

TASMANIA

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**RAIL INFRASTRUCTURE BILL 2007**

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# **RAIL INFRASTRUCTURE BILL 2007**

*(Brought in by the Minister for Infrastructure, the Honourable  
James Glennister Cox)*

## **A BILL FOR**

**An Act to provide for and facilitate the operation of the State's major rail network including its attendant land and infrastructure consequent on its reversion to State control and for related purposes**

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

### **PART 1 – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the *Rail Infrastructure Act 2007*.

#### **2. Commencement**

This Act commences on a day to be proclaimed.

#### **3. Interpretation**

(1) In this Act, unless the contrary intention appears –

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“**access**”, land, means enter and cross over the land or enter and remain on the land;

“**adjoining land**” means land adjoining the rail network;

“**adjoining landholder**” means the owner or occupier of adjoining land;

“**administrative costs**” includes assessment, supervision and inspection costs;

“**carry out**” includes cause to be carried out;

“**commencement day**” means the day proclaimed under section 2;

“**deal**”, with a railway emergency, includes –

- (a) assess, avert and lessen the railway emergency; and
- (b) take any necessary or incidental remedial or follow-up action;

“**emergency railway works**” means railway works to deal with a railway emergency;

“**maintain**”, the rail network, includes –

- (a) repair the rail network; and
- (b) modify the rail network; and
- (c) upgrade the rail network; and
- (d) any dismantling or replacement of infrastructure carried out in

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connection with such a repair,  
modification or upgrade;

**“notice”** means notice in writing;

**“occupier”**, of land, means a person who has,  
or is entitled to, possession or control of  
the land;

**“owner”**, of land, means any one or more of  
the following:

- (a) in the case of a fee simple estate  
in land, the person in whom that  
estate is vested;
- (b) in the case of land that is not  
registered under the *Land Titles  
Act 1980* and is subject to a  
mortgage, the person for the time  
being holding the equity of  
redemption in that mortgage;
- (c) in the case of land held under a  
tenancy for life, the person who is  
the life tenant;
- (d) in the case of land held under a  
lease for a term of not less than  
99 years or for a term of not less  
than such other prescribed period,  
the person who is the lessee of  
the land;
- (e) in the case of land in respect of  
which a person has a prescribed

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interest, the person with the prescribed interest;

- (f) in the case of land that has not been alienated from the Crown, the Minister, authority or other person responsible for managing the land;

**“person”** includes a body of any kind;

**“protective protocol”** means a lawful land use protocol, standard or restriction relating, but not limited, to the following:

- (a) an agricultural or industrial research or development project;
- (b) air, soil or water quality;
- (c) biological control;
- (d) crop security;
- (e) food standards or hygiene;
- (f) occupational health and safety;
- (g) plant or animal quarantine;
- (h) product processing;
- (i) waste treatment;

**“rail infrastructure”** or **“infrastructure”** includes –

- (a) rail lines and fastenings; and

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- (b) crossing loops, sidings, switches and points; and
  - (c) sleepers and ballast; and
  - (d) drains and culverts; and
  - (e) bridges, cuttings, tunnels and embankments; and
  - (f) poles and pylons; and
  - (g) structures and supports; and
  - (h) overhead lines; and
  - (i) platforms and railway stations; and
  - (j) rail yards; and
  - (k) freight sheds, workshops and associated buildings; and
  - (l) electrical substations; and
  - (m) signs and signalling equipment; and
  - (n) train control and communication systems; and
  - (o) traffic control devices that are capable of being automatically activated by trains; and
  - (p) plant, machinery and other fixed equipment;

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**“Rail Infrastructure Manager”** – see section 8;

**“Rail Infrastructure Owner”** – see section 7;

**“rail network”** – see section 4;

**“railway”** – see subsection (2);

**“railway crossing”** means a level crossing or other place where a road and railway track intersect;

**“railway emergency”** includes, but is not limited to –

- (a) an imminent threat to the safety or operability of the rail network arising from natural or artificial causes; and
- (b) a notifiable occurrence within the meaning of the *Rail Safety Act 1997*;

**“railway employee”** means an employee or contractor of a railway entity;

**“railway entity”** means the Rail Infrastructure Owner, a Rail Infrastructure Manager or a Rolling Stock Operator;

**“railway operations”** means either or both of the following:

- (a) operating trains;

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- (b) carrying out activities connected with the operation of trains;

**“railway works”** means works to maintain or extend the rail network;

**“recover”**, a debt, means recover the debt in a court of competent jurisdiction;

**“responsible Rail Infrastructure Manager”**, in respect of any power, function, obligation, liability or other matter, means –

- (a) if there is a Rail Infrastructure Manager for the entire rail network, the Rail Infrastructure Manager; or
- (b) if there is a Rail Infrastructure Manager for the part of the rail network to which the power, function, obligation, liability or other matter relates, that Rail Infrastructure Manager;

**“restricted Rail Infrastructure Manager”** – see section 8;

**“road”** means any kind of road, street, lane, path or stock crossing;

**“Rolling Stock Operator”** – see section 9;

**“routine railway works”** means railway works other than emergency railway works;

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“**standards**” means any State, national or international standards, codes or guidelines relating to railway operations or to railways or their management;

“**track**” has the same meaning as in the *Rail Safety Act 1997*;

“**train**” has the same meaning as in the *Rail Safety Act 1997*.

- (2) In this Act, unless the contrary intention appears, a reference to a railway is taken to be a reference to the track of the railway, the land corridor along which the track of the railway is laid and all of the attendant rail infrastructure.
- (3) To avoid doubt, land is not taken to be adjoining land for the purposes of this Act unless, fences, ditches or other artificial barriers notwithstanding, the land is in fact contiguous to the rail network.
- (4) A note in the text of this Act does not form part of this Act.

**4. Application of Act – the rail network**

- (1) This Act applies to the State rail network (referred to throughout this Act as the “rail network”).
- (2) The rail network consists of the railways specified in Part 1 of Schedule 1, other than railways, or railways of a kind, specified in Part 2 of that Schedule.

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**5. Act binds Crown**

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

**6. Act prevails over certain other Acts**

If a provision of this Act is inconsistent with a provision of the *Crown Lands Act 1976* or *Boundary Fences Act 1908*, the provision of this Act prevails to the extent of the inconsistency.

## **PART 2 – RAILWAY ENTITIES**

### **7. Rail Infrastructure Owner**

- (1) The Rail Infrastructure Owner is –
  - (a) such person as the Minister, by order, designates; or
  - (b) in the absence of such a designation, the Crown in right of Tasmania.
- (2) The Rail Infrastructure Owner has –
  - (a) such powers and functions in respect of the rail network as are conferred and imposed on it by this or any other Act; and
  - (b) such incidental and ancillary powers as may be necessary or convenient in that regard.

### **8. Rail Infrastructure Manager**

- (1) The Minister, by order, may designate a person as Rail Infrastructure Manager for –
  - (a) the entire rail network; or
  - (b) a part of the rail network specified in the order.

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- (2) A person designated as Rail Infrastructure Manager for a part of the rail network is a “restricted Rail Infrastructure Manager”.
- (3) The Minister must ensure that, at any time, no part of the rail network has more than one Rail Infrastructure Manager.
- (4) A Rail Infrastructure Manager has –
  - (a) such powers and functions in respect of the rail network (or, if it is a restricted Rail Infrastructure Manager, its part of the rail network) as are conferred and imposed on it by this or any other Act; and
  - (b) such incidental and ancillary powers as may be necessary or convenient in that regard.
- (5) If any part of the rail network does not for the time being have a Rail Infrastructure Manager, the Rail Infrastructure Owner –
  - (a) may exercise or perform any power or function that a Rail Infrastructure Manager for that part of the rail network could exercise or perform; and
  - (b) is responsible for discharging any obligation that a Rail Infrastructure Manager for that part of the rail network would have; and
  - (c) may incur any liabilities that a Rail Infrastructure Manager for that part of

the rail network would be capable of incurring.

