

# Rail Safety (Reform) Bill

## Exposure Draft

**This document is a draft of a *Rail Safety (Reform) Bill* that is being developed, on the instructions of the National Transport Commission, as proposed model legislation to be submitted in due course for the agreement of the Australian Transport Commission (consisting of Ministers of the Commonwealth and all States and Territories).**

**NOTE: This draft has not been settled by the Parliamentary Counsel's Committee.**

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# **Rail Safety (Reform) Bill**

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Part 1—Preliminary

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**PART 1—PRELIMINARY**

**101. Purpose**

The purpose of this Act is to make provision for rail [transport] safety and other matters that form part of the system of nationally consistent rail [transport] laws.

*Draft Note : Note that the manner of citation of the Act will be as determined by the jurisdiction.*

**102. Commencement**

This Act comes into operation on a day or days to be proclaimed.

*Draft Note : Commencement of the Act will be as determined by the jurisdiction.*

**103. Objects**

(1) The objects of this Act are-

- (a) to provide for the safe construction, operation and maintenance of rail transport in this jurisdiction;
- (b) to manage safety risks associated with railway operations;
- (c) to provide for the improvement of rail safety in this jurisdiction;
- (d) to promote public confidence in the safety of rail transport;
- (e) to put in place special provision necessary for the control of particular risks arising from railway operations-

having regard to the principles set out in sections 104 to 108.

(2) The objects referred to in sub-section (1) are to be achieved having regard to-

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- (a) overall transport safety and regulatory efficiency; and
  - (b) differences in risk environment.
- (3) It is the intention of [the Parliament] that the objects of this Act will be achieved in the context of nationally consistent rail safety laws and a nationally consistent approach in the administration of those laws.

**104. Principle of responsibility**

Rail safety is the responsibility of Government, rail transport operators, rail safety workers and others involved in railway operations.

**105. Principle of integrated risk**

If approaches to managing risks associated with any particular railway have potential impacts on any other railway or the railway network of which the railway is part, the best practicable rail safety outcome should be sought.

**106. Principle of enforcement**

The purpose of enforcement of this Act and the regulations is-

- (a) protecting safety;
- (b) promoting improvement in rail safety;
- (c) removing any incentive for unfair commercial advantage that might be derived from contravening the rail safety laws;
- (d) influencing the attitude and behaviour of persons whose actions may have adverse impacts on rail safety.

**107. Principle of transparency and consistency**

Regulatory decision-making processes should be timely, transparent and nationally consistent.

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**108. Principle of participation, consultation and involvement**

Rail transport operators and the organisations representing them, Rail Safety Regulators, rail safety workers and the organisations representing them and others involved in railway operations should participate in, and be consulted on and involved in, the development and implementation of measures to manage safety risks associated with railway operations.

**109. Definitions**

In this Act-

**"accreditation"** means accreditation under this Act;

**"accredited person"** means a person who has been granted accreditation but does not include a person whose accreditation-

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

**"adopted compliance code"** means a code approved for the time being for the purposes of this Act by the Rail Safety Regulator and published in the Gazette, being the national compliance code with such amendments as the Rail Safety Regulator approves;

**"adopted guidelines"** means guidelines approved for the time being for the purposes of this Act by the Rail Safety Regulator and published in the Gazette, being the national guidelines with such amendments as the Rail Safety Regulator approves;

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**"adopted standards"** means standards approved for the time being for the purposes of this Act by the Rail Safety Regulator and published in the Gazette, being the national standards with such amendments as the Rail Safety Regulator approves;

**"associate"** – see section 113;

**"Australian police officer"** means-

- (a) a police officer; or
- (b) a member (however described) of the police force or police service of another jurisdiction;

**"Australian rail safety law"** means a rail safety law or a corresponding rail safety law;

**"Australian rail safety regulator"** means the Rail Safety Regulator or a corresponding Rail Safety Regulator;

**"Australian Road Rules"** means [*insert local jurisdiction definition*] the Road Rules—Victoria published in the Government Gazette (Periodical Gazette No. 2) on 28 October 1999, as those Rules have effect for the purposes of regulation 201(1) of the Road Safety (Road Rules) Regulations 1999;

**"body corporate"** includes the Crown in any capacity and any body or entity that is not an individual;

**"Chief Commissioner of Police"** has the same meaning as in the **Police Regulation Act 1958**; [*Local variations*]

**"commercial benefits order"** means an order under section 742;

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**"corresponding law"** means-

- (a) the law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of another jurisdiction that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;

**"corresponding rail safety law"** means a rail safety law as defined in a corresponding law;

**"corresponding Rail Safety Regulator"** means-

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

**"embargo notice"** means a notice issued under section 414;

**"extract"** from a record, device or other thing means a copy of any information contained in the record, device or thing;

**"function"** includes power, authority or duty;

**"hazard"** means a source of potential harm to any person;

**"improvement notice"** means a notice served under section 428;

**"infringement notice"** means a notice under Division 5 of Part 7;

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**"interface co-ordination plan"** means an agreement between a rail transport operator and one or more other parties specifying the responsibilities of each party for the management of risks associated with the rail transport operator's railway operations that may be caused or contributed to by the activities or operations of, or by the ownership, occupation or management of any premises by, any other party to the agreement;

**"jurisdiction"** means the Commonwealth or a State or Territory;

**"level crossing"** has the same meaning as in [Rule 120] [*local variation*] of the Australian Road Rules;

Note: *Road Rules – Victoria* Rule 120 defines level crossing as

- (a) an area where a road and a railway meet at substantially the same level, whether or not there is a level crossing sign (as shown in Rule 120(2)) on the road at all or any of the entrances to the area; or
- (b) an area where a road and tram tracks meet at substantially the same level and that has a level crossing sign (as shown in Rules 120(2)) on the road at each entrance to the area.

Note that 'road' does not include 'road related area' (see Rule 13) and 'tram tracks' includes a rail designed for a light rail vehicle to run on.

**"maintenance"** includes repair work, reconditioning, examination, testing or alteration;

**"material"** includes plant;

**"national compliance code"** means a code approved for the time being for the purposes of Australian rail safety laws by the Australian Transport Council by resolution

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made in accordance with the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport entered into in 2003 *and published in the [CW Gazette]*;

**"national guidelines"** means guidelines approved for the time being for the purposes of Australian rail safety laws by the Australian Transport Council by resolution made in accordance with the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport entered into in 2003 *and published in the [CW Gazette]*;

**"national standards"** means standards approved and published by the Australian Transport Council for the purposes of Australian rail safety laws by resolution made in accordance with the Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport entered into in 2003 *and published in the [CW Gazette]*;

**"notifiable occurrence"** means an occurrence that has, or could have, caused-

- (a) significant property damage; or
- (b) serious injury; or
- (c) death; or
- (d) is prescribed by the regulations to be a notifiable occurrence-

but does not include an occurrence that is prescribed by the regulations not to be a notifiable occurrence;

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**"occupational health and safety legislation"**  
means [*insert local definition*] the  
**Occupational Health and Safety Act 2004**  
and regulations under that Act;

**"occupier"**, in relation to a place, means the  
occupier for the time being of the place;

**"occurrence"** means an accident or incident  
associated with railway operations;

**"place"** includes public place and railway  
premises;

**"police officer"** means [an officer or member of  
the police force of Victoria];

*Draft Note : Each jurisdiction to use local definition and if  
necessary include special constable.*

**"prescribed concentration of alcohol"** means  
any concentration of alcohol present in the  
breath or blood of a person;

**"private siding"** means a siding that is managed,  
owned or controlled by a person, other than a  
person who manages the rail infrastructure  
that the siding connects with, or has access  
to, but does not include-

- (a) a marshalling yard;
- (b) a crossing loop;
- (c) a passenger terminal;
- (d) a freight terminal;
- (e) a siding of a kind that the regulations  
state is not a private siding;

**"prohibition notice"** means a notice served  
under section 435;

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**"public place"** means-

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

**"rail infrastructure"** means the facilities that are necessary to operate a railway and includes, but is not limited to-

- (a) railway tracks, associated track structures and works (such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works);
- (b) over-track structures and under-track structures (including tunnels under tracks);
- (c) service roads, signalling systems, rolling stock control systems, communications systems, telecommunications systems and data management systems;
- (d) notices and signs;
- (e) overhead electrical power supply systems;
- (f) associated buildings, workshops, depots and yards;
- (g) plant, machinery and equipment-

but does not include-

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- (h) facilities that are managed or controlled by a person other than the rail infrastructure manager, being facilities the management or control of which is not within the power of the rail infrastructure manager; or
- (i) rolling stock; or
- (j) any facility that, under the regulations, is not rail infrastructure to which this Act applies;

**"rail infrastructure manager"**, in relation to rail infrastructure of a particular railway, means the person who has effective management and control of the rail infrastructure, being the person who-

- (a) owns the rail infrastructure or has a statutory or contractual right to use it and to control or provide access to it; or
- (b) operates, or will operate, its own rolling stock on it or allows another person to do so;

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

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

**"Rail Safety Regulator"** means [*insert name of local Rail Safety Regulator*];

**"rail safety work"** – see section 112;

**"rail safety worker"** means a natural person who has carried out, is carrying out or is about to carry out, rail safety work and includes a contractor or sub-contractor or an employee of either;

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**"rail transport"** means the transport of goods or passengers by rail by means of rolling stock;

**"rail transport operator"** means a person who is a rail infrastructure manager or rolling stock operator in relation to one or more railways;

**"railway"** means a guided system, or proposed guided system, designed for the movement of rolling stock having the capability of transporting passengers or freight or both on a railway track, together with its rail infrastructure and rolling stock and includes heavy railway, light railway, monorail, inclined railway, tramway, railway within a marshalling yard or passenger or freight terminal and railway of a class prescribed by the regulations for the purposes of this definition;

**"railway operations"** means-

- (a) designing, commissioning, constructing, manufacturing, erecting, installing, operating, maintaining, repairing, modifying, decommissioning or managing rail infrastructure;
  - (b) designing, commissioning, constructing, manufacturing, maintaining, repairing, modifying or decommissioning rolling stock;
  - (c) the operation or movement, or causing the operation or movement by any means, of rolling stock on a railway (including for the purposes of construction or restoration of rail infrastructure);
  - (d) moving, or causing to be moved, any rolling stock for the purposes of operating a railway service; and
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- (e) any other activities conducted by a rail infrastructure manager or a rolling stock operator on, or in relation to, a railway;

**"railway premises"**, in relation to railway operations, means-

- (a) land (including any premises on land) on or in which is situated any item or part of an item of the rail infrastructure; or
- (b) land (including any premises on land) on or in which is situated any over track structure or part of an over track structure, or on or in which is situated any under track structure or part of an under track structure; or
- (c) land (including any premises on land) on or in which records required for, or relating to, the accreditation of an operator of a railway are kept; or
- (d) freight centres or depots; or
- (e) maintenance depots; or
- (f) office buildings or housing; or
- (g) rolling stock or other vehicles associated with the railway operations; or
- (h) workshops; or
- (i) any railway track, works or other thing that is part of anything mentioned in paragraphs (d) to (h);

**"regulations"** means regulations under this Act;

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**"responsible person"** means any person having, at a relevant time, a role or responsibilities associated with rail operations and includes-

- (a) rail infrastructure manager;
- (b) rolling stock operator;
- (c) person in charge, or apparently in charge, of a train, rolling stock or railway premises;
- (d) rail safety worker;
- (e) owner, occupier or person in charge of premises entered by a rail safety officer *under this Act*;
- (f) agent, employer, employee or sub-contractor of a person referred to in the preceding paragraphs of this definition;

**"road vehicle"** [*insert appropriate local definition eg for Victoria, has the same meaning as in the Road Safety Act 1986*];

**"rolling stock"** means a vehicle that operates on or uses a railway and includes a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, self propelled infrastructure maintenance vehicle, trolley, wagon or monorail vehicle but does not include a vehicle designed to operate both on and off a railway when the vehicle is not operating on a railway;

**"rolling stock operator"** means the person who is responsible for the management and control of the operation or movement of rolling stock on rail infrastructure for a particular railway but does not include a person who drives the rolling stock or who [*controls the network or the network signals*];

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**"safety"** means the safety of people, including rail safety workers, passengers, other users of rail transport and the general public;

**"safety management system"** means the organisation and arrangements established by a rail transport operator to ensure the safe management of its railway operations;

**"security management plan"** – see section 334;

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

**"supervisory intervention order"** means an order under section 743;

**"this jurisdiction"** means [*Victoria*];

**"train"** means a single unit of rolling stock or two or more units of rolling stock coupled together, at least one of which is a locomotive or other self-propelled unit;

**"tram"** means a vehicle that operates on or uses a tramway track;

**"Tribunal"** means [*for Victoria, VCAT*] [*local provisions*]

**110. Railways to which this Act applies**

(1) This Act applies to-

(a) any railway within, or partly within, this jurisdiction with a railway track gauge of 600 millimetres or more; and

(b) any monorail railway; and

*Draft Note : not all jurisdictions need this*

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- (c) any other system designed to transport passengers or freight or both and declared by the regulations to be a railway for the purposes of this Act—  
and to the operation of any such railway.
- (2) This Act does not apply to—
- (a) a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations;
  - (b) a slipway;
  - (c) a railway used only to guide a crane;
  - (d) an aerial cable operated system;
  - (e) a railway that is operated solely within an amusement or theme park, is required to be registered as an amusement device under occupational health and safety legislation and does not operate [*is not capable of being operated*] on or across a road within the meaning of the [**Road Safety Act 1986**] [*local variations*];
  - (f) a railway that the regulations state is not a railway to which this Act applies.

**111. The concept of ensuring safety**

- (1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety requires the person—
- (a) to eliminate risks to safety so far as is reasonably practicable; and
  - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
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- (2) To avoid doubt, for the purposes of this Act and the regulations, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety-
- (a) the likelihood of the hazard or risk concerned eventuating;
  - (b) the degree of harm that would result if the hazard or risk eventuated;
  - (c) what the person concerned knows or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
  - (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
  - (e) the cost of eliminating or reducing the risk.

**112. Rail safety work**

- (1) Subject to sub-section (2), any of the following classes of work carried out by a rail safety worker is rail safety work for the purposes of this Act-
- (a) driving, despatching or any other activity which is capable of controlling or affecting the movement of rolling stock;
  - (b) signalling, and signalling operations, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
  - (c) coupling or uncoupling stock;
  - (d) design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of-
-

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- (i) rolling stock, including checking that the rolling stock is working properly before being used; or
  - (ii) civil and or electric traction infrastructure; or
  - (iii) signalling and or telecommunications equipment;
- (e) installation of components in relation to rolling stock;
- (f) work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of the rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used;
- (g) installation or maintenance of any part of the rail infrastructure or of the telecommunications system relating to it or used in connection with it, or of the means of supplying electricity directly to that railway or to any rolling stock using it or to the telecommunications system;
- (h) receiving and relaying of communications;
- (i) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
- (j) work involving the decommissioning or disposal of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
-

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- (k) work involving the development, management or monitoring of safe working systems for railways;
  - (l) any other work that is prescribed by the regulations to be rail safety work.
- (2) The following are not rail safety work for the purposes of this Act-
- (a) any work that involves the driving of a road vehicle or rolling stock on a road or road related area within the meaning of [the *Road Safety Act 1986 - Vic*]
  - (b) any work prescribed by the regulations not to be rail safety work.

**113. Associates**

- (1) For the purposes of this Act, a person is an associate of another if-
- (a) one is a spouse, parent, brother sister or child of another; or
  - (b) they are members of the same household; or
  - (c) they are partners; or
  - (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
  - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or
  - (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
  - (g) they are related bodies corporate within the meaning of the Corporations Act 2001 of the Commonwealth; or
-

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(h) a chain of relationships can be traced between them under any one or more of the above paragraphs.

(2) For the purposes of sub-section (1), a beneficiary of a trust includes an object of a trust.

**114. Application of Acts Interpretation Act of the Commonwealth**

(1) The provisions of the Acts Interpretation Act 1901 of the Commonwealth apply to the interpretation of this Act and regulations except that-

(a) Gazette is to refer to the Government Gazette of this jurisdiction;

(b) Minister is to refer to the responsible Minister of this jurisdiction.

(2) This section does not prevent the [*Interpretation of Legislation Act 1984 -Vic*] from applying to the interpretation of this Act and the regulations to the extent that it can do so consistently with the application of the provisions of the Acts Interpretation Act 1901 of the Commonwealth.

(3) This section has effect subject to section 109.

**115. Occupational health and safety legislation**

(1) If a provision of the [*Occupational Health and Safety Act 2004*] [of this jurisdiction] or the regulations made under that Act applies to railway operations, that provision continues to apply, and must be observed, in addition to the provisions of this Act and the regulations.

Note: For example, Part 3 of the **Occupational Health and Safety Act 2004** (Victoria) imposes duties relating to safety of rail operations as does Part 5 of this Act. The provisions of this Act apply in addition to those of the OHSA and do not remove any protections, rights or obligations under the OHSA.

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- (2) If an act or commission constitutes an offence-
- (a) under this Act or the regulations; and
  - (b) under the Occupational Health and Safety legislation-
- the offender is not liable to be punished twice in respect of the offence.

*Draft Note : See cl. 709*

**116. Examples**

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

**117. Notes**

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

**118. Crown to be bound**

- (1) This Act and the regulations bind the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act *and the regulations*.

*Draft Note : CW legislation could contain the following provisions:*

- (1) It is intended that a corresponding law of a State or of the Northern Territory will bind the Crown in all its capacities.
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- (2) For that purpose, a corresponding law of a State or of the Northern Territory may bind the Crown in right of the Commonwealth.

