

**RAIL SAFETY BILL 2009
SERIAL NO. 79**

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR TRANSPORT

EXPLANATORY STATEMENT

GENERAL OUTLINE

Model rail safety legislation was developed by the National Transport Commission following extensive consultations with the rail industry, State and Territory governments and the Rail, Tram and Bus Union in 2005. The development of the model legislation arose out of the Inter-Governmental Agreement on Regulatory and Operational Reform in Road, Rail and Intermodal Transport (IGA) and is designed to deliver a higher degree of regulatory harmonisation across Australian States and Territories.

This Bill will repeal and replace the current *Northern Territory Rail Safety Act* with provisions based on the model legislation and on South Australia's *Rail Safety Act 2007*. It will also preserve the role and powers of independent accident investigators contained in the current Act.

The main purpose of this Bill is to provide for rail safety legislation that will form part of a system of nationally consistent rail safety laws. The Bill sets out legal duties and operating requirements that are to be applied on a nationally consistent basis to all parties responsible for rail safety.

The objects of the Bill are to:

- (a) provide for improvement of the safe carrying out of railway operations;
 - (b) provide for the management of risks associated with railway operations;
 - (c) make special provision for the control of particular risks arising from railway operations;
- and
- (d) promote public confidence in the safety of transport of persons or freight by rail, in a manner which will be consistent with the legislation in place in the other States and the Australian Capital Territory.

NOTES ON CLAUSES

PART 1 INTRODUCTION

Division 1 Preliminary matters

Clause 1 Short Title

The Bill when passed will be cited as the *Rail Safety Act 2009*.

Clause 2 Commencement

The Bill will commence on a date fixed by the Administrator and notified in the *Gazette*.

Clause 3 Objects of Act

The objects of the Bill are:

- to provide for improvement of the safe carrying out of railway operations;
- to provide for the management of risks associated with railway operations;
- to make special provision for the control of particular risks arising from railway operations; and
- to promote public confidence in the safety of transport of persons or freight by rail.

Division 2 Application of Act

Clause 4 Railways to which Act does not apply

The provisions of the Bill do not include the following:

- railways in underground mines;
- slipways;
- railways used only to guide cranes;
- aerial cable operated systems;
- railways operated solely in amusement or theme parks; and
- any other railways, or classes of railway, that are prescribed by the regulations.

Clause 5 Crown to be bound

The Crown will be bound by the provisions of the Bill

Division 3 Interpretation

Clause 6 Definitions

This clause defines terms used in the Bill, for example: “accredited person”, “rail infrastructure manager”, “notifiable occurrence”, “private siding”, “rail safety worker”, “rail transport operator”, “rolling stock”, “rolling stock operator”, and “safety management system”.

The definition of a rail safety worker includes anyone who performs rail safety work (which is defined in clause 11).

Clause 7 Railway

This clause defines a railway as a guided system designed for the movement of rolling stock capable of carrying passengers and freight, on a railway track with a gauge of at least 600 mm, and includes:

- light and heavy railways;
- monorails;
- inclined railways;
- marshalling yards;
- tramways;
- private sidings; and
- and any other guided system, or classes of guided system, which is prescribed by the regulations.

Clause 8 Railway premises

This clause defines railway premises as being land on which there is rail infrastructure, buildings and associated land (such as freight depots and workshops) used in connection with railway operations, and rolling stock.

Clause 9 Rail infrastructure

This clause defines rail infrastructure to mean facilities that are necessary to enable a railway to operate safely. This would include such things as:

- railway tracks and associated track structures;
- service roads, signalling systems, communications systems, rolling stock control systems and data management systems;
- notices and signs;
- electrical power supply and electric traction systems;

- associated buildings, workshops, depots and yards; and
- plant, machinery and equipment.

However rolling stock, or any facility or class of facility that might be prescribed by the Regulations, is excluded from the definition.

Clause 10 Railway operations

This clause defines railway operations to mean:

- the construction of a railway, railway tracks and associated track structures or rolling stock;
- the commissioning, use, maintenance and decommissioning of rail infrastructure;
- the commissioning, maintenance, decommissioning of rolling stock; and
- the operation or movement of rolling stock on a railway.

Clause 11 Rail safety work

This clause sets out the classes of work carried out by rail safety workers which are taken to be rail safety work for the purposes of the Bill. It also allows for regulations to be made specifying activities that are not to be regarded as rail safety work. The focus is on work types that have potential safety issues. Some people employed by rail transport operators may not perform rail safety work, in which case they will not be rail safety workers for the purposes of this Bill.

Clause 12 Ensuring safety

This clause clarifies the nature of the duty to ensure safety under the Bill.

Sub-clause (1) provides that a duty imposed on a person under the Bill or the regulations to ensure safety, requires the person to -

- eliminate risks to safety; or
- if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.

Sub-clause (2) sets out certain matters to which regard must be had in determining what is, or what at a particular time was, reasonably practicable in relation to ensuring safety. They include:

- the risk and any ways of eliminating or reducing the risk;
- the likelihood of the particular risk concerned eventuating;
- the degree of harm that would result if the risk eventuated;
- what the person concerned knew, or ought reasonably be expected to have known, about the risk and any ways of eliminating or reducing the risk; and
- the cost of eliminating or reducing the risk.

Clause 13 **Notes and other matters for corresponding laws**

Sub-clause 1 explains that notes can be used to explain why the wording used in the Bill may differ from that used in an equivalent provision in a corresponding law.

The Bill does not use the expressions *Rail Safety Regulator* or *Rail Safety Law*, opting instead for the *Director* and this *Act*. However the model laws adopted in other jurisdictions use the expressions *corresponding rail safety law* and *corresponding Rail Safety Regulator*, and those terms are defined as rail safety laws or regulators “defined in a corresponding law”. Because of this, subclause (2) has been included to define *rail safety law* and *rail safety regulator* so that the Bill and the Director will be a *corresponding rail safety law* and a *corresponding Rail Safety Regulator* for the purposes of corresponding rail safety laws adopted in the other jurisdictions.

Clause 14 **Application of Criminal Code**

This clause applies Part IIAA of the Criminal Code to all offence provisions in the Bill. The consequence of this is that offences can be created with no fault element for one or more physical elements of the offence.

PART 2 **OCCUPATIONAL HEALTH AND SAFETY LEGISLATION**

Clause 15 **Act adds to protection provided by OHS legislation**

This clause clarifies how the safety duties in the Bill will operate in conjunction with the *Workplace Health and Safety Act 2007* or any other occupational health and safety legislation that might be prescribed for the purposes of this Part. If a provision of the *Workplace Health and Safety Act 2007* applies to railway operations, that provision continues to apply, and must be observed in addition to this Bill and any regulations made under this Bill.

Clause 16 **OHS legislation prevails**

If a provision of this Bill or the regulations made under this Bill is inconsistent with a provision in the *Workplace Health and Safety Act 2007*, then the provision in the *Workplace Health and Safety Act 2007* prevails to the extent of any inconsistency.

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

This clause provides that if a person complies with the requirements of this Bill or regulations made under this Bill, it is not a defence in itself against any proceedings that may be brought against the person for an offence under the *Workplace Health and Safety Act 2007*

Clause 18 Relationship between duties under Act and OHS legislation

This clause provides for evidence of a relevant contravention of this Bill or the regulations made under this Bill to be admissible in any proceedings for an offence against the *Workplace Health and Safety Act 2007*

Clause 19 No double jeopardy

Because the basic safety duties imposed under the Bill overlap with similar provisions in the *Workplace Health and Safety Act 2007*, it is likely that a breach of a safety duty under this Bill will also be a breach of a comparable duty under the *Workplace Health and Safety Act 2007*, and the offender will be exposed to a prosecution both under the Bill and the *Workplace Health and Safety Act 2007*.

