

RAIL SAFETY BILL 2009

CLAUSE NOTES

PART 1 - PRELIMINARY

Clause 1 Short title and citation.

Clause 2 Subclause (1) provides for the Act except Part 23 to commence on a day or days to be proclaimed.

Subclause (2) and (3) provide for alternative commencement days for Part 23 of this Act which is comprised of sections 195 and 196.

In the event that this Act receives the Royal Assent before section 12 and Schedule 1 of the *Emu Bay Railway (Operation and Acquisition Act 2009)* commence section 195 of this Act will commence on the day on which this Act receives the Royal Assent.

Sections 12 and Schedule 1 of the *Emu Bay Railway (Operation and Acquisition Act 2009)* commence on the completion of the Business Sale Agreement for the purchase of the rail infrastructure and related assets from Pacific National. Section 195 of this Act amends item 1 in Schedule 1 of the *Emu Bay Railway (Operation and Acquisition Act 2009)* by omitting “*Rail Safety Act 1997*” from the proposed section 7A (2) of the *Boundary Fences Act 1908* and substituting *Rail Safety Act 2009*.

Alternatively, subclause (3) provides that if this Act receives the Royal Assent after section 12 and Schedule 1 of the *Emu Bay Railway (Operation and Acquisition Act 2009)* commence, section 196 of this Act commences on the day on which this Act receives the Royal Assent. The reason for this is that if this Act receives the Royal Assent after section 12 and Schedule 1 of the *Emu Bay Railway (Operation and Acquisition Act 2009)* the proposed section 7A(2) of the *Boundary Fences Act 1908* will have been incorporated into the *Boundary Fences Act 1908*. Accordingly section 196 of this Act provides for the amendment of section 7A (2) of the *Boundary Fences Act 1908* by omitting *Rail Safety Act 1997* and substituting *Rail Safety Act 2009*.

Clause 3 Sets out the objects of the Act which are to provide for improved rail safety, the management and control of risks associated with rail operations and to promote public confidence in rail safety.

Clause 4	Defines terms used in the Act, and in particular, defines key terms such as "notifiable occurrence", "rail infrastructure", "rail infrastructure manager", "rail safety worker", "rail transport operator", "railway", "railway operations", "rolling stock", and "rolling stock operator".
Clause 5	Sets out the types of railway to which this Act does not apply and provides for the Minister to prescribe, by notice, a railway or class of railway to which the Act does not apply.
Clause 6	Explains that a duty to ensure safety imposed by the Act requires a person to eliminate or reduce risks to safety so far as is reasonably practicable. Determining what is reasonably practicable will involve considering the likelihood of the risk eventuating, the degree of harm that may result, what the person knows about the risk, the ways available to eliminate or reduce the risk and the cost of doing so.
Clause 7	Sets out the classes of work which are taken to be rail safety work for the purposes of the Act. The regulations may prescribe work that is not to be rail safety work for the purposes of the Act.
Clause 8	Provides that the Act binds the Crown in right of the State and in all its other capacities so far as the legislative power of the State permits.
Clause 9	Specifies that an example in the Act while part of the Act is not meant to be exhaustive or limiting, but may extend the meaning of a provision.
Clause 10	Specifies that a note in the Act is explanatory and is not part of the Act.

PART 2 - RAIL SAFETY DUTIES

Clause 11 Subclause (1) provides that a rail transport operator has a duty to ensure the safety of the operator's railway operations so far as is reasonably practicable. The subclause also specifies the maximum penalties that may be imposed for contravention of that duty.

Without limiting subclause (1), subclause (2) describes certain matters that constitute a contravention of the duty by a rail transport operator.

Without limiting subclause (1), subclause (3) describes certain matters that constitute a contravention of the duty by a rail infrastructure manager.

Without limiting subclause (1), subclause (4) describes certain matters that constitute a contravention of the duty by a rolling stock operator.

Clause 12 Subclause (1) provides that the duties of a rail transport operator is to ensure safety extends not only to a contractor of the operator, who undertakes railway operations in relation to the rolling stock or rail infrastructure of the operator, but also the contractor's employees,

Subclause (2) requires compliance with such duties by a contractor and that contractor's employees and specifies the maximum penalties that may be imposed for contravention of those duties.

Clause 13

Subclause (1) imposes a duty on a person who designs, manufactures, supplies, erects or installs something that he or she is aware will be used as or in connection with rail infrastructure or rolling stock, to ensure that it is safe to use for that purpose. The person must carry out any necessary tests or examinations to ensure that this is the case and to take such action to ensure that information is available about the use of the thing, the results of any testing or examinations and any conditions that are necessary to ensure that the thing is safe for use. This subclause also specifies the maximum penalties that may be imposed for contravention of the duty.

Subclause (2) specifies that a person who decommissions any rail infrastructure or rolling stock must ensure that it is carried out safely and must carry out any testing or examinations to ensure compliance with this duty. This subclause also specifies the maximum penalties that may be imposed for contravention of the duty.

Subclause (3) provides that a person who is merely financing the acquisition of a thing on behalf of another person is not bound by this provision as a supplier, but the duty applies instead to that other person.

PART 3 - ACCREDITATION

Division 1- Application for accreditation

Clause 14 Sets out the purpose of accreditation of a rail transport operator in relation to railway operations under the Act as being to attest that the operator has demonstrated the competence and capacity to manage risks to safety associated with those railway operations.

Clause 15 Provides that a person must not carry out railway operations unless he or she is a rail transport operator who is accredited under this Act or is otherwise exempt from compliance under this Act, or is a person who is carrying out those operations on behalf of an operator who is accredited or exempted.

The requirements of this clause do not apply to a rail safety worker who is not a rail transport operator, but is carrying out rail safety work on behalf of an accredited or exempted rail transport operator. The clause also specifies the maximum penalty that may be imposed for a breach of this provision.

Clause 16 Subclause (1) exempts the rail infrastructure manager of a private siding from accreditation, safety management system and certain notification requirements of this Act.

Subclause (2) provides that where a private siding is to be connected with or have access to a railway or siding of an accredited person, the rail infrastructure manager is required to register the siding with the Rail Safety Regulator, pay the annual registration fee, and comply with the conditions imposed by the Rail Safety Regulator or prescribed by regulations in relation to the safe construction, maintenance and operation of the private siding.

The rail infrastructure manager must also comply with the provisions of clause 47 in relation to the management of the interface with the railway of an accredited person and notify them in writing of any railway operations affecting the safety of the railway or siding of the accredited person. This subclause also specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (3) requires the Rail Safety Regulator to issue a notice of registration in relation to a registered siding.

Subclause (4) requires the Rail Safety Regulator to make the particulars of the registration available for public inspection, if so prescribed by the regulations.

Subclause (5) clarifies that the conditions and regulations imposed on the rail infrastructure manager pursuant to subclause (2) may be the same or similar to those referred to in subclause (1).

Clause 17 Provides that accreditation may be granted to a rail transport operator for carrying out railway operations for specified railways or parts of railways, for a particular service or aspect of railway operations, or for specified railway operations such as to permit construction and repair work, or other activities that the Rail Safety Regulator considers appropriate.

Accreditation may be granted for a specified period of time.

Clause 18 Provides for a rail transport operator to apply to the Rail Safety Regulator for accreditation in relation to specified railway operations. The application must specify the scope and nature of the railway operations and must include a safety management plan, and must state whether or not the applicant is accredited under a corresponding law. The application must also include any information required under the regulations and must be accompanied by the prescribed application fee. The Rail Safety Regulator may require further information or verification of any information supplied by statutory declaration.

Clause 19 Provides that, before granting accreditation, the Rail Safety Regulator must be satisfied (having regard to relevant guidelines) that the applicant is, or will be, the rail infrastructure manager or rolling stock operator in relation to the relevant railway operations and that the operator has the capacity and competence to manage safety risks and to implement the proposed safety management system.

The applicant must also demonstrate he or she has the financial capacity or adequate insurance arrangements to meet potential accident liabilities and that he or she has also met the consultation requirements under this Act and any requirements under the regulations.

Clause 20 Empowers the Rail Safety Regulator to give a direction in writing to rail transport operators to coordinate their applications for accreditation, where there are 2 or more, in the interests of safety. Such direction must be complied with and may include a requirement that the rail transport operators provide each other with information about their railway operations relevant to risks to safety. Reference to such information must then be included in the application. This clause also specifies the maximum penalty that may be imposed for failing to comply with this provision.

- Clause 21 Provides that if the Rail Safety Regulator receives an application for accreditation or variation of accreditation and the applicant is accredited or is seeking accreditation under a corresponding law of another State or Territory, the Rail Safety Regulator must consult with the relevant corresponding Rail Safety Regulator about the application to ensure consistency in the way in which the application is dealt with, taking into account any applicable guidelines. This clause also requires the Rail Safety Regulator, in circumstances where he or she has not acted consistently with the guidelines, to inform the applicant, in writing, of the reasons and provide information about the right of review.
- Clause 22 Requires the Rail Safety Regulator to give written notice granting or refusing the application generally within 6 months of receiving the application. A notice granting the application must specify the prescribed details of the applicant and the scope and nature of the railway operations for which the accreditation is given, any conditions or restrictions imposed and any other information prescribed by the regulations. A notice refusing the application or imposing a condition or restriction must include the reasons for the decision and information about the right of review under this Act. A notice extending the period in relation to an application must also include information about the right of review. This clause also defines the term “relevant period” for the purposes of an application.
- Clause 23 Provides that an accreditation is subject to any conditions or restrictions imposed by the regulations.
- Clause 24 Makes it an offence for an accredited person to contravene a condition or restriction of accreditation and specifies the maximum penalty that may be imposed for a breach of this provision.