**119. Offences**

*Draft Note : Note that offences are drafted as for Victoria.*

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**PART 2—ADMINISTRATION**

**Division 1—The Rail Safety Regulator**

**201. The Rail Safety Regulator**

*[Each jurisdiction will need either to establish the Rail Safety Regulator or define another person/body as the Rail Safety Regulator].*

**202. Functions**

- (1) The Rail Safety Regulator has the following functions—
    - (a) to administer this Act and the regulations and carry out its functions under this Act or the regulations;
    - (b) to administer, audit and review the accreditation regime under this Act;
    - (c) to audit, investigate and enforce compliance with this Act;
    - (d) to work with rail transport operators, rail safety workers, others involved in railway operations and corresponding Rail Safety Regulators to improve rail safety in this jurisdiction and nationally;
    - (e) to share information with corresponding Rail Safety Regulators on matters, including information about causal factors of rail incidents, accreditation processes, investigation methods and risk assessment methodologies;
    - (f) to collect and publish information relating to rail safety;
    - (g) to provide, or facilitate the provision of, advice, education and training in relation to rail safety;
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- (h) to approve compliance codes, standards and guidelines *that are not inconsistent with* nationally approved compliance codes, nationally approved standards and nationally approved guidelines under this Act.
- (2) The functions of the Rail Safety Regulator under this Act are in addition to any function that the Rail Safety Regulator has under any other Act or law.

**203. Information to be included in annual reports**

- (1) The Rail Safety Regulator shall in each annual report relating to a financial year include-
  - (a) information on the development of railway safety including an aggregation of all statistics reported to the Rail Safety Regulator under this Act or the regulations in respect of that year; and
  - (b) information on any important changes in relation to the regulation of railway safety; and
  - (c) information on the approval of an adopted compliance code, adopted guidelines and adopted standards; and
  - (d) the results of, and experience relating to, the regulation and monitoring of rail transport operators in this jurisdiction; and
  - (e) any other information prescribed by the regulations for the purposes of this section.
- (2) Sub-section (1) is in addition to any other requirement under any other Act or law to *make a report or publish information.*

*Draft Note : Note that the form of this section will differ according to the way in which each jurisdiction deals with annual reporting.*

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**204. Delegation**

The Rail Safety Regulator may, by instrument in writing, delegate any of the Rail Safety Regulator's functions under this Act (other than this power of delegation) or under the regulations to a rail safety officer or class of rail safety officers.

*Draft Note : CW AIA and local ILA apply to provide detail of the delegation power*

**205. Rail Safety Regulator may exercise functions of rail safety officers**

The Rail Safety Regulator may exercise any function conferred on a rail safety officer by or under this Act or the regulations or a corresponding rail safety law.

**206. Disclosure of information by the Rail Safety Regulator in certain cases**

- (1) The Rail Safety Regulator may, if the Rail Safety Regulator considers it is desirable *for the promotion of* the safe operation of a railway, disclose to the public any information that the Rail Safety Regulator collects, or that is given to the Rail Safety Regulator, under a rail safety law.
- (2) Without limiting sub-section (1), the Rail Safety Regulator may, if the Rail Safety Regulator thinks it desirable for the promotion of the safe operation of a railway, publish any information, including a report, *or part of a report*, of a rail safety inquiry or a notifiable occurrence.

*Draft Note : Depending on the nature of the report, there may be copyright or other restrictions on publication.*

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**207. Rail Safety Regulator may release certain information**

- (1) The Rail Safety Regulator may give to a corresponding Rail Safety Regulator any of the following information—
  - (a) information that the Rail Safety Regulator collects in the exercise of functions under this Act or the regulations [for law enforcement purposes or rail safety inquiries], or that is given to the Rail Safety Regulator under a rail safety law;
  - (b) information relating to any proceedings taken by the Rail Safety Regulator under the rail safety law;
  - (c) information about or contained in any records, devices, documents or other things inspected or seized under this Act by a rail safety officer.
- (2) Any records, devices or other things seized under this Act, or any information obtained under this Act, may, for the purposes of law enforcement, be given to any public authority of any jurisdiction (including any corresponding Rail Safety Regulator) considered appropriate by the Rail Safety Regulator or *the Commissioner of Police*, but only after consultation with the public authority concerned.
- (3) This section has effect subject to applicable privacy legislation.

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**Division 2—Rail Safety Officers**

**211. Appointment**

- (1) The Rail Safety Regulator, by instrument in writing, may appoint—
- (a) a specified person to be a rail safety officer;  
or
  - (b) persons of a specified class to be rail safety officers.

Note 1: A person appointed under sub-section (1) need not be an employee of the Rail Safety Regulator or of a government agency.

Note 2: A person appointed under sub-section (1) may be a police officer of this jurisdiction or a rail safety officer under a corresponding rail safety law.

- (2) The Rail Safety Regulator must not appoint a person or persons of a specified class under sub-section (1) unless the Rail Safety Regulator is satisfied the person or persons hold the appropriate qualifications, or have the appropriate experience, to exercise the powers of a rail safety officer.
- (3) An appointment may be subject to any condition imposed by the Rail Safety Regulator and specified in the instrument of appointment.
- (4) Without limiting sub-section (3), a condition imposed under that sub-section may specify—
- (a) powers under this Act or the regulations that may not be exercised by a rail safety officer appointed under the relevant instrument;
  - (b) powers under this Act or the regulations that may only be exercised by a rail safety officer appointed under the relevant instrument;

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- (c) circumstances in which, or how, a power under this Act or the regulations may be exercised by a rail officer appointed under the relevant instrument.

**212. Powers of rail safety officers**

Subject to section 211, a rail safety officer has the powers conferred on rail safety officers under this Act or the regulations.

**213. Reciprocal powers of rail safety officers**

- (1) This section has effect in relation to another jurisdiction while there is in force a corresponding rail safety law of the other jurisdiction that contains provisions corresponding to this section.
  - (2) The Minister may enter into an agreement with a Minister of the other jurisdiction under which—
    - (a) rail safety officers of this jurisdiction may, in this jurisdiction or the other jurisdiction, exercise powers conferred on rail safety officers of the other jurisdiction by or under the corresponding rail safety law of that other jurisdiction; and
    - (b) rail safety officers of that other jurisdiction may, in this jurisdiction or that other jurisdiction, exercise powers conferred on rail safety officers by or under this Act.
  - (4) Anything done or omitted to be done by a rail safety officer of this jurisdiction by reason of an agreement under sub-section (3) which provides for the matters or things contemplated by sub-section (3)(a) is taken to have been done under this Act as well as under the corresponding rail safety law of that other jurisdiction.
  - (5) The regulations may make provision for or with respect to the exercise of powers referred to in this section.
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- (6) Nothing in this section affects the appointment under section 211 of persons to be rail safety officers for the purposes of this Act.

**214. Identification cards**

- (1) The Rail Safety Regulator may—
- (a) issue a rail safety officer with an identification card; or
  - (b) designate a card issued to a rail safety officer by a corresponding Rail Safety Regulator or by a person, body or authority (whether or not of this jurisdiction) as an identification card for the purposes of this Act.
- (2) An identification card issued by the Rail Safety Regulator must—
- (a) contain a photograph of the officer, the name of the Rail Safety Regulator and either—
    - (i) the name and signature of the officer; or
    - (ii) a unique number that has been assigned to the officer by the Rail Safety Regulator; and
  - (b) identify the officer as a rail safety officer.
- (3) The Rail Safety Regulator must not designate a card issued to a rail safety officer by a corresponding Rail Safety Regulator unless the card—
- (a) contains a photograph of the officer, the name of the corresponding Rail Safety Regulator and either—
    - (i) the name and signature of the officer; or
-

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- (ii) a unique number that has been assigned to the officer by the corresponding Rail Safety Regulator; and
- (b) identifies in some way (however expressed) that officer as a rail safety officer under the corresponding rail safety law under which that officer was appointed or as having official functions under another law.

**215. Rail safety officer must not exercise powers without identification card**

A rail safety officer must not exercise a power conferred by or under this Act unless an identification card has been issued to, or designated for, the officer.

**216. Display and production of identification card**

- (1) This section applies to a rail safety officer who is exercising, or about to exercise, a power under this Act.
- (2) A rail safety officer must—
  - (a) display his or her identification card if the officer is not wearing an approved uniform or badge; or
  - (b) produce his or her identification card if requested to do so by a person in relation to whom the officer is exercising, or about to exercise, the power.
- (3) If it is not practical for a rail safety officer to produce his or her identification card on being requested to do so, the rail safety officer must produce his or her identification card as soon as practicable after the request is made.

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(4) In this section—

**"approved"**, in relation to a uniform or badge worn by a rail safety officer, means a uniform or badge approved by the Rail Safety Regulator.

**217. Return of identification cards**

A person who has ceased to be a rail safety officer must not, without reasonable excuse, refuse or fail to return to the Rail Safety Regulator, within such period as is specified by the Rail Safety Regulator in a request for return of the card, any identification card issued to the person by the Rail Safety Regulator.

Penalty:

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**PART 3 – RAIL SAFETY**

**Division 1 – General Safety Requirements**

*Draft Note : Local variations will apply so that the provisions of this Part are consistent with local occupational health and safety laws.*

**301. Rail infrastructure managers**

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

Penalty: for a natural person  
for a body corporate

- (2) Without limiting sub-section (1), a rail infrastructure manager contravenes that sub-section if the rail infrastructure manager fails to do any of the following-
- (a) develop and implement, so far as is reasonably practicable, safe systems for the carrying out of the railway operations;
  - (b) ensure the rail infrastructure is designed, constructed, commissioned, operated and maintained in a condition that ensures, so far as is reasonably practicable, the safety of railway operations;
  - (c) establish such systems and procedures for the *scheduling*, control and monitoring of railway operations that ensure, so far as is reasonably practicable, the safety of the railway operations;
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- (d) provide or maintain rail infrastructure that is, so far as reasonably practicable, safe;
  - (e) make arrangements for ensuring, so far as is reasonably practicable, safety in connection with the use, operation and maintenance of rail infrastructure;
  - (f) provide, so far as is reasonably practicable, adequate facilities for the safety and security of persons at any railway premises under the *control and* management of the rail infrastructure manager;
  - (g) provide such information to persons on railway premises (other than rail safety workers) as is necessary to enable those persons to ensure their safety.
- (3) An offence against sub-section (1) is an indictable offence.

**302. Rolling stock operators**

- (1) A rolling stock operator must, so far as is reasonably practicable, ensure the safety of the rolling stock operator's railway operations.
- Penalty: for a natural person  
for a body corporate
- (2) Without limiting sub-section (1), a rolling stock operator contravenes that sub-section if the rolling stock operator fails to do any of the following-
- (a) provide or maintain rolling stock that, so far as is reasonably practicable, is safe;
  - (b) develop and implement, so far as is reasonably practicable, safe systems for the carrying out of the railway operations;

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- (c) ensure the rolling stock is designed, constructed, commissioned, operated and maintained in a condition that ensures, so far as is reasonably practicable, the safety of railway operations;
  - (d) comply with such rules and procedures for the *scheduling*, control and monitoring that have been established by the rail infrastructure manager in relation to the use of the rail infrastructure by the rolling stock operator;
  - (e) establish and maintain equipment, procedures and systems to minimise risks to safety;
  - (f) make arrangements for ensuring, so far as is reasonably practicable, safety in connection with the use, operation and maintenance of rolling stock;
  - (g) provide, so far as is reasonably practicable, adequate facilities for the safety and security of persons at any railway premises under the control and management of the rolling stock operator;
  - (h) provide such information to persons on railway premises (other than rail safety workers) as is necessary to enable those persons to ensure their safety.
- (3) An offence against sub-section (1) is an indictable offence.

**303. Rail contractor duties**

- (1) A person (other than a rail transport operator) who is engaged directly by a rail transport operator for not less than 12 months, or for two or more periods the total of which is not less than 12 months in any 4 year period, to supply, construct, maintain or operate any rail infrastructure or
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rolling stock (in this section called "**the contractor**") must, so far as is reasonably practicable, ensure that the person's railway operations are carried out safely.

Penalty: for a natural person  
for a body corporate

- (2) A contractor who-
- (a) designs, commissions, constructs, manufactures, supplies, installs, erects, maintains, repairs or modifies any thing; and
  - (b) knows, or ought reasonably to know, that the thing is, or is to be, used as rail infrastructure or rolling stock—
- must—
- (c) ensure, so far as is reasonably practicable, that the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired, modified; and
  - (d) carry out, or arrange the carrying out, of such testing and examination as may be necessary for compliance with this section; and
  - (e) take such action as is necessary to ensure that there will be available in connection with the use of the thing adequate information about—
    - (i) the use for which the thing was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired, modified; and
    - (ii) the results of any testing or examination referred to in paragraph (d); and
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- (iii) any conditions necessary to ensure the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired, modified.

Penalty: In the case of a natural person

In the case of a body corporate

- (3) Without limiting sub-section (2), a contractor contravenes that sub-section if the contractor fails to do any of the following—
    - (a) in the case of a contractor that operates rail infrastructure, provide or maintain rail infrastructure that is, so far as is reasonably practicable, safe;
    - (b) in the case of a contractor that operates rolling stock, provide or maintain rolling stock that is, so far as is reasonably practicable, safe;
    - (c) provide or maintain systems of rail safety work that are, so far as is reasonably practicable, safe;
    - (d) supply rail infrastructure or rolling stock in accordance with the safety management system of the rail operator that has engaged the contractor to supply rail infrastructure or rolling stock to them;
    - (e) provide, so far as reasonably practicable, such—
      - (i) information, instruction, training or supervision to rail safety workers as is necessary to enable those workers to perform their rail safety work in a way that is safe; and
-

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- (ii) information to persons on railway premises (other than rail safety workers) as is necessary to enable those persons to ensure their safety.
- (4) For the purposes of sub-section (2), if the person who supplies the thing—
- (a) carries on the business of financing the acquisition of the thing by customers; and
  - (b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
  - (c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer—
- the reference in sub-section (1) to the person who supplies that thing is instead taken to be a reference to the third person.
- (5) An offence against sub-section (1) or (2) is an indictable offence.

**Division 2 - Accreditation**

**304. Purpose of accreditation**

The purpose of accreditation of a rail transport operator is to attest that the rail transport operator has demonstrated to the Rail Safety Regulator the competency and capacity to carry out safely particular railway operations and that the Rail Safety Regulator has granted accreditation to that rail transport operator for those operations.

**305. Rail transport operators to be accredited**

- (1) A rail infrastructure manager must not-
- (a) prepare, or cause to be prepared, a site for a railway; or
  - (b) construct, maintain or restore, or cause to be constructed, maintained or restored, a railway track or associated works (such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works) for a railway; or
  - (c) grant access rights to a railway; or
  - (d) operate or move, or cause the operation or movement of, rolling stock on a railway-
- unless the rail infrastructure manager-
- (e) is accredited under this Part; or
  - (f) is exempt under this Part in relation to that activity.
- (2) A rolling stock operator must not-
- (a) use, or permit to be used, any rolling stock on a railway; or
  - (b) move, or cause the movement of, any rolling stock on a railway-
- unless the rolling stock operator-
- (c) is accredited under this Part in relation to that rolling stock; or

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- (d) is exempt under this Part from compliance with this section in relation to that activity.

Penalty: In the case of a natural person

In the case of a corporation

*Draft Note : If a body corporate and related bodies corporate are involved, only one of the bodies need be accredited (related body corporate meaning related by virtue of section 50 of the Corporations Act 2001).*

*Draft Note : An exemption may be given under cl 325 eg relating to private sidings*

- (3) An accreditation may be granted-
- (a) for a limited period;
  - (b) only for the carrying on of railway operations for the part or parts of a railway designated in the certificate of accreditation, or for a part or parts having the scope or characteristics so designated;
  - (c) only for the railway operations of the railway designated in the accreditation or for railway operation having the scope or characteristics so designated;
  - (d) only for any service or aspect, or part of a service or aspect, of railway operations designated in the application;
  - (e) for specified railway operations to permit-
    - (i) site preparation;
    - (ii) construction of rail infrastructure;
    - (iii) restoration or repair work;
    - (iv) testing of rail track or other infrastructure; or
-

- (v) other activities considered appropriate by the Rail Safety Regulator and designated in the certificate of accreditation.

**306. Application for accreditation**

- (1) A rail transport operator may apply to the Rail Safety Regulator for accreditation in respect of rail infrastructure or rolling stock involved in the railway operations or for both rail infrastructure and rolling stock if they are involved in the same railway operations.
  - (2) An application must be made in the manner and form approved by the Rail Safety Regulator and—
    - (a) must specify the scope and nature of the railway operations in respect of which accreditation is sought; and
    - (b) must include a plan for a safety management system complying with Division 4;
    - (c) must contain the prescribed information; and
    - (d) must be accompanied by the [prescribed] application fee [*local variations*].
  - (3) The Rail Safety Regulator may require a rail transport operator who has applied for accreditation—
    - (a) to supply further information specified by the Rail Safety Regulator;
    - (b) to verify by statutory declaration any information supplied to the Rail Safety Regulator.
  - (4) The application, and any further information supplied by the applicant under sub-section (3), must be signed—
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- (a) if the applicant is a body corporate-
  - (i) being a company within the meaning of the Corporations Act 2001, in accordance with section 127 of that Act;
  - (ii) in any other case, by two members of the committee of management of the body corporate;
- (b) if the applicant is an unincorporated association or body, by each member of the committee of management of the association or body;
- (c) if the applicant is a partnership, by each partner;
- (d) if the applicant is an individual, by the individual-

and each signatory must declare that he or she is not a person who, under Part 2D.6 of the Corporations Act, is disqualified from managing corporations and has not, within the preceding 5 years, been convicted of a criminal offence punishable by imprisonment for 12 months or more..