This clause has been included to prevent a person from being punished twice for any act or omission that is an offence both under this Bill (or any regulations made under this Bill), and under the *Workplace Health and Safety Act 2007*.

PART 3 RAIL SAFETY

Division 1 General safety duties

Part 3 Division 1 contains a range of safety duties on rail industry participants that require them to ensure the safety of railway operations. In particular, safety duties are imposed on rail transport operators (infrastructure managers and rolling stock operators), contractors and subcontractors to rail transport operators, and designers, manufacturers and suppliers of things to be used as or in connection with rail infrastructure or rolling stock to ensure, so far as is reasonably practicable, the safety of railway operations.

These safety duties will impose an explicit obligation to conduct railway operations safely, improving the transparency as to what is required by the legislation for all stakeholders. The expression of the required outcome (in the form of a general duty) rather than prescriptively defining how it must be achieved maintains the flexibility for organisations to determine the most

cost effective and practical means of compliance.

The “in so far as is reasonably practicable” qualification built into the concept of ensuring safety recognises that safety cannot be guaranteed, and that the pursuit of safety cannot occur regardless of cost. Although expressed in slightly varying forms, all Commonwealth, State and Territory occupational health and safety legislation qualifies the general requirement for duty holders in a similar manner.

Clause 20 Duty of rail transport operator to ensure safety

This clause imposes a general safety duty on rail transport operators to ensure the safety of their respective railway operations.

Sub-clause 2 extends the application of this duty to contractors engaged by a rail transport operator in regard to matters that they have control over. *Contractor* is defined in clause 6 to include someone other than an employee of a rail transport operator who carries out rail safety work in relation to rail infrastructure or rolling stock.

Sub-clauses (3), (4) and (5) set out examples of specific safety requirements which, if not met, will amount to a contravention of the basic duty to ensure the safety of railway operations. They include:

- a failure to develop and implement safe systems for the carrying out of their railway operations.
- a failure by a rail infrastructure manager to ensure that any installation, modification, design, construction, commissioning, maintenance or decommissioning of rail infrastructure is done in a way that ensures, the safety of railway operations; and
- a failure by a rolling stock operator to provide or maintain rolling stock that is safe.

Clause 21 Duty of designer, manufacturer, supplier and others

This clause imposes general safety duties on other key rail industry participants, such as designers, manufacturers and suppliers, relating to the safety of their activities.

Sub-clause (2) imposes duties on those who design, commission, manufacture, supply, install or erect any thing for use as or in connection with rail infrastructure or rolling stock:

- to ensure, that the thing is safe for its intended purpose;
- to carry out or arrange for such testing and examination of the thing to be carried out as is reasonably necessary to ensure its safe use; and
- to ensure, in so far as is reasonably practicable, that adequate information is made available about:

- Ø the use for which the thing is designed, commissioned, installed manufactured, supplied, installed or erected,
- Ø the results of any testing or examination of the thing; and
- Ø any conditions necessary to ensure the safe use of the thing.

Sub-clause (3) provides that the duties imposed under this clause do not apply to a person who has supplied something in their capacity as a financier and they have not acquired any other interest in the thing. In that situation, the duty lies instead on the person from whom the financier acquired the thing.

Clause 22 Duty when decommissioning

Sub-clause (1) imposes a duty on those who decommission any rail infrastructure or rolling stock to ensure that the decommissioning is carried out safely and that they carry out any testing or examinations as are necessary to ensure the safety of the decommissioning.

Division 2 Accreditation

Part 3 Division 2 outlines the purpose of accreditation under the Bill and the details of the accreditation system. Under the Bill, the purpose of accreditation is to provide assurance to the public that a rail transport operator has demonstrated competence and capacity to manage risks to safety associated with the railway operations for which accreditation has been sought.

The Bill makes it clear that gaining accreditation is no more than a threshold requirement for rail transport operators: a precursor to being permitted to operate. The granting of accreditation indicates that, in the opinion of the Director of Rail Safety, the rail transport operator has the capacity, competency and systems in place to manage the risks to safety associated with the particular railway operations for which the rail transport operator is seeking accreditation. The granting of accreditation is not a certification of safety. No such warranty could ever be given by a rail safety regulator.

The Bill limits the range of parties to be accredited. Only the rail infrastructure manager and the rolling stock operator (collectively referred to as rail transport operators) are required to be accredited. In some jurisdictions this is consistent with current practice, but for the Territory and South Australia, it represents a narrowing of the range of accredited parties. The rationale behind this focus on rail transport operators is that infrastructure managers and rolling stock operators should be primarily responsible for demonstrating the competence and capacity of those other parties with whom they contract, due to the fact that the accreditation process essentially relates to the operation of whole systems, characterised by multiple, interacting risks that need to be

managed in a systemic fashion. Rail transport operators need to be able to demonstrate that their contractors' practices fit with, and form part of the rail transport operators' safety management systems. Both the capacity and competence of the rail transport operator to manage the contractor and the capacity and competence of the contractor to fulfil the safety critical functions which they are proposing to undertake will be assessed.

Clause 23 Purpose of accreditation

By gaining accreditation, a rail infrastructure manager or a rolling stock operator is permitted to operate their railway operations.

The grant of accreditation is recognition of a rail infrastructure manager or a rolling stock operator's demonstrated competence and capacity to manage risks to safety associated with their particular railway operations.

Clause 24 Accreditation required for railway operations

This clause makes it an offence for a person to carry out any railway operations without either being accredited to do so, or being exempt from the requirement to be accredited, or unless they are doing so on behalf of a rail transport operator who is accredited or exempt.

It is also an offence if a rail infrastructure manager or rolling stock operator causes or permits another person to do so (for example, by engaging a contractor to carry out the railway operations).

Clause 25 Purpose for which accreditation may be granted

This clause enables accreditation to be granted for parts of railway operations and for specific activities only. It also enables accreditation to be granted for a limited, rather than an indefinite period, but only where the applicant has requested this.

Clause 26 Application for accreditation

This clause makes provision for applications for accreditation to be made by rail transport operators to the Director of Rail Safety in respect of the operators' railway operations.

Provisions of this clause:

- specify the manner and form in which an application for accreditation must be made, and

the things which must accompany an application; and

- allows the Director of Rail Safety to require an applicant to supply further information or to verify, by declaration, information supplied for the purposes of the application.

Clause 27 What applicant for accreditation must demonstrate

This clause sets out the criteria on which accreditation applications by rail transport operators are to be assessed. The Director of Rail Safety must accredit a rail transport operator in respect of their railway operations if the Director of Rail Safety is satisfied, having regard to guidelines, that the applicant has demonstrated that:

- the applicant is a rail transport operator in relation to the railway operations for which accreditation is sought;
- they have the competence and capacity to manage risks to safety associated with their railway operations;
- they have the competency and capacity to implement the proposed safety management system and the financial capacity to meet potential accident liabilities arising from their railway operations;
- the consultation requirements have been met; and
- they have complied with any other requirements that may be prescribed.

Clause 28 Director may direct applicants to coordinate applications

This clause enables the Director of Rail Safety to direct rail transport operators to co-ordinate their applications for accreditation to ensure that railway operations are carried out safely. A direction given under this clause may require each rail transport operator to jointly assess risks to safety associated with the interface of their respective railway operations and to determine appropriate controls that will form part of each rail transport operator's safety management system, such that they can demonstrate competence and capacity to carry out their proposed railway operations safely.

A rail transport operator who coordinates an application must include in the application reference to information given by that operator to each other operator involved.

Clause 29 Coordination between Rail Safety Regulators

This clause makes provision for the co-ordination of the determination of applications for accreditation and applications for variations of accreditation or the conditions or restrictions of accreditation where the applicant operates or is applying to operate in two or more jurisdictions.

