day of expiry of the search warrant or the day after the day on which the search warrant was executed, whichever is the earlier, is to give or transmit to the magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.
- (8) The magistrate is to attach to the documents provided under subsection (7) the form of search warrant completed by the magistrate.
- (9) If –



*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 84**

- 
- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a search warrant issued under this section was duly authorised; and
  - (b) the form of search warrant signed by the issuing officer is not produced in evidence –

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

**84. Notice to be given of entry under warrant**

- (1) Before executing a search warrant, the rail safety officer named in the warrant or a person assisting the officer must –
  - (a) announce that he or she is authorised by the warrant to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) The rail safety officer or a person assisting the officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the search warrant is not frustrated.
- (3) If an occupier or another person who apparently represents the occupier is present at premises

*Rail Safety Act 2009*  
*Act No. of*

**s. 85**

Part 9 – Enforcement

---

when a search warrant is being executed, the rail safety officer or person assisting the officer must give the person a copy of the warrant.

**85. Seizure of things not mentioned in warrant**

A search warrant authorises the rail safety officer executing the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant, if –

- (a) the rail safety officer believes, on reasonable grounds, that the thing –
  - (i) is of a kind which could have been included in a search warrant; or
  - (ii) will afford evidence of the commission of an offence against the rail safety law; and
- (b) in the case of seizure, the rail safety officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence against the rail safety law.

---

***Division 4 – Powers to support seizure***

**86. Directions relating to seizure**

- (1) To enable a thing to be seized under this Part, a rail safety officer may direct the person in control of it –
  - (a) to take it to a specified place within a specified time; and
  - (b) if necessary, to remain in control of it at the specified place for a period specified in the direction.
- (2) A direction under subsection (1) –
  - (a) must be given by signed notice in writing given to the person; or
  - (b) if for any reason it is not practicable to give a signed notice in writing to the person, may be given orally and confirmed by signed notice in writing given to the person as soon as is practicable.
- (3) A further direction may be made under subsection (1) about the thing if it is necessary and reasonable to make the further direction.

*Example* A further direction may be that the thing be transported during stated off-peak hours, be transported along a particular route, or be transported in a particular way.

*Rail Safety Act 2009*  
*Act No. of*

s. 87

Part 9 – Enforcement

---

- (4) A person given a direction under subsection (1) must comply with that direction unless the person has a reasonable excuse.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) an individual, a fine not exceeding 20 penalty units.
- (5) Without limiting what may otherwise be a reasonable excuse under subsection (4), it is a reasonable excuse for a person in control of a thing not to comply with a direction under subsection (1) if, in all the circumstances, the direction was unreasonable.
- (6) In this section –
- “in control”**, in relation to a thing, means having, or reasonably appearing to a rail safety officer as having, authority to exercise control over the thing.

**87. Rail safety officer may direct a thing’s return**

- (1) If a rail safety officer has directed a person to take a thing to a specified place within a specified time under section 86(1), a rail safety officer may direct the person to return the thing to the place from which it was taken.

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 88**

- 
- (2) A person given a direction under subsection (1) must comply with that direction unless the person has a reasonable excuse.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

**88. Receipt for seized things**

- (1) After a rail safety officer seizes a thing under this Part, the officer must give a receipt for it to the person from whom the thing was seized or the owner of the thing.
- (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 the thing seized and its condition.
- (4) This section does not apply if it would be impracticable or unreasonable to expect the officer to account for the thing, given its condition, nature and value.

*Rail Safety Act 2009*  
*Act No. of*

s. 89

Part 9 – Enforcement

---

**89. Access to seized thing**

- (1) Until a seized thing 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.

**90. Embargo notices**

- (1) This section applies if –
  - (a) a rail safety officer is authorised to seize any record, device or other thing under this Part; and
  - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
- (2) A rail safety officer may issue an embargo notice under this section.
- (3) An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of a rail safety officer or the Rail Safety Regulator.
- (4) The embargo notice must –
  - (a) contain the particulars required by the regulations; and

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

s. 90

---

- (b) list the activities that it forbids; and
  - (c) set out a copy of subsection (9).
- (5) On issuing an embargo notice, a rail safety officer must –
  - (a) cause a copy of the notice to be served on the owner of the record, device or other thing; or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, affix a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person must not knowingly do anything that is forbidden by an embargo notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) an individual, a fine not exceeding 20 penalty units.
- (7) A person must not instruct or request another person to do anything that the first-mentioned person knows is forbidden by an embargo notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or

*Rail Safety Act 2009*  
*Act No. of*

s. 90

Part 9 – Enforcement

---

- (b) an individual, a fine not exceeding 20 penalty units.
- (8) It is a defence to a prosecution for an offence against subsection (6) to establish that the person charged –
  - (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it; and
  - (b) notified the rail safety officer who issued the embargo notice of the move and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (9) A person on whom an embargo notice has been served must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.

Penalty: In the case of –

  - (a) a body corporate, a fine not exceeding 100 penalty units; or
  - (b) an individual, a fine not exceeding 20 penalty units.
- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.



---

***Division 5 – Forfeiture***

**91. Return of seized things**

- (1) As soon as possible after a rail safety officer seizes any thing (including a document) under this Part, the rail safety officer must return the thing to the owner unless –
  - (a) the rail safety officer considers it necessary to retain the thing because it may afford evidence in proceedings, that have been or may be commenced, for an offence against the rail safety law; or
  - (b) the thing is forfeited to the Crown under section 92; or
  - (c) the rail safety officer is otherwise authorised (by law or an order of a court) to retain, destroy or dispose of the thing.
- (2) The thing may be returned either unconditionally or on the terms and conditions that the rail safety officer considers appropriate to eliminate or reduce any risks to safety.
- (3) If the rail safety officer imposes terms or conditions on the return of a thing, the owner must comply with the terms and conditions.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or

*Rail Safety Act 2009*  
*Act No. of*

s. 92

Part 9 – Enforcement

---

- (b) an individual, a fine not exceeding 20 penalty units.

**92. Forfeiture**

- (1) A sample or thing taken for analysis, or a thing seized under this Part, is forfeited to the Crown if the rail safety officer who took, or arranged the taking of, the sample or thing or who seized the thing –
  - (a) after making reasonable efforts, cannot return it to its owner; or
  - (b) after making reasonable inquiries, cannot find its owner; or
  - (c) considers it necessary to retain the sample or thing to prevent the commission of an offence against the rail safety law.
- (2) For the purposes of subsection (1), the officer is not required to –
  - (a) make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or
  - (b) make inquiries if it would be unreasonable to make inquiries to find the owner.
- (3) In deciding whether –

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

s. 93

- 
- (a) it is reasonable to make efforts or inquiries; and
  - (b) if efforts or inquiries are made, the efforts or inquiries, including the period over which they are made, are reasonable –

regard must be had to the sample or thing's condition, nature and value.

- (4) In this section –

“**owner**”, in relation to 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.

**93. Dealing with forfeited sample or thing**

- (1) On forfeiture of a sample or thing to the Crown, the sample or thing becomes the Crown's property and may be dealt with by the Rail Safety Regulator in any way the Rail Safety Regulator considers appropriate.
- (2) Without limiting subsection (1), the Rail Safety Regulator may destroy or dispose of the sample or thing.
- (3) If a thing is forfeited to the Crown under section 92(1)(c), the rail safety officer must notify, in writing, the owner –
  - (a) of the forfeiture; and

*Rail Safety Act 2009*  
*Act No. of*

s. 94

Part 9 – Enforcement

---

- (b) about the right of the owner to seek review under Part 10 of the decision to forfeit the thing –

unless the rail safety officer cannot find the owner despite making reasonable enquiries.

***Division 6 – Directions***

**94. Directions to certain persons to give assistance**

- (1) A rail safety officer may direct a rail transport operator or a rail safety worker to give the rail safety officer reasonable assistance to enable the officer to exercise a power under this Part.

*Example* When inspecting rolling stock, 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 approved safety management system for the railway or for the operation of rolling stock on the railway.

- (2) When giving a direction to a person under subsection (1), the rail safety officer must warn the person that it is an offence to fail to comply with the direction unless the person has a reasonable excuse.
- (3) A person given a direction under subsection (1) must comply with the direction unless the person has a reasonable excuse.

Penalty: Fine not exceeding 100 penalty units.

- (4) In this section –

**“reasonable assistance”** includes –

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 95**

- 
- (a) assistance to enable the rail safety officer to find and gain access to electronically stored material and information; and
  - (b) unloading rolling stock; and
  - (c) running the engine of a locomotive; and
  - (d) driving a train; and
  - (e) giving the rail safety officer assistance to enter any rail infrastructure or any part of rail infrastructure or open rolling stock or any part of rolling stock.

**95. Directions to give name and address**

- (1) A rail safety officer may direct a person to state the person's name and residential or business address if the officer –
  - (a) finds the person committing an offence against the rail safety law; or
  - (b) finds the person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has committed an offence against the rail safety law; or
  - (c) finds the person at railway premises and the officer –

*Rail Safety Act 2009*  
*Act No. of*

s. 96

Part 9 – Enforcement

---

- (i) reasonably believes the person is carrying out railway operations for a rail transport operator; and
  - (ii) reasonably considers that it is necessary for the purposes of the rail safety law to know the person's name and residential or business address.
- (2) When giving a direction under subsection (1), the officer must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse.
- (3) The officer may also direct the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address is false.
- (4) A person given a direction under subsection (1) or (3) must comply with the direction, unless the person has a reasonable excuse.

Penalty: Fine not exceeding 100 penalty units.

**96. Direction to produce documents**

- (1) A rail safety officer may direct a person to make available for inspection by the officer at a specified time and place, or produce to the officer for inspection at a specified time and place –
  - (a) a document that is required to be kept by the person under the rail safety law; or

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 96**

- 
- (b) a document that –
- (i) is prepared by the person under the rail safety law for the management of rail infrastructure or the operation of rolling stock; and
  - (ii) the officer reasonably believes is necessary for the officer to consider, in order to understand or verify a document that is required to be kept under the rail safety law; or
- (c) a document held by, or under the control of, the person relating to the carrying out of railway operations.

*Example* A safety management system may require testing of equipment as part of a scheduled maintenance program and a record of the results of the test to be kept. If an item of equipment is tested in accordance with the safety management system, the document that states the results of the test is a document prepared under the safety management system.