### **9. Rolling Stock Operator**

A Rolling Stock Operator is a person permitted to use all or part of the rail network to carry out railway operations.

### **10. Status of railway entities for owner accreditation under *Rail Safety Act 1997***

For the purposes of the *Rail Safety Act 1997*, the following provisions apply:

- (a) if there is one Rail Infrastructure Manager for the entire rail network, the Rail Infrastructure Manager is taken to be the owner of the railways in the rail network;
- (b) if there is a Rail Infrastructure Manager for a part of the rail network, that Rail Infrastructure Manager is taken to be the owner of the railways in that part of the rail network;
- (c) if for the time being a part of the rail network does not have a Rail Infrastructure Manager, the Rail Infrastructure Owner is taken to be the owner of the railways in that part of the rail network;

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- (d) if for the time being no part of the rail network has a Rail Infrastructure Manager, the Rail Infrastructure Owner is taken to be the owner of the railways in the rail network.

**11. Responsible public land manager for gas and electricity infrastructure approvals**

For the purposes of section 84 of the *Gas Act 2000* and section 52 of the *Electricity Supply Industry Act 1995*, the following provisions apply:

- (a) if there is one Rail Infrastructure Manager for the entire rail network, the Rail Infrastructure Manager is taken to be the responsible management authority for the public land in the rail network;
- (b) if there is a Rail Infrastructure Manager for a part of the rail network, that Rail Infrastructure Manager is taken to be the responsible management authority for the public land in that part of the rail network;
- (c) if for the time being a part of the rail network does not have a Rail Infrastructure Manager, the Rail Infrastructure Owner is taken to be the responsible management authority for the public land in that part of the rail network;

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- (d) if for the time being no part of the rail network has a Rail Infrastructure Manager, the Rail Infrastructure Owner is taken to be the responsible management authority for the public land in the rail network.

## **PART 3 – LANDS AND PLANNING**

### *Division 1 – Land acquisition*

#### **12. Minister may acquire land for railway purposes**

- (1) The Minister may acquire land for railway purposes.
- (2) The *Land Acquisition Act 1993* applies to the acquisition and the land acquired.
- (3) Where the Minister is authorised under this section to acquire any land, that land may be acquired by the exchange for that land of any Crown land if the Director-General of Lands consents.
- (4) An exchange of land under this section may be made on such terms and conditions as may be agreed, including terms and conditions with respect to the payment, giving or receipt of any money or other consideration by way of exchange.
- (5) For the purpose of effecting an exchange, the Governor, in the name of the Crown, may grant any Crown land for an estate in fee simple.

### *Division 2 – Rail planning corridors*

#### **13. Interpretation of Division**

In this Division –

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**“affected railway”** means a part of the rail network in respect of which a rail planning corridor has been declared under this Division;

**“appeal”** means an appeal to the Resource Management and Planning Appeal Tribunal under Division 3 of Part 4 of the *Land Use Planning and Approvals Act 1993*;

**“condition”** includes restriction;

**“discretionary development”** means a development or use to which section 57 of the *Land Use Planning and Approvals Act 1993* applies;

**“permitted development”** means a development or use to which section 58 of the *Land Use Planning and Approvals Act 1993* applies;

**“planning authority”** means a planning authority within the meaning of the *Land Use Planning and Approvals Act 1993*;

**“rail network”** includes a proposed extension of the rail network;

**“rail network safeguard”** means a condition imposed on a permit for a permitted or discretionary development to ensure the safety or operability of the rail network;

**“rail planning corridor”** means a planning corridor declared by an order in force under section 14(1).

#### **14. Declaration of rail planning corridors**

- (1) To ensure the safety or operability of the rail network, the Minister, by order, may declare a planning corridor in respect of any part of the rail network.
- (2) In determining the width of the planning corridor the Minister may have regard to –
  - (a) any standards; and
  - (b) any accreditations, plans or other matters in place under the *Rail Safety Act 1997*; and
  - (c) any other matters the Minister considers relevant.
- (3) The Minister may revoke an order under subsection (1) at any time and must do so without delay if he or she becomes aware that –
  - (a) in the case of an order in respect of existing rail network, the rail network has been permanently dismantled or has ceased permanently to be operational; and
  - (b) in the case of an order for a proposed extension of the rail network, the

extension is not going to be constructed or made operational.

**15. Effect of declarations as regards permitted planning applications**

- (1) If application is made for a permit for a permitted development wholly or partly within a rail planning corridor –
  - (a) the relevant planning authority must give the Minister notice of the application and, subject to the time constraints of section 58(2) of the *Land Use Planning and Approvals Act 1993*, at least 14 days in which to advise the planning authority on the proposed development; and
  - (b) the Minister may, within that period, give the planning authority such advice on the application as the Minister thinks fit and in so doing may recommend that the permit be granted subject to rail network safeguards specified in the advice.
- (2) If the Minister gives such advice, the planning authority –
  - (a) may have regard to the advice in determining the application; and
  - (b) may, without limiting its discretion, grant the permit subject to any rail network safeguards recommended by the Minister (with or without modification).

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- (3) If the planning authority decides to grant the permit subject to rail network safeguards and the applicant lodges an appeal against that decision –
- (a) the planning authority must give the Minister notice of the appeal; and
  - (b) the Minister is, for the purposes of section 14 of the *Resource Management and Planning Appeal Tribunal Act 1993*, taken to be a person whose interests are affected by the decision and who has a proper interest in the subject matter of the appeal.

**16. Effect of declarations as regards discretionary development applications**

- (1) If application is made for a permit for a discretionary development wholly or partly within a rail planning corridor –
- (a) the relevant planning authority must, when notice of the application is given under section 57 of the *Land Use Planning and Approvals Act 1993*, refer the application to the Minister; and
  - (b) the Minister may, within the 14-day or further representation period allowed under section 57(5) of the *Land Use Planning and Approvals Act 1993*, give the planning authority such advice on the application as the Minister thinks fit and

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in so doing may recommend that, if granted, the permit should be made subject to rail network safeguards specified in the advice.

- (2) If the Minister fails to give any such advice, the planning authority may determine the application without further reference to the Minister.
- (3) If the Minister gives any such advice –
  - (a) the planning authority is to have regard to the advice in determining the application; and
  - (b) the advice is taken to be a representation made under section 57(5) of the *Land Use Planning and Approvals Act 1993* in relation to the application; and
  - (c) the planning authority may, without limiting its discretion in the event it approves the application, grant the permit subject to any rail network safeguards recommended by the Minister (with or without modification).
- (4) Section 57(2) of the *Land Use Planning and Approvals Act 1993* does not apply to an application referred to in subsection (1).
- (5) When a planning authority complies with section 57(7) of the *Land Use Planning and Approvals Act 1993* for an application referred to in subsection (1), it must also give the Minister

notice of its decision whether or not the Minister has given it advice on the application.

- (6) The failure of a planning authority to comply with subsection (1) for a development application does not invalidate a permit for the development but, in any such case, the Minister has the same right of appeal against the grant of the permit as a person who made representations in relation to the application.

**17. Effect of declarations as regards minor amendment of permits**

A planning authority must, in making any determination under section 56(2)(b) of the *Land Use Planning and Approvals Act 1993*, have regard to the safety and operability of any affected railway.

**18. Effect of declarations as regards compensation and land acquisition**

- (1) The declaration of a rail planning corridor does not entitle a person to claim or recover compensation under this or any other Act for any loss or detriment that the person may suffer in consequence of the declaration.
- (2) The declaration of a rail planning corridor over any land does not constitute injurious affection of that land or any other land for the purposes of the *Land Acquisition Act 1993*, Major

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*Infrastructure Development Approvals Act 1999*  
or any other Act.

