

# NORTHERN TERRITORY OF AUSTRALIA

## RAIL SAFETY ACT

As in force at 31 October 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 31 October 2011. Any amendments that commence after that date are not included.

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## RAIL SAFETY ACT

**An Act to make provision for rail safety and other matters that form part of a system of nationally consistent rail safety laws**

### **Part 1            Introduction**

#### **Division 1       Preliminary matters**

##### **1            Short title**

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

##### **2            Commencement**

This Act commences on the date fixed by the Administrator by *Gazette* notice.

##### **3            Objects of Act**

Having regard to the importance of rail safety and regulatory efficiency, the objects of this Act are:

- (a) to provide for improvement of the safe carrying out of railway operations; and
- (b) to provide for the management of risks associated with railway operations; and
- (c) to provide for the control of particular risks arising from railway operations; and
- (d) to promote public confidence in the safety of transport of persons or freight by rail.

## Division 2            Application of Act

### 4            Railways to which Act does not apply

This Act does not apply to any of the following:

- (a) an underground railway in a mine, or a railway which is predominantly underground, 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 the occupational health and safety legislation and does not operate on or across a public street within the meaning of the *Traffic Act*;
- (f) a railway prescribed as a railway to which this Act does not apply.

### 5            Crown to be bound

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## Division 3            Interpretation

### 6            Definitions

In this Act:

***accredited person*** means a rail transport operator who is currently accredited under Part 3, Division 2.

***acting in an official capacity***, for Part 7, Division 3, see section 146.

***Australian Road Rules*** means the *Australian Road Rules* contained in Schedule 3 to the *Traffic Regulations*.

***commercial benefits order***, see section 156.

***compliance code*** means a compliance code approved under section 165.

**conduct** includes an act and an omission.

**contractor** means a person who:

- (a) is not an employee of a rail transport operator; and
- (b) undertakes railway operations on or in relation to the operator's rail infrastructure or rolling stock.

**corresponding law** means:

- (a) the law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of another jurisdiction, prescribed as 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 as defined in 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 for this Act as the corresponding Rail Safety Regulator for another jurisdiction.

**Director** means the Director of Rail Safety appointed under section 172.

**embargo notice**, see section 92(2).

**employee** means a person employed under a contract of employment or contract of training.

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

**exclusion order**, see section 159(1).

**exercise** includes perform.

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

**function** includes power, authority and duty.

**guidelines** means guidelines approved under section 165.

***improvement notice***, see section 101.

***infringement notice*** means an infringement notice, as defined in section 9 of the *Fines and Penalties (Recovery) Act*, that is issued under the Regulations.

***interface agreement***, see section 60.

***investigation***, by an investigator, means an investigation under Part 6.

***investigator***, see section 122.

***jurisdiction*** means a State or Territory of the Commonwealth.

***level crossing*** means:

- (a) a level crossing as defined in the *Australian Road Rules*; or
- (b) a crossing constructed on a part of the corridor, as defined in section 5(1) of the *AustralAsia Railway (Special Provisions) Act*, that is bordered by land to which is annexed the benefit of an access easement created by section 14A(2) of that Act, whether or not there is a sign indicating the crossing; or
- (c) another crossing constructed on a part of a railway where a track or access way (for the passage of persons, vehicles, equipment or animals on private land bordering the railway) and a railway track meet at substantially the same level, whether or not there is a sign indicating the crossing.

***notice*** means notice in writing, signed by the person issuing the notice and given to or served on the person the subject of the notice.

***notice of accreditation***, see section 30(1).

***notice of registration***, see section 48(3).

***notifiable occurrence*** means an accident or incident associated with railway operations:

- (a) that has, or could have, caused:
  - (i) significant property damage; or
  - (ii) serious injury; or
  - (iii) death; or
- (b) that is prescribed as a notifiable occurrence;

but does not include an accident or incident prescribed not to be a notifiable occurrence.

***occupational health and safety legislation*** means the following:

- (a) the *Workplace Health and Safety Act*,
- (b) any other prescribed legislation.

*Example*

*Other prescribed legislation could include laws relating to carrying dangerous goods by rail.*

***official***, for Part 7, Division 3, see section 146.

***prescribed*** means prescribed by regulation.

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

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

***prohibited drug***, see section 68(5).

***prohibition notice***, see section 106(2).

***public place*** means a place that, whether or not on payment of money:

- (a) the public is entitled to use; or
- (b) is open to members of the public; or
- (c) is used by the public; or
- (d) members of the public are allowed by the occupier to enter.

**public road** means a road as defined in section 5(1) of the *Control of Roads Act* but does not include a road that is closed under that Act or a street, road, lane, thoroughfare, footpath or other place under construction and not open to or used by the public.

**rail infrastructure**, see section 9.

**rail infrastructure manager**, in relation to rail infrastructure, means the person who has effective management and control of the rail infrastructure, whether or not the person:

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

**rail safety officer** means a person appointed by the Director as a rail safety officer under section 177.

*Note*

*Section 176(2) provides that a reference to a rail safety officer includes the Director.*

**rail safety work**, see section 11.

**rail safety worker** means an individual who has carried out, is carrying out or is about to carry out, rail safety work.

**rail transport operator** means:

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

**railway**, see section 7.

**railway crossing** means:

- (a) a level crossing; or
- (b) any area where a footpath or shared path (as defined in the *Australian Road Rules*) crosses a railway or tram tracks at substantially the same level.

**railway operations**, see section 10.

**railway premises**, see section 8.

***railway tracks and associated track structures*** means any of the following:

- (a) railway tracks, associated track structures, over-track structures and under-track structures (including tunnels under tracks);
- (b) works (including, for example, cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, landfill, track support earthworks and drainage works).

***reasonably believes*** means believes on grounds that are reasonable in the circumstances.

***registered organisation*** means an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth).

***reviewable decision***, for Part 5, see section 119.

***road*** means an area developed for, or which has as one of its main uses, the driving or riding of road vehicles.

***road manager*** means:

- (a) for a public road – the person, body or authority (which may include the Territory) having the care, control and management of the public road; or
- (b) for another road – the owner of, or person responsible for, the road.

***road or rail crossing*** means a railway crossing, a bridge carrying a road over a railway or a bridge carrying a railway over a road.

***road vehicle*** means a vehicle as defined in section 5(1) of the *Motor Vehicles Act*.

***rolling stock*** means a vehicle that operates on or uses a railway and includes a locomotive, carriage, railcar, railmotor, light rail vehicle, train, tram, light inspection vehicle, self-propelled infrastructure maintenance vehicle, trolley, wagon and 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 a person who has effective management and control of the operation or movement of rolling stock on rail infrastructure for a particular railway but does not include a person by reason only that the person drives the rolling stock or controls the network or the network signals.

***safety*** means the safety of people, including rail safety workers, passengers, other users of railways and the general public.

***safety management plan*** means a document describing a safety management system.

***safety management system***, see section 50.

***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.

***supervisory intervention order***, see section 157.

***supply*** includes supply or resupply by way of sale, exchange, lease, hire or hire purchase, whether as principal or agent.

***train*** means:

- (a) a unit of rolling stock that is a locomotive or other self-propelled unit; or
- (b) 2 or more units of rolling stock coupled together, at least one of which is a locomotive or other self-propelled unit.

## **7        Railway**

A ***railway*** is a guided system, or proposed guided system, designed for the movement of rolling stock capable of transporting passengers or freight, or both, on a railway track with a gauge of 600 mm or more, together with its rail infrastructure and rolling stock and includes the following:

- (a) a heavy railway;
- (b) a light railway;
- (c) a monorail;
- (d) an inclined railway;
- (e) a tramway;
- (f) a railway within a marshalling yard or a passenger or freight terminal;
- (g) a private siding;
- (h) a guided system, or guided system of a class, prescribed as a railway.



## 8            **Railway premises**

***Railway premises*** are any of the following:

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

## 9            **Rail infrastructure**

- (1) ***Rail infrastructure*** is any facility necessary to enable a railway to operate safely, including (but not limited to) any of the following:
  - (a) railway tracks and associated track structures;
  - (b) service roads, signalling systems, communications systems, rolling stock control systems and data management systems;
  - (c) notices and signs;
  - (d) electrical power supply and electric traction systems;
  - (e) associated buildings, workshops, depots and yards;
  - (f) plant, machinery and equipment.
- (2) However, rail infrastructure does not include:
  - (a) rolling stock; or
  - (b) any facility prescribed not to be rail infrastructure.

## 10            **Railway operations**

***Railway operations*** are any of the following:

- (a) the construction of a railway, railway tracks and associated track structures or rolling stock;
- (b) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure;
- (c) the commissioning, maintenance, repair, modification or decommissioning of rolling stock;
- (d) the operation or movement, or causing the operation or movement by any means, of rolling stock on a railway (including for construction or restoration of rail infrastructure);
- (e) the movement, or causing the movement, of rolling stock for operating a railway service.

## 11            **Rail safety work**

(1) Each of the following is ***rail safety work***:

- (a) driving or despatching rolling stock or any other activity which is capable of controlling or affecting the movement of rolling stock;
- (b) signalling (and signalling operations), receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
- (c) coupling or uncoupling rolling stock;
- (d) maintaining, repairing, modifying, monitoring, inspecting or testing:
  - (i) rolling stock, including checking that the rolling stock is working properly before being used; or
  - (ii) rail infrastructure;
- (e) 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:
    - (i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure; or
    - (ii) the means of supplying electricity directly to rail infrastructure or to any rolling stock using rail infrastructure or to a telecommunications system;
  - (h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
  - (i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
  - (j) work involving the development, management or monitoring of safe working systems for railways;
  - (k) work involving the management or monitoring of passenger safety on, in or at any railway;
  - (l) any other work prescribed as rail safety work.
- (2) However, rail safety work does not include work prescribed not to be rail safety work for this Act.

## **12        Ensuring safety**

- (1) A duty imposed on a person under this Act to ensure safety requires the person:
- (a) if it is possible to eliminate risks to safety – to eliminate the risks; or
  - (b) otherwise – to reduce the risks so far as is reasonably practicable.
- (2) In deciding what is (or was at a particular time) reasonably practicable in relation to ensuring safety, regard must be had to the following:
- (a) the risk and any ways of eliminating or reducing the risk;
  - (b) the likelihood of the risk eventuating;
  - (c) the degree of harm that would result if the risk eventuated;

- (d) what the person knew, or ought reasonably to have known, about the availability and suitability of ways to eliminate or reduce the risk;
- (e) the cost of eliminating or reducing the risk.

### 13 Notes and other matters for corresponding laws

- (1) A note in the text in this Act is sometimes used to indicate why the language in this Act may be different to the language used in a corresponding law.

*Example for subsection (1)*

*A reference to this Act includes, for example, a regulation made or in force under this Act because of section 17 of the Interpretation Act. Section 17 of that Act includes the following definition:*

***this Act** includes a statutory instrument under the Act in which the expression occurs.*

- (2) For corresponding laws, the following are defined:

- (a) **rail safety law** means this Act;
- (b) **Rail Safety Regulator** means the Director.

*Note for subsection (2)*

*A corresponding law may use the terms "corresponding rail safety law" and "corresponding Rail Safety Regulator". The definitions in subsection (2) are for the purposes of those definitions even though in this Act the terms "rail safety law" and "Rail Safety Regulator" are not used. Instead, "this Act" and "Director" are used.*

### 14 Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 14*

*Part IIAA of the Criminal Code sets out the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## Part 2 Occupational health and safety legislation

### 15 Act adds to protection provided by OHS legislation

If a provision of the occupational health and safety legislation applies to railway operations, the provision continues to apply, and must be observed, in addition to this Act.

**16 OHS legislation prevails**

If a provision of this Act is inconsistent with a provision of the occupational health and safety legislation, the provision of the occupational health and safety legislation prevails to the extent of the inconsistency.

*Note for section 16*

*If a provision of this Act deals with a certain matter and a provision of the occupational health and safety legislation deals with the same matter and it is impossible to comply with both provisions, a person must comply with the occupational health and safety legislation and not with this Act. If provisions of both the occupational health and safety legislation and this Act deal with the same matter but it is possible to comply with both provisions, a person must comply with both laws.*

**17 Compliance with Act no defence to prosecution under OHS legislation**

Compliance with this Act, or with any requirement imposed under this Act, is not in itself a defence in any proceedings for an offence against the occupational health and safety legislation.

*Example for section 17*

*A person may be guilty of an offence under the occupational health and safety legislation for an act or omission that is expressly required or permitted to be done or omitted under this Act.*

**18 Relationship between duties under Act and OHS legislation**

Subject to any express provisions to the contrary, evidence of a relevant contravention of this Act is admissible in any proceedings for an offence against the occupational health and safety legislation.

*Note for section 18*

*See section 118(2) for circumstances where evidence may not be admissible due to protection from self-incrimination.*

**19 No double jeopardy**

An offender is not liable to be punished twice in respect of conduct if the conduct constitutes an offence:

- (a) under this Act; and
- (b) under the occupational health and safety legislation.

## **Part 3            Rail safety**

### **Division 1        General safety duties**

#### **20            Duty of rail transport operator to ensure safety**

- (1) A rail transport operator must ensure the safety of the operator's railway operations.

*Note for subsection (1)*

*See section 12 for an explanation of what is required in ensuring safety.*

- (2) The duty of a rail transport operator under subsection (1) in relation to matters over which the operator has control (or would have control if not for an agreement purporting to limit or remove the control) extends to a contractor and an employee of the contractor.

- (3) Without limiting subsection (1), a rail transport operator contravenes the subsection if the operator does not do one or more of the following:

- (a) develop and implement, so far as is reasonably practicable, safe systems for the carrying out of the operator's railway operations;

- (b) ensure, so far as is reasonably practicable, each rail safety worker who performs rail safety work in relation to the operator's railway operations:

- (i) is of sufficiently good health and fitness to carry out the work safely; and

- (ii) is competent to undertake that work;

- (c) ensure, so far as is reasonably practicable, rail safety workers do not carry out rail safety work in relation to the operator's railway operations, and are not on duty, while a prohibited drug, or a concentration of alcohol equal to or greater than the prescribed level, is present in their body;

*Note for paragraph (c)*

*See section 68(4) for when alcohol at a certain concentration, or a prohibited drug, is taken to be present in a person's body.*

- (d) ensure, so far as is reasonably practicable, rail safety workers who perform rail safety work in relation to the operator's railway operations comply with the operator's program for fatigue management;

- (e) provide, so far as is reasonably practicable, adequate facilities for the safety of persons at any railway premises under the control or management of the operator;
  - (f) provide, so far as is reasonably practicable, the information and instruction to, and training and supervision of, rail safety workers as is necessary to enable the workers to perform rail safety work in relation to the operator's railway operations in a safe way;
  - (g) provide, so far as is reasonably practicable, the information to rail transport operators and other persons on railway premises under the control or management of the operator as is necessary to enable the persons to ensure their safety.
- (4) Without limiting subsection (1), a rail infrastructure manager contravenes the subsection if the operator does not do one or more of the following:
  - (a) ensure, so far as is reasonably practicable, any design, construction, commissioning, use, installation, modification, maintenance, repair, cleaning or decommissioning of the manager's rail infrastructure is done or carried out in a way that ensures the safety of railway operations;
  - (b) establish the systems and procedures for the scheduling, control and monitoring of railway operations that ensure the safety of the railway operations.
- (5) Without limiting subsection (1), a rolling stock operator contravenes the subsection if the operator does not do one or more of the following:
  - (a) provide or maintain rolling stock that, so far as is reasonably practicable, is safe;
  - (b) ensure, so far as is reasonably practicable, any design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of rolling stock is done or carried out in a way that ensures safety;
  - (c) comply, so far as is reasonably practicable, with the rules and procedures for the scheduling, control and monitoring of rolling stock that have been established by a rail infrastructure manager in relation to the use of the manager's rail infrastructure by the operator;
  - (d) so far as is reasonably practicable, establish and maintain equipment, procedures and systems to minimise risks to the safety of the railway operations;

- (e) make arrangements for ensuring, so far as is reasonably practicable, safety in connection with the use, operation and maintenance of the operator's rolling stock.
- (6) A person commits an offence if the person engages in conduct that results in a contravention of subsection (1).

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a risk to safety.

Maximum penalty:        400 penalty units or imprisonment for  
   2 years.

## **21            Duty of designer, manufacturer, supplier and others**

- (1) This section applies to a person who designs, commissions, manufactures, supplies, installs or erects anything for use as or in connection with rail infrastructure or rolling stock.
- (2) The person must:
  - (a) ensure the thing is safe when used for a purpose for which it is designed, commissioned, manufactured, supplied, installed or erected; or
  - (b) carry out, or arrange the carrying out of, the testing and examination of the thing as may be necessary to ensure its safe use; or
  - (c) ensure, as far as is reasonably practicable, adequate information is available about the following in connection with the use of the thing:
    - (i) the use for which it is designed, commissioned, manufactured, supplied, installed or erected;
    - (ii) the results of any testing or examination mentioned in paragraph (b);



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

*Note for subsection (2)*

*See section 12 for an explanation of what is required in ensuring safety.*

- (3) However, if the person who supplies the thing as mentioned in subsection (2)(a):
  - (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 the customer;

the obligation under subsection (2) on the person who supplies the thing is instead taken to be an obligation on the third person.