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

An applicant for accreditation must demonstrate, to the satisfaction of the Rail Safety Regulator –

- (a) that the applicant has the competency and capacity to carry out safely the railway operations for which the applicant is seeking accreditation, including, but not limited to the competency and capacity-
    - (i) to identify and assess safety risks associated with the railway operations;
- and

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- (ii) to eliminate or control or reduce those risks as far as is reasonably practicable; and
- (b) that the applicant's plan for a safety management system demonstrates that the system will comply with this Act and the regulations; and
- (c) that the applicant has the competence and capacity to implement the proposed safety management system; and
- (d) that the applicant has the financial capacity or has public risk insurance arrangements to meet reasonable potential accident liabilities arising from the railway operations; and
- (e) that the applicant has met the consultation requirements of this Act in relation to the applicant's plan for safety management systems; and
- (f) such other matters as are prescribed by the regulations or set out in any guidelines approved by the Rail Safety Regulator for the purposes of this section.

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

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

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

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- (2) A direction under this section may require each rail transport operator that is the subject of the direction to provide to another rail transport operator that is also the subject of the direction information concerning any circumstances in relation to the carrying out of railway operations by that rail transport operator that could constitute a hazard in relation to the carrying out of rail operations by the other rail transport operator.
- (3) A rail transport operator that is given a direction under sub-section (1) must comply with the direction.

Penalty:

- (4) A rail transport operator that has co-ordinated the preparation of an application in accordance with this section must include in the application reference to information given by the rail transport operator to another rail transport operator, and information given to the rail transport operator by another rail transport operator, in accordance with a direction under this section.

Penalty:

**309. Applicants with railway operations in this jurisdiction and another jurisdiction**

- (1) If an applicant intends to seek accreditation in this jurisdiction and in one or more other jurisdictions, the applicant must include a statement to that effect in the application for accreditation under this Act and state whether or not an application for accreditation has been lodged in the other jurisdiction or jurisdictions.
- (2) If the Rail Safety Regulator receives an application for accreditation that includes a statement under sub-section (1), the Rail Safety Regulator must, as soon as possible and before deciding whether or not to grant the application,

consult with the relevant corresponding Rail Safety Regulator or Regulators in relation to the application.

- (3) The Rail Safety Regulator, in complying with sub-section (2), must take into account any national guidelines applicable to this section.

**310. Determination of application**

- (1) Subject to this section, the Rail Safety Regulator must give to the applicant, *within the relevant period*, notice in writing in the prescribed form -
- (a) if the Rail Safety Regulator is satisfied as to the matters referred to in section 307 and, if applicable, section 308, granting accreditation to the applicant with or without any restrictions or conditions; or
  - (b) if the Rail Safety Regulator is not so satisfied, refusing the application.

*Draft Note : The time limit for dealing with applications and a provision deeming an application to have been refused if not granted within that time gives rise to rights of review.*

- (2) A notice under sub-section (1) granting an application must-
- (a) specify the prescribed details of the applicant; and
  - (b) specify the scope and nature of the railway operations, and the manner in which they are to be carried out, in respect of which the accreditation is granted; and
  - (c) specify any conditions and restrictions imposed by the Rail Safety Regulator on the grant of accreditation; and
  - (d) specify any other prescribed information.
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- (3) A condition or restriction under sub-section (1) is void to the extent that it is inconsistent with this Act or any other law.

*Draft Note : A reference to any other law is necessarily a reference to a law of this jurisdiction*

- (4) A notice under sub-section (1) refusing an application must include the reasons for the decision to refuse to grant the application and must be accompanied by an notice containing information about review of the decision or of a condition or restriction imposed by the Rail Safety Regulator on the grant of accreditation.
- (5) In this section, "**relevant period**", in relation to an application, means-
- (a) 6 months after the application was received by the Rail Safety Regulator; or
  - (b) if the Rail Safety Regulator requested further information, 6 months, or such other period as is agreed between the Rail Safety Regulator and the applicant after receiving the last information so requested; or
  - (c) if the Rail Safety Regulator, by notice in writing given to the applicant before the expiry of the relevant 6 months, specifies another period, that period-
- whichever is the longer.

**311. Prescribed conditions or restrictions**

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

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**312. Penalty for breach of condition or restriction**

An accredited person must not fail to comply with a condition or restriction of accreditation-

- (a) imposed by the Rail Safety Regulator; or
- (b) applying because of this Part.

Penalty:

**313. Annual fees**

- (1) An accredited person must pay the annual accreditation fee [prescribed by the regulations] [*local variations to manner of fixing fees*].
- (2) The Rail Safety Regulator may accept payment of an annual accreditation fee due and payable by an accredited person in accordance with an agreement made with the person, whether for payment by instalments or otherwise.
- (3) If an accredited person fails to pay an annual fee in accordance with sub-section (1) or (2), the Rail Safety Regulator may, by notice given to the accredited person, suspend the person's accreditation until the fee is paid.

**314. (Minimum and) late payment fees**

- (1) The regulations may prescribe *minimum* fees and impose additional fees for late payment of fees after the due date for payment.
- (2) A fee for late payment of fees may be, but is not required to be, calculated on a daily basis.

**315. Waiver of fees**

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

**316. Surrender of accreditation**

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

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**317. Revocation of accreditation**

- (1) Subject to sub-section (2), the Rail Safety Regulator may revoke an accreditation of a person if the Rail Safety Regulator considers that the person-
  - (a) is no longer able to demonstrate to the satisfaction of the Rail Safety Regulator the matters referred to in section 307 or satisfy the conditions of the accreditation; or
  - (b) is not managing the rail infrastructure or is not operating rolling stock in relation to any rail infrastructure to which the accreditation relates and has not done so for at least the preceding 12 months.
- (2) Without limiting sub-section (1), the Rail Safety Regulator may revoke the accreditation of a person who contravenes this Act or the regulations.
- (3) Before revoking an accreditation of a person, the Rail Safety Regulator-
  - (a) must notify the person in writing-
    - (i) that the Rail Safety Regulator is considering revoking the accreditation for the reasons specified in the notification; and
    - (ii) that the person may, within 28 days or such longer period as is specified in the notification, make representations to the Rail Safety Regulator showing cause why the accreditation should not be revoked; and
  - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.

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- (4) The Rail Safety Regulator, after considering any representations made under sub-section (3)(a)(ii), may, by notice in writing given to the person-
  - (a) revoke the accreditation; or
  - (b) impose specified conditions or restrictions on the accreditation or take such other action as the Rail Safety Regulator deems appropriate.
- (5) If the Rail Safety Regulator revokes an accreditation of a person, the Rail Safety Regulator must include in the notice of revocation under sub-section (4)(a) the reasons for the revocation and a statement of the right to internal review and to mediation or review.

**318. Suspension of accreditation**

- (1) Subject to sub-section (2), the Rail Safety Regulator may suspend an accreditation of a person if the Rail Safety Regulator considers that the person-
    - (a) is no longer able to demonstrate to the satisfaction of the Rail Safety Regulator the matters referred to in section 307 or satisfy the conditions of the accreditation; or
    - (b) is not managing the rail infrastructure or is not operating rolling stock in relation to any rail infrastructure to which the accreditation relates and has not done so for at least the preceding 12 months.
  - (2) Before suspending an accreditation of a person, the Rail Safety Regulator-
    - (a) must notify the person in writing-
      - (i) that the Rail Safety Regulator is considering suspending the accreditation for the reasons specified in the notification; and
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- (ii) that the person may, within 28 days or such longer period as is specified in the notification, make representations to the Rail Safety Regulator showing cause why the accreditation should not be suspended; and
  - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (3) The Rail Safety Regulator, after considering any representations made under sub-section (2)(a)(ii), may, by notice in writing given to the person suspend the accreditation for a specified period or until *specified conditions* are complied with or until the Rail Safety Regulator cancels the suspension, whichever first occurs.

**319. Immediate suspension of accreditation**

- (1) If the Rail Safety Regulator considers that there would be an immediate and serious risk to safety unless an accreditation is suspended immediately, the Rail Safety Regulator may, without complying with section 317, immediately suspend the accreditation of an accredited person *wholly or partially*.
  - (2) Written notice of a suspension under this section is to be given to the accredited person and is to specify-
    - (a) whether the accreditation is wholly or partly suspended and, if partially suspended, is to specify the extent of the suspension; and
    - (b) any conditions relating to the suspension; and
    - (c) the period of suspension, being a period not exceeding 6 weeks.
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- (3) The Rail Safety Regulator may, by notice in writing given to an accredited person, reduce or extend the period of suspension specified in a notice under sub-section (2).
- (4) The Rail Safety Regulator may withdraw a suspension by notice in writing given to the person.

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

A rail transport operator must ensure that-

- (a) the current notice of accreditation or exemption under Division 3; and
- (b) any other document prescribed by the regulations for the purposes of this section-

are available for inspection at the rail transport operator's principal place of business *during ordinary business hours*.

**321. When application for variation of accreditation is required**

- (1) An accredited person must apply to the Rail Safety Regulator for a variation of the accreditation-
  - (a) if the accredited person proposes to make a change to-
    - (i) the scope or nature of, or manner of carrying out, the railway operations; or
    - (ii) the accredited person's safety management system for the railway operations-

being a change of a kind prescribed by the regulations or a change that might reasonably be expected to require an amendment to the details specified in the notice of accreditation; or

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- (b) if directed to do so by the Rail Safety Regulator under section 323.
- (2) An accredited person must not make any change of a kind referred to in sub-section (1)(a) unless the accredited person has applied for, and been granted, a variation of the accreditation.  
Penalty:
- (3) The adopted guidelines may make provisions for or with respect to the identification of changes that require applications for variation of an accreditation.

**322. Application for variation**

- (1) An application for variation of an accreditation must be made in the manner and form approved by the Rail Safety Regulator and—
    - (a) must specify the details of the variation to the accreditation or safety management system being sought; and
    - (b) must contain the prescribed information; and
    - (c) must be accompanied by the [prescribed] application fee [*local variations*].
  - (2) The Rail Safety Regulator may require a rail transport operator who has applied for a variation—
    - (a) to supply further information specified by the Rail Safety Regulator;
    - (b) to verify by statutory declaration any information supplied to the Rail Safety Regulator.
  - (3) The application, and any further information supplied by the applicant under sub-section (2), must be signed in accordance with, and each signatory must make the declaration referred to, section 306(4).
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- (4) If the Rail Safety Regulator is satisfied as to the matters referred to in section 307 so far as they are applicable to the subject matter of an application for variation of the accreditation, the Rail Safety Regulator must give the applicant for a variation notice in writing approving the variation.
- (5) If the Rail Safety Regulator is not satisfied as to the matters referred to in section 307 so far as they are applicable to the subject matter of an application for variation of the accreditation, the Rail Safety Regulator must give the applicant for a variation notice in writing refusing the application.
- (6) The Rail Safety Regulator must include in a notice under sub-section (5) refusing to grant a variation a statement of the right to internal review and to mediation or review.

**323. Rail Safety Regulator may direct variation, or resubmission of application for, accreditation**

- (1) The Rail Safety Regulator may direct an accredited person by notice in writing-
  - (a) to apply to the Rail Safety Regulator for a variation to the accreditation; or
  - (b) to resubmit a plan for a safety management system-within a specified period, being not less than 28 days after the giving of the direction.
- (2) A direction under sub-section (1) must state the reasons why the Rail Safety Regulator considers it is necessary for the accredited person to apply for a variation or to resubmit a plan for a safety management system.
- (3) The accredited person must comply with a direction under sub-section (1).

Penalty:

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- (4) If the Rail Safety Regulator is satisfied as to the matters referred to in section 307 so far as they are applicable to the subject matter of an application for variation of the accreditation in accordance with a direction under this section, the Rail Safety Regulator must give the applicant for a variation notice in writing approving the variation.
- (5) If the Rail Safety Regulator is not satisfied as to the matters referred to in section 307 so far as they are applicable to the subject matter of an application for variation of the accreditation in accordance with a direction under this section, the Rail Safety Regulator must give the applicant for a variation notice in writing refusing the application.
- (6) The Rail Safety Regulator must include in a notice under sub-section (5) refusing to grant a variation a statement of the right to internal review and to mediation or review.

**324. Variation of conditions and restrictions**

- (1) An accredited person may apply to the Rail Safety Regulator for a variation of any condition or restriction to which the accreditation imposed by the Rail Safety Regulator is subject.
  - (2) An application for variation of an accreditation shall be made as if it were an application for accreditation and section 306 applies accordingly.
  - (3) The Rail Safety Regulator must consider the application and may, by notice given to the accredited person and, so far as practicable, in accordance with the provisions of this Division applicable to a grant of accreditation, grant or refuse to grant the variation.
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- (4) The Rail Safety Regulator must include in a notice under sub-section (3) refusing to grant a variation a statement of the right to internal review and to mediation or review.

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

- (1) The Rail Safety Regulator may, subject to this section, at any time and in the discretion of the Rail Safety Regulator, vary or revoke a condition or restriction imposed by the Rail Safety Regulator to which an accreditation is subject or impose a new condition or restriction.
- (2) The Rail Safety Regulator must give not less than 10 business days notice to the accredited person before *taking action* under sub-section (1) unless the Rail Safety Regulator determines that in the interests of public safety action must be taken forthwith.
- (3) The Rail Safety Regulator must give written notice to the accredited person of any action taken under sub-section (1), must provide written reasons for the action and must include in the notice advice about the accredited person's right to seek internal review or mediation or review.

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

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

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

**Division 3 – Exemption**

**327. Application for exemption**

- (1) Despite Division 2, a rail transport operator conducting railway operations (including railway operations within a private siding) may apply to the Rail Safety Regulator for an exemption from the requirement to be accredited in relation to the railway operations.
- (2) An application under sub-section (1) must be accompanied by-
  - (a) such interface co-ordination plans for or in respect of the railway operations that comply with section 333 and the prescribed requirements; and
  - (b) such other information as the Rail Safety Regulator reasonably requires to enable the application to be considered; and
  - (c) the prescribed fee.

**328. Rail Safety Regulator may grant exemptions**

- (1) The Rail Safety Regulator, on his or her own motion or on application by a person, may, by written notice, exempt a person from compliance with all or any one or more of the requirements of [this Part except Division 1 and 4] (including the requirement to be accredited) for the period specified in the notice.
- (2) An exemption may be subject to any conditions and restrictions that appear to the Rail Safety Regulator to be necessary in order to eliminate or control risks as far as is reasonably practicable.
- (3) An exemption may be granted only if the person demonstrates, to the satisfaction of the Rail Safety Regulator, that the person has the competency and capacity and the systems with respect to the carrying out of railway operations having regard to-
  - (a) the scope and nature of the railway operations; and
  - (b) the extent of the track layout and other rail infrastructure; and
  - (c) the adequacy of any interface co-ordination plans in relation to the operations; and
  - (d) such other matters as the Rail Safety Regulator considers necessary to take into account in the particular circumstances.
- (4) If an application for an exemption is made to the Rail Safety Regulator and the Rail Safety Regulator refuses to grant an exemption under this section, the Rail Safety Regulator must give the applicant a written notice containing information about mediation or review of the decision.

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- (5) The Rail Safety Regulator may, by notice in writing given to a person holding an exemption under this section, withdraw the exemption with effect from the expiration of the period of 28 days after the giving of the notice or such longer period as is stated in the notice.
- (6) A notice under sub-section (5) must state the reasons why the Rail Safety Regulator considers that it is necessary to withdraw the exemption.
- (7) A person is not guilty of an offence of contravening a requirement of [this Part] in respect of which the person holds a current notice of exemption under this section.
- (8) Subject to the terms of the exemption, this Act continues to apply to a person to whom an exemption under this section has been granted.

**Division 4 – Safety Management**

**329. Safety management system**

- (1) A rail transport operator must have a safety management system for identifying, managing and controlling the risks of carrying out the rail transport operator's railway operations that-
    - (a) complies this Act and the regulations with -
      - (i) the prescribed relevant requirements and the prescribed risk management principles, methods and procedures; and
      - (ii) the relevant requirements and risk management principles, methods and procedures set out in an adopted standards, adopted guidelines or adopted compliance code; and
    - (b) includes an emergency plan in accordance with section 335; and
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- (c) is sufficient to ensure the *railway operations* achieve any relevant prescribed *operational safety targets*.
- (2) A safety management system must-
- (a) identify any safety risks that have arisen or may arise from the carrying out of railway operations by or on behalf of the accredited person;
  - (b) specify the controls (including audits, expertise, resources and staff) that are to be used by the accredited person to manage the risks and to monitor safety in relation to those railway operations;
  - (c) subject to this Act, be in a form approved by the Rail Safety Regulator.
- (3) A rail transport operator, before establishing a safety management system in relation to railway operations or reviewing or varying any such safety management system, must consult with-
- (a) persons who work in the railway operations and any unions representing them; and
  - (b) workplace safety representatives; and
  - (c) any rail transport operator with whom there is an interface co-ordination plan; and
  - (d) the public, as appropriate.
- (4) If the safety management system of a rail transport operator and the safety management system of another rail transport operator with whom there is an *interface co-ordination plan*, when taken as one system, comply with this Act, the first-mentioned safety management system is also taken so to comply.
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- (5) A safety management system-
  - (a) must identify, and be certified as *accurate* by, each person responsible for preparing any part of the safety management system; and
  - (b) must identify the person responsible for implementing the system.

**330. Compliance with safety management systems**

- (1) A rail transport operator must implement a safety management system that complies with this Act and the regulations and must ensure that the railway operations in question are carried out in compliance with the safety management system for those operations.
- (2) A rail transport operator must not, without reasonable excuse, fail to comply with the rail transport operator's safety management system for the railway transport operator's operations.
- (3) It is a reasonable excuse if the rail transport operator complied with the safety management system to the extent practicable while complying with a condition of accreditation or if the rail transport operator demonstrates that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening.
- (4) Sub-section (3) does not limit the excuses that may be reasonable excuses.