The Director of Rail Safety must consult with the rail safety regulator or rail safety regulators in

each of the other relevant jurisdictions prior to determining the application with the aim of co-ordinating decision-making between each jurisdiction.

The Director of Rail Safety must also take into account guidelines issued for the purposes of this clause.

The guidelines will be national guidelines approved by the Australian Transport Council for the purpose of this clause, that will include such matters as the process and timeframe for the Director of Rail Safety and other rail safety regulators to follow in such cases, the manner of consultation between the relevant rail safety regulators, and factors that should be taken into account, and a national register for recording decisions and reasons for decisions, with a view to achieving consistency of decision-making.

If the Director of Rail Safety does not act consistently with the guidelines, the Director of Rail Safety must provide the applicant with reasons for not doing so and the applicant will have a right to seek review of the determination under Part 5.

Clause 30 Determination of application

This clause sets out requirements on the Director of Rail Safety to determine an application and to provide a notice containing the prescribed information to the applicant of the determination. The determination must be made within 6 months of the Director receiving the application, unless further information is required by the Director or, or unless the Director of Rail Safety extends the time for determination of the application.

If accreditation is granted, the notice of accreditation must specify the scope and nature of the railway operations for which accreditation is being granted, the manner in which they are to be carried out and any conditions imposed by the Director of Rail Safety on the grant of accreditation.

A notice refusing an application or imposing conditions or restrictions must include reasons for the Director of Rail Safety's decision and must include information about the right of review under Part 5.

Clause 31 Prescribed conditions and restrictions

This clause makes provision for an accreditation to be subject to any conditions or restrictions prescribed by the regulations for the purpose of this clause.

Clause 32 Penalty for breach of condition or restriction

This clause makes it an offence for an accredited person to fail to comply with a condition or restriction of accreditation.

Clause 33 Annual fees

This clause obliges an accredited person to pay the annual accreditation fee prescribed by regulations.

Sub-clause (2) allows the Director of Rail Safety to enter into agreements with accredited operators regarding the manner of payment of the annual accreditation fee. For example, the Director of Rail Safety might allow the fee to be paid in instalments.

Clause 34 Late payment of fees

This clause allows the Director of Rail Safety to suspend the accreditation of a rail transport operator who fails to pay their accreditation fee by the due date.

Clause 35 Waiver of fees

This clause allows the Director of Rail Safety to waive the whole or part of an accreditation fee.

Clause 36 Surrender of accreditation

This clause allows an accredited person to surrender their accreditation, and contains a power to make regulations to make further provision for the surrender of accreditation.

Clause 37 Suspension or revocation of accreditation

This clause makes provision for the Director of Rail Safety to suspend or revoke accreditation, or impose or vary conditions of accreditation, where the Director of Rail Safety considers the accredited person:

- is no longer able to demonstrate to the satisfaction of the Director of Rail Safety the matters referred to in clause 27 or to satisfy the conditions of accreditation;
- is not managing the rail infrastructure or 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
- has contravened this Bill or the regulations.

However, sub-clause (4) provides that before suspending or revoking accreditation, or imposing or varying the conditions of accreditation under this clause, the Director of Rail Safety must give the accredited person notice in writing that the Director of Rail Safety is considering taking such action, must allow the accredited person at least 28 days to show cause why that action should not be taken, and must also consider any submission that the accredited person makes in this regard.

Sub-clause (5) provides that the Director of Rail Safety must include in the written notice of suspension or revocation the reasons for the suspension or revocation and information about the right of review under Part 5.

Where a person's accreditation is revoked or suspended, and that person is also accredited in another jurisdiction, sub-clause (6) requires the Director of Rail Safety to give notice of the suspension or revocation to the corresponding rail safety regulator for the other jurisdiction.

Clause 38 Immediate suspension of accreditation

This clause provides for the immediate suspension of an accreditation, or part of an accreditation, for up to six weeks, where there is an immediate and serious risk to safety. The accredited person has a right of review.

Sub-clause (3) enables the Director of Rail Safety to reduce the period of suspension, or to extend the period of suspension by up to a further 6 weeks.

If the Director proposes to extend the period of suspension, sub-clause (4) requires the Director to give the person whose accreditation has been suspended, notice in writing of this intention, as well as the opportunity to show cause why the suspension should not be extended. The Director must also, before making a decision to extend the suspension, consider any submission that the person makes.

Sub-clause (5) provides that if the Director extends the suspension, the Director must give reasons for that decision and information about the right to seek review of that decision under Part 5.

Clause 39 Documents available for public inspection

This clause provides that a rail transport operator must ensure that the current notice of accreditation or exemption and any other document prescribed by regulations for the purpose of

this clause are available for inspection. A failure to do so is a strict liability offence, but a reasonable excuse defence is available to the operator.

Clause 40 Application for variation of accreditation

This clause makes provision for the accredited person to apply for a variation of accreditation.

Provisions of this clause:

- address the manner and form in which an application for variation of accreditation must be made, and the information and fee which must accompany an application and
- allow the Director of Rail Safety to require an applicant to supply further information or to verify by declaration, information supplied for the purposes of the application.

Clause 41 Application relating to cooperative railway operations or operations in another jurisdiction

This clause provides that clause 28 (requiring two or more rail transport operators to co-ordinate their applications to ensure interfaces between their respective railway operations are managed safely) and clause 29 (requiring rail safety regulators to co-ordinate their decision where an applicant is either accredited, or applying for accreditation, in two or more jurisdictions) apply to an application for variation in the same way they apply to an application for accreditation.

Clause 42 Determination of application for variation

This clause provides that the Director of Rail Safety must give an applicant for a variation notice in writing that the application has been granted or refused within six months of receiving the application, unless further information is required by the Director, or unless the Director extends the time for determination of the application.

If the application for a variation is granted, the notice must also include prescribed details of the applicant (such as the name and registered address of the applicant), information on how the variation affects the scope and nature and manner of carrying out the applicant's railway operations, any conditions or restrictions, and any other prescribed information.

If the application for a variation is refused, or is granted subject to conditions or restrictions, the notice must also include the reasons for doing so, and information on seeking a review of the decision under Part 5.

Clause 43 Prescribed conditions and restrictions

This clause provides that a variation of an accreditation will be subject to any applicable conditions and restrictions that may be prescribed by the regulations.

Clause 44 Variation of conditions and restrictions

This clause allows an accredited person to apply for a variation of a condition or restriction to which the person's accreditation is subject, other than a condition or restriction that is prescribed by the regulations to be applicable to the person's accreditation. The application must be made in the same manner as an application for variation of accreditation under clause 40, and the Director of Rail Safety must decide the application and provide notice to the applicant of the decision as far as possible in the same manner as the requirements for the determination of an application for accreditation.

If the Director refuses the application, the notice to the applicant must include the reasons for the refusal and information on how to seek a review of the decision under Part 5.

Clause 45 Director may change conditions or restrictions

This clause provides that the Director of Rail Safety may, of his or her own volition, vary or revoke a condition or restriction to which an accreditation is subject, other than a condition or restriction that is prescribed by the regulations to be applicable to the accreditation. Unless the Director considers the immediate variation or revocation is necessary in the interests of safety, the Director must give prior notice to the accredited person and allow the person an opportunity to make representations to the Director.

Reasons for making a decision to vary or revoke the condition or restriction must be given to the accredited person, along with information on how to seek a review of the decision under Part 5.

Clause 46 Accreditation cannot be transferred or assigned

This clause makes it clear that accreditation is personal to the person who holds it, and is not capable of being transferred or assigned, and cannot vest in another person by operation of law. Any purported sale or transfer of, or other dealing with, accreditation will be of no force and effect.

