

NORTHERN TERRITORY OF AUSTRALIA  
NORTHERN TERRITORY RAIL SAFETY ACT 1998

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No. 96 of 1998

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# NORTHERN TERRITORY OF AUSTRALIA

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No. 96 of 1998

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## AN ACT

to promote the safe construction, maintenance and operation of railways as part of a national approach to rail safety regulation and for related purposes

[Assented to 29 December 1998]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### PART 1 — PRELIMINARY

#### *Division 1 — General*

#### 1. SHORT TITLE

This Act may be cited as the *Northern Territory Rail Safety Act 1998*.

#### 2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

#### 3. ACT BINDS CROWN

This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, in all its other capacities.

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4. DEFINITIONS

In this Act, unless the contrary intention appears —

"accreditation" means accreditation as an owner or operator of a railway (whether permanent accreditation or temporary accreditation) under Part 2 or section 36;

"accreditation document" means the document that specifies or documents that jointly specify the grant of an accreditation, the terms and conditions of the accreditation and any variation of the accreditation;

"accredited person" means an owner or operator of the railway who has been granted accreditation;

"approved" means approved in writing by the Director;

"Australian Rail Safety Standards" means the principles and standards prepared, approved and published by the Standards Association of Australia relating to railway safety management that are prescribed for the purposes of this definition;

"Director" means the Director of Rail Safety appointed under section 6;

"inspector" means a person appointed to be an inspector under section 63;

"investigator" means a person appointed to be an investigator under section 54;

"notifiable occurrence" means an occurrence prescribed as a notifiable occurrence;

"operation of rolling stock" includes provision, maintenance or movement of rolling stock;

"operator", in relation to a railway, means a person who is, whether by reason of ownership, control or management of the railway, responsible for the operation of rolling stock on the railway;

"owner", in relation to a railway or a part of a railway, means the person who is, whether by reason of ownership, control or management of the railway or part of the railway, responsible for —

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- (a) the construction or maintenance of rail infrastructure; or
- (b) the operation of train control, signalling or communication systems;

"permanent accreditation" means accreditation referred to in section 18(a);

"private siding" means —

- (a) a siding owned by a person who does not own, control or manage the running line to which the siding is connected or has access; and
- (b) the rail infrastructure associated with the siding,

but does not include a siding or a class of siding prescribed as excluded from this definition;

"rail infrastructure" means the facilities for the operation of rolling stock on a railway and includes associated track structures, over and under track structures, supports (including supports for equipment or items associated with the use of a railway), tunnels, bridges, stations, platforms, train control systems, signalling systems, communication systems, electric traction rail infrastructure, buildings, workshops, offices and associated plant, machinery, equipment, furnishings and fittings;

"railway" means —

- (a) a system of railway track, consisting of a running line and the sidings connected or having access to the running line, that is designed for the operation of rolling stock which has the capability of transporting passengers, freight or both; and
- (b) the rail infrastructure associated with that railway track,

and includes a heavy railway, light railway, monorail, inclined railway or tramway, a railway within a marshalling yard or a passenger or freight terminal, a prescribed railway and a part of a railway;

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"railway employee" means a person who performs railway safety work for an owner or operator, whether an employee or contractor of the owner or operator or a person who performs railway safety work on a voluntary or unpaid basis;

"railway safety work" means —

- (a) work that involves or relates to the driving or operation of a train;
- (b) work that involves or relates to the control of the movement of a train;
- (c) work that involves or relates to the design, construction, repair, maintenance, upgrading, inspection, testing or removal of rail infrastructure or rolling stock; or
- (d) prescribed work;

"railway track" means a combination of rails, rail connectors, sleepers, ballast, points, crossings or devices used in place of any of those components;

"rolling stock" means a vehicle, whether or not self propelled, which operates on or uses a railway track, including a locomotive, carriage, rail car, rail motor, light rail vehicle, train, tram, light inspection vehicle, trolley, wagon and a vehicle designed to operate both on and off a railway track when the vehicle is operating on a railway track;

"running line" means railway track that is not a siding;

"safety management plan" means a plan referred to in section 13;

"safeworking system", in relation to a railway, means the systems and procedures for operating trains safely and protecting railway employees, passengers, freight, rolling stock, motor vehicles, buildings and other property on or in the vicinity of railway tracks;

"siding" means railway track —

- (a) that connects by points to a running line or to another siding which provides access to a running line; and



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- (b) on which rolling stock can manoeuvre or be left unattended clear of the running line;

"State" means a State or a Territory of the Commonwealth;

"temporary accreditation" means accreditation referred to in section 17(2) and 18(b);

"train" means one or more units of rolling stock coupled together of which at least one is a locomotive or other self-propelled unit.

### 5. APPLICATION OF ACT

- (1) This Act applies to and in relation to —

- (a) a railway within the Territory with a track gauge of not less than 600 mm; and
- (b) a system of transport prescribed to be a railway for the purposes of this Act.

- (2) This Act does not apply to or in relation to —

- (a) a railway in a mine that is underground or predominantly underground and used in connection with the performance of mining operations;
- (b) a slipway;
- (c) a crane-type runway; or
- (d) a railway or system of transport prescribed not to be a railway for the purposes of this Act.

(3) Nothing in this Act derogates from any law in force in the Territory under which a claim or proceeding for compensation or damages lies or that otherwise imposes rights, duties and liabilities for and in relation to health, safety, death, injury or the handling of dangerous equipment, goods or materials.

### *Division 2 — Administration*

### 6. DIRECTOR OF RAIL SAFETY

(1) The Minister may by instrument appoint a Chief Executive Officer or an employee, as defined in section 3 of the *Public Sector Employment and Management Act*, to be the Director of Rail Safety.

- (2) The Director has —

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- (a) the powers and functions conferred or imposed on the Director under this Act; and
- (b) any other powers to do all things necessary or convenient to be done for or incidental to the performance of those powers and functions.

(3) In exercising powers and performing functions under this Act the Director is subject to the directions of the Minister.

### 7. DELEGATION

(1) The Director may, by instrument, delegate to a person or a body all or any of the Director's powers and functions under this Act, other than this power of delegation.

(2) A delegation under this section may be to a named person or the person from time to time holding, acting in or performing the duties of an office, designation or position.

(3) Without limiting subsections (1) and (2), a delegation under this section may be to —

- (a) a person from time to time holding, acting in or performing the duties of an office, designation or position in another State; or
- (b) a body in another State,

who or that has functions similar to those of an office, position or designation under this Act.

(4) A power or function delegated under this section is, when exercised or performed by the delegate, to be taken to have been exercised or performed by the Director.

(5) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Director.

### 8. EXEMPTION FROM APPLICATION OF ACT

- (1) The Director may exempt —
  - (a) by written notice given to a person, the person;
  - (b) by written notice given to the owner and the operator of a railway, the railway; or

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- (c) by notice in the Gazette, a class of person or a class of railway,

from the application of this Act, the Regulations or specified provisions of this Act or the Regulations.

(2) An exemption may be subject to the conditions the Director thinks fit and specifies in the notice.

(3) A person must comply with the conditions of an exemption.

Penalty: \$20,000.

### PART 2 — ACCREDITATION

#### *Division 1 — General*

#### 9. REQUIREMENT FOR ACCREDITATION FOR OWNER AND OPERATOR OF RAILWAY

Subject to Part 3, a person must not —

- (a) own a railway; or
- (b) operate a railway,

unless the person holds the appropriate accreditation.

Penalty: \$50,000.

#### 10. PERSON MAY BE ACCREDITED AS BOTH OWNER AND OPERATOR

Nothing in this Act prevents a person applying for and being granted accreditation as both the owner and operator of a railway.