***Division 3 – Miscellaneous***

**19. Planning status of railway works**

- (1) A railway entity does not have to comply with the requirements of the *Land Use Planning and Approvals Act 1993* as regards –
  - (a) emergency railway works; or
  - (b) routine railway works that are carried out wholly within the rail network in order to maintain the rail network.
- (2) All other railway works are taken to be developments that a planning authority has a discretion either to refuse or permit in accordance with section 57 of the *Land Use Planning and Approvals Act 1993*.
- (3) To avoid doubt over the application of subsection (1)(b), the question of whether railway works are carried out wholly within the rail network is to be determined irrespective of whether a railway entity has to access adjoining land to carry out those railway works.

**PART 4 – WORKS AND ACCESS**

*Division 1 – Fencing*

**20. Fencing obligations of Rail Infrastructure Owner**

- (1) This section applies if, as a result of railway works carried out by or on behalf of the Rail Infrastructure Owner or a railway accident –
  - (a) a dividing fence is damaged; or
  - (b) a dividing fence is destroyed; or
  - (c) a dividing fence has to be dismantled; or
  - (d) a dividing fence has to be moved (with or without being dismantled); or
  - (e) a new, unfenced, boundary is formed between the rail network and any adjoining land.
- (2) The Rail Infrastructure Owner must, as soon as practicable and in any event no later than 30 days after the railway works are completed and at its own cost –
  - (a) repair the fence if subsection (1)(a) applies; or
  - (b) replace the fence with one of at least the same standard if subsection (1)(b) applies; or

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- (c) reinstate the fence (and carry out any necessary refurbishment of the fence) if subsection (1)(c) applies; or
  - (d) move the fence (if necessary by carrying out any necessary dismantling and reassembly of the fence) if subsection (1)(d) applies; or
  - (e) erect a suitable dividing fence along the unfenced boundary if subsection (1)(e) applies.
- (3) If the Rail Infrastructure Owner fails to discharge its obligation under subsection (2), the adjoining landholder may give the Rail Infrastructure Owner a notice requiring it to carry out the necessary fencing work within 30 days or such longer period as the adjoining landholder may allow.
- (4) If the Rail Infrastructure Owner fails to comply with the adjoining landholder's notice –
- (a) the adjoining landholder may carry out the necessary fencing; and
  - (b) any costs reasonably incurred by the adjoining landholder in carrying out that fencing are recoverable as a debt due to the adjoining landholder from the Rail Infrastructure Owner.
- (5) For the purposes of subsection (2), the adjoining landholder is entitled to assume that railway works have been completed if, in the absence of any concession by the Rail Infrastructure Owner,

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it reasonably appears to the adjoining landholder that the purported object of those railway works has been substantially attained, regardless of whether any incidental follow-up action such as equipment removal, land remediation or cleaning-up remains to be taken.

- (6) Notwithstanding any other provision of this section, the adjoining landowner may, in writing, release the Rail Infrastructure Owner from its obligation under subsection (2).
- (7) For the purposes of this section, and without limiting its generality, railway works that are carried out by a Rail Infrastructure Manager with the actual or ostensible authority of the Rail Infrastructure Owner are taken to have been carried out on behalf of the Rail Infrastructure Owner.
- (8) In this section –
- “**dividing fence**” means a fence dividing a part of the rail network from adjoining land that is not Crown land;
  - “**fence**” includes part of a fence;
  - “**repair**”, a fence, means repair it to the same or a better condition;
  - “**suitable**”, in relation to a fence, means suitable in the circumstances having regard to factors like –

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- (a) the safety, security and operability of the rail network; and
- (b) the safety of persons on adjoining land; and
- (c) adjoining land use; and
- (d) the durability and maintenance of the fence; and
- (e) relevant environmental, heritage and land use factors.

*Division 2 – Railway works and works access*

**21. Emergency works access to adjoining land**

- (1) This section applies if a railway entity needs access to adjoining land to carry out emergency railway works.
- (2) The railway entity, acting through its railway employees, may access the adjoining land, if necessary without warning or permission, to such extent and for such period as is reasonably necessary to carry out the emergency railway works.
- (3) If the access is effected without warning, the railway entity is to alert the adjoining landholder of the access and the nature of the railway emergency and emergency railway works as soon as practicable.

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- (4) In effecting the access, the railway entity may –
- (a) call on and use such assistance as the railway entity considers necessary in the circumstances; and
  - (b) adjust or shut off any machinery, energy supply, water supply or other thing on the adjoining land that, if not adjusted or shut off, is likely to worsen the railway emergency or create a fresh emergency; and
  - (c) if there is no alternative, make use of anything on the land, other than machinery, that may serve to prevent a worsening of the railway emergency or prevent a fresh emergency; and
  - (d) open any door, gate, fence or other barrier, if necessary by forcing a lock, latch or chain or by dismantling or removing the barrier.
- (5) However, in effecting the access, the railway entity is to –
- (a) cause as little damage and disruption as possible; and
  - (b) do whatever can be practicably done in the circumstances for the welfare of stock; and
  - (c) make reasonable enquiry as to whether the adjoining land is subject to any

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protective protocols and, if so, respect those protocols; and

- (d) do whatever can be practicably done in the circumstances to accommodate reasonable concerns of the adjoining landholder.
- (6) Once the access has been effected, section 25 applies.
- (7) Where more than one railway entity accesses adjoining land under this section in respect of the same railway emergency –
  - (a) the rights and obligations of those railway entities under this section and section 25 are joint and several; and
  - (b) if a dispute arises between those railway entities as to their respective liability regarding any of those obligations, the dispute is to be determined by an arbitrator in accordance with the *Commercial Arbitration Act 1986*.
- (8) For a restricted Railway Infrastructure Manager, this section applies only in respect of its part of the rail network.

**22. Routine works access to adjoining land – with permission**

- (1) This section applies if an adjoining landholder gives a railway entity permission to access

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adjoining land to carry out routine railway works.

- (2) The railway entity is to ensure that –
  - (a) the adjoining landholder is warned when the access is about to be effected; and
  - (b) the access is effected in accordance with the terms of the permission and with as little damage and disruption as possible; and
  - (c) if circumstances require, the adjoining land is fenced or otherwise secured so as to maintain the adjoining landholder's level of protection as regards trespass and, if applicable, loss of stock; and
  - (d) it respects all protective protocols of which it has notice; and
  - (e) it vacates the adjoining land forthwith and without argument if the permission is for any reason withdrawn.
- (3) Once the access has been effected then, except in so far as the adjoining landholder and the railway entity may otherwise agree, section 25 applies.

**23. Routine works access to adjoining land – without permission**

- (1) This section applies if –

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- (a) a railway entity needs access to adjoining land to carry out routine railway works but the adjoining landholder –
    - (i) cannot, despite the railway entity's best endeavours, be contacted; or
    - (ii) is, for any reason, incapable of permitting the access; or
    - (iii) has, despite the railway entity's reasonable entreaties, unreasonably refused to permit the access; or
    - (iv) has imposed such stringent conditions on the access that the routine railway works would be unreasonably expensive, time-consuming or difficult to carry out or could not be carried out safely, properly or at all; or
  - (b) a railway entity is unable to complete routine railway works because an adjoining landholder has unreasonably withdrawn permission for the railway entity to access adjoining land.
- (2) The railway entity –
- (a) may apply to a justice for a warrant to access the land for the purposes of carrying out or, as the case may be, completing the routine railway works; but

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- (b) must give the adjoining landholder at least 5 clear days' notice of its intention to make the application or, if subsection (1)(a)(i) applies, make a reasonable attempt to give such notice.
- (3) The justice may issue the warrant if satisfied on reasonable grounds that –
  - (a) the routine railway works are necessary for the safety or operability of the rail network; and
  - (b) there is no feasible, safe or cost-effective way of carrying out or, as the case may be, completing the routine railway works except by accessing the adjoining land; and
  - (c) the railway entity will exercise the right of access responsibly; and
  - (d) the railway entity has complied with subsection (2)(b).
- (4) The warrant may –
  - (a) authorise the access by reference to specified times or specified periods; and
  - (b) be issued on such conditions as the justice considers appropriate.
- (5) Without limiting this, the conditions may –
  - (a) require the railway entity to meet specified notification or other

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- requirements before exercising the right of access; and
- (b) provide for the adjoining land to be fenced or otherwise secured so as to maintain the adjoining landholder's level of protection as regards trespass and, if applicable, loss of stock.
- (6) The warrant is to specify whether the right of access being conferred is a right to cross over the adjoining land or a right to enter and remain on the adjoining land.
- (7) The warrant authorises the railway entity, acting through its railway employees, to access the adjoining land to carry out the routine railway works specified in the warrant, at the times or during the periods specified in the warrant and on the conditions specified in the warrant.
- (8) In effecting the access and carrying out the routine railway works, the railway entity –
- (a) may call on and use such assistance as it considers necessary or expedient in the circumstances; and
- (b) must, whether or not they are mentioned in the warrant, respect all protective protocols of which it has notice.
- (9) Once access has been effected pursuant to the warrant, section 25 applies.
- (10) The railway employee in charge of executing the warrant for the railway entity must produce it for

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inspection if asked to do so by the adjoining landholder.