Division 2 – Fees

- Clause 25 Provides for the Minister to determine application, registration and accreditation fees by notice in the *Gazette* and establishes that such notice is a statutory rule for the purposes of the *Rules Publication Act 1953*.
- The clause also provides for the Minister to fix different fees for different types of applications or accreditations, fix different ways of calculating fees, fix differential application, registration or accreditation fees or impose additional fees for late payment. It also clarifies that GST, where payable, is deemed to be included in such fee.

- Clause 26 Requires that an annual fee fixed by the Minister and published in the Gazette must be paid by the accredited person at the time of his or her accreditation and, for each subsequent year thereafter, on a date determined by the Minister and notified to that person in writing. It also enables the accredited person to enter into an agreement with the Rail Safety Regulator in relation to the manner of payment of the fee.
- Clause 27 Empowers the Rail Safety Regulator to impose an additional fee for late payment, which may be calculated on a daily basis, if an accredited person fails to pay the annual fee by the due date.
- Clause 28 Empowers the Rail Safety Regulator to waive or refund the whole or part of any fee due under this Part.

Division 3 – Variation and ending of accreditations

- Clause 29 Provides for the surrender of accreditation in accordance with the regulations.

- Clause 30 Subclause (1) details the circumstances under which the Rail Safety Regulator may suspend or revoke an accreditation.

Subclause (2) empowers the Rail Safety Regulator, by notice, to suspend or revoke an accreditation for a given period or from a specified date, either wholly or in part, and to impose conditions or restrictions on or vary the conditions on or restrictions of, an accreditation.

Subclause (3) empowers the Rail Safety Regulator to disqualify a person who has had his or her accreditation revoked from applying for accreditation or for accreditation in relation to certain railway operations for a specified period.

Subclause (4) requires the Rail Safety Regulator, before making a decision under this clause, to notify the person in writing of the proposed decision and the reasons for it, and the person's right to make representations to the Rail Safety Regulator as to why the decision should not be made.

Subclause (5) provides that if the Rail Safety Regulator, after considering any representations, suspends or revokes an accreditation, the notice must set out the reasons for the decision and information about the right of review under this Act.

Subclause (6) requires the Rail Safety Regulator to notify the corresponding Rail Safety Regulator of the suspension or revocation if the person is also accredited in another jurisdiction.

Subclause (7) empowers the Rail Safety Regulator to withdraw a suspension of an accredited person by written notice.

Clause 31

Subclause (1) empowers the Rail Safety Regulator to immediately suspend an accreditation, either wholly or in part, or in respect of certain railway operations, for up to 6 weeks by notice in writing if he or she considers there is an immediate and serious risk to safety not to do so.

Subclause (2) allows the Rail Safety Regulator to reduce the period of suspension or increase it in writing, but for not more than 6 weeks after the first notice.

Subclause (3) requires the Rail Safety Regulator, before increasing the period of suspension, to notify the person of his or her intention and give reasons why. The person may within 7 days, or such longer period specified by the Rail Safety Regulator, make representations in writing as to why the suspension should not be extended.

Subclause (4) requires the Rail Safety Regulator, after considering the representations, to give reasons for his or her decision to go ahead and extend the suspension and give information about the right of review under this Act.

Subclause (5) allows a suspension under this provision to be withdrawn by the Rail Safety Regulator by notice in writing.

Clause 32 Requires a rail transport operator to ensure that the current notice of accreditation, exemption, notice of registration of a private siding or other prescribed document is available for inspection at the operator's registered office or principal place of business during ordinary business hours, or at another place and time approved by the Rail Safety Regulator. It also specifies the maximum penalty that may be imposed for a breach of this provision.

Clause 33 Provides for an accredited person to apply to the Rail Safety Regulator for a variation of the accreditation. The application must specify the details of the variation being sought and contain the prescribed information and application fee. It also empowers the Rail Safety Regulator to require the applicant to provide further information or verify information already supplied by means of a statutory declaration.

Clause 34 Clarifies that the requirements of clauses 20 (directions by the Rail Safety Regulator for applicants to coordinate an application for accreditation) and 21 (corresponding Rail Safety Regulators to consult on applications across jurisdictions) also apply to applications for variations of accreditation.

Clause 35 Requires the Rail Safety Regulator to give the applicant for variation of accreditation a notice in writing of his or her decision, generally within 6 months of receiving the application.

A notice varying an accreditation must specify the prescribed details of the applicant and specify the variation to the accreditation so far as it applies to the nature and scope of railway operations or the manner in which they are to be carried out, and specify any conditions and restrictions imposed or varied by the Rail Safety Regulator and any other prescribed information.

A notice refusing an application or imposing a condition or restriction must set out the reasons and the information about the right of review under this Act. This clause also defines the term "relevant period" for the purposes of an application.

- Clause 36 Provides that the regulations may prescribe conditions and restrictions to which an accreditation varied under Part 3 of the Act may be subject.
- Clause 37 Provides for an application by an accredited person to vary a condition or restriction imposed by the Rail Safety Regulator on the accreditation, and applies the requirements for the granting of such application. After considering the application the Rail Safety Regulator may grant or refuse the application and in the case of a refusal, must include reasons for the decision and information about the right of review of the decision under this Act.
- Clause 38 Empowers the Rail Safety Regulator to at any time in his or her discretion vary or revoke a condition or restriction imposed by him or her or impose a new condition or restriction. Unless immediate action is required in the interests of safety, before taking action under this clause, the Rail Safety Regulator must give written notice of the proposed action and allow the accredited person to make written representations within 14 days (or other period as agreed) about the proposed action. After considering the representations, the Rail Safety Regulator must provide, in writing, details of the decision and the reasons for it and notification of the rights of review under this Act.
- Clause 39 Specifies that, regardless of the terms of any act or rule of law to the contrary, an accreditation cannot be transferred or assigned to another person and cannot vest by operation of law in any other person. Any purported transfer or assignment will have no effect.
- Clause 40 Provides that if an accredited person proposes to sell or transfer any railway operations for which he or she is accredited, the Rail Safety Regulator may waive compliance with certain provisions of this Division in relation to the proposed transferee, but only if the Rail Safety Regulator is satisfied that the transferee has the capacity and competency to comply with the relevant requirements of this Division.

This to allow the smooth transfer of a rail way to a new owner when there has been no wholesale changes to the organisational structure or systems.

PART 4 – SAFETY MANAGEMENT

Division 1 – Safety management systems

Clause 41 Subclause (1) requires a rail transport operator to have a safety management system for railway operations carried out on or in relation to the operator's rail infrastructure or rolling stock, which must be in an approved form and comply with the prescribed requirements, risk management principles, methods and procedures. It must identify and assess any safety risks in relation to the railway operations on the operator's rail infrastructure or rolling stock and must specify the controls that are to be used by the operator to manage the risks that have been identified and to monitor safety in relation to the railway operations in addition to procedures for monitoring, reviewing and revising the adequacy of these controls. It must also include measures to manage risks to safety identified under this Part, a security management plan, an emergency management plan, a health and fitness management plan, an alcohol and drug management plan and a fatigue management plan. This subclause also specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (2) requires a rail transport operator, before establishing or reviewing a rail safety management system, to consult, so far as is reasonably practicable, with persons likely to be affected by the system such as persons who carry out those railway operations or work at the operator's railway premises or with the operator's rolling stock, health and safety representatives, union representatives, any other rail transport operator with whom the operator has an interface agreement under this Part, and members of the public as appropriate.

Subclause (3) provides that where two rail transport operators have an interface agreement with each other and their respective safety management systems, when taken as one system, comply with this Act, then both systems are taken to comply with this Act.

Subclause (4) requires a safety management plan to be evidenced in writing.

Subclause (5) requires that each person responsible for preparing any part of the system and the person or class of persons responsible for implementing the system to be identified.

Subclause (6) requires a rail transport operator to provide the Rail Safety Regulator with a copy of a document that constitutes a variation to a safety management system, as soon as practicable after being requested by the Rail Safety Regulator. This subclause also specifies the maximum penalty that may be imposed for a breach of this provision.

- Clause 42 Requires a rail transport operator to implement a safety management system and comply with that system unless they have a reasonable excuse (for example, demonstrating that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening). It also specifies the maximum penalties that may be imposed for breaching these requirements.
- Clause 43 Requires contractors to comply with a rail transport operators' safety management system. It also specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 44 Requires a rail transport operator to review the safety management system in accordance with the periods prescribed by the regulations or, if no time is prescribed, at least once a year or as agreed by the operator and the Rail Safety Regulator. It also specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 45 Empowers the Rail Safety Regulator to direct a rail transport operator to amend his or her safety management system within a specified period not less than 28 days. The direction must be in writing and include details of the reasons for such direction and notification of the rights of review under this Act. The clause also requires the rail transport operator to comply with the direction unless they have a reasonable excuse and specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 46 Requires the rail transport operator to provide the Rail Safety Regulator with a safety performance report, within 6 months after the end of each reporting period, which contains a description and assessment of the safety performance of the operator's railway operations, comments on any deficiencies and irregularities in the operations that are relevant to the safety of the railway, a description of any safety initiatives undertaken or proposed in relation to the railway operations and any other prescribed performance indicators. The clause also defines the term "reporting period" in relation to the time within which a report must be submitted and specifies the maximum penalty that may be imposed for failing to comply.

Division 2 – Interface coordination

- Clause 47 Requires a rail transport operator to 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 or because of railway operations carried out by another operator or that other operator's contractor, as well as determine measures to manage those risks, and in doing so, seek to enter into an interface agreement with the other operator.

Unless the regulations prescribe otherwise, the requirements under this section relating to the preparation of an interface

agreement do not apply if neither of the operators are a rail infrastructure manager.