#### 11. ACCREDITATION NOT TRANSFERABLE

An accreditation is not transferable.

#### *Division 2 — Application for Accreditation*

#### 12. APPLICATION FOR ACCREDITATION

(1) A person may apply to the Director for accreditation as —

- (a) an owner of a railway; or
  - (b) an operator of a railway.
- (2) The application is to be —
- (a) in an approved form;

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- (b) accompanied by the prescribed fee; and
  - (c) accompanied by the safety management plan required under section 13.
- (3) The Director may request from an applicant any additional information the Director requires to determine the application.
- (4) The Director may request that information provided in support of an application be verified by statutory declaration.

### 13. SAFETY MANAGEMENT PLANS

(1) An applicant for accreditation must submit to the Director a comprehensive safety management plan that —

- (a) in the case of an application for accreditation as an owner of a railway — identifies the significant potential risks that may arise from the construction or maintenance of rail infrastructure or the operation of train control, signalling and communication systems associated with the railway;
- (b) in the case of an application for accreditation as an operator of a railway — identifies the significant potential risks that may arise from the operation of rolling stock on the railway;
- (c) specifies the systems, audits, expertise and resources to be used by the applicant to address those risks and put in place appropriate safeworking systems; and
- (d) specifies who is to be responsible for the implementation and management of the safety management plan.

(2) The Director must not accept a safety management plan unless he or she is satisfied that it complies with subsection (1).

### *Division 3 — Grant of Accreditation*

#### 14. GRANT OF ACCREDITATION AS OWNER

The Director must grant accreditation to an owner of a railway if he or she is satisfied that —

- (a) the applicant has the competency and capacity to comply with the Australian Rail Safety Standards and any other prescribed safety

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standards that are relevant to the safe construction or maintenance of rail infrastructure or the proper operation of train control, signalling and communication systems;

- (b) the applicant will comply with the safety management plan he or she submitted under section 13;
- (c) the applicant is of a sound and stable financial background and has the financial resources to own the railway;
- (d) the applicant has sufficient public risk insurance arrangements in place to meet reasonable potential accident liabilities as the owner of the railway;
- (e) the applicant has or will be given a right of access to the land where the railway is or is to be constructed;
- (f) in the case of an applicant who will be responsible for the operation of train control, signalling or communication systems — the applicant has or will be given, by agreement with the owner of the rail infrastructure, the right to use relevant rail infrastructure; and
- (g) any prescribed matters are complied with.

### 15. GRANT OF ACCREDITATION AS OPERATOR

The Director must grant accreditation as an operator of a railway if he or she is satisfied that —

- (a) the applicant has the competency and capacity to comply with the Australian Rail Safety Standards and any other prescribed safety standards that are relevant to the safe operation of rolling stock on the railway;
- (b) the applicant will comply with the safety management plan submitted under section 13;
- (c) the applicant is of a sound and stable financial background and has the financial resources to operate the railway;
- (d) the applicant has sufficient public risk insurance arrangements in place to meet reasonable potential accident liabilities as the operator of the railway;

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- (e) the applicant has or will be given, by agreement with the owner of the railway, the appropriate rights to operate the railway; and
- (f) any prescribed matters are complied with.

### 16. REFUSAL TO GRANT ACCREDITATION

If the Director refuses to grant accreditation, the Director must notify the applicant in writing of —

- (a) his or her refusal;
- (b) the reasons for the refusal; and
- (c) the procedures for review and appeal under Part 7.

### *Division 4 — Form, Terms and Conditions of Accreditation*

### 17. ACCREDITATION MAY BE PERMANENT OR TEMPORARY

(1) The Director may grant permanent accreditation or temporary accreditation.

(2) Temporary accreditation may be granted for any purpose that the Director considers appropriate, including —

- (a) site preparation for the construction of a railway;
- (b) restoration or repair work; and
- (c) testing of railway track or rail infrastructure.

### 18. DURATION OF ACCREDITATION

- (1) An accreditation remains in force —
  - (a) in the case of permanent accreditation — until the accreditation is cancelled or surrendered or unless it is suspended; or
  - (b) in the case of temporary accreditation — for the period that the Director thinks appropriate and specifies in the accreditation document.

(2) On the expiry of the period for which temporary accreditation is in force under subsection (1)(b), the Director may, as he or she thinks fit in view of the reason the temporary accreditation was granted, extend the period the temporary accreditation is in force.

19. FORM OF ACCREDITATION

(1) Accreditation is to be in writing given to the accredited person.

(2) The accreditation document is to specify all the terms and, except for conditions prescribed under this Act, conditions of the accreditation, including whether it applies —

- (a) to the whole or a part of a railway;
- (b) to either public or private passenger or freight services or both;
- (c) to an operation or service; or
- (d) otherwise as the Director thinks appropriate.

20. CONDITIONS OF ACCREDITATION

(1) An accreditation is subject to —

- (a) the prescribed conditions; and
- (b) any other conditions imposed by the Director and specified in the accreditation document.

(2) It is a condition of an accreditation that the accredited person —

- (a) must comply with the accreditation, this Act and the Regulations; and
- (b) must not make any arrangement or agreement or engage in any conduct that is inconsistent with the accreditation.

(4) An accredited person must not contravene a condition of his or her accreditation.

Penalty: \$20,000.

*Division 5 — Register of Accredited Persons*

21. REGISTER OF ACCREDITED PERSONS

(1) The Director must establish and maintain, in the form and manner the Director thinks fit, a register of accredited persons.

(2) The following information is to be recorded in the register in respect of each accredited person:

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- (a) the person's name and principal business address in the Territory;
- (b) the date of the grant of the accreditation;
- (c) whether the person is accredited as an owner or operator of a railway;
- (d) the location or proposed location of the railway in respect of which the accreditation is granted;
- (e) any suspension or cancellation of the accreditation and the reasons for the suspension or cancellation;
- (f) the surrender of the accreditation;
- (g) any other information the Director considers appropriate.

(2) The Director may, for the purpose of correcting an error, alter an entry in the register in the manner the Director thinks fit.

(3) A member of the public may, on payment of the prescribed fee and during the hours the office of the Director is open to the public —

- (a) search an entry in the register; or
- (b) take an extract of an entry in the register.

### *Division 6 — Variation of Accreditation*

## 22. VARIATION OF ACCREDITATION

(1) Subject to this section, if in the opinion of the Director it is appropriate to do so, the Director may —

- (a) on his or her own motion; or
- (b) on the application of an accredited person in an approved form to the Director,

by notice given to the accredited person vary the terms and conditions of the accreditation.

(2) Before varying an accreditation under subsection (1)(a), the Director must give the accredited person written notice —

- (a) specifying the proposed variation;



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- (b) specifying the reasons for the variation; and
- (c) inviting the person to, within the period of not less than 28 days specified in the notice, submit reasons why the variation should not be made.

(3) If, having considered the submissions of the accredited person (if any), the Director continues to consider that variation of the accreditation is appropriate, the Director may vary the accreditation, whether or not as proposed in the notice under subsection (2).

(4) An accreditation may be varied by the addition, substitution or deletion of any of its terms and conditions.

(5) A variation of an accreditation takes effect on —

- (a) the date notice of the variation is given to the accredited person; or
- (b) the date specified for that purpose in the notice,

whichever last occurs.

(6) An accredited person must comply with his or her accreditation as varied under this section.

(7) Subsections (2), (3) (4) and (5) do not apply if the variation is for a formal or clerical reason that does not alter the effect of the accreditation.