- (11) The warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.
- (12) The date specified in the warrant pursuant to subsection (11) is to be a date falling no later than 3 months after the warrant is issued.
- (13) For a restricted Railway Infrastructure Manager, this section applies only in respect of its part of the rail network.

**24. Clearing obstructions to lines of sight, &c.**

- (1) This section applies if a railway entity other than a Rolling Stock Operator reasonably considers that –
  - (a) any fence, sign or vegetation on adjoining land is obstructing a line of sight in respect of the rail network; and
  - (b) the obstruction poses a genuine risk to the safety of the rail network or to road users or other persons.
- (2) The railway entity may give the adjoining landholder a notice (in this section referred to as a “clearance notice”) requiring the adjoining landholder to clear the obstruction by, as circumstances require –

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- (a) modifying the fence or sign or trimming the vegetation; or
  - (b) if necessary, relocating or removing the fence, sign or vegetation.
- (3) The clearance notice is to allow the adjoining landholder a reasonable period, of at least 21 days, in which to clear the obstruction.
- (4) The railway entity may, by the clearance notice or otherwise, offer the adjoining landholder help in clearing the obstruction.
- (5) If the adjoining landholder fails for any reason to comply with the clearance notice, the railway entity may apply to a justice for a warrant to access the land to clear the obstruction.
- (6) The justice may issue the warrant if satisfied on reasonable grounds that –
  - (a) the fence, sign or vegetation in question is obstructing a line of sight in respect of the rail network; and
  - (b) the obstruction poses a genuine risk to the safety of the rail network or to road users or other persons; and
  - (c) a clearance notice given in respect of the obstruction has not been complied with; and
  - (d) the railway entity has received no indication that the adjoining landholder is likely to clear the obstruction within,

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- in terms of the level of risk, a reasonable time; and
- (e) there are no countervailing heritage, environmental or other considerations to which the relevant safety considerations ought to be subordinated.
- (7) The warrant may be issued on such conditions as the justice considers appropriate.
- (8) Without limiting this, the conditions may –
- (a) require the railway entity to meet specified notification or other requirements before exercising the right of access; and
- (b) provide for the adjoining land to be fenced or otherwise secured so as to maintain the adjoining landholder's level of protection as regards trespass and, if applicable, loss of stock.
- (9) The warrant authorises the railway entity, acting through its railway employees, to access the adjoining land and, causing as little damage and disruption as possible, clear the obstruction specified in the warrant in the way specified in the warrant.
- (10) In effecting the access and clearing the obstruction, the railway entity –
- (a) may call on and use such assistance as it considers necessary or expedient in the circumstances; and

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- (b) must, whether or not they are mentioned in the warrant, respect all protective protocols of which it has notice.
- (11) Once access has been effected pursuant to the warrant, section 25 applies.
- (12) The railway employee in charge of executing the warrant for the railway entity must produce it for inspection if asked to do so by the adjoining landholder.
- (13) The warrant is to specify the date on which, and the time at which, the warrant ceases to have effect.
- (14) The date specified in the warrant pursuant to subsection (13) is to be a date falling no later than 3 months after the warrant is issued.
- (15) Any costs reasonably incurred by the railway entity in clearing the obstruction pursuant to the warrant are recoverable as a debt due to the railway entity from the adjoining landholder.
- (16) For a restricted Railway Infrastructure Manager, this section applies only in respect of its part of the rail network.
- (17) In this section –
- “fence”** includes screen and free-standing wall;
- “line of sight”**, in respect of the rail network, means –

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- (a) a view that, for safety and operational purposes, a train driver needs to have of railway tracks ahead or of vehicles approaching or traversing a railway crossing; and
- (b) a view that, for personal safety, road users need to have of trains approaching or traversing a railway crossing;

“**sign**” includes the pole, hoarding or other structure on which the sign is displayed.

**25. Damage to be made good, &c.**

- (1) This section applies if a railway entity has accessed adjoining land under section 21, 22, 23 or 24 to carry out railway works or other works.
- (2) As soon as practicable after completing the works, the railway entity must –
  - (a) make good any unsanctioned damage caused to or in respect of the adjoining land as a result of effecting the access or carrying out the works; or
  - (b) pay the adjoining landholder fair compensation for that unsanctioned damage.
- (3) Any dispute regarding the nature or extent of the railway entity’s obligation under subsection (2) is to be determined by an arbitrator in

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accordance with the *Commercial Arbitration Act 1986*.

- (4) Without prejudice to the *Commercial Arbitration Act 1986*, matters that may be considered in the arbitration include, but are not limited to, the following:
- (a) whether some act or omission of the adjoining landholder triggered or contributed to the need to carry out the works;
  - (b) whether the unsanctioned damage was needlessly made worse by some act or omission of the adjoining landholder;
  - (c) whether the adjoining landholder took, or failed to take, measures that were reasonably available to avoid or minimise the unsanctioned damage;
  - (d) whether the railway entity effected the access and carried out the works as responsibly, efficiently and expeditiously as possible in the circumstances;
  - (e) whether some act or omission of the railway entity triggered or contributed to the need to carry out the works;
  - (f) whether the unsanctioned damage was needlessly made worse by some act or omission of the railway entity;
  - (g) whether the railway entity took, or failed to take, measures that were reasonably

available to avoid or minimise the unsanctioned damage.

(5) In this section –

**“unsanctioned damage”** means damage other than –

- (a) for section 21, damage directly resulting from an action taken in good faith to ensure the immediate safety of persons, or of stock or other animals, on the adjoining land; and
- (b) for section 24, damage resulting from the actual modification or removal of the relevant obstruction.

## **26. Control of vegetation**

(1) A Rail Infrastructure Manager is to –

- (a) prepare a vegetation management plan for the rail network or, if it is a restricted Rail Infrastructure Manager, its part of the rail network; and
- (b) periodically review and revise that plan; and
- (c) implement that plan.

(2) In preparing or reviewing and revising its vegetation management plan, a Rail

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Infrastructure Manager is to have regard to the following:

- (a) the overall safety and operational requirements of the rail network;
- (b) the need to prevent vegetation from becoming established in, encroaching on or overhanging the rail network;
- (c) the need for train drivers and road users to have good lines of sight in and around the rail network, particularly near railway crossings;
- (d) the need to prevent weeds from spreading onto adjoining land from the rail network;
- (e) the need to eliminate or minimise fire hazards in and around the rail network;
- (f) the need for a regular, effective and sustainable vegetation inspection and monitoring regime;
- (g) plans, standards, orders, declarations or other things that from time to time may be in force under the *Rail Safety Act 1997*, *Weed Management Act 1999*, *Threatened Species Protection Act 1995* or prescribed Acts;
- (h) the vegetation management provisions, if any, of relevant council planning schemes;

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- (i) prescribed requirements, if any;
  - (j) any directions that it is given by the Minister.
- (3) In preparing and revising its vegetation management plan, a Rail Infrastructure Manager is to carry out such consultations as it considers necessary or expedient.
- (4) A Rail Infrastructure Manager is to publish its vegetation management plan electronically –
- (a) as soon as practicable after the plan is prepared; and
  - (b) as soon as practicable after the plan is revised.
- (5) A Rail Infrastructure Manager may –
- (a) publish its vegetation management plan in such other ways and at such other times as it thinks fit; and
  - (b) charge a fee to recover the reasonable cost of providing any person with a printed copy of its vegetation management plan.
- (6) A Rail Infrastructure Manager may –
- (a) prepare a vegetation management plan jointly with another Rail Infrastructure Manager; and
  - (b) with the permission of another Rail Infrastructure Manager, incorporate in its

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own vegetation management plan, with or without modification, provisions from a vegetation management plan prepared by that other Rail Infrastructure Manager.