- Clause 48 Requires a rail infrastructure manager to identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations wholly or partly because of the use or existence of rail or road crossings that form part of the road infrastructure of a public road, as well as determine measures to manage the risks and in doing so, seek to enter into an interface agreement with the responsible road manager.
- Clause 49 Requires a rail infrastructure manager to identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations wholly or partly because of the use or existence of rail or road crossings that form part of the road infrastructure of a non-public road, and consider the necessity of managing the risks in conjunction with the responsible road manager. It also requires the rail infrastructure manager, if he or she considers joint management to be necessary, to notify the road manager, determine measures to manage the risks and in doing so, seek to enter into an interface agreement with the road manager. If it is not considered necessary, the rail infrastructure manager must keep a written record of that opinion.
- Clause 50 Requires the responsible road manager in relation to a public road, or a non-public road if a rail infrastructure manager has notified the road manager that certain risks should be managed jointly, to identify and assess risks to safety arising from rail or road crossings wholly or partly because of railway operations, determine measures to manage the risks and seek to enter interface agreements for managing those risks with the relevant rail infrastructure manager. It also requires the road manager to act consistently with and have regard to the functions, obligations and powers conferred pursuant to an Act other than this Act, and provides that nothing in this Division (interface coordination) affects the operation of the Civil Liability Act 2002 with respect to a public or other authority responsible for carrying out road work.

- Clause 51 Provides that a rail transport operator, rail infrastructure manager or road manager who is required to identify and assess risks to safety that may arise from operations carried out by another person, may do so alone, jointly with the other person, or by adopting the identification and assessment of those risks carried out by the other person.
- Clause 52 Provides that an interface agreement, which may consist of 2 or more documents, may be entered into by 2 or more operators and may include measures to manage any number of risks to safety that may arise, either wholly or partly, because of railway operations or the existence or use of any roads or related infrastructure. The interface agreement may apply, adopt or incorporate any matter contained in any document.
- Clause 53 Empowers the Rail Safety Regulator to issue a written notice to a rail transport operator, rail infrastructure manager or road manager, as the case requires, and to the person with whom the operator or manager was required to enter into an interface agreement, if satisfied they have unreasonably refused or failed to enter into such agreement as required under this Division or delayed the negotiation of such agreement and sets out the required content of the notice.
- It also specifies the action the Rail Safety Regulator may take if the notice has not been complied with, which includes giving a direction in writing (to either or both persons issued with the original notice) setting out the arrangements to manage any safety risks. It authorises the Rail Safety Regulator to request the operator or manager to provide information for the purpose of making a direction, makes it an offence not to comply with the direction and specifies the maximum penalty that may be imposed for non-compliance.
- Clause 54 Requires a rail transport operator and road manager to maintain registers of applicable interface agreements and arrangements determined under this Division. This clause also specifies the maximum penalty that may be imposed for a breach of this provision.

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

Division 1 – Plans and programs

- Clause 55 Requires a rail transport operator to have a security management plan for railway operations carried out by the operator or in relation to the operator's rail infrastructure or rolling stock and specifies the required content of the plan. The operator must ensure that the plan is implemented and the appropriate response measures of the plan are implemented if an incident contemplated occurs. This clause also specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 56 Requires a rail transport operator to have an emergency management plan that must be prepared in conjunction with relevant emergency services and in accordance with the requirements of the regulations, and to implement the appropriate response measures of the emergency plan in the case of an emergency. This clause also specifies the maximum penalties that may be imposed for a breach of this provision.
- Clause 57 Requires a rail transport operator to have and implement a health and fitness program for rail safety workers who carry out rail safety work in relation to the operator's rail infrastructure or rolling stock that complies with this Act and the regulations. This clause also specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 58 Requires a rail transport operator to prepare and implement an alcohol and drug management plan for rail safety workers that complies with this Act and the regulations. This clause also specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 59 Requires a rail transport operator to prepare and implement a fatigue management program that complies with requirements prescribed by the regulations for rail safety workers who carry out rail safety work in relation to the operator's rail infrastructure or rolling stock. This clause also specifies the maximum penalty that may be imposed for a breach of this provision.

Division 2 – Rail safety workers

- Clause 60 Subclause (1) requires a rail transport operator to ensure that each rail safety worker who is to carry out rail safety work in relation to the operator's rail infrastructure or rolling stock has the competence to do that work, and specifies the maximum penalty that may be imposed for a breach of this provision.
- Subclause (2) sets out the manner in which the assessment of the worker's competence must be made.

Subclause (3) provides that a certificate issued under the Australian Quality Training Framework is evidence of the worker's competence in the areas documented in the certificate.

Subclause (4) clarifies that 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.

Subclause (5) requires a rail transport operator to keep records of competence in the manner prescribed by the regulations, and specifies the maximum penalty that may be imposed for a breach of this provision.

Clause 61 Requires a rail transport operator to ensure that a rail safety worker has identification sufficient to enable verification of the competence and training of the worker by a rail safety officer. This identification must be produced by the worker on request by the rail safety officer. This clause also specifies the maximum penalties that may be imposed for a breach of this provision.

Clause 62 Subclause (1) sets out the duty of a rail safety worker to take reasonable care for his or her own safety and the safety of others and to cooperate with the rail transport operator in any action taken by the operator in relation to a requirement under this Act. It also specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (2) provides that a rail safety worker when carrying out rail safety work must not intentionally or recklessly interfere with, or misuse, anything provided by the operator in the interests of safety or under this Act or the regulations. It also specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (3) provides that a rail safety worker must not wilfully or recklessly place the safety of others on or near rail infrastructure at risk while carrying out rail safety work, and specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (4) provides that in determining whether a rail safety worker failed to take reasonable care, regard must be had to what the worker knew about the relevant circumstances.

PART 6 – DRUG AND ALCOHOL USE AND TESTING

- Clause 63 Requires that a rail safety worker must not be on duty, carry out or attempt to carry out rail safety work –
- (a) while any alcohol (is present in his or her blood or breath
 - (b) while a prescribed illicit drug is present in his or her oral fluid or blood
 - (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. (For example: a rail safety worker has taken too much prescription medicine and is incapable of discharging his function as a train driver)

- Clause 64 Specifies the alcohol and drug testing procedures for rail safety workers.

Subclause (1) provides alignment in the testing procedures with the *Road Safety (Alcohol and Drugs) Act 1970*. By adopting this approach it is not necessary to replicate in this Act a separate alcohol and drugs testing procedure for rail workers.

Subclause (2) provides that this Act 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 provisions of the *Road Safety (Alcohol and Drugs) Act 1970* specified under subclause (1) with the appropriate modifications applies to a rail safety worker on duty or carrying out, or attempting to carry out rail safety work.

Subclause (3) specifies the appropriate modification for the purposes of the application of the *Road Safety (Alcohol and Drugs) Act 1970* to rail safety workers on duty or carrying out, or attempting to carry out rail safety work.

PART 7 – INFORMATION, INVESTIGATION BY RAIL SAFETY OPERATORS AND AUDIT

Clause 65 Subclause (1) provides that a Rail Safety Regulator may, by notice in writing, require a rail transport operator to provide the Regulator with information about measures taken to promote rail safety, the operator's financial capacity or insurance arrangements or other prescribed information relating to rail safety.

Subclause (2) makes it an offence for the rail transport operator not to comply with the notice given by the Rail Safety Regulator and specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (3) requires a rail transport operator to provide the Rail Safety Regulator, in a manner and form approved by the Regulator, at the prescribed times and in respect of the prescribed periods, information prescribed by the regulations in relation to rail safety or accreditation. It also specifies the maximum penalty that may be imposed for a breach of this provision.

Clause 66 Subclause (1) requires a rail transport operator to report to the Rail Safety Regulator or another entity specified by the Rail Safety Regulator all notifiable occurrences within the period and in the manner prescribed. It also specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (2) provides that 2 or more rail transport operators may make a joint report about a notifiable occurrence affecting them.

Subclause (3) provides that the Rail Safety Regulator may give written notice requiring a rail transport operator to provide the Regulator or another entity specified by the Rail Safety Regulator with a report about any other occurrence or type of occurrence that endangers or could endanger the safe operation of any railway operations.

Subclause (4) empowers the Rail Safety Regulator to require verification of the information provided in the report by means of a statutory declaration.

Subclause (5) makes it an offence for the rail transport operator not to comply with the notice given by the Rail Safety Regulator and specifies the maximum penalty that may be imposed for a breach of this provision.

Clause 67 Subclause (1) empowers the Rail Safety Regulator to require, by written notice, a rail transport operator to investigate and report on notifiable occurrences or other occurrences that have endangered or may endanger the safe operation of the operator's railway operations.

Subclause (2) provides for the Rail Safety Regulator to decide the level of the investigation required having regard to the severity and potential consequences of the notifiable occurrence or other occurrence.

Subclause (3) requires the Rail Safety Regulator to ensure that the focus of the investigation is directed at identifying the cause of, and factors contributing, to the occurrence, rather than to apportion blame.

Subclause (4) requires the rail transport operator to ensure that the investigation is conducted in the manner and time period set by the Regulator, and specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (5) requires the rail transport operator to give the Rail Safety Regulator a report of an investigation conducted under this clause within the period specified in the notice.

Clause 68 Subclause (1) empowers the Rail Safety Regulator to audit the railway operations of a rail transport operator, to prepare and implement an annual audit program and to inspect the railway operations of the operator for the purposes of the audit.

Subclause (2) specifies what an audit program may focus on.

Subclause (3) requires the Rail Safety Regulator to give a minimum 24 hours notice in writing to a rail transport operator before inspecting the operator's railway operations under this section.

Subclause (4) provides that the regulations may establish procedures, including procedures to ensure confidentiality of records, in relation to carrying out audits.

Subclause (5) clarifies the term 'rail transport operator' for the purposes of this section.

PART 8 – INVESTIGATIONS

Clause 69 Subclause (1) requires the Secretary of the Department when requested by the Minister to appoint one or more independent investigators to investigate an accident or incident on, involving or associated with a railway. It also empowers the Secretary to act on his or her own initiative, or at the request of a person.

Subclause (2) restricts the appointment of an investigator to a person that the Secretary of the Department is satisfied is suitably qualified to conduct the investigation.