### 23. DECLARATION AS TO VARIATION OF ACCREDITATION

An accredited person must, not later than 28 days before each anniversary of the date the person was granted accreditation —

- (a) provide to the Director a declaration in an approved form stating that, to the best of the person's knowledge and belief, no circumstance exists that might require the person to apply for a variation of the person's accreditation; or
- (b) without limiting section 22(1)(b) — apply to the Director for variation of the person's accreditation.

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*Division 7 - Disciplinary*

24. VARIATION, SUSPENSION AND CANCELLATION OF ACCREDITATION

- (1) If an accredited person -
  - (a) fails to comply with the person's accreditation;
  - (b) fails to comply with a requirement of or under this Act;
  - (c) in the course of acting under the accreditation acts negligently or in a manner that is unsafe or unlawful; or
  - (d) provides false or misleading information in connection with the operation of this Act,

the Director may, in addition to any proceeding or other action that may be taken in respect of the accredited person's act or omission, take action against the accredited person under this section.

(2) The Director must give written notice to the accredited person -

- (a) specifying the action under subsection (3) he or she proposes to take;
- (b) specifying the reasons for the action; and
- (c) inviting the person to, within the period of not less than 28 days specified in the notice, submit reasons why the Director should not take the action.

(3) If, having considered the submissions of the accredited person (if any), the Director continues to consider that action should be taken, the Director may, by written notice given to the person -

- (a) vary the terms and conditions of the accreditation;
  - (b) issue directions to the person;
  - (c) suspend the accreditation for a specified period or until the fulfilment of a specified condition; or
  - (d) cancel the accreditation.
- (4) Notice under subsection (3) is to specify -

- (a) the action;
  - (b) the reasons for taking the action; and
  - (c) the procedures for review and appeal under Part 7.
- (5) The notice takes effect on —
- (a) the date it is received by the accredited person; or
  - (b) the date specified in the notice,

whichever last occurs.

(6) The accredited person must comply with the notice under subsection (3).

Penalty: \$20,000.

## 25. IMMEDIATE VARIATION OR SUSPENSION OF ACCREDITATION

(1) Despite section 24, if the Director considers that a matter referred to in section 24(1) causes an immediate and serious threat to the safety of the public or to property, the Director may by written notice given to the accredited person —

- (a) vary the person's accreditation; or
- (b) suspend the person's accreditation,

effective immediately on the person's receipt of the notice for the period of not more than 6 weeks specified in the notice.

(2) Notice of suspension given under subsection (1) is to specify —

- (a) whether the accreditation is wholly or partially suspended;
- (b) if the accreditation is partially suspended — the extent of the suspension;
- (c) the conditions relating to the suspension, if any; and
- (d) the period of suspension.

(3) The accredited person must comply with the notice.

Penalty: \$20,000.

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(4) On the variation or suspension of the accreditation under subsection (1) taking effect, the Director must proceed to deal with the matter under section 24.

(5) The Director may by written notice given to the accredited person —

- (a) despite the Director not having finished dealing with the matter under section 24, if the public or property are no longer endangered — revoke the notice of variation or suspension given under subsection (1); or
- (b) if the Director is not able to finish dealing with the matter under section 24 within the time specified in the notice given under subsection (1) — with the written agreement of the Minister, extend the period of variation or suspension until the matter is dealt with under that section.

### 26. SUSPENSION OR CANCELLATION IN CASE OF FAILURE TO PAY PRESCRIBED FEE OR LODGE PRESCRIBED RETURN

(1) Despite section 24, if an accredited person fails to pay a prescribed annual fee, the person's accreditation is, by force of this subsection, suspended until the fee is paid.

(2) Despite section 24, if an accredited person fails to lodge a prescribed return, the Director may by written notice given to the person —

- (a) if not more than 14 days has expired since the due date for lodgement of the return — suspend the person's accreditation; or
- (b) if more than 2 months has expired since the due date for lodgement of a return — cancel the person's accreditation.

### 27. SURRENDER OF ACCREDITATION

An accredited person may, by lodging the approved form with the Director, surrender his or her accreditation.

## PART 3 — PRIVATE SIDINGS

### 28. REGISTRATION OF PRIVATE SIDING

(1) A private siding must be registered under this Part.

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(2) A person who owns or operates a registered private siding is not required to hold an accreditation in respect of the private siding.

### 29. OWNER TO REGISTER PRIVATE SIDING

(1) A person who owns a private siding that is not registered must register the private siding with the Director.

Penalty: \$20,000.

(2) Registration of a private siding is to be —

- (a) in an approved form; and
- (b) accompanied by the prescribed fee.

(3) The Director may request from the applicant any additional information the Director requires to register the private siding.

(4) The Director may request that information provided in support of an application be verified by statutory declaration.

### 30. CONDITIONS OF REGISTRATION OF PRIVATE SIDING

(1) The registration of a private siding is subject to the prescribed conditions.

(2) The Director may impose any other conditions relating to safe maintenance or operation on the registration of the private siding as the Director considers appropriate.

### 31. NOTICE OF REGISTRATION TO BE GIVEN TO OWNER

The Director must give written notice to the owner of a private siding of the date and the conditions of the registration of the private siding.

### 32. OWNER OF REGISTERED PRIVATE SIDING TO COMPLY WITH ACT AND CONDITIONS OF REGISTRATION

The owner of a private siding must comply with —

- (a) the conditions of the registration of the private siding; and
- (b) this Act and the Regulations.

Penalty: \$20,000.

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### 33. REGISTER OF PRIVATE SIDINGS

(1) The Director must establish and maintain, in the form and manner he or she thinks fit, a register of registered private sidings.

(2) The following information is to be recorded in the register in respect of each registered private siding:

- (a) the name and principal business address of the owner of the private siding in the Territory;
- (b) the location or proposed location of the private siding;
- (c) any change of ownership of the private siding;
- (d) any suspension or cancellation of a registration and the reasons for the suspension or cancellation;
- (e) any other information the Director considers appropriate.

(3) The Director may, for the purpose of correcting an error, alter an entry in the register in the manner the Director thinks fit.

(4) A member of the public may, on payment of the prescribed fee and during the hours the office of the Director is open to the public —

- (a) search an entry in the register; or
- (b) take an extract of an entry in the register.

### 34. SUSPENSION OR CANCELLATION IN CASE OF FAILURE TO PAY PRESCRIBED FEE OR LODGE PRESCRIBED RETURN

(1) If the owner of a private siding fails to pay a prescribed annual fee, the registration of the private siding is suspended until the fee is paid.

(2) If the owner of a private siding fails to lodge a prescribed return, the Director may by written notice given to the owner —

- (a) if not more than 14 days has expired since the due date for lodgement of the return — suspend the registration of the private siding; or

- (b) if more than 2 months has expired since the due date for lodgement of a return by an accredited person — cancel the registration of the private siding.

35. REVIEW OF REGISTRATION OF PRIVATE SIDING

(1) The owner of a private siding must, not later than 28 days before each anniversary of the date the siding was registered —

- (a) provide to the Director a declaration in an approved form stating that, to the best of the owner's knowledge and belief, no circumstance exists that might require the person to apply for a review of the registration; or

- (b) apply to the Director for review of the registration.

(2) Despite subsection (1), the Director may, on his or her own motion, review the registration of a private siding.

(3) In reviewing the registration of a private siding the Director —

- (a) may request the owner to provide him or her with the information he or she requires to do so; and

- (b) must determine whether or not to vary the conditions of the registration or whether the siding continues to be a private siding.

(4) If the Director determines that a siding is no longer a private siding, the Director must cancel its registration.