Clause 47 Sale or transfer of railway operations by accredited person

This clause provides that if railway operations are to be sold or transferred by an accredited person, the Director of Rail Safety may exercise his or her discretion, when considering an application for accreditation from the proposed transferee, to waive compliance with some or all of the accreditation requirements, provided that the proposed transferee has the requisite competence and capacity to comply. The waiver of compliance may however be subject to such conditions and restrictions as the Director may impose.

Division 3 Private sidings

Clause 48 Exemption from accreditation and registration

Sub-clause (1) provides that a rail infrastructure manager of a private siding is not required to be accredited in respect of the private siding.

However, sub-clause (2) requires the rail infrastructure manager of any private siding that is connected to a railway or a siding of an accredited person, to register the private siding with the Director of Rail Safety and comply with any conditions or restrictions imposed by the Director.

Except as may be otherwise prescribed, a rail infrastructure manager of a private siding is not required to comply with the safety, reporting and investigating requirements of Divisions 4, 5 and 6 of Part 3 of the Bill. However, the Director of Rail Safety, when imposing conditions upon registration, may impose conditions the same or similar to provisions in Divisions 4, 5 or 6.

Clause 49 Offences relating to private siding

This clause creates an offence for a breach of a registration condition and also for a breach of the interface obligation in clause 55 (in effect prescribing compliance with clause 55 for the purposes of the previous clause)

Division 4 Safety management

Clause 50 Safety management system

Sub-clause (1) requires a rail transport operator to have a safety management system for their operations that is in the approved form and complies with the prescribed relevant requirements and the prescribed risk management principles, methods and procedures.

The Bill itself prescribes that rail transport operator's safety management system must include

such matters as:

- any required interface co-ordination agreements;
- a security management plan;
- an emergency plan;
- a health and fitness management program;
- an alcohol and drug management program; and
- a fatigue management plan.

Regulations that will be made under this section will prescribe additional detail on the content of safety management systems, and for the contents of health and fitness management programs, alcohol and drug management programs, and fatigue management plans.

The regulations will, for example, specify that the rail transport operator's safety management system must include a management of change process.

The safety management system must identify and assess risks to safety and specify controls to manage those safety risks.

Importantly, there is an explicit requirement that the safety management system include procedures for reviewing and revising the adequacy of the specified controls.

Sub-clause (3) sets out who the rail transport operator must consult with before establishing, reviewing or varying the safety management system.

Sub-clause (4) provides that where there is a safety interface between the railway operations of two rail transport operators who have an interface co-ordination plan to manage the safety risks associated with that interface, and if both operator's safety management systems, considered as one, meet the requirements for a safety management system set out in this clause, then the safety management system of either of the operators is also taken to comply with the requirements.

Sub-clause (5) requires the safety management system to be documented and to specify who is responsible for its implementation.

Clause 51 Director may direct amendment of a safety management system

This clause provides that the Director of Rail Safety may direct a rail transport operator to amend the person's safety management system within a specified period. The direction must be in writing and must state the reasons why the Director considers the amendment is necessary. It is a strict liability offence to fail to comply with the direction but a reasonable excuse defence is available to the operator.

Clause 52 Compliance with safety management system

This clause provides that a rail transport operator must implement and comply with the safety management system. It is a reasonable excuse to fail to comply with the safety management system if the rail transport operator complies with it to the extent practicable while complying with a condition or restriction of accreditation, or demonstrates that compliance with the safety management system would have posed an unacceptable safety risk.

Clause 53 Review of safety management system

This clause provides that a rail transport operator must review the safety management system in accordance with the regulations at least once each year or at such other time as is agreed with the Director of Rail Safety. A failure to do so is a strict liability offence, but the reasonable excuse defence is available to the operator.

Clause 54 Safety performance reports

This clause provides that a rail transport operator must give the Director of Rail Safety a safety performance report each calendar year or for such other period as is agreed with the Director of Rail Safety, within six months of the end of the relevant reporting period. This clause also specifies the required form and content of the safety performance report.

A failure to provide a safety performance report within the required time is a strict liability offence, but the reasonable excuse defence is available to the operator.

Clause 55 Interface co-ordination – rail transport operators

This clause requires rail transport operators to identify potential risks to the safety of their railway operations posed by the railway operations carried out by other rail transport operators.

In circumstances where risks to safety are identified, the operators involved must determine what measures need to be taken to manage the risks, and must seek to enter into interface coordination

plans with one another to minimise or eliminate identified risks to safety.

Clause 56 Interface co-ordination – rail infrastructure manager – public roads

This clause requires a rail infrastructure manager to identify potential risks to the safety of the rail infrastructure manager’s railway operations posed by road or rail crossings involving public roads, determine what measures need to be taken to manage any identified risks, and enter into interface coordination plans with the relevant road managers.

road or rail crossing is defined in sub-clause 4(1) to mean level crossings, areas where footpaths and shared paths cross railways at the same level, and bridge crossings where roads cross either above or below railways.

Clause 57 Interface co-ordination – rail infrastructure manager – other roads

This clause requires a rail infrastructure manager to identify potential risks to the safety of the rail infrastructure manager’s railway operations posed by road or rail crossings involving roads other than public roads and having regard to the protocol adopted under the *AustralAsia Railway (Special Provisions) Act* (that addresses interface risks for occupational crossings), determine what, if any, measures need to be taken to manage any identified risks, and where risks are addressed that are not dealt with adequately by the protocol, enter into interface coordination plans with the relevant land owners.

It is anticipated that the protocol should suffice for nearly all crossings on private land. However it is conceivable that there may be some roads on private land that, for example, service mines and on which the volume of heavy vehicle traffic poses a significant risk where the roads cross the railway. In these circumstances, if a rail transport operator forms the view that the protocol does not adequately address the risks, they will have to approach the person responsible for the road and seek to enter into an interface coordination agreement with them.

Clause 58 Interface co-ordination - road manager – public roads and other roads

Sub-clause (1) imposes an obligation upon public road managers to undertake the same risk assessment for road and rail crossings that rail transport operators have to undertake.

Sub-clause (2) requires the owners of non public roads to go through a similar consideration of risks, but only where they have been given notice by the rail infrastructure manager that they are

of the opinion that the risks posed by a particular crossing need to be managed under an interface coordination agreement.

No offence is created for the road managers and land owners for a failure to meet their obligations under this clause. In the case of public roads, the road managers will either be the Territory or a local government body.

If a road manager or owner unreasonably refuses or fails to enter into an interface agreement, they will be given a direction to do so under clause 60.

Clause 59 Identification and assessment of risks

This clause provides that a rail transport operator, rail infrastructure manager or a road manager required to identify and assess interface risks arising because of someone else's operations, can do so jointly with the other person and may adopt their identification and assessment.

Clause 60 Interface agreement

This clause explains what an interface agreement is and sets out what must, and what may, be included in an interface agreement. Essentially an interface agreement is an agreement between different rail transport operators or between rail transport operators and road managers to manage the risks to safety associated with any interface between their different operations.

Clause 61 Director may give directions

If the Director of Rail Safety is satisfied that someone has made a reasonable attempt to enter into an interface agreement with another person but that other person is unreasonably refusing to enter into an agreement or is unreasonably delaying the negotiation of an agreement, the Director can warn them of his or her powers under this clause and suggest what terms should be included within, an interface agreement.

If they fail to enter into an interface agreement within the time specified in the notice, the Director can then issue a further notice determining how the risks should be managed and directing that one or more of the parties involved implement those measures.

A failure to comply with a direction under subclause (4) without a reasonable excuse is a strict liability offence, the onus being on the rail transport operator or road manager to establish that they had a reasonable excuse.