Subclause (3) requires the Secretary of the Department to consult with the Minister and the accredited person in respect of the railway to which the investigation relates about the person to be appointed, the matters to be inquired into and the reporting arrangements for the investigation.

Subclause (4) allows for an investigator to be appointed and continue undertaking an investigation despite there being another investigation into the matter or a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

Subclause (5) requires the appointment of an investigator to be on the terms and conditions agreed between him or her and the Secretary.

Clause 70 Requires an investigator to ensure that the focus of the investigation is directed at identifying the cause of, and factors contributing, to the occurrence so as to prevent any future recurrence, rather than to apportion blame or determine liability, and to conduct the investigation quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues. This clause also provides that, in conducting the investigation, the investigator is not bound by the rules of evidence and may inform himself or herself in any way he or she considers appropriate.

- Clause 71 Subclause (1) empowers an investigator to conduct the investigation in the manner he or she determines, subject to this section.
- Subclause (2) sets out the powers of an investigator in conducting an investigation including the power to issue a summons to require the attendance of a person or production of a document, object, material or information.
- Subclause (3) empowers an investigator to require a person (who has been summoned) to provide information and answer questions under oath or affirmation.
- Subclause (4) provides that subject to subclause (5), Part 9 (Enforcement) applies to an investigator conducting an investigation pursuant to this Part (Investigations) as if a reference to a rail safety officer were a reference to an investigator. This provides an investigator with the required powers such as general powers after entering a place, use of assistants, use of electronic equipment, securing a site, seizure, etc.
- Subclause (5) excludes the application of Divisions 7 (Improvement notices) and 8 (Prohibition notices) of Part 9 to an investigator conducting an investigation pursuant to this part.
- Subclause (6) authorises the investigator to inspect, copy, photograph, take extracts from, test, or take possession of and keep while necessary for the investigation, a document, object or material produced by summons.
- Subclause (7) enables an investigator to appoint a person or persons to assist in an investigation.
- Clause 72 Subclause (1) requires an investigator to prepare a written report at the conclusion of an investigation
- Subclause 2 specifies that the report may contain recommendations and any other matters the investigator considers relevant.
- Subclause (3) requires the investigator to circulate a confidential draft of the report to persons he or she considers appropriate for their comments prior to finalisation.
- Subclause (4) requires the investigator to provide a copy of the report to the Secretary of the Department and the Minister.
- Subclause (5) requires the Secretary of the Department to ensure publication of the report within 28 days of receiving it.
- Subclause (6) specifies what constitutes 'publication' for the purpose of subclause (5).

Clause 73

Subclause (1) requires a person who has been summoned, to attend before the investigator and produce evidence in accordance with that summons unless he or she has a reasonable excuse. It also specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (2) requires a person to answer relevant questions for the purposes of an investigation unless he or she has a reasonable excuse and specifies the maximum penalty for failing to comply with this provision.

Subclause (3) requires a person to swear or affirm when required to do so under the investigation provisions of the proposed Act and specifies the maximum penalty for failing to comply with this provision.

Subclause (4) makes it an offence to hinder or obstruct or fail to obey a requirement of the investigator as provided for under the investigation provisions of the proposed Act and specifies the maximum penalty that may be imposed for a breach of this provision.

Subclause (5) provides that a person is not excused from answering a question or producing evidence under the investigation provisions of the proposed Act on the ground that in doing so, he or she might be incriminated or liable to a penalty.

Subclause (6) provides for the protection from self-incrimination for a person required under the investigation provisions of the Act to make statements, answer questions or produce evidence if the person objected to so doing on the ground of self-incrimination or was not warned that providing the statement or evidence might incriminate them. This protection does not extend to proceedings in respect of false or misleading information.

Subclause (7) precludes a person from having to provide information that is privileged on the grounds of legal professional privilege.

Subclause (8) provides that except as provided in sub-section (6) or (7), any information obtained from a person under this Part is admissible in evidence against the person in criminal or civil proceedings against that person.

PART 9 – ENFORCEMENT

Division 1 – Entry to places by rail safety officers

- Clause 74 Sets out when a rail safety officer may enter a place (including any limitations) for compliance and investigative purposes in terms of the proposed Act, or in an emergency. It also defines the term ‘compliance and investigative purposes’ for the purposes of this provision.
- Clause 75 Requires a rail safety officer to have either the consent of the occupier or the authority of a warrant to enter a place used only for residential premises.
- Clause 76 Requires a rail safety officer to give reasonable notice before entering railway premises other than a public place, unless the occupier consents or notice would defeat the purpose of entry, or there is an immediate risk to safety, or a warrant has been issued.

Division 2 – General enforcement powers

- Clause 77 Subclause (1) empowers a rail safety officer who enters railway premises or residential premises to do various things for compliance and investigative purposes, including search and seizure powers, the power to inspect and record images, and the power to require a person to answer questions or otherwise give information in relation to a suspected offence against the Act or the regulations.
- Subclause (2) prevents any image taken of rail infrastructure, rolling stock, road vehicle or any other thing, that includes the likeness of one or more persons, from being inadmissible as evidence in an investigation unless the main reason for taking the image appears to have been to capture such likeness.
- Clause 78 Provides that a rail safety officer may be assisted by such assistants and equipment as the officer considers necessary in the exercise of his or her powers under this Part and, if the circumstances warrant, an assistant may exercise the same powers when supervised and authorised to do so by the officer.
- Clause 79 Empowers a rail safety officer or his or her assistant to operate equipment to access information stored on tape or disk or other device in the exercise of his or her powers under the proposed section 76, but only if the officer or assistant reasonably believes the operation or seizure of such equipment can be carried out without it being damaged.

Clause 80 Empowers a rail safety officer to bring equipment onto rolling stock, a vehicle or place needed for the examination or processing of things found in order to determine if they are things that may be seized. However, this only applies if the officer or his or her assistant reasonably believes that the equipment is suitable for the examination or the processing and the examination or processing can be carried out without damage to the equipment.

Clause 81 Authorises a rail safety officer to secure the perimeter of a site by whatever means considered appropriate in order to protect evidence relevant for compliance or investigative purposes. It prohibits anyone from entering or remaining in a secure site without the permission of the officer (which must not be unreasonably withheld) unless such entry is for the purposes specified therein. The clause also specifies the maximum penalty for a breach of this provision.

Division 3 – Search warrants

Clause 82 Empowers a rail safety officer to apply to the Magistrates' Court for a search warrant for railway premises or residential premises if the officer reasonably believes that evidence of an offence will be found there. The clause sets out the circumstances in which a warrant may be issued, who is authorised by the warrant, and the things that must be stated in such warrant. It also requires the Magistrate to record the grounds upon which the warrant was sought and clarifies that the warrant is not invalidated by any defect unless the defect affects the substance of the search warrant in a material particular.

Clause 83

Subclause (1) enables an application for a warrant to be made by telephone, telex, facsimile or another form of electronic communication if a rail safety officer reasonably considers it necessary because of urgent circumstances or other special circumstances.

Subclause (2) empowers the magistrate to speak with the applicant where practicable.

Subclause (3) provides that an application under this clause must include the same information as an application under clause 82 but may be made before the written application is sworn.

Subclause (4) empowers the magistrate to issue the same form of warrant under this section as that issued under clause 82 if he or she is satisfied it was necessary to make the application under this clause and the way the application was made was appropriate.

Subclause (5) requires the magistrate, upon deciding to issue a warrant, to inform the rail safety officer by telephone, telex, facsimile or other electronic means of the terms of the warrant and the date and time the warrant was signed.

Subclause (6) requires the rail safety officer to complete a form of the warrant in terms substantially corresponding to those given by the magistrate, including the name of the issuing magistrate and the date and time the warrant was signed.

Subclause (7) requires the rail safety officer, by no later than the day after either the expiry or the execution of the warrant, whichever is the earlier, to provide the magistrate with the form of warrant completed by the officer, duly sworn.

Subclause (8) requires the magistrate to attach the rail safety officer's documents to the original warrant.

Subclause (9) provides that if an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section and the original warrant is not produced in evidence, the court is to assume such power was not authorised, unless the contrary is proved.

Clause 84

Sets out the procedure to be followed if a rail safety officer named in a warrant issued under this part or an assistant is intending to enter the place under the warrant. However, the officer or the assistant need not comply with these procedures if he or she reasonably believes that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated. It also requires a copy of the warrant to be given to the occupier (or the occupier's representative) if he or she is present at the place during the execution of the warrant.

Clause 85 Provides that a rail safety officer may seize things not described in the search warrant where the officer reasonably believes that the thing could have been included in the warrant or will afford evidence about the commission of an offence against this Act and the officer reasonably believes that seizure is necessary to prevent the thing being concealed, lost, destroyed or used in the contravention of this Act.

Division 4 – Powers to support seizure

Clause 86 Subclause (1) empowers a rail safety officer, for the purpose of seizure, to direct a person in control of the thing to take it to a specified place within a specified time and, if necessary, to remain in control of it.

Subclause (2) requires the direction to be made by signed written notice or, if for any reason it is not practicable to give the notice, may be given orally and confirmed by signed written notice as soon as is practicable.

Subclause (3) enables a further direction to be made relating to seizure of the thing if necessary and reasonable.

Subclause (4) makes it an offence for a person to fail to comply with a direction without reasonable excuse and specifies the maximum penalty that may be imposed for non-compliance.

Subclause (5) establishes a reasonable excuse for a person in control of a thing and subject to a direction to fail to comply with it if, in all the circumstances, the direction was unreasonable.

Subclause (6) defines the term “in control” for the purposes of this provision.

Clause 87 Provides that a person directed by a rail safety officer pursuant to proposed section 86 to take a thing to a specified place within a specified time may also be directed to return it to the place from where it was taken. It also makes it an offence for a person to fail to comply with a direction without reasonable excuse and specifies the maximum penalty that may be imposed for non-compliance.