(5) The Director must give written notice to the owner of the private siding of the outcome of the review.

(6) The owner of the private siding must comply with the notice.

36. GRANT OF TEMPORARY ACCREDITATION WHERE RAILWAY TRACK NO LONGER A PRIVATE SIDING

(1) Despite section 17, if the Director cancels the registration of a private siding under section 35(4) on the ground that the railway track that comprised the private siding has become part of a running line or a siding that is not a private siding, the owner and operator of that railway track are, by force of this section, granted temporary accreditation for the purpose

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of applying for permanent accreditation in respect of that rail track.

(2) Despite section 18, temporary accreditation referred to in subsection (1) remains in force for 12 months after the grant of the accreditation or until the date on which both the owner and operator have been granted permanent accreditation, whichever first occurs.

### *PART 4 — SAFETY COMPLIANCE*

#### *Division 1 — Definitions*

#### 37. DEFINITIONS

In this Part —

"authorised person" means a person authorised by the Director for the purposes of this Part;

"systems, devices, equipment and appliances" includes safeworking systems, braking systems, wheels, isolating switches and points.

#### *Division 2 — Safety Compliance*

#### 38. COMPLIANCE WITH SAFETY STANDARDS

An accredited person or the owner of a private siding must comply with —

(a) the Australian Rail Safety Standards; and

(b) any prescribed safety standards.

Penalty: In the case of a natural person — \$25,000.

In the case of a body corporate —  
\$125,000.

#### 39. COMPLIANCE WITH SAFETY MANAGEMENT PLAN

An accredited person must comply with the safety management plan submitted by the person to the Director under section 13.

Penalty: In the case of a natural person — \$25,000.

In the case of a body corporate —  
\$125,000.



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### 40. REQUIREMENT TO MAINTAIN SAFETY SYSTEMS, DEVICES OR APPLIANCES

An accredited person or owner of a private siding must, in accordance with this Act, the Regulations or the person's accreditation or the conditions of the registration of the private siding, install and maintain or, if already installed, maintain systems, devices, equipment and appliances in respect of the rail infrastructure or rolling stock that relates to the person's accreditation or the private siding.

Penalty: \$20,000.

### 41. SAFETY COMPLIANCE INSPECTIONS

The Director —

- (a) must, in the manner he or she thinks fit, inspect not less than once in every year —
  - (i) the rail infrastructure or rolling stock of an accredited person or owner of a private siding;
  - (ii) the construction, maintenance and operation of a railway; or
  - (iii) the performance of railway employees of an accredited person or owner of a private siding; and
- (b) may at any time inspect any documents held by or under the control of an accredited person or owner of a private siding relating to —
  - (i) the construction, maintenance or operation of a railway;
  - (ii) the acquisition, operation, disposal, renovation or repair of rail infrastructure or rolling stock;
  - (iii) the preparation, implementation or operation of the safeworking systems of a railway; or
  - (iv) any other matters the Director considers relevant to the safe construction, maintenance or operation of a railway,

to assess the extent to which the accredited person or owner of the private siding is complying with this Act or the Regulations or the person's accreditation or the conditions of the registration of the private siding.

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### Division 3 — Controls

#### 42. DIRECTION TO UNDERTAKE REMEDIAL SAFETY WORK

(1) Whether as a consequence of an inspection under section 41 or for any other reason, the Director may by written notice given to an accredited person or the owner of a private siding direct the accredited person or owner of the private siding to carry out remedial safety work so that the person or owner will be complying with this Act, the Regulations or the person's accreditation or the conditions of the registration of the private siding.

(2) The direction is to set out the details of the work to be executed and the period within which the accredited person or owner of the private siding must comply with the direction.

(3) The accredited person or owner of the private siding must comply with the direction.

Penalty: \$20,000 and, in addition, \$1,000 for each day during which the offence continues after the first day on which it is committed.

#### 43. DIRECTION TO PROVIDE PROGRAM OF REMEDIAL SAFETY WORK

(1) Whether as a consequence of an inspection under section 41 or for any other reason, the Director may direct an accredited person or owner of a private siding who is not complying with this Act or the Regulations or the person's accreditation or the conditions of the registration of the private siding to provide to the Director a program detailing —

(a) the remedial safety work that the person or owner will carry out to remedy the non-compliance; and

(b) the period within which the work will be completed or the periods within which various stages of the work will be completed.

(2) The direction is to be by written notice given to the accredited person or owner of a private siding.

(3) The direction is to specify the period within which the accredited person or owner of the private siding must provide the program to the Director.

(4) The accredited person or owner of the private siding must comply with the direction.

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Penalty: \$20,000 and, in addition, \$1,000 for each day during which the offence continues after the first day on which the offence is committed.

### 44. INSTALLATION OF SAFETY OR PROTECTIVE DEVICES

(1) If in the opinion of the Director it is necessary for the purpose of the safe construction or operation of a railway, the Director may by written notice given to an accredited person or owner of a private siding direct the accredited person or owner of the private siding to install specified systems, devices, equipment or appliances in respect of the rail infrastructure or rolling stock of the railway.

(2) The Director may specify in the instrument the period within which the accredited person or owner of the private siding must comply with the direction.

(3) The accredited person or owner of the private siding must comply with the direction.

Penalty: \$20,000 and, in addition, \$1,000 for each day during which the offence continues after the first day on which the offence was committed.

### 45. CLOSING RAILWAY CROSSINGS, BRIDGES, &C.

(1) If in the opinion of the Director or an authorised person it is necessary for the safety of a railway or the public, the Director or authorised person may by written notice given to the accredited person responsible for the operation and, if not the same person, the maintenance of the railway direct the accredited person to temporarily close or regulate a bridge or other structure used for crossing or passing over or under the railway.

(2) The direction is to specify the reasons for the closure or regulation.

(4) The accredited person or persons must comply with the direction.

Penalty: \$50,000 and, in addition, \$1,500 for each day during which the offence continues after the first day on which the offence is committed.

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46. POWER TO REQUIRE WORKS TO STOP, &C.

(1) A person must not carry out work within 100 m of a railway unless the person has the consent of —

- (a) in the case of a private siding — the owner of the private siding;
- (b) in any other case — the accredited owner and the accredited operator of the railway; or
- (c) the Director.

Penalty: \$20,000.

(2) If a person is carrying out or proposes to carry out work within 100 m of a railway that the Director believes on reasonable grounds will or is likely to threaten the safe operation of the railway or its operational integrity, the Director may by written notice given to the person direct the person to stop, alter or not commence the work.

(3) The person must comply with the direction.

Penalty: \$20,000.

(4) If work is carried out in contravention of this section, the Director may by written notice given to the owner or occupier of the land where the work is situated direct the owner or occupier to alter, demolish or remove the work within the time specified in the notice.

(5) The owner or occupier of the land must comply with the direction.

Penalty: \$20,000.

47. WHERE REQUIREMENTS OF DIRECTION NOT COMPLIED WITH

(1) The Director or an authorised person on behalf of the Director may carry out the work required to be executed under a direction under this Division if the person directed to execute the work fails to comply with the direction.

(2) If the Director or an authorised person carries out work under subsection (1), the cost of carrying out the work is a debt due and payable to the Territory by the person who was directed to execute the work.

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48. POWER OF ENTRY, &C.

The Director or an authorised person may —

- (a) after giving 3 days written notice to the owner or occupier of the land;
- (b) with the written agreement of the owner or occupier of the land; or
- (c) if the Director believes on reasonable grounds that there is such an immediate and significant threat to the safe operation of a railway or its operational integrity that it is necessary to do so to prevent danger or injury to a person or the loss or damage to property — without having given notice to or obtaining the agreement of the owner or occupier of the land,

enter and remain on the land for the purpose of carrying out an inspection under section 41 or work referred to in section 47.