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**27. Demolition, &c., of unlawful works**

- (1) If a person carries out works on the rail network without lawful authority, the responsible Rail Infrastructure Manager may –
  - (a) demolish the unlawful works, dispose of any materials from the unlawful works and carry out such remediation works as it thinks fit; and
  - (b) recover its costs of so doing as a debt due to that Rail Infrastructure Manager from that person; and
  - (c) retain, if applicable, any proceeds of disposal.
- (2) No action lies against the responsible Rail Infrastructure Manager for demolishing or disposing of the material from the unlawful works.

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

*Division 3 – Service infrastructure*

**28. Interpretation of Division**

(1) In this Division –

**“install”**, on the rail network, includes install under or over the rail network;

**“installation conditions”**, of a permission to install service infrastructure on the rail network, includes conditions providing for any of the following:

- (a) the supervision, inspection and testing of the installation;
- (b) the time and manner of installation;
- (c) the management of initial and on-going risks associated with the installation;
- (d) the on-going monitoring and maintenance of the service infrastructure, including inspection, testing and replacement schedules;
- (e) the on-going operation of the service infrastructure;
- (f) the carrying out of remediation works consequent on the installation, maintenance or

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removal of the service infrastructure;

- (g) the carrying out of consequential works including the erection, alteration or removal of signs or signals;

**“installer”** means an adjoining landholder or other person who installs service infrastructure on the rail network pursuant to a permission granted under section 29;

**“remove”**, service infrastructure, includes dismantle prior to removal;

**“responsible entity”** – see subsections (2), (3) and (4);

**“service infrastructure”** includes –

- (a) agricultural and domestic drains and drainage works; and
- (b) communications equipment; and
- (c) farm irrigation pipes; and
- (d) gas pipelines; and
- (e) power conduits and cables; and
- (f) water supply pipes.

- (2) The responsible entity for the initial installation of service infrastructure on the rail network, up

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until its operational commissioning, is the installer.

- (3) The responsible entity for service infrastructure that has already been installed on the rail network, and been operationally commissioned, is –
- (a) the person who, by law or contractual obligation, has primary responsibility for its maintenance; or
  - (b) in the absence of legal or contractual certainty, whichever of the following persons, in the reasonable determination of the responsible Rail Infrastructure Manager, has, or should in equity have, at the time of making the determination, primary responsibility for its maintenance:
    - (i) in the case of any service infrastructure, the installer or the installer's legal successor;
    - (ii) in the case of agricultural or domestic service infrastructure installed on the rail network by or on behalf of an adjoining landholder, the adjoining landholder or the adjoining landholder's legal successor;
    - (iii) in the case of service infrastructure for a communications, gas, electricity or water service, the service

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provider or, if a person other than the service provider owns or operates the service infrastructure and charges the service provider for its use, that owner or operator.

- (4) A person who disputes a determination under subsection (3)(b), that the person has, or should in equity have, the primary responsibility for maintaining any particular service infrastructure, may apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination.

**29. Installation of service infrastructure on rail network**

- (1) A Rail Infrastructure Manager may permit an adjoining landholder or other person to install service infrastructure on the rail network or, if it is a restricted Rail Infrastructure Manager, on its part of the rail network.
- (2) The permission may be granted subject to –
- (a) such installation conditions and other conditions as the Rail Infrastructure Manager considers necessary or expedient having regard to the safety and operability of the rail network; and
  - (b) conditions providing for the payment of administrative or other costs that the Rail Infrastructure Manager may incur in

connection with the installation or its operation or maintenance.

- (3) If a condition of the kind referred to in subsection (2)(b) is not complied with, the Rail Infrastructure Manager may recover the unpaid costs as a debt due to the Rail Infrastructure Manager from the responsible entity.

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

### **30. Compliance with installation conditions**

- (1) This section applies if a permission under section 29 is granted subject to installation conditions.
- (2) The responsible Rail Infrastructure Manager, by notice to the responsible entity, may vary the installation conditions from time to time as circumstances require having regard to the safety and operability of the rail network.
- (3) If the responsible entity fails to comply with an installation condition, the responsible Rail Infrastructure Manager, depending on the nature of the condition, the status of the responsible entity and the urgency or seriousness of any attendant threat to the safety or operability of the rail network, may –
  - (a) by notice to the responsible entity, require the responsible entity to comply

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- with the condition within a specified time; or
- (b) with or without notice to the responsible entity, take action itself to ensure that the condition is complied with; or
  - (c) by notice to the responsible entity, revoke the permission (with or without decommissioning, adjusting, moving, removing or disposing of any service infrastructure already installed).
- (4) If the responsible entity fails to comply with a notice under subsection (3)(a), the responsible Rail Infrastructure Manager may proceed to act under subsection (3)(b) or (c) as if it were an initial failure to comply with the installation condition.
- (5) Any costs that the responsible Rail Infrastructure Manager incurs pursuant to subsection (3)(b) or (c) are recoverable as a debt due to that Rail Infrastructure Manager from the responsible entity.
- (6) Neither the Crown nor the responsible Rail Infrastructure Manager is liable for any loss or damage that a responsible entity may incur as a result of actions taken under subsection (3)(b) or (c).

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**31. Removal, &c., of problematic service infrastructure**

- (1) This section applies if it reasonably appears to a Rail Infrastructure Manager that any service infrastructure installed on the rail network or, if applicable, its part of the rail network pursuant to a permission under section 29 –
  - (a) has fallen into disuse or been abandoned; or
  - (b) has fallen into disrepair or suffered major damage; or
  - (c) is being operated, either constantly or repeatedly, in an improper or dangerous manner; or
  - (d) has become obsolete; or
  - (e) poses an unacceptable risk to the safety or operability of the rail network; or
  - (f) poses an unacceptable risk to the safety of any persons.
- (2) If the responsible entity is unknown and cannot be identified or found after reasonably diligent enquiry has been made, the Rail Infrastructure Manager may, without notice to any specific person and with or without giving any public notice –
  - (a) revoke the permission; and
  - (b) remove the service infrastructure; and

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- (c) render the service infrastructure safe and inoperative, dispose of it or take such other action as the Rail Infrastructure Manager thinks fit in the circumstances; and
  - (d) retain, if applicable, any proceeds of disposal.
- (3) If the responsible entity's identity is known, the Rail Infrastructure Manager is to give that entity a notice –
- (a) explaining, in terms of subsection (1), the nature of the Rail Infrastructure Manager's concern with the service infrastructure; and
  - (b) asking the responsible entity to show cause, within such period as is specified in the notice, why the relevant permission should not be revoked.
- (4) If the responsible entity fails to respond to the notice under subsection (3), satisfactorily or at all, the Rail Infrastructure Manager may give the responsible entity a further notice –
- (a) revoking the relevant permission; and
  - (b) requiring that, within a specified time and in accordance with any specified conditions, the responsible entity remove the service infrastructure, render it safe and inoperative or carry out specified actions in relation to the service infrastructure.

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- (5) If the responsible entity fails to comply with the further notice, the Rail Infrastructure Manager may, in its discretion –
- (a) take the actions specified in the notice or any other actions regarding the service infrastructure, including disposal, as it considers necessary or expedient for the safety or operability of the rail network; and
  - (b) recover its costs of so doing as a debt due to the Rail Infrastructure Manager from the responsible entity; and
  - (c) retain, if applicable, any proceeds of disposal.
- (6) No action lies against the Rail Infrastructure Manager for taking any actions pursuant to subsection (2) or (5).