- (2) When giving a direction under subsection (1), the rail safety officer must warn the person that it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.
- (3) The rail safety officer may keep the document to copy it but must return the document to the person after copying it.
- (4) A person given a direction to make available, or produce, for inspection a document under

*Rail Safety Act 2009*  
*Act No. of*

s. 97

Part 9 – Enforcement

---

subsection (1) must comply with the direction, unless the person has a reasonable excuse.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

***Division 7 – Improvement notices***

**97. Improvement notices**

- (1) A rail safety officer may serve an improvement notice on a person if the officer believes on reasonable grounds that the person –
  - (a) is contravening a provision of the rail safety law; or
  - (b) has contravened a provision of the rail safety law and it is likely that the contravention will continue or be repeated; or
  - (c) is carrying out or has carried out railway operations that threaten safety.
- (2) The rail safety officer may serve on a person an improvement notice requiring the person, within the period specified in the notice –
  - (a) to undertake remedial rail safety work or do any other thing to remedy the



*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

s. 97

---

contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention; or

- (b) to carry out railway operations so that safety is not threatened or likely to be threatened.
- (3) The period within which a person is required by the improvement notice to comply with the notice must be at least 7 days after service of the notice.
- (4) An improvement notice must –
  - (a) state the reasons for the service of the notice; and
  - (b) if it is served in respect of a contravention or likely contravention of the rail safety law, specify the provision of the rail safety law in respect of which the belief is held; and
  - (c) if it is served on a person who is carrying out or has carried out railway operations that threaten safety, specify the operations in respect of which that belief is held; and
  - (d) include information about the right to a review under Part 10 of the decision to serve the notice; and
  - (e) set out the penalty for contravening the notice; and

*Rail Safety Act 2009*  
*Act No. of*

s. 97

Part 9 – Enforcement

---

- (f) include a statement of the effect of section 100; and
  - (g) state that it is served under this section.
- (5) An improvement notice served on a person on a ground stated in subsection (1)(a) or (b) –
  - (a) may specify a method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, are to be remedied; and
  - (b) may offer the person on whom the notice has been served a choice of ways by which an alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, may be remedied; and
  - (c) may specify that a person provide the Rail Safety Regulator with a program of rail safety work that 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.
- (6) An improvement notice served on a person on the ground stated in subsection (1)(c) –
  - (a) may specify a method by which railway operations may be carried out so that

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 98**

---

safety is not threatened or likely to be threatened; and

(b) may offer the person on whom the notice has been served a choice of ways by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and

(c) may specify that the person provide the Rail Safety Regulator with a program of railway operations that the person proposes to carry out to remedy the threat or likely threat to safety.

(7) A program referred to in subsection (5)(c) or subsection (6)(c) may include a timetable for the completion of the program of rail safety work.

**98. Contravention of improvement notice**

(1) A person on whom an improvement notice has been served must comply with the notice, unless the person has a reasonable excuse.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 1 000 penalty units;  
or

(b) an individual, a fine not exceeding 200 penalty units.

(2) In proceedings against a person for an offence of engaging in conduct that results in a

*Rail Safety Act 2009*  
*Act No. of*

s. 99

Part 9 – Enforcement

---

contravention of a requirement of an improvement notice served on a ground stated in section 97(1)(a) or (b), it is a defence if the person charged establishes that –

- (a) the alleged contravention or likely contravention; or
- (b) the matters or activities occasioning the alleged contravention or likely contravention –

were remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.

- (3) In proceedings against a person for an offence of engaging in conduct that results in a contravention of a requirement of an improvement notice on the ground stated in section 97(1)(c), it is a defence if the person charged establishes that the threat to safety was removed within the period specified in the notice, though by a method different from that specified in the improvement notice.

**99. Withdrawal or amendment of improvement notices**

- (1) An improvement notice served by a rail safety officer –
  - (a) may be withdrawn by notice served by a rail safety officer on the person affected by the notice; and

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 100**

- 
- (b) may be amended by any rail safety officer, by notice served on the person affected by the notice.
  - (2) An amendment of an improvement notice is effected by service on the person affected of a notice stating the terms of the amendment.
  - (3) An amendment of an improvement notice served on a person is ineffective if it purports to deal with a contravention of a different provision of the rail safety law from that dealt with in the improvement notice as first served.
  - (4) A notice of an amendment of an improvement notice must –
    - (a) state the reasons for the amendment; and
    - (b) include information about obtaining a review under Part 10 of the decision to amend the notice; and
    - (c) state that it is served under this section.

**100. Proceedings for offences not affected by improvement notices**

The service, amendment or withdrawal of an improvement notice does not affect any proceedings for an offence against the rail safety law in connection with any matter in respect of which the improvement notice was served.

**101. Rail Safety Regulator to arrange for rail safety work required by improvement notice to be carried out**

- (1) If a person fails to comply with an improvement notice served on the person that requires 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 –

the Rail Safety Regulator may arrange for that rail safety work to be carried out.

- (2) The Rail Safety Regulator may recover from the person served with an improvement notice referred to in subsection (1) the reasonable costs and expenses incurred by the Rail Safety Regulator for rail safety work carried out.

***Division 8 – Prohibition notices***

**102. Prohibition notice**

- (1) This section applies if an activity –
- (a) is occurring in relation to railway operations or railway premises that involves or will involve an immediate risk to safety; or

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

**s. 102**

- 
- (b) may occur in relation to railway operations or railway premises that, if it occurs, will involve an immediate risk to safety; or
    - (c) may occur at, on, or in the immediate vicinity of, rail infrastructure or rolling stock that, if it occurs, will involve an immediate risk to safety.
  - (2) If a rail safety officer believes on reasonable grounds that an activity referred to in subsection (1) is occurring or may occur, the rail safety officer may serve a prohibition notice on a person who has or appears to have control over the activity.
  - (3) The prohibition notice may prohibit the carrying on of the activity, or the carrying on of the activity in a specified way, until the rail safety officer has certified in writing that the matters that give or will give rise to the risk have been remedied.
  - (4) A prohibition notice has effect upon being served or, if the notice specifies a later date, on that later date.
  - (5) A prohibition notice must –
    - (a) state the basis for the rail safety officer's belief on which the service of the notice is based; and
    - (b) specify the activity which the rail safety officer believes involves or will involve

*Rail Safety Act 2009*  
*Act No. of*

**s. 102**

Part 9 – Enforcement

---

the risk and the matters which give or will give rise to the risk; and

- (c) if the rail safety officer believes that the activity involves a contravention or likely contravention of a provision of the rail safety law, specify that provision and state the basis for that belief; and
  - (d) include information about the right to a review under Part 10 of the decision to serve the notice; and
  - (e) set out the penalty for contravening the notice; and
  - (f) include a statement of the effect of section 106; and
  - (g) state that it is served under this section.
- (6) A prohibition notice may include directions on the measures to be taken to minimise or eliminate the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (5)(c).
- (7) A direction in a prohibition notice may –
- (a) require that measures be taken in accordance with a compliance code; or
  - (b) offer the person on whom the notice has been served a choice of ways to remedy the risk, activities or matters to which the notice relates or the contravention or



likely contravention mentioned in subsection (5)(c).

- (8) A prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following:
- (a) a place, or part of a place, at which the activity is not to be carried out;
  - (b) any thing that is not to be used in connection with the activity;
  - (c) any procedure that is not to be followed in connection with the activity.

### **103. Contravention of prohibition notice**

A person on whom a prohibition notice is served must comply with the notice, unless the person has a reasonable excuse.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or
- (b) an individual, a fine not exceeding 400 penalty units.

### **104. Oral direction before prohibition notice served**

- (1) If a rail safety officer –

*Rail Safety Act 2009*  
*Act No. of*

**s. 104**

Part 9 – Enforcement

---

- (a) believes on reasonable grounds that an activity referred to in section 102(1) is occurring or may occur; and
- (b) that it is not possible or reasonable to serve a prohibition notice under that section immediately –

the officer may direct a person who has or appears to have control over the activity to do or not to do a stated act by telling the person –

- (c) to do or not to do the stated act; and
- (d) the reason for the officer giving the direction.

- (2) A person to whom a direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (3) It is a reasonable excuse if the rail safety officer did not tell the person that the person commits an offence if the person does not comply with the direction.
- (4) If a rail safety officer gives a direction under subsection (1) in respect of an activity but does not, within 5 days of giving the direction, serve a

---

prohibition notice in respect of the activity, the direction ceases to have effect.

**105. Withdrawal or amendment of prohibition notice**

- (1) A prohibition notice served by a rail safety officer –
  - (a) may be withdrawn by notice served by a rail safety officer on the person affected by the notice; and
  - (b) may be amended by notice served by a rail safety officer on the person affected by the notice.
- (2) An amendment of a prohibition notice is effected by service on the person affected of a notice stating the terms of the amendment.
- (3) An amendment of a prohibition notice is ineffective if it purports to deal with a contravention of a different provision of the rail safety law from that dealt with in the prohibition notice as first served.
- (4) A notice of an amendment of a prohibition notice must –
  - (a) state the reasons for the amendment; and
  - (b) include information about obtaining a review under Part 10 of the decision to amend the notice; and
  - (c) state that it is served under this section.

**106. Proceedings for offences not affected by prohibition notices**

The service, amendment or withdrawal of a prohibition notice does not affect any proceedings for an offence against the rail safety law in connection with any matter in respect of which the prohibition notice was served.

***Division 9 – Miscellaneous***

**107. Directions may be given under more than one provision**

- (1) A rail safety officer may, on the same occasion, give directions under one or more provisions of this Part.
- (2) Without limiting subsection (1), a rail safety officer may, in the course of exercising powers under a provision of this Part, give either or both of the following:
  - (a) further directions under the provision;
  - (b) directions under one or more other provisions of this Part.

**108. Temporary closing of railway crossings, bridges, &c.**

- (1) In this section –

*Rail Safety Act 2009*  
*Act No. of*

Part 9 – Enforcement

s. 109

---

**“authorised person”** means a person who is authorised by the Rail Safety Regulator under subsection (4);

**“railway crossing”** means a level crossing, bridge, or other structure, used to cross or passing over or under a railway.