*Division 4 — Railway Employees*

49. OBLIGATIONS OF ACCREDITED PERSON, &C., IN RESPECT OF RAILWAY EMPLOYEES

It is a condition of an accreditation or registration of a private siding that the accredited person or the owner of the private siding must take all reasonable steps to ensure that a railway employee performing railway safety work —

- (a) has the capacity and skills and is adequately trained to perform the work;
- (b) is of sufficient good health and fitness to perform the work;
- (c) does not carry out railway safety work if —
  - (i) there is a concentration of alcohol present in the employee's blood that is equal to or more than the prescribed concentration; or
  - (ii) affected by a drug in such a way that the employee's ability to perform the work is detrimentally affected.

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### 50. OBLIGATIONS OF RAILWAY EMPLOYEE

A railway employee must not carry out railway safety work if —

- (a) there is a concentration of alcohol present in the employee's blood that is equal to or more than the prescribed concentration; or
- (b) affected by a drug in such a way that the employee's ability to perform the work is detrimentally affected.

Penalty: \$5,000.

### PART 5 — REPORTING AND PROVISION OF OTHER INFORMATION TO THE DIRECTOR

#### 51. REPORTS ON NOTIFIABLE OCCURENCES

(1) An accredited person or the owner of a private siding must report in an approved form to the Director on a notifiable occurrence.

(2) The report must be provided to the Director within the prescribed time.

#### 52. OTHER REPORTING

(1) Despite section 51, the Director may by written notice given to an accredited person or owner of a private siding direct the accredited person or owner of the private siding to —

- (a) report on matters relating to safety or dangerous incidents in respect of the operations of the accredited person or owner of the private siding as the Director considers necessary;
- (b) report on a particular accident or incident that relates to the person's accreditation or the private siding or that has or may have adversely affected the construction, maintenance or operation of the railway or a part of the railway in respect of which the person is accredited or that comprises the private siding; or
- (c) having received a report from the accredited person or owner of the private siding under this Part — inquire into a matter the subject of the report and provide a further report on the matter to the Director.

- (2) The report is to be in the approved form.
- (3) The direction is to specify –
  - (a) the date by which the Director is to receive the report; and
  - (b) in the case of a report referred to in subsection (1)(c) – the manner in which the person is to conduct the inquiry.
- (4) The accredited person or owner of the private siding must comply with the direction.

Penalty: \$20,000.

#### 53. VERIFICATION BY STATUTORY DECLARATION

The Director may require information supplied in a report under this Part to be verified by statutory declaration.

### PART 6 – INVESTIGATIONS AND INSPECTIONS

#### *Division 1 – Investigations and Investigators*

#### 54. INVESTIGATORS

(1) Subject to subsection (2), if there is an accident or other incident involving a railway which is of a serious nature, the Director –

- (a) on his or her own motion or on the request of an accredited person or owner of a private siding – may; or
- (b) on the request of the Minister – must,

appoint an investigator to investigate and report on the accident or incident.

(2) The person the Director appoints to be an investigator –

- (a) must not have a direct or indirect pecuniary interest, other than as a member, director or employee of an incorporated company consisting of 25 members or more, in a matter to be investigated; and
- (b) must have suitable expertise and experience to conduct the investigation.

(3) An investigator is appointed on the terms and conditions determined by the Director.

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### 55. FUNCTIONS OF INVESTIGATOR

(1) The functions of an investigator are -

- (a) to conduct an investigation in accordance with this Division 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, body orders otherwise.

### 56. APPOINTMENT OF PERSONS TO ASSIST INVESTIGATOR

(1) An investigator may appoint an inspector 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, other than as a member, director or employee of an incorporated company consisting of 25 members or more, in a matter that the investigator will investigate with the assistance of the person.

(3) A person appointed to assist the investigator must carry out his or her duties in accordance with the directions of the investigator.

### 57. CONDUCT OF INVESTIGATION

In conducting an investigation under this Division, an investigator -

- (a) must fairly and properly consider the issues;
- (b) must act expeditiously and without regard to technicalities or formality;
- (c) is not bound by the rules of evidence but may inform himself or herself on any matter in the manner the investigator considers appropriate;



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- (d) must conduct the investigation in accordance with the approved procedures or, if there is no relevant approved procedure, as determined by the investigator;
- (e) must keep a record of his or her proceedings;
- (f) may require —
  - (i) by notice signed by the investigator — the attendance of a person before the investigator or the production of any relevant document or thing;
  - (ii) a person to make an oath or affirmation to answer truthfully all questions relevant to the investigation put by the investigator; or
  - (iii) a person to answer a relevant question put by the investigator;
- (g) may —
  - (i) inspect;
  - (ii) make copies of, photograph, take extracts from;
  - (iii) arrange for the testing or examination of; or
  - (iv) possess and retain for the period he or she considers necessary for the purposes of the investigation,  
  
any document or thing produced before him or her;
- (h) may inquire into the mental and physical capacity of a person and for that purpose may require the person to be examined by a medical practitioner nominated by the Director and that a copy of the results of the examination be given to him or her; and
- (h) must allow an accredited person or the owner of a private siding a reasonable opportunity to make submissions in relation to the investigation to the investigator.

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58. INVESTIGATOR 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 the 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 it to its owner or occupier.

(3) The Administrator may make regulations prescribing the manner in which an investigator enters and takes control of a place or building under this section and conducts the part of the investigation in relation to the place or building.

59. INVESTIGATOR'S REPORT

(1) On completing an investigation the investigator must make a report to the Director and the Minister detailing —

- (a) the manner in which the investigation was conducted;
- (b) the circumstances of the accident or incident the subject of the investigation as established by the investigator;
- (c) the investigator's assessment of the circumstances of the accident or incident in relation to railway safety;
- (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.

(2) Subject to subsection (3), the Director must, not later than 28 days after receiving the investigator's report, cause a copy of the report to be available for public inspection during normal business hours at the office of the Director in Darwin.

(3) Before making a copy of a report available to the public the Director must remove from the report any matter that the Director reasonably believes may -

- (a) prejudice 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;
- (b) be considered defamatory; or
- (c) be contrary to public interest,

or that he or she decides to withhold from the public under section 60.

#### 60. 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 is to be in writing and specify the reasons of the accredited person or owner of the private siding for wanting the information to be withheld.

(3) The Director must, as soon as reasonably possible, consider the request and, if he or she accepts the reasons specified in the request, withhold from the public the whole or the part of the report that he or she considers the request relates to (which may not be the same information the accredited person or owner or the private siding requested to be withheld).

#### 61. DIRECTOR MAY INSPECT OF GIVE DIRECTIONS AS A CONSEQUENCE OF INVESTIGATOR'S REPORT

(1) If the Director considers it is appropriate because of the recommendation's contained in an inspector's report under section 59, the Director may carry out an inspection under section 41 or give a direction under section 42, 43, 44, 45 or 46.

(2) Subsection (1) is not to be taken to have the effect of limiting the effect of section 41 or Division 3 of Part 4 in any way.

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62. OFFENCES RELATING TO INVESTIGATORS

- (1) If an investigator requires a person to —
  - (a) attend before him or her;
  - (b) produce a document or other thing;
  - (c) make an oath or affirmation to answer relevant questions truthfully;
  - (d) answer a relevant question; or
  - (e) be examined by a medical practitioner nominated by the Director,

the person must comply with the requirement.