Clause 88 Provides that if a rail safety officer seizes a thing, he or she must give a receipt, describing the thing and its condition, to the owner or the person from whom the thing was seized. If for any reason it is not practicable to give the receipt, the rail safety officer must leave it in a conspicuous place and in a reasonably secure way. However, this clause does not apply to a thing if it is impracticable or would be unreasonable for the officer to account for the thing, given its condition, nature and value.

Clause 89 Provides that until a seized thing is forfeited or returned, a rail safety officer must allow its owner to inspect it or make a copy of it in the case of a document, unless it is not reasonable or practicable to do so.

Clause 90 Subclause (1) provides that this section applies if a rail safety officer is authorised to seize a record, device or other thing under this Part and the record, device or other thing can not, or can not readily, be physically seized and removed.

Subclause (2) empowers a rail safety officer to issue an embargo notice.

Subclause (3) explains the purpose of an embargo notice is to prohibit certain actions (such as moving, sale, deletion of information) from being taken in relation to a thing that cannot, or cannot readily, be seized or moved.

Subclause (4) specifies what must be detailed in an embargo notice.

Subclause (5) requires a rail safety officer to ensure a copy of the embargo notice is served on the owner of the record, device or other thing, or is affixed to the record, device or thing in a prominent position, where all reasonable steps have failed to locate the owner.

Subclause (6) makes it an offence to knowingly do anything forbidden by an embargo notice and specifies the maximum penalty that may be imposed for contravening this provision.

Subclause (7) makes it an offence to instruct or request another person to do something known to be forbidden by an embargo notice and specifies the maximum penalty that may be imposed for contravening this provision.

Subclause (8) establishes a defence to a prosecution for an offence if the person charged moved all or part of a record, device, or other thing to preserve or protect it and notified the rail safety officer who issued the embargo notice within the specified period of his or her actions.

Subclause (9) makes it an offence for a person served with an embargo notice to fail to take reasonable steps to prevent another person from doing something forbidden by the notice and specifies the maximum penalty that may be imposed for contravening this provision.

Subclause (10) voids the sale, lease, transfer or other dealing with all or part of a record, device or other thing that contravenes this section, despite anything to the contrary in any other Act or at law.

Division 5 – Forfeiture

- Clause 91 Requires a rail safety officer to return anything seized by him or her to the owner as soon as possible unless it is evidence in proceedings for an offence against this Act or the thing is forfeited to the Crown or the officer is otherwise authorised by law or court order to retain, destroy or dispose of it. The clause also requires the owner to comply with any terms or conditions imposed by the officer on the seized thing's return and specifies the maximum penalty that may be imposed for failure to comply.
- Clause 92 Provides that a sample or thing taken for analysis or a thing seized by a rail safety officer is forfeited to the Crown if the officer considers it necessary to retain it to prevent an offence, or, after making reasonable efforts or inquiries, the sample or thing cannot be returned to its owner or the owner cannot be found. The officer is not required to make efforts or inquiries to return the sample or thing or find the owner that would be considered unreasonable having regard to the sample or thing's condition, nature and value. The clause also defines "owner" for the purposes of this provision.
- Clause 93 Provides that on forfeiture of a sample or thing to the Crown, it becomes the Crown's property to be dealt with by the Rail Safety Regulator as he or she thinks fit, including its destruction or disposal. It also requires the rail safety officer to give notice in writing informing the owner of the forfeiture and his or her right of review, unless the owner cannot be found despite the officer making reasonable enquiries.

Division 6 – Directions

- Clause 94 Empowers a rail safety officer to direct a rail transport operator or rail safety worker to give them reasonable assistance to enable the officer to exercise a power under this Part of the Act, and requires the officer, when directing a person under this Part, to warn the person that failure to comply with the direction without reasonable excuse is an offence. The clause specifies the maximum penalty that may be imposed for failing to comply with a direction and also defines the term "reasonable assistance" for the purposes of this provision.

Clause 95 Subclause (1) empowers a rail safety officer to direct a person to state their name and address if the person is committing an offence against this Act, is found in circumstances that lead to a reasonable suspicion that the person has committed such an offence, or is a person carrying out railway operations who is found at railway premises and the officer reasonably considers the information is necessary for the purposes of the Act or regulations.

Subclause (2) requires the rail safety officer to warn a person subject to a direction that it is an offence to fail to comply with that direction without reasonable excuse.

Subclause (3) enables the rail safety officer to require evidence of a person's correct name and address if the officer has a reasonable suspicion the person has provided false details.

Subclause (4) makes it an offence to fail to comply with a direction and specifies the maximum penalty that may be imposed for non-compliance.

Clause 96 Subclause (1) empowers a rail safety officer to direct a person to allow the officer to inspect, at a specified time and place, a document required to be kept by the person under this Act, or a document prepared by the person under this Act for the management of rail infrastructure or operation of rolling stock and which the officer believes is necessary to understand or verify a document required to be kept by the person under this Act, or a document held by or under the control of the person in relation to carrying out railway operations.

Subclause (2) requires the rail safety officer to warn a person subject to a direction that failure to comply with the direction without reasonable excuse is an offence.

Subclause (3) requires the rail safety officer to return the document to the person once the officer has made a copy.

Subclause (4) makes it an offence for a person failing to comply with a direction without reasonable excuse and specifies the maximum penalty that may be imposed for non-compliance.

Division 7 – Improvement notices

Clause 97 Subclause (1) empowers a rail safety officer to serve an improvement notice on a person if the officer reasonably believes the person is contravening this Act or has contravened this Act and is likely to continue or repeat the contravention, or is carrying out railway operations that threaten safety.

Subclause (2) enables the rail safety officer to serve an improvement notice requiring a person to undertake remedial

rail safety work or do any other thing to remedy the contravention or likely contravention or the matters or activities occasioning the contravention or likely contravention, or to carry out railway operations so that safety is not threatened.

Subclause (3) specifies that a person served with an improvement notice is to be given a minimum of 7 days to comply after receiving the notice.

Subclause (4) sets out the requirements as to the contents of the improvement notice, including the provision of information about a person's right of review and the maximum penalty for contravention of the notice.

Subclause (5) provides that an improvement notice given to a person who is contravening this Act or has contravened this Act and is likely to continue or repeat the contravention may specify the required remedial action, or offer the person a choice of remedial actions, and may specify the requirement for the person to provide the Rail Safety Regulator with a program of proposed remedial action.

Subclause (6) provides that an improvement notice given to a person who is carrying out railway operations that threaten safety may specify the way or offer a choice of ways in which the railway operations may be carried out to prevent the threat or likely threat to rail safety. The notice may also require the person to give the Rail Safety Regulator a program of proposed railway operations to remedy the threat or likely threat to rail safety.

Subclause (7) allows a timetable for the completion of remedial works to be included in the program.

Clause 98

Makes it an offence for a person served with an improvement notice to fail to comply with that notice without reasonable excuse and specifies the maximum penalty that may be imposed for non-compliance. It also establishes defences for a person in a proceeding for an offence if an alleged contravention, likely contravention or matters or activities occasioning such contraventions, or a threat to safety is remedied within the time specified in the notice though by a method other than one specified in a notice.

- Clause 99 Provides for an improvement notice served by a rail safety officer to be withdrawn or amended by notice served on the person affected, and sets out the requirements as to the contents of the notice and how it is to be effected. It also provides that the notice is ineffective if it purports to deal with a contravention of a different provision of this Act than that dealt with in the original improvement notice.
- Clause 100 Provides that the service, amendment or withdrawal of an improvement notice does not affect any proceedings for an offence in relation to any connected matter.
- Clause 101 Empowers the Rail Safety Regulator to arrange for remedial rail safety work to be undertaken and to recover reasonable associated costs and expenses incurred from a person if that person has failed to comply with an improvement notice that requires the person to carry out rail safety work to remedy an alleged contravention, likely contravention or matters or activities occasioning such contraventions.

Division 8 – Prohibition notices

- Clause 102 Subclause (1) specifies that the section applies if an activity involves or may involve an immediate risk to safety in relation to railway operations or railway premises or at, on or in the vicinity of rail infrastructure or rolling stock.
- Subclause (2) empowers a rail safety officer to serve a prohibition notice on the person in control of a specified activity if the officer reasonably believes the activity involves or may involve an immediate risk to safety.
- Subclause (3) provides for a prohibition notice to prohibit the carrying on of an activity or the carrying on of the activity in a particular way until the rail safety officer certifies, in writing, that the matters that give or will give rise to the risk have been remedied.
- Subclause (4) provides that the prohibition notice has effect upon being served or at a later date if specified in the notice.
- Subclause (5) sets out the requirements of a prohibition notice, which must include the basis for the rail safety officer's belief on which the giving of the notice is based, details of the activity giving rise to the risk or contravention of this Act, the right of review, penalty for failure to comply with the notice, and advice that the notice is served under this section and that proceedings for offences in relation to connected matters are not affected by the notice.
- Subclause (6) provides that the prohibition notice may include directions on measures to be taken to remedy the risk.

Subclause (7) sets out the types of directions that may be included in a prohibition notice, including directions on specific measures to be taken in accordance with a compliance code, or a choice of measures that may be taken to remedy the risk.

Subclause (8) sets out restrictions that may be included in a prohibition notice that prohibit the carrying on of an activity in a specified way.

Clause 103 Provides that it is an offence to fail to comply with a prohibition notice without reasonable excuse, and specifies the maximum penalty that may be imposed for non-compliance.

Clause 104 Empowers a rail safety officer to give an oral direction to a person who has, or appears to have, control over an activity involving an immediate risk to safety and where it is not possible or reasonable to immediately serve a notice, to do or not to do a stated act. It makes it an offence for a person to fail to comply with the direction without reasonable excuse (such as the officer not informing the person that failure to comply is an offence), and specifies the maximum penalty that may be imposed for non-compliance. It also provides that an oral direction ceases to have effect if a prohibition notice is not issued within 5 days of the giving of the direction.