- (2) An authorised person may close temporarily, or regulate, a railway crossing if he or she is satisfied it is necessary because of an immediate threat to safety.
- (3) If an authorised person decides to close temporarily, or regulate, a railway crossing, the authorised person must, as soon as practicable after its closure or regulation, notify the person or authority responsible for the railway crossing of its closure or regulation.
- (4) The Rail Safety Regulator may authorise a person for the purposes of this section.

**109. Restoring rail infrastructure and rolling stock &c. to original condition after action taken**

If –

- (a) a rail safety officer, or a person assisting the rail safety officer, takes any action in the exercise or purported exercise of any power under this Part in relation to rail infrastructure or rolling stock, railway premises or a road vehicle; and

*Rail Safety Act 2009*  
*Act No. of*

**s. 110**

Part 9 – Enforcement

---

- (b) damage was caused by the unreasonable exercise of the power or by the use of force that was not authorised under this Part –

the rail safety officer must take reasonable steps to return the rail infrastructure or rolling stock, railway premises or road vehicle to the condition it or they were in immediately before the action was taken.

**110. Use of force**

A power conferred by this part to enter any railway premises, or to do anything in or on any railway premises, may not be exercised unless the rail safety officer, or a person assisting a rail safety officer proposing to exercise the power, uses no more force than is reasonably necessary to effect the entry or to do the thing for which the entry is effected.

**111. Power to use force against persons to be exercised only by police officers**

A provision in this Part that authorises a rail safety officer, or a person assisting a rail safety officer, to use reasonable force does not authorise a rail safety officer, or a person, who is not a police officer to use force against another person.

---

**112. Protection from incrimination**

- (1) A natural person is not excused from complying with a requirement under section 77(1)(h) or a direction under Division 4 or 6 –

- (a) to give his or her name and residential or business address; or
- (b) to produce a document; or
- (c) to give or provide information –

on the ground that compliance with the requirement or direction may result in information being provided that might incriminate the person or may make the person liable to a penalty.

- (2) However, any information obtained or document produced as a direct result of the compliance with the requirement or direction is not admissible in evidence against the person in criminal proceedings, other than proceedings in respect of false information, or proceedings that may make the person liable to a penalty –

- (a) if the person claims before giving the information or producing the document that it might incriminate the person or make the person liable to a penalty; or
- (b) if the person was not, before the information was given or the document was produced, informed of his or her entitlement to make a claim of the kind referred to in paragraph (a).

*Rail Safety Act 2009*  
*Act No. of*

**s. 112**

Part 9 – Enforcement

---

- (3) Except as provided in subsection (2), any information given, or document produced, by a natural person as a direct result of the compliance with the requirement or direction may be used in evidence in any criminal or civil proceedings against the person.



*Rail Safety Act 2009*  
*Act No. of*

Part 10 – Review of Decisions

s. 113

**PART 10 – REVIEW OF DECISIONS**

**113. Reviewable decisions**

- (1) A decision made under a section of this Act that is specified in Column 2 of the table to this section is a reviewable decision.
- (2) A person is an eligible person in relation to a reviewable decision if the person is specified, in Column 3 of the table to this section, opposite the reviewable decision in column 2.

<b>Item</b>	<b>Column 2</b>  <b>Provision under which reviewable decision is made</b>	<b>Column 3</b>  <b>Eligible person in relation to reviewable decision</b>
1.	Section 21(5) (Rail Safety Regulator not acting in accordance with guidelines)	A rail transport operator who has applied for accreditation
2.	Section 22(1) (refusal to accredit or imposing conditions or restrictions on accreditation)	A rail transport operator whose application for accreditation is refused or is subject to conditions or restrictions
3.	Section 22(4)(c) (extending the period for determining an application)	A rail transport operator who has applied for accreditation
4.	Section 30 (revocation or suspension of accreditation)	A rail transport operator whose accreditation is revoked or suspended
5.	Section 31(1)(immediate suspension)	A rail transport operator whose accreditation is suspended

*Rail Safety Act 2009*  
*Act No. of*

**s. 113**

Part 10 – Review of Decisions

<b>Item</b>	<b>Column 2</b>  <b>Provision under which reviewable decision is made</b>	<b>Column 3</b>  <b>Eligible person in relation to reviewable decision</b>
6.	Section 31(2) (extension of immediate suspension)	A rail transport operator whose accreditation is suspended
7.	Section 35(1) (refusal to grant variation of accreditation)	A rail transport operator whose application for variation of accreditation is refused
8.	Section 35(1) (grant of variation of accreditation subject to conditions or restrictions)	A rail transport operator whose accreditation is varied subject to a condition or restriction
9.	Section 35(4)(c) (extending the period for determining an application for variation)	A rail transport operator who has applied for variation of accreditation
10.	Section 37(3) (refusal to grant variation of condition or restriction of accreditation)	A rail transport operator whose application for variation of a condition or restriction is refused
11.	Section 38(1) (variation or revocation of a condition or restriction, or imposition of a new condition or restriction)	A rail transport operator whose conditions or restrictions of accreditation are changed
12.	Section 45(1) (direction to amend safety management system)	A rail transport operator given a direction to amend a safety management system
13.	Section 92(1)(c) (retention of sample or seized thing to prevent commission of offence)	A person who is the owner, within the meaning of section 92(4), of the sample or thing
14.	Section 97 (decision to serve an improvement notice)	A person on whom an improvement notice is served

*Rail Safety Act 2009*  
*Act No. of*

Part 10 – Review of Decisions

**s. 114**

---

<b>Item</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Provision under which reviewable decision is made</b>	<b>Eligible person in relation to reviewable decision</b>
15.	Section 99 (decision to amend improvement notice)	A person on whom a notice of amendment of an improvement notice is served
16.	Section 102(2) (decision to serve a prohibition notice)	A person on whom a prohibition notice is served
17.	Section 105(1) (decision to amend a prohibition notice)	A person on whom a notice of amendment of a prohibition notice is served

**114. Review by Rail Safety Regulator**

- (1) An eligible person in relation to a reviewable decision made by the Rail Safety Regulator may, within 28 days after the decision is made, apply to the Rail Safety Regulator for a review by the Rail Safety Regulator of the decision.
- (2) An eligible person in relation to a reviewable decision made by a person other than the Rail Safety Regulator, may, within –
  - (a) 28 days after the day on which the decision first came to the eligible person's notice; or
  - (b) a longer period that the Rail Safety Regulator allows –

apply to the Rail Safety Regulator for review, by the Rail Safety Regulator, of the decision.

*Rail Safety Act 2009*  
*Act No. of*

**s. 114**

Part 10 – Review of Decisions

---

- (3) An application under this section must be in the form approved in writing by the Rail Safety Regulator.
- (4) If an application is made to the Rail Safety Regulator in accordance with this section, the Rail Safety Regulator must make a decision –
  - (a) to affirm or vary the reviewable decision; or
  - (b) to set aside the reviewable decision and substitute another decision that the Rail Safety Regulator considers appropriate.
- (5) The Rail Safety Regulator must make a decision under subsection (4) –
  - (a) within 14 days (or if the reviewable decision was made under section 97, section 99 or section 102 or 105, within 7 days) after the application is made; or
  - (b) with the agreement of the applicant, at a later date; or
  - (c) if the Rail Safety Regulator sought further information for the purposes of making a decision and the applicant is notified of the date by which the information is to be obtained, by that date –

whichever is the later.
- (6) The Rail Safety Regulator must give a written notice to the applicant setting out –

*Rail Safety Act 2009*  
*Act No. of*

Part 10 – Review of Decisions

**s. 114**

- 
- (a) the Rail Safety Regulator’s decision under subsection (4) and the reasons for the decision; and
    - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.
  - (7) If the Rail Safety Regulator has not notified an applicant of a decision in accordance with subsection (6) on or before the date by which, under subsection (5), the decision must be made, the Rail Safety Regulator is taken to have made a decision to affirm the reviewable decision.
  - (8) An application under this section does not affect the operation of the reviewable decision, or prevent the taking of any action to implement the decision, unless the Rail Safety Regulator, on the Rail Safety Regulator’s own initiative or on the application of the applicant for review, stays the operation of the decision (not being a prohibition notice) pending the determination of the review.
  - (9) The Rail Safety Regulator must make a decision on an application for a stay by the end of the next following business day after the making of the application.
  - (10) If the Rail Safety Regulator has not made a decision in accordance with subsection (9), the Rail Safety Regulator is taken to have made a decision to grant a stay.
  - (11) The Rail Safety Regulator may attach any conditions to a stay of the operation of a

*Rail Safety Act 2009*  
*Act No. of*

**s. 115**

Part 10 – Review of Decisions

---

reviewable decision that the Rail Safety Regulator considers appropriate.

**115. Review by Magistrates Court (Administrative Appeals Division)**

(1) A person may apply to the Magistrates Court (Administrative Appeals Division) for review of –

- (a) a reviewable decision made by the Rail Safety Regulator; or
- (b) a decision made, or taken to have been made, by the Rail Safety Regulator under section 114 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision) –

if the person is an eligible person in relation to the reviewable decision.

(2) The application must be made –

- (a) if the decision is to forfeit a thing, including a document, seized under Part 9, within 28 days after the day on which the decision first came to the applicant's notice; or
- (b) in relation to any other decision, within 14 days after the day on which the decision first came to the applicant's notice; or

*Rail Safety Act 2009*  
*Act No. of*

Part 10 – Review of Decisions

**s. 115**

- 
- (c) if the Rail Safety Regulator is required under the *Magistrates Court (Administrative Appeals Division) Act 2001* to give the applicant a statement of reasons, within 14 days after the day on which the applicant is given the statement –

whichever period ends last.

**PART 11 – GENERAL LIABILITY AND EVIDENTIARY PROVISIONS**

***Division 1 – General***

**116. Period within which proceedings for offences may be commenced**

- (1) This section applies to an offence against the rail safety law, other than –
  - (a) an offence prescribed for the purposes of this section; and
  - (b) an offence in respect of which proceedings may only be commenced within a period of less than 2 years after its alleged commission.
- (2) Despite anything to the contrary in any other Act, proceedings for an offence against the rail safety law to which this section applies may be commenced within –
  - (a) the period of 2 years after the commission of the alleged offence; or
  - (b) a further period of one year commencing on the day on which the Rail Safety Regulator, a rail safety officer or a police officer first obtained evidence of the commission of the alleged offence considered reasonably sufficient by the Rail Safety Regulator or officer to warrant commencement of proceedings.