- (4) A person commits an offence if the person engages in conduct that results in a contravention of subsection (2)(a), (b) or (c).

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) knows the thing is to be used as or in connection with rail infrastructure or rolling stock; and
- (c) is reckless as to whether the conduct would result in a risk to safety.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

## **22            Duty when decommissioning**

- (1) A person who decommissions any rail infrastructure or rolling stock must:
- (a) ensure, so far as is reasonably practicable, the decommissioning is carried out safely; and
  - (b) carry out, or arrange the carrying out of, the testing and examination necessary to ensure the safety of the decommissioning.

*Note for subsection (1)*

*See section 12 for an explanation of what is required in ensuring safety.*

- (2) A person commits an offence if the person engages in conduct that results in a contravention of subsection (1).

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a risk to safety.

Maximum penalty:        400 penalty units or imprisonment for  
   2 years.

## **Division 2            Accreditation**

### **23            Purpose of accreditation**

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

### **24            Accreditation required for railway operations**

- (1) A person must not carry out, or cause or permit to be carried out, railway operations unless the person:
- (a) is a rail transport operator who is accredited under this Part in relation to those operations; or

- (b) is a contractor carrying out those operations, or causing or permitting those operations to be carried out, for or on behalf of a rail transport operator who is accredited under this Part in relation to those operations.

Fault elements:

The person:

- (a) intentionally carries out, or causes or permits to be carried out, railway operations; and
- (b) is reckless as to the circumstance of the rail transport operator's accreditation.

Maximum penalty:        200 penalty units.

(2) Subsection (1) does not apply:

- (a) to a rail safety worker, who is not a rail transport operator, carrying out rail safety work for or on behalf of a rail transport operator who is accredited under this Part in relation to that rail safety work; or
- (b) if an exemption under this Part or section 184 applies to the person or the rail transport operator for or on whose behalf the operations are carried out.

*Example for subsection (2)*

*If a body corporate and related bodies corporate are involved, an exemption may be given so that only one of the bodies need be accredited (related, for bodies corporate, is dealt with in section 50 of the Corporations Act 2001).*

## **25            Purpose for which accreditation may be granted**

- (1) The Director may grant accreditation to a rail transport operator for one or more of the following purposes:
  - (a) the carrying out of railway operations for the part or parts of a railway designated in the notice of accreditation, or for a part or parts having the scope or characteristics so designated;
  - (b) any service or aspect, or part of a service or aspect, of railway operations designated in the notice of accreditation;
  - (c) specified railway operations to permit any one or more of the following:
    - (i) site preparation;
    - (ii) construction of rail infrastructure;

- (iii) restoration or repair work;
  - (iv) testing of railway track or other infrastructure;
  - (v) other activities relating to railway operations considered appropriate by the Director and designated in the notice of accreditation.
- (2) If the applicant so requests, accreditation may be granted for a specified period only.

## **26      Application for accreditation**

- (1) A rail transport operator may apply to the Director for accreditation in respect of specified railway operations carried out, or proposed to be carried out, by or on behalf of the operator.
- (2) The application must:
  - (a) specify the scope and nature of the railway operations in respect of which accreditation is sought; and
  - (b) include a safety management plan relating to those railway operations; and
  - (c) specify whether or not the applicant is accredited, or has applied for accreditation, under a corresponding law; and
  - (d) contain the prescribed information; and
  - (e) be accompanied by the prescribed application fee.
- (3) The Director may require a rail transport operator who has applied for accreditation:
  - (a) to supply further information requested by the Director; or
  - (b) to verify by statutory declaration any information supplied to the Director.

## **27      What applicant for accreditation must demonstrate**

- (1) The Director must not grant accreditation to an applicant unless satisfied, having regard to the guidelines applicable to this section, the applicant has demonstrated:
  - (a) the applicant is or is to be a rail infrastructure manager or rolling stock operator in relation to the railway operations for which accreditation is sought; and

- (b) the applicant has the competence and capacity to manage risks to safety associated with the railway operations for which accreditation is sought; and
  - (c) the applicant has the competence and capacity to implement the proposed safety management system; and
  - (d) 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) the applicant has met the consultation requirements of this Act, as mentioned in section 50(3), in relation to the applicant's safety management system; and
  - (f) the applicant has complied with any other prescribed requirements.
- (2) The Director may, in determining whether an applicant satisfies the requirements of subsection (1)(b) or (c), take into account (and, if the Director considers appropriate, rely on) the fact that the applicant holds an accreditation under a corresponding law.

## **28            Director may direct applicants to coordinate applications**

- (1) If the Director:
- (a) receives applications from 2 or more rail transport operators for accreditation; and
  - (b) believes that coordinated preparation of the applications is necessary to ensure the applicants' railway operations are carried out safely;

the Director may give a written direction to the operators to coordinate their applications.

- (2) The direction may require each of the rail transport operators to provide to each other operator information about any circumstances in relation to the carrying out of railway operations by the operator that could constitute a risk to the safety of the railway operations of another operator.
- (3) A rail transport operator given a direction under subsection (1) must comply with the direction.

Maximum penalty:        100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

- (5) A rail transport operator commits an offence if the operator:
- (a) prepares a coordinated application in accordance with a direction under subsection (1); but
  - (b) does not include in the application a reference to:
    - (i) information given by the operator, in accordance with the direction, to each other rail transport operator; and
    - (ii) information given to the operator, in accordance with the direction, by each other rail transport operator.

Maximum penalty:        100 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.
- (7) It is a defence to a prosecution for an offence against subsection (3) or (5) if the defendant establishes a reasonable excuse.

## **29            Coordination between Rail Safety Regulators**

- (1) This section applies if the Director receives an application for accreditation, or for variation of accreditation or the conditions or restrictions of accreditation, that indicates the applicant is accredited, or is seeking accreditation, under a corresponding law of one or more other jurisdictions (whether or not contiguous with the Territory).
- (2) The Director 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 about the application with a view to the outcome of the application being consistent with the outcome of applications made in the other jurisdiction or jurisdictions.
- (3) For subsection (2), the Director must take into account any guidelines applicable to this section.
- (4) If the Director does not act consistently with the provisions of the guidelines in relation to an application, the Director must give the applicant a notice setting out:
- (a) the reasons for not acting consistently with the guidelines; and
  - (b) information about the right of review under Part 5.

## 30 Determination of application

- (1) The Director must give to the applicant, within the relevant period:
  - (a) if the Director is satisfied as to the matters mentioned in section 27 and, if applicable, section 28, a notice (a ***notice of accreditation***) granting accreditation to the applicant with or without any conditions or restrictions; or
  - (b) if the Director is not so satisfied, a notice refusing the application.
- (2) A notice of accreditation must specify:
  - (a) the prescribed details relating to the applicant; and
  - (b) 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) any conditions and restrictions imposed by the Director on the grant of accreditation; and
  - (d) any other prescribed information.
- (3) A notice under subsection (1) refusing an application, or imposing a condition or restriction, must include:
  - (a) the reasons for the decision to refuse to grant the application or impose the condition or restriction; and
  - (b) information about the right of review under Part 5.
- (4) In this section:

***relevant period***, in relation to an application, means the longest of the following periods:

- (a) 6 months after the application was received by the Director;
- (b) if the Director requested further information – 6 months after the Director receives the last information so requested (or another period as agreed between the Director and the applicant);
- (c) if the Director, by notice given to the applicant before the expiry of the relevant 6 months, specifies another period – the other period.

**31      Prescribed conditions and restrictions**

An accreditation granted under this Part is subject to any prescribed conditions or restrictions applicable to the accreditation.

**32      Penalty for breach of condition or restriction**

(1) An accredited person commits an offence if:

- (a) the person engages in conduct in the carrying out of rail transport operations; and
- (b) the conduct results in a contravention of a condition or restriction of accreditation applying under this Part.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of a condition or restriction applying under this Part.

Maximum penalty:      100 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

**33      Annual fees**

(1) An accredited person must pay the prescribed annual accreditation fee:

- (a) at the time of accreditation; and
- (b) each subsequent year on or before the date determined by the Minister.

(2) The Director may accept payment of the annual accreditation fee in accordance with an agreement made with the person liable to pay the fee.

*Example for subsection (2)*

*An agreement that provides for the payment of fees by instalments.*



**34            Late payment of fees**

If an accredited person fails to pay an annual accreditation fee by the due date, or an instalment by the due date under an agreement, the Director may suspend the person's accreditation until the payment is made.

**35            Waiver of fees**

The Director may waive or refund the whole or part of any fee payable under this Part.

**36            Surrender of accreditation**

- (1) An accredited person may surrender the person's accreditation.
- (2) The Regulations may make provision in relation to the surrender of accreditation.

**37            Suspension or revocation of accreditation**

- (1) This section applies in respect of an accredited person if:
  - (a) the Director considers the accredited person:
    - (i) is no longer able to demonstrate to the satisfaction of the Director the matters mentioned in section 27 or to satisfy the conditions, or to comply with the restrictions, of the accreditation; or
    - (ii) is not managing the rail infrastructure, or is not operating rolling stock in relation to any rail infrastructure, to which the accreditation relates and has not done so for at least the preceding 12 months; or
  - (b) the accredited person contravenes this Act.
- (2) The Director may, by notice to the accredited person:
  - (a) suspend the accreditation, or part of the accreditation, of the accredited person for a period determined by the Director; or
  - (b) revoke the accreditation of the accredited person wholly or in part, or in respect of particular railway operations specified in the notice, with immediate effect or with effect from a specified future date; or
  - (c) impose conditions or restrictions on the accreditation; or
  - (d) vary conditions or restrictions to which the accreditation is subject.

- (3) If the Director revokes the accreditation, the Director may declare that the accredited person is disqualified from applying for accreditation, or for accreditation in relation to specified railway operations, during a specified period.
- (4) Before taking action under subsection (2), the Director:
  - (a) must notify the person in writing:
    - (i) that the Director is considering taking action under subsection (2) of the kind, and for the reasons, specified in the notice; and
    - (ii) that the person may, within 28 days or such longer period as is specified in the notice, make written representations to the Director showing cause why the action should not be taken; and
  - (b) must consider any representations made under paragraph (a)(ii).

*Note for subsection (4)(b)*

*If a representation was made but has been withdrawn, it is no longer a representation that must be considered. A corresponding law may refer to representations that have been withdrawn.*

- (5) If the Director suspends or revokes the accreditation of the accredited person wholly or in part, or in respect of specified railway operations, the Director must include in the notice of suspension or revocation:
  - (a) the reasons for the suspension or revocation; and
  - (b) information about the right of review under Part 5.
- (6) If the Director suspends or revokes the accreditation of a person who is also accredited in another jurisdiction, the Director must give notice of the suspension or revocation to the corresponding Rail Safety Regulator for the other jurisdiction.

### **38            Immediate suspension of accreditation**

- (1) If the Director considers there is, or would be, an immediate and serious risk to safety unless an accreditation is suspended immediately, the Director may, without complying with section 37(4) or (5), by notice to the accredited person, immediately suspend the accreditation of the person:
  - (a) wholly or in part, or in respect of particular railway operations specified in the notice; and

- (b) for a specified period, not exceeding 6 weeks.
- (2) A notice under subsection (1) must include information about the right of review under Part 5.
- (3) The Director may, by further notice to a person whose accreditation is suspended under subsection (1):
  - (a) reduce the period of suspension specified in the notice under subsection (1); or
  - (b) extend the period of suspension specified in the notice under subsection (1) but not so the suspension continues for more than 6 weeks after the date of the further notice.
- (4) Before making a decision under subsection (3)(b) to extend a period of suspension, the Director:
  - (a) must, by notice, advise the person:
    - (i) that the Director is considering extending the period of suspension for the reasons specified in the notice; and
    - (ii) that the person may, within 7 days or a longer period as is specified in the notice, make written representations to the Director showing cause why the suspension should not be extended; and
  - (b) must consider any representations made under paragraph (a)(ii).
- (5) If the Director extends a suspension, the Director must include in the notice extending the suspension the reasons for the extension and information about the right of review under Part 5.

### **39 Documents available for public inspection**

- (1) A rail transport operator must ensure the following documents are available for inspection in accordance with subsection (4):
  - (a) if the operator is an accredited person or has an exemption relating to this Part – the current notice of accreditation or exemption;
  - (b) if the operator is a rail infrastructure manager of a private siding registered with the Director – the notice of registration;
  - (c) any other document prescribed for this section.

Maximum penalty:        20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) The documents mentioned in subsection (1) must be made available for inspection:
  - (a) if the operator is a body corporate – at the operator's registered office during normal business hours; or
  - (b) if the operator is not a body corporate – at the operator's principal place of business during normal business hours or, if the Director approves another place and time, at the other place and time.

#### **40            Application for variation of accreditation**

- (1) An accredited person may apply to the Director, in the manner and form approved by the Director, for a variation of the accreditation.
- (2) An application for variation must:
  - (a) specify the details of the variation being sought; and
  - (b) contain the prescribed information; and
  - (c) be accompanied by the prescribed application fee.
- (3) The Director may require an accredited person who has applied for a variation:
  - (a) to supply further information requested by the Director; or
  - (b) to verify by statutory declaration any information supplied to the Director.

#### **41            Application relating to cooperative railway operations or operations in another jurisdiction**

Sections 28 and 29 apply to an application for variation as if a reference in those sections to accreditation were a reference to variation of accreditation.

## 42 Determination of application for variation

- (1) The Director must, within the relevant period, give to the applicant:
  - (a) if the Director is satisfied as to the matters mentioned in sections 27 and 28 so far as they are applicable to the proposed variation – a notice varying the accreditation, with or without any conditions or restrictions; or
  - (b) if the Director is not so satisfied – a notice refusing the application.
- (2) A notice under subsection (1) varying an accreditation must specify the following:
  - (a) the prescribed details relating to the applicant;
  - (b) the variation of the accreditation, so far as it applies to the scope and nature of the railway operations or the manner in which they are to be carried out;
  - (c) any conditions and restrictions imposed by the Director on the accreditation as varied;
  - (d) any other prescribed information.
- (3) A notice under subsection (1) refusing an application, or imposing a condition or restriction, must include:
  - (a) the reasons for the decision to refuse to grant the application for variation or imposing the condition or restriction; and
  - (b) information about the right of review under Part 5.
- (4) In this section:

***relevant period***, in relation to an application, means the longest of the following periods:

- (a) 6 months after the application was received by the Director;
- (b) if the Director requested further information – 6 months after the Director receives the last information so requested (or another period as agreed between the Director and the applicant);
- (c) if the Director, by notice given to the applicant before the expiry of the relevant 6 months, specifies another period – the other period.

**43            Prescribed conditions and restrictions**

An accreditation that is varied under this Part is subject to any prescribed conditions or restrictions applicable to the accreditation as varied.

**44            Variation of conditions and restrictions**

- (1) An accredited person may apply to the Director for a variation of any condition or restriction to which the accreditation is subject and that was imposed by the Director.
- (2) An application for variation of a condition or restriction must be made as if it were an application for variation of accreditation and section 40 applies accordingly.
- (3) The Director must consider the application and, if satisfied as to the matters mentioned in sections 27 and 28 so far as they are applicable to the proposed variation, may, by notice to the accredited person and in accordance with the provisions of this Part applicable to a grant of accreditation, grant, or refuse to grant, the variation.
- (4) A notice under subsection (3) refusing to grant a variation of a condition or restriction must include the reasons for the refusal and information about the right of review under Part 5.

**45            Director may change conditions or restrictions**

- (1) The Director may, at any time:
  - (a) vary or revoke a condition or restriction imposed by the Director on an accredited person's accreditation; or
  - (b) impose a new condition or restriction.
- (2) Before taking action under subsection (1), the Director must:
  - (a) give the accredited person notice of the action the Director proposes to take; and
  - (b) allow the accredited person to make written representations about the intended action within 14 days (or any other period the Director and the accredited rail operator agree on); and
  - (c) consider any representations made under paragraph (b).
- (3) Subsection (2) does not apply if the Director considers it necessary to take immediate action in the interests of safety.

- (4) The Director must, by notice, give the accredited person:
  - (a) details of any action taken under subsection (1); and
  - (b) a statement of reasons for any action taken under subsection (1); and
  - (c) information about the right of review under Part 5.

#### **46        Accreditation cannot be transferred or assigned**

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

#### **47        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 Director 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 Division.
- (2) The Director must not waive compliance with any such requirements unless the proposed transferee demonstrates, to the satisfaction of the Director, that the proposed transferee has the competence and capacity to comply with the relevant requirements of this Division that apply to applicants for accreditation of the appropriate kind.
- (3) A waiver of compliance with requirements may be given subject to any conditions and restrictions the Director considers necessary.

