

TASMANIA

RAIL SAFETY NATIONAL LAW (TASMANIA) BILL 2012

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RAIL SAFETY NATIONAL LAW (TASMANIA)

BILL 2012

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
27 September 2012

*(Brought in by the Minister for Infrastructure, the Honourable
David James O'Byrne)*

A BILL FOR

An Act to apply as a law of this State a national law relating to the provision of a national system of rail safety and for related matters

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

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Rail Safety National Law (Tasmania) Act 2012*.

2. Commencement

This Act commences on a day to be proclaimed.

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Part 1 – Preliminary

3. Interpretation

(1) In this Act –

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

(2) Terms used in this Act and also in the Rail
Safety National Law set out in the Schedule to
the *Rail Safety National Law (South Australia)*
Act 2012 of South Australia have the same
meanings in this Act as they have in that Law.

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**PART 2 – ADOPTION OF RAIL SAFETY NATIONAL
LAW**

4. Application of Rail Safety Law

The Rail Safety National Law, as in force from time to time, set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia –

- (a) applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the Rail Safety National Law (Tasmania); and
- (c) as so applying is part of this Act.

5. Interpretation of certain expressions

- (1) In the Rail Safety National Law (Tasmania), unless the contrary intention appears –

court—a reference to a court –

- (a) in Part 5 (Enforcement measures), is a reference to the Magistrates Court; and
- (b) in Part 7 (Review of decisions), is a reference to the Magistrates Court (Administrative Appeals Division); and
- (c) in Division 6 of Part 10 (Enforceable voluntary

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undertakings), is a reference to the Magistrates Court;

emergency services means –

- (a) the State Emergency Service continued under section 25 of the *Emergency Management Act 2006*; or
- (b) the Tasmanian Ambulance Service established under the *Ambulance Service Act 1982*; or
- (c) the Tasmania Fire Service established under the *Fire Service Act 1979*; or
- (d) the Police Service established under the *Police Service Act 2003*; or
- (e) a council; or
- (f) another body constituted under an Act or a Commonwealth Act, a Government agency or a part of a Government agency –
 - (i) whose role usually includes emergency management; or
 - (ii) which is, or may be, in a particular emergency, required to participate in

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emergency management;
or

(g) a prescribed body;

Gazette means the Tasmanian Government Gazette;

magistrate has the same meaning as in the *Magistrates Court Act 1987*;

Minister means the Minister to whom the administration of the *Rail Safety National Law (Tasmania) Act 2012* is assigned;

police officer means a police officer as defined in the *Police Service Act 2003*;

private road means –

(a) a road that –

(i) is not open to members of the public or not used by members of the public;
and

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

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responsible for
maintaining; and

(b) a road that –

- (i) is not open to members of the public or not used by members of the public; and
- (ii) is a forest road within the meaning of the *Forestry Act 1920*; and
- (iii) is constructed or maintained by the Forestry corporation, within the meaning of that Act, or by a person for the purpose of timber production; and

(c) a road that –

- (i) is not open to members of the public or not used by members of the public; and
- (ii) is constructed or maintained by the Corporation, within the meaning of the *Hydro-Electric Corporation Act 1995*; and

(d) a road that is prescribed;

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public sector auditor means the Auditor-General of South Australia;

Rail Safety National Law or ***this Law*** means the Rail Safety National Law (Tasmania);

road means an area that is open to or used by the public and is developed for, or has as one of its main uses, the driving or riding of motor vehicles, and includes a road-related area;

road-related area means –

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

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

road vehicle means –

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

shared path has the same meaning as in the *Road Rules 2009*;

State authority means a body or authority, whether incorporated or not, that is established or constituted under a written law or under the royal prerogative, being a body or authority which, or of which the governing authority, wholly or partly comprises a person or persons appointed by the Governor, a Minister or another State authority, but does not include an Agency within the meaning of the *State Service Act 2000*;

State entity includes –

- (a) an Agency within the meaning of the *State Service Act 2000*; and
- (b) a Government Business Enterprise within the meaning of the *Government Business Enterprises Act 1995*; and