*Rail Safety Act 2009*  
*Act No. of*

- 
- (3) For the purposes of subsection (2), a certificate, purporting to have been issued by the Rail Safety Regulator, a rail safety officer or a police officer, as to the date when the Rail Safety Regulator or officer first obtained evidence considered reasonably sufficient by the Rail Safety Regulator or officer to warrant commencement of proceedings, is admissible in any proceedings and is evidence of the matters stated.

**117. Authority to take proceedings**

- (1) Subject to this section, any proceedings for an offence against, or to recover any charge, fee or money due under, the rail safety law may be taken only by –
- (a) the Rail Safety Regulator; or
  - (b) a person authorised by the Rail Safety Regulator for the purpose, either generally or in any particular case.
- (2) Proceedings against the Crown or a statutory body representing the Crown for an offence against the rail safety law are not to be instituted without the written consent of the Minister.
- (3) In any proceedings referred to in this section, the production of an authority or consent purporting to be signed by the Rail Safety Regulator or the Minister is to be evidence of the authority or consent without proof of the signature of the Rail Safety Regulator or the Minister.

*Rail Safety Act 2009*  
*Act No. of*

**s. 118**

Part 11 – General Liability and Evidentiary Provisions

---

- (4) The Rail Safety Regulator may, for the purposes of subsection (1), authorise any person who is a member of a specified class of persons to take the actions referred to in that subsection.

**118. Vicarious responsibility**

- (1) If, in any proceedings for an offence against the rail safety law, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show –
  - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence against the rail safety law, conduct engaged in on behalf of a body corporate by a director, employee, volunteer or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against the rail safety law, it is necessary to establish the state of mind of a person other than the body corporate

*Rail Safety Act 2009*  
*Act No. of*

Part 11 – General Liability and Evidentiary Provisions

**s. 118**

---

(the “**employer**”) in relation to particular conduct, it is sufficient to show –

- (a) that the conduct was engaged in by an employee, volunteer or agent of the employer within the scope of his or her actual or apparent authority; and
  - (b) that the employee, volunteer or agent had the relevant state of mind.
- (4) For the purposes of a prosecution for an offence against the rail safety law, conduct engaged in on behalf of a person other than a body corporate (the “**employer**”) by an employee, volunteer or agent of the employer within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) In this section –

“**director**” of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction;

“**state of mind**” of a person includes –

- (a) the knowledge, intention, opinion, belief or purpose of the person; and

*Rail Safety Act 2009*  
*Act No. of*

**s. 119**

Part 11 – General Liability and Evidentiary Provisions

---

- (b) the person's reasons for the intention, opinion, belief or purpose.

**119. Records and evidence from records**

- (1) The Rail Safety Regulator must keep records of –
  - (a) the grant, refusal, variation, suspension, surrender and revocation of accreditations under this Act; and
  - (b) any conditions or restrictions of accreditations under this Act; and
  - (c) improvement notices and prohibition notices under this Act.
- (2) A certificate purporting to be signed by the Rail Safety Regulator and certifying that –
  - (a) on a date specified in the certificate; or
  - (b) during any period so specified –

the particulars set out in the certificate as to any matter required to be recorded under this section did or did not appear on or from the records is, for the purposes of any proceedings, evidence of what it certifies.
- (3) A certificate referred to in subsection (2) is admissible in any proceedings –

*Rail Safety Act 2009*  
*Act No. of*

Part 11 – General Liability and Evidentiary Provisions

**s. 120**

- (a) without proof of the signature of the Rail Safety Regulator; and
- (b) without production of any record or document on which the certificate is founded.

**120. Certificate evidence**

A statement in a certificate purporting to be issued by the Rail Safety Regulator, a corresponding Rail Safety Regulator, a rail safety officer or a police officer as to any matter that appears in, or can be calculated from, documents kept or accessed by the Rail Safety Regulator, is admissible in any proceedings and is evidence of the matter.

**121. Proof of appointments and signatures unnecessary**

- (1) For the purposes of this Act and the regulations, it is not necessary to prove the appointment of an office holder.
- (2) For the purposes of this Act, a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.
- (3) In this section –

**“office holder”** means –

- (a) the Rail Safety Regulator; and

*Rail Safety Act 2009*  
*Act No. of*

**s. 122**

Part 11 – General Liability and Evidentiary Provisions

---

- (b) a corresponding Rail Safety Regulator; and
- (c) a rail safety officer; and
- (d) a rail safety officer of another jurisdiction; and
- (e) a police officer; and
- (f) a police officer of another jurisdiction.

**122. Multiple offences**

Despite anything to the contrary in this or any other law, a person may be punished for more than one breach of a requirement of the rail safety law if the breaches relate to different parts of the same rail infrastructure, railway premises or rolling stock.

**123. Offences by bodies corporate, partnerships, associations and employees**

- (1) If a body corporate commits an offence against the rail safety law, each director of the body corporate, and each person concerned in the management of the body corporate, is taken to have committed the offence and may be convicted of the offence.
- (2) If a person who is a partner in a partnership commits an offence against the rail safety law in

*Rail Safety Act 2009*  
*Act No. of*

---

the course of the activities of the partnership, each other person who is a partner in the partnership, and each person concerned in the management of the partnership, is taken to have committed the offence and may be convicted of the offence.

- (3) If a person who is concerned in the management of an unincorporated association commits an offence against the rail safety law in the course of the activities of the unincorporated association, each other person concerned in the management of the unincorporated association is taken to have committed the offence and may be convicted of the offence.
- (4) Subsections (1), (2) and (3) do not affect the liability of the person who actually committed the offence.
- (5) If an employee commits an offence against the rail safety law, the employer is taken to have committed the offence and may be convicted of the offence.
- (6) A person may be proceeded against and found guilty of an offence arising under this section whether or not the body corporate or other person who actually committed the offence has been proceeded against or been found guilty of the offence.
- (7) It is a defence to a charge for an offence arising under subsection (1) if the defendant establishes that –

*Rail Safety Act 2009*  
*Act No. of*

**s. 123**

Part 11 – General Liability and Evidentiary Provisions

---

- (a) the defendant was not in a position to influence the conduct of the body corporate in relation to the actual offence; or
  - (b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (8) It is a defence to a charge for an offence arising under subsection (2) or (3) if the defendant establishes that –
  - (a) the defendant was not in a position to influence the conduct of the person who actually committed the offence; or
  - (b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (9) It is a defence to a charge for an offence arising under subsection (5) if the defendant establishes that –
  - (a) the defendant had no knowledge of the actual offence; or
  - (b) the defendant took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (10) An officer –



*Rail Safety Act 2009*  
*Act No. of*

- (a) of a body corporate (including a body corporate representing the Crown); or
- (b) of a partnership or unincorporated body or association –

who is a volunteer, is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

***Division 2 – Discrimination against employees***

**124. Dismissal or other victimisation of employee**

- (1) This section applies to –
  - (a) an employer who dismisses an employee, injures an employee in the employment of the employer or alters the position of an employee to the employee's detriment; and
  - (b) an employer who threatens to do any of those things to an employee; and
  - (c) an employer or prospective employer who refuses or fails to offer employment to a prospective employee or treats a prospective employee less favourably than another prospective employee would be treated in offering terms of employment.
- (2) The employer or prospective employer is guilty of an offence if the employer or prospective employer engaged in that conduct because the

*Rail Safety Act 2009*  
*Act No. of*

**s. 124**

Part 11 – General Liability and Evidentiary Provisions

---

employee or prospective employee (as the case may be) –

- (a) has assisted or has given any information to a public agency in respect of 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 the employer, a fellow employee, a union or a public agency; or
- (c) assists or has assisted, or gives or has given any information to, a public agency in respect of a breach or alleged breach of an Australian rail safety law; or
- (d) has made a complaint about a breach or alleged breach of an Australian rail safety law to a former employer, a former fellow employee, a union or a public agency.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
  - (b) an individual, a fine not exceeding 100 penalty units.
- (3) An employer or prospective employer may be guilty of an offence against subsection (2) only if the reason mentioned in subsection (2)(a), (b), (c) or (d) is the dominant reason why the

*Rail Safety Act 2009*  
*Act No. of*

employer or prospective employer engaged in the conduct.

(4) In this section –

“**employee**” includes a natural person who works under a contract for services;

“**public agency**” includes an Australian Rail Safety Regulator, a rail safety officer, a police officer and a police officer of another jurisdiction.

**125. Defendant bears onus of proof**

In proceedings for an offence against section 124, if all the facts constituting the offence other than the reason for the defendant’s conduct are proved, the defendant bears the onus of proving that the reason alleged in the charge was not the dominant reason why the defendant engaged in the conduct.

**126. Order for damages or reinstatement**

(1) If an employer or prospective employer is convicted or found guilty of an offence against section 124, the court may (in addition to imposing a penalty) make either or both of the following orders:

(a) an order that the offender pay, within a specified period, the damages to the employee or prospective employee

*Rail Safety Act 2009*  
*Act No. of*

**s. 127**

Part 11 – General Liability and Evidentiary Provisions

---

against whom the offender discriminated that the court considers appropriate to compensate him or her;

(b) an order that –

(i) the employee be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or

(ii) the prospective employee be employed in the position for which he or she had applied or a similar position.

(2) In this section –

“**employee**” includes a natural person who works under a contract for services.

***Division 3 – False or misleading information***

**127. False or misleading information provided to Rail Safety Regulator or officials**

(1) A person commits an offence if –

(a) the person makes a statement to the Rail Safety Regulator or to an official who is exercising a power under the rail safety law; and

(b) the person knows that the statement is false or misleading in a material particular.

*Rail Safety Act 2009*  
*Act No. of*

- (2) A person commits an offence if –
  - (a) the person makes a statement to the Rail Safety Regulator or to an official who is exercising a power under the rail safety law; and
  - (b) the statement is false or misleading in a material particular; and
  - (c) the person is reckless as to whether the statement is false or misleading in a material particular.
- (3) A person commits an offence if –
  - (a) the person gives a document to the Rail Safety Regulator or to an official who is exercising a power under the rail safety law; and
  - (b) the document is false or misleading in a material particular; and
  - (c) the person is reckless as to whether the document is false or misleading in a material particular.
- (4) Subsection (3) does not apply if, at the time the person gave the document to the Rail Safety Regulator or to an official, the person informed the Rail Safety Regulator or official that the document was false or misleading in a material particular and specified in what respect it was false or misleading.