**331. Audit of safety management system**

- (1) A rail transport operator must undertake an annual audit and review of the safety management system.
  - (2) A rail transport operator must also undertake an audit and review of the safety management system if-
    - (a) there is reason to suspect that the system no longer complies with this Act; or
    - (c) changes to the system are required as a result of an audit under section 347; or
    - (d) changes in relation to which an application for variation of the system is required under this Part.
  - (3) A rail transport operator must record-
    - (a) the risk assessment process undertaken, the methods of any calculation used and any assumptions made; and
    - (b) any findings of the risk assessment, including the measures in place and any further measures the rail transport operator intends to take to ensure safe operation of the railway in relation to the rail transport operator's railway operations.
  - (4) An audit and review for the purposes of this section must-
    - (a) assess the effectiveness of the safety management system; and
    - (b) take into account any improvement notices and prohibition notices served on the rail transport operator since the last review; and
    - (c) take into account any recommendations or issues arising from an audit under section 347; and
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- (d) take into account any notifiable occurrences and any inquiries into them; and
  - (e) consider whether any changes to the system are required.
- (5) The rail transport operator must make and retain a record of-
- (a) the date of the review; and
  - (b) how the system was reviewed; and
  - (c) any improvement notices or prohibition notices or recommendations served on the rail transport operator in relation to the rail infrastructure or rolling stock in question whether arising from audits or inquiries into notifiable occurrences or otherwise and how they have been considered; and
  - (d) any significant changes proposed to the safety management system.
- (6) A rail transport operator must revise the safety management system if, as the result of an audit, a deficiency in the effectiveness of adopted control measures is identified or changes are required.
- (7) An occurrence that may affect the safe operation, construction, maintenance, repair or alteration of the railway operations for which the person is accredited is to be taken to be evidence of deficiency in the rail transport operator's safety management system that gives rise to the requirement to undertake an audit and any requirement under sub-section (6) and revise the accredited person's safety management system.

**332. Annual safety performance reports**

- (1) A rail transport operator must send to the Rail Safety Regulator within 3 months after the end of each financial year or within such longer period as the Rail Safety Regulator may approve, either
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generally or in a particular case, an annual safety performance report relating to that financial year that-

- (a) is prepared in a form approved by the Rail Safety Regulator; and
  - (b) complies with the requirements (if any) prescribed by the regulations or contained in any guidelines issued by the Rail Safety Regulator for the purposes of this section; and
  - (c) contains-
    - (i) a description and assessment of the safety performance of the rail transport operator's railway operations, including a report of any inspection or audit undertaken under section 347; and
    - (ii) comments on any deficiencies in, and any irregularities in, the railway operations that may be relevant to the safety of the railway; and
    - (iii) a description of any safety initiatives proposed to be undertaken in relation to the railway operations in the next 12 months; and
    - (iv) any other information or performance indicators prescribed by the regulations for the purpose of this section or required by the Rail Safety Regulator.
- (2) A rail transport operator must not fail to submit a report in accordance with this section.

Penalty:

**333. Interface co-ordination plans**

- (1) A rail transport operator must have and implement interface co-ordination plans that comply with the
-

prescribed requirements for or in respect of the operator's railway operations.

- (2) A rail transport operator must prepare and keep a register of the current interface co-ordination plans.

Penalty:

**334. Security management plan**

A rail transport operator –

- (a) must prepare a security management plan that-
- (i) incorporates measures to protect persons from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and
  - (ii) complies with this Act and the regulations; and
- (b) must ensure that the security management plan is implemented for the rail transport operator's railway operations; and
- (c) must implement the security management plan without delay if a security occurrence occurs.

Penalty:

**335. Emergency plan**

- (1) A rail transport operator must prepare an emergency plan for the railway operations that the rail transport operator carries out.
- (2) The emergency plan so prepared by a rail transport operator is to form part of the rail transport operator's safety management system under section 329.

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- (3) The emergency plan must—
- (a) address and include the matters that are prescribed; and
  - (b) be prepared in—
    - (i) conjunction with *emergency services* [*local variations*] and any other person who is prescribed; and
    - (ii) accordance with the regulations; and
  - (c) be kept and maintained in accordance with the regulations; and
  - (d) be provided to the emergency services and any other person who is prescribed; and
  - (e) be tested in accordance with the regulations.

Penalty:

**Division 5 - Rail Safety Workers**

**336. Health and fitness of rail safety workers**

A rail transport operator must ensure that a rail safety worker who is to perform rail safety work—

- (a) is of sufficient good health and fitness to carry out safely the rail safety work in question; and
- (b) meets the provisions of the adopted standards that are applicable to the health and safety of a rail safety worker carrying out work of that kind.

**337. Competency and training of rail safety workers**

- (1) A rail transport operator must ensure that each rail safety worker who is to perform rail safety work in relation to the rail transport operator's railway operations is competent and appropriately trained to undertake the rail safety work in question.
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- (2) A rail transport operator must assess the competence and training of each rail safety worker who is to perform rail safety work by reference to—
  - (a) any *nationally recognised unit of competency*; and
  - (b) any *national certificate* issued under the *recognised qualifications framework*.
- (3) The Rail Safety Regulator must ensure that a rail safety worker who is to perform rail safety work meets the provisions of the adopted guidelines and the adopted standards that are applicable for or with respect to the competency and training of rail safety workers.
- (4) Nothing in sub-section (1) or (2) prevents a rail transport operator from requiring a rail safety worker to undertake further training before performing rail safety work.

*Draft Note : Purpose is to enable network specific training.*

**338. Identification for rail safety workers**

- (1) A rail transport operator must ensure that each rail safety worker who is to perform rail safety work in relation to the rail transport operator's railway operations carries identification in a form that allows the Rail Safety Regulator readily to determine by reference to that identification the competence and training of the rail safety worker for the rail safety work in question and the period for which the identification is to remain valid.

Penalty:

- (2) A rail safety worker who is carrying out railway safety work must, when requested by a rail safety officer to do so, produce the identification to the rail safety officer.

Penalty:

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**339. Alcohol and drug program**

- (1) A rail transport operator must prepare and implement a drug and alcohol program for its rail safety workers who are to carry out rail safety work that complies with this Act, the regulations and the provisions of any adopted guidelines relating to drug and alcohol programs.

Penalty:

- (2) The drug and alcohol program is to include any matters required to be included by this Act or the regulations or adopted guidelines applicable to this section.
- (3) Without limiting sub-section (1), the adopted guidelines are to include provision for or with respect to the following-
- (a) protocols for fair procedures; and
  - (b) education and assistance of rail safety workers.

**340. Presence of alcohol or drugs**

- (1) A rail transport operator must take reasonable steps to ensure that its rail safety workers do not carry out rail safety work, and are not on duty, while more than the prescribed concentration of alcohol is present in their blood or breath or while impaired by a drug.

Penalty:

- (2) The Rail Safety Regulator may at any time arrange with a rail transport operator for the random testing of any person on duty for the purpose of carrying out rail safety work for the presence of alcohol or any other drug.

**341. Fatigue management program**

- (1) A rail transport operator must prepare and implement a program for the management of fatigue, safe hours of work and periods between work for its rail safety workers who are to carry out rail safety work that complies with this Act, the regulations and the provisions of any adopted guidelines applicable to fatigue or hours of work of rail safety workers.

Penalty:

- (2) The program for the management of fatigue, safe hours of work and periods between work is to include any matters required to be included by the regulations or the adopted guidelines.

**342. Work conditions**

- (1) A rail transport operator must provide conditions of work that comply with, or are more favourable to a rail safety worker than, requirements prescribed by the regulations for the purposes of this section.

**Division 6 – Provision of Information about Safety**

**343. Rail transport operators to provide information relating to safety**

- (1) A rail transport operator must provide to the Rail Safety Regulator information concerning measures taken by the rail transport operator to promote rail safety or concerning other matters relating to rail safety or the person's accreditation that the Rail Safety Regulator reasonably requires, including matters relating to the financial capacity or insurance arrangements of the rail transport operator.

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- (2) A rail transport operator must submit a safety report to the Rail Safety Regulator at such times as the Rail Safety Regulator specifies by written notice given to the person.
- (3) The information or report must be provided in the form and manner approved by the Rail Safety Regulator.

**Division 7 – Investigating and Reporting by Rail Transport Operators**

**344. Notification of occurrences**

- (1) A rail transport operator must report to the Rail Safety Regulator or such other authority specified by the Rail Safety Regulator within the time, and in the form and manner, prescribed by the regulations, all occurrences of a kind *prescribed by the regulations as notifiable occurrences* that happen on, or in relation to, their railway premises or railway operations.

Penalty:

- (2) Two or more rail transport operators may make a joint report with respect to a notifiable occurrence affecting them.
  - (3) In addition to the matters specified in sub-section (1), the Rail Safety Regulator may, by notice in writing, require a rail transport operator to report to the Rail Safety Regulator or another authority specified by the Rail Safety Regulator, any other occurrence or type of occurrence which endangers or could endanger the safe *construction, maintenance or operation* of any railway operations.
  - (4) The Rail Safety Regulator may require information in a report under this section to be verified by statutory declaration.
-

**345. Investigation and reporting on occurrences**

- (1) The Rail Safety Regulator may, by written notice to a rail transport operator, require the rail transport operator to investigate and report to the Rail Safety Regulator notifiable occurrences, or any other occurrences that have affected or that may affect the safe operation, construction, maintenance, repair or alteration of the railway operations carried out by the rail transport operator.
- (2) The level of investigation shall be determined by the severity and potential consequences of the occurrence as well as other similar occurrences and its focus should be to determine the underlying cause, rather than to apportion blame.
- (3) The rail transport operator must ensure that the investigation complies with the requirements for such investigations and reports that are prescribed by the regulations.

**Division 8 – Audit and Review by Rail Safety Regulator**

**346. Audit program for inspecting activities of accredited person**

For each year, the Rail Safety Regulator must prepare a program ("**audit program**") for inspecting the activities of accredited persons during the year.

- (2) Without limiting sub-section (1), an audit program may focus on the following-
    - (a) particular rail infrastructure managers or rolling stock operators;
    - (b) particular criteria relating to rail infrastructure managers or rolling stock operators;
    - (c) a particular aspect of rail safety.
-

**347. Audit of rail transport operators**

- (1) For the purposes of auditing rail transport operators, the Rail Safety Regulator must cause inspections to be carried out to ensure that the rail transport operator is complying with the terms of the rail transport operator's accreditation or exemption under Division 3.
  - (2) The Rail Safety Regulator must establish an audit program for each year.
  - (3) The Rail Safety Regulator must, each year, inspect each rail transport operator under the audit program for the year.
  - (4) The Rail Safety Regulator may, at any time, inspect a rail transport operator if the Rail Safety Regulator is satisfied that-
    - (a) an aspect of safety needs to be considered in relation to the rail transport operator or rail transport operators generally; or
    - (b) the rail transport operator has not, or is not, complying with a rail safety law.
  - (5) The Rail Safety Regulator must give the rail transport operator notice in writing of an audit under this section.
  - (6) The rail transport operator must satisfy the Rail Safety Regulator that the requirements of the rail safety laws are met.
  - (7) For the purposes of this section, the Rail Safety Regulator may cause the following to be inspected-
    - (a) the railway track, other infrastructure and rolling stock relating to the railway operations of the rail transport operator;
    - (b) the carrying out of railway operations by the rail transport operator;
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- (c) competency and training of rail safety workers in accordance with section 337;
  - (d) subject to and in accordance with the regulations, records of prescribed categories relating to rail safety workers who carry out rail safety work in relation to the rail transport operator's railway operations, whether held by the rail transport operator or by a rail contractor or other person on behalf of the rail transport operator;
  - (e) the arrangements for the security of members of the public using railways or in or on railway infrastructure;
  - (f) any other thing the Rail Safety Regulator considers to be relevant to the safe carrying out of railway operations by the rail transport operator.
- (8) For the purposes of an inspection under this section, a rail transport operator, rail contractor or other person must give the Rail Safety Regulator access to the records of prescribed categories relating to rail safety workers.

Penalty:

- (9) The regulations may establish procedures for the conduct of audits and inspections under this section, including procedures to ensure the confidentiality of records.
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**PART 4-ENFORCEMENT AND OTHER POWERS**

**Division 1—Entry to Places by Rail Safety Officers**

**401. Power to enter places**

- (1) A rail safety officer may enter a place if the rail safety officer reasonably believes that—
  - (a) a rail safety law has been or is being contravened; or
  - (b) there is an immediate risk to safety.
- (2) Subject to section 403, a rail safety officer may enter a place if—
  - (a) the place is a public place and the entry is made when the place is open to the public; or
  - (b) the entry to the place is authorised by a warrant under section 404; or
  - (c) the place is railway premises and the entry is made when the place is—
    - (i) open for carrying on activities by reason of which the place is railway premises or a place associated with railway operations; or
    - (ii) otherwise open for entry; or
    - (iii) not open, or required to be open, as mentioned in sub-paragraphs (i) to (iii) but the entry is urgently required to investigate the circumstances of a notifiable occurrence at any time during which railway operations are being carried out or are usually carried out.

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- (3) A rail safety officer who enters railway premises under sub-section (2)(c) must not unnecessarily impede any activities being conducted at the premises.

**402. Limitation on entry powers—places used for residential purposes**

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

- (a) with the consent of the occupier of the place; or
- (b) under the authority conferred by a warrant under section 404.

**403. Notice of entry**

Before a rail safety officer enters railway premises under section 401, the rail safety officer must give the occupier of the railway premises reasonable notice of the intention to enter unless—

- (a) the giving of the notice would defeat the purpose for which it is intended to enter the premises;
  - (b) entry to the premises is made with the consent of the occupier of the premises;
  - (c) entry is required in circumstances where the rail safety officer reasonably believes there is an immediate risk to safety because of the carrying out of railway operations at the premises; or
  - (d) entry is authorised by a warrant under section 404.
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**404. Warrants**

If a rail safety officer believes on reasonable grounds there is, or may be within the next 72 hours, a document or thing at a particular place that may provide evidence of the commission of an offence against a rail safety law, the rail safety officer may apply to a [magistrate] for a warrant authorising the officer to exercise a power to enter and search the place.

*Draft Note : Local provisions will be required here for the issue of warrants (including telephone warrants) and associated matters. These provisions may also need to deal with evidence uncovered that does not relate to the rail safety law offence or offences covered by the warrant, but which may constitute evidence of another rail safety law offence (or any other kind of offence).*

**Division 2—General Enforcement Powers**

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

- (1) A rail safety officer who enters a place under this Part, may do any of the following—
  - (a) search and inspect any part of the place and any rail infrastructure, rolling stock or road vehicle or any other thing at the place;
  - (b) enter or open, using reasonable force, rail infrastructure, rolling stock, a road vehicle or other thing at the place to examine the structure, rolling stock, road vehicle or other thing;
  - (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers;

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- (d) test any part of rail infrastructure or rolling stock (for the purpose of identifying quality or faults);
- (e) subject to this Part, drive or operate rolling stock;
- (f) inspect, film, photograph, videotape or otherwise record an image of—
  - (i) a structure, rolling stock, road vehicle or other thing at the place;
  - (ii) a document or record at the place or in rolling stock or vehicle at the place;

*Draft Note : "Record" includes information stored or recorded by means of a computer – see AIA s. 25*

- (g) take, or authorise another person to take, for analysis a thing, or a sample of or from the thing, at the place;
  - (h) seize anything that the rail safety officer suspects on reasonable grounds is connected with an offence against this Act or the regulations or to secure any such thing against interference;
  - (i) mark, tag or otherwise identify rolling stock, a road vehicle or other thing at the place;
  - (j) take an extract from, or copy, a document at the place or in rolling stock or a road vehicle at the place;
  - (k) take a necessary step to allow a power under paragraphs (a) to (j) to be exercised.
- (2) A film, photograph, videotape or image taken under sub-section (1)(f) of rail infrastructure, or of any part of rail infrastructure, is not inadmissible as evidence by reason only of the fact that it includes the likeness of one or more persons if the capturing of that likeness does not appear to have

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been the main reason for the taking of the film, photograph, videotape or image.

**406. Use of assistants and equipment**

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

**407. Use of electronic equipment**

- (1) Without limiting section 405, if—
    - (a) a thing found in or on rolling stock or a road vehicle, or at a place, is, or includes, a disk, tape or other device for the storage of information; and
    - (b) the equipment in or on the rolling stock or road vehicle, or at the place, may be used with the disk, tape or other storage device—

the rail safety officer, or a person assisting the officer, may operate the equipment to access the information.
  - (2) A rail safety officer, or a person assisting an officer, must not operate or seize equipment for the purpose mentioned in this section unless the officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.
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**408. Use of equipment to examine or process things**

- (1) Without limiting section 406, a rail safety officer exercising a power under this Part may bring to, onto, or into, rolling stock, a road vehicle or a place any equipment reasonably necessary for the examination or processing of things found at, on or in the rolling stock, road vehicle or place in order to determine whether they are things that may be seized.
- (3) The rail safety officer, or a person assisting the officer, may operate equipment already in, on or at the rolling stock, road vehicle, or place to carry out the examination or processing of a thing found in, on or at the rolling stock, road vehicle, or railway premises in order to determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that—
  - (a) the equipment is suitable for the examination or the processing; and
  - (b) the examination or processing can be carried out without damage to the equipment or the thing.