## **Division 3            Private sidings**

### **48            Exemption from accreditation and registration**

- (1) A rail infrastructure manager of a private siding:
  - (a) is not required to be accredited under this Part in respect of railway operations carried out in the private siding; and
  - (b) except to the extent otherwise prescribed, is not required to comply with Division 4, 5 or 6 in relation to the private siding.
- (2) However, if the private siding is, or is to be, connected with, or to have access to, a railway or siding of an accredited person, the rail infrastructure manager must register the private siding with the Director and pay the prescribed annual fee.
- (3) The Director must issue a notice (a *notice of registration*) to a rail infrastructure manager who registers a private siding with the Director.
- (4) Despite subsection (1)(b), the Director may, in the notice of registration, impose any conditions he or she considers appropriate on the registration of the private siding, even if the conditions are the same as, or similar to, any provisions of Division 4, 5 or 6.
- (5) The Director must make prescribed particulars of the registration available for public inspection during normal business hours at the office of the Director or, if another place is prescribed, the other place.

### **49            Offences relating to private siding**

- (1) This section applies if a rail infrastructure manager's private siding is registered by the Director.
- (2) The rail infrastructure manager commits an offence if:
  - (a) the manager engages in conduct; and
  - (b) the conduct results in a contravention of a prescribed condition or condition imposed by the Director (from time to time) with respect to the safe construction, maintenance and operation of the siding, whether or not the conditions are the same as, or similar to, any provisions of Division 4, 5 or 6.

Fault elements:

The manager:

- (a) intentionally engages in the conduct; and



- (b) is reckless as to whether the conduct would result in a contravention of any condition.

Maximum penalty: 200 penalty units.

- (3) The rail infrastructure manager commits an offence if:
  - (a) the manager intentionally engages in conduct in carrying out the manager's operations; and
  - (b) the operations affect or relate to the safety of the railway or siding of the accredited person for the railway to which it is, or is to be, connected, or to have access; and
  - (c) the manager does not give notice of the operations to the accredited person.

Fault elements:

The manager:

- (a) intentionally engages in the conduct; and
- (b) knows the operations affect or relate to the safety of the accredited person's railway or siding.

Maximum penalty: 200 penalty units.

- (4) Strict liability applies to the circumstance mentioned in subsection (3)(c).

## Division 4 Safety management

### 50 Safety management system

- (1) A rail transport operator must have a system (a ***safety management system***) for railway operations (other than railway operations in respect of which the operator is not required to be accredited) carried out on or in relation to the rail transport operator's rail infrastructure or rolling stock that:
  - (a) complies with the relevant prescribed requirements and the prescribed risk management principles, methods and procedures; and
  - (b) identifies and assesses any risks to safety that have arisen or may arise from the carrying out of railway operations on or in relation to the rail transport operator's rail infrastructure or rolling stock; and

- (c) specifies the controls (including audits, expertise, resources and staff) to be used by the rail transport operator to manage risks that have been identified and to monitor safety in relation to those railway operations; and
- (d) includes procedures for monitoring, reviewing and revising the adequacy of those controls; and
- (e) includes:
  - (i) measures to manage risks to safety identified under section 55, 56 or 57; and
  - (ii) a security management plan in accordance with section 63; and
  - (iii) an emergency management plan in accordance with section 64; and
  - (iv) a health and fitness management program in accordance with the Regulations; and
  - (v) an alcohol and drug management program in accordance with the Regulations; and
  - (vi) a fatigue management program in accordance with the Regulations.

Maximum penalty:        100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) A rail transport operator, before establishing, reviewing or varying a safety management system, must consult, so far as is reasonably practicable, with:
  - (a) persons (the *relevant persons*) likely to be affected by the system, review or variation (for example, persons who carry out railway operations or work on or at the rail transport operator's railway premises or with the rail transport operator's rolling stock); and
  - (b) health and safety representatives (within the meaning of the occupational health and safety legislation) representing any of the relevant persons; and
  - (c) if requested by any of the relevant persons – a registered organisation of which the person is a member; and

- (d) any other rail transport operator with whom the operator has an interface agreement under section 55; and
  - (e) the public, as appropriate.
- (4) If 2 rail transport operators are parties to an interface agreement under section 55 and the safety management systems of the operators, when taken as a single system, comply with this Act, each of the systems is taken to comply with this Act.
- (5) A safety management system must:
  - (a) be documented in a way approved by the Director; and
  - (b) identify each person responsible for preparing any part of the safety management system; and
  - (c) identify the person, or class of persons, responsible for implementing the system.
- (6) A rail transport operator:
  - (a) may, in satisfying a requirement under this section, including a requirement arising in relation to a plan or program mentioned in subsection (1)(e), incorporate (including by reference) a document or other material prepared for another Act if the document or other material satisfies the relevant requirement under this Act; and
  - (b) may be taken to have complied with a requirement under this section, including a requirement arising in relation to a plan or program mentioned in subsection (1)(e), to the extent that the relevant requirement has been satisfied by compliance with the provisions of another Act.
- (7) The Director may, in acting in relation to a safety management system, exercise a function under this Act as if any document or other material incorporated under subsection (6)(a), or any requirement under another Act that has effect for subsection (6)(b), formed part of the safety management system.

**51            Director may direct amendment of safety management system**

- (1) The Director may, by notice to a rail transport operator, direct the operator to amend the operator's safety management system.

- (2) The direction must:
- (a) specify the period, not less than 28 days after the direction is given, within which the operator must comply with the direction; and
  - (b) specify the reasons why the Director considers it necessary for the rail transport operator to amend the safety management system; and
  - (c) include information about the right of review under Part 5.
- (3) The rail transport operator must comply with the direction.
- Maximum penalty:        50 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

## **52            Compliance with safety management system**

- (1) A rail transport operator commits an offence if:
- (a) the operator engages in conduct in the carrying out of rail transport operations; and
  - (b) the conduct results in the operator's safety management system not being implemented.

Fault elements:

The operator:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in the system not being implemented.

Maximum penalty:        200 penalty units.

- (2) A rail transport operator commits an offence if:
- (a) the operator engages in conduct in the carrying out of rail transport operations; and

- (b) the conduct results in a contravention of the operator's safety management system.

Fault elements:

The operator:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the system.

Maximum penalty:        200 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
- (4) Without limiting subsection (3), it is a reasonable excuse if the rail transport operator:
  - (a) complies with the operator's safety management system to the extent practicable while complying with a condition or restriction of accreditation; or
  - (b) demonstrates that compliance with the system in particular circumstances would have increased the likelihood of a notifiable occurrence happening.

### **53        Review of safety management system**

- (1) A rail transport operator must review the operator's safety management system, in the prescribed manner, as follows:
  - (a) at the prescribed times or within the prescribed periods;
  - (b) if no times or periods are prescribed:
    - (i) at least once each year; or
    - (ii) at another time agreed between the operator and the Director.

Maximum penalty:        100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

## 54            Safety performance reports

- (1) A rail transport operator must, within 6 months after the end of each reporting period, give the Director a safety performance report for the reporting period that:
  - (a) complies with the prescribed requirements; and
  - (b) contains:
    - (i) a description and assessment of the safety performance of the operator's railway operations; and
    - (ii) comments on any deficiencies in, and any irregularities in, the railway operations that may be relevant to the safety of the railway; and
    - (iii) a description of any safety initiatives in relation to the railway operations undertaken during the reporting period or proposed to be undertaken in the next reporting period; and
    - (iv) any other prescribed information or performance indicators.

Maximum penalty:       100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) The report must be in a form approved by the Director.
- (5) In this section:

***reporting period*** means a calendar year or such other period as is agreed from time to time by the Director and the rail transport operator.

## 55            Interface coordination – rail transport operators

- (1) A rail transport operator must:
  - (a) so far as is reasonably practicable, identify and assess risks to safety that may arise from railway operations carried out by or on behalf of the operator because of, or partly because of, railway operations carried out by or on behalf of any other rail transport operator; and
  - (b) determine measures to manage those risks; and

- (c) for managing those risks, seek to enter into an interface agreement with the other rail transport operator or operators.
- (2) Except to the extent the Regulations otherwise provide, subsection (1)(c) does not apply if none of the rail transport operators is a rail infrastructure manager.

**56            Interface coordination – rail infrastructure manager – public roads**

A rail infrastructure manager must:

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

**57            Interface coordination – rail infrastructure manager – other roads**

A rail infrastructure manager must:

- (a) so far as is reasonably practicable, identify and assess risks to safety that may arise from railway operations carried out on or in relation to the manager's rail infrastructure and that may so arise because of, or partly because of, the existence or use of any road or rail crossing that is part of any road, other than a public road; and
- (b) consider the extent to which those risks are managed by any protocol in place under section 21 of the *AustralAsia Railway (Special Provisions) Act*; and
- (c) consider whether it is necessary to manage, or further manage, those risks in conjunction with the road manager for the road and:
  - (i) if the rail infrastructure manager is of the opinion it is necessary that those risks be managed in conjunction with the road manager, must give notice of that opinion to the road manager and must determine measures to manage, so far as is reasonably practicable, those risks; or

- (ii) if the rail infrastructure manager is of the opinion that the management of those risks does not need to be carried out in conjunction with the road manager, must keep a written record of that opinion; and
- (d) unless paragraph (c)(ii) applies – for managing those risks, seek to enter into an interface agreement with the road manager for the road.

**58            Interface coordination – road manager – public roads and other roads**

- (1) The road manager for a public road must:
  - (a) so far as is reasonably practicable, identify and assess risks to safety that may arise from the existence or use of any road or rail crossing that is part of the public road because of, or partly because of, railway operations carried out on or in relation to any rail infrastructure; and
  - (b) determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) for managing those risks, seek to enter into an interface agreement with the rail infrastructure manager of the rail infrastructure.
- (2) If, under section 57(c), a rail infrastructure manager gives to a road manager for a road (that is not a public road) a notice of an opinion that certain risks need to be managed in conjunction with the road manager, the road manager must:
  - (a) so far as is reasonably practicable, identify and assess risks to safety that may arise from the existence or use of any road or rail crossing that is part of the road because of, or partly because of, railway operations; and
  - (b) determine measures to manage, so far as is reasonably practicable, those risks; and
  - (c) for managing those risks, seek to enter into an interface agreement with the rail infrastructure manager.
- (3) This section does not authorise or require a road manager to act inconsistently with, or without regard to, the functions or obligations conferred on the road manager under an Act other than this Act.



**59            Identification and assessment of risks**

A rail transport operator, rail infrastructure manager or road manager required under section 55, 56, 57 or 58 to identify and assess risks to safety that may arise from operations carried out by another person may do so:

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

**60            Interface agreement**

- (1) An *interface agreement* is a written agreement between 2 or more rail transport operators, or one or more rail transport operators and one or more road managers, about managing risks to safety identified and assessed under this Division.
- (2) An interface agreement must include provisions for:
  - (a) implementing and maintaining measures to manage those risks; and
  - (b) the evaluation, testing and, where appropriate, revision of those measures; and
  - (c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and
  - (d) procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and
  - (e) a process for keeping the agreement under review and its revision.
- (3) An interface agreement may:
  - (a) include measures to manage any number of risks to safety that may arise:
    - (i) because of, or partly because of, any railway operations; or
    - (ii) from any railway operations because of, or partly because of, the existence or use of any road; and

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

## **61        Director may give directions**

- (1) This section applies if the Director is satisfied:
  - (a) a rail transport operator or road manager has made a reasonable attempt to enter into an interface agreement with another person as required under this Division; and
  - (b) the other person is unreasonably refusing to enter into, or is otherwise unreasonably delaying the negotiation of, an interface agreement with the operator or manager.
- (2) The Director may give a notice to the rail transport operator or road manager and the other person that:
  - (a) sets out the Director's functions under this section, including the power to issue a direction under subsection (4) at any time after a specified date; and
  - (b) includes a copy of this section; and
  - (c) may contain suggested terms for inclusion in an interface agreement.
- (3) If the Director gives a notice under subsection (2), the Director may, in writing, request any person given the notice to provide any information the Director reasonably requires for making a direction under subsection (4).
- (4) If a notice is given under subsection (2) and an interface agreement has not been entered into by or on the date specified in the notice, the Director:
  - (a) may determine the arrangements that are to apply in relation to the management of risks to safety mentioned in section 55, 56, 57 or 58, as the case requires; and
  - (b) may direct any person to whom the notice is given to give effect to the arrangements; and
  - (c) if a direction is made – must specify by when the direction must be complied with.

- (5) A direction under subsection (4):
  - (a) must be in writing; and
  - (b) must set out any arrangements determined by the Director under that subsection.
- (6) A person given a direction under subsection (4) must comply with the direction.

Maximum penalty:      100 penalty units.
- (7) An offence against subsection (6) is an offence of strict liability.
- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.

## **62      Register of interface agreements**

- (1) A rail transport operator must maintain a register of the following that are applicable to its railway operations:
  - (a) interface agreements to which it is a party;
  - (b) arrangements determined by the Director under section 61.

Maximum penalty:      20 penalty units.
- (2) An offence against subsection (1) is an offence of strict liability.
- (3) A road manager must maintain a register of the following that are applicable to any road in relation to which it is the road manager:
  - (a) interface agreements to which it is a party;
  - (b) arrangements determined by the Director under section 61.

Maximum penalty:      20 penalty units.
- (4) An offence against subsection (3) is an offence of strict liability.

## **63      Security management plan**

- (1) A security management plan must:
  - (a) incorporate measures to protect people from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm; and
  - (b) comply with any prescribed requirements.

- (2) A rail transport operator commits an offence if:
- (a) an incident of a kind mentioned in subsection (1)(a) occurs; and
  - (b) response measures are included in the operator's security management plan for the incident; and
  - (c) the operator engages in conduct that results in a response measure not being implemented without delay.

Fault elements:

The operator:

- (a) knows the incident has occurred; and
- (b) intentionally engages in the conduct; and
- (c) is reckless as to whether the conduct would result in a response measure not being implemented without delay.

Maximum penalty: 400 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes the defendant implemented other measures that were appropriate in the circumstances in response to the incident.

## **64 Emergency management plan**

- (1) An emergency management plan must:
- (a) address and include any prescribed matters; and
  - (b) be prepared:
    - (i) in conjunction with the emergency services; and
    - (ii) in accordance with the Regulations; and
  - (c) be kept and maintained in accordance with the Regulations; and
  - (d) be provided to the emergency services; and
  - (e) be tested as prescribed.
- (2) A rail transport operator commits an offence if:
- (a) an emergency occurs; and

- (b) response measures are included in the operator's emergency management plan for the emergency; and
- (c) the operator engages in conduct that results in a response measure not being implemented in accordance with the plan.

Fault elements:

The operator:

- (a) knows the emergency has occurred; and
- (b) intentionally engages in the conduct; and
- (c) is reckless as to whether the conduct would result in a response measure not being implemented.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) Strict liability applies to the circumstance mentioned in subsection (2)(b).
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes the defendant implemented other measures that were appropriate in the circumstances in response to the emergency.
- (5) In this section:

***emergency services*** means any or all of the following:

- (a) the Police Force of the Northern Territory;
- (b) the Northern Territory Fire and Rescue Service;
- (c) the Northern Territory Emergency Service;
- (d) a prescribed body or organisation.

## **65 Competence to carry out rail safety work**

- (1) A rail transport operator commits an offence if:
  - (a) the operator requires a rail safety worker to carry out rail safety work; and

- (b) the worker is not competent to carry out the work safely.

Fault elements:

The operator:

- (a) intentionally requires the worker to carry out the work; and
- (b) is reckless as to whether the worker is competent to carry out the work safely.

Maximum penalty:       200 penalty units.

- (2) For subsection (1), the competence of a rail safety worker to carry out rail safety work must be assessed:
  - (a) by reference to any prescribed qualification or units of competence applicable to the rail safety work to be carried out; or
  - (b) by reference to the knowledge and skills of the rail safety worker that would enable the worker to carry out the rail safety work safely.
- (3) A certificate purporting to have been issued to a rail safety worker certifying that the worker has specified qualifications or units of competence recognised under subsection (2)(a) is evidence that the worker has the specified qualifications or units of competence.
- (4) This section does not prevent a rail transport operator from requiring a rail safety worker to undertake further training before carrying out rail safety work.
- (5) A rail transport operator must maintain prescribed records of the competence of rail safety workers who carry out rail safety work on or in relation to the operator's rail infrastructure or rolling stock.

Maximum penalty:       20 penalty units.

- (6) An offence against subsection (5) is an offence of strict liability.

## **66            Identification for rail safety workers**

- (1) A rail transport operator must ensure each rail safety worker who is to carry out rail safety work in relation to the operator's railway operations is issued with identification sufficient to enable a rail safety officer to check the type of competence and training of the worker for the work.

Maximum penalty:       20 penalty units.

- (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 officer.

Maximum penalty:        20 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant establishes a reasonable excuse.

## **67        Duty of rail safety worker**

- (1) A rail safety worker who engages in conduct in carrying out rail safety work must ensure the conduct does not place the safety of the worker or someone else at risk.