*Rail Safety Act 2009*  
*Act No. of*

**s. 128**

Part 11 – General Liability and Evidentiary Provisions

---

- (5) The penalty for an offence under this section committed in relation to the Rail Safety Regulator or official exercising a power under the rail safety law is –
- (a) if there is one offence under the provision of the rail safety law under which the power is exercised, the penalty for that offence; or
  - (b) if there is more than one offence under that provision, the penalties for those offences if the penalties are the same, or the lower or lowest of the penalties if they are different.
- (6) In this section –
- “official”** means a rail safety officer or a person assisting a rail safety officer.

***Division 4 – Other offences***

**128. Obstructing or hindering rail safety officers**

- (1) A person must not intentionally hinder or obstruct –
- (a) the Rail Safety Regulator; or
  - (b) a rail safety officer; or
  - (c) a person assisting the Rail Safety Regulator; or
  - (d) a person assisting a rail safety officer –

*Rail Safety Act 2009*  
*Act No. of*

Part 11 – General Liability and Evidentiary Provisions

**s. 128**

---

in the exercise of his or her functions under the rail safety law, or encourage another person to do so.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

(2) A person must not intentionally conceal from –

- (a) the Rail Safety Regulator; or
- (b) a rail safety officer; or
- (c) a person assisting the Rail Safety Regulator; or
- (d) a person assisting a rail safety officer –

the location or existence of, or fail to comply with a request from such a person to produce, a record, document or any other thing.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

*Rail Safety Act 2009*  
*Act No. of*

**s. 129**

Part 11 – General Liability and Evidentiary Provisions

---

**129. Impersonation of rail safety officer**

A person who is not a rail safety officer must not, in any way, hold himself or herself out to be a rail safety officer.

Penalty: Fine not exceeding 100 penalty units.

**130. Interference with train, tram &c.**

A person must not, without either the permission of the rail transport operator, a rail safety officer or a police officer or reasonable excuse –

- (a) move or attempt to move; or
- (b) interfere or attempt to interfere with; or
- (c) disable or attempt to disable; or
- (d) operate or attempt to operate –

any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator.

Penalty: Fine not exceeding 200 penalty units.

**131. Applying brake or emergency device**

A person must not, without reasonable excuse –

- (a) apply any brake or make use of any emergency device fitted to a train or tram; or



*Rail Safety Act 2009*  
*Act No. of*

Part 11 – General Liability and Evidentiary Provisions

**s. 132**

- (b) make use of any emergency device on railway premises.

Penalty: Fine not exceeding 50 penalty units.

*Example* Emergency devices include an emergency button on a station communication board or on an escalator.

### **132. Stopping train or tram**

A person must not, without reasonable excuse, cause or attempt to cause a train or tram in motion to be stopped.

Penalty: Fine not exceeding 50 penalty units.

### ***Division 5 – Infringement notices***

### **133. Infringement notices**

- (1) In this section –

**“infringement offence”** means an offence against the rail safety law that is prescribed to be an infringement offence.

- (2) A rail safety officer or police officer may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.
- (3) An infringement notice may not be served on an individual who has not attained the age of 16 years.
- (4) An infringement notice –

*Rail Safety Act 2009*  
*Act No. of*

**s. 133**

Part 11 – General Liability and Evidentiary Provisions

---

- (a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and
  - (b) is not to relate to more than 3 offences.
- (5) The regulations –
  - (a) may prescribe the penalty applicable to each infringement offence that is payable under an infringement notice; and
  - (b) may prescribe different penalties for bodies corporate and individuals.
- (6) The infringement penalty prescribed for an offence must not exceed 20% of the maximum penalty that could be imposed on an individual by a court in respect of the offence.
- (7) In the application of the *Monetary Penalties Enforcement Act 2005* to an infringement notice issued and served under this section –
  - (a) the rail safety officer or police officer who issued and served the infringement notice is taken to be a public sector body within the meaning of that Act; and
  - (b) a penalty prescribed under subsection (5) in respect of an infringement offence is taken to be the prescribed penalty applicable to that offence for the purposes of section 14(a)(ii) of that Act.

---

***Division 6 – Enforceable voluntary undertakings***

**134. Rail Safety Regulator may accept undertakings**

- (1) The Rail Safety Regulator may, by written notice to a person, accept a written undertaking given by the person in connection with a matter relating to a contravention or alleged contravention by the person of the rail safety law.
- (2) The person may withdraw or vary the undertaking at any time but only with the Rail Safety Regulator's written consent.
- (3) Neither the Rail Safety Regulator nor a rail safety officer may bring proceedings for an offence against the rail safety law constituted by the contravention or alleged contravention to which the undertaking relates, unless the undertaking is withdrawn.

**135. Enforcement of undertakings**

- (1) If the Rail Safety Regulator considers that a person has contravened an undertaking accepted by the Rail Safety Regulator, the Rail Safety Regulator may apply to the Magistrates Court for enforcement of the undertaking.
- (2) If the Magistrates Court is satisfied that the person has contravened the undertaking, it may make either or both of the following orders:

*Rail Safety Act 2009*  
*Act No. of*

**s. 136**

Part 11 – General Liability and Evidentiary Provisions

---

- (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;
- (b) any other order that the Magistrates Court considers appropriate.

***Division 7 – Court-based sanctions***

**136. Daily penalty for continuing offences**

- (1) If an offence is committed by a person by reason of a contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) A person convicted of an offence referred to in subsection (1) is liable, in addition to the penalty otherwise prescribed for the offence, in this Act or by the regulations, to a daily penalty, of not more than 20% of the maximum penalty so prescribed, for each day or part of a day during which the offence continues after conviction.

**137. Commercial benefits order**

- (1) The court that finds a person guilty of an offence against the rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, make an order (in this section referred

*Rail Safety Act 2009*  
*Act No. of*

to as a “commercial benefits order”) under this section.

- (2) The court may make a commercial benefits order requiring the person to pay, as a fine, an amount of not more than 3 times the amount estimated by the court to be the gross commercial benefit that –
  - (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and
  - (b) in the case of a journey that was interrupted or not commenced because of action taken by a rail safety officer in connection with the commission of the offence, would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.
- (3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account –
  - (a) benefits of any kind, whether monetary or otherwise; and
  - (b) monetary savings or a reduction in any operating or capital expenditure of any kind achieved because of the commission of the offence; and

*Rail Safety Act 2009*  
*Act No. of*

**s. 137**

Part 11 – General Liability and Evidentiary Provisions

---

- (c) any other matters that it considers relevant, including for example –
  - (i) the value per tonne or per kilometre of the carriage of the goods involved in the offence as freight; and
  - (ii) the distance over which any such goods were or were to be carried.
- (4) However, in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.
- (5) Nothing in this section prevents the court from ordering payment of an amount that is –
  - (a) less than 3 times the estimated gross commercial benefit; or
  - (b) less than the estimated gross commercial benefit.
- (6) For the purposes of this section, a person is an associate of another if –
  - (a) one is a spouse, parent, brother, sister or child of the other; or
  - (b) they are members of the same household; or
  - (c) they are partners; or

*Rail Safety Act 2009*  
*Act No. of*

- 
- (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or
  - (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
  - (g) they are related bodies corporate within the meaning of the Corporations Act; or
  - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (7) For the purposes of subsection (6), a beneficiary of a trust includes an object of a trust.

**138. Supervisory intervention order**

- (1) The court that finds a person guilty of an offence against the rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, if the court considers the person to be a systematic or persistent offender against Australian rail safety laws, make a supervisory intervention order under subsection (2).
- (2) The court may make a supervisory intervention order requiring the person (at the person's own

*Rail Safety Act 2009*  
*Act No. of*

**s. 138**

Part 11 – General Liability and Evidentiary Provisions

---

expense and for a specified period of not more than one year) to do any or all of the following:

- (a) to do specified things that the court considers will improve the person's compliance with the rail safety law or specified aspects of the rail safety law, including, for example, the following:
  - (i) appointing or removing staff to or from particular activities or positions;
  - (ii) training and supervising staff;
  - (iii) obtaining expert advice about maintaining appropriate compliance;
  - (iv) installing monitoring, compliance, managerial or operational equipment;
  - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
- (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Rail Safety Regulator or a person nominated by the Rail Safety Regulator;



*Rail Safety Act 2009*  
*Act No. of*

Part 11 – General Liability and Evidentiary Provisions

**s. 138**

- 
- (c) to provide compliance reports to the Rail Safety Regulator or the court or both as specified in the order;
  - (d) to appoint a person to have responsibilities –
    - (i) to assist the person in improving compliance with the rail safety law or specified aspects of the rail safety law; and
    - (ii) to monitor the person's performance in complying with the rail safety law or specified aspects of the rail safety law and in complying with the requirements of the order; and
    - (iii) to provide compliance reports to the Rail Safety Regulator or the court, or both, as specified in the order.
  - (3) The court may specify matters that are to be dealt with in compliance reports and the form and manner in which, and frequency with which, compliance reports are to be prepared and provided.
  - (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form and manner in which, and frequency with which, they are to be made public.

*Rail Safety Act 2009*  
*Act No. of*

**s. 138**

Part 11 – General Liability and Evidentiary Provisions

---

- (5) The court may only make a supervisory intervention order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with the rail safety law, having regard to –
- (a) the offences against Australian rail safety laws of which the person has been previously found guilty; and
  - (b) the offences against Australian rail safety laws for which the person has been proceeded against by way of unwithdrawn infringement notices; and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.
- (6) The supervisory intervention order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of –
- (a) the Rail Safety Regulator; or
  - (b) the person in respect of whom the order was made, but only if the court is satisfied that there has been a change of

*Rail Safety Act 2009*  
*Act No. of*

Part 11 – General Liability and Evidentiary Provisions

s. 138

circumstances warranting revocation or amendment.

(8) In this section –

**“compliance report”**, in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to –

(a) the performance of the person in complying with –

(i) the rail safety law or aspects of the rail safety law specified in the order; and

(ii) the requirements of the order; and

(b) without limiting the above –

(i) things done by the person to ensure that any failure by the person to comply with the rail safety law or the specified aspects of the rail safety law does not continue; and

(ii) the results of those things having been done.