**409. Securing a site**

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

Penalty:

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- (3) Sub-section (2) does not apply if the person enters the site, or remains at the site-
  - (a) to ensure the safety of persons; or
  - (b) to remove deceased persons or animals from the site; or
  - (c) to move a road vehicle, or the wreckage of a road vehicle, to a safe place; or
  - (d) to protect the environment from significant damage or pollution.
- (4) The Rail Safety Regulator or a rail safety officer must not unreasonably withhold a permission referred to in sub-section (2).

**Division 3—Powers to Support Seizure**

**410. Directions relating to seizure**

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

**Example**

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

- (4) A person given a direction under sub-section (1) or (3) must comply with that direction unless the person has a reasonable excuse.

Penalty:

- (5) Without limiting what may otherwise be a reasonable excuse under sub-section (4), it is a reasonable excuse for a person in control of a thing not to comply with a direction under sub-section (1) of (3) if in the all the circumstances, the direction was unreasonable.
- (6) In this section—

**"in control"**, in relation to a thing, means having, or reasonably appearing to a rail safety officer as having, authority to exercise control over the thing.

**411. Rail safety officer may direct a thing's return**

- (1) If a rail safety officer has directed a person to take a thing to a specified place within a specified time under section 410(1), a rail safety officer may direct the person to return the thing to the place from which it was taken.
- (2) A person given a direction under sub-section (1) must comply with that direction unless the person has a reasonable excuse.

Penalty:

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**412. Receipt for seized things**

- (1) After a rail safety officer seizes a thing under this Part, the officer must give a receipt for it to the person from whom the thing was seized.
- (2) However, if for any reason it is not practicable to comply with sub-section (1), the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally the thing seized and its condition.
- (4) This section does not apply if it would be impracticable or unreasonable to expect the officer to account for the thing, given its condition, nature and value.

**413. Access to seized thing**

- (1) Until a seized thing is forfeited or returned, a rail safety officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Sub-section (1) does not apply if it is impracticable or it would be unreasonable to allow the inspection or copying.

**414. Embargo notices**

- (1) This section applies where—
    - (a) a rail safety officer is authorised to seize any record, device or other thing under this Part; and
    - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
  - (2) A rail safety officer may issue an embargo notice under this section.
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- (3) An embargo notice is a notice forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of a rail safety officer or the Rail Safety Regulator.
- (4) The embargo notice must—
- (a) be in the form, or contain the particulars, required by the regulations; and
  - (b) list the activities that it forbids; and
  - (c) set out a copy of sub-section (9).
- (5) On issuing an embargo notice, a rail safety officer must—
- (a) cause a copy of the notice to be served on the owner of the record, device or other thing; or
  - (b) if that person cannot be located after all reasonable steps have been taken to do so, affix a copy of the notice to the record, device or other thing in a prominent position.
- (6) A person must not knowingly do anything that is forbidden by an embargo notice.
- Penalty:
- (7) A person ("**the first mentioned person**") must not instruct or request another person to do anything that the first mentioned person knows is forbidden by an embargo notice.
- Penalty:
- (8) It is a defence to a prosecution for an offence against sub-section (6) to establish that the person charged—
- (a) moved the record, device or other thing, or part of it, for the purpose of protecting or preserving it; and
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- (b) notified the rail safety officer who issued the embargo notice of the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.
- (9) A person on whom an embargo notice has been served must take reasonable steps to prevent another person from doing anything forbidden by the embargo notice.  
Penalty:
- (10) Despite anything to the contrary in any other Act or at law, a sale, lease or transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section is void.

**Division 4—Forfeiture**

**415. Return of seized things**

- (1) As soon as possible after a rail safety officer seizes any thing (including a document) under this Part, the rail safety officer must return the thing to the owner unless—
    - (a) the rail safety officer considers it necessary to retain the thing because it may afford evidence in proceedings, that have been or may be commenced, for an offence against this Act or the regulations; or
    - (b) the thing is forfeited to the Crown under section 416; or
    - (c) the rail safety officer is otherwise authorised (by law or an order of a court) to retain, destroy or dispose of the thing.
  - (2) The thing may be returned either unconditionally or on such terms and conditions as the rail safety officer considers appropriate to eliminate or reduce any risks to safety.
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- (3) If the rail safety officer imposes terms or conditions on the return of a thing, the owner must comply with each of those terms and conditions.

Penalty:

**416. Forfeiture**

- (1) A sample or thing taken for analysis or a thing seized under this Part, is forfeited to the Crown if the rail safety officer who took, or arranged the taking of, the sample or thing or who seized the thing—
- (a) after making reasonable efforts, cannot return it to its owner; or
  - (b) after making reasonable inquiries, cannot find its owner; or
  - (c) considers it necessary to retain the sample thing to prevent the commission of an offence against this Act or the regulations.
- (2) For purposes of sub-section (1), the officer is not required to—
- (a) make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or
  - (b) make inquiries if it would be unreasonable to make inquiries to find the owner.
- (3) In deciding whether—
- (a) whether it is reasonable to make efforts or inquiries; and
  - (b) if efforts or inquiries are made—what efforts or inquiries, including the period over which they are made, are reasonable—
- regard must be had to the sample's or thing's condition, nature and value.
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(4) In this section—

**"owner"**, in relation to a sample or a thing taken for analysis, means the person in charge of the thing or place from which the sample or thing was taken.

**417. Forfeiture on conviction**

*Draft Note : Local Acts relating to confiscation will apply.*

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

- (1) On forfeiture of a sample or thing to the Crown, the sample or thing becomes the Crown's property and may be dealt with by the Rail Safety Regulator in any way the Rail Safety Regulator considers is appropriate.
- (2) Without limiting sub-section (1), the Rail Safety Regulator may destroy or dispose of the sample or thing.

*Draft Note : Local variations if the Rail Safety Regulator does not represent the Crown in a particular jurisdiction.*

- (3) If a thing is forfeited to the Crown under section 416(1)(c), the rail safety officer must notify (in writing) the owner accordingly, setting out how the owner may seek review of the decision to forfeit the thing, unless the rail safety officer cannot find the owner despite making reasonable enquiries.

**Division 5—Directions**

**419. Rail safety officers may direct certain persons to give assistance**

- (1) A rail safety officer may direct a responsible person to give the rail safety officer reasonable assistance to enable the officer to exercise a power under this Part.
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**Example**

When inspecting rolling stock, a rail safety officer may ask the driver of the rolling stock to accompany the officer or to explain how a piece of equipment is used as part of the accredited person's approved safety management system for the railway or for the operation of rolling stock on the railway.

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

Penalty:

- (4) In this section—

**"reasonable assistance"** includes—

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

**420. Power to direct rolling stock or road vehicle to be stopped to enable entry or for it to be opened**

- (1) If rolling stock or a road vehicle that a rail safety officer may enter or open under this Part is moving or about to move, the officer may—
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- (a) direct the relevant rail transport operator or the driver of the rolling stock or road vehicle to stop the rolling stock or vehicle at, not move the rolling stock or vehicle from, or move the rolling stock or vehicle to, a stated place; or
  - (b) direct or signal the person in control of the rolling stock or road vehicle to stop the rolling stock or vehicle at, or not move the rolling stock or vehicle from, a stated place.
- (2) Before giving a direction or signal under sub-section (1)(b) to a person in control of the rolling stock or road vehicle, the rail safety officer must—
- (a) consult with the train controller of the rolling stock about whether it is safe to stop the rolling stock at, or not move the rolling stock from, the place taking into account other rolling stock; and
  - (b) disrupt the operation of rolling stock on the railway only to the extent that is reasonably necessary.
- (3) A rail transport operator or driver given a direction under sub-section (1)(a) must comply with that direction unless the operator or driver has a reasonable excuse.

Penalty:

- (4) A person in control of rolling stock, or a road vehicle, given a direction or signal under sub-section (1)(b) must comply with that direction or signal unless the person has a reasonable excuse.

Penalty:

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- (5) Without limiting what may be a reasonable excuse under sub-section (4), it is a reasonable excuse for a person in control of rolling stock or a road vehicle not to comply with a direction or signal given under sub-section (1)(b) if—
- (a) to comply immediately with the request or signal would—
    - (i) endanger the person or someone else; or
    - (ii) cause damage to rail infrastructure, rolling stock or a road vehicle; and
  - (b) the person complies with the direction or signal as soon as is practicable to comply with the direction or signal.

- (6) In this section—

**"train controller"**, in relation to rolling stock, means a person who is in control of train control signalling and communication for the section of railway track on which the rolling stock is moving or stationary.

**421. Power to stop rolling stock or vehicle that may be entered or opened**

- (1) If a rail safety officer enters or opens rolling stock or a road vehicle under this Part, the officer may, after consulting the relevant rail transport operator, direct the person in control of the rolling stock or vehicle to—
- (a) bring the rolling stock or vehicle to a stated reasonable place; and
  - (b) remain in control of the rolling stock or the vehicle for a reasonable period—

to allow the officer to exercise a power under this Part or Part 3.

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

Penalty:

**422. Power to direct name and address be given**

- (1) A rail safety officer may direct a person to state the person's name and residential or business address if the officer—
    - (a) finds the person committing an offence against a rail safety law; or
    - (b) finds the person in circumstances that lead, or has information that leads, the officer to reasonably to suspect the person has committed an offence against a rail safety law; or
    - (c) finds the person at railway premises and—
      - (i) reasonably believes the person is carrying out railway operations for a rail transport operator; and
      - (ii) reasonably considers that it is necessary for the purposes of this Act or the regulations to know the person's name and residential or business address.
  - (2) When giving a direction under sub-section (1), the officer must warn the person it is an offence to fail to state the person's name or address unless the person has a reasonable excuse.
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- (3) The officer may also direct the person to give evidence of the correctness of the stated name or required address if the officer reasonably suspects the stated name or address is false.

**423. Failure to give name or address**

A person given a direction under section 422(1) or (3) must comply with the direction, unless the person has a reasonable excuse.

Penalty:

**424. Directions for information about rail safety law offences believed to have been committed**

- (1) This section applies if a rail safety officer reasonably believes—
- (a) an offence has been committed against a rail safety law; and
  - (b) a person may be able to give information about the alleged commission of that offence.
- (2) A rail safety officer may direct a person to give information within the person's knowledge about the alleged commission of the offence—
- (a) within a specified period of time; and
  - (b) in a specified way.
- (3) The specified period of time must be a reasonable period of time and the specified way must be a reasonable way.
- (4) When giving a direction under sub-section (2), the rail safety officer must warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse.

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**425. Failure to give information about rail safety law offence believed to have been committed**

A person given a direction under section 424 must comply with the direction, unless the person has a reasonable excuse.

Penalty: .

**426. Power to direct production of documents etc.**

- (1) A rail safety officer may direct a responsible person to make available for inspection by the officer, or produce to the officer for inspection, at a specified time and place—
  - (a) a document that is required to be kept by the responsible person under a rail safety law; or
  - (b) a document that is prepared by the responsible person under a rail safety law for the management of rail infrastructure or the operation of rolling stock that the officer reasonably believes is necessary for the officer to consider to understand or verify a document that is required to be kept under the rail safety law.

**Example**

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

- (2) When giving a direction under subsection (1), the officer must warn the person it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.
  - (3) The officer may keep the document to copy it but must return the document to the responsible person after copying it.
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**427. Failure to produce document**

A responsible person given a direction to make available, or produce, for inspection a document under section 426 must comply with the direction, unless the person has a reasonable excuse.

Penalty:

**Division 6—Improvement Notices**

**428. Improvement notices**

- (1) A rail safety officer may serve an improvement notice on a rail transport operator if the officer believes on reasonable grounds that the operator—
  - (a) is contravening a provision of a rail safety law; or
  - (b) has contravened a provision of a rail safety law and it is likely that the contravention will continue or be repeated; or
  - (c) is or has carried out railway operations that threaten safety.

*Draft Note : The inclusion of paragraph (c) may be a matter for local variation.*

- (2) The rail safety officer may serve on a rail transport operator an improvement notice requiring the operator, within the period specified in the notice—
  - (a) to undertake remedial rail safety work or do any other thing to remedy the contravention or likely contravention, or the matters or activities occasioning the contravention or likely contravention; or
  - (b) to carry out railway operations so that safety is not threatened or likely to be threatened.

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- (3) The period within which a rail transport operator is required by the improvement notice to comply with the notice must be at least 7 days after service of the notice.
- (4) An improvement notice must—
- (a) state the reasons for the service of the notice; and
  - (b) in the case of an improvement notice served in respect of a contravention or likely contravention of a rail safety law, specify the provision of the rail safety law in respect of which that belief is held; and
  - (c) in the case of an improvement notice served in respect of railway operations that threaten safety, specify the relevant operations in respect of which that belief is held; and
  - (d) include information about obtaining a review of the decision to serve the notice; and
  - (e) set out the penalty for contravening the notice; and
  - (f) include a statement of the effect of section 432 (proceedings for offences not affected by improvement notices).
  - (g) state that it is served under this section.
- (5) An improvement notice served on a rail transport operator on a ground stated in sub-section (1)(a) or (b)—
- (a) may specify a method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention are to be remedied; and
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- (b) may offer the person on whom the notice has been served a choice of ways by which an alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention may be remedied;
  - (c) may specify that a person provide the Rail Safety Regulator with a program of rail safety work that the person proposes to carry out to remedy the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention.
- (6) An improvement notice served on a rail transport operator on the ground stated in sub-section (1)(c)—
- (a) may specify a method by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and
  - (b) may offer the operator on whom the notice has been served a choice of railway operations that may be carried out so that safety is not threatened or likely to be threatened;
  - (c) may specify that the operator provide the Rail Safety Regulator with a program of railway operations that the operator proposes to carry out to remedy the threat or likely threat to the safety.
- (7) A program referred to in sub-section (5)(c) or (6)(c) may include a timetable for the completion of the program of rail safety work or railway operations (as the case requires).
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**429. Contravention of improvement notice**

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

Penalty:

- (2) In proceedings against a rail transport operator for an offence of engaging in conduct that results in a contravention of a requirement of an improvement notice served on a ground stated in section 428(1)(a) or (b), it is a defence if the operator charged establishes that—
- (a) the alleged contravention or likely contravention; or
  - (b) the matters or activities occasioning the alleged contravention or likely contravention—

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

- (3) In proceedings for an offence against a rail transport operator of engaging in conduct that results in a contravention of a requirement of an improvement notice on the ground stated in section 428(1)(c), it is a defence if the operator charged establishes that the threat or likely threat to the safety was removed within the period specified in the notice, though by a method different from that specified in the improvement notice.

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

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

**431. Clearance certificates for improvement notices**

- (1) A rail safety officer may issue a clearance certificate to the effect that all or any specified requirements of an improvement notice have been complied with.
- (2) A requirement of an improvement notice ceases to be operative on receipt, by the rail transport operator on whom the notice was served, of a clearance certificate to the effect that—
  - (a) all requirements of the notice have been complied with; or

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- (b) that the specific requirement has been complied with.

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

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

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

- (1) If a rail transport operator, fails to comply with an improvement notice served on the operator that requires the operator to carry out rail safety work to remedy—
- (a) the alleged contravention or likely contravention; or
  - (b) the matters or activities occasioning the alleged contravention or likely contravention—

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

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

**434. Application to Tribunal for stay of operation of improvement notices**

- (1) A rail transport operator who applies to the Tribunal for a review of a decision to serve an improvement notice may apply to the Tribunal for a stay of operation of the improvement notice.

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- (2) A stay may be granted for a period considered appropriate by the Tribunal but not so as to extend past the time when notice of the result of the review is given to the applicant by the Rail Safety Regulator.
- (3) A stay may be granted on such conditions as the Tribunal considers appropriate and may be amended or revoked by the Tribunal.

**Division 7—Prohibition Notices**

**435. Prohibition notice**

- (1) This section applies if an activity—
    - (a) is occurring in relation to railway operations or railway premises that involves or will involve an immediate risk to safety; or
    - (b) may occur in relation to railway operations or railway premises that, if it occurs, will involve an immediate risk to safety; or
    - (c) may occur at, on, or in the immediate vicinity of, rail infrastructure or rolling stock that, if it occurs, will involve an immediate risk to the safety of railway operations.
  - (2) If a rail safety officer believes on reasonable grounds that an activity referred to in sub-section (1) is occurring or may occur, the rail safety officer may serve on a person who has or appears to have control over the activity a prohibition notice prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until rail safety officer has certified in writing that the matters that give or will give rise to the risk have been remedied.
  - (3) A prohibition notice has effect upon being served or, if the notice specifies a later date, on that later date.
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- (4) A prohibition notice must—
- (a) state the basis for the rail safety officer's belief on which the service of the notice is based; and
  - (b) specify the activity which the rail safety officer believes involves or will involve the risk and the matters which give or will give rise to the risk; and
  - (c) if the rail safety officer believes that the activity involves a contravention or likely contravention of a provision of a rail safety law, specify that provision and state the basis for that belief; and
  - (d) set out the penalty for contravening the notice; and
  - (e) include information about obtaining a review of the decision to serve the notice; and
  - (f) include a statement of the effect of section 438 (proceedings for offences not affected by prohibition notices).
  - (g) state that it is served under this section.
- (5) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in sub-section (4)(c).
- (6) A direction may—
- (a) require that measures be taken in accordance with an adopted compliance code or adopted standards; or
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- (b) offer the person on whom the notice has been served a choice of ways to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in sub-section (4)(c).
- (7) A prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following—
  - (a) a place, or part of a place, at which the activity is not to be carried out;
  - (b) any thing that is not to be used in connection with the activity;
  - (c) any procedure that is not to be followed in connection with the activity.