Fault elements:

The worker:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in placing the safety of the worker or someone else at risk.

Maximum penalty:        400 penalty units or imprisonment for 2 years.

*Note for subsection (1)*

*See section 12 for an explanation of what is required in ensuring safety.*

- (2) A rail safety worker must, when carrying out rail safety work, cooperate with the rail transport operator with respect to any action taken by the operator to comply with a requirement imposed under this Act.

Maximum penalty:        100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

- (5) A rail safety worker must not, when carrying out rail safety work, interfere with or misuse anything provided to the worker by the rail transport operator in the interests of safety or under this Act.

Fault elements:

The worker:

- (a) intentionally interferes with or misuses the thing; and
- (b) knows the thing is provided in the interest of safety or under this Act.

Maximum penalty: 100 penalty units.

## **68 Alcohol or prohibited drug**

- (1) A rail safety worker must not carry out rail safety work while a concentration of alcohol equal to or greater than the prescribed level, or a prohibited drug, is present in the worker's body.

Maximum penalty: 50 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if analysis, in the prescribed manner, of a sample taken from the rail safety worker in the prescribed manner:
  - (a) does not indicate the presence of any drug prescribed under subsection (5)(a); or
  - (b) does indicate the presence of a drug prescribed under subsection (5)(b) but the defendant satisfies the court that for that drug, he or she:
    - (i) was, at the time of the alleged offence, under treatment by a medical practitioner and had taken the drug as part of that treatment; and
    - (ii) had taken the drug in accordance with the directions of the medical practitioner.
- (4) For subsection (1), alcohol at a certain concentration, or a prohibited drug, is taken to be present in a person's body if the presence is evidenced by:
  - (a) for alcohol – the prescribed concentration (or greater) in a sample of the person's breath or blood; or



- (b) for a drug – detection of the substance in a sample of the person's body fluids or tissues.
- (5) For subsection (1), a ***prohibited drug*** is a drug prescribed as either of the following:
  - (a) a drug that is strictly prohibited for subsection (1);
  - (b) a drug that is prohibited for subsection (1) but in relation to which the defence under subsection (3)(b) applies.

## **69      Impairment**

- (1) A rail safety worker must not carry out rail safety work while under the influence of alcohol, a prohibited drug or another substance to the extent the worker is incapable of effectively discharging a function of a rail safety worker.

Maximum penalty:      50 penalty units or imprisonment for 6 months.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) Without limiting subsection (1), a person is incapable of effectively discharging a function of a rail safety worker if, due to the influence of alcohol, a prohibited drug or another substance, the use of any mental or physical faculty of the person is lost or the faculty is appreciably impaired.

## **70      Testing for presence of alcohol or drugs**

The Director may arrange with any of the following for the testing of any person on duty for carrying out rail safety work for the presence of alcohol or any drug prohibited by regulation in the person's body:

- (a) a rail transport operator;
- (b) a person undertaking railway operations on or in relation to a rail transport operator's rail infrastructure or rolling stock.

*Note for section 70*

*See section 68(4) for when alcohol at a certain concentration, or a prohibited drug, is taken to be present in a person's body.*

## **71      Contractors to comply with safety management system**

A contractor commits an offence if:

- (a) the contractor engages in conduct in undertaking railway operations of a rail transport operator; and

- (b) the conduct results in a contravention of the operator's safety management system to the extent the system applies to the operations undertaken by the contractor.

Fault elements:

The contractor:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the system to the extent the system applies to the operations.

Maximum penalty:        400 penalty units.

## **Division 5            Information about rail safety**

### **72            Rail transport operators to provide information**

- (1) The Director may, by notice to a rail transport operator, require the operator to provide to the Director on or before a specified date and in a manner and form approved by the Director, any or all of the following:
  - (a) information concerning measures taken by the rail transport operator to promote rail safety;
  - (b) information concerning matters, including matters relating to the operator's financial capacity or insurance arrangements, relating to rail safety or the accreditation of the operator as the Director reasonably requires;
  - (c) other prescribed information.
- (2) The notice must state it is an offence to fail to comply with it.
- (3) The rail transport operator must comply with the notice.

Maximum penalty:        100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

## **Division 6 Investigating and reporting by rail transport operators**

### **73 Report of notifiable occurrences**

(1) A rail transport operator commits an offence if:

- (a) a notifiable occurrence happens on or in relation to the operator's railway premises or railway operations; and
- (b) the operator does not, within the prescribed time and in the prescribed manner, report the occurrence to the Director or, if the Director specifies another authority, the other authority.

Fault element: The operator knows the occurrence happened.

Maximum penalty: 200 penalty units.

(2) Strict liability applies to the circumstance mentioned in subsection (1)(b).

(3) A rail transport operator commits an offence if:

- (a) another type of notifiable occurrence happens on or in relation to the operator's railway premises or railway operations; and
- (b) the occurrence endangers or could endanger the safe operation of any railway operations; and
- (c) the occurrence is of a type that the Director has, by notice to the operator, required the operator to report to the Director or another authority specified by the Director; and
- (d) the operator does not report the occurrence as mentioned in paragraph (c) within the prescribed time and in the prescribed manner.

Fault elements:

The operator:

- (a) knows the occurrence happened; and
- (b) is reckless as to whether the occurrence would endanger the safe operation of any railway operations.

Maximum penalty: 200 penalty units.

- (4) Strict liability applies to the circumstances mentioned in subsection (3)(c) and (d).
- (5) Two or more rail transport operators may make a joint report with respect to a notifiable occurrence affecting them.
- (6) The Director may require information in a report under this section to be verified by statutory declaration.

#### **74            Investigation of notifiable occurrences**

- (1) The Director may, by notice to a rail transport operator, require the operator to investigate notifiable occurrences, or any other occurrences that have endangered or may endanger the safe operation of the operator's railway operations.
- (2) The level of investigation must be determined by the severity and potential consequences of the notifiable occurrence as well as by other similar occurrences, and its focus should be to determine the cause and contributing factors rather than to apportion blame.
- (3) The rail transport operator must ensure the investigation is conducted in a manner approved, and within the period specified by, the Director.

Maximum penalty:       100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.
- (6) A rail transport operator who has carried out an investigation under this section must report in writing to the Director on the investigation within the period specified by the Director.

Maximum penalty:       100 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.
- (8) It is a defence to a prosecution for an offence against subsection (6) if the defendant establishes a reasonable excuse.
- (9) The contents of a part of a report under this section are not admissible in evidence against an individual in proceedings for an offence or for the imposition of a penalty to the extent the part of the report discloses information provided by the individual for the relevant investigation.

**75            Director may release information from report**

- (1) The Director may release information from a report under section 74(6) as the Director considers appropriate, including by doing either of the following:
  - (a) providing a copy of the report, or part of the report, to any persons as the Director considers appropriate;
  - (b) publishing the report, or part of the report, in any other manner as the Director considers appropriate.
- (2) The Director may also take steps the Director considers appropriate to prevent the disclosure of specific information from the report, as the Director considers appropriate.
- (3) The Director must, in releasing information (or preventing the disclosure of information) under this section, be satisfied that his or her actions are:
  - (a) in the public interest, including on account of issues of public safety; or
  - (b) justifiable on some other reasonable ground.
- (4) No action lies against the Director in relation to the provision or publication of the report or part of the report.

**Division 7            Audit by Director**

**76            Audit of railway operations by Director**

- (1) The Director may:
  - (a) audit the railway operations of a rail transport operator; and
  - (b) prepare and implement a program (an *audit program*) for each year for auditing the railway operations of rail transport operators; and
  - (c) for the purposes of an audit, inspect the railway operations of a rail transport operator whether or not under an audit program.
- (2) Without limiting subsection (1)(b), an audit program may focus on one or more of the following:
  - (a) particular rail transport operators;
  - (b) particular criteria relating to rail transport operators;

- (c) particular aspects of rail safety;
- (d) particular aspects of railway operations.
- (3) The Director must give not less than 24 hours notice to a rail transport operator before inspecting the operator's railway operations under this section.
- (4) The Regulations may establish procedures for the conduct of audits under this section, including procedures to ensure the confidentiality of records.
- (5) In this section:  
*rail transport operator* includes a contractor.

## **Part 4            Enforcement**

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

#### **77            Power to enter places**

- (1) For compliance and investigative purposes, 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 occupier of the place consents to the entry; or
  - (c) the entry to the place is authorised by a warrant issued under section 86; or
  - (d) 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
    - (ii) otherwise open for entry; or
    - (iii) not open as mentioned in subparagraph (i) or (ii) but the entry is urgently required, at a time during which railway operations are being carried out or are usually carried out at the place, to investigate the circumstances of a notifiable occurrence.

- (2) A rail safety officer may also enter railway premises at any time if the officer is responding to a situation the officer reasonably believes to be an emergency.
- (3) A rail safety officer who enters railway premises under subsection (1)(d) must not unnecessarily impede any activities being conducted at the premises.
- (4) In this section:

***compliance and investigative purposes*** includes purposes related to ascertaining any or all of the following:

- (a) whether this Act has been or is being complied with, including whether an offence has been committed against this Act;
- (b) whether the terms of, or a condition or restriction of, an accreditation has been or is being complied with;
- (c) whether a condition of an exemption has been or is being complied with.

## **78        Limitation on entry powers – places used for residential purposes**

The powers of a rail safety officer under this Part in relation to entering a place are not exercisable in respect of any place that is used only for residential purposes except:

- (a) with the consent of the occupier of the place; or
- (b) as authorised by a warrant issued under section 86.

## **79        Notice of entry**

Before a rail safety officer enters railway premises (which are not a public place) under section 77, the officer must give the occupier of the premises reasonable notice of the intention to enter unless:

- (a) giving the notice would be reasonably likely to defeat the purpose for which it is intended to enter the premises; or
- (b) entry to the premises is made with the consent of the occupier of the premises; or
- (c) entry is required in circumstances where the officer reasonably believes there is an immediate risk to safety or another form of emergency; or
- (d) entry is authorised by a warrant issued under section 86.

## **Division 2            General enforcement powers**

### **80            General powers after entry**

- (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 infrastructure, rolling stock, road vehicle or other thing;
  - (c) take measurements, make surveys and take levels and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers;
  - (d) test any part of rail infrastructure or rolling stock or cause any part of rail infrastructure or rolling stock to be tested;
  - (e) inspect, film, photograph, videotape or otherwise record an image of:
    - (i) rail infrastructure, rolling stock, a road vehicle or any other thing; or
    - (ii) a document;
  - (f) take, or authorise another person to take, for analysis a thing, or a sample of or from the thing;
  - (g) seize anything the officer suspects, on reasonable grounds, is connected with an offence against this Act or to secure the thing against interference;
  - (h) mark, tag or otherwise identify rolling stock, a road vehicle or other thing;
  - (i) take a copy of a document or part of a document;
  - (j) take all necessary steps to allow a power conferred above to be exercised;
  - (k) exercise other prescribed powers.



- (2) A film, photograph, videotape or image taken under subsection (1)(e) 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 been the main reason for the taking of the film, photograph, videotape or image.

## **81            Other powers after entry**

- (1) A rail safety officer who enters a place under this Part may also do any of the following:
- (a) give directions with respect to the stopping or movement of any rolling stock or road vehicle at the place;
  - (b) require a person at the place to produce specified documents, or documents of a specified kind, including a written record that reproduces in an understandable form information stored by computer, microfilm or other process;
  - (c) require a person at the place to answer questions.
- (2) A person to whom a direction is given, or a requirement is made, under subsection (1) must comply with the direction or requirement.

Maximum penalty:        100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) A person does not comply with a requirement to answer a question unless the person answers the question to the best of the person's knowledge, information and belief.
- (5) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

*Note for subsection (5)*

*Section 118 excludes self-incrimination as an excuse, but provides protection for an individual who is required to answer questions.*

## **82            Use of assistants and equipment**

- (1) A rail safety officer may exercise powers under this Part with the aid of assistants and equipment 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 it is reasonably necessary in the circumstances for the powers to be exercised by an assistant.

### **83            Use of electronic equipment**

- (1) Without limiting section 80, 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 device;

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

- (2) However, the rail safety officer, or a person assisting the officer, must not operate or seize equipment for the purpose mentioned in subsection (1) unless the officer or person reasonably believes the operation or seizure of the equipment can be carried out without damage to the equipment.

### **84            Use of equipment to examine or process things**

- (1) Without limiting section 82, 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.
- (2) The rail safety officer, or a person assisting the officer, may operate equipment already in or on the rolling stock or road vehicle, or at the place, to carry out the examination or processing of a thing found in or on the rolling stock or road vehicle, or at the place, in order to determine whether it is a thing that may be seized, if the officer or person assisting reasonably believes:
- (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.

### **85            Securing a site**

- (1) To protect evidence that might be relevant for compliance or investigative purposes, a rail safety officer or a police officer may secure the perimeter of any site at a place by whatever means the officer considers appropriate.

- (2) A person must not, without the permission of a rail safety officer or a police officer, enter or remain at a site the perimeter of which is secured under this section.

Maximum penalty:       50 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) A rail safety officer or police officer must not unreasonably withhold a permission mentioned in subsection (2).
- (5) Subsection (2) does not apply if the person enters 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.
- (6) In this section:

*compliance and investigative purposes*, see section 77(4).

## **Division 3            Search warrants**

### **86            Search warrant**

- (1) A rail safety officer may apply to a Justice for the issue of a search warrant in relation to particular railway premises or residential premises if the officer reasonably believes there is, or may be within the next 72 hours, in or on the railway premises or residential premises a thing of a kind that may be evidence of the commission of an offence against this Act.
- (2) An application for a search warrant:
- (a) may be made:
    - (i) orally before a Justice; or
    - (ii) in any other manner prescribed; and
  - (b) must be supported by evidence on oath or in an affidavit.

- (3) If a Justice is satisfied there are reasonable grounds for believing that there is, or may be within the next 72 hours, in or on the railway premises or residential premises evidence of the commission of an offence against this Act, the Justice may issue a search warrant authorising a rail safety officer named in the warrant and any assistants the officer considers necessary:
  - (a) to enter the railway premises or residential premises named or described in the warrant; and
  - (b) to search for and seize a thing in accordance with the terms of the warrant.
- (4) In addition to any other requirement, a search warrant issued under this section must specify the following:
  - (a) the relevant offence;
  - (b) the railway premises or residential premises to be searched;
  - (c) a description of the thing for which the search is to be made;
  - (d) any conditions to which the warrant is subject;
  - (e) whether entry is authorised to be made at any time or during specified hours;
  - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect;
  - (g) any other prescribed information.

## **87            Seizure of things not mentioned in warrant**

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

- (a) the officer reasonably believes the thing:
  - (i) is of a kind which could have been included in a warrant issued under section 86; or
  - (ii) will afford evidence about the commission of an offence against this Act; and
- (b) the officer reasonably believes it is necessary to seize the thing in order to prevent its concealment, loss or destruction or its use in the commission of an offence against this Act.

## Division 4            Seizure of things

### 88            Directions relating to seizure

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

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

- (4) A person given a direction under subsection (1) or (3) must comply with the direction.

Maximum penalty:        100 penalty units.

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.
- (7) Without limiting what may otherwise be a reasonable excuse under subsection (6), it is a reasonable excuse for a person in control of a thing not to comply with a direction under subsection (1) or (3) if, in all the circumstances, the direction was unreasonable.
- (8) 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.

**89            Rail safety officer may direct return of thing**

- (1) This section applies if a rail safety officer has directed a person to take a thing to a specified place under section 88(1) and it is no longer necessary for the thing to remain at that place.
- (2) A rail safety officer may direct the person to return the thing to the place from which it was taken or another place agreed between the officer and the person.
- (3) A person given a direction under subsection (1) must comply with the direction.

Maximum penalty:        100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

**90            Receipt for seized thing**

- (1) After a rail safety officer seizes a thing under this Part, the officer must give a receipt for it to the person from whom the thing was seized or the owner of the thing.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the rail safety 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 rail safety officer to account for the thing, given its condition, nature and value.

**91            Access to seized thing**

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

## 92            Embargo notice

- (1) This section applies if:
- (a) a rail safety officer is authorised to seize any record, device or other thing under this Part; and
  - (b) the record, device or other thing cannot, or cannot readily, be physically seized and removed.
- (2) A rail safety officer may issue a notice (an ***embargo notice***) forbidding the use, movement, sale, leasing, transfer, deletion of information from or other dealing with the record, device or other thing, or any part of it, without the written consent of a rail safety officer or the Director.
- (3) The embargo notice must:
- (a) contain the prescribed particulars; and
  - (b) list the activities that it forbids; and
  - (c) set out a copy of subsection (8).
- (4) On issuing an embargo notice, a rail safety officer must:
- (a) serve a copy of the notice on the owner of the record, device or other thing; or
  - (b) if the owner 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.
- (5) A person must not do anything that is forbidden by an embargo notice.

Fault elements:

The person:

- (a) knows doing the thing is forbidden by the embargo notice; and
- (b) intentionally does the thing.

Maximum penalty:        200 penalty units.