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-
- (c) a State-owned company; and
 - (d) a State authority that is not a Government Business Enterprise; and
 - (e) the council, board, trust or trustees, or other governing body (however designated) of, or for, a corporation, body of persons or institution, that is or are appointed by the Governor or a Minister of the Crown; and
 - (f) any other person or body prescribed by the regulations;

State-owned Company means a company incorporated under the Corporations Act which is controlled by –

- (a) the Crown; or
- (b) a State authority; or
- (c) another company which is itself controlled by the Crown or a State authority;

the jurisdiction or ***this jurisdiction*** means Tasmania.

- (2) For the purposes of this Act and the Rail Safety National Law (Tasmania) and any other Act or law –
 - (a) the Office of the National Rail Safety Regulator –

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- (i) is not a State entity (and therefore not a Tasmanian entity); and
 - (ii) is not an agency or instrumentality of the Tasmanian Crown; and
- (b) an employee of the Office of the National Rail Safety Regulator is not a State Service officer or State Service employee.

6. No double jeopardy

If –

- (a) an act or omission is an offence against the Rail Safety National Law (Tasmania) and is also an offence against a law of another participating jurisdiction; and
- (b) the offender has been punished for the offence under the law of the other jurisdiction –

the offender is not liable to be punished for the offence against the Rail Safety National Law (Tasmania).

7. Exclusion of legislation of this jurisdiction

- (1) The *Acts Interpretation Act 1931* does not apply to the Rail Safety National Law (Tasmania) or to instruments made under that Law.

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-
- (2) Subject to subsection (3), the following Acts of this jurisdiction do not apply to this Act and the Rail Safety National Law (Tasmania) or to instruments made under that Law (except as applied under that Law):
- (a) *Archives Act 1983*;
 - (b) *Audit Act 2008*;
 - (c) *Financial Management and Audit Act 1990*;
 - (d) *Ombudsman Act 1978*;
 - (e) *Right to Information Act 2009*;
 - (f) *State Service Act 2000*;
 - (g) *Subordinate Legislation Act 1992*.
- (3) The Acts referred to in subsection (2) apply to a State entity or an employee of a State entity exercising a function under the Rail Safety National Law (Tasmania).

8. Amendments to National Law

- (1) The Minister is to cause any amendment to the Rail Safety National Law (Tasmania) to be tabled in each House of Parliament within 10 sitting-days from the date on which the amendment receives the Royal Assent in South Australia.
- (2) Nothing in this section affects the operation of that amendment.

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Part 3 – National Regulations

PART 3 – NATIONAL REGULATIONS

9. Procedure in relation to national law regulations

- (1) The making of any regulations under the Rail Safety National Law (Tasmania) is to be notified in the *Gazette* within 21 days after the day on which the regulations are published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.
- (2) The regulations are to be laid before each House of Parliament within the first 10 sitting-days of the House after the regulations are notified in the *Gazette*.
- (3) The regulations are to take effect on or from a day that is specified for the purpose in the regulations.
- (4) If either House of Parliament passes a resolution, of which notice has been given within the first 15 sitting-days of the House after any regulation under subsection (1) is laid before it, that the regulation be disallowed –
 - (a) the provisions of subsection (5) have effect; and
 - (b) the Minister is to notify the Ministerial Council of the resolution.
- (5) If a regulation referred to in subsection (1) is disallowed in this jurisdiction, the regulation does not cease to have effect in this jurisdiction unless the regulation is disallowed in a majority

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of the participating jurisdictions (and, in such a case, the regulation will cease to have effect on the date of its disallowance in the last of the jurisdictions forming the majority).

**PART 4 – PROVISIONS RELATING TO DRUG AND
ALCOHOL TESTING**

10. Testing for drugs and alcohol

(1) For the purposes of this section –

applicable provisions means –

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

as in force from time to time.