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

- (1) A prohibition notice served by a rail safety officer—
  - (a) may be withdrawn by notice served on the person affected by the notice;
  - (b) may be amended by any rail safety officer.
- (3) An amendment of a prohibition notice is effected by service on the person affected of a notice stating the terms of the amendment.
- (4) An amendment of a prohibition notice is ineffective if it purports to deal with a contravention of a different provision of a rail safety law from that dealt with in the prohibition notice as first served.

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- (5) A notice of an amendment of a prohibition notice must—
- (a) state the reasons for the amendment; and
  - (b) include information about obtaining a review of the decision to amend the notice; and
  - (c) state that it is served under this section.

**437. Contravention of prohibition notice**

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

Penalty:

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

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

**Division 8—Miscellaneous**

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

- (1) A rail safety officer may, on the same occasion, give directions under one or more provisions in this Part.
  - (2) Without limiting sub-section (1), a rail safety officer may, in the course of exercising powers under a provision in this Part give—
    - (a) further directions under the provision; or
    - (b) directions under one or more other provisions of this Part—or both.
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**440. Closing railway crossings**

- (1) An authorised person may temporarily close or regulate a railway crossing, bridge or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to the safety.
- (2) If an authorised person decides to close or regulate a railway crossing bridge or other structure the authorised person must, as soon as practicable after its closure or regulation, notify the person or authority responsible for the railway crossing bridge or other structure of its closure or regulation, unless the Rail Safety Regulator has determined that notification is unnecessary.

- (3) In this section—

**"authorised person"** means—

- (a) a person who holds a specific authority from the Rail Safety Regulator for the purposes of this section; or
- (b) a senior manager within the staff of a rail transport operator who holds a specific authority issued by the rail transport operator in accordance with relevant guidelines issued by the Rail Safety Regulator.

**"railway crossing"** means a level crossing, bridge or another structure used to cross over or under a railway.

**441. Restoring rail infrastructure and rolling stock etc. to original condition after action taken**

If—

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

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

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

**442. Giving evidence to other Rail Safety Regulators**

Any records, devices or other things seized under this Part, or any information obtained under this Act, may, for the purposes of law enforcement, be given to a corresponding Rail Safety Regulator.

**443. Use of force**

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

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

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

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**445. Self incrimination in relation to directions**

A person is not excused from complying with a direction under this Part—

- (a) to give their name and residential or business address; or
- (b) to produce a record, or a device or other thing that contains or may contain a record; or
- (c) to give or provide information; or
- (d) to give or provide assistance—

on the ground that compliance with the direction may result in information being provided that might incriminate the person.

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Part 5—Inquiries into Rail Accidents and Incidents

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**PART 5—INQUIRIES INTO RAIL ACCIDENTS AND  
INCIDENTS**

**501.**

*Draft Note : Local variations pending approval by ATC of  
national consistent provisions*

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**PART 6—REVIEW OF DECISIONS**

**601. Application of ombudsman legislation to Rail Safety Regulator and rail safety officers**

The [**Ombudsman Act 1973**] *local provision* applies to the Rail Safety Regulator as if—

- (a) the Rail Safety Regulator were a public statutory authority within the meaning of that Act; and
- (b) rail safety officers exercising powers under this Act were employees of the Rail Safety Regulator.

*Draft Note : This provision reflects the Victorian jurisdictional position. It also assumes that the Victorian Rail Safety Regulator will not already fall within the scope of the **Ombudsman Act 1973**.*

*Draft Note : Each jurisdiction will need to draft their own provision that is consistent with that jurisdiction's drafting practice to confer jurisdiction on their Ombudsman.*

**602. Mediation**

- (1) A person —
    - (a) whose application for accreditation has been refused, or who considers that his or her application for accreditation has not been decided within a reasonable period;
    - (b) who is an accredited person and is aggrieved by a decision of the Rail Safety Regulator with respect to conditions or restrictions imposed with respect to the accreditation, or a variation or proposed variation of such conditions or restrictions; or
    - (c) who is, or was, an accredited person and is aggrieved by a decision of the Rail Safety Regulator -
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Part 6—Review of Decisions

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may—

- (d) apply for the matter to be dealt with by mediation in accordance with the scheme prescribed; or
  - [(e) apply to the Tribunal for a review of the matter].
- (2) An application under sub-section (1)(d) in respect of a decision is to be made within one month after notice of the relevant decision has been given.
  - (3) A person who is dissatisfied with the outcome of mediation proceedings under sub-section (1)(d) may, subject to the regulations, apply to the Tribunal for a review of the outcome of mediation proceedings.
  - (4) Subject to sub-section (5), the operation of a decision continues pending the outcome or determination of conciliation or mediation proceedings, [or the outcome of a review].
  - (5) The Rail Safety Regulator [or the court or the Tribunal] may make an interim order suspending the operation of a decision.

**603. Application and proceedings**

- (1) An applicant for a matter to be dealt with by mediation is to —
  - (a) make the application in writing to the Rail Safety Regulator; and
  - (b) in the application, give information about the matter and the grounds on which the application is made.
- (2) The Rail Safety Regulator, after consultation with the applicant for mediation, is to appoint a suitable person to act as a mediator.

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- (3) For the purposes of mediation proceedings —
- (a) the parties are to attend before the mediator at a time and place determined by the mediator; and
  - (b) the mediator must hear the parties and seek to make relevant determinations and recommendations about what would be an acceptable outcome in the matter; and
  - (c) the mediator is not bound by the rules of evidence; and
  - (d) the mediator may request written submissions from either party and must give the other party an opportunity to comment on those submissions; and
  - (e) the mediator may set deadlines for further submissions and comments by the parties; and
  - (f) the mediator may carry out an inspection of any matter to which the claim relates; and
  - (g) the mediator may adjourn any proceedings from time to time; and
  - (h) the mediator may at any time interview the parties separately or together; and
  - (i) the mediator may at any time bring the proceedings to an end if the mediator considers that the proceedings will not result in a resolution of the matter between the parties.
- (4) A mediator may inform himself or herself on a matter in any way as the mediator thinks fit.
- (5) Evidence of anything said or done in an attempt to resolve a matter by mediation under this Act must not be disclosed in any subsequent proceedings.
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**604. Determination of mediator**

- (1) In determining an application for mediation, the mediator must -
    - (a) take account of and give effect to, the provisions of this Act and the regulations; and
    - (b) take account of and give effect to, any relevant adopted guidelines, adopted standards and adopted compliance code; and
    - (c) take account of relevant documentation and information that has been duly made by the claimant in support of the claim and any responses to the claim or reasons given by the Rail Safety Regulator; and
    - (d) where appropriate, take account of the results of any inspection carried out by the mediator of any matter to which the application relates.
  - (2) The mediator's determination must be in writing and must include the reasons for the determination.
  - (3) A mediator may correct-
    - (a) a clerical mistake;
    - (b) an error arising from an accidental slip or omission;
    - (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to;
    - (d) a defect of form-in a determination made by him or her.
  - (4) A correction under sub-section (3) may be made on the mediator's own initiative or on the application of the applicant.
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- (5) A determination of a mediator is final when the right of appeal or review expires or, if the determination is the subject of review or appeal *if and when the determination is upheld*.
- (6) When a determination is final the parties to the mediation are bound by it.
- (7) Costs and expenses associated with the appointment and work of a mediator under this Act will be shared equally between the parties unless otherwise determined by the *Minister*.

**605. Reviewable decisions**

- (1) The following table sets out-
  - (a) decisions made under this Act that are reviewable in accordance with this Part ("**reviewable decisions**"); and
  - (b) who is eligible to apply for review of a reviewable decision (the "**eligible person**" in relation to the reviewable decision).
- (2) To avoid doubt, sections 4 and 5 of the **Victorian Civil and Administrative Tribunal Act 1998** [*local provisions*] apply for the purposes of this Act.

Note: Under section 4 of that Act, a person makes a decision if the person refuses to make a decision or an instrument, imposes a condition or restriction or does or refuses to do any other act or thing. Section 5 of that Act sets out when a person's interests are affected by a decision.

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<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
1.	Section 310(1)	(1)A person whose application for accreditation is refused etc
2.	Section 310(5)	<i>limitations on accred</i>

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<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
3.	Section 317 or 318	<i>revocation, suspension etc</i>
4.	Section 321	<i>variations</i>
5.	Section 324	<i>conditions etc</i>
6.	Section 327 or 328	<i>exemptions etc</i>
7.	Section 428	<i>improvement notices</i>
8.	Section 430	<i>amendment of improvement notices</i>
9.	Section 435	<i>prohibition notices</i>

*Draft Note : Table to be completed*

**606. Internal review**

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the Rail Safety Regulator, may apply to the Rail Safety Regulator for review of the decision within—
  - (a) 28 days after the day on which the decision first came to the eligible person's notice; or
  - (b) such longer period as the Rail Safety Regulator allows.
- (2) The application must be in the form approved (in writing) by the Rail Safety Regulator.
- (3) If an application is made to the Rail Safety Regulator in accordance with this section, the Rail Safety Regulator must make a decision—
  - (a) to affirm or vary the reviewable decision; or
  - (b) to set aside the reviewable decision and substitute another decision that the Rail Safety Regulator considers appropriate.

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- (4) The Rail Safety Regulator must give a written notice to the applicant setting out—
- (a) the Rail Safety Regulator's decision under sub-section (3) and the reasons for the decision; and
  - (b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based—
- and must do so within 14 days after the application is made or, if the reviewable decision was made under section [428] or [435], within 7 days after the application is made.
- (5) If the Rail Safety Regulator has not notified an applicant of a decision in accordance with sub-section (4), the Rail Safety Regulator is taken to have made a decision to affirm the reviewable decision.
- (6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Rail Safety Regulator, on the Rail Safety Regulator's own initiative or on the application of the applicant for review, stays the operation of the decision (not being a prohibition notice) pending the determination of the review.
- (7) The Rail Safety Regulator must make a decision on an application for a stay within 24 hours after the making of the application.
- (8) If the Rail Safety Regulator has not made a decision in accordance with sub-section (7), the Rail Safety Regulator is taken to have made a decision to grant a stay.
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- (9) The Rail Safety Regulator may attach any conditions to a stay of the operation of a reviewable decision that the Rail Safety Regulator considers appropriate.

**607. Review by the Tribunal**

- (1) A person may apply to the Tribunal for review of—
- (a) a reviewable decision made by the Rail Safety Regulator; or
  - (b) a decision made, or taken to have been made, by the Rail Safety Regulator under section 606 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision)—

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

- (2) The application must be made—
- (a) if the decision is to forfeit a thing (including a document) seized under Part 4, within 28 days after the day on which the decision first came to the applicant's notice; or
  - (b) in the case of any other decision, within 14 days after the day on which the decision first came to the applicant's notice; or
  - (c) if the Rail Safety Regulator is required by the **Victorian Civil and Administrative Tribunal Act 1998** [*local provisions*] to give the applicant a statement of reasons, within 14 days after the day on which the applicant is given the statement—

whichever period ends last.

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Part 7—General Liability and Evidentiary Provisions

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**PART 7—GENERAL LIABILITY AND EVIDENTIARY PROVISIONS**

**Division 1 – General**

**701. Proceedings for offences**

Proceedings for an indictable offence under this Act or the regulations *may be dealt with summarily*.

*Draft Note : Local provisions to be used in relation to summary/indictable offences*

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

- (1) This section applies to offences against rail safety laws, other than-
    - (a) offences prescribed by the regulations for the purposes of this section; and
    - (b) offences in respect of which proceedings may only be commenced within a period of less than 2 years after their alleged commission.
  - (2) Despite anything to the contrary in any other Act, proceedings for an offence against a rail safety law to which this section applies may be commenced within-
    - (a) the period of 2 years after the commission of the alleged offence; or
    - (b) a further period of one year commencing on the day on which the Rail Safety Regulator, a rail safety officer or a police officer first obtained evidence of the commission of the alleged offence considered reasonably sufficient by the Rail Safety Regulator or officer to warrant commencement proceedings.
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- (3) For the purposes of sub-section (2), a certificate purporting to have been issued by the Rail Safety Regulator, a rail safety officer or a police officer as to the date when the Rail Safety Regulator or officer first obtained evidence considered reasonably sufficient by the Rail Safety Regulator or officer to warrant commencing proceedings is admissible in any proceedings and is evidence of the matters stated.

**703. Authority to take proceedings**

- (1) Subject to this section, any legal proceedings for an offence against, or to recover any charge, fee or money due under this Act or the regulations may be taken only by the Rail Safety Regulator or by a person authorised by the Rail Safety Regulator for the purpose, either generally or in any particular case.
- (2) Proceedings for an offence against this Act are not to be instituted in the Supreme Court in its summary jurisdiction without the written consent of the Rail Safety Regulator or of an officer of the Rail Safety Regulator authorised by the Rail Safety Regulator for the purposes of this section.
- (3) Proceedings against the Crown or a statutory body representing the Crown for an offence against this Act or the regulations are not to be instituted without the written consent of the Minister.
- (4) In any proceedings referred to in this section, the production of an authority or consent purporting to be signed by the Rail Safety Regulator or the Minister is to be evidence of the authority or consent without proof of the signature of the Rail Safety Regulator or the Minister.

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

**704. Vicarious responsibility**

- (1) If, in any proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show-
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, employee or agent had the relevant state of mind.
- (2) For the purposes of a prosecution for an offence against a rail safety law, conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.
- (3) If, in proceedings for an offence against a rail safety law, it is necessary to establish the state of mind of a person other than the body corporate ("**the employer**") in relation to particular conduct, it is sufficient to show-
- (a) that the conduct was engaged in by an employee or agent of the employer within the scope of his or her actual or apparent authority; and
  - (b) that the employee or agent had the relevant state of mind.
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- (4) For the purposes of a prosecution for an offence against a rail safety law, conduct engaged in on behalf of a person other than a body corporate ("**the employer**") by an employee or agent of the employer within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer, unless the employer establishes that the employer took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) In this section-
- "director"** of a body corporate includes a constituent member of a body corporate incorporated for a public purpose by a law of any jurisdiction;
- "state of mind"** of a person includes-
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**705. Records and evidence from records**

- (1) The Rail Safety Regulator must keep records of the grant, refusal, variation, suspension, surrender and revocation of accreditations, and of any conditions or restrictions of accreditation, under this Act.
- (2) A certificate purporting to be signed by the Rail Safety Regulator and certifying that-
- (a) on a date specified in the certificate; or
  - (b) during any period so specified-
- the particulars set out in the certificate as to any matter required to be recorded under this section did not or did not appear on or from the records is,

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for the purposes of any legal proceedings, prima facie evidence of what it certifies.

- (3) Such a certificate is admissible in any proceedings-
  - (a) without proof of the signature of the Rail Safety Regulator; and
  - (b) without production of any record or document on which the certificate is founded.

**706. Certificate evidence**

A statement in a certificate purporting to be issued by the Rail Safety Regulator, a corresponding Rail Safety Regulator, a rail safety officer or a police officer as to any matter that appears in, or can be calculated from, records kept or *accessed* is *admissible in any proceedings and is [prima facie] evidence of the matter.*

**707. Proof of appointments and signatures unnecessary**

- (1) For the purposes of this Act *and the regulations*, it is not necessary to prove the appointment of an office holder.
- (2) For the purposes of this Act, a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.
- (3) In this section, "**office holder**" means-
  - (a) the Rail Safety Regulator;
  - (b) a corresponding Rail Safety Regulator;
  - (c) the Chief Commissioner of Police;
  - (d) the head of the police force or police service of any other jurisdiction;
  - (e) a rail safety officer;
  - (f) a rail safety officer of another jurisdiction;

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- (g) a police officer;
- (h) a police officer of another jurisdiction.

**708. Multiple offenders**

- (1) This section applies where a provision of a rail safety law provides (expressly or impliedly) that each of 2 persons is liable for an offence against a rail safety law.
- (2) Proceedings may be taken against all or any of the persons.
- (3) Proceedings may be taken against any of the persons-
  - (a) regardless of whether or not proceedings have commenced against any of the other persons; and
  - (b) if proceedings have been commenced against any of the other persons – regardless of whether or not the proceedings have been concluded; and
  - (c) if proceedings have been concluded against any of the other persons – regardless of the outcome of the proceedings.
- (4) This section has effect subject to section 709 and to any express provisions of a rail safety law.

**709. Double jeopardy**

- (1) A person may be punished only once in relation to the same failure to comply with a particular rail safety law of this jurisdiction, even if the person is liable in more than one capacity.
  - (2) Despite sub-section (1) and section 115 a person may be punished for more than one breach of a requirement where the breaches relate to different parts of the same rail infrastructure, railway premises or rolling stock.
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**710. Offences by bodies corporate, partnerships, associations and employees**

- (1) If a body corporate commits an offence against a rail safety law, each director of the body corporate, and each person concerned in the management of the body corporate, is taken to have committed the offence and is punishable accordingly.
- (2) If a person who is a partner in a partnership commits an offence against a rail safety law in the course of the activities of the partnership, each other person who is a partner in the partnership, and each person concerned in the management of the partnership, is taken to have committed the offence and is punishable accordingly.
- (3) If a person who is concerned in the management of an unincorporated association commits an offence against a rail safety law in the course of the activities of the unincorporated association, each other person concerned in the management of the unincorporated association is taken to have committed the offence and is punishable accordingly.
- (4) If an employee commits an offence against a rail safety law, the employer is taken to have committed the offence and is punishable accordingly.
- (5) This section does not affect the liability of the person who actually committed the offence.
- (6) A person may be proceeded against and found guilty of an offence arising under this section whether or not the body corporate or other person who actually committed the offence has been proceeded against or been found guilty of the offence.