*Rail Safety Act 2009*  
*Act No. of*

s. 139

Part 11 – General Liability and Evidentiary Provisions

---

**139. Contravention of supervisory intervention order**

A person who is subject to a requirement of a supervisory intervention order must not engage in conduct that results in contravention of the requirement.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

**140. Exclusion orders**

- (1) A court that finds a person guilty of an offence against the rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, if the court considers the person to be a systematic or persistent offender against Australian rail safety laws, make an exclusion order.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences against Australian rail safety laws, the court may, if it considers it appropriate to do so, make an exclusion order under subsection (1) prohibiting the person, for a specified period, from –
  - (a) managing rail infrastructure, or operating rolling stock, or managing or operating a

*Rail Safety Act 2009*  
*Act No. of*

- 
- particular type of rail infrastructure or rolling stock; or
- (b) being a director, secretary or officer concerned in the management of a body corporate involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction; or
  - (c) being involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction except by driving a train or rolling stock.
- (3) The court may only make an exclusion order under subsection (1) if it is satisfied that the person should not continue the things which are the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to –
- (a) the offences against Australian rail safety laws of which the person has previously been found guilty; and
  - (b) the offences against Australian rail safety laws of which the person has been proceeded against by way of unwithdrawn infringement notices; and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.

*Rail Safety Act 2009*  
*Act No. of*

**s. 141**

Part 11 – General Liability and Evidentiary Provisions

---

(4) A court that may make an exclusion order may revoke or amend an exclusion order made under subsection (1), on the application of –

- (a) the Rail Safety Regulator; or
- (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

**141. Contravention of exclusion order**

A person who is subject to an exclusion order under section 140 must not engage in conduct that results in a contravention of the order.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

---

**PART 12 – OCCUPATIONAL HEALTH AND SAFETY  
LEGISLATION**

**142. Act adds to protection provided by OHS legislation**

If a provision of the occupational health and safety legislation applies to railway operations, that provision continues to apply, and must be observed, in addition to the rail safety law.

**143. OHS legislation prevails**

If a provision of the rail safety law is inconsistent with a provision of the occupational health and safety legislation, the provision of the occupational health and safety legislation prevails to the extent of any inconsistency.

**Note:** For example, if a provision of this Act deals with a certain matter and a provision of the occupational health and safety legislation deals with the same matter and it is impossible to comply with both provisions, then the person must comply with the occupational health and safety legislation and not with this Act. If provisions of both Acts deal with the same matter but it is possible to comply with both provisions, then a person must comply with both Acts.

**144. Compliance with this Act is no defence to prosecution under OHS legislation**

Compliance with the rail safety law, or with any requirement imposed under the rail safety law, is not in itself a defence in any proceedings for an

*Rail Safety Act 2009*  
*Act No. of*

**s. 145**

Part 12 – Occupational Health and Safety Legislation

---

offence against the occupational health and safety legislation.

**Note:** For example, a person may be guilty of an offence under the occupational health and safety legislation in respect of any act or omission that is expressly required or permitted to be done or omitted by or under this Act or the regulations made under this Act.

**145. Evidence of contravention under this Act is admissible in OHS legislation proceedings**

Evidence of a relevant contravention of the rail safety law is admissible in any proceedings for an offence against the occupational health and safety legislation.

**146. No double jeopardy**

If an act or omission constitutes an offence –

- (a) under the rail safety law; and
- (b) under the occupational health and safety legislation –

the offender is not liable to be punished twice in respect of the offence.



## **PART 13 – ADMINISTRATION**

### ***Division 1 – Rail Safety Regulator***

#### **147. Rail Safety Regulator**

- (1) The Minister administering this Act may appoint a State Service officer or State Service employee to be the Rail Safety Regulator.
- (2) A person appointed as the Rail Safety Regulator may hold that office in conjunction with State Service employment.

#### **148. Functions**

- (1) In addition to any other functions conferred on the Rail Safety Regulator by the rail safety law, the Rail Safety Regulator 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 rail safety in this jurisdiction and nationally;
  - (c) to provide information to corresponding Rail Safety Regulators, including information about causal factors of rail incidents, accreditation processes,

*Rail Safety Act 2009*  
*Act No. of*

**s. 149**

Part 13 – Administration

---

- investigation methods and risk assessment methodologies;
  - (d) to collect and publish information relating to rail safety;
  - (e) to provide, or facilitate the provision of, advice, education and training in relation to rail safety;
  - (f) to monitor, investigate and enforce compliance with this Act and the regulations.
- (2) The functions of the Rail Safety Regulator under this Act are in addition to any function that the Rail Safety Regulator has under any other Act or law.

**149. Annual reports**

- (1) The Rail Safety Regulator must prepare an annual report in respect of a financial year.
- (2) The annual report prepared under subsection (1) must include –
  - (a) information on the development of rail safety, including an aggregation of statistics of a prescribed class reported to the Rail Safety Regulator under the rail safety law in respect of that year; and
  - (b) information on any improvements and important changes in relation to the regulation of rail safety.

*Rail Safety Act 2009*  
*Act No. of*

Part 13 – Administration

s. 149

- 
- (3) The annual report prepared under subsection (1) may form part of the annual report of the Department prepared under section 36 of the *State Service Act 2000*.
- (4) The Rail Safety Regulator is to submit to the Minister the annual report prepared under subsection (1).
- (5) Except if subsection (3) applies, the Minister is to cause copies of the annual report for a financial year to be laid before each House of Parliament on or before 31 October or another prescribed date.
- (6) A date prescribed for the purposes of subsection (5) is to be a date not later than 4 months after the end of the financial year.
- (7) If the Minister is unable to comply with subsection (5) by reason of the fact that either House of Parliament is not sitting, the Minister, on 31 October or another date prescribed under subsection (5), as the case may require, is to –
- (a) forward a copy of the report referred to in subsection (1) to the Clerk of the Legislative Council and the Clerk of the House of Assembly; and
  - (b) make the report available to the public –
- and, within the next 7 sitting-days of that House, is to cause a copy of the report to be laid before that House.

*Rail Safety Act 2009*  
*Act No. of*

**s. 150**

Part 13 – Administration

---

- (8) If 31 October, or another date prescribed under subsection (5) is a day (“an excluded day”) that –
- (a) is a Sunday; or
  - (b) a statutory holiday under the *Statutory Holidays Act 2000*; or
  - (c) a public holiday throughout the State –

subsection (7) is taken to be complied with if a copy of the report is forwarded to the Clerk of the Legislative Council and the Clerk of the House of Assembly, and is made available to the public, on the next day afterwards, not being an excluded day.

**150. Delegation**

- (1) The Rail Safety Regulator may, by instrument in writing, delegate any of the Rail Safety Regulator’s functions under this Act (other than this power of delegation) or under the regulations to a rail safety officer or to any other person.
- (2) A rail safety officer or other person may, by instrument, delegate to any other person any function delegated to him or her under subsection (1) if the Rail Safety Regulator permits the officer or person to subdelegate the function to that other person.

**151. Rail Safety Regulator may exercise functions of rail safety officers**

- (1) The Rail Safety Regulator may exercise any function conferred on a rail safety officer by or under the rail safety law.
- (2) Accordingly, in this Act (except this Part) a reference to a rail safety officer includes a reference to the Rail Safety Regulator.

***Division 2 – Rail safety officers***

**152. Appointment**

- (1) The Rail Safety Regulator, by instrument in writing, may appoint to be a rail safety officer for a term, and subject to the conditions, specified in the instrument –
  - (a) a State Service officer or a State Service employee; or
  - (b) a person who is a member of a prescribed class of State Service officers or State Service employees; or
  - (c) a police officer; or
  - (d) a police officer who is a member of a prescribed class of police officers.
- (2) A person appointed as a rail safety officer in accordance with subsection (1)(a) or (b) may hold that office in conjunction with State Service employment.

*Rail Safety Act 2009*  
*Act No. of*

**s. 153**

Part 13 – Administration

---

- (3) Without limiting the conditions to which the appointment of a rail safety officer may be subject, a condition may specify one or more of the following:
  - (a) functions under the rail safety law that may not be exercised by the rail safety officer;
  - (b) the only functions under the rail safety law that may be exercised by the rail safety officer;
  - (c) the circumstances or manner in which a function under the rail safety law may be performed by the rail safety officer.

**153. Reciprocal powers of rail safety officers**

- (1) This section has effect in relation to another jurisdiction while there is in force a corresponding rail safety law that contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement with a Minister of another jurisdiction for the purposes of this section, including an agreement to amend or revoke any such agreement.
- (3) To the extent envisaged by such an agreement –
  - (a) rail safety officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise functions conferred on rail safety officers of the other jurisdiction by or under the

*Rail Safety Act 2009*  
*Act No. of*

Part 13 – Administration

**s. 154**

---

corresponding rail safety law of that other jurisdiction; and

- (b) rail safety officers of that other jurisdiction may, in this jurisdiction or that other jurisdiction, exercise functions conferred on rail safety officers by or under this Act.
- (4) Anything done or omitted to be done by a rail safety officer of this jurisdiction under subsection (3) is taken to have been done under this Act as well as under the corresponding rail safety law.
- (5) The regulations may make provision for or with respect to the exercise of functions under this section.
- (6) Nothing in this section affects the appointment under section 152 of persons as rail safety officers for the purposes of this Act.

**154. Identification cards for rail safety officers**

- (1) The Rail Safety Regulator must –
  - (a) issue a rail safety officer with an identification card; or
  - (b) designate a card issued to a rail safety officer by a corresponding Rail Safety Regulator or by a person, body or authority (whether or not of this jurisdiction) as an identification card for the purposes of this Act.

*Rail Safety Act 2009*  
*Act No. of*

**s. 155**

Part 13 – Administration

---

- (2) The Rail Safety Regulator must not issue an identification card to a rail safety officer unless the card displays –
- (a) the name and signature, and a photograph, of the officer; and
  - (b) the name of the Rail Safety Regulator; and
  - (c) a statement to the effect that the person to whom the card is issued is a rail safety officer.
- (3) The Rail Safety Regulator must not designate a card to be an identification card for the purposes of this Act unless it displays the matters referred to in subsection (2)(a) and (c) and the name of the corresponding Rail Safety Regulator of the jurisdiction in which the card was issued.

**155. Rail safety officer must not exercise functions without identification card**

A rail safety officer must not exercise a function conferred by or under this Act unless an identification card has been issued to, or designated for, the officer by the Rail Safety Regulator.