Clause 62 Register of interface agreements

This clause obliges rail transport operators and road managers to keep and maintain registers of all interface coordination agreements to which they are a party and of any arrangements determined by the Director under clause 61 that relate to their rail or road operations.

Clause 63 Security management plan

This clause specifies the required content of a security management plan to protect people from theft, assault, sabotage, terrorism and other criminal acts, and from other harm.

Clause 64 Emergency management plan

This clause specifies the required form and content of an emergency management plan, and how a plan is to be prepared, maintained and tested.

It also requires rail transport operators to implement their relevant response measures in the event of an emergency.

Clause 65 Competence to carry out rail safety work

This clause provides that a rail transport operator must ascertain whether its rail safety workers are competent to carry out rail safety work.

The assessment of competence of a worker must be based on any units of competence recognised under the regulations that are relevant to the type of work to be carried out by that worker, or the knowledge and skill of the worker.

The rail transport operator is entitled to rely on a certificate that purports to certify that the rail safety worker holds certain qualifications, in the absence of proof that the rail safety worker does not hold such qualifications.

This clause also obliges rail transport operators to maintain records of the competence of their rail safety workers.

Clause 66 Identification for rail safety workers

Sub-clause (1) provides that a rail transport operator must ensure that each of their rail safety workers has a form of identification that is sufficient to enable the Director of Rail Safety to

check the type of competence and training they have for the rail safety work they are performing.

Subclause (2) requires rail safety workers to provide their identification on a request by a rail safety officer.

Clause 67 Duty of rail safety worker

This clause sets out the duties of rail safety workers when carrying out rail safety work.

Sub-clause (1) prohibits a rail safety worker from engaging in conduct that places the worker or other persons at risk.

Sub-clause (2) places an obligation on a rail safety worker to co-operate with the rail transport operator to enable the rail transport operator to comply with applicable rail safety requirements. A reasonable excuse defence is available for a prosecution under this subclause.

Sub-clause (5) provides that a rail safety worker carrying out rail safety work must not intentionally interfere with or misuse anything provided to him or her by the rail transport operator in the interests of safety or under the Bill.

Clause 68 Alcohol or prohibited drug

This clause creates offences for rail safety workers who carry out rail safety work with more than the prescribed level of alcohol in their blood, or with a prohibited drug present in their body.

Clause 69 Impairment

This clause creates an offence for rail safety workers who carry out rail safety work while impaired by alcohol, prohibited drugs or other substances to such an extent that they are incapable of properly carrying out their functions.

Clause 70 Testing for presence of alcohol or drugs

This clause empowers the Director of Rail Safety to enter into arrangements with rail transport operators for the testing, in accordance with the regulations, of any person carrying out rail safety work for the presence of alcohol or any prohibited drug.

Clause 71 Contractors to comply with safety management system

This clause requires contractors who undertake railway operations on or in relation to rail infrastructure or rolling stock of rail transport operators, to comply with the safety management systems of the rail transport operators to the extent that those systems apply to the contractors' railway operations.

Division 5 Information about rail safety

Clause 72 Rail transport operators to provide information

This clause empowers the Director of Rail Safety to require a rail transport operator to provide such information about safety related matters, including financial and insurance arrangements, as is required by the Director of Rail Safety or prescribed by regulations. It is an offence to fail to comply with this requirement, but a reasonable excuse defence has been included in respect of information requirements imposed by the Director.

Division 6 Investigating and reporting by rail transport operators

Clause 73 Report of notifiable occurrences

Sub-clause (1) requires a rail transport operator to inform the Director of Rail Safety if any accident or incident occurs that is of a kind defined as a notifiable occurrence.

Sub-clause (3) empowers the Director of Rail Safety to give a notice to a rail transport operator requiring information to be provided by the rail transport operator to the Regulator or to another public authority (for instance, NT Worksafe) on any other accident or incident that could affect the safety of the railway operations.

Sub-clause (5) enables two or more rail transport operators to jointly inform the Director of Rail Safety of a notifiable occurrence that affects them both or all.

Clause 74 Investigation of notifiable occurrences

This clause empowers the Director of Rail Safety, by notice to a rail transport operator, to require the operator to conduct an internal investigation into any notifiable occurrence or any other accident or incident that could endanger the safety of the railway operations. This provision will often be triggered by a report of a notifiable occurrence or other occurrence under clause 73, or following an audit or inspection under clause 76.

It also requires the rail transport operator to give a written report on the investigation to the Director of Rail Safety.

Clause 75 Director may release information from report

This clause sets out the Director of Rail Safety's powers to either release or prevent the release of information from a rail transport operator's report prepared under clause 74.

Division 7 Audit by Director

Clause 76 Audit of railway operations by Director

This clause empowers the Director of Rail Safety to conduct routine audits and safety inspections of all rail transport operators' railway operations and, for that purpose, to prepare annual audit programs.

The Director may also inspect railway operations of rail transport operators even though those rail transport operators are not included in an annual audit program.

Twenty-four hours written notice is required before rail transport operators may be inspected under this clause.

For the purposes of this clause, contractors are included in the definition of *rail transport operator*.

PART 4 ENFORCEMENT

Division 1 Entry to places by rail safety officers

Clause 77 Power to enter places

This clause provides that a rail safety officer may, for compliance and investigative purposes, enter any premises:

- at any time they are open; or
- if the occupier consents;
- or the safety officer has a warrant,

and may enter railway premises when they are open, or if they are not open, at any time during which railway operations are being carried out or are usually carried out, if entry is urgently

required to investigate the circumstances of a notifiable occurrence.

Clause 78 Limitation on entry powers – places used for residential purposes

This clause provides that a rail safety officer may only enter residential premises if the occupier consents or the entry is authorised under a warrant.

Clause 79 Notice of entry

This clause provides that a rail safety officer must give the occupier of the railway premises reasonable notice of the intention to enter unless:

- giving notice would defeat the purpose for which it is intended to enter the premises; or
- the occupier has given consent; or
- the rail safety officer believes there is an immediate risk to safety because of the carrying out of railway operations at the premises; or
- the safety officer has a warrant.

Division 2 General enforcement powers

Clause 80 General powers after entry

This clause provides general powers needed by rail safety officers after entering a place under this Part. It empowers a rail safety officer who enters railway premises or residential premises to do various things, including to inspect, to inquire, to take samples, to make sketches and recordings, to search for evidence, and to make copies of documents.

Clause 81 Other powers after entry

After entering premises, rail safety officers may exercise the following powers:

- direct the movement of rolling stock;
- require the production of documents; and
- require people to answer questions.

Clause 82 Use of assistants and equipment

This clause authorises the use of assistants and equipment where a rail safety officer considers it to be reasonably necessary in order to carry out enforcement powers under this Part. For example, in order to gain entry to locked premises, a locksmith might be required, or to gain access to electronically stored data, an information technology specialist might be needed.

Clause 83 Use of electronic equipment

This clause empowers a rail safety officer or authorised assistant to operate electronic equipment and devices at premises that are entered under this Part to obtain access to information. For instance, the rail safety officer may require a rail transport operator's employee to operate a computer at the premises to obtain data stored on the computer. However, this provision does not authorise any use of any equipment or device already in place at the premises if that use might damage the equipment or device.

Clause 84 Use of equipment to examine or process things

This clause empowers a rail safety officer to bring onto premises, that are entered under this Part, things such as trucks and machinery that are reasonably necessary to examine or process potential evidence at the premises and may carry out such examination or processing at the premises.

Clause 85 Securing a site

This clause provides that a rail safety officer may secure any part of railway premises to preserve evidence that might be relevant for compliance or investigative purposes.

An offence is created for people who enter onto or remain upon a secured site without the permission of a rail safety officer.