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- (7) It is a defence to a charge for an offence arising under sub-section (1) if the defendant establishes that-
- (a) the defendant was not in a position to influence the conduct of the body corporate in relation to the actual offence; or
  - (b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (8) It is a defence to a charge for an offence arising under sub-section (2) or (3) if the defendant establishes that-
- (a) the defendant was not in a position to influence the conduct of the person who actually committed the offence; or
  - (b) the defendant, being in such a position, took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.
- (9) It is a defence to a charge for an offence arising under sub-section (4) if the defendant establishes that-
- (a) the defendant had no knowledge of the actual offence; and
  - (b) the defendant took reasonable precautions and exercised due diligence to prevent the commission of the actual offence.

*Draft Note : Note that service of documents is covered by the AIA or ILA.*

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**Division 2 – Discrimination against employees or contractors**

**711. Dismissal or other victimisation of employee or contractor**

- (1) This section applies to—
- (a) an employer who dismisses an employee or contractor, injures an employee or contractor in the employment of the employer or alters the position of an employee or contractor to the employee's or contractor's detriment; and
  - (b) an employer who threatens to do any of those things to an employee or contractor; and
  - (c) an employer or prospective employer who refuses or fails to offer employment to a prospective employee or contractor, or treats a prospective employee or contractor less favourably than another prospective employee or contractor would be treated in offering terms of employment.
- (2) The employer or prospective employer is guilty of *an indictable offence* if the employer or prospective employer engaged in that conduct because the employee or contractor or prospective employee or contractor (as the case may be)—
- (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of an Australian rail safety law; or
  - (b) has made a complaint about a breach or alleged breach of an Australian rail safety law to the employer, a fellow employee or fellow contractor, a trade union or a public agency; or
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- (c) assists or has assisted, or gives or has given any information to, a public agency in respect of a breach or alleged breach of an Australian rail safety law; or
  - (d) has made a complaint about a breach or alleged breach of an Australian rail safety law to a former employer, a former fellow employee or former fellow contractor, a trade union or a public agency.
- (3) An employer or prospective employer may be guilty of an offence against sub-section (2) only if the reason mentioned in sub-section (2)(a), (b), (c) or (d) is the dominant reason why the employer or prospective employer engaged in the conduct.
- (4) An employer or prospective employer who is guilty of an offence against sub-section (2) is liable to—
- (a) in the case of a natural person
  - (b) in the case of a body corporate

**712. Defendant bears onus of proof**

In proceedings for an offence against section 711, if all the facts constituting the offence other than the reason for the defendant's conduct are proved, the defendant bears the onus of proving that the reason alleged in the charge was not the dominant reason why the defendant engaged in the conduct.

**713. Order for damages or reinstatement**

If an employer or prospective employer is convicted or found guilty of an offence against section 711, the court may (in addition to imposing a penalty) make either or both of the following orders—

- (a) an order that the offender pay (within a specified period) such damages to the employee or contractor or prospective
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employee or contractor against whom the offender discriminated as the court considers appropriate to compensate him or her;

- (b) an order that—
  - (i) the employee or contractor be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
  - (ii) the prospective employee or contractor be employed in the position for which he or she had applied or a similar position.

**Division 3 – False or misleading Information**

**714. False or misleading information provided to Rail Safety Regulator or officials**

- (1) A person commits an offence if-
    - (a) the person makes a statement to the Rail Safety Regulator or to an official who is exercising a power under a rail safety law; and
    - (b) the person knows that the statement is false or misleading in a material particular.
  - (2) A person commits an offence if-
    - (a) the person makes a statement to the Rail Safety Regulator or to an official who is exercising a power under a rail safety law; and
    - (b) the statement is false or misleading in a material particular; and
    - (c) the person is reckless as to whether the statement is false or misleading in a material particular.
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- (3) A person commits an offence if-
- (a) the person gives a record to the Rail Safety Regulator or to an official who is exercising a power under a rail safety law; and
  - (b) the person knows that the record is false or misleading in a material particular.
- (4) A person commits an offence if-
- (a) the person gives a record, document *or device* to the Rail Safety Regulator or to an official who is exercising a power under a rail safety law; and
  - (b) the record, document *or device* is false or misleading in a material particular; and
  - (c) the person is reckless as to whether the record, document *or device* is false or misleading in a material particular.
- (5) Sub-section (3) does not apply if, at the time the person gave the record to the Rail Safety Regulator or to an official, the person informed the Rail Safety Regulator or official that the record was false or misleading in a material particular and specified in what respect it was false or misleading.
- (6) The penalty for an offence under this section committed in relation to an official exercising a power under a rail safety law is-
- (a) if there is one offence under the provision of the rail safety law under which the power is exercised – the penalty for that offence; or
  - (b) if there is more than one offence under that provision – the penalties for those offences if the penalties are the same, or the lower or lowest of the penalties if they are different;  
or
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(c) if there is no offence under that provision – a penalty of *(tbc)*.

(7) In this section, "**official**" means a rail safety officer or a person who is assisting a rail safety officer.

**715. False or misleading information provided to responsible persons**

(1) A person commits (subject to sub-sections (3) and (4)) an offence if-

(a) the person is a responsible person and provides information to another responsible person; and

(b) the person does so knowing that the information is false or misleading in a material particular.

(2) A person commits (subject to sub-section (4)) an offence if-

(a) the person is a responsible person and provides information to another responsible person; and

(b) the information is false or misleading in a material particular; and

(c) the person does so recklessly as to whether the information is false or misleading in a material particular.

(3) Sub-section (1) does not apply if, at the time the person gave the information to another responsible person in written form, the person informed the other responsible person that the information was false or misleading in a material particular and specified in what respect it was false or misleading.

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- (4) A person is not guilty of an offence under this section unless it is established that-
- (a) the material particular in which the information is alleged to be false or misleading relates to an ingredient of another Australian rail safety law that is or could be committed by the other or any other responsible person ("**the affected person**"), if the affected person relies or were to rely on the material particular contained in the information; and
  - (b) the affected person did not know and could not reasonably be expected to know or ascertain that the information was false or misleading in that particular.
- (5) In this section, "**information**" means information in any form, whether written or not.

**Division 4 – Other Offences**

**716. Obstructing or hindering rail safety officers**

- (1) A person must not-
- (a) intentionally hinder or obstruct a rail safety officer in the performance of his or her functions or the exercise of his or her powers under this Act or the regulations, or induce or attempt to induce any other person to do so; or
  - (b) intentionally conceal from a rail safety officer the location or existence of, or fail to comply with a request to produce, a document or any other thing.

Penalty: for a natural person  
for a body corporate

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- (2) A person must not assault directly or indirectly intimidate or threaten, or attempt to intimidate or threaten, a rail safety officer or a person assisting a rail safety officer.

Penalty: for a natural person.

for a body corporate.

**717. Offence to impersonate rail safety officer**

A person who is not a rail safety officer must not, in any way, hold himself or herself out to be a rail safety officer.

Penalty:

**718. Tampering with safety equipment**

- (1) A person must not tamper with, or disable-
- (a) the *safety equipment* (including track and communication systems) of a railway or of a unit or units of rolling stock; or
  - (b) the interlocking system of a railway; or
  - (c) any other safe working system associated with a railway.

Penalty:

- (2) In this section, "**interlocking system**" means any lever or collection of levers, or electrical and mechanical devices, or electrical devices, that operate or control points and signals, or signals, at locations where trains can be directed from one track to another and that are interlocked to prevent conflicting movement of trains.

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**719. Crossing railway tracks by pedestrians**

- (1) A pedestrian must not cross or attempt to cross railway tracks at a place provided for crossing by pedestrians—
- (a) when gates at the crossing or at an adjacent vehicle crossing are closed or locked; or
  - (b) when rolling stock can be seen or heard approaching and there would be a danger of a collision with the *rolling stock* if the pedestrian entered the crossing; or
  - (c) when *rolling stock* is on or entering the crossing; or
  - (d) if the crossing or the path beyond the crossing is blocked; or
  - (e) when directed not to do so by an authorised person.

Penalty:

- (2) A pedestrian must not cross or attempt to cross railway tracks at a place other than a place provided for crossing by pedestrians.

Penalty:

- (3) In this section, "**authorised person**" means rail safety officer, police officer, rail safety worker or person who has duties in relation to the issue, inspection or collection of tickets for, or the operation of, rolling stock.

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**720. Crossing tramway tracks by pedestrians**

- (1) A pedestrian must not cross or attempt to cross *designated tramway tracks* at a place other than a place provided for crossing by pedestrians.

Penalty:

- (2) A pedestrian must not cross or attempt to cross *designated tramway tracks* at a place provided for crossing by pedestrians—
- (a) when warning signals or devices are operating at the pedestrian crossing or at an adjacent vehicle crossing; or
  - (b) when gates at the crossing or at an adjacent vehicle crossing are closed or locked; or
  - (c) when a tram can be seen or heard approaching and there would be a danger of a collision with the tram if the pedestrian entered the crossing; or
  - (d) when a tram is on or entering the crossing; or
  - (e) if the crossing or the path beyond the crossing is blocked; or
  - (f) when directed not to do so by an authorised person.

Penalty:

- (3) In this section, "**authorised person**" means rail safety officer, police officer, rail safety worker or person who has duties in relation to the issue, inspection or collection of tickets for, or the operation of, a tram.

**721. Driver approaching level crossing**

The driver of a road vehicle must, when approaching a railway level crossing, stop the road vehicle so that the point of the road vehicle is on the approach side of, and safely clear of, the

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nearest rail and of any gate, boom or barrier at the crossing unless the driver can proceed through the level crossing without stopping before the rear of the road vehicle is on the departure side of and safely clear of the furthest rail and of any gate, boom or barrier at the crossing.

Penalty:

*Draft Note : On one view, this is a road offence, not a rail safety offence and would be sufficiently covered by Rule 121 of the Road Rules.*

**722. Trespass**

A person must not wilfully trespass on any land or premises owned or occupied by a rail transport operator *and used for the purposes of a railway*.

Penalty:

**723. Entering and leaving train or tram**

- (1) A person must not, without reasonable excuse or permission from an authorised person—
  - (a) enter or attempt to enter a train or tram if it has only stopped for passengers to leave; or
  - (b) leave or attempt to leave a train or tram if it has only stopped for passengers to enter.

Penalty: .

*Draft Note : In some jurisdictions, there are stops which are only to let passengers off, or only to take passengers on.*

- (2) A person must not, without reasonable excuse or the permission of an authorised person, enter or leave or attempt to enter or leave—
  - (a) a train or tram except by a doorway next to the platform if such a doorway is available; or

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- (b) a tram except through the entrance or exit on the left hand side of the tram in the direction of travel; or
- (c) a train or tram or railway premises [*or a designated area*] except through an entrance or exit provided for passengers or the public; or

*Draft Note : Note that designated areas may best be dealt with by the local jurisdiction*

- (d) through an emergency exit if there is no emergency.

Penalty:

- (3) A person must not, without reasonable excuse or permission of an authorised person, jump or climb over any barrier on railway premises.

Penalty:

- (4) In this section-

**"authorised person"** means rail safety officer, police officer, rail safety worker or person who has duties in relation to the issue, inspection or collection of tickets for, or the operation of, a train or tram.

**"ticket"** means a ticket, pass, symbol or other thing issued to a person entitling that person to travel on a train or tram.

#### **724. Creating an obstruction**

A person in or on a train, tram or railway premises must not create an obstruction without reasonable excuse.

Penalty:

**Example**

Placing a bicycle so as to block an exit and, without reasonable excuse, not moving it when asked.

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**725. Not to drain onto railway premises**

A person must not cause or permit drainage or sewage to flow or empty from any premises occupied by the person onto any railway premises.

Penalty:

**726. Not to interfere with train, tram etc**

(1) A person must not, without the permission of an authorised person—

- (a) move or attempt to move;
- (b) interfere or attempt to interfere with;
- (c) tamper or attempt to tamper with;
- (d) operate or attempt to operate—

any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator.

Penalty:

(2) In this section-

**"authorised person"** means the rail transport operator, a rail safety officer or a police officer.

**727. Applying brake or emergency device**

A person must not, without reasonable excuse-

- (a) apply any brake or make use of any emergency device fitted to a train or tram; or
- (b) make use of any emergency device on railway premises.

Penalty:

**Example**

Emergency devices include an emergency button on a station communication board or on an escalator.

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**728. Stopping a train or tram**

A person must not, without reasonable excuse, cause or attempt to cause a train or tram in motion to be stopped.

Penalty:

**729. Animals on railway tracks**

- (1) A person must not take or attempt to take an animal across a track for a train or tram at a level crossing—
- (a) when warning signals or devices are operating at the crossing; or
  - (b) when gates at the crossing are closed or locked; or
  - (c) when a train or tram is entering the crossing; or
  - (d) when a train or tram can be seen or heard approaching and there would be a danger of a collision with the animal if it entered the crossing; or
  - (e) if the crossing or the path beyond the crossing is blocked; or
  - (f) when directed not to do so by an authorised person or an employee of a rolling stock operator.

Penalty:

- (2) In this section-

**"authorised person"** means [rail transport operator], rail safety officer, police officer or rail safety worker;

**"track"** means a track used by a rolling stock operator to operate a train or tram for the carriage of passengers or freight.

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**Division 5 – Infringement Notices**

Note:

Provision for infringement notices will be dealt with by appropriate provisions in each jurisdiction, either by including provisions in this Division or by integrating the offences in the Bill with existing legislation relating to infringement notices.

**730. Infringement notices**

A rail safety officer or police officer who believes on reasonable grounds that a person has committed a prescribed offence against a rail safety law may serve the person with an infringement notice as an alternative to prosecution in court for an offence.

**731. Infringement penalty**

- (1) The infringement penalty for an offence is-
  - (a) the amount specified in column 2 of Schedule 1 for the offence; or
  - (b) if an amount is not so specified for the offence – the amount prescribed by the regulations as the amount of the infringement penalty for the offence.
- (2) The infringement penalty prescribed by the regulations for an offence must not exceed 20% of the maximum penalty that could be imposed on an individual by a court in respect of the offence.
- (3) An infringement penalty may not be prescribed by the regulations for an offence if Schedule 1 indicates that an infringement notice is not available for the offence.

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**Division 6 – Enforceable Voluntary Undertakings**

**732. Rail Safety Regulator may accept undertakings**

- (1) The Rail Safety Regulator may accept (by written notice) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act or the regulations.
- (2) The person may withdraw or vary the undertaking at any time but only with the Rail Safety Regulator's written consent.
- (3) Neither the Rail Safety Regulator nor a rail safety officer may bring a proceeding for an offence against this Act or the regulations constituted by the contravention or alleged contravention to which the undertaking relates.

**733. Enforcement of undertakings**

- (1) If the Rail Safety Regulator considers that a person has contravened an undertaking accepted by the Rail Safety Regulator, the Rail Safety Regulator may apply to the Magistrates' Court for enforcement of the undertaking.
- (2) If the Magistrates' Court is satisfied that the person has contravened the undertaking, it may make—
  - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking; or
  - (b) any other order that it considers appropriate.

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**Division 7 – Court-based Sanctions**

**740. Fines**

*Draft Note : Local jurisdiction law to apply in relation to method of stating penalty amount*

**741. Daily penalty for continuing offences**

- (1) Where an offence is committed by a person by reason of a contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is taken to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) A person convicted of such an offence is liable, in addition to the penalty otherwise prescribed for the offence, to a daily penalty not exceeding one fifth of the maximum penalty prescribed for the offence for each day or part of a day during which the offence continues after written notice of the offence has been given to the offender by the *Rail Safety Regulator*, whether before or after conviction.

**742. Commercial benefits order**

- (1) The court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, make an order under this section.
- (2) The court may make a commercial benefits order requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that-
  - (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence; and

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- (b) in the case of a journey that was interrupted or not commenced because of action taken by a rail safety officer in connection with the commission of the offence- would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.
  - (3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account-
    - (a) benefits of any kind, whether monetary or otherwise; and
    - (b) any other matters that it considers relevant, including (for example)-
      - (i) the value per tonne or per kilometre of the carriage of the goods involved in the offence as freight; and
      - (ii) the distance over which any such goods were or were to be carried.
  - (4) However, in estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.
  - (5) Nothing in this section prevents the court from ordering payment of an amount that is-
    - (a) less than 3 times the estimated gross commercial benefit; or
    - (b) less than the estimated gross commercial benefit.
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**743. Supervisory intervention order**

- (1) The court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, if the court considers the person to be a systematic or persistent offender against the Australian rail safety laws, make an order under this section.
- (2) The court may make a supervisory intervention order requiring the person (at the person's own expense and for a specified period not exceeding one year) to do all or any of the following-
  - (a) to do specified things that the court considers will improve the person's compliance with rail safety laws or specified aspects of rail safety laws, including (for example) the following-
    - (i) appointing or removing staff to or from particular activities or positions;
    - (ii) training and supervising staff;
    - (iii) obtaining expert advice as to maintaining appropriate compliance;
    - (iv) installing, monitoring, compliance, managerial or operational equipment;
    - (v) implementing, monitoring, compliance, managerial or operational practices, systems or procedures;
  - (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Rail Safety Regulator or a person nominated by the Rail Safety Regulator;
  - (c) to furnish compliance reports to the Rail Safety Regulator or the court or both as specified in the order;

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- (d) to appoint a person to have responsibilities-
  - (i) to assist the person in improving compliance with rail safety laws or specified aspects of rail safety laws; and
  - (ii) to monitor the person's performance in complying with rail safety laws or specified aspects of rail safety laws and in complying with the requirements of the order; and
  - (iii) to furnish compliance reports to the Rail Safety Regulator or the court or both as specified in the order.
- (3) The court may specify matters that are to be dealt with in compliance reports and the form, manner and frequency in which compliance reports are to be prepared and furnished.
- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form, manner and frequency in which they are to be made public.
- (5) The court may only make a supervisory order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with the rail safety laws, having regard to-
  - (a) the offences against Australian rail safety laws of which the person has been previously found guilty; and
  - (b) the offences against Australian rail safety laws for which the person has been proceeded against by way of unwithdrawn infringement notices; and

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- (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations.
  - (6) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
  - (7) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of-
    - (a) the Rail Safety Regulator; or
    - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.
  - (8) In this section, "**compliance report**", in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to-
    - (a) the performance of the person in complying with-
      - (i) the rail safety laws or aspects of rail safety laws specified in the order; and
      - (ii) the requirements of the order; and
    - (b) without limiting the above-
      - (i) things done by the person to ensure that any failure by the person to comply with the rail safety laws or the specified aspects of the rail safety laws does not continue; and
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- (ii) the results of those things having been done.