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**32. Removal, &c., of pre-existing service infrastructure**

- (1) To ensure the safety and operability of the rail network, a Rail Infrastructure Manager's powers under section 31 are also exercisable in respect of any pre-existing service infrastructure and it may, for that purpose –
- (a) treat the pre-existing service infrastructure as service infrastructure

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that has been installed on the rail network pursuant to a permission under section 29; and

(b) treat the adjoining landholder as the responsible entity.

(2) In this section –

**“pre-existing service infrastructure”** means service infrastructure installed on the rail network before the commencement day.

**33. Removal, &c., of unlawful service infrastructure**

(1) If a person installs or leaves service infrastructure on the rail network without lawful authority, the responsible Rail Infrastructure Manager may –

(a) remove and dispose of the unlawful service infrastructure and take such other actions as it thinks fit; and

(b) recover its costs of so doing as a debt due to that Rail Infrastructure Manager from that person; and

(c) retain, if applicable, any proceeds of disposal.

(2) No action lies against the responsible Rail Infrastructure Manager for removing or disposing of the unlawful service infrastructure.

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*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**34. Relationship to service infrastructure legislation**

Nothing in this Division is to be taken as derogating from the provisions of any of the following:

- (a) the *Electricity Industry Safety and Administration Act 1997*;
- (b) the *Electricity Supply Industry Act 1995*;
- (c) the *Gas Act 2000*;
- (d) the *Gas Pipelines Act 2000*;
- (e) the *Water Management Act 1999*;
- (f) any prescribed Act.

*Division 4 – Responsibility for railway crossings, &c.*

**35. Interpretation of Division**

In this Division –

“**construction conditions**”, of a permission to construct a private road across the rail network by way of a level crossing, includes conditions providing for any of the following:

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- (a) the supervision and inspection of the construction;
- (b) the time and manner of the construction;
- (c) the management of initial and on-going risks associated with the construction;
- (d) the on-going monitoring and maintenance of the level crossing, including inspection schedules;
- (e) the on-going operation of the level crossing;
- (f) the carrying out of remediation works consequent on the construction, maintenance or removal of the level crossing;
- (g) the carrying out of consequential works including the erection, alteration or removal of signs or signals;

**“established”** means in place immediately before the commencement day;

**“level crossing”** means a railway crossing at which the road and the railway track intersect at or about the same level;

**“maintenance agreement”** means a written agreement that –

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- (a) a person has entered into with any railway operator or manager having the power to do so; and
- (b) sets out their respective maintenance responsibilities in respect of a railway crossing;

**“private road”** means a road other than a public road;

**“private road owner”**, for a private road, means the owner of the land on which the private road is situated;

**“public road”** means any road or place open to or used by the public or to which the public have or are permitted to have access, whether on payment of fee or otherwise;

**“rails”** means the rails of a railway track;

**“railway track”** means a railway track within the rail network;

**“requisite standard”**, for the surface of any part of a road, means a standard that –

- (a) matches that of the immediately adjoining parts of that road; and
- (b) does not compromise the safety or operability of the rail network;

**“responsible entity”**, for sections 38 and 39, means –

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- (a) the adjoining landholder or other person permitted, under section 38, to construct the relevant level crossing or their legal successor; or
- (b) such other person as is specified by the terms of that permission;

**“responsible road authority”**, for a public road, means the person for the time being responsible for maintaining the public road;

**“road infrastructure”** includes –

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

- (g) road markings; and
- (h) road lighting; and
- (i) pedestrian crossings and associated infrastructure; and
- (j) prescribed things.

**36. Maintenance responsibilities at railway crossings – public roads**

- (1) Where a railway track intersects a public road by way of a level crossing –
  - (a) the Rail Infrastructure Owner must, at its cost –
    - (i) maintain the rail infrastructure; and
    - (ii) maintain, to the requisite standard, the road surface (and, if applicable, the footpath surface) –
      - (A) between the rails; and
      - (B) on either side of the outermost rails, to a distance of 0.6 metres; and
  - (b) the responsible road authority must, at its cost, maintain the road infrastructure on either side of the railway track to within 0.6 metres of the outermost rails

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(regardless of whether that part of road infrastructure impinges on the rail network).

- (2) Where a railway track crosses over a public road by way of a bridge or other elevated structure –
  - (a) the Rail Infrastructure Owner must, at its cost, maintain the rail infrastructure and the bridge or other elevated structure; and
  - (b) the responsible road authority must, at its cost, maintain the road infrastructure.
  
- (3) Where a public road crosses over a railway track by way of a bridge or other elevated structure –
  - (a) the responsible road authority must at its cost, maintain the road infrastructure and the bridge or other elevated structure; and
  - (b) the Rail Infrastructure Owner must at its cost, maintain the rail infrastructure.

**37. Maintenance responsibilities at established level crossings – private roads**

- (1) Where a railway track intersects a private road by way of an established level crossing then, unless an established maintenance agreement provides to the contrary –
  - (a) the Rail Infrastructure Owner must –

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- (i) maintain the rail infrastructure;  
and
  - (ii) maintain, to the requisite standard, the road surface (and, if applicable, the footpath surface) –
    - (A) between the rails; and
    - (B) on either side of the outermost rails, to a distance of 0.6 metres;  
and
  - (b) the private road owner must, at the private road owner's cost and in accordance with the requirements, if any, of the responsible Rail Infrastructure Manager and any relevant standards, maintain the road infrastructure to within 0.6 metres of the outermost rails (regardless of whether that part of the private road impinges on the rail network).
- (2) Except in an emergency, the private road owner must give the responsible Rail Infrastructure Manager at least 21 days' notice before discharging, on any occasion, the obligation under subsection (1)(b).
- (3) If the private road owner fails to discharge the obligation under subsection (1)(b), the responsible Rail Infrastructure Manager may give the private road owner a notice requiring that the relevant road maintenance works be

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carried out within 30 days or such longer period as that Rail Infrastructure Manager may allow.

- (4) If the private road owner fails to comply with the notice under subsection (3), the responsible Rail Infrastructure Manager may, in its discretion –
  - (a) carry out the relevant road maintenance works; or
  - (b) if the relevant road maintenance works have been partially carried out, complete or undo them.
- (5) The private road owner must, on reasonable demand being made for same, pay the responsible Rail Infrastructure Manager's reasonable costs of carrying out (or completing or undoing) road maintenance works pursuant to subsection (4).
- (6) The costs incurred under subsection (5) are recoverable as a debt due to the responsible Rail Infrastructure Manager from the private road owner.
- (7) Under this section, if an established private road is in different ownership on either side of the rail network, a private road owner is only responsible for his or her own side of the rail network.
- (8) A private road owner who accesses the rail network under and in accordance with this section does not commit a trespass by so doing.

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*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**38. Construction of new level crossings – private roads**

- (1) A Rail Infrastructure Manager may permit an adjoining landholder or other person to construct a private road across the rail network by way of a level crossing, or, if it is a restricted Rail Infrastructure Manager, across its part of the rail network by way of a level crossing.
- (2) The permission may be granted subject to –
  - (a) such construction conditions and other conditions as the Rail Infrastructure Manager considers necessary or expedient having regard to the safety and operability of the rail network and the reasonable commercial and domestic needs of any landholders; and
  - (b) conditions providing for the payment of administrative or other costs that the Rail Infrastructure Manager may incur in connection with the construction or maintenance of the level crossing.
- (3) If a condition of the kind referred to in subsection (2)(b) is not complied with, the Rail Infrastructure Manager may recover the unpaid costs as a debt due to the Rail Infrastructure Manager from the responsible entity.