Division 3 Search warrants

Clause 86 Search warrant

This clause provides that a rail safety officer may apply to a justice or a magistrate for a warrant to enter and search a particular place if he or she believes on reasonable grounds there is, or may be within the next 72 hours, a document or thing at that place which may provide evidence of the commission of an offence against the Bill.

The clause also sets out information that must be included in a search warrant, and allows oral applications to be made for search warrants.

Clause 87 Seizure of things not mentioned in the warrant

This clause gives a rail safety officer the power to seize a thing not described in the search

warrant where the officer reasonably believes that the thing:

- is of a kind which could have been included in the warrant; or
- will afford evidence about the commission of an offence against a relevant transport safety law;

and the officer believes on reasonable grounds that seizure of the thing is necessary to prevent it being concealed, lost, destroyed or used in the contravention of a relevant rail safety law.

Division 4 Seizure of things

Clause 88 Directions relating to seizure

This clause empowers a rail safety officer, for the purpose of seizure of a thing as evidence, to direct the person in control of the thing to take it to a place nominated by the rail safety officer and at a time nominated by the officer, and, if necessary to keep control of the thing at that place and time. The rail safety officer may make a further direction about the thing if it is necessary and reasonable. Failure to comply with the original or further direction is an offence, unless the person to whom the direction is given has a reasonable excuse.

Clause 89 Rail safety officer may direct return of thing

This clause empowers a rail safety officer to require the person in control of a thing that has been produced pursuant to a direction under the previous clause to collect that thing and return it to the place from which it was taken. Failure to comply with the direction is an offence, unless the person to whom the direction is given has a reasonable excuse.

Clause 90 Receipt for seized thing

This clause provides that if a rail safety officer seizes a thing, he or she must provide a receipt to the person from whom the thing was seized or the owner to the thing. The receipt must describe generally the thing seized and its condition.

Clause 91 Access to seized thing

This clause provides that a rail safety officer must allow the owner of a seized thing to inspect it and, if it is a document, to copy it.

Clause 92 Embargo notice

This clause empowers a rail safety officer to issue a notice prohibiting the use or removal or any other dealing with a thing that the rail safety officer is empowered to seize but which can not readily be moved. This is called an embargo notice. For instance, the rail safety officer may be authorised to seize a piece of machinery that is too heavy to be moved by the officer. Until such time as the rail safety officer can arrange for the collection of the machinery, an embargo notice may be used to prohibit the use or interference with the machinery, thereby ensuring its evidentiary value is not diminished.

The notice must either be served on the owner of the thing, or, if the owner can not be located, the notice may be attached to the thing itself. It is an offence to knowingly contravene the notice or cause someone else to contravene the notice, without the consent in writing of the rail safety officer or the Director of Rail Safety, or unless the person moved the thing to protect it and notified the officer within 48 hours of doing so. It is also an offence if the person upon whom the notice is served fails to take reasonable steps to prevent another person from contravening the notice.

Any sale or other dealing with a thing in a manner that is contrary to an embargo notice will be void.

Clause 93 Return of seized thing

This clause provides that things seized must not be retained any longer than necessary and must be returned, unless they are required as evidence in legal proceedings, or are forfeited under the next clause, or are required by law to be retained, destroyed or disposed of.

The rail safety officer is empowered to impose safety related conditions on the return of a thing - for example that upon the return of an item of seized machinery, a safety device be fitted to the machinery before it is re-used in railway operations. The owner of the thing must comply with such conditions.

Division 5 Forfeiture

Clause 94 Forfeiture

This clause provides for the forfeiture to the Crown of a thing that has been seized as evidence if the thing can not be returned to its owner, or the owner can not be found despite reasonable enquiries, or if the rail safety officer who seized the thing considers the further retention of the

thing is necessary to prevent its use in the commission of a rail safety offence.

Clause 95 Forfeiture on conviction

Where something is seized under this Part as part of proceedings for an offence under this Bill, and a person is convicted for that offence, the Court may order that the thing seized be forfeited to the Territory or destroyed or disposed of.

Clause 96 Dealing with forfeited sample or thing

This clause provides that the Territory may deal with a thing forfeited under either of the previous clauses as it sees fit, including by destroying or disposing of the thing.

Clause 97 Acquisition on just terms

This clause provides that if property is acquired by the Territory through the operation of this Bill, other than on just terms, the owner of the property is entitled to compensation.

Division 6 Directions

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

This clause empowers a rail safety officer to issue a direction to a rail transport operator or a rail safety worker to provide reasonable assistance to the officer to enable the officer to exercise powers under this Part. Reasonable assistance might include such things as unlocking a locked door, operating safety equipment, and providing access to databases on a computer.

It is an offence to fail to comply with the direction without reasonable excuse, and the officer must, when giving such a direction warn the person to whom the direction is given of this fact.

Clause 99 Power to direct name and address be given

This clause empowers a rail safety officer to direct a person who the rail safety officer reasonably suspects has committed a rail safety offence or other specified classes of persons present on railway premises to provide their name and address and, if necessary, evidence of each person's name and address to the rail safety officer.

It is an offence to fail to comply with a direction given under this clause without reasonable

excuse provided that the rail safety officer, when giving the direction, warns the person that their failure to comply with the direction will be an offence.

Clause 100 Power to direct production of documents

This clause empowers a rail safety officer to direct a person to produce a rail safety or railway operations related document or other thing for inspection at a specified time and place.

It is an offence to fail to comply with a direction given under this clause without reasonable excuse, provided that the rail safety officer, when giving the direction, warns the person that their failure to comply with the direction will be an offence.

Division 7 Improvement notices

Clause 101 Improvement notice

This clause provides that an improvement notice may be served where a rail safety officer believes that a person is contravening a provision of the Bill, or has contravened a provision of the Bill and it is likely that the contravention will continue or be repeated, or if the person is carrying out or has carried out railway operations that threaten safety.

The improvement notice may require the person to take specified action by a specified date to remedy the contravention or to stop the contravention or unsafe railway operations from continuing or occurring again. An improvement notice must set out the basis of the rail safety officer's belief, and may include directions on the measures to be taken to remedy the contravention or unsafe operations.

Clause 102 Contravention of improvement notice

This clause provides that it is an offence to fail to comply with an improvement notice without reasonable excuse.

In the case of proceedings against a person for failing to comply with an improvement notice, it is a defence if the person establishes that the contravention of the Bill or the unsafe railway operations for which the improvement notice has been issued has been remedied within the period specified in the notice, though by a method different from that specified in the improvement notice.

Clause 103 Withdrawal or amendment of improvement notice

This clause provides for the amendment or withdrawal of improvement notices by a rail safety officer and when the amendment or withdrawal is to have effect.

Amendment notices must state the reasons for the amendment and give the person notice of their right to have the amendment decision reviewed.

Clause 104 Proceedings for offences not affected by improvement notice

This clause provides that the service, amendment or cancellation of an improvement notice does not affect proceedings for offences in connection with the matter in respect of which the improvement notice was served.

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

This clause allows the Director of Rail Safety to arrange to have remedial work carried out if the person on whom an improvement notice is served fails to comply with the improvement notice. It also allows the Director to recover the cost of doing so from the person to whom the improvement notice was directed.

Division 8 Prohibition notice

Clause 106 Prohibition notice

This clause provides that where a rail safety officer believes on reasonable grounds that an activity:

- is occurring at railway premises or in the immediate vicinity of rail infrastructure or rolling stock; and
 - involves or will involve an immediate risk to the safety of a person or railway operations;
- the rail safety officer may serve on a person who has or appears to have control over the activity, a notice prohibiting the carrying on of the activity until the matters giving rise to the safety risk have been remedied. A prohibition notice must set out the basis of the rail safety officer's belief, and may include directions on the measures to be taken to remedy the safety risk.