**744. Contravention of supervisory intervention order**

A person who is subject to a requirement of a supervisory intervention order must not engage in conduct that results in contravention of the requirement.

Penalty:

**745. Exclusion orders**

- (1) The court that finds a person guilty of an offence against a rail safety law may, on the application of the prosecutor or the Rail Safety Regulator, if the court considers the person to be a systematic or persistent offender against the Australian rail safety laws, make an order under this section.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences against Australian rail safety laws, the court may, *if it considers it appropriate to do so*, make an exclusion order *prohibiting* the person, for a specified period, from-
- (a) managing rail infrastructure, or operating rolling stock, or managing or operating a particular type of rail infrastructure or rolling stock; or
  - (b) being a director, secretary or *high managerial agent* of a body corporate involved in managing rail infrastructure *that is in this jurisdiction* or operating rolling stock *in this jurisdiction*; or
  - (c) being involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction except by driving a train *or rolling stock*.
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- (3) The court may only make an order under this section if it is satisfied that the person should not continue the things the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to-
- (a) the offences against the Australian rail safety laws of which the person has previously been found guilty; and
  - (b) the offences against the Australian rail safety laws of which the person has been proceeded against by way of unwithdrawn infringement notices; and
  - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with *railway operations*.
- (4) A court that has power to make an exclusion order may revoke or amend an exclusion order on the application of –
- (a) the Rail Safety Regulator; or
  - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

**746. Contravention of exclusion order**

A person who is subject to an *exclusion* contained in an exclusion order must not engage in conduct that results in a contravention of the exclusion.

Penalty:

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**PART 8—MUTUAL RECOGNITION**

**801. Effect of administrative actions of authorities of other jurisdictions**

(1) In this section-

**"administrative action"** means an action of an administrative nature, as in force from time to time;

**"administrative authority"** means-

- (a) a corresponding Rail Safety Regulator; or
  - (b) a person holding an office constituted by or under the law of another jurisdiction and prescribed by the regulations; or
  - (c) a body constituted by or under the law of another jurisdiction and prescribed by the regulations.
- (2) An administrative action of an administrative authority under or in connection with a corresponding rail safety law has the same effect in this jurisdiction as it has in the other jurisdiction.
- (3) Nothing in this section gives an administrative action effect in this jurisdiction or in a particular place in this jurisdiction-
- (a) in so far as the action is incapable of having effect in or in relation to this jurisdiction or that place; or
  - (b) if any terms of the action expressly provide that the action does not extend or apply to or in relation to this jurisdiction or that place; or
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(c) if any terms of the action expressly provide that the action has effect only in the other jurisdiction or a specified place in the other jurisdiction.

(4) This section applies only to administrative actions of kinds prescribed by the regulations.

**802. Effect of court orders of other jurisdictions**

(1) In this section, "**order**" means an order in any judicial or other proceedings, civil or criminal, as in force from time to time.

(2) An order of a court or tribunal or another jurisdiction under or in connection with a corresponding rail safety law has the same effect in this jurisdiction as it has in the other jurisdiction.

(3) Nothing in this section gives an order effect in this jurisdiction or in a particular place in this jurisdiction –

(a) in so far as the order is incapable of having effect in or in relation to this jurisdiction or that place; or

(b) if any terms of the order expressly provide that the order does not extend or apply to or in relation to this jurisdiction or that place; or

(c) if any terms of the order expressly provide that the order has effect only in the other jurisdiction or a specified place in the other jurisdiction.

(4) This section applies only to orders of kinds prescribed by the regulations.

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**PART 9—GENERAL**

**Division 1—Confidentiality**

**901. Confidentiality**

- (1) This section applies to a person engaged or previously engaged in the administration of this Act and (without limiting the foregoing) to—
  - (a) rail safety officer;
  - (b) a person authorised by the Rail Safety Regulator or rail safety officer under a provision of this Act to do the act or thing provided for in that provision;
  - (c) a person who is or was a delegate of the Rail Safety Regulator;
  - (d) a person who is or was employed by, or engaged to provide services to or on behalf of, the Rail Safety Regulator;
  - (e) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Rail Safety Regulator.
- (2) A person to whom this section applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of this Act except—
  - (a) as required or authorised by or under this or any other Act; or
  - (b) with the consent of the person from whom the information was obtained or to whom the information relates; or

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- (c) in connection with the administration of rail safety laws; or
- (d) to an Australian Rail Safety Regulator, a rail safety officer or police officer; or
- (e) to a prescribed Rail Safety Regulator of any jurisdiction; or
- (f) to a Rail Safety Regulator of any jurisdiction for law enforcement purposes; or
- (g) to a court or in connection with any legal proceedings; or
- (h) in accordance with relevant national guidelines.

Penalty:

- (3) Nothing in this section prevents information being used to enable an Australian Rail Safety Regulator to accumulate aggregate data and to enable the Australian Rail Safety Regulator to authorise use of the aggregate data for the purposes of research or education.

**Division 2—Indemnities**

**902. Indemnity of Rail Safety Regulator**

- (1) The Rail Safety Regulator is not liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the discharge of a duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

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- (2) A liability that would, apart from sub-section (1), attach to the Rail Safety Regulator attaches instead to the Crown.

*Draft Note : The Rail Safety Regulator may be a natural person or a body corporate – if a body corporate, the members of the board (and possibly the CEO) will need to be conferred the immunity under the Bill. This should a provision that each jurisdiction will need to draft to reflect the individual jurisdiction's position, both in relation to the status of the Rail Safety Regulator and the jurisdiction's practice in relation to statutory indemnities.*

**903. Indemnity of rail safety officers**

- (1) A rail safety officer does not incur civil liability for an act or omission done honestly and in good faith in the course of exercising his or her powers under this Act.
- (2) A liability that would, apart from sub-section (1), attach to a rail safety officer attaches instead to—
- (a) the Rail Safety Regulator, if the officer was at the relevant time subject to the control and direction of the Authority in connection with the exercise of the power concerned; or
  - (b) a corresponding Rail Safety Regulator, if the officer was at the relevant time subject to the control and direction of the corresponding Rail Safety Regulator in connection with the exercise of the power concerned; or
  - (c) the officer's employer, if the officer was at the relevant time—
    - (i) not subject to the control and direction of the Rail Safety Regulator or a corresponding Rail Safety Regulator in connection with the exercise of the power concerned; and
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- (ii) acting in the capacity of an employee of a person or body; or
  - (d) in any other case—the Crown in right of this jurisdiction.
- (3) If—
- (a) a prescribed corresponding law of another jurisdiction provides that a liability that would, apart from a provision of that law, attach to a rail safety officer of that jurisdiction attaches instead to the Rail Safety Regulator; and
  - (b) the officer was at the relevant time subject to the control and direction of the Rail Safety Regulator in connection with the exercise of the power concerned—

the liability accordingly attaches to the Rail Safety Regulator by force of this section.

Note: Sub-section (3) is intended to complement and give effect to a provision of a corresponding law that transfers liability to the Rail Safety Regulator of this jurisdiction, but only where the corresponding law is prescribed by the regulations.

**904. Protection from liability for wrongdoing**

- (1) An action in tort does not lie against a person for anything that the person has, in good faith, done in the performance or purported performance of a function under this Act or the regulations.
- (2) If this section provides that an action does not lie against a person for doing anything, the Crown is also relieved of any liability it might otherwise have had for the doing of the thing by the person.
- (3) The protection given by this section applies even if the thing done in the performance or purported performance of a function under this Act or the

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regulations may have been capable of being done whether or not this Act had been enacted.

- (4) In this section a reference to the doing of anything includes a reference to the omission of to do anything.

*Draft Note : Local variations*

**905. Indemnity of persons authorised by Rail Safety Regulator and rail safety officers**

- (1) An authorised person does not incur civil liability for an act or omission done honestly and in good faith in the course of exercising his or her powers under this Act.
- (2) A liability that would, apart from sub-section (1), attach to an authorized person attaches instead to—
- (a) the Rail Safety Regulator or rail safety officer that authorised the authorised person, if the authorised person was at the relevant time subject to the control and direction of the Rail Safety Regulator or rail safety officer (as the case requires) in connection with the exercise of the power concerned; or
  - (b) a corresponding Rail Safety Regulator, if the authorised person was at the relevant time subject to the control and direction of the corresponding Rail Safety Regulator in connection with the exercise of the power concerned; or
  - (c) the authorised person's employer, if authorised person was at the relevant time—
    - (i) not subject to the control and direction of the Rail Safety Regulator or a corresponding Rail Safety Regulator (as the case requires) in connection with the exercise of the power concerned; and
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- (ii) acting in the capacity of an employee of that employer; or
  - (d) in any other case—the Crown in right of this jurisdiction.
- (3) If—
- (a) a prescribed corresponding law of another jurisdiction provides that a liability that would, apart from a provision of that law, attach to an authorised person (within the meaning of section 00 of that corresponding law) attaches instead to the Rail Safety Regulator; and
  - (b) the authorised person was at the relevant time subject to the control and direction of the Rail Safety Regulator in connection with the exercise of the power concerned—

the liability accordingly attaches to the Rail Safety Regulator by force of this section.

Note: Sub-section (3) is intended to complement and give effect to a provision of a corresponding law that transfers liability to the Rail Safety Regulator of this jurisdiction, but only where the corresponding law is prescribed by the regulations.

- (4) In this section—

**"authorised person"** means any person authorised by the Rail Safety Regulator or rail safety officer under a provision of this Act to do the act or thing provided for in that provision.

**906. Immunity for reporting unfit rail safety worker**

- (1) No action may be taken against a person who, in good faith, reports to the Rail Safety Regulator any information which discloses that a person is unfit to carry out rail safety work or certain types of rail safety work or that it may be dangerous to
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allow that person to carry out rail safety work or certain types of rail safety work.

- (2) No action may be taken against a person who, in good faith, reports to the Rail Safety Regulator—
- (a) the results of a test or examination carried out under this Act or the regulations; or
  - (b) an opinion formed by that person as a result of conducting such a test or examination.

**Division 3—Miscellaneous**

**907. Recovery of certain costs**

The Rail Safety Regulator may recover as a debt from an accredited person the reasonable costs of the entry and inspection of railway infrastructure or rolling stock in respect of which the person is accredited, other than the costs of an audit of accreditation under section 347.

**908. Recovery of amounts due**

Every fee, charge or other amount of money payable under this Act or the regulations may be recovered by the Rail Safety Regulator as a debt due to the jurisdiction in a court of competent jurisdiction.

*Draft Note : Fees, charges or other amounts of money are to form part of a jurisdiction's consolidated revenue.*

**909. Compliance with conditions of accreditation**

If—

- (a) a condition or restriction imposed by the Rail Safety Regulator on a grant of accreditation makes provision for or with respect to a duty or obligation imposed by this Act or the regulations; and

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- (b) the accredited person complies with the condition or restriction to the extent that it makes that provision—

the accredited person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

**910. Adopted compliance code**

- (1) The Rail Safety Regulator may approve the national compliance code, with such amendments, not being inconsistent with the national compliance code, as the Rail Safety Regulator determines, as the adopted compliance code for the purposes of this Act.
- (2) The Rail Safety Regulator may approve a variation of the adopted compliance code.
- (3) The Rail Safety Regulator must cause a copy of the adopted compliance code, and of any variation, approved under this section to be published in the Gazette.
- (4) The adopted compliance code, or a variation of the adopted compliance code, takes effect when a copy of the code or variation is published in the Gazette or on such later date as is specified in the code or the variation.
- (5) The Rail Safety Regulator must ensure that a copy—
  - (a) of the adopted compliance code as currently in force; and
  - (b) of each document applied, adopted or incorporated (to any extent) by or in the adopted compliance code—

is available for inspection by members of the public without charge at the office of the Rail Safety Regulator during normal business hours.

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**911. Effect of adopted compliance code**

A failure to comply with the adopted compliance code does not give rise to any civil or criminal liability.

Note: A person who complies with a compliance code may, however, be taken to have complied with this Act (see section 912).

**912. Effect of compliance with adopted compliance code**

If—

- (a) the adopted compliance code makes provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
- (b) a person complies with the adopted compliance code to the extent that it makes that provision—

the person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

**913. Adopted standards**

- (1) The Rail Safety Regulator may approve the national standards, with such amendments, not being inconsistent with the national standards, as the Rail Safety Regulator determines, as the adopted standards for the purposes of this Act.
- (2) The Rail Safety Regulator may approve a variation of the adopted standards.
- (3) The Rail Safety Regulator must cause a copy of the adopted standards, and of any variation, approved under this section to be published in the Gazette.

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- (4) The adopted standards, or a variation of the adopted standards, take effect when a copy of the standards or variation is published in the Gazette or on such later date as is specified in the standards or the variation.
- (5) The Rail Safety Regulator must ensure that a copy—
  - (a) of the adopted standards as currently in force; and
  - (b) of each document applied, adopted or incorporated (to any extent) by or in the adopted standards—

is available for inspection by members of the public without charge at the office of the Rail Safety Regulator during normal business hours.

**914. Adopted guidelines**

- (1) The Rail Safety Regulator may approve the national guidelines, with such amendments, not being inconsistent with the national guidelines, as the Rail Safety Regulator determines, as the adopted guidelines for the purposes of this Act.
- (2) The Rail Safety Regulator may approve a variation of the adopted guidelines.
- (3) The Rail Safety Regulator must cause a copy of the adopted guidelines, and of any variation, approved under this section to be published in the Gazette.
- (4) The adopted guidelines, or a variation of the adopted guidelines, take effect when a copy of the guidelines or variation is published in the Gazette or on such later date as is specified in the guidelines or the variation.

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(5) The Rail Safety Regulator must ensure that a copy—

- (a) of the adopted guidelines as currently in force; and
- (b) of each document applied, adopted or incorporated (to any extent) by or in the adopted guidelines —

is available for inspection by members of the public without charge at the office of the Rail Safety Regulator during normal business hours.

**915. Roads and land use**

(1) A person who undertakes-

- (a) any road use management planning; or
- (b) land use planning-

that is reasonably likely to affect any railway premises, rail infrastructure or rolling stock, must take reasonable steps to consult any relevant rail transport operator.

Penalty:

(2) Before a person commences any changes to-

- (a) the use of land or to any infrastructure managed or owned by the person, being land or infrastructure that is connected with or has access to any rail infrastructure or rolling stock; or
- (b) any of the person's operations for which there is a safety interface with any rail infrastructure or rolling stock-

the person must take reasonable steps-

- (c) to give notice to the relevant rail transport operator in the prescribed form in relation to such of the proposed changes that are reasonably likely to affect any rail
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infrastructure or rolling stock of the rail transport operator; and

- (d) to take into account, to the extent that it is reasonable and practical to do so, any views expressed by a rail transport operator as to the management of the safety interface with the rail infrastructure or rolling stock.

Penalty:

- (3) A person is not guilty of an offence under subsection (2) if the effect of the changes is not *an* adverse safety effect in relation to the rail infrastructure or rolling stock.

**916. Obligations of road authorities etc**

A person referred to in section 915(1) or (2) must ensure that the person complies with interface co-ordination plans with any affected rail transport operators and the person addresses the risks identified in those plans.

Penalty:

**917. Prescribed persons**

A person prescribed by the regulations for the purposes of this section must give notice in the prescribed form and within a prescribed period to a rail transport operator of the commencement, or discontinuation, or completion of *prescribed* operations or activities that may adversely affect the safety of any rail infrastructure or rolling stock of a rail transport operator.

Penalty:

**918. Contracting out prohibited**

A term of any contract or agreement that purports to exclude, limit or modify the operation of this Act or of any provision of this Act is void to the extent that it would otherwise have effect.

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**919. Regulations**

- (1) The [appropriate authority] may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act—
  - (a) may be of general or of specially limited application; and
  - (b) may differ according to differences in time, place or circumstance; and
  - (c) may require a matter affected by the regulations to be—
    - (i) in accordance with a specified standard or specified requirement; or
    - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
    - (iii) as specified in both sub-paragraphs (i) and (ii); and
  - (d) may apply, adopt or incorporate any matter contained in any document whether—
    - (i) wholly or partially or as amended by the regulations; or
    - (ii) as in force at a particular time or as in force from time to time; and
  - (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
  - (f) may provide in a specified case or class of case for the exemption of people or things or a class of people or things from any of the provisions of the regulations, whether

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- unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
- (g) may impose a penalty not exceeding [?] for a contravention of the regulations; and
  - (h) may provide that an application may be made to the *Tribunal* for the review of a decision made under the regulations.
- (3) The regulations may exempt, or provide for the exemption of, either absolutely or subject to conditions, any person, railway, part of a railway or operation from all or any of the provisions of this Act.

*Draft Note : This is section 117(4) of the NSW Act – local jurisdiction will need to determine how to deal with exemptions according to local practice.*

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Part 10-Transitional

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**PART 10-TRANSITIONAL**

**1001. Transitional**

*Draft Note : Local variations*

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**Schedule 1**

*Draft Note : Add Schedules for Infringement penalties (Part 9)*

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**ENDNOTES**