- (2) Without limiting the application of the *Road Safety (Alcohol and Drugs) Act 1970* to a rail safety worker otherwise than by virtue of this section, the applicable provisions of the *Road Safety (Alcohol and Drugs) Act 1970*, with the appropriate modifications, apply to, and in relation to, a rail safety worker carrying out, or attempting to carry out, rail safety work.
- (3) The appropriate modifications of the applicable provisions of the *Road Safety (Alcohol and Drugs) Act 1970* are as follows:
 - (a) in section 2(1) of the applicable provisions the words “a concentration of 0.05 of a gram of alcohol in 210 litres of breath or a concentration of 0.05 of a gram of alcohol in 100 millilitres of

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blood” in the definition of *prescribed concentration* are to be taken to be the words “any concentration of alcohol in the blood”;

- (b) in section 2(1) of the applicable provisions the words “a drug prescribed in the regulations as an illicit drug” in the definition of *prescribed illicit drug* are to be taken to be the words “a prescribed drug as defined in section 128(5) of the Rail Safety National Law (Tasmania)”;
- (c) a reference in the applicable provisions, in relation to a person, to the relevant time, in relation to a test, an examination or requirement or direction to submit to the taking of a sample, is to be taken, despite section 2(3A) of those provisions, to be a reference to the time when the person was required or directed to undertake the test or medical examination or to submit to the taking of the sample;
- (d) a reference in the applicable provisions to –
 - (i) a driver; or
 - (ii) the driving of a vehicle or a motor vehicle; or
 - (iii) a person driving, or who drove, or who has driven, a motor vehicle on a public street –

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

- (e) a reference in the applicable provisions, (apart from section 10) to a police officer or an approved operator is to be taken to include a reference to an authorised person;
- (f) a matter, thing or person that or who is prescribed or approved for the purposes of that Act is to be taken to be prescribed or approved, respectively, for the purposes of the applicable provisions as they apply by virtue of this section;
- (g) sections 7D, 8 and 8A of the applicable provisions do not, by reason only of this section, apply to a rail safety worker carrying out, or attempting to carry out, rail safety work;
- (h) in section 9(1) of the applicable provisions, the words “a person drove a motor vehicle in a public street while he was in such a condition as to be incapable of driving that vehicle without risk of danger to other persons” are to be taken to be the words “a rail safety worker carrying out, or attempting to carry out, rail safety work is in such a condition as to be incapable of undertaking a function or duty of a rail safety worker”;

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

11. Concentration of alcohol in breath taken to indicate concentration of alcohol in blood

If a person submits to a preliminary breath test or breath analysis and the preliminary breath test apparatus or the breath analysing instrument produces a reading in terms of a number of grams of alcohol in 210 litres of the person’s breath, the reading will, for the purposes of this Act, the Rail Safety National Law (Tasmania) and any other Act, be taken to be that number of grams of alcohol in 100 millilitres of the person’s blood.

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Part 5 – Transitional Provisions

PART 5 – TRANSITIONAL PROVISIONS

12. Interpretation

In this Part –

Rail Safety National Law or ***Law*** means the Rail Safety National Law, as in force from time to time, set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia;

relevant day means the day on which the *Rail Safety Act 2009* is repealed;

repealed Act means the *Rail Safety Act 2009*.

13. Accreditation

- (1) An application for accreditation, or variation of accreditation, made but not determined under the repealed Act immediately before the relevant day, will be taken, on and from the relevant day, to be an application for accreditation, or variation of accreditation, under the Rail Safety National Law and will, accordingly, be determined in accordance with that Law.
- (2) A rail transport operator that, immediately before the relevant day, holds an accreditation under the repealed Act in respect of railway operations carried out by or on behalf of that operator will be taken, on and from the relevant day, to hold an accreditation in respect of those railway operations under the Rail Safety National Law subject to such conditions and

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restrictions as applied to the accreditation under the repealed Act.

- (3) If, immediately before the relevant day, the accreditation, or part of the accreditation, of a rail transport operator has been suspended under the repealed Act, the accreditation under the Rail Safety National Law that the operator will be taken, on and from the relevant day, to hold by virtue of subsection (2) will be subject to the same suspension as applied to the accreditation under the repealed Act.