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*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**39. Compliance with construction conditions**

- (1) This section applies if a permission under section 38 is granted subject to construction conditions.
- (2) The responsible Rail Infrastructure Manager, by notice to the responsible entity, may vary the construction conditions from time to time as circumstances require having regard to the safety and operability of the rail network.
- (3) If the responsible entity fails to comply with a construction condition, the responsible Rail Infrastructure Manager, depending on the nature of the condition, the status of the responsible entity and the urgency or seriousness of any attendant threat to the safety or operability of the rail network, may –
  - (a) by notice to the responsible entity, require the responsible entity to comply with the condition within a specified time; or
  - (b) with or without notice to the responsible entity, take action itself to ensure that the condition is complied with; or
  - (c) by notice to the responsible entity, revoke the permission (with or without

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undoing any work or removing or disposing of any materials).

- (4) If the responsible entity fails to comply with a notice under subsection (3)(a), the responsible Rail Infrastructure Manager may proceed to act under subsection (3)(b) or (c) as if it were an initial failure to comply with the construction condition.
- (5) Any costs that the responsible Rail Infrastructure Manager incurs pursuant to subsection (3)(b) or (c) are recoverable as a debt due to that Rail Infrastructure Manager from the responsible entity.
- (6) Neither the Crown nor the responsible Rail Infrastructure Manager is liable for any loss or damage that a responsible entity may incur as a result of actions taken under subsection (3)(b) or (c).

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**40. Railway entity to reinstate public road after removing tracks from level crossing**

- (1) This section applies if a railway entity –
  - (a) intends to remove any track from a level crossing on a public road; and
  - (b) does not intend to replace that track.

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- (2) The railway entity must give the responsible road authority as much notice of its intention as practicable in the circumstances so that the responsible road authority can, as necessary, adjust traffic signage or take other safety measures near the level crossing.
- (3) After removing the track, the railway entity must reinstate the public road to the requisite standard without delay and at its own cost.
- (4) If it appears to the responsible road authority that the railway entity has failed to discharge its obligation under subsection (3), the responsible road authority may give the railway entity a notice requiring it to reinstate the public road within 30 days or such longer period as the responsible road authority may allow.
- (5) If the railway entity fails to comply with the responsible road authority's notice –
  - (a) the responsible road authority may reinstate the public road to the requisite standard; and
  - (b) any costs reasonably incurred by the responsible road authority in so reinstating the public road are recoverable as a debt due to the responsible road authority from the railway entity.
- (6) For the purposes of this section, a responsible road authority is entitled to assume that a railway entity does not intend to replace track that the railway entity has removed from a level crossing

if works to replace the track have not physically commenced, at the level crossing, within 30 days after the date of removal.

*Division 5 – Works liabilities*

**41. Liability for forced consequential infrastructure works**

- (1) This section applies if –
  - (a) the person for the time being responsible for any infrastructure (in this section referred to as “the initiating infrastructure authority”) repairs, modifies or replaces any of that infrastructure or installs new infrastructure; and
  - (b) as a direct consequence, another person (in this section referred to as “the affected infrastructure authority”) is compelled to install, repair, modify or replace any infrastructure.
- (2) In the absence of an agreement to the contrary between the initiating infrastructure authority and the affected infrastructure authority –
  - (a) the initiating infrastructure authority is liable for the reasonable costs that the affected infrastructure authority incurs as a result of being compelled to install, repair, modify or replace infrastructure; and

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(b) those costs are recoverable as a debt due to the affected infrastructure authority from the initiating infrastructure authority.

(3) In this section –

**“compelled”** means compelled by the operation of any law or standards or by the need to ensure the safety or operability of infrastructure;

**“infrastructure”** means rail infrastructure or road infrastructure;

**“road infrastructure”** has the same meaning as in Division 4.

**42. Non-feasance protection for failure to carry out railway works**

(1) The Crown is not liable in proceedings in respect of a claim for any loss or damage arising from a failure of the Crown to carry out or consider carrying out railway works unless, at the time of the alleged failure, the Crown had actual knowledge of the facts creating the particular risk the materialisation of which resulted in the harm.

(2) This section does not operate –

(a) to create a duty of care in respect of a risk merely because the Crown or a Rail Infrastructure Manager has actual knowledge of the risk; or

(b) to affect any standard of care that would otherwise be applicable in respect of a risk.

(3) In this section –

“**Crown**” includes, if the Rail Infrastructure Owner is a person other than the Crown, that person.

*Division 6 – Rights and obligations of adjoining landholders*

**43. Right of emergency access to rail network**

(1) An adjoining landholder may access the rail network without the permission of the Crown or any railway entity if –

- (a) the adjoining landholder is in the business of primary production or manufacturing or processing; and
- (b) the relevant adjoining land is used for that business; and
- (c) the access is essential for an emergency action related to that adjoining land.

(2) The adjoining landholder may –

- (a) call on and use such assistance as the adjoining landholder considers necessary or expedient in the circumstances; and

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- (b) if the adjoining landholder is not a natural person, effect the access through an employee or contractor.
- (3) However, the adjoining landholder must –
  - (a) make a reasonable attempt to give the responsible Rail Infrastructure Manager prescribed notice before effecting the access; and
  - (b) take account of any safety warnings or injunctions, whether as to train schedules or otherwise, given by the responsible Rail Infrastructure Manager consequent on such prescribed notice; and
  - (c) only effect the access strictly to such extent and for such period as is required to take the emergency action; and
  - (d) not endanger or knowingly interfere with any railway operations; and
  - (e) not damage or knowingly disturb any rail infrastructure; and
  - (f) take sensible precautions for the safety of persons and property; and
  - (g) not knowingly aggravate any existing danger, risk or hazard; and
  - (h) if practicable in the case of prolonged access, maintain regular radio or telephone contact with the responsible Rail Infrastructure Manager; and

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- (i) leave the rail network at, by or for a specified time if directed to do so, for personal or operational safety reasons, by any railway entity; and
  - (j) make a reasonable attempt to give the responsible Rail Infrastructure Manager notice immediately after leaving the rail network.
- (4) An adjoining landholder who accesses the rail network under and in accordance with the requirements of this section does not commit a trespass by so doing.
- (5) Neither the Crown nor any railway entity is liable for any loss or damage that an adjoining landholder, or any employee or other person acting for or accompanying the adjoining landholder, may incur as a result of accessing the rail network pursuant to this section.
- (6) Without limiting section 46, a notice is effectively given for the purposes of this section if it is given by means of a radio or telephone.
- (7) In this section –
- “emergency action”** includes, but is not limited to, the following:
- (a) the rounding-up of runaway stock;
  - (b) combating or averting a fire, flood or chemical hazard;

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- (c) the urgent repair of fencing, structures or embankments that have sustained sudden unforeseen damage;
- (d) the retrieval of structures or materials that have been dislodged by storm action, illegal interference or other causes;
- (e) the retrieval of broken down vehicles or agricultural machinery;

**“prescribed notice”** means notice as to the actual or estimated time and duration of access, the access location, the identity and number of persons involved, emergency contact details and particulars of the required emergency action and any attendant hazards and risks.

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**44. Notification and control of major excavations**

- (1) This section applies if a person (in this section referred to as “the excavator”) intends to do an excavation within 3 metres of the rail network.
- (2) If the excavation is a major excavation, the excavator must give the responsible Rail Infrastructure Manager notice of that intention.