- (6) A person must not instruct or request another person to do anything that is forbidden by an embargo notice.

Fault elements:

The person:

- (a) knows doing the thing is forbidden by the embargo notice; and
- (b) intentionally instructs or requests the other person to do the thing.

Maximum penalty:        200 penalty units.

- (7) It is a defence to a prosecution for an offence against subsection (5) or (6) if the defendant establishes that the defendant:

- (a) moved, or caused to be moved, the record, device or other thing, or part of it, to protect or preserve it; and
- (b) notified the rail safety officer who issued the embargo notice about the move, and of the new location of the record, device or other thing or part of it, within 48 hours after the move.

- (8) 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.

Maximum penalty:        50 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.

- (10) Despite anything to the contrary in any other Act or at law, a sale, lease, transfer or other dealing with a record, device or other thing, or part of it, in contravention of this section, is void.

## **93        Return of seized thing**

- (1) As soon as practicable after a rail safety officer seizes anything (including a document) under this Part, the officer must return the thing to the owner unless:

- (a) the 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
- (b) the thing is forfeited to the Territory under this Act; or
- (c) the 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 terms and conditions that the rail safety officer considers appropriate to eliminate or reduce any risks to safety.
- (3) If the rail safety officer, by notice to the owner, imposes a term or condition on the return of a thing, the owner must comply with the term or condition.

Maximum penalty:        100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

## **Division 5            Forfeiture**

### **94            Forfeiture**

- (1) A sample or thing taken for analysis, or a thing seized under this Part, is forfeited to the Territory 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 thing to prevent the commission of an offence against this Act.
- (2) If a thing is forfeited to the Territory under subsection (1)(c), the rail safety officer must, by notice to the owner of the thing, advise the owner about the forfeiture, setting out how the owner may seek review under Part 5 of the decision to forfeit the thing, unless the rail safety officer cannot find the owner after making reasonable enquiries.
- (3) For subsections (1) and (2), the rail safety 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.
- (4) In deciding whether:
  - (a) 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 condition, nature and value of the sample or thing.

- (5) In this section:

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

## **95            Forfeiture on conviction**

If proceedings for an offence against this Act involve a thing seized under this Part and the defendant in the proceedings is convicted or found guilty of the offence, the court may:

- (a) order the thing be forfeited to the Territory; or
- (b) authorise a person to destroy or dispose of the thing.

## **96            Dealing with forfeited sample or thing**

- (1) On forfeiture of a sample or thing to the Territory, the sample or thing becomes the property of the Territory and may be dealt with by the Director in any way the Director considers appropriate.
- (2) Without limiting subsection (1), the Director may destroy or dispose of the sample or thing.

## **97            Acquisition on just terms**

If, apart from this section, property would be acquired from a person because of the operation of this Act other than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

## Division 6            Directions

### 98            Rail safety officers may direct certain persons to give assistance

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

*Example for subsection (1)*

*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 an accredited person's approved safety management system.*

- (2) A person commits an offence if:
- (a) the person is given a direction under subsection (1); and
  - (b) when giving the direction, the rail safety officer tells the person it is an offence not to comply with the direction; and
  - (c) the person does not comply with the direction.

Maximum penalty:        100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.
- (5) In this section:

***reasonable assistance*** includes:

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

**99            Power to direct name and address be given**

- (1) A rail safety officer may direct a person to give the person's name and residential or business address to the officer if the officer:
  - (a) finds the person committing an offence against this Act or suspects, on reasonable grounds, that the person has committed an offence against this Act; or
  - (b) finds the person at railway premises and reasonably believes the person is carrying out railway operations for a rail transport operator.
- (2) The officer may also direct the person to give evidence of the correctness of the name or address given if the officer reasonably suspects the given name or address is false.
- (3) The person commits an offence if:
  - (a) the person is given a direction under subsection (1) or (2); and
  - (b) when giving the direction, the rail safety officer tells the person it is an offence not to comply with the direction; and
  - (c) the person does not comply with the direction.

Maximum penalty:        100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.

**100          Power to direct production of documents**

- (1) A rail safety officer may direct a 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 required to be kept by the person under this Act; or
  - (b) a document prepared by the person under this Act for the management of rail infrastructure or the operation of rolling stock that the officer reasonably believes is necessary for the officer to consider in order to understand or verify a document that is required to be kept under this Act; or

- (c) a document held by, or under the control of, the person relating to the carrying out of railway operations.

*Example for subsection (1)*

*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 sets out the results of the test is a document prepared under the safety management system.*

- (2) A person commits an offence if:
  - (a) the person is given a direction under subsection (1); and
  - (b) when giving the direction, the rail safety officer tells the person it is an offence not to comply with the direction; and
  - (c) the person does not comply with the direction.

Maximum penalty:        100 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) The rail safety officer may keep the document to copy it but must return the document to the person after copying it.
- (5) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

## **Division 7            Improvement notices**

### **101            Improvement notice**

- (1) A rail safety officer may serve a notice (an *improvement notice*) on a person if the officer reasonably believes the person:
  - (a) is contravening this Act; or
  - (b) has contravened this Act and it is likely the contravention will continue or be repeated; or
  - (c) is carrying out or has carried out railway operations that threaten safety.

- (2) An improvement notice may require the person on whom it is served to do either or both of the following within the period specified in the notice:
  - (a) 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;
  - (b) carry out railway operations so that safety is not threatened or likely to be threatened.
- (3) An improvement notice must:
  - (a) specify the period, not less than 7 days after the notice is given, within which the person must comply with the notice; and
  - (b) specify the reasons for the service of the notice; and
  - (c) in the case of an improvement notice served in respect of a contravention or likely contravention of this Act, specify the provision in respect of which that belief is held; and
  - (d) in the case of an improvement notice served on a person who is carrying out or has carried out railway operations that threaten safety, specify the operations in respect of which that belief is held; and
  - (e) include information about the right of review under Part 5 of the decision to serve the notice; and
  - (f) set out the penalty for contravening the notice; and
  - (g) include a statement about section 104.
- (4) An improvement notice served on a person on a ground mentioned in subsection (1)(a) or (b) may:
  - (a) specify a method by which the alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, are to be remedied; and
  - (b) offer the person on whom the notice is served a choice of ways by which an alleged contravention or likely contravention, or the matters or activities occasioning the alleged contravention or likely contravention, may be remedied; and

- (c) require the person to provide the Director with a program of rail safety work 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.
- (5) An improvement notice served on a person on the ground specified in subsection (1)(c) may:
  - (a) specify a method by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and
  - (b) offer the person on whom the notice is served a choice of ways by which railway operations may be carried out so that safety is not threatened or likely to be threatened; and
  - (c) require the person to provide the Director with a program of railway operations the person proposes to carry out to remedy the threat or likely threat to safety.
- (6) A program mentioned in subsection (4)(c) or (5)(c) must include a timetable for the completion of the program.

## **102        Contravention of improvement notice**

- (1) A person commits an offence if:
  - (a) an improvement notice has been served on the person; and
  - (b) the person engages in conduct that results in a contravention of the notice.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the notice.

Maximum penalty:     400 penalty units.

- (2) Strict liability applies to the circumstance mentioned in subsection (1)(a).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

- (4) Without limiting subsection (3), it is a defence to a prosecution for an offence against subsection (1) if the defendant establishes:

- (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 improvement notice, though by a method different from that specified in the notice.

- (5) In addition and without limiting subsection (3), it is a defence to a prosecution for an offence against subsection (1) for a contravention of an improvement notice on the ground specified in section 101(1)(c), if the defendant establishes the threat to safety was removed within the period specified in the notice, though by a method different from that specified in the notice.

### **103        Withdrawal or amendment of improvement notice**

- (1) An improvement notice served by a rail safety officer:
- (a) may be withdrawn by notice served by a rail safety officer on the person affected by the notice; or
  - (b) may be amended by a rail safety officer by notice (an ***amendment notice***) served on the person affected by the notice.
- (2) An amendment notice must specify the terms of the amendment.
- (3) However, an amendment notice is not effective if it purports to deal with a contravention of a different provision of this Act from that dealt with in the improvement notice.
- (4) An amendment notice must:
- (a) specify the reasons for the amendment; and
  - (b) include information about the right of review under Part 5 of the decision to amend the improvement notice.

### **104        Proceedings for offence not affected by improvement notice**

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



**105 Director to arrange for rail safety work required by improvement notice to be carried out**

- (1) This section applies if a person fails to comply with an improvement notice served on the person that requires the person to carry out rail safety work to remedy:
  - (a) the alleged contravention or likely contravention; or
  - (b) the matters or activities occasioning the alleged contravention or likely contravention.
- (2) The Director may arrange for the rail safety work specified in the improvement notice to be carried out.
- (3) The Director may recover from the person served with the improvement notice the reasonable costs and expenses incurred by the Director in carrying out rail safety work under subsection (2).

**Division 8 Prohibition notice**

**106 Prohibition notice**

- (1) This section applies if a rail safety officer reasonably believes:
  - (a) an activity is occurring in relation to railway operations or railway premises that involves or may involve an immediate threat to safety; or
  - (b) an activity may occur in relation to railway operations or railway premises that, if it occurs, may involve an immediate threat to safety; or
  - (c) an activity is occurring at, on, or in the vicinity of, rail infrastructure or rolling stock that involves or may involve an immediate threat to the safety or operational integrity of the railway; or
  - (d) an activity may occur at, on, or in the immediate vicinity of, rail infrastructure or rolling stock that, if it occurs, may involve an immediate threat to the safety or operational integrity of the railway.
- (2) A rail safety officer may serve on a person who has or appears to have control over the activity a notice (a ***prohibition notice***) prohibiting the carrying on of the activity or the carrying on of the activity in a specified way.

- (3) A prohibition notice:
  - (a) has effect when served or, if the notice specifies a later date, on that later date; and
  - (b) unless withdrawn or set aside – remains in effect until a rail safety officer has certified in writing that the matters that gave rise or may give rise to the threat have been remedied.
- (4) A prohibition notice must:
  - (a) specify the basis for the rail safety officer's belief on which the service of the notice is based; and
  - (b) specify the activity the officer believes involves or may involve the threat and the matters which give rise or may give rise to the threat; and
  - (c) if the officer believes the activity involves a contravention or likely contravention of a provision of this Act – specify the provision and give the basis for the belief; and
  - (d) include information about the right of review under Part 5 of the decision to serve the notice; and
  - (e) specify the penalty for contravening the notice; and
  - (f) include a statement about section 112.
- (5) A prohibition notice may include directions on the measures to be taken to minimise or eliminate the risk, activities or matters, or the contravention or likely contravention mentioned in subsection (4)(c), to which the notice relates.
- (6) A direction in a prohibition notice may:
  - (a) require that measures be taken in accordance with a compliance code; or
  - (b) offer the person on whom the notice has been served a choice of ways to remedy:
    - (i) the risk, activities or matters to which the notice relates; or
    - (ii) the contravention or likely contravention mentioned in subsection (4)(c).

- (7) A prohibition notice may prohibit the carrying on of an activity in a specified way 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) anything 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.

#### **107        Contravention of prohibition notice**

- (1) A person commits an offence if:
- (a) a prohibition notice has been served on the person; and
  - (b) the person engages in conduct that results in a contravention of the notice.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the notice.

Maximum penalty:        400 penalty units.

- (2) Strict liability applies to the circumstance mentioned in subsection (1)(a).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

#### **108        Oral direction before prohibition notice served**

- (1) This section applies if a rail safety officer reasonably believes:
- (a) an activity mentioned in section 106(1) is occurring or may occur; and
  - (b) it is not possible or reasonable to serve a prohibition notice under that section immediately.

- (2) The officer may direct a person who has or appears to have control over the activity to do or not to do a specified act by telling the person:
  - (a) to do or not to do the specified act; and
  - (b) the reason for the officer giving the direction.
- (3) A person commits an offence if:
  - (a) a direction under subsection (2) has been given to the person; and
  - (b) when giving the direction, the rail safety officer tells the person it is an offence if the person engages in conduct that results in a contravention of the direction; and
  - (c) the person engages in conduct that results in a contravention of the direction.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the direction.

Maximum penalty:      400 penalty units.

- (4) Strict liability applies to the circumstances mentioned in subsection (3)(a) and (b).
- (5) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes a reasonable excuse.
- (6) If a rail safety officer gives a direction under subsection (2) in respect of an activity but does not, within 5 days after giving the direction, serve a prohibition notice in respect of the activity, the direction ceases to have effect.

## **109      Withdrawal or amendment of prohibition notice**

- (1) A prohibition notice served by a rail safety officer may:
  - (a) be withdrawn by notice served by a rail safety officer on the person affected by the notice; or
  - (b) be amended by a rail safety officer by notice (an ***amendment notice***) served on the person affected by the notice.

- (2) An amendment notice must specify the terms of the amendment.
- (3) However, an amendment notice is not effective if it purports to deal with a contravention of a different provision of this Act from that dealt with in the prohibition notice.
- (4) An amendment notice must:
  - (a) specify the reasons for the amendment; and
  - (b) include information about the right of review under Part 5 of the decision to amend the prohibition notice.

#### **110        Power to have remedial work done**

- (1) If a person fails to comply with a requirement in a prohibition notice, the Director may arrange for any measures required by the notice to be taken.
- (2) The Director may recover from a person to whom the prohibition notice is directed the reasonable costs and expenses incurred by the Director in acting under subsection (1).

#### **111        Power to enter land**

For this Division, a rail safety officer, or a person who holds a specific authority from the Director, may enter land and inspect measures required by a prohibition notice to be taken, or take any measures under section 110:

- (a) after giving 3 days notice to an owner or occupier of the land;  
or
- (b) with the written agreement of an owner or occupier of the land;  
or
- (c) without notice or agreement, if the Director reasonably believes there is an immediate and significant risk to the safety or operational integrity of a railway.

#### **112        Proceedings for offence not affected by prohibition notice**

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

## **Division 9            Miscellaneous matters**

### **113            Direction may be given under more than one provision**

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

### **114            Temporary closure of railway crossing, bridge or other structure**

- (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 safety.
- (2) If an authorised person decides to temporarily 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.
- (3) In this section:

***authorised person*** means a person who holds a specific authority from the Director for this section.

### **115            Restoring items to original condition after action taken**

- (1) This section applies if:
  - (a) a rail safety officer, or a person assisting the officer, takes any action in the exercise or purported exercise of any function under this Part in relation to rail infrastructure, rolling stock, railway premises or a road vehicle; and
  - (b) damage is caused by an unreasonable exercise of the power or by the use of force that is not authorised under this Part.
- (2) The rail safety officer must take reasonable steps to return the rail infrastructure, rolling stock, railway premises or road vehicle to the condition it or they were in immediately before the action was taken.

**116 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, and any 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.

**117 Force against persons only by police officers**

A provision in this Part authorising a person to use reasonable force does not authorise a person who is not a police officer to use force against another person.

**118 Protection from incrimination**

- (1) A person is not excused from complying with a direction under Division 2 or 6:

- (a) to answer a question; or
- (b) to produce a document; or
- (c) to give or provide information;

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

- (2) However, any information obtained or document produced as a direct result of the compliance with the direction by an individual is not admissible in evidence against the individual in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

**Part 5 Review of decisions****119 Reviewable decisions**

The Schedule 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).

**120 Review by Director**

- (1) An eligible person:
  - (a) in relation to a reviewable decision made by the Director may, within 28 days after the decision was made, apply to the Director for a review of the decision; or
  - (b) in relation to a reviewable decision not made by the Director, may apply to the Director for review of the decision within:
    - (i) 28 days after the day on which the decision first came to the eligible person's notice; or
    - (ii) a longer period as the Director allows.
- (2) The application must be in the form approved by the Director.
- (3) If an application is made to the Director in accordance with this section, the Director must make a decision:
  - (a) to affirm or vary the reviewable decision; or
  - (b) to set aside the reviewable decision and substitute another decision as the Director considers appropriate.
- (4) The Director must, within 14 days after the application is made, give a notice to the applicant setting out:
  - (a) the Director's decision under subsection (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.
- (5) However, if the reviewable decision was made under section 101, 103, 106 or 109, the notice must be given within 7 days after the application is made.
- (6) If the Director has not notified an applicant of a decision in accordance with subsection (4) or (5), the Director is taken to have made a decision to affirm the reviewable decision.
- (7) The making of an application under subsection (1) does not affect the operation of the reviewable decision or prevent the taking of any action to implement it.



- (8) However, the Director, on the Director's own initiative or on application by the applicant for review, may stay the operation of the decision pending the determination of the review.
- (9) Subsection (8) does not apply if the reviewable decision related to an immediate suspension of accreditation or the serving of a prohibition notice.
- (10) The Director must make a decision on an application for a stay by the end of the next business day following the day on which the application for the stay was made.
- (11) If the Director has not made a decision in accordance with subsection (10), the Director is taken to have made a decision to grant a stay.
- (12) The Director may attach any conditions to a stay of the operation of a reviewable decision as the Director considers appropriate.