Penalty: \$10,000.

(2) In answering a relevant question put by an investigator, the person must not —

- (a) make a statement that the person knows is false or misleading in a material particular; or
- (b) omit anything without which the answer would, to the person's knowledge, be misleading in a material particular.

Penalty: \$10,000.

(3) A person must not —

- (a) hinder, obstruct or interfere with an investigator or a person assisting an investigator; or
- (b) use abusive, threatening or insulting language to an investigator or a person assisting an investigator.

Penalty: \$10,000.

*Division 2 — Inspections and Inspectors*

63. APPOINTMENT OF INSPECTORS

(1) The Director may, by instrument, appoint a person to be an inspector.

(2) The Director and each investigator is an inspector.

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(3) A member of the Police Force is an inspector while exercising the powers conferred and performing the functions imposed on an inspector under this Act.

### 64. IDENTITY CARDS

(1) The Director must issue to an inspector appointed under section 63(1) or referred to in section 63(2) an identity card -

(a) containing a photograph and the signature of the person; and

(b) verifying that the person is an inspector.

(2) On the request of a person apparently in charge of a place or building where the inspector is exercising or about to exercise or has exercised his or her powers under this Division, an inspector must display his or her identity card to the person.

(3) A person must as soon as reasonably possible after ceasing to be an inspector return his or her identity card to the Director.

### 65. FUNCTIONS OF INSPECTORS

(1) It is the function of an inspector to ensure that this Act and the Regulations are being complied with.

(2) When performing his or her functions an inspector is subject to the directions of the Director or, in the case of a member of the Police, the Commissioner of Police.

(3) The Director may by instrument impose conditions and limitations on the performance of functions by an inspector or a class of inspector.

### 66. INSPECTION, &C.

(1) Subject to subsection (2), an inspector may, at all reasonable times and as is reasonably required for the administration of this Act (which includes ascertaining whether this Act or the Regulations are being or have been complied with) enter a place or building used for or in connection with the construction, maintenance or operation of a railway (including for the storing of documents) and remain there to -

(a) inspect the place or building or any rail infrastructure, rolling stock or other vehicle or box, cupboard or other container or receptacle in the place or building;

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- (b) require a person to stop or move rolling stock or bring it to another place and remain in control of it at that place until permitted by an inspector to depart from that place;
- (c) require a person who is in the place or building to state his or her name and address;
- (d) take measurements and make surveys and take levels and dig trenches, break up soil and set up posts, stakes or markers to do so;
- (e) examine or take samples of any substance or thing from the place, rolling stock or other vehicle for analysis;
- (f) require production of evidence of the accreditation of a person or registration of a private siding;
- (g) require a person in the place or building to answer questions, produce a document or thing kept there that is under the person's control, or give any other assistance the inspector requires to carry out the inspection;
- (h) examine, copy or take extracts from a document produced or require a person to provide a copy of the document;
- (j) remove and retain a document which the inspector has reasonable grounds to believe is evidence of or otherwise relates to an offence against this Act or the Regulations for so long as is reasonably necessary for the purposes of making copies of the document;
- (k) take photographs, films or audio, video or other recordings;
- (m) examine or test any rail infrastructure, rolling stock, plant system, device, equipment, appliance, vehicle or other thing or seize and retain it or require its production for examination or testing;
- (n) seize and remove or require the production of any thing which the inspector has reasonable grounds to believe is evidence of or otherwise relates to an offence against this Act or the Regulations; or
- (p) exercise any prescribed powers.

(2) Before an inspector may enter and inspect a place or building under this section, the inspector must give the owner or occupier of the place or building reasonable written notice of his or her intention to do so unless -

- (a) the owner or occupier consents to the entry and inspection;
- (b) the inspector believes on reasonable grounds that there are circumstances of such seriousness and urgency as to require and justify immediate entry and inspection without the authority of a search warrant issued under section 67; or
- (c) entry and inspection are authorised by a search warrant issued under section 67.

(3) If an inspector enters and inspects a place or building in circumstances referred to in subsection (2)(b), the inspector is authorised to enter and remain in the place or building and carry out the inspection with the force that is necessary and reasonable.

#### 67. SEARCH WARRANTS

(1) If an inspector wishes to enter and inspect a place or building under section 66(1) and -

- (a) entry has been refused, opposed, prevented or otherwise cannot be obtained; or
- (b) the giving of notice under section 66(2) is unusually difficult or would cause an unreasonable delay or defeat the purpose for entering and inspecting the place or building,

an inspector may apply to a Justice for a search warrant.

(2) If the Justice is satisfied by evidence on oath that there are reasonable grounds to carry out the inspection and that consent to enter the place or building cannot or should not be obtained, the Justice may issue a search warrant to the inspector.

(3) The search warrant authorises the inspector to -

- (a) enter and remain in the place or building specified in the warrant at the time or within the period specified in the warrant; and
- (b) exercise the powers specified in section 67(1) for the purpose specified in the warrant,

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with the force that is necessary and reasonable.

(4) A search warrant may be executed by the inspector to whom it is issued or by any other inspector.

(5) An inspector executing the search warrant must, at the request of a person in the place or building, display the warrant to the person.

### 68. INSPECTOR MAY REQUIRE DEFECTS TO BE REMEDIED, &C.

(1) If, after inspecting a place or building, an inspector is of the opinion that a matter, thing or practice connected with the construction, operation or maintenance of the railway the subject of the inspection is defective or unnecessarily dangerous and is likely to injure a person or cause loss or damage to property or endanger the public, the inspector or another inspector may by written notice given to the relevant accredited person or owner of a private siding or an agent or employee of the person or owner direct the person, owner, agent or employee to remedy the defect or cease the practice —

(a) within the time specified in the direction; or

(b) if in the opinion of the inspector the defect or practice is likely to cause immediate danger — immediately.

(2) The Director may cause to be carried out work that would remedy the defect or cease the practice if the accredited person, owner of the private siding or agent or employee fails to comply with the direction of the inspector.

(3) If work is carried out under subsection (2), the cost of carrying out the work is a debt due and payable to the Territory by the accredited person or owner of the private siding.

### 69. RECOVERY OF COSTS OF INSPECTION

The reasonable costs of the entry and inspection of a place or building under this Division is a debt due and payable to the Territory by the accredited person or owner of the private siding in respect of whose operations the inspection relates.

### 70. OFFENCE TO HINDER, &C., INSPECTOR

A person must not —

(a) hinder, obstruct or interfere with an inspector;



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- (b) use abusive, threatening or insulting language to an inspector;
- (c) without reasonable excuse, refuse or fail to comply with a requirement or direction of an inspector;
- (d) without reasonable excuse, fail to answer a question put by an inspector; or
- (e) give an answer to a question put by an inspector that is false or misleading in a material particular.

Penalty: \$10,000.

71. PERSON NOT TO HOLD HIMSELF OR HERSELF OUT AS INSPECTOR

A person must not falsely represent, by words or conduct, that he or she is an inspector.

Penalty: \$10,000.

*Division 3 - Detention, Return, Forfeiture and Disposal  
of Thing Seized*

72. DELIVERY OF THING SEIZED TO DIRECTOR

An inspector who seizes a thing under section 66 must, as soon as reasonably possible after seizing it, deliver it to the Director.

73. DETENTION OF THING SEIZED

Subject to this Division, the Director may retain in his or her possession or under his or her control a thing delivered under section 72 until the institution of proceedings for an offence against this Act or the Regulations in relation to the thing and, if necessary, during the proceedings.