Clause 105 Authorises a rail safety officer to withdraw or amend a prohibition notice by notice served on the affected person, and sets out the requirements as to the contents of an amendment notice which must include and how it is to be effected. It also provides that an amendment to the notice is ineffective if it purports to deal with a contravention of a different provision of this Act than that dealt with in the original prohibition notice.

Clause 106 Provides that the service, amendment or withdrawal of a prohibition notice does not affect any proceedings for an offence in relation to any connected matter.

Division 9 – Miscellaneous

Clause 107 Makes it clear that a rail safety officer may give directions or further directions under one or more provisions of this Part at the same time.

- Clause 108 Provides for an authorised person, who holds the specific authority of the Rail Safety Regulator to close temporarily or regulate a railway crossing, bridge or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to safety. It also requires the authorised person to notify the person or authority responsible for the railway crossing, bridge or other structure of its closure or regulation and defines the terms “authorised person” and “railway crossing” for the purposes of this provision.
- Clause 109 Imposes an obligation on a rail safety officer or a person assisting him or her to take reasonable steps to return any rail infrastructure, rolling stock, railway premises or road vehicle that is damaged by the use of unreasonable exercise of power or unauthorised force to the condition in which it was before any action was taken in accordance with this Part.
- Clause 110 Prohibits a rail safety officer, or a person assisting him or her, from using any more force than is reasonably necessary to effect an entry or to exercise a power in relation to any railway premises.
- Clause 111 Provides that an authorisation under this Act that authorises a rail safety officer or his or her assistant to use reasonable force does not authorise the officer or assistant who is not a police officer to use force against another person.
- Clause 112 Subclause (1) provides that a natural person is not excused from complying with a requirement under section 77(1) (h) direction under Division 4 (Powers to support seizure) or Division 6 (Directions) to answer a question, produce a document or provide information on the grounds that it may tend to incriminate the person or make him or her liable to a penalty.
- Subclause (2) provides protection from self-incrimination for a person required under the investigation provisions of this Act to give information or produce documents, so that any such information or document may not be used in criminal proceedings (other than those relating to the giving of false information) if the person objected on the ground of self-incrimination or the person was not warned that providing the information or document might incriminate the person or make him or her liable to a penalty.
- Subclause (3) provides that except as provided by subclause (2), any information or document obtained from a person as the result of a direction is admissible in evidence against the person in criminal or civil proceedings.

PART 10 – REVIEW OF DECISIONS

- Clause 113 Specifies decisions under this Act that are reviewable and who is eligible to apply for review of a reviewable decision.
- Clause 114 Establishes the procedure for applying for a review and the procedures that must be followed by the Rail Safety Regulator in reviewing the decision.
- Clause 115 Provides for review by the Magistrates Court (Administrative Appeals Division) of reviewable decisions under this Act by enabling an eligible person to apply to the Court for a decision that was made, or that was subject to review, by the Rail Safety Regulator. It also specifies the time within which an application must be made to the Court depending on the particular decision or circumstances.

PART 11 – GENERAL LIABILITY AND EVIDENTIARY PROVISIONS

Division 1 – General

- Clause 116 This section applies to an offence against a rail safety law other than an offence prescribed by the regulations or an offence for which proceedings may only be commenced within a period of less than 2 years after its alleged commission. Despite any other law to the contrary, proceedings for an offence against this Act to which this provision applies may be commenced within 2 years or a further period of 1 year from when the Rail Safety Regulator, rail safety officer or police officer first obtained evidence of the alleged offence considered sufficient to warrant the commencement of proceedings. It also permits a certificate, purportedly issued by the Rail Safety Regulator, rail safety officer or police officer as the date when evidence was first obtained (which they considered reasonably sufficient to warrant commencing proceedings to be commenced), to be admissible in proceedings and to be evidence of the matters stated.
- Clause 117 Restricts who may institute legal proceedings for an offence against, or to recover any charge, fee or money due under this Act to the Rail Safety Regulator or a person authorised by him (who may be a member of a specified class of persons). It prohibits the institution of legal proceedings against the Crown (or a representative statutory body) for an offence against this Act or the regulations without the written consent of the Minister. It also permits an authority or consent, purportedly signed by the Rail Safety Regulator or the Minister (but without proof of a signature), to be considered as evidence of such authority or consent.
- Clause 118 Provides that if in any proceedings for an offence against this Act it is necessary to establish the state of mind of either a body corporate or an employer in relation to particular conduct, it is sufficient to show that the conduct was engaged in by a director, employee or agent of the body corporate or employer, as appropriate, within the scope of their actual or apparent authority and that they had the relevant state of mind. It also provides that conduct engaged in by a director, employee, volunteer or agent on behalf of either a body corporate or employer will be taken to have been engaged in by the body corporate or employer unless the body corporate or employer can show reasonable precautions were taken and due diligence was exercised to avoid the conduct. It also defines the term “state of mind” and “director” for the purposes of this provision.

- Clause 119 Specifies certain records, such as those relating to accreditations, improvement notices and prohibition notices, which the Rail Safety Regulator must keep. It also provides that a certificate, purporting to be signed by the Rail Safety Regulator and setting out the various matters required to be recorded under this Act, is evidence of such matters and is admissible in any proceedings without requiring proof of the signature or production of the record or document on which the certificate is based.
- Clause 120 Provides that a certificate purporting to be issued by the Rail Safety Regulator, a Rail Safety Regulator from another jurisdiction, a rail safety officer or a police officer and stating any matter that appears in or can be deduced from records kept or accessed by the Rail Safety Regulator, is admissible in any proceedings and is evidence of the matter.
- Clause 121 Provides that for the purposes of this Act and the regulations it is not necessary to prove the appointment of an office holder and that an office holder's purported signature is evidence of the signature it purports to be. It also defines the term "office holder" for the purpose of this provision.
- Clause 122 Provides for a person to be punished for multiple offences under this Act or the regulations in relation to different parts of the same rail infrastructure, railway premises or rolling stock.
- Clause 123 Makes each director and person involved in the management of a body corporate, and each partner and person involved in the management of a partnership, or management of unincorporated association and employer liable for an offence, committed by body corporate, other partner, other manager or an employee respectively, but makes it clear this does not affect the liability of the person who actually committed the offence.
- The clause also enables proceedings to be taken against a person who is liable under this section, irrespective of whether proceedings may have commenced or concluded in respect of the body corporate or person who committed the offence, and provides for the defences that may be raised by those persons.
- The clause also precludes an officer who is a volunteer of a body corporate (including a body corporate representing the Crown), a partnership, unincorporated body or association from liability for anything done or not done in that capacity, and defines "volunteer" for the purpose of this provision.

Division 2 – Discrimination against employees

- Clause 124 Makes it an offence for an employer or prospective employer to victimise an employee or prospective employee because that person has provided information to a public agency in respect

of a breach or an alleged breach of a rail safety law or made a complaint about a breach of a rail safety law.

The clause also specifies what constitutes a breach of this section by an employer or prospective employer, the maximum penalty that may be imposed for such a breach and the limitation on a finding of guilt, and defines “employee” and “public agency” for the purpose of this provision.

Clause 125 Provides that where all other facts constituting the offence are proved other than the reason for the defendant’s conduct the defendant has the onus of proving the alleged reason why he or she engaged in conduct which resulted in proceedings for an offence against section 124 was not the dominant reason why the defendant engaged in the conduct.

Clause 126 Specifies the orders, including an order for compensation or reinstatement a court may make in addition to the imposition of a penalty where an employer or a prospective employer is convicted or found guilty of an offence against section 124. The clause also defines “employee” for the purposes of this section.

Division 3 – False or misleading information

Clause 127 Makes it an offence for a person to knowingly make a statement or provide a document that is false and misleading in a material particular to the Rail Safety Regulator or an official exercising a power under this Act, and also if the person is reckless as to whether it is false or misleading. However, an offence is not committed if the person in providing a document informed the Rail Safety Regulator or official that the document was false and misleading in a material particular and specified in what respect it was.

The clause also specifies the penalties that may be imposed for a breach or number of breaches of this section, and defines “official” for the purposes of this section.

Division 4 – Other offences

Clause 128 Makes it an offence to hinder or obstruct, or encourage another person to hinder or obstruct, the Rail Safety Regulator, a rail safety officer or his or her assistant or a police officer in the exercise of their functions under this Act or the regulations, or to intentionally conceal from those persons the location or existence of, or refuse their request to produce, a record, document or other thing.

The clause also specifies the maximum penalty that may be imposed for a breach of this section.

- Clause 129 Makes it an offence for a person who is not a rail safety officer to impersonate an officer, and specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 130 Makes it an offence for a person to act or attempt to act in the manner specified without reasonable excuse or permission of the rail transport operator, rail safety officer or police officer in relation to any equipment, rail infrastructure or rolling stock owned or operated by the operator, and specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 131 Makes it an offence for a person, without reasonable excuse, to apply a brake or use an emergency device fitted to a train or tram or use an emergency device on railway premises, and specifies the maximum penalty that may be imposed for a breach of this provision.
- Clause 132 Makes it an offence for a person, without reasonable excuse, to cause or attempt to cause a train or tram in motion to stop, and specifies the maximum penalty that may be imposed for a breach of this provision.

Division 5 – Infringement notices

- Clause 133 Subclause (1) defines the term “infringement notice” for the purposes of this Act.
- Subclause (2) authorises a rail safety officer or police officer to issue and serve an infringement notice on a person he or she reasonably believes has committed an offence.
- Subclause (3) restricts the issuance of infringement notices to persons aged 16 years and over.
- Subclause (4) specifies that the form of an infringement notice must be in accordance with the *Monetary Penalties Enforcement Act 2005* and not relate to more than three offences.
- Subclause (5) authorises what the regulations may prescribe in relation to penalties.
- Subclause (6) limits the penalty that can be prescribed under the regulations to 20 percent of the maximum penalty that a court could impose for the offence.
- Subclause (7) provides that where a rail safety officer or police officer issues and serves an infringement notice in accordance with the *Monetary Penalties Enforcement Act 2005* under this section, he or she is taken to be a public sector body within the meaning of that Act and any penalty prescribed by the regulations in respect of a notice is taken to the prescribed

penalty for the purposes of that Act.