## **121 Application to Local Court**

- (1) An eligible person in relation to a reviewable decision may apply to the Local Court for review of:
  - (a) a reviewable decision made by the Director; or
  - (b) a decision made, or taken to have been made, by the Director under section 120 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision).

*Note for subsection (1)(a)*

*An eligible person may apply:*

- (a) under section 120 for review by the Director of a reviewable decision; or*
- (b) under subsection (1)(a) to the Local Court for review of the decision.*

- (2) An application for review must be made within 28 days after the person is advised of the decision in relation to which the application is made.
- (3) In determining the matter, the Local Court may, as the Court considers appropriate:
  - (a) affirm the decision; or
  - (b) substitute its own decision; or
  - (c) remit the matter to which the application relates to the Director for reconsideration, either generally or in respect of specified matters, and for substitution of another decision.

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- (4) The Local Court may make any other order, including orders as to costs, as it considers appropriate.
  - (5) In remitting a matter to the Director, the Local Court must:
    - (a) advise the Director of its reasons for doing so; and
    - (b) give to the Director the directions it considers appropriate for the reconsideration or otherwise of the whole or part of the matter that is referred back for reconsideration.

## Part 6                      Investigations

### 122              Appointment of investigator

- (1) If an accident or other incident on, involving or associated with a railway causes or results in a person's death, serious personal injury, or major property damage, the Director:
  - (a) on his or her own initiative or on the request of a rail transport operator – may; or
  - (b) on the request of the Minister – must;appoint a person (an *investigator*) to investigate and report on the accident or incident under this Part.
- (2) The Director may also appoint a person (also an *investigator*) to investigate and report on, under this Part, any other accident or incident.
- (3) Before making an appointment under subsection (1) or (2), the Director must consult with the Minister and any relevant rail transport operator about the following:
  - (a) the person to be appointed as the investigator;
  - (b) the matter or matters to be inquired into by the investigator;
  - (c) reporting arrangements once the investigation is completed.
- (4) The Director must not appoint a person to be an investigator if the person has a direct or indirect pecuniary interest in a matter that the investigator will investigate, other than an interest as a member, director or employee of an incorporated company consisting of 25 members or more.
- (5) An investigator is appointed on the terms and conditions determined by the Director.

**123 Functions of investigator**

- (1) The functions of an investigator are:
  - (a) to conduct an investigation in accordance with this Part to establish and assess the circumstances surrounding the accident or incident being investigated (but not to apportion blame or determine liability) for the purpose of preventing the occurrence of future accidents or incidents; and
  - (b) report to the Minister and the Director on the outcomes of the investigation.
- (2) Despite the commencement of proceedings in respect of the accident or incident in a court or before any other body in accordance with a law in force in the Territory, the investigator may commence or continue to investigate and make a report on the accident or incident unless the court or, if within its power to do so, the other body orders otherwise.

**124 Persons appointed to assist investigator**

- (1) An investigator may appoint a rail safety officer or other person to assist him or her in the conduct of an investigation.
- (2) The investigator must not appoint a person to assist him or her if the person has a direct or indirect pecuniary interest in a matter that the investigator will investigate with the assistance of the person, other than an interest as a member, director or employee of an incorporated company consisting of 25 members or more.
- (3) A person appointed to assist the investigator must carry out his or her duties in accordance with the directions of the investigator.

**125 Conduct of investigation**

- (1) In conducting an investigation, an investigator:
  - (a) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues; and
  - (b) is not bound by the rules of evidence but may inform himself or herself on any matter as the investigator considers appropriate.
- (2) Except as provided by this Part, an investigation may be conducted in a manner determined by the investigator.

**126 Powers of investigator**

- (1) For an investigation, an investigator may do any of the following:
  - (a) by notice to a person, require the attendance of the person, or require the production of any document, object or material;
  - (b) require a person to answer relevant questions;
  - (c) require a person to take an oath to truthfully answer questions relevant to the investigation put by the investigator.
- (2) An investigator may also exercise any of the functions of a rail safety officer under this Act other than the power to issue an improvement notice or prohibition notice.
- (3) An investigator may inquire into the mental and physical capacity of a person and for that purpose may:
  - (a) require the person to be examined by a medical practitioner nominated by the Director; and
  - (b) require a copy of the results of the examination to be given to the investigator.

**127 Power to enter and take control of place or building**

- (1) If it appears that an action is being taken or is likely to be taken in a place or a building that might hinder or obstruct the proper conduct of an investigation, the Minister may authorise the investigator to enter and take control of the place or building.
- (2) If an investigator enters and takes control of a place or building under subsection (1):
  - (a) no person may take any action or do anything in the place or building unless he or she has the written consent of the investigator to do so; and
  - (b) the investigator must, without delay, conduct the part of the investigation that relates to the place or building and restore control of the place or building to its owner or occupier.
- (3) The Regulations may prescribe the manner in which an investigator is to enter and take control of a place or building under this section and conduct the part of the investigation in relation to the place or building.

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**128 Report by investigator**

- (1) An investigator must make a written report to the Director at the end of an investigation.
- (2) The report must detail:
  - (a) the manner in which the investigation was conducted; and
  - (b) the circumstances of the accident or incident the subject of the investigation as established by the investigator; and
  - (c) the investigator's assessment of the circumstances of the accident or incident in relation to railway safety; and
  - (d) the recommendations of the investigator in relation to the prevention of future accidents or incidents; and
  - (e) any other matter the investigator considers relevant.
- (3) On receiving the report, the Director must forward a copy to the Minister together with comments or advice the Director considers appropriate.
- (4) The Minister or the Director may do any of the following:
  - (a) provide a copy of the report or part of the report to persons as the Minister or the Director considers appropriate;
  - (b) publish a copy of the report or part of the report, as the Minister or Director considers appropriate.
- (5) Without limiting subsection (4), within 28 days after receiving a report under subsection (1), the Director must ensure a copy of the report is available for public inspection, without charge, during normal business hours at the office of the Director.
- (6) However, before making a copy of the report available to the public, the Director must remove from the report any matter the Director believes it is necessary or appropriate to remove:
  - (a) in order to avoid prejudicing any proceedings before a court or other body in accordance with a law in force in the Territory in respect of the accident or incident the subject of the report or an accident or incident of a similar kind; or
  - (b) in the public interest; or
  - (c) on some other reasonable ground.

**129 Withholding of information contained in report**

- (1) An accredited person or the owner of a private siding may request the Director not to make the whole or a part of an investigator's report available to the public.
- (2) The request must be in writing and specify the reasons for wanting the information to be withheld.
- (3) The Director must, as soon as reasonably possible, consider the request and, if the Director accepts the reasons specified in the request, withhold from the public the whole or the part of the report the Director considers appropriate to withhold (which may not be the same information the accredited person or owner or the private siding requested to be withheld).

**130 Director may take action as consequence of report**

- (1) If the Director considers it is appropriate because of the recommendations contained in an investigator's report under section 128, the Director may do any of the following:
  - (a) serve a person with an improvement notice;
  - (b) serve a person with a prohibition notice;
  - (c) give directions under section 108.
- (2) Subsection (1) does not limit Part 4.

**131 Immunity**

No action in relation to the provision or publication of a report or part of a report under this Part lies against:

- (a) the investigator; or
- (b) the Minister, the Director or a rail safety officer; or
- (c) a person who has provided evidence, or any document, object or material, to the investigator for an investigation.

**132 Offences**

- (1) A person served with a notice under section 126(1) must comply with the notice.

Maximum penalty: 100 penalty units.

- (2) A person required under section 126(1) to answer questions or take an oath must comply with the requirement.

Maximum penalty:        100 penalty units.

- (3) If, under section 126(3), an investigator requires a person to be examined by a medical practitioner nominated by the Director, the person must comply with the requirement.

Maximum penalty:        100 penalty units.

- (4) An offence against subsection (1), (2) or (3) is an offence of strict liability.

- (5) It is a defence to a prosecution for an offence against subsection (1), (2) or (3) if the defendant establishes a reasonable excuse.

*Note for subsection (5)*

*Section 118 excludes self-incrimination as an excuse, but provides protection for an individual who is required to answer questions or produce documents.*

- (6) A person is not obliged under this Part to provide information that is privileged on the ground of legal professional privilege.

- (7) If a document, object or material is produced, or found by an investigator, the investigator may do any of the following:

- (a) inspect it;
- (b) make copies of, photograph or take extracts from, or test, it;
- (c) take possession of it, and keep it while it is necessary for the investigation.

## **Part 7            General liability and evidentiary provisions**

### **Division 1        General matters**

#### **133            Time for offence proceedings to be commenced**

- (1) This section applies to an offence against this Act, other than:
- (a) an offence in respect of which proceedings may only be commenced within a period of less than 2 years after its alleged commission; or
  - (b) a prescribed offence.

- (2) Despite anything to the contrary in any other Act, proceedings for an offence against this Act 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 Director, a rail safety officer or a police officer first obtained evidence of the commission of the alleged offence considered reasonably sufficient by the Director or officer to warrant commencing proceedings.
- (3) For subsection (2)(b), a certificate purporting to have been issued by the Director, a rail safety officer or a police officer as to the date when the Director or officer first obtained evidence considered reasonably sufficient by the Director or officer to warrant commencing proceedings is admissible in any proceedings and is evidence of the matters mentioned.

#### **134            Authority to take proceedings**

- (1) Any legal proceedings to recover any charge, fee or money due under this Act may be taken only by the Director or by a person authorised by the Director for the purpose, either generally or in any particular case.
- (2) Any legal proceedings for an offence against this Act may be taken only with the approval of the Director or a person authorised by the Director for the purpose, either generally or in any particular case.
- (3) Proceedings against the Crown or a statutory body representing the Crown for an offence against this Act are not to be commenced without the written consent of the Minister.
- (4) In any proceedings mentioned in this section, the production of an authority or consent purporting to be signed by the Director or the Minister is to be evidence of the authority or consent without proof of the signature of the Director or the Minister.
- (5) The Director may, for subsection (1), authorise any person who is a member of a specified class of persons to take the actions mentioned in that subsection.

#### **135            Records and evidence from records**

- (1) The Director must keep records of the grant, refusal, variation, suspension, surrender and revocation of accreditations, and of any conditions or restrictions of accreditations, and of improvement notices and prohibition notices, under this Act.



(2) A certificate purporting to be signed by the Director and certifying that:

(a) on a date specified in the certificate; or

(b) during any period so specified;

the particulars set out in the certificate as to any matter required to be recorded under this section did or did not appear on or from the records is, for any legal proceedings, evidence of what it certifies.

(3) The certificate is admissible in any legal proceedings:

(a) without proof of the signature of the Director; and

(b) without production of any record or document on which the certificate is founded.

### **136        Certificate evidence**

A statement in a certificate purporting to be issued by the Director, 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 by the Director is admissible in any legal proceedings and is evidence of the matter.

### **137        Proof of appointments and signatures unnecessary**

(1) For this Act:

(a) it is not necessary to prove the appointment of an office holder; and

(b) a signature purporting to be the signature of an office holder is evidence of the signature it purports to be.

(2) In this section:

***office holder*** means any of the following:

(a) the Minister;

(b) the Director;

(c) a corresponding Rail Safety Regulator;

(d) the Commissioner of Police;

(e) the head of the police force or police service of any other jurisdiction;

- (f) a rail safety officer;
- (g) a rail safety officer of another jurisdiction (however described);
- (h) a police officer;
- (i) a police officer of another jurisdiction.

### **138        Multiple offences**

Despite anything to the contrary in this Act or any other law, a person may be punished for more than one breach of a requirement of this Act if the breaches relate to different parts of the same rail infrastructure, railway premises or rolling stock.

### **139        Conduct of representative**

- (1) This section applies to a prosecution for an offence against a provision of this Act.

*Note for subsection (1)*

*This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code contains provisions about corporate criminal responsibility.*

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.
- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.
- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
- (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.
- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
- (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and

- (b) the representative had the fault element in relation to the physical element.
- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
  - (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
  - (b) the person proves the person exercised due diligence to prevent the conduct.
- (8) A person (the *defendant*) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.
- (9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).
- (10) In this section:

*fault element* includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

*person* means an individual.

*representative*, of a person, means an employee or agent of the person.

## 140        Criminal liability of partner in partnership

- (1) A partner in a partnership commits an offence if:
  - (a) another partner in the partnership (the *offender*) commits an offence in the course of the activities of the partnership by contravening a provision of this Act (a *relevant offence*); and
  - (b) the partner was in a position to influence the conduct of the offender in relation to the contravention; and

- (c) the partner failed to take reasonable steps to prevent the contravention.

Fault element:                      The partner was reckless about whether the contravention would happen.

Maximum penalty:                The maximum penalty that may be imposed for the relevant offence.

- (2) This section does not affect the liability of the offender.
- (3) This section applies whether or not the offender is prosecuted for, or convicted of, the relevant offence, but does not apply if the offender would have a defence to a prosecution for the relevant offence.
- (4) In this section:

*partner*, of a partnership, includes a person who is concerned with, or takes part in, the management of the partnership.

*partnership* does not include an incorporated limited partnership formed under the *Partnership Act*.

## 141                      Criminal liability of manager of unincorporated association

- (1) A manager of an unincorporated association commits an offence if:
  - (a) another manager of the association (the *offender*) commits an offence in the course of the activities of the association by contravening a provision of this Act (a *relevant offence*); and
  - (b) the manager was in a position to influence the conduct of the offender in relation to the contravention; and
  - (c) the manager failed to take reasonable steps to prevent the contravention.

Fault element:                      The manager was reckless about whether the contravention would happen.

Maximum penalty:                The maximum penalty that may be imposed on an individual for the relevant offence.

- (2) This section does not affect the liability of the offender.
- (3) This section applies whether or not the offender is prosecuted for, or convicted of, the relevant offence, but does not apply if the offender would have a defence to a prosecution for the relevant offence.

(4) In this section:

*manager*, of an unincorporated association, means a person who is concerned with, or takes part, in the management of the association.

## **142       Criminal liability of executive officer of body corporate**

(1) An executive officer of a body corporate commits an offence if:

- (a) the body corporate commits an offence by contravening a provision of this Act (a *relevant offence*); and
- (b) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
- (c) the officer failed to take reasonable steps to prevent the contravention.

Fault element:            The officer was reckless about whether the contravention would happen.

Maximum penalty:        The maximum penalty that may be imposed on an individual for the relevant offence.

(2) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must consider the following:

- (a) any action the officer took directed towards ensuring the following (to the extent the action is relevant to the contravention):
  - (i) the body corporate arranged regular professional assessments of the body corporate's compliance with the contravened provision;
  - (ii) the body corporate implemented any appropriate recommendation arising from an assessment under subparagraph (i);
  - (iii) the body corporate's representatives and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
- (b) any action the officer took when the officer became aware that the contravention was, or could be, about to happen.

(3) Subsection (2) does not limit the matters the court may consider.

- (4) This section does not affect the liability of the body corporate.
- (5) This section applies whether or not the body corporate is prosecuted for, or convicted of, the relevant offence but does not apply if the body corporate would have a defence to a prosecution for the relevant offence.
- (6) In this section:  
  
***executive officer***, of a body corporate, means a director or other person who is concerned with, or takes part in, the management of the body corporate.

#### **143        Sections 140 to 142 do not apply to volunteer**

- (1) An individual is not liable to be prosecuted under sections 140 to 142 for anything done or not done by him or her as a volunteer.
- (2) In this section:  
  
***volunteer*** means a person who is acting on a voluntary basis, irrespective of whether the person receives out-of-pocket expenses.

### **Division 2        Discrimination against employees**

#### **144        Victimisation of employee**

- (1) This section applies to:
  - (a) an employer who dismisses an employee, injures an employee in the employment of the employer or alters the position of an employee to the employee's detriment; and
  - (b) an employer who threatens to do any of the things mentioned in paragraph (a) to an employee; and
  - (c) an employer or prospective employer who refuses or fails to offer employment to a prospective employee, or treats a prospective employee less favourably than another prospective employee would be treated in offering terms of employment.
- (2) The employer or prospective employer commits an offence if the employer or prospective employer engaged in conduct mentioned in subsection (1) because the employee or prospective employee:
  - (a) has assisted or has given any information to a public agency in respect of a breach or alleged breach of this Act or a corresponding rail safety law; or

- (b) has made a complaint about a breach or alleged breach of this Act or a corresponding rail safety law to the employer, a fellow employee, a registered organisation or a public agency; or
- (c) assists or has assisted, or gives or has given any information to, a public agency in respect of a breach or alleged breach of this Act or a corresponding rail safety law; or
- (d) has made a complaint about a breach or alleged breach of this Act or a corresponding rail safety law to a former employer, a former fellow employee, a registered organisation or a public agency.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) knows the employee, or prospective employee, gave the assistance or information or made the complaint.

Maximum penalty:        200 penalty units or imprisonment for  
   12 months.