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- (3) The notice must –
  - (a) specify the date on which the excavator expects to physically start the excavation (in this section referred to as “the starting date”); and
  - (b) be given at least 7 clear days before the starting date.
- (4) Consequent on the notice, the responsible Rail Infrastructure Manager may give the excavator any directions it reasonably considers necessary or expedient for the safety or operability of the rail network.
- (5) The excavator must –
  - (a) comply with any directions given under subsection (4) before the starting date; and
  - (b) in so far as it is in the excavator’s power to do so, ensure that other persons comply with those directions.
- (6) If any railway entity has to carry out railway works to ensure the safety or operability of the rail network as the direct or indirect result of the excavator’s failure to comply with an obligation under this section, any costs reasonably incurred by the railway entity in carrying out those railway works are recoverable as a debt due to the railway entity from the excavator.
- (7) If the excavator –

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- (a) is in any doubt as to whether the intended excavation should be regarded as a major excavation for the purposes of this section; or
  - (b) disputes that the excavation, even if in progress or completed, may properly be so regarded by any railway entity; or
  - (c) disputes that a direction given under subsection (4) may reasonably be considered necessary or expedient for the safety or operability of the rail network –
- the excavator may apply to the Minister for a ruling.
- (8) In making the application, the excavator must meet the prescribed requirements, if any, and pay a prescribed fee, if any.
  - (9) The Minister, after consulting the excavator and such railway entities and other persons and considering such matters as he or she thinks the circumstances require, is to make the ruling, in writing, without undue delay.
  - (10) The ruling –
    - (a) is binding on the excavator and all railway entities; but
    - (b) is not grounds for challenging any judicial or administrative decision made before the date of the ruling.
  - (11) The Minister may –

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- (a) formulate guidelines to assist adjoining landholders and professional excavators for the purposes of this section; and
  - (b) from time to time publish those guidelines electronically and in such other ways as the Minister thinks fit.
- (12) In any proceedings, the production of a document purporting to be signed by the Minister and certifying that the document is a ruling or true copy of a ruling made under subsection (9) is evidence –
- (a) that the document is such a ruling or copy; and
  - (b) of the matters the document contains.
- (13) Nothing in this section is to be taken as –
- (a) requiring the excavator to give the responsible Rail Infrastructure Manager notice of intention to do excavations of which it has notice under other provisions of this Part; or
  - (b) authorising the responsible Rail Infrastructure Manager to give directions about excavations in respect of which it may give directions, impose requirements or exercise any other degree of control under other provisions of this Part; or
  - (c) conferring on any railway entity power to recover debts for carrying out railway

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works consequent on acts or omissions relating to excavations where the acts or omissions relate to, and the debts are recoverable under, other provisions of this Part; or

- (d) restricting or regulating minor excavations.

(14) In this section –

**“major excavation”** means a deep, disruptive or extensive excavation of the kind ordinarily required for or associated with –

- (a) building foundations; or
- (b) roadworks; or
- (c) quarrying; or
- (d) the construction of dams or swimming pools; or
- (e) the installation, by trenching, of underground service apparatus like gas pipelines, sewer pipes, storm water drains or telecommunications cables; or
- (f) the installation of underground water storage tanks; or
- (g) the installation of septic tanks or construction of sullage pits; or

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- (h) pits for the mass burial of diseased stock;

**“minor excavation”** means a superficial, shallow or isolated excavation of the kind ordinarily required for or associated with –

- (a) fencing; or
- (b) the domestic installation of kerbs, paths or paving; or
- (c) the domestic installation of minor conveniences like low-voltage outdoor lighting or garden watering systems; or
- (d) the domestic installation of poles for things like clotheslines, flags, netball hoops, shade structures or private power connections; or
- (e) the erection of minor domestic structures like barbeques, cubbyhouses, kennels or pre-fabricated garden sheds; or
- (f) the installation of farm irrigation systems; or
- (g) the tillage of farms or gardens.

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**45. Control of drainage**

- (1) A person who owns or occupies land adjoining the rail network must not, without the written consent of the responsible Rail Infrastructure Manager –
- (a) do anything to concentrate the natural drainage of the adjoining land onto the rail network; or
  - (b) do anything on the adjoining land to increase, impede or redirect natural drainage in and around the rail network; or
  - (c) cause or allow effluent from the adjoining land to flow, drain, seep or otherwise discharge onto the rail network.
- (2) If a railway entity has to carry out railway works to ensure the safety or operability of the rail network as the direct or indirect result of an adjoining landholder’s failure to comply with the obligation under subsection (1), any costs reasonably incurred by the railway entity in carrying out those railway works are recoverable as a debt due to the railway entity from the adjoining landholder.
- (3) In this section –
- “**effluent**” includes irrigation run-off, storm water and waste water (whether generated by humans or animals);

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**“onto”**, the rail network, means onto the surface of the rail network or into any part of the subsurface of the rail network.

*Note: For a part of the rail network that does not for the time being have a Rail Infrastructure Manager, section 8(5) applies to the operation of this section.*

**PART 5 – MISCELLANEOUS**

**46. Service of notices and other documents**

A notice or other document is effectively given to a person under this Act if –

- (a) in the case of a natural person, it is –
  - (i) handed to the person; or
  - (ii) left at, or sent by post to, the person’s postal or residential address or place of business or employment last known to the giver of the notice or document; or
  - (iii) faxed to the person’s fax number; or
  - (iv) emailed to the person’s email address; and
- (b) in the case of any other person, it is –
  - (i) left at, or sent by post to, the person’s principal or registered office or principal place of business; or
  - (ii) faxed to the person’s fax number; or
  - (iii) emailed to the person’s email address.

**47. Delegation by Minister**

The Minister may delegate any of the Minister's powers or functions under this Act other than –

- (a) a power or function under section 7, 8, 12, 14 or 49; or
- (b) this power of delegation.

**48. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may, consistently with the *Rail Safety Act 1997* –
  - (a) make further provision for the management, safety or operability of the rail network or railway operations; and
  - (b) make further provision for the physical security and protection of the rail network or railway operations; and
  - (c) make further provision for the management, safety or operability of railway crossings; and
  - (d) prescribe notification requirements for works or other activities affecting or potentially affecting the rail network or railway operations; and

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- (e) prescribe track protection and other precautions and measures with regard to rolling stock and its operation on the rail network.
- (3) The regulations may be made so as to apply differently according to such factors as are specified in the regulations.
- (4) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Minister, the Rail Infrastructure Owner or a Rail Infrastructure Manager.
- (5) The regulations may confer powers on the Minister, the Rail Infrastructure Owner or a Rail Infrastructure Manager.
- (6) The regulations may provide for any matter by incorporating, either specifically or by reference and either wholly or in part and with or without modification, any standards, whether as in force at a particular time or as from time to time amended and whether published or issued before, on or after the commencement day.
- (7) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (8) Regulations under subsection (7) may take effect on the commencement day or a later day as specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

**49. Amendment of Schedule**

The Minister, by order, may amend Schedule 1 by doing one or more of the following:

- (a) inserting an item in either Part of the Schedule;
- (b) omitting an item from either Part of the Schedule;
- (c) omitting an item from either Part of the Schedule and substituting another item.

**50. Status of orders**

Ministerial orders under sections 7, 8, 14 and 49 –

- (a) are statutory rules within the meaning of the *Rules Publication Act 1953*; but
- (b) are not instruments of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

**51. 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

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

**52. Consequential Amendments**

The legislation specified in Schedule 2 is amended as specified in that Schedule.

**SCHEDULE 1 – THE RAIL NETWORK**

Section 4

**PART 1 – RAILWAYS**

1. The Bell Bay Line (being the railway running from the East Tamar junction to Bell Bay).
2. The Derwent Valley Line (being the railway running from Bridgewater to Maydena).
3. The Fingal Line (being the railway running from Conara junction to Fingal).
4. The North-East Line (being the railway running from Coldwater Creek junction to Tonganah).
5. The South Line (being the railway running from the Hobart rail yard to the East Tamar junction).
6. The Western Line (being the railway running from Western Junction to Wiltshire).
7. The “Zinc Works Line” also known as the “Risdon Line” (being the railway running from

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the Derwent Park junction to the former siding at the Risdon Smelter).

**PART 2 – EXCLUDED RAILWAYS**

1. Railways that are entirely within the precincts of and used only in connection with a factory, mine or quarry.
2. Railways that are entirely within the precincts of a transport, railway or other museum and, if operational, used only in connection with that museum.
3. Model railways.
4. Runways that are used only in connection with the operation of cranes or gantries.
5. Marine slipways.
6. Tourist tramways.

**SCHEDULE 2 – CONSEQUENTIAL AMENDMENTS**

Section 52

***Rail Safety Act 1997***

1. Section 3 is amended by inserting after the definition of “owner” the following definition:

**“person”** includes a body of any kind;