14. Registration

A rail infrastructure manager of a private siding that, immediately before the relevant day, is registered under the repealed Act will be taken, on and from the relevant day, to be registered under the Rail Safety National Law in respect of the private siding subject to the conditions and restrictions that applied to the registration under the repealed Act.

15. Notifiable occurrences

- (1) A report of a notifiable occurrence made under section 66 of the repealed Act immediately before the relevant day will have effect, on and from the relevant day, as if it were a report of a notifiable occurrence made under Division 8 of Part 3 of the Rail Safety National Law (Tasmania).

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- (2) A notifiable occurrence that is being investigated under section 67 of the repealed Act immediately before the relevant day will, on and from the relevant day, continue as if it were an investigation under Division 8 of Part 3 of the Rail Safety National Law (Tasmania).

16. Notices

- (1) A notice in force under section 65 of the repealed Act immediately before the relevant day will continue, on and from the relevant day, to have force and effect as if it were a notice under section 20 of the Rail Safety National Law (Tasmania).
- (2) An embargo notice in force under Division 4 of Part 9 of the repealed Act immediately before the relevant day will continue, on and from the relevant day, to have force and effect as if it were a non-disturbance notice under Division 3 of Part 5 of the Rail Safety National Law (Tasmania).
- (3) A direction in force under section 96 of the repealed Act immediately before the relevant day will continue, on and from the relevant day, to have force and effect as if it were a notice under section 120 of the Rail Safety National Law (Tasmania).
- (4) An improvement notice in force under Division 7 of Part 9 of the repealed Act immediately before the relevant day will continue, on and from the relevant day, to have force and effect as if it were an improvement notice under Division

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1 of Part 5 of the Rail Safety National Law (Tasmania).

- (5) A prohibition notice in force under Division 8 of Part 9 of the repealed Act immediately before the relevant day will continue, on and from the relevant day, to have force and effect as if it were a prohibition notice under Division 2 of Part 5 of the Rail Safety National Law (Tasmania).
- (6) An infringement notice in force under Division 5 of Part 11 of the repealed Act immediately before the relevant day will continue, on and from the relevant day, to have force and effect as if it were an infringement notice under Part 9 of the Rail Safety National Law (Tasmania).
- (7) An enforceable voluntary undertaking in force under Division 6 of Part 11 of the repealed Act immediately before the relevant day will continue, on and from the relevant day, to have force and effect as if it were an enforceable voluntary undertaking under Division 6 of Part 10 of the Rail Safety National Law (Tasmania).

17. Review and appeals

- (1) If a decision has been made under the repealed Act that was reviewable under Part 10 of that Act and the period within which the applicant could have applied for a review of the decision had that Act not been repealed has not, immediately before the relevant day, expired, the applicant may, before the expiry of that period, apply for a review of the decision under the Rail

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Safety National Law (Tasmania) as if the decision had been made under that Law.

- (2) Any action resulting from the review of, or appeal against, a decision in relation to an application made under subsection (1) is to be taken to be an action under the Rail Safety National Law (Tasmania) subject to the conditions and restrictions that would have applied to that action under the repealed Act.

18. Provision of information and assistance by Rail Safety Regulator

- (1) Despite any other Act or law, the Rail Safety Regulator under the repealed Act is authorised, on his or her own initiative or at the request of ONRSR –
 - (a) to provide ONRSR with such information (including information given in confidence) in the possession or control of the Rail Safety Regulator that is reasonably required by ONRSR for the purposes of this Act or the Rail Safety National Law (Tasmania); and
 - (b) to provide ONRSR with such other assistance as is reasonably required by ONRSR to perform or exercise a function or power under this Act or the Rail Safety National Law (Tasmania).
- (2) Despite any other Act or law, the Rail Safety Regulator under the repealed Act may authorise ONRSR to disclose information provided under

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subsection (1) even if the information was given to the Rail Safety Regulator in confidence.

- (3) Nothing done, or authorised to be done, by the Rail Safety Regulator in acting under subsection (1) or (2) –
- (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (c) constitutes a breach of duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
 - (f) releases a surety or any other obligee wholly or in part from an obligation.