- (3) An employer or prospective employer may be guilty of an offence against subsection (2) only if the reason mentioned in subsection (2)(a), (b), (c) or (d) is the dominant reason why the employer or prospective employer engaged in the conduct.
- (4) In proceedings for an offence against subsection (2), if all the facts constituting the offence other than the reasons 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.
- (5) In this section:

***public agency*** includes the Director or a corresponding Rail Safety Regulator, a rail safety officer, a police officer and a police officer of another jurisdiction.

## 145            Order for damages or reinstatement

If an employer or prospective employer is convicted or found guilty of an offence against section 144, 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) damages to the employee or prospective employee against whom the offender discriminated, as the court considers appropriate to compensate him or her;
- (b) an order that:
  - (i) the employee be reinstated or re-employed in his or her former position or, if that position is not available, in a similar position; or
  - (ii) the prospective employee be employed in the position for which he or she had applied or a similar position.

## Division 3            Offences

### 146            Definitions

In this Division:

***acting in an official capacity***, in relation to a person, means the person is exercising a function under this Act or a corresponding rail safety law.

***official*** means any of the following:

- (a) the Director;
- (b) a rail safety officer;
- (c) an investigator;
- (d) a person assisting the Director, a rail safety officer or an investigator.



**147      Misleading information**

- (1) A person must not give misleading information to an official who is acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the information to the official; and
- (b) knows the information is misleading; and
- (c) knows the official is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) A person must not give a document containing misleading information to an official who is acting in an official capacity.

Fault elements:

The person:

- (a) intentionally gives the document to the official; and
- (b) knows the document contains misleading information; and
- (c) knows the official is acting in an official capacity.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (3) Subsection (2) does not apply if the person, when giving the document:

- (a) draws the misleading aspect of the document to the official's attention; and
- (b) to the extent to which the person can reasonably do so – gives the official the information necessary to remedy the misleading aspect.

- (4) In this section:

***misleading information*** includes information that is misleading because the information:

- (a) does not contain relevant information; or

- (b) contains misinformation.

#### 148        **Obstructing official**

- (1) A person must not obstruct an official who is acting in an official capacity.

Fault elements:

The person:

- (a) intentionally obstructs the official; and
- (b) knows the official is acting in an official capacity.

Maximum penalty:        50 penalty units or imprisonment for  
   6 months.

- (2) A person must not induce another person to obstruct an official who is acting in an official capacity.

Fault elements:

The person:

- (a) intentionally induces the other person to obstruct the official;  
and
- (b) knows the official is acting in an official capacity.

Maximum penalty:        50 penalty units or imprisonment for  
   6 months.

- (3) In this section:

***obstruct***, an official, includes:

- (a) hinder or resist the official; and
- (b) conceal from the official the location or existence of a document, record or thing.

**149        Abusive, threatening or insulting language to official**

- (1) A person must not use abusive, threatening or insulting language to an official who is acting in an official capacity.

Fault element:            The person knows the official is acting in an official capacity.

Maximum penalty:        50 penalty units or imprisonment for 6 months.

- (2) Strict liability applies to the use of the abusive, threatening or insulting language.

**150        Impersonating rail safety officer**

A person must not falsely represent, by words or conduct, that the person or someone else is a rail safety officer.

Fault element:            The person intentionally represents the person or someone else is a rail safety officer with an intention to deceive.

Maximum penalty:        200 penalty units or imprisonment for 2 years.

**151        Interference with equipment, infrastructure or rolling stock**

- (1) A person must not deal with any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator unless the person is the rail transport operator or an authorised person, or is permitted by the operator or an authorised person to deal with the equipment, infrastructure or rolling stock.

Fault elements:

The person:

- (a) intentionally deals with the equipment, infrastructure or rolling stock; and
- (b) knows the equipment, infrastructure or rolling stock is owned or operated by a rail transport operator.

Maximum penalty:        200 penalty units.

- (2) A person must not:

- (a) apply any brake or use any emergency device fitted to a train; or

- (b) use any emergency device on railway premises;

unless the person is the relevant rail transport operator or an authorised person, or is permitted by the relevant operator or an authorised person to apply the brake or use the emergency device.

Maximum penalty:        50 penalty units.

*Example of an emergency device*

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

- (3) A person must not cause a train in motion to be stopped unless the person is the rail transport operator for the train or an authorised person, or is permitted by the operator or an authorised person to stop the train.

Maximum penalty:        50 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.
- (5) It is a defence to a prosecution for an offence against subsection (1), (2) or (3) if the defendant establishes a reasonable excuse.
- (6) In this section:

***authorised person*** means any of the following:

- (a) a rail safety officer;
- (b) an investigator;
- (c) a police officer.

***deal with*** means any of the following:

- (a) move or attempt to move;
- (b) interfere or attempt to interfere with;
- (c) disable or attempt to disable;
- (d) operate or attempt to operate.

**152        Carrying out works near railway**

A person must not, without the approval of the relevant rail infrastructure manager, carry out works near a railway if the works give rise, or are likely to give rise, to a risk to:

- (a) the safety of the railway; or
- (b) the operational integrity of the railway.

Fault elements:

The person:

- (a) intentionally carries out the work; and
- (b) is reckless as to giving rise to the risk.

Maximum penalty:        200 penalty units or imprisonment for  
   12 months.

**Division 4        Enforceable voluntary undertakings**

**153        Director may accept undertaking**

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

**154        Enforcement of undertaking**

- (1) If the Director considers a person has contravened an undertaking accepted as mentioned in section 153(1), the Director may apply to the Local Court for enforcement of the undertaking.
- (2) If the Local Court is satisfied the person has contravened the undertaking, it may:
  - (a) order the person to comply with the undertaking or take specified action to comply with the undertaking; or
  - (b) make any other order as it considers appropriate.

(3) A person commits an offence if:

- (a) the person is subject to an order under subsection (2); and
- (b) the person engages in conduct that results in a contravention of the order.

Fault elements:

The person:

- (a) knows the person is subject to the order; and
- (b) intentionally engages in the conduct; and
- (c) is reckless as to whether the conduct would result in a contravention of the order.

Maximum penalty:        100 penalty units or imprisonment for  
   12 months.

## Division 5            Court-based sanctions

### 155            Continuing offences

- (1) This section applies if a court has found a person guilty of an offence against a provision of this Act.
- (2) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 10 penalty units for each day during which the offence continues after the day on which the offence is committed.

### 156            Commercial benefits order

- (1) The court that finds a person guilty of an offence against this Act may, on the application of the prosecutor or the Director, make an order (a ***commercial benefits order***) under this section.
- (2) The court may make a commercial benefits order requiring the person to pay, as a fine, an amount 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 an associate of the person, from the commission of the offence; and
  - (b) in the case of a journey that was interrupted or not commenced because of action taken by a rail safety officer in connection with the commission of the offence, would have

been received or receivable by the person, or an associate of the person, from the commission of the offence had the journey been completed.

- (3) In estimating the gross commercial benefit that was or would have been received or receivable from the commission of the offence, the court may take into account:
- (a) benefits of any kind, whether monetary or otherwise; and
  - (b) monetary savings or a reduction in any operating or capital expenditure of any kind achieved because of the commission of the offence; and
  - (c) any other matters that it considers relevant, including (for example):
    - (i) the value for each tonne or for each kilometre of the carriage of the goods involved in the offence as freight; and
    - (ii) the distance over which the 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 must disregard any costs, expenses or liabilities incurred by the person or an associate of the person.
- (5) This section does not prevent the court from ordering payment of an amount that is:
- (a) less than 3 times the estimated gross commercial benefit; or
  - (b) less than the estimated gross commercial benefit.
- (6) For this section, a person is an associate of another if:
- (a) one is a spouse, de facto partner, parent, brother, sister or child of the other; 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; or
  - (h) a chain of relationships can be traced between them under one or more of the above paragraphs.
- (7) For subsection (6)(d), a beneficiary of a trust includes an object of a trust.

## **157            Supervisory intervention order**

- (1) The court that finds a person guilty of an offence against this Act may, on the application of the prosecutor or the Director, if the court considers the person to be a systematic or persistent offender against any of the rail safety laws, make an order (a ***supervisory intervention 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 12 months) 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 Director or a person nominated by the Director;



- (c) to give compliance reports to the Director or the court or both as specified in the order;
  - (d) to appoint a person to have responsibilities:
    - (i) to assist the person in improving compliance with 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 give compliance reports to the Director or the court or both as specified in the order.
- (3) The court may specify matters that are to be dealt with in compliance reports and the form and manner in which, and frequency with which, compliance reports are to be prepared and given.
- (4) The court may require compliance reports or aspects of compliance reports to be made public, and may specify the form and manner in which, and frequency with which, they are to be made public.
- (5) The court may only make a supervisory intervention order if satisfied the order is capable of improving the person's ability or willingness to comply with rail safety laws, having regard to:
  - (a) the offences against rail safety laws of which the person has been previously found guilty; and
  - (b) the offences against rail safety laws for which the person has been proceeded against by way of infringement notices that have not been withdrawn; and
  - (c) any other offences or other matters 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 there has been a substantial failure to comply with the order.
- (7) A court that has power to make a supervisory intervention order may revoke or amend a supervisory intervention order on the application of:
  - (a) the Director; or

- (b) the person in respect of whom the order was made, but only if the court is satisfied there has been a change of circumstances warranting the 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 person's performance 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 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
  - (ii) the results of those things having been done.

***rail safety laws*** means this Act and corresponding rail safety laws.

## **158        Contravention of supervisory intervention order**

- (1) A person commits an offence if:
  - (a) the person is subject to a supervisory intervention order; and
  - (b) the person engages in conduct that results in a contravention of the order.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the order.

Maximum penalty:        500 penalty units.

- (2) Strict liability applies to the circumstance mentioned in subsection (1)(a).

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.

## 159            **Exclusion order**

- (1) The court that finds a person guilty of an offence against this Act may, on the application of the prosecutor or the Director, if the court considers the person to be a systematic or persistent offender against any of the rail safety laws, make an order (an ***exclusion 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 any of the 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, that is in the Territory; or
  - (b) being a director, secretary or officer concerned in the management of a body corporate involved in managing rail infrastructure, or operating rolling stock, that is in the Territory; or
  - (c) being involved in managing rail infrastructure, or operating rolling stock, that is in the Territory except by driving a train or rolling stock.
- (3) The court may only make an exclusion order if satisfied the person should not continue the things the subject of the proposed order and a supervisory intervention order is not appropriate, having regard to:
- (a) the offences against rail safety laws of which the person has previously been found guilty; and
  - (b) the offences against rail safety laws of which the person has been proceeded against by way of infringement notices that have not been withdrawn; 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 Director; or

- (b) the person in respect of whom the order was made, but only if the court is satisfied there has been a change of circumstances warranting the revocation or amendment.

- (5) In this section:

***rail safety laws*** means this Act and corresponding rail safety laws.

## **160        Contravention of exclusion order**

- (1) A person commits an offence if:

- (a) the person is subject to an exclusion order; and
- (b) the person engages in conduct that results in a contravention of the order.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of the order.

Maximum penalty:        500 penalty units.

- (2) Strict liability applies to the circumstance mentioned in subsection (1)(a).

## **Part 8            General**

### **Division 1        Confidentiality**

#### **161        Confidentiality**

- (1) This section applies to a person engaged or previously engaged in the administration of this Act.
- (2) Without limiting subsection (1), this section also applies to the following persons:
  - (a) a rail safety officer or a person assisting a rail safety officer;
  - (b) a person authorised by the Director or a 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 Director;

- (d) a person who is or was employed by, or engaged to provide services to or on behalf of, the Director;
  - (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 Director.
- (3) A person to whom this section applies commits an offence if the person engages in conduct that results in the disclosure or communication of information obtained (whether by that person or otherwise) in the administration of this Act except:
- (a) as required or authorised under this Act or another Act; or
  - (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
  - (c) in connection with the administration of this Act and corresponding rail safety laws; or
  - (d) for law enforcement purposes, public safety or to an investigator conducting an investigation under Part 6; or
  - (e) to a court or in connection with any legal proceedings; or
  - (f) to a corresponding Rail Safety Regulator; or
  - (g) in accordance with the Regulations.

Fault elements:

The person:

- (a) knows the information is obtained in the administration of this Act; and
- (b) intentionally engages in the conduct; and
- (c) is reckless as to whether the conduct results in the disclosure of the information.

Maximum penalty:     200 penalty units or imprisonment for  
   2 years.

- (4) This section does not prevent:
- (a) information being used by the Director or a corresponding Rail Safety Regulator to accumulate aggregate data; or
  - (b) the Director or a Regulator from authorising use of the aggregate data for research or education.

## **Division 2            Civil liability**

### **162            Civil liability not affected**

- (1) Nothing in Part 3, Division 1 or 4 is to be construed:
  - (a) as conferring a right of action in any civil proceedings in respect of conduct that is a contravention of any provisions of that Division; or
  - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.
- (2) Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the Regulations is actionable.

### **163            Act done in good faith**

- (1) A person is not civilly or criminally liable for conduct engaged in by the person in good faith in the exercise of a function as any of the following:
  - (a) the Director;
  - (b) an investigator;
  - (c) a rail safety officer.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the conduct.
- (3) In this section:

*exercise*, of a function, includes the purported exercise of the function.

### **164            Immunity for reporting unfit rail safety worker**

- (1) No action may be taken against a person to whom this section applies who, in good faith, reports to:
  - (a) the Director; or
  - (b) a rail transport operator; or
  - (c) any other person to whom this section applies who is employed or engaged by the Director or a rail transport operator;

any information which discloses that a person is unfit to carry out rail safety work or certain types of rail safety work or that it may be dangerous to allow the person to carry out rail safety work or certain types of rail safety work.

- (2) No action may be taken against a person to whom this section applies who, in good faith, reports either of the following to a person mentioned in subsection (1)(a), (b) or (c):
- (a) the results of a test or examination carried out under this Act;
  - (b) an opinion formed by the person as a result of conducting such a test or examination.

- (3) In this section:

***person to whom this section applies*** means any of the following:

- (a) a medical practitioner;
- (b) a person registered under the Health Practitioner Regulation National law to practise in the optometry or physiotherapy profession as an optometrist or physiotherapist (other than as a student);
- (c) a prescribed person.

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

### **165            Approval of compliance codes and guidelines**

- (1) To provide practical guidance to persons who have functions or obligations under this Act, the Minister may by *Gazette* notice:
- (a) approve a compliance code; or
  - (b) approve guidelines.
- (2) A compliance code takes effect, and guidelines take effect, when notice of it or them is published in the *Gazette* or a later date specified in the notice.
- (3) The Minister must ensure a copy of each of the following is or are available for inspection by members of the public without charge at the office of the Director during normal business hours:
- (a) each compliance code that is currently approved;
  - (b) guidelines that are currently approved.

**166        Effect of compliance code**

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

**167        Effect of complying with a compliance code**

A person is taken to have complied with this Act in relation to a duty or obligation imposed by this Act if:

- (a) a compliance code makes provision in relation to the duty or obligation; and
- (b) the person complies with the compliance code in relation to the duty or obligation.

**Division 4        Miscellaneous matters**

**168        Recovery of certain costs**

The Director may recover from a rail transport operator the reasonable costs of the entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited, other than the costs of an audit of an accredited person under Part 3, Division 7.

**169        Recovery of amounts due**

Every fee, charge or other amount of money payable under this Act (including reasonable costs mentioned in section 168) may be recovered by the Director as a debt due to the Territory in a court of competent jurisdiction.

**170        Compliance with conditions of accreditation**

An accredited person is taken to have complied with this Act in relation to a duty or obligation imposed by this Act if:

- (a) a condition or restriction to which the accreditation of the person is subject makes provision in relation to the duty or obligation; and
- (b) the accredited person complies with the condition or restriction.

**171        Contracting out prohibited**

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



## **Part 9            Administration**

### **Division 1        Director of Rail Safety**

#### **172            Director of Rail Safety**

The Minister may appoint a Chief Executive Officer, or a public sector employee, to be the Director of Rail Safety.

#### **173            Functions of Director**

- (1) In addition to any other functions conferred on the Director by this Act, the Director has the following functions:
  - (a) to administer, audit and review the accreditation regime under this Act;
  - (b) to work with rail transport operators, rail safety workers, others involved in railway operations and corresponding Rail Safety Regulators to improve rail safety in the Territory and nationally;
  - (c) to provide information to corresponding Rail Safety Regulators, including information about causal factors of rail incidents, accreditation processes, investigation methods and risk assessment methodologies;
  - (d) to collect and publish information relating to rail safety;
  - (e) to provide, or facilitate the provision of, advice, education and training in relation to rail safety;
  - (f) to monitor, investigate and enforce compliance with this Act.
- (2) The functions of the Director under this Act are in addition to any function the Director has under any other Act or law.

#### **174            Annual report**

- (1) The Director must, on or before 31 October in each year, give to the Minister a report on the Director's activities under this Act for the year ending on the preceding 30 June.
- (2) The Director must include in the report:
  - (a) information on the development of rail safety including an aggregation of statistics of a prescribed class reported to the Director under this Act in respect of that year; and

- (b) information on any improvements and important changes in relation to the regulation of rail safety; and
  - (c) any other information required to be included in the report by another provision under this Act or any other Act, or by the Minister.
- (3) The report may be included as part of the annual report of the Agency responsible to the Minister for the administration of this Act.