Clause 107 Contravention of prohibition notice

This clause makes it is an offence to fail to comply with a prohibition notice without a reasonable excuse.

Clause 108 Oral direction before prohibition notice served

This clause empowers a rail safety officer to verbally direct a person not to do a particular act, if it is not possible or reasonable to serve a written notice on the recipient for the same purpose. For instance, a verbal direction may be necessary to immediately prohibit an unsafe train from leaving a station. If giving a verbal prohibition, the rail safety officer must also state the reasons for doing so, must advise the person that a failure to comply will be an offence, and within five days after the direction is given, the rail safety officer must serve a prohibition notice on the person, otherwise the oral direction ceases to have effect.

It is an offence not to comply with an oral direction given by a rail safety officer unless the person given the direction can establish that they had a reasonable excuse.

Clause 109 Withdrawal or amendment of prohibition notice

This clause sets out the manner by which a rail safety officer may amend or withdraw a prohibition notice and when the amendment or withdrawal will become effective.

Clause 110 Power to have remedial work done

Where a person is given a prohibition notice that directs them to carry out remedial work to remove a particular risk, and they fail to do so, this clause gives the Director the power both to arrange to have the necessary remedial work carried out, and to recover the cost of doing so from the person to whom the prohibition notice was directed.

Clause 111 Power to enter land

This clause allows entry onto land by rail safety officers or persons specifically authorised by the Director of Rail Safety to inspect works, and carry out remedial work under clause 110.

Clause 112 Proceedings for offence not affected by prohibition notice

This clause provides that the service of a prohibition notice does not affect proceedings for offences in connection with the matter in respect of which the prohibition notice was served.

Division 9 Miscellaneous matters

Clause 113 Direction may be given under more than one provision

This clause provides that a rail safety officer may, on the same occasion, give directions under one or more provisions in Part 4.

Clause 114 Temporary closure of railway crossing, bridge or other structure

This clause provides that 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. An *authorised person* is defined as someone who holds a specific authority from the Director of Rail Safety for the purposes of this clause.

Clause 115 Restoring items to original condition after action taken

This clause provides that if damage is caused to rail infrastructure or rolling stock, railway premises or a road vehicle as a result of the unreasonable exercise of power under Part 4, the rail safety officer must take reasonable steps to return the rail infrastructure or rolling stock, railway premises or road vehicle to the condition it or they were in immediately before the action was taken.

Clause 116 Use of force

This clause provides that a rail safety officer, or person assisting an officer, exercising a power to enter railway premises, or to do something in or on railway premises, must not use more force than is reasonably necessary to enter the premises, or to do the thing upon the premises.

Clause 117 Force against persons only by police officers

This clause provides that a rail safety officer, or person assisting an officer who is not a police officer, must not use force against another person in exercising a power under this Part.

Clause 118 Protection from incrimination

Sub-clause (1) provides that a natural person is not excused from complying with a direction under this Part to provide information or produce a record, or a device or other thing that may contain a record, on the ground that compliance with the direction may result in information

being provided that might incriminate the person.

Sub-clause (2) provides that any self incriminating information, record, device or other thing obtained as a direct result of the compliance with a direction is not admissible in evidence against the person in criminal proceedings (other than for the offence of making a false or misleading statement).

PART 5 REVIEW OF DECISIONS

Clause 119 Reviewable decisions

This clause provides that certain decisions made under the Bill are reviewable decisions and the table in the schedule to the Bill specifies the various decisions that might be made under the Act and which are subject to review. It also sets out who is eligible to seek a review of a decision made under the Bill.

Clause 120 Review by Director

This clause provides for the internal review of reviewable decisions by the Director of Rail Safety. The clause sets out the procedure for applying for internal review and the procedures that must be followed by the Director in reviewing the decision.

Clause 121 Application to Local Court

This clause allows eligible persons to apply to the Local Court for the review of reviewable decisions under the Bill and of internal review decisions made by the Director of Rail Safety under the previous clause.

PART 6 INVESTIGATIONS

This Part preserves the investigation provisions contained in Division 1 Part 6 of the *Northern Territory Rail Safety Act* (which will be repealed upon the commencement of this Bill).

Clause 122 Appointment of investigator

This clause allows the Director of Rail Safety to appoint an independent investigator to investigate accidents or incidents associated with a railway. In the case of an accident or incident that causes death, serious personal injury or major property damage, the Minister can direct the

Director to appoint an investigator. In the absence of such a direction or in the case of a less serious accident or incident, the appointment of an investigator is at the discretion of the Director.

Before making an appointment the Director must consult with the Minister and any relevant rail transport operator about who should be appointed, the scope of the investigation, and reporting arrangements on completion of the investigation.

Clause 123 Functions of investigator

This clause provides that the investigator's functions are to conduct an investigation into the circumstances of the accident or incident for the purpose of preventing future incidents, and to report to the Minister and the Director of Rail Safety on the outcomes of the investigation. Their role is not to apportion blame.

Proceedings brought before a court in respect of the accident or incident under investigation will not prevent the investigation from continuing unless the court specifically orders otherwise.

Clause 124 Persons appointed to assist investigator

This clause allows an investigator to appoint people to assist with the investigation. A rail safety officer might be used to assist an investigator. Someone with a direct pecuniary interest in the matter under investigation cannot be appointed to assist.

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

Clause 125 Conduct of investigation

This clause provides that investigations are to be conducted as quickly as possible and with as little formality as possible having regard to the need to fairly and properly consider the issues.

An investigator is not bound by the rules of evidence and can determine his or her own procedures for the conduct of the investigation.

Clause 126 Powers of investigator

This clause provides that investigators, with a few exceptions, have all the powers given to rail safety officers together with the power:

- to compel people to attend and provide information;
- to require people to take an oath or affirmation and to truthfully answer questions;
- to require people to undergo medical examination; and
- to obtain the results of such a medical investigation.

The exceptions are the powers to issue prohibition notices and improvement notices

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

This clause allows the Minister to authorise an investigator to take control of a place or building where it appears that some action is being taken, or is likely to be taken, that might hinder or obstruct an investigation.

Clause 128 Report by investigator

This clause requires an investigator to prepare a report for the Director of Rail Safety at the conclusion of the investigation, and it details the matters that have to be addressed in the report.

The Director must give a copy of the report, together with any appropriate comments or advice, to the Minister.

Reports, or parts of reports, can be published by the Minister or the Director and given to anyone that either the Minister or the Director considers appropriate.

The Director must make a report available to the public for inspection without charge within 28 days of its receipt by the Director, but before doing so, the Director must remove any matter that the Director reasonably believes is necessary in the public interest, or to avoid prejudicing any proceedings before a court in respect of the accident or incident which is the subject of the report, or in respect of any similar accident or incident.

Clause 129 Withholding of information contained in report

This clause allows an accredited person or the owner of a private siding to request that a report or part of a report be kept confidential. If the Director agrees with the request the Director may withhold the report (or part of the report that relates to the request) from the public.

Clause 130 Director may take action as a consequence of report

This clause allows the Director to issue an improvement notice, a prohibition notice, or a direction under clause 108 in anticipation of an improvement notice if he considers it appropriate

in light of any recommendations in an investigator's report.

Clause 131 Immunity

This provision provides immunity for investigators, the Minister, the Director of Rail Safety and rail safety officers or people providing evidence or information to an investigator, in relation to the provision or publication of a report under this Part of the Bill.

Clause 132 Offences

This clause creates offences for failures to comply with requirements made by an investigator exercising his or her powers under sub-clauses 126(1) and (3). The reasonable excuse defence is available, but clause 118 makes it clear that self incrimination is not a reasonable excuse for a refusal to answer questions or provide information or documents to an investigator

PART 7 GENERAL LIABILITY AND EVIDENTIARY PROVISIONS

Division 1 General matters

Clause 133 Time for offence proceedings to be commenced

This clause provides that proceedings for offences against the Bill may be commenced within two years after the commission of the alleged offence or 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 to warrant commencing proceedings.