19. Regulations – saving and transitional provisions

- (1) The Governor may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act,

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Part 5 – Transitional Provisions

including any repeals and amendments made as a result of the enactment of this Act.

- (2) Regulations made under this section may –
 - (a) have a retrospective effect to a day on or from a date not earlier than the day on which this Act commences; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of persons.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act) or in any statutory instrument.

20. Rail safety officers

A person holding office as a rail safety officer under section 152 of the repealed Act immediately before the relevant day may continue, on and from the relevant day, to hold office as a rail safety officer and may perform the functions and exercise the powers of a rail safety officer under the Rail Safety National Law (Tasmania) –

- (a) for a period of 6 months commencing on the commencement of this Act; or
- (b) until he or she is appointed as a rail safety officer under section 135 of the Rail Safety National Law (Tasmania) –

whichever occurs first.

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21. Existing operators under repealed Act

(1) In this section –

existing operator means a person who is accredited under the repealed Act immediately before the commencement of this Act.

(2) The provisions in force under Part 15 of the repealed Act, in relation to existing operators, immediately before the commencement of this Act continue in relation to those operators under the Rail Safety National Law (Tasmania) for the period for which they would have continued under the repealed Act.

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Part 6 – Miscellaneous

PART 6 – MISCELLANEOUS

22. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Infrastructure; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

23. Consequential amendments

The legislation specified in Schedule 1 is amended as specified in that Schedule.

24. Legislation repealed

The legislation specified in Schedule 2 is repealed.

25. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

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26. Legislation revoked

The legislation specified in Schedule 4 is
revoked.

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SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Section 23

Boundary Fences Act 1908

1. Section 7A(2) is amended by omitting “*Rail Safety Act 2009*” and substituting “*Rail Safety National Law (Tasmania) Act 2012*”.

Emu Bay Railway (Operation and Acquisition) Act 2009

1. Section 3(1) is amended by omitting “*Rail Safety Act 2009*” from paragraph (b) of the definition of *rail infrastructure and related assets* and substituting “*Rail Safety National Law (Tasmania) Act 2012*”.
2. Section 4(3)(a) is amended by omitting “section 15 of the *Rail Safety Act 2009*” and substituting “section 62 of the *Rail Safety National Law (Tasmania) Act 2012*”.

Local Government Act 1993

1. Section 87(1)(b)(xiv) is amended by omitting “*Rail Safety Act 2009*” and substituting “*Rail Safety National Law (Tasmania) Act 2012*”.

Police Offences Act 1935

1. Section 3(1) is amended by omitting “*Rail Safety Act 2009*” from the definition of *public place* and

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substituting “*Rail Safety National Law (Tasmania) Act 2012*”.

Rail Company Act 2009

1. Section 4 is amended by omitting “*Rail Safety Act 2009*” from paragraph (b) of the definition of *rail infrastructure and related assets* and substituting “*Rail Safety National Law (Tasmania) Act 2012*”.

Rail Infrastructure Act 2007

1. Section 3(1) is amended as follows:
 - (a) by omitting “*Rail Safety Act 2009*” from paragraph (b) of the definition of *railway emergency* and substituting “*Rail Safety National Law (Tasmania) Act 2012*”;
 - (b) by omitting “*Rail Safety Act 2009*” from the definition of *train* and substituting “*Rail Safety National Law (Tasmania) Act 2012*”.

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SCHEDULE 2 – LEGISLATION REPEALED

Section 24

Rail Safety Act 2009 (No. 64 of 2009)

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SCHEDULE 3 – LEGISLATION RESCINDED

Section 25

Rail Safety Regulations 2010 (No. 110 of 2010)

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SCHEDULE 4 – LEGISLATION REVOKED

Section 26

Rail Safety (Guidelines) Order 2010 (No. 107 of 2010)

Proclamation under the Rail Safety Act 2009 (No. 109 of 2010)

Rail Safety (Fees) Notice 2012 (No. 42 of 2012)