**175        Delegation**

The Director may delegate any of the Director's functions under this Act to a rail safety officer or to any other person.

**176        Director may exercise functions of rail safety officer**

- (1) The Director may exercise any function conferred on a rail safety officer under this Act.
- (2) For this Act (except this Part), a reference to a rail safety officer includes the Director.

**Division 2       Rail safety officers**

**177        Appointment of rail safety officers**

- (1) The Director may appoint a person to be a rail safety officer.
- (2) The Director must not appoint a person under subsection (1) unless satisfied the person holds appropriate qualifications, or has appropriate experience, to exercise the functions of a rail safety officer under this Act.
- (3) The Director may also, by *Gazette* notice, specify a class of persons who are to be taken to be appointed as rail safety officers.

*Note for subsections (1) and (3)*

*A person who is a rail safety officer under subsection (1) or (3):*

- (a) *need not be a public sector employee; and*
  - (b) *may be a police officer of the Territory or a rail safety officer (however described) under a corresponding rail safety law.*
- (4) An appointment under subsection (1) or (3) may be subject to conditions specified by the Director.

- (5) Without limiting the conditions to which the appointment of a rail safety officer may be subject, a condition may specify one or more of the following:
  - (a) functions under this Act that may not be exercised by the rail safety officer;
  - (b) the only functions under this Act that may be exercised by the rail safety officer;
  - (c) the circumstances or manner in which a function under this Act may be exercised by the rail safety officer.
- (6) Despite a *Gazette* notice under subsection (3) specifying a class of persons who are to be taken to be appointed as rail safety officers, the Director may, by *Gazette* notice, declare that a particular person is not a rail safety officer.

## **178        Reciprocal powers of rail safety officers**

- (1) This section has effect in relation to another jurisdiction while there is in force a corresponding rail safety law that contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement with a Minister of another jurisdiction for this section, including an agreement to amend or revoke any such agreement.
- (3) To the extent envisaged by an agreement mentioned in subsection (2):
  - (a) rail safety officers of the Territory may, in the Territory or the other jurisdiction, exercise functions conferred on rail safety officers (however described) of the other jurisdiction under the corresponding rail safety law of that other jurisdiction; and
  - (b) rail safety officers (however described) of that other jurisdiction may, in the Territory or that other jurisdiction, exercise functions conferred on rail safety officers under this Act.

*Note for subsection (3)*

*Corresponding rail safety laws may describe rail safety officers as, for example, authorised officers.*

- (4) Any conduct engaged in by a rail safety officer of the Territory under subsection (3) is taken to have been done under this Act as well as under the corresponding rail safety law.

- (5) The Regulations may make provision for, or with respect to, the exercise of functions under this section.
- (6) Nothing in this section affects the appointment under section 177 of persons as rail safety officers for this Act.

#### **179            Identification cards for rail safety officers**

The Director must:

- (a) in relation to each rail safety officer appointed under section 177(1), issue each officer with an identification card; and
- (b) in relation to rail safety officers appointed under section 177(3), designate a card issued to the officers by a corresponding Rail Safety Regulator or by a person, body or authority (whether or not of the Territory) as an identification card for this Act.

#### **180            Exercise of functions without identification card**

A rail safety officer must not exercise a function conferred under this Act unless an identification card has been issued to, or designated for, the officer by the Director under section 179.

#### **181            Display and production of identification card**

- (1) This section applies to a rail safety officer who is exercising, or about to exercise, a function under this Act.
- (2) The 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 function.
- (3) If it is not practical for a rail safety officer to produce his or her identification card on being requested to do so, the officer must produce the card as soon as practicable after the request is made.
- (4) In this section:

***approved***, in relation to a uniform or badge, means a uniform or badge approved by the Director.

***identification card*** means an identification card issued, or a card designated, under section 179.

**182 Return of identification card**

- (1) A person who ceases to be a rail safety officer must, as soon as practicable after ceasing to be a rail safety officer but in any case within 14 days, return his or her identification card to the Director.

Maximum penalty: 5 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.
- (4) In this section:

***identification card*** means an identification card issued under section 179.

**Division 3 Miscellaneous administrative provisions**

**183 Forms**

- (1) The Director may approve forms for this Act.
- (2) Substantial compliance with a form is sufficient.

**184 Exemption from application of Act**

- (1) The Director may exempt the following from the application of this Act or a specified provision of this Act:
- (a) a person, by notice to the person;
  - (b) a railway, by notice to the rail infrastructure manager for the railway;
  - (c) a class of person or a class of railway, by *Gazette* notice.
- (2) An exemption may be subject to the conditions the Director considers appropriate and specifies in the notice.
- (3) A person commits an offence if:
- (a) the person is exempt from the application of this Act or a specified provision of this Act; and
  - (b) the exemption is subject to a condition; and

- (c) the person engages in conduct that results in a contravention of the condition.

Fault elements:

The person:

- (a) knows about the circumstances of the exemption mentioned in paragraphs (a) and (b); and
- (b) intentionally engages in the conduct; and
- (c) is reckless as to whether the conduct would result in a contravention of a condition of the exemption.

Maximum penalty: 100 penalty units.

## **185 Effect of contravention of condition of exemption**

- (1) If a person contravenes a condition of an exemption under section 184:
  - (a) the exemption does not, while the contravention continues, operate in the person's favour; and
  - (b) the exemption is to be disregarded in determining whether there has been a breach of this Act.
- (2) If, because of subsection (1), a person is guilty of an offence against a provision of this Act from which the person was exempted, the person may be proceeded against either for that offence or for the offence under section 184 of failing to comply with a condition of the exemption.

## **186 Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The Regulations may provide for any of the following matters:
  - (a) the application, adoption or incorporation (wholly or in part and with or without modification) of an instrument or other document as in force at a particular time or from time to time;
  - (b) offences against the Regulations and penalties not exceeding (for an individual) 100 penalty units or 12 months imprisonment;
  - (c) provide for an offence against the Regulations to be an offence of strict or absolute liability but not with a penalty exceeding 50 penalty units;

- (d) trespassing on railway tracks, tramway tracks or railway premises;
  - (e) prescribing fees for this Act;
  - (f) regulation of the conduct of passengers and other persons on a railway or in a place or building adjacent to a railway;
  - (g) regulation or prohibition of crossing railways and of the opening, closing and use of railway gates and railway crossings.
- (3) The Regulations may:
- (a) make different provision for different matters or different classes of matters; and
  - (b) be of general or of specially limited application; and
  - (c) require a matter affected by the Regulations to be either or both of the following:
    - (i) in accordance with a specified standard or specified requirement;
    - (ii) approved by, or to the satisfaction of, a specified person or a specified class of person; and
  - (d) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
  - (e) 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 unconditionally or on specified conditions and either wholly or to such an extent as is specified.

## **Part 10      Repeal and transitional matters**

### **Division 1      Repeal**

#### **187      Repeal**

The *Northern Territory Rail Safety Act* (Act No. 96 of 1998) is repealed.

## Division 2 Transitional matters for Rail Safety Act 2010

### 188 Definitions

In this Part:

*commencement* means the commencement of this Part.

*repealed Act* means the *Northern Territory Rail Safety Act*.

### 189 Continuation of appointments

- (1) The person who, immediately before the commencement, was the Director of Rail Safety under the repealed Act is taken to be appointed under section 172 as the Director of Rail Safety.
- (2) Each person who, immediately before the commencement, was an inspector under the repealed Act is taken to be appointed under section 177(1) as a rail safety officer.

### 190 Application for accreditation under repealed Act

If a person applied for accreditation under section 12 of the repealed Act (the *section 12 application*) and it was not granted or refused before the commencement, the section 12 application is to be dealt with as if it were an application for accreditation under section 26 in respect of the railway operations specified in the section 12 application.

### 191 Accreditation under repealed Act

- (1) If, immediately before the commencement, a person is an accredited person under the repealed Act as the owner or operator of a railway, the person is taken to be accredited under section 30 as a rail transport operator in relation to the same railway operations of that railway.
- (2) Conditions that applied to the accreditation as mentioned in section 20 of the repealed Act continue to apply to the accreditation under this Act as if imposed under this Act.

### 192 Refusal to grant accreditation under repealed Act

- (1) This section applies if a person had been notified of a refusal under section 16 of the repealed Act before the commencement and:
  - (a) the person had not applied for a review or appeal, and the period during which the person could apply for a review or appeal had not ended; or



- (b) the person had applied for a review or appeal, but the review or appeal had not been finalised.
- (2) If subsection (1)(a) applies, the person may apply for a review or appeal of the refusal under the repealed Act as if it had not been repealed.
- (3) If subsection (1)(b) applies, the review or appeal of the refusal is to be conducted, or continued, under the repealed Act as if it had not been repealed.
- (4) However, if an accreditation is ordered to be granted on a review or appeal under subsection (2), the accreditation is to be made under Part 3, Division 2.

### **193 Variation of accreditation**

If a notice had been given to a person under section 22(2) of the repealed Act but, immediately before the commencement, the action specified in the notice had not been done, the notice is taken to have been given under section 42.

### **194 Variation, suspension and cancellation of accreditation**

- (1) This section applies if, before the commencement, the Director:
  - (a) had given a notice under section 24(2) of the repealed Act to an accredited person about taking action under the section against the person; but
  - (b) had not taken the action or given notice to the person that the Director had decided not to take the action.
- (2) The Director must continue to deal with the matter as if the notice had been given under section 37(2) to the accredited person, including, for example, by treating any submissions made before the commencement as submissions made under this Act.

### **195 Immediate variation or suspension of accreditation**

- (1) If a person's accreditation was varied or suspended under section 25 or 26 of the repealed Act and the variation or suspension was in existence at the commencement, the accreditation is taken to continue under this Act subject to the variation or suspension.
- (2) The period of the variation or suspension, as existing at the commencement, continues for the same period as if section 25 or 26 of the repealed Act had not been repealed, including any extension as mentioned in section 25(5)(b) of the repealed Act.

**196 Registration of private siding**

- (1) This section applies to a private siding that, immediately before the commencement, was registered under Part 3 of the repealed Act.
- (2) If the private siding is required to be registered under section 48(2), the registration continues as if it were a registration of the private siding under section 48 of this Act.
- (3) The continuation of the registration is subject to the conditions that applied to the registration of the private siding before the commencement.

**197 Directions under repealed Act for remedial safety work**

- (1) This section applies if, before the commencement, the Director had given to an accredited person or the owner of a private siding a direction under section 42, 43, 44 or 45 of the repealed Act and the direction was in force at the commencement.
- (2) The direction has effect under this Act as if it were an improvement notice served on the accredited person or owner of a private siding under section 101 of this Act.

**198 Power to require works to stop**

- (1) This section applies if, before the commencement, the Director had given to a person a direction under section 46(2) or (4) of the repealed Act and the direction was in force at the commencement.
- (2) The direction has effect under this Act as if it were a prohibition notice served on the person under section 106 of this Act.
- (3) However, if the person had, before the commencement, committed an offence of failing to comply with the direction, proceedings may be brought against the person as if section 46 of the repealed Act had not been repealed.
- (4) In addition, if work required to be carried out under a direction under Part 4, Division 3 of the repealed Act had not been carried out before the commencement, the Director may carry out the work, and recover the cost of carrying out the work, under section 47 of the repealed Act as if that section had not been repealed.

**199 Reports on notifiable occurrences**

- (1) This section applies if, before the commencement, the Director had given to a person a direction under section 52 of the repealed Act and a report in accordance with the direction had not been made.

- (2) The direction has effect under this Act as if it were a notice given to the person under section 74(1) of this Act.

## **200 Investigation not completed**

- (1) This section applies if, before the commencement, the Director had appointed an investigator to investigate and report on an accident or incident, and, at the commencement:
  - (a) the investigation was not completed; or
  - (b) the investigation was completed but the investigator had not given his or her report to the Director and the Minister.
- (2) The investigator must complete the investigation and give the report to the Director and the Minister under Part 6, Division 1 of the repealed Act as if that Act had not been repealed.

## **201 Search warrant**

- (1) This section applies if a search warrant had been issued under section 67 of the repealed Act and, at the commencement, the warrant had not been executed but was in force.
- (2) The warrant may be executed as if the repealed Act had not been repealed.
- (3) However, the warrant must be executed within 7 days after the issue of the warrant as if the warrant were issued under section 86.

## **202 Offences**

If, before the commencement, a person engaged in conduct that constituted an offence against a provision of the repealed Act, the offence may be prosecuted, and a penalty may be imposed, as if the repealed Act had not been repealed.

## **203 Condition of accreditation or registration**

If, before the commencement, a person engaged in conduct that constituted a contravention of a condition of accreditation or registration under the repealed Act, the person may be prosecuted for the contravention, and a penalty may be imposed, as if the repealed Act had not been repealed.

**204        Seized things**

A thing seized under the repealed Act that, before the commencement, had not been returned to its owner or another person or had not been forfeited to the Territory is taken to have been seized under Part 4, Division 4, and that Division and Part 4, Division 5 apply accordingly.

**205        Non-disclosure of information**

- (1) This section applies to a person who, in the course of the administration of the repealed Act, obtained information about a person's affairs.
- (2) If, after the commencement, the person discloses or communicates information mentioned in subsection (1), section 161 applies in relation to the disclosure or communication as if the information had been obtained in the administration of this Act.

**206        References to repealed Act**

In an Act or other document, a reference to the repealed Act may, if the context permits, be taken to be a reference to this Act.

**207        *Interpretation Act* not limited**

This Part does not limit the application of Part III of the *Interpretation Act*.

## Schedule      Reviewable decisions

section 119

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
1	Section 29(4) (Director not acting in accordance with guidelines)	A rail transport operator who has applied for accreditation
2	Section 30(1) (refusal to accredit or imposing conditions or restrictions on accreditation)	A rail transport operator whose application for accreditation is refused or is subject to conditions or restrictions
3	Section 37 (suspension or revocation of accreditation)	A rail transport operator whose accreditation is suspended or revoked
4	Section 38(1) (immediate suspension)	A rail transport operator whose accreditation is suspended
5	Section 38(3)(b) (extension of immediate suspension)	A rail transport operator whose accreditation is suspended
6	Section 42(1)(b) (refusal to grant variation of accreditation or imposing a condition or restriction)	A rail transport operator whose application for variation of accreditation is refused
7	Section 42(2)(c) (grant of variation of accreditation subject to conditions or restrictions)	A rail transport operator whose accreditation is varied subject to a condition or restriction
8	Section 44(3) (refusal to grant variation of condition or restriction of accreditation)	A rail transport operator whose application for variation of a condition or restriction is refused
9	Section 45(1) (variation or revocation of a condition or restriction, or imposition of a new condition or restriction)	A rail transport operator whose conditions or restrictions of accreditation are changed

Item	Provision under which reviewable decision is made	Eligible person in relation to reviewable decision
10	Section 51(1) (direction to amend safety management system)	A rail transport operator given a direction to amend a safety management system
11	Section 94(1)(c) (retention of sample or seized thing to prevent commission of offence)	A person who is the owner within the meaning of section 94(5) of the sample or thing
12	Section 101(1) (decision to serve an improvement notice)	A person on whom an improvement notice is served
13	Section 103(1)(b) (decision to amend improvement notice)	A person on whom a notice of amendment of an improvement notice is served
14	Section 106(2) (decision to serve a prohibition notice)	A person on whom a prohibition notice is served
15	Section 109(1)(b) (decision to amend a prohibition notice)	A person on whom a notice of amendment of a prohibition notice is served

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## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
<i>Gaz</i> = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

### 2 LIST OF LEGISLATION

***Rail Safety Act 2010* (Act No. 10, 2010)**

Assent date	17 March 2010
Commenced	31 October 2010 ( <i>Gaz</i> G40, 6 October 2010, p 2)

***Health Practitioner (National Uniform Legislation) Implementation Act 2010* (Act No. 18, 2010)**

Assent date	20 May 2010
Commenced	1 July 2010 (s 2)

***Statute Law Revision Act 2010* (Act No. 29, 2010)**

Assent date	9 September 2010
Commenced	13 October 2010 ( <i>Gaz</i> G43, 13 October 2010, p 2)

***Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010* (Act No. 40, 2010)**

Assent date	18 November 2010
Commenced	1 March 2011 (s 2, s 2 <i>Oaths, Affidavits and Declarations Act 2010</i> (Act No. 39, 2010) and <i>Gaz</i> G7, 16 February 2011, p 4)

### 3 LIST OF AMENDMENTS

s 6	amd No. 29, 2010, s 7
s 126	amd No. 40, 2010, s 118
s 132	amd No. 40, 2010, s 118
s 164	amd No. 18, 2010, s 89; No. 29, 2010, s 7
s 208	exp No. 10, 2010, s 208
pt 11 hdg	exp No. 10, 2010, s 210
ss 209 – 210	exp No. 10, 2010, s 210