Division 6 – Enforceable voluntary undertakings

- Clause 134 Provides for the Rail Safety Regulator, by written notice, to accept a voluntary undertaking by a person in relation to a contravention or alleged contravention of the Act or regulations, and subject to the consent of the Rail Safety Regulator for the person to withdraw or vary the undertaking. It also prevents the Rail Safety Regulator or a rail safety officer from bringing proceedings related to the offence while the undertaking is in force.
- Clause 135 Empowers the Rail Safety Regulator to apply to the Magistrates Court for an enforcement of an undertaking by order of the Court. It also empowers the Court to make such order or any other order it considers appropriate.

Division 7 – Court-based sanctions

- Clause 136 Provides for an additional penalty, of not more than one fifth of the maximum penalty prescribed for an offence, for each day or part of a day during which an offence continues after a person has been required or directed to do any act or thing, or to refrain from doing any act or thing.

Clause 137

Subclause (1) enables a court to make a commercial benefits order against a person convicted of an offence against this Act on the application of the prosecutor or Rail Safety Regulator.

Subclause (2) provides for the court to make a commercial benefits order that requires the person to pay a fine of up to three times the amount a court estimates to be the gross commercial benefit the person (or associate of the person) received or would have received as a result of the offence.

Subclause (3) sets out what the court may take into account in estimating the gross commercial benefit that was or would have been received.

Subclause (4) provides that in calculating the gross commercial benefit the court is to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.

Subclause (5) clarifies that the court may impose a penalty that is less than either the estimated gross commercial benefit or the maximum permitted amount.

Subclause (6) sets out who is an associate of a person for the purposes of the provision, including spouses, domestic partners, household members, partners, fellow trustees and directors, and shareholders.

Subclause (7) clarifies that a beneficiary of a trust includes an object of a trust, for the purpose establishing who is an associate of a person.

Clause 138

Subclause (1) enables a court to make a supervisory intervention order against a person convicted of an offence against this Act on the application of the prosecutor or Rail Safety Regulator if it considers the person to be a systematic or persistent offender.

Subclause (2) specifies the things the court may require of the person to do under the supervisory intervention order, at his or her own expense, including actions to improve compliance with the Act, to carry out specified practices, systems or procedures, appointing persons with specific compliance responsibilities, or to provide compliance reports to the Rail Safety Regulator. Under this provision, an order must not exceed one year.

Subclause (3) empowers the court to specify the content, form, manner and frequency of compliance reports.

Subclause (4) empowers the court to require all or part of compliance reports to be made public and to specify the form, and manner of the reports and frequency with which they are to be made public.

Subclause (5) confines the court to making a supervisory order

only if it considers the order is capable of improving a person's ability or willingness to comply with the Act, having regard to offences the person has been found guilty of or has been proceeded against, or any other offences considered relevant by the court.

Subclause (6) authorises the court to suspend any penalty or sanction imposed for the offence pending the court's determination whether there has been a substantial failure to comply with the order.

Subclause (7) enables the court to revoke or amend its supervisory intervention order on the application of the Rail Safety Regulator or on the application of the person on whom the order was made but in the latter case only if there has been a change of circumstances warranting revocation or amendment.

Subclause (8) defines the term "compliance report" for the purposes of this provision.

Clause 139 Makes it an offence for a person to contravene a supervisory intervention order made against him or her and specifies the maximum penalty that may be imposed for such contravention.

Clause 140 Subclause (1) enables a court to make an exclusion order against a person convicted of an offence against this Act on the application of the prosecutor or Rail Safety Regulator if it considers the person to be a systematic or persistent offender.

Subclause (2) enables the court to make an exclusion order prohibiting a person for a specified period from doing certain things (such as managing rail infrastructure, operating rolling stock, or being a director or officer concerned in the management of a body corporate) in order to restrict the opportunities for the person to commit or be involved in the commission of further offences.

Subclause (3) confines the court to making an exclusion order only if it is satisfied 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 offences the person has been found guilty of or has been proceeded against, or any other offences considered relevant by the court.

Subclause (4) enables the court to revoke or amend its exclusion order on the application of the Rail Safety Regulator or, where there has been a change of circumstances warranting revocation or amendment, the person on whom the order was made.

Clause 141 Makes it an offence for a person to contravene an exclusion order made against him or her and specifies the maximum penalty that may be imposed for such contravention.

PART 12 – OCCUPATIONAL HEALTH AND SAFETY LEGISLATION

- Clause 142 Provides that occupational health and safety legislation will continue to apply to railway operations and must be observed in addition to the provisions of the Act and the regulations.
- Clause 143 Provides that if there is any inconsistency between the occupational health and safety legislation and the provisions of the Act or the regulations, the occupational health and safety legislation will prevail to the extent of any inconsistency.
- Clause 144 Provides that complying with this Act or the regulations will not of itself be a defence in any proceedings for an offence against the occupational health and safety legislation.
- Clause 145 Specifies that evidence of a contravention of this Act or the regulations may be admissible in any proceedings for an offence against the occupational health and safety legislation.
- Clause 146 Prevents a person from being punished twice in respect of conduct that is an offence under both this Act (or the regulations) and the occupational health and safety legislation.

PART 13 – ADMINISTRATION

Division 1 – The Rail Safety Rail Safety Regulator

Clause 147 Empowers the Minister to appoint either a State Service officer or State Service employee as the Rail Safety Regulator and that the person may hold that office in conjunction with State Service employment.

Clause 148 Specifies certain functions the Rail Safety Regulator has in addition to the other functions conferred on him or her by this Act or the regulations, or any other Act or law, including administering, auditing and reviewing the accreditation regime set up by the Act, working with rail transport operators, rail safety workers and other persons involved in railway operations including interstate Rail Safety Rail Safety Regulators, to improve rail safety in Tasmania and nationally, collecting and publishing information, providing advice, education and training in relation to rail safety, as well as monitoring, investigating and enforcing compliance with the Act and the regulations.

Clause 149 Subclause (1) requires the Rail Safety Regulator to prepare an annual report to the Minister in respect of each financial year.

Subclause (2) sets out what information the annual report must include.

Subclause (3) provides that the annual report may form part of the Department of Infrastructure, Energy and Resources' annual report.

Subclause (4) requires the Rail Safety Regulator to submit an annual report to the Minister.

Subclause (5) requires the Minister to lay the annual report before each House of Parliament on or before 31 October or another prescribed date, unless the report forms part of the Department of Infrastructure, Energy and Resources' annual report.

Subclause (6) provides that, when the Rail Safety Regulator's annual report is not laid before Parliament on or before 31 October, it must be within four months of the end of the financial year to which it relates.

Subclause (7) sets out what process the Minister must follow in respect of the annual report where either House of Parliament is not sitting on 31 October or other prescribed date, and includes making the report available to the public.

Subclause (8) provides for a copy of the annual report to be made available to the public the next day where 31 October or the other prescribed date is an excluded day (Sunday, bank holiday or state-wide public holiday).

- Clause 150 Authorises the Rail Safety Regulator to delegate in writing his or her functions under the Act or regulations (to a rail safety officer or another person and if permitted by the Rail Safety Officer to sub-delegate a delegated function to any other person.
- Clause 151 Empowers the Rail Safety Regulator to exercise any function conferred on a rail safety officer under this Act or the regulations, and clarifies that a reference in this Act to a rail safety officer includes a reference to the Rail Safety Regulator, except in Part 13 - Administration.

Division 2 – Rail Safety Officers

- Clause 152 Empowers the Rail Safety Regulator to appoint rail safety officers by instrument in writing and specifies who is eligible to be appointed. The appointment of an officer may be for a specific term and subject to conditions which, for example, limit the functions that may be exercised or the circumstances or manner in which functions may be performed.
- Clause 153 Operates in relation to other States or Territories that may have in force, rail safety legislation that corresponds to this Act by empowering the Minister to enter into, amend or revoke an agreement with the Minister of that other jurisdiction in respect of Tasmanian rail safety officers exercising functions conferred on rail safety officers of the other jurisdiction and vice versa. It provides that an act or omission by a Tasmanian officer under legislation of another jurisdiction is taken to be done (or omitted to be done) under this Act as well as the corresponding legislation. It also provides for the regulations to make provision in respect of the exercise of functions under this section and that nothing in this section affects the appointment under section 152 of persons as rail safety officers for the purposes of this Act.

- Clause 154 Requires the Rail Safety Regulator to issue rail safety officers with identification cards, or to designate a card issued to an officer by a corresponding Rail Safety Regulator or by another person, body or authority as an identification card for the purposes of this Act. It specifies what must be displayed on an identification card before it can be issued to an officer and restricts the Rail Safety Regulator from designating a card to be an identification card unless it displays the officer's name, photograph, signature, a statement confirming the holder is a rail safety officer, and the name of the Rail Safety Regulator of the corresponding issuing jurisdiction.
- Clause 155 Specifies that rail safety officers must not exercise a function unless they have been issued with an identification card.
- Clause 156 Specifies that when exercising a function, a rail safety officer must display the identification card if he or she is not wearing an approved uniform or badge, in which case he or she must produce it on request or, where that is not practicable, as soon as practicable thereafter. It also defines "approved" for the purpose of this provision.
- Clause 157 Specifies that a person who has ceased to be a rail safety officer must return the identification card to the Rail Safety Regulator unless they have a reasonable excuse, and specifies the maximum penalty that may be imposed for a breach of this provision.