74. RETURN OF THING SEIZED

(1) If a thing is seized and delivered to the Director and -

- (a) no proceedings are instituted for an offence relating to the thing; or
- (b) proceedings instituted for an offence relating to the thing have ended,

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the Director must, by notice in writing, invite the person from whom the thing was seized, or another person appearing to the Director to be the owner of the thing, to claim delivery of it to him or her.

(2) A person to whom a notice is directed under subsection (1) who wishes to make a claim for the delivery of the thing to him or her must make the claim not later than 30 days after the date of the notice.

(3) If a person who receives a notice under subsection (1) makes a claim for the delivery of the thing seized, the Director must deliver the thing into the custody of the person.

### 75. RETURN OF THING SEIZED PENDING PROSECUTION

(1) Despite section 74, the owner or another person who would, but for the seizure of a thing under this Part, be entitled to possession of the thing may, any time before the trial of a person for an offence to which the seizure relates, apply to the Director for the return of the thing to him or her.

(2) If an application is made for the return of a thing, the Director may release the thing subject to the conditions relating to its production as evidence at the trial as the Director thinks fit.

### 76. FORFEITURE OF THING SEIZED

(1) If no claim is made for the delivery of a thing under section 74, the thing is forfeited to the Territory.

(2) If a person is found guilty of an offence relating to a thing seized and delivered to the Director under this Division, the thing is forfeited to the Territory.

(3) If proceedings are commenced against a person for an offence against this Act or the Regulations involving a thing seized and delivered to the Director under this Division, the court before which the person was tried may order that the thing or a part of it is forfeited to the Territory.

(4) A forfeiture under subsection (2) or (3) is in addition to any penalty imposed on a person found guilty of the offence.

77. DISPOSAL OF THING SEIZED

(1) All things forfeited to the Territory under this Division may be destroyed or disposed of in the manner determined by the Director.

(2) Without limiting subsection (1), if the Director approves, a thing that has been forfeited may be sold or returned to a person who immediately before the forfeiture of the thing had a legal or equitable interest in it.

PART 7 — REVIEWS AND APPEALS

78. DIRECTOR MAY REVIEW DECISIONS

(1) A person aggrieved by a decision under this Act may, not later than one month after receiving notice of the decision, request the Director to review the decision.

(2) The request for review is to —

(a) be in writing in an approved form; and

(b) set out the grounds on which the request for review is made.

(3) The Director must conduct the review in a manner that is fair and expeditious and must give proper consideration to the issues.

(4) In determining the review, the Director must, by notice in writing to the person who requested the review —

(a) affirm the decision reviewed;

(b) revoke or vary the decision reviewed; or

(c) substitute a decision for that decision.

(5) The Director must specify the reasons for his or her decision in the notice.

79. APPEAL AGAINST OUTCOME OF REVIEW

(1) A person who is dissatisfied with the outcome of a review under section 78 may, not later than one month after receiving notice of the decision of the Director under section 78(4), appeal against that decision to the Local Court.

(2) The appeal is to be by hearing *de novo*.

(3) In determining the appeal, the Local Court may, in the manner it thinks fit —

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- (a) confirm the decision appealed against;
- (b) vary or quash the decision appealed against; or
- (c) remit the matter to which the appeal relates to the Director for re-consideration, either generally or in respect of specified matters, and for substitution of another decision,

and the Local Court may make any other order or the orders as to costs as it thinks fit.

(4) 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 as it thinks fit for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

### 80. OPERATION OF DECISION PENDING REVIEW OR APPEAL

(1) Subject to subsection (2), a decision that is the subject of a review or appeal continues to have effect pending the determination of the review or appeal.

(2) The Director may by notice in writing given to the person to whom the decision being reviewed or appealed relates -

- (a) suspend the operation of that decision; or
- (b) impose conditions on the operations of that person,

until determination of the review or appeal.

## PART 8 — GENERAL OFFENCES AND PROCEEDINGS

### *Division 1 — General Offences*

#### 81. FALSE INFORMATION

A person must not knowingly make a statement that is false or misleading in a material particular in connection with an application or report under this Act.

Penalty: \$20,000.

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82. FRAUDULENT USE, &C., OF ACCREDITATION, &C.

A person must not —

- (a) forge or fraudulently alter or use an accreditation or registration of a private siding; or
- (b) fraudulently allow an accreditation or registration of a private siding to be used by another person.

Penalty: \$20,000.

83. TAMPERING WITH RAILWAY EQUIPMENT

(1) A person must not tamper with or disable —

- (a) the safety equipment of a railway or rolling stock;
- (b) the interlocking system of a railway; or
- (c) any other safeworking system associated with a railway.

Penalty: \$40,000.

(2) In subsection (1), "interlocking system" means a lever or collection of levers, an electrical device or an electrical and mechanical device that operates or controls points or signals at locations where trains can be directed from one track to another and that are interlocked to prevent conflicting movements of trains.

84. CHANGES TO BE NOTIFIED

An accredited person or an owner of a registered private siding must —

- (a) if the person changes his or her name or principal business address in the Territory — notify the Director in writing of the change not later than 14 days after the change occurs; and
- (b) if the person sells or otherwise disposes of railway track, rail infrastructure or rolling stock in respect of his or her accreditation or private siding — notify the Director in writing of the sale or disposal not later than 7 days after the date of the sale or disposal stating the details of the property sold and the name and address of the purchaser.

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Penalty: \$10,000.

### 85. PROTECTION AGAINST UNLAWFUL DISMISSAL, &C.

If a person complies with a requirement of an investigator under section 57 or an inspector under section 66, the person in whose service the first-mentioned person is employed must not —

- (a) dismiss that person from his or her service; or
- (b) act in any way to the prejudice of that person in relation to his or her employment,

on account of that person's compliance with the requirement.

Penalty: \$5,000.

### 86. NON-DISCLOSURE OF INFORMATION

A person who, in the course of the administration of this Act, acquires information about a person's affairs or has custody of or access to a document about a person's affairs must not —

- (a) make a record of the information;
- (b) communicate the information; or
- (c) produce the document or a copy of it to another person,

unless he or she is required to do so for the purposes of this or any other Act or an Act of the Commonwealth or another State or the making of the record, communicating the information or producing the document or copy relates to the investigation or prosecution of an offence against this Act.

Penalty: \$5,000.

## *Division 2 — Procedural Matters*

### 87. OFFENCES BY BODY CORPORATES

(1) If a body corporate commits an offence or allegedly commits an offence against this Act or the Regulations, each person who is a director of the body corporate or an officer concerned in the management of the body corporate is to be taken to have committed or allegedly committed the offence to the same extent as the body corporate unless the person satisfies the court that —

- (a) the commission or alleged commission of the offence occurred without the person's knowledge;
- (b) the person was not in a position to influence the conduct of the body corporate in relation to the offence; or
- (c) the person used all due diligence to prevent the commission or alleged commission of the offence by the body corporate.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and omissions of a member in connection with the member's functions of management as if the member were an officer of the body corporate.

(3) A proceeding may be brought against a person and an order or finding of guilt may be made in respect of the person by virtue of subsection (1) whether or not the body corporate has been or is being proceeded against or an order or finding of guilt has been or will be made in respect of the body corporate.

(4) Nothing in this section prejudices or affects a body corporate's liability in relation to an offence committed against this Act or the Regulations.

#### 88. PROSECUTION OF ACCREDITED PERSONS, &C., FOR ACTIONS OF EMPLOYEES

(1) If the actions of a person employed by an accredited person or the owner of a private siding constitute or allegedly constitute an offence against this Act or the Regulations, the accredited person or owner of the private siding may be prosecuted for the offence (whether or not the person employed is also prosecuted) as if he or she had personally performed those actions.