---

**156. Display and production of identification card**

- (1) This section applies to a rail safety officer who is exercising, or about to exercise, a function under this Act.
- (2) A rail safety officer must –
  - (a) display his or her identification card if the officer is not wearing an approved uniform or badge; or
  - (b) produce his or her identification card if requested to do so by a person in relation to whom the officer is exercising, or is about to exercise, the function.
- (3) If it is not practical for a rail safety officer to produce his or her identification card on being requested to do so, the rail safety officer must produce his or her identification card as soon as practicable after the request is made.
- (4) In this section –

**“approved”**, in relation to a uniform or badge worn by a rail safety officer, means a uniform or badge approved by the Rail Safety Regulator.

**157. Return of identification cards**

A person who has ceased to be a rail safety officer must not, without reasonable excuse, refuse, or fail, to return to the Rail Safety Regulator, within the period specified by the

*Rail Safety Act 2009*  
*Act No. of*

**s. 157**

Part 13 – Administration

---

Rail Safety Regulator in a request for return of the card, an identification card issued to the person by the Rail Safety Regulator.

Penalty: Fine not exceeding 5 penalty units.

**PART 14 – MISCELLANEOUS**

***Division 1 – Confidentiality***

**158. Confidentiality**

- (1) This section applies to a person engaged or previously engaged in the administration of this Act and, without limiting the foregoing, to –
  - (a) a rail safety officer or a person assisting a rail safety officer; and
  - (b) a person authorised by the Rail Safety Regulator or rail safety officer under a provision of this Act to do the act or thing provided for in that provision; and
  - (c) a person who is or was a delegate of the Rail Safety Regulator; and
  - (d) a person who is or was employed by, or engaged to provide services to or on behalf of, the Rail Safety Regulator; and
  - (e) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Rail Safety Regulator.
- (2) A person to whom this section applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of this Act except –

*Rail Safety Act 2009*  
*Act No. of*

**s. 159**

Part 14 – Miscellaneous

---

- (a) as required or authorised by or under this or any other Act; or
- (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
- (c) in connection with the administration of the rail safety law and corresponding rail safety laws; or
- (d) for law enforcement purposes, rail safety inquiries or public safety; or
- (e) to a court or in connection with any proceedings; or
- (f) in accordance with the regulations.

Penalty: Fine not exceeding 50 penalty units.

- (3) Nothing in this section prevents information being used to enable an Australian Rail Safety Regulator to accumulate aggregate data and to enable the Australian Rail Safety Regulator to authorise use of the aggregate data for the purposes of research or education.

***Division 2 – Civil liability***

**159. Civil liability not affected by Part 2, 4 or 5**

- (1) Nothing in Part 2, 4 or 5 is to be construed –
  - (a) as conferring a right of action in any civil proceedings in respect of any

*Rail Safety Act 2009*  
*Act No. of*

Part 14 – Miscellaneous

**s. 160**

---

contravention, whether by act or omission, of any provisions of that Part; or

(b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.

(2) Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the regulations is actionable.

**160. Exclusion of personal liability**

(1) The Minister, the Rail Safety Regulator, a rail safety officer, an investigator or any authorised person incurs no civil liability for an act or omission done or made in good faith and in the exercise or purported exercise of functions under this Act.

(2) A liability that would, apart from subsection (1), attach to the Minister, the Rail Safety Regulator, a rail safety officer, an investigator or an authorised person attaches instead to the Crown.

(3) Despite subsection (2), if at the relevant time the authorised person was, in relation to the exercise of the power concerned –

(a) subject to the control and direction of a corresponding Rail Safety Regulator, the liability attaches to the corresponding

*Rail Safety Act 2009*  
*Act No. of*

s. 161

Part 14 – Miscellaneous

---

Rail Safety Regulator instead of the Crown; or

- (b) acting in the capacity of an employee of an employer who is not the Crown, the liability attaches to the employer instead of the Crown.

- (4) In this section –

**“authorised person”** means any person authorised by the Rail Safety Regulator or a rail safety officer under a provision of this Act to do the act or thing provided for in that provision.

**161. Immunity for reporting unfit rail safety worker**

- (1) No action may be taken against a health care professional who, in good faith, reports to –
  - (a) the Rail Safety Regulator; or
  - (b) a rail transport operator; or
  - (c) any other person to whom this section applies who is employed or engaged by the Rail Safety Regulator or a rail transport operator –

any information which discloses that a person is unfit to carry out rail safety work or certain types of rail safety work, or that it may be dangerous to allow that person to carry out rail safety work or certain types of rail safety work.

*Rail Safety Act 2009*  
*Act No. of*

Part 14 – Miscellaneous

**s. 162**

---

(2) No action may be taken against a health care professional who, in good faith, reports –

- (a) the results of a test or examination carried out under the rail safety law; or
- (b) an opinion formed by that person as a result of conducting such a test or examination –

to a person referred to in subsection (1)(a), (b) or (c).

(3) In this section –

**“health care professional”** means a person who is registered as a medical practitioner, optometrist or physiotherapist under an Act.

***Division 3 – Compliance codes and guidelines***

**162. Approval of compliance codes and guidelines**

(1) For the purpose of providing practical guidance to persons who have duties or obligations under the rail safety law, the Minister may make an order –

- (a) approving a compliance code; or
- (b) approving guidelines.

(2) The Minister may make an order approving the variation of a compliance code or guidelines or

*Rail Safety Act 2009*  
*Act No. of*

**s. 163**

Part 14 – Miscellaneous

---

revoking the approval of a compliance code or guidelines.

- (3) An order approving a compliance code or guidelines, or a variation or revocation order, takes effect when notice of it is published or on a date specified in the order.
- (4) The Minister must ensure that a copy of –
  - (a) each compliance code that is currently approved; and
  - (b) guidelines that are currently approved –is or are available for inspection by members of the public without charge at the office of the Rail Safety Regulator during normal business hours.
- (5) The *Rules Publication Act 1953* applies to an order made under subsection (1).
- (6) Section 47 of the *Acts Interpretation Act 1931*, apart from subsections (1) and (2) of that section, applies to an order under this section as if it were a regulation.

**163. Effect of compliance code**

A failure to comply with a compliance code or guidelines does not give rise to any civil or criminal liability.

**Note:** A person who complies with a compliance code may, however, be taken to have complied with this Act (see section 164).



---

**164. Effect of complying with compliance code**

If –

- (a) a compliance code makes provision for or in respect of a duty or obligation imposed by the rail safety law; and
- (b) a person complies with the compliance code to the extent that it makes that provision –

the person is, for the purposes of this Act and the regulations, taken to have complied with the rail safety law in relation to that duty or obligation.

***Division 4 – Other matters***

**165. Exemptions**

- (1) The Minister may, by notice in the *Gazette*, exempt from the application of this Act or a provision of this Act –
  - (a) a person, or a member of a class of persons, who or which are specified in the notice; or
  - (b) a railway, or a class of railways, that is specified in the notice.
- (2) An exemption under subsection (1) may be granted on conditions specified in the notice.
- (3) A person, or a member of a class of persons, who or which are specified in a notice under

*Rail Safety Act 2009*  
*Act No. of*

**s. 166**

Part 14 – Miscellaneous

---

subsection (1) must not fail to comply with a condition specified in the notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or
  - (b) an individual, a fine not exceeding 400 penalty units.
- (4) If a railway, or a class of railways, is specified in a notice under subsection (1), a rail transport operator in respect of the railway or a railway of that class must not fail to comply with a condition specified in the notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 2 000 penalty units;  
or
- (b) an individual, a fine not exceeding 400 penalty units.

**166. Recovery of certain costs**

The Rail Safety Regulator may recover as a debt from a rail transport operator the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an inspection of the

operations of a rail transport operator under section 68.

**167. Recovery of amounts due**

Every fee, charge or other amount of money payable under the rail safety law may be recovered by the Rail Safety Regulator as a debt due to the Crown in a court of competent jurisdiction.

**168. Compliance with conditions of accreditation**

If –

- (a) a condition or restriction to which the accreditation of a person is subject makes provision for or in respect of a duty or obligation imposed by the rail safety law; and
- (b) the accredited person complies with the condition or restriction to the extent that it makes that provision –

the accredited person is, for the purposes of this Act and the regulations, taken to have complied with the rail safety law in relation to that duty or obligation.

**169. Prescribed persons**

A person prescribed for the purposes of this section must give notice in the prescribed form and within a prescribed period to a rail transport operator of the commencement, discontinuation or completion of prescribed operations or activities that may adversely affect the safety of any rail infrastructure or rolling stock of a rail transport operator.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

**170. Contracting-out prohibited**

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Act or of any provision of this Act is void to the extent that it would otherwise have effect.

**171. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.

*Rail Safety Act 2009*  
*Act No. of*

Part 14 – Miscellaneous

s. 171

- 
- (2) Without limiting the generality of subsection (1), the regulations may be made in relation to one or more of the following:
- (a) the refund or waiver of fees for the purposes of this Act;
  - (b) forms for the purposes of this Act;
  - (c) any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (3) Regulations made under this Act –
- (a) may be of general or of specially limited application; and
  - (b) may differ according to differences in time, place or circumstances; and
  - (c) may require a matter affected by the regulations to be –
    - (i) in accordance with a specified standard or specified requirement; or
    - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
    - (iii) as specified in both subparagraphs (i) and (ii); and
  - (d) may apply, adopt or incorporate any matter contained in any document whether –

*Rail Safety Act 2009*  
*Act No. of*

**s. 171**

Part 14 – Miscellaneous

---

- (i) wholly or partially or as amended by the regulations; or
    - (ii) as in force at a particular time or as in force from time to time; and
  - (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
  - (f) may provide, in a specified case or class of cases, for the exemption of people or things, or a class of people or things, from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified; and
  - (g) may impose a penalty of not more than 200 penalty units for a contravention of the regulations; and
  - (h) may provide that an application may be made to the Magistrates Court (Administrative Appeals Division) for the review of a decision made under the regulations.
- (4) The regulations may exempt, or provide for the exemption of, either absolutely or subject to conditions, any person, railway, part of a railway or operation from all or any of the provisions of the rail safety law.