PART 14 – MISCELLANEOUS

Division 1 – Confidentiality

- Clause 158 Provides that a person engaged or previously engaged in the administration of this Act and other persons as specified must not disclose or communicate information obtained in the administration of the Act except for the reasons specified, . It also specifies the maximum penalty that may be imposed for a breach of this provision. Nothing in this section prevents an Australian rail Safety Regulator from using information to accumulate and authorise use of aggregate data for the purposes of research or education.

Division 2 – Civil liability

- Clause 159 Provides that nothing in Part 2, 4 or 5 of this Act (rail safety duties, safety management or plans, programs and duties of rail safety workers) affects civil liability nor the extent (if any) to which a breach of duty imposed by the regulations is actionable.
- Clause 160 Excludes the Minister, the Rail Safety Regulator, a rail safety officer, an investigator or an authorised officer acting in the administration of this Act from personal liability for an act or omission done or made in good faith and in the exercise of a function or power under this Act. Where liability would otherwise attach to those persons, this clause provides for liability to attach to the Crown, with the exception of an authorised officer subject to the control and direction of a corresponding Rail Safety Regulator or acting as an employee of an employer who is not the Crown, in which case liability attaches to the corresponding Rail Safety Regulator or employer, as applicable. The clause also defines “authorised officer” for the purpose of this provision.
- Clause 161 Provides that no action lies against a health care professional who in good faith reports to the Rail Safety Regulator, rail transport operator or other person employed by either of these persons, any information, test result or examination or opinion relating to those results or examination that discloses that a person is unfit to carry out rail safety work or that it might be dangerous to allow that person to carry out such work. The clause also defines “health care professional” for the purpose of this provision.

Division 3 – Compliance codes and guidelines

- Clause 162 Empowers the Minister to make an order, to take effect when notice of it is published in the Gazette or on a date specified in the order, approving, varying or revoking a compliance code or guidelines for the purpose of providing practical guidance to persons with duties or obligations under this Act or the

regulations. It also requires the Minister to make copies of all approved compliance codes and guidelines available for inspection by the public without charge at the office of the Rail Safety Regulator during normal business hours.

Clause 163 Provides that a person's failure to comply with compliance codes or guidelines does not give rise to any civil or criminal liability.

Clause 164 Provides that if a person complies with a compliance code in respect of a duty or obligation imposed by this Act or the regulations, he or she is taken to have complied with this Act or the regulations in relation to that duty or obligation.

Division 4 – Other matters

Clause 165 Subclause (1) Provides that the Minister may by notice in the Gazette, provide an exemption for a person or class of person or a railway or class of railway from this Act or a provision of this Act.

Subclause (2) allows for the exemption to be granted on conditions.

Subclause (3) and Subclause (4) make it a penalty to not comply with a condition of exemption.

Clause 166 Provides that the Rail Safety Regulator may recover from a rail transport operator, the reasonable costs of entry and inspection of railway infrastructure, rolling stock or railway premises, other than the costs of an inspection for the purpose of an audit of railway operations by the Rail Safety Regulator.

Clause 167 Provides for the recovery of amounts due to the Crown under this Act or the regulations by the Rail Safety Regulator in a court of competent jurisdiction.

Clause 168 Clarifies that an accredited person will be taken to have complied with this Act or the regulations in relation to an obligation or duty if a condition of accreditation makes provision for or in respect of the duty or obligation and the person complies with that condition.

- Clause 169 Requires a person prescribed by the regulations for the purposes of this section to 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 an operator.
- Clause 170 Voids a term of any contract or agreement that purports to exclude, limit or modify the operation of this Act to the extent that it would otherwise have effect.
- Clause 171 Empowers the Governor to make regulations for the purposes of this Act, sets out the types of regulations that can be made including those that make provision for or in relation to the factors specified. It also allows for the regulations to 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 this Act.
- Clause 172 Assigns the administration of this Act to the Minister for Infrastructure and designates the Department of Infrastructure, Energy and Resources as responsible to that Minister in respect of administration of the Act, until provision is made otherwise.

PART 15 – TRANSITIONAL

- Clause 173 Defines the terms “commencement day” and “former Act” for the purpose of this Division.
- Clause 174 Provides that the Administering Authority of the former Act is taken to be the Rail Safety Regulator appointed pursuant to this Act, until such time that the appointment is revoked or the person ceases to be eligible.
- Clause 175 Ensures that accreditation held under the former Act is recognised under the new Act and remains subject to the conditions on which it was granted, but enables those conditions to be varied, amended, replaced or revoked, or the accreditation itself to be suspended or revoked under this Act. It also ensures that a recognised accreditation granted for a period not exceeding 12 months expires at the end of that period and prevents a person being liable for payment of an annual accreditation fee twice in the same calendar year.
- This Clause also enables an application for accreditation or variation of accreditation made but not determined under the former Act to be determined under this Act.
- This Clause exempts a person from the section 15 of this Act (accreditation required for railway operations) for a period of six months after the commencement of this Act if the person was exempt from holding an accreditation as a railway operator or owner under the former Act.
- Clause 176 Ensures that a private siding registered under the former Act is recognised under the new Act.

Clause 177

Ensures that an application made by a person under the dispute resolution provisions of the former Act and any related application to the Magistrates Court (Administrative Appeals Division), or a requirement imposed under the notifiable occurrence or accident and incident reporting provisions of the former Act, that was applied for or imposed under the former Act but not determined prior to the commencement of this Act, continues as if it was made under the corresponding provision of this Act.

This provision also ensures that a direction given or requirement imposed in relation to the installation of safety or protective devices, stoppage of work where a railway's safety and operational integrity are at risk, safety compliance inspections, remedial safety work or provision of a program of remedial safety work, that was given or imposed under the relevant provisions of the former Act but not complied with prior to the commencement of this Act, continues in force as if those provisions had not been repealed.

This Clause also enables an inquiry commenced by an investigator (appointed under the former Act) but not completed prior to the commencement of this Act, to be completed and a report provided by the investigator to the Minister as if the relevant provisions of the former Act had not been repealed.

Clause 178

Provides a transition period for existing operators to comply with the new requirements of this Act.

Rail Transport Operators will have 12 months to make the necessary changes to their Safety Management Systems and Interface Agreements with other Rail Transport Operators. Railways will be required to comply with the current requirements until the end of the 12 month period.

Rail Transport Operators will have 36 months to comply with the new Interface Agreement requirements with Public Road Managers and to comply with the new Competency requirements.

PART 16-ABT RAILWAY DEVELOPMENT ACT 1999 AMENDED

- Clause 179 Provides that the *Abt Railway Development Act 1999* is the Principal Act for the purposes of this Part of the Act.
- Clause 180 Repeals section 3(1) of the *Abt Railway Development Act 1999* as the provision and the reference to the *Rail Safety Act 1997* is no longer required.

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

- Clause 181 Makes the *Emu Bay Railway (Operation and Acquisition) Act 2009* the Principal Act for the purposes of this part of the Act.
- Clause 182 Amends section 3(1) of *Emu Bay Railway (Operation and Acquisition) Act 2009* by replacing the reference to the *Rail Safety Act 1997* with a reference to the *Rail Safety Act 2009*.
- Clause 183 Amends section 4(3)(a) of *Emu Bay Railway (Operation and Acquisition) Act 2009* by replacing the reference to section 6 of the *Rail Safety Act 1997* with a reference to section 15 of the *Rail Safety Act 2009*.

PART 18 – LOCAL GOVERNMENT ACT 1993 AMENDED

- Clause 184 Makes the *Local Government Act 1993* the Principal Act for the purposes of this part of the Act.
- Clause 185 Amends section 87(1) (b) (xiv) of the *Local Government Act 1993* by replacing the reference to the *Rail Safety Act 1997* with a reference to the *Rail Safety Act 2009*.

PART 19 –POLICE OFFENCES ACT 1935 AMENDED

- Clause 186 Makes the *Police Offences Act 1935* the Principal Act for the purposes of this part of the Act.
- Clause 187 Amends Section 3(1) of the *Police Offences Act 1935* by replacing the reference to the *Rail Safety Act 1997* with a reference to the *Rail Safety Act 2009*.

PART 20 –RAIL COMPANY ACT 2009 AMENDED

- Clause 188 Makes the *Rail Company Act 2009* the Principal Act for the purposes of this part of the Act.
- Clause 189 Amends Section 4 of the *Rail Company Act 2009* by replacing the reference to the *Rail Safety Act 1997* with a reference to the *Rail Safety Act 2009*.

PART 21 –RAIL INFRASTRUCTURE ACT 2007 AMENDED

- Clause 190 Makes the *Rail Infrastructure Act 2007* the Principal Act for the purposes of this part of the Act.
- Clause 191 Amends Section 3 (1) of the *Rail Infrastructure Act 2007* by replacing the references to the *Rail Safety Act 1997* with references to the *Rail Safety Act 2009*.
- Subclause (b) also amends the definition of ‘track’ in the Principal Act.
- Clause 192 Repeals Section 10 of the *Rail Infrastructure Act 2007* as it is no longer required due to this act clearly defining who is the Rail Infrastructure Manager.

PART 22 –LEGISLATION REPEALED AND RESCINDED

Clause 193 Provides that the *Rail Safety Act 1997* is repealed.

Clause 194 Provides that the *Rail Safety Regulations 1999* is rescinded.

PART 23 –FURTHER CONSEQUENTIAL AMENDMENTS

Clause 195 This provision relates to the timing of the commencement of this Act in relation to the commencement of the *Emu Bay Railway (Operation and Acquisition) Act 2009*.

If this Act commences first, the reference to the *Rail Safety Act 1997* in Schedule 1 of the *Emu Bay Railway (Operation and Acquisition) Act 2009* will be amended to read the *Rail Safety Act 2009*.

Clause 196 This provision also relates to the timing of the commencement of this Act in relation to the commencement of the *Emu Bay Railway (Operation and Acquisition) Act 2009*.

If this Act commences after the other Act, the reference to the *Rail Safety Act 1997* in Section 7 (a) (2) of the *Boundary Fences Act 1908* will be amended to read *Rail Safety Act 2009*.