(2) It is a defence to a prosecution of an accredited person or the owner of a private siding for an offence referred to in subsection (1) if the accredited person or owner did not authorise (either expressly or by implication) the actions of the person employed constituting the offence.

(3) A reference in this section to a person employed by an accredited person or an owner of a private siding includes a reference to a person whose services are provided to the accredited person or owner under a contract with the person or another person.

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89. EVIDENTIARY

In any proceedings —

- (a) an extract from or copy of an entry in a register kept under this Act purported to be certified by the Director is sufficient evidence of the particulars contained in the entry without requiring —
  - (i) the production of the register or any documents upon which the entry is based; or
  - (ii) proof of the signature of the Director or the fact that that person was the Director; and
- (b) a document bearing the Director's signature stating that —
  - (i) a specified notice or direction was given to a specified person on a specified date; or
  - (ii) specified information or a specified report was or was not received by the Director as required under this Act or the Regulations,is sufficient evidence of the particulars stated in the document without the proof of the signature of the Director or the fact that that person was the Director; and
- (c) the burden of proving that a person is authorised to do an act or make an omission lies on the person.

90. SELF-INCRIMINATION

(1) A person is not excused from answering a question or producing a document or thing when required to do so under this Act on the ground that the answer or production might tend to incriminate him or her or make him or her liable to a penalty.

(2) The answer of or production by the person is not admissible against him or her in any civil or criminal proceedings other than proceedings for false or misleading information relating to the answer or production.



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(3) Nothing in subsection (1) prevents a person from refusing to answer a question or produce a document or thing on the ground that the answer, document or thing relates to or contains information in respect of which the person claims legal professional privilege.

### PART 9 — MISCELLANEOUS

#### 91. GIVING OR LODGEMENT OF NOTICES AND APPLICATIONS

A document that is required to be given to or lodged with a person under this Act may be given or lodged personally or by post.

#### 92. NO LIABILITY OR COMPENSATION FOR LOSS, &C.

No civil or criminal liability is incurred by the Territory, the Director, an investigator, a person appointed to assist an investigator or an inspector in respect of any loss, damage or injury caused by an act or omission of the Director, an investigator, person assisting an investigator or an inspector done or made in good faith in the exercise or performance, or the purported exercise or performance, of a power or function under this Act or the Regulations.

#### 93. POWERS OF POLICE

The powers conferred by this Act on a member of the Police Force, including the Commissioner of Police, are in addition to and not in derogation of any other power he or she may have under any other law in force in the Territory.

#### 94. ACQUISITION TO BE ON JUST TERMS

If the application of a provision of this Act or a regulation made under this Act would, but for this section, result in an acquisition of property otherwise than on just terms, the person from whom the property is acquired is entitled to receive just compensation for the acquisition and a court of competent jurisdiction may make the order that, in its opinion, is necessary to ensure that the acquisition is on just terms.

#### 95. REGULATIONS

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters that are —

- (a) required or permitted by this Act to be prescribed; or

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- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;
- (2) Without limiting subsection (1), the Regulations may —
  - (a) prescribe the fees payable in relation to matters under this Act, including annual fees for accreditation or registration of a private siding, and the time for and manner of payment of the fees;
  - (b) provide for the recognition of the accreditation of a person to own or operate a railway under a law in force in another State for the purpose of granting accreditation under this Act;
  - (c) provide for the lodgement of returns by an accredited person and the information to be stated in the returns;
  - (d) prescribe the records and documents to be kept by an accredited person or the owner of a private siding and the manner of keeping the records and documents;
  - (e) provide for the revision of safety management plans;
  - (f) provide for the making of an annual safety report by an accredited person or owner of a private siding and the content of the report;
  - (g) prescribe the manner in which a document, thing or substance may be or is to be examined or tested for the purposes of the conduct of an investigation or inspection under this Act;
  - (h) prescribe the manner in which an inspector when conducting an inspection under this Act may or must take samples for analysis, the method of the analysis of the samples, the keeping of samples and evidence in proceedings relating to the analysis and samples;
  - (j) prescribe the functions of railway employees;
  - (k) prescribe the training and examination of railway employees and provide for the award of certificates of competency, including provisional certificates, for railway employees and the duration, variation, suspension or cancellation of the certificates;

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- (m) provide for the recognition of the training and examination of and awards made to a railway employee under a law in force in a State;
- (n) prescribe the procedures for breath, urine and blood testing of railway employees (including the approval of equipment or apparatus for testing or analysis), the analysis of test results, the keeping of samples and evidence in proceedings relating to the testing, analysis and samples;
- (p) provide for the regulation of the conduct of passengers and other persons on railway or in a place or building adjacent to a railway;
- (q) prescribe the content of, markings on and display of signs and notices and the identification of rolling stock, rail infrastructure, devices, appliances, equipment and freight;
- (r) provide for the regulation or prohibition of crossing railways and of the opening, closing and use of railway gates and railway crossings;
- (s) provide for the regulation of the construction of rolling stock and the prohibition or regulation of the equipment to be carried on or used in association with rolling stock;
- (t) provide for the holding, collection and disposal of goods and other property left or abandoned on a train or on or near a railway;
- (u) provide for the regulation of the packing and carriage of dangerous goods on a train;
- (w) provide for the regulation of the loading and unloading of a train;
- (x) prescribe the maximum number of passengers that may be transported on a train or a class of train;
- (y) provide for the prohibition of trespassing on a railway and carrying out of dangerous activities on or in the vicinity of a railway;
- (z) prescribe procedures to be carried out in the event of a natural disaster or other emergency occurring on or in the vicinity of a railway;

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- (za) provide controls for the giving or exchanging of information acquired in the course of the administration of this Act to or with a person or body whether in or outside the Territory;
- (zb) provide for the designation of an offence against a regulation as a regulatory offence; and
- (zc) prescribe penalties not exceeding \$20,000 or, in the case of a body corporate, \$50,000 for offences against the Regulations.

(3) The Regulations may apply, adopt, incorporate or apply by reference, either wholly or in part or with or without modification, a standard, code, specification or method, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body, whether or not a Territory authority or body.

(4) A code, standard or specification applied, adopted or incorporated under this section may require anything referred to in the code, standard or specification to be in accordance with another code, standard or specification the code standard or specification refers to.

(5) The Director —

- (a) must cause a copy of each code, standard and specification adopted, incorporated or applied under subsection (3), and each code, standard and specification referred to in the first-mentioned code, standard or specification, to be made available for inspection by members of the public at the office of the Director during normal office hours without charge; and
- (b) may cause copies of each code, standard and specification adopted, incorporated or applied under subsection (3), and each code, standard and specification referred to in the first-mentioned code, standard or specification (or a part of the code, standard or specification referred to), to be available for purchase by members of the public on payment of the charge the Director requires.

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96. TRANSITIONAL

(1) A person who, on the commencement of this Act, is the owner or operator of a railway is granted temporary accreditation for a period of 12 months.

(2) A person referred to in subsection (1) must apply and be granted accreditation (whether permanent accreditation or temporary accreditation) under Part 2 before the expiry of his or her temporary accreditation granted under that subsection.

(3) A private siding in existence on the commencement of this Act is, on that commencement, to be taken to be registered under this Act.

(4) A temporary accreditation referred to in subsection (1) or the registration of a private siding referred to in subsection (3) is subject to and may be dealt with under this Act as if an accreditation granted under Part 2 or a registration of a private siding under Part 3 and this Act is, with the necessary changes, to be construed accordingly.

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