*Rail Safety Act 2009*  
*Act No. of*

Part 14 – Miscellaneous

**s. 172**

---

**172. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Infrastructure; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

## **PART 15 – TRANSITIONAL**

### **173. Interpretation of this Part**

In this Part –

“**commencement day**” means the day on which the *Rail Safety Act 1997* is repealed by this Act;

“**former Act**” means the *Rail Safety Act 1997*, as in force immediately before the commencement day.

### **174. Saving of appointment of Rail Safety Regulator**

The person who is, immediately before the commencement day, the Administrating Authority for the purposes of the former Act, is to be taken to be the Rail Safety Regulator appointed under section 147 of this Act, until the appointment is revoked under this Act or the person ceases to be a State Service officer or State Service employee.

### **175. Saving of accreditation of persons under former Act**

- (1) An accreditation as an owner or operator of a railway that was, immediately before the commencement day, held by a person under the former Act and that was not, on that day, suspended, is to be taken to be, on and from that day, an accreditation as a railway operator in



*Rail Safety Act 2009*  
*Act No. of*

Part 15 – Transitional

s. 175

---

respect of the railway granted under section 22 to the person, but may be suspended or revoked under this Act.

- (2) If the accreditation to which subsection (1) applies was granted under the former Act for a period of 12 months or less, the accreditation expires at the end of the period.
- (3) Any accreditation under the former Act remains subject to the conditions on which it was granted under that Act but those conditions may be varied, amended, replaced or revoked under this Act.
- (4) If, in the calendar year in which a person was required under the former Act to pay the annual fee, the person had paid that fee, the person is not liable in the calendar year to pay the annual fee otherwise payable under this Act.
- (5) An application for accreditation that had been made, but not determined, under the former Act before the commencement day is to be taken to have been made under section 18 of this Act.
- (6) An application for variation of an accreditation that had been made, but not determined, under the former Act before the commencement day is to be taken to have been made under section 33 of this Act.
- (7) A person who was, immediately before the commencement day, exempted under the former Act from the requirement under that Act to hold accreditation as a railway operator or railway owner, is exempted from section 15 of this Act

*Rail Safety Act 2009*  
*Act No. of*

**s. 176**

Part 15 – Transitional

---

until the expiry of the period of 6 months after the commencement day.

**176. Registration of private sidings**

A private siding that was registered under the former Act before the commencement day is to be taken, on and from the commencement day, to have been registered under section 16(2) of this Act.

**177. Applications and administrative acts and decisions**

- (1) If an application had been made by a person under section 20(1) of the former Act but had not been determined under the former Act immediately before the commencement day –
  - (a) the person is taken to be an eligible person under section 113; and
  - (b) the decision to which the application relates is taken to be a reviewable decision for the purposes of Part 10 that was made on the commencement day; and
  - (c) the application is taken to be an application for review made under section 114 on the commencement day.
- (2) Despite the repeal of the former Act by this Act, the Magistrates Court (Administrative Appeals Division) may continue to hear and determine an

*Rail Safety Act 2009*  
*Act No. of*

Part 15 – Transitional

**s. 177**

---

application that was made to it under section 20(2) of the former Act before the commencement day but not determined by it before that day, as if the application had been made to that court under section 115.

- (3) Despite the repeal of the former Act by this Act, if, before the commencement day –
- (a) a direction was given under section 26(1), 28(2) or 30(2), 31(1) or 32(1) of the former Act or a requirement was imposed under section 28(4) of the former Act; and
  - (b) the direction or requirement has not been complied with before the commencement day –

the direction or requirement continues in force, and a failure to comply with it may be prosecuted, as if the section of the former Act under which it were made had continued in force after the commencement day.

- (4) A requirement imposed, before the commencement day, under section 33(3), 34(1) or 35(1) of the former Act and not complied with before that day, is to be taken to be a requirement imposed under section 66(1), section 67 or section 65 of this Act, respectively.
- (5) An investigator appointed under section 37 of the former Act who has commenced but not completed an inquiry under Part 5 of the former Act may continue to conduct, and complete, the inquiry and provide a report in relation to it to

*Rail Safety Act 2009*  
*Act No. of*

**s. 178**

Part 15 – Transitional

---

the Minister, as if that Part of the former Act had not been repealed.

**178. Application of provisions in respect of existing operators**

(1) In this section –

**“existing operator”** means a person –

- (a) who is, by virtue of the operation of section 175(1), a person who is taken to be accredited as a railway operator; and
  - (b) whose accreditation has not been revoked.
- (2) Section 41 and section 47 do not apply to, and in relation to, an existing operator until 12 months after the day on which this section commences.
- (3) Until 12 months after the day on which this section commences, an existing operator must comply with the safety management plan as submitted and revised by the operator, before this section commences, under section 9 of the former Act.

Penalty: Fine not exceeding 500 penalty units.

- (4) Sections 48, 49 and 50 and section 60 do not apply to, and in relation to, an existing operator until 3 years after the day on which this section commences.

*Rail Safety Act 2009*  
*Act No. of*

Part 16 – Abt Railway Development Act 1999 Amended

**s. 179**

---

**PART 16 – ABT RAILWAY DEVELOPMENT ACT 1999  
AMENDED**

**179. Principal Act**

In this Part, the *Abt Railway Development Act 1999\** is referred to as the Principal Act.

**180. Section 30 repealed**

Section 30 of the Principal Act is repealed.

---

\*No. 41 of 1999

*Rail Safety Act 2009*  
*Act No. of*

**s. 181**                      Part 17 – Emu Bay Railway (Operation and Acquisition) Act 2009  
Amended

---

**PART 17 – EMU BAY RAILWAY (OPERATION AND  
ACQUISITION) ACT 2009 AMENDED**

**181. Principal Act**

In this Part, the *Emu Bay Railway (Operation and Acquisition) Act 2009\** is referred to as the Principal Act.

**182. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended by omitting “*Rail Safety Act 1997*” from paragraph (b) of the definition of “rail infrastructure and related assets” and substituting “*Rail Safety Act 2009*”.

**183. Section 4 amended (Authority of PN Tas (Operations) Pty Limited to operate rail business on Emu Bay Railway)**

Section 4(3)(a) of the Principal Act is amended by omitting “section 6 of the *Rail Safety Act 1997*” and substituting “section 15 of the *Rail Safety Act 2009*”.

---

\*No. 44 of 2009

*Rail Safety Act 2009*  
*Act No. of*

Part 18 – Local Government Act 1993 Amended

**s. 184**

---

**PART 18 – LOCAL GOVERNMENT ACT 1993  
AMENDED**

**184. Principal Act**

In this Part, the *Local Government Act 1993*\* is referred to as the Principal Act.

**185. Section 87 amended (Exemption from rates)**

Section 87(1)(b)(xiv) of the Principal Act is amended by omitting “the *Rail Safety Act 1997*” and substituting “the *Rail Safety Act 2009*”.

---

\*No. 95 of 1993

*Rail Safety Act 2009*  
*Act No. of*

s. 186

Part 19 – Police Offences Act 1935 Amended

---

**PART 19 – POLICE OFFENCES ACT 1935 AMENDED**

**186. Principal Act**

In this Part, the *Police Offences Act 1935*\* is referred to as the Principal Act.

**187. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended by omitting “*Rail Safety Act 1997*” from the definition of “**public place**” and substituting “*Rail Safety Act 2009*”.

---

\*No. 44 of 1935



*Rail Safety Act 2009*  
*Act No. of*

Part 20 – Rail Company Act 2009 Amended

s. 188

---

**PART 20 – RAIL COMPANY ACT 2009 AMENDED**

**188. Principal Act**

In this Part, the *Rail Company Act 2009*\* is referred to as the Principal Act.

**189. Section 4 amended (Interpretation)**

Section 4 of the Principal Act is amended by omitting “*Rail Safety Act 1997*” from paragraph (b) of the definition of “rail infrastructure and related assets” and substituting “*Rail Safety Act 2009*”.

---

\*No. 46 of 2009

**PART 21 – RAIL INFRASTRUCTURE ACT 2007  
AMENDED**

**190. Principal Act**

In this Part, the *Rail Infrastructure Act 2007*\* is referred to as the Principal Act.

**191. Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “*Rail Safety Act 1997*” from paragraph (b) of the definition of “railway emergency” and substituting “*Rail Safety Act 2009*”;
- (b) by omitting the definition of “track” and substituting the following definition:

**“track”** means the combination of rails, rail connectors, sleepers, ballast, points and crossings (or substitute devices if used);
- (c) by omitting “*Rail Safety Act 1997*” from the definition of “train” and substituting “*Rail Safety Act 2009*”.

---

\*No. 36 of 2007

*Rail Safety Act 2009*  
*Act No. of*

Part 21 – Rail Infrastructure Act 2007 Amended

**s. 192**

---

**192. Section 10 repealed**

Section 10 of the Principal Act is repealed.

*Rail Safety Act 2009*  
*Act No. of*

s. 193

Part 22 – Legislation repealed and rescinded

---

**PART 22 – LEGISLATION REPEALED AND  
RESCINDED**

**193. Legislation repealed**

The legislation specified in Schedule 1 is repealed.

**194. Legislation rescinded**

The legislation specified in Schedule 2 is rescinded.

*Rail Safety Act 2009*  
*Act No. of*

Part 23 – Further Consequential Amendments

s. 195

---

**PART 23 – FURTHER CONSEQUENTIAL  
AMENDMENTS**

**195. Amendment of *Emu Bay Railway (Operation and Acquisition) Act 2009***

Item 1 in Schedule 1 to the *Emu Bay Railway (Operation and Acquisition) Act 2009* is amended by omitting “*Rail Safety Act 1997*” from proposed section 7A(2) of the *Boundary Fences Act 1908* and substituting “*Rail Safety Act 2009*”.

**196. Amendment of *Boundary Fences Act 1908***

Section 7A(2) of the *Boundary Fences Act 1908* is amended by omitting “*Rail Safety Act 1997*” and substituting “*Rail Safety Act 2009*”.

*Rail Safety Act 2009*  
*Act No. of*

**sch. 1**

---

**SCHEDULE 1 – LEGISLATION REPEALED**

Section 193

*Rail Safety Act 1997* (No. 24 of 1997)

*Rail Safety Act 2009*  
*Act No. of*

**sch. 2**

---

**SCHEDULE 2 – LEGISLATION RESCINDED**

Section 194

*Rail Safety Regulations 1999* (No. 105 of 1999)