Clause 134 Authority to take proceedings

This clause limits the power to initiate prosecution or fee recovery proceedings under this Bill, to the Director of Rail Safety, or someone authorised by the Director. It also provides that proceedings cannot be initiated against a government department or statutory body without the permission of the Minister and prosecutions generally require the approval of the Director or someone specifically authorised by the Director for the purpose.

A certificate purporting to provide authorisation or consent that purports to have been signed by the Director of Rail Safety or Minister for the purposes of this clause is evidence of the

authorisation or consent and does not require proof of the signature of the Director or Minister to be proved.

Clause 135 Records and evidence from records

This clause provides that the Director of Rail Safety must keep certain records relating to the accreditation of rail transport operators and that any certificate purporting to be signed by the Director that certifies particulars of any such record is prima facie evidence of the matters it certifies, without the need for proof of the signature of the Director and without the need for production of the actual record.

Clause 136 Certificate evidence

This clause provides that a certificate purporting to be signed by the Director of Rail Safety, a corresponding Rail Safety Regulator, a rail safety officer or a police officer, that certifies particulars of matters that appear in or can be calculated from records that are kept by the Director is admissible as evidence in any proceedings and is evidence of the matters it certifies.

Clause 137 Proof of appointments and signatures unnecessary

This clause avoids the need to formally prove the appointment of certain office holders and provides that a signature purporting to be that of an office holder is presumed to be the signature it purports to be.

Office holders include:

- the Director; or
- a corresponding Rail Safety Regulator; or
- the Commissioner of Police; or
- the head of the police force or police service of any other jurisdiction; or
- a rail safety officer; or
- a rail safety officer of another jurisdiction; or
- a police officer; or
- a police officer of another jurisdiction.

Clause 138 Multiple offences

This clause provides that a person may be charged with and punished for more than one breach of this Bill relating to the same rail infrastructure, railway premises or rolling stock provided the breaches relate to different parts of the rail infrastructure, railway premises or rolling stock.

Clause 139 Conduct of representative

This clause deals with actions taken by representatives of individuals. Corporate criminal responsibility is dealt with in Division 5 of Part IAA of the Criminal Code.

Conduct engaged in by a representative of a person within that representative's actual or apparent authority is taken to have been engaged in by the person.

Where that conduct contravenes a provision of the Bill, a defence is available if the person can demonstrate that they took all reasonable steps to prevent the conduct of the representative.

Subclause (4) sets out matters that can be taken into account in considering whether a person has taken all reasonable steps to prevent certain conduct by their representative.

Where it is necessary to show that the person had a particular fault element, it is sufficient to show that the representative who engaged in the physical element had the necessary fault element in relation to the physical element of the offence.

Section 43AX of the Criminal Code excuses a person from criminal responsibility for a strict liability offence where the person engaging in the relevant conduct does so under a mistake of fact. This clause makes that defence available for strict liability offences under the Bill where a person's representative has a mistaken but reasonable belief about facts that, if correct, would have meant that their conduct would not have been an offence, and if the person shows that they exercised care to prevent the conduct.

Section 43BA of the Criminal Code provides a defence for strict and absolute liability offences where a physical element of an offence is brought about by an intervening act that is outside the control of the defendant. Sub-clause (8) removes this defence for strict liability offences under the Bill where the intervening act is brought about by a representative of the defendant.

Subclause (9) provides that a person, who, under this clause, is vicariously liable for the actions of their representative, cannot be punished by imprisonment for the offence.

Clause 140 Criminal liability of partner in partnership

This clause provides that partners, and anyone else who is involved in the management of a partnership, may be held personally liable for offences committed by another partner or person involved in the management of the partnership in the course of their partnership activities if they:

- were in a position to influence the conduct of the person who committed the offence; and
- failed to take reasonable steps to prevent the offence from occurring.

Clause 141 Criminal liability of manager of unincorporated association

This clause provides that person involved in the management of an unincorporated association may be held personally liable for offences committed by other people involved in the management of the association in the course of that involvement, if they:

- were in a position to influence the conduct of the person who committed the offence; and
- failed to take reasonable steps to prevent the offence from occurring.

Clause 142 Criminal liability of executive officer of body corporate

This clause provides that an executive officer of a body corporate (a director or someone involved in the management of the body corporate) may be held personally liable for a contravention of a provision of the Bill by the body corporate if the officer:

- was in a position to influence the conduct of the body corporate; and
- failed to take reasonable steps to prevent the contravention from occurring.

The clause also provides guidance as to what should be taken into account by the Court in considering whether a director has taken reasonable steps to prevent a contravention of the Bill from occurring.

The factors listed include any action the officer took directed towards ensuring the following (to the extent the action is relevant to the particular contravention):

- regular professional assessments of the body corporate's compliance with the relevant provision of the Bill;
- the implementation of any appropriate recommendations arising from an assessment of the body corporate's compliance with the relevant provision;
- that all representatives and contractors of the body corporate had a reasonable knowledge and understanding of the requirement to comply with the contravened provision, and any action taken by the officer once he or she became aware that the particular contravention was, or might be, about to happen.

Clause 143 Sections 140 to 142 do not apply to volunteer

This clause excludes the application of clauses 140, 141 and 142 to people who are acting as officers of, or partners in, or who otherwise are involved in the management of companies, associations and partnerships on a voluntary basis.

Division 2 Discrimination against employees

Clause 144 Victimisation of employee

This clause makes it an offence to dismiss or otherwise victimise an employee who has assisted or given a public agency, information in respect of an alleged rail safety breach or who has raised concerns about rail safety.

It is a defence if the employer can establish that the fact that the employee assisted a public agency or provided information was not the dominant reason for the dismissal or victimisation.

An employee is defined to include a natural person who works under a contract for services.

A public agency is defined to include an Australian rail safety regulator, a rail safety officer, a police officer and a police officer of another jurisdiction.

Clause 145 Order for damages or reinstatement

This clause provides remedies of reinstatement or compensation for employees if an employer or prospective employer is found guilty of an offence of dismissing or victimising the employee.

Division 3 Offences

Clause 146 Definitions

This clause defines an *official* as the Director, a rail safety officer, an investigator or a person assisting the Director, a rail safety officer or an investigator.

Clause 147 Misleading information

This clause makes it an offence to provide false or misleading information to an official acting in an official capacity. *acting in an official capacity* is defined in clause 6 to mean that the official is exercising a function under this Bill or a corresponding rail safety law.

Clause 148 Obstructing official

This clause creates an offence for obstructing an official acting in an official capacity or inducing others to obstruct or hinder an official acting in an official capacity.

obstruct has been defined to include concealing the location or existence of documents records and other things from an official.

Clause 149 Abusive, threatening or insulting language to an official

This clause makes it an offence to threaten or use abusive or insulting language to an official who is acting in an official capacity.

Clause 150 Impersonating rail safety officer

This clause makes it an offence to impersonate a rail safety officer with the intent to deceive someone.

Clause 151 Interference with equipment, infrastructure or rolling stock

This clause makes it an offence to deal with any equipment, rail infrastructure or rolling stock owned or operated by a rail transport operator, unless the person is an authorised person (the Director or a rail safety officer, the relevant rail transport operator, an investigator or a police officer) or someone who is permitted to do so by an authorised person.

deal with is defined for the purposes of this clause to include move or attempt to move, interfere with or attempt to interfere with, disable or attempt to disable, and operate or attempt to operate.

Clause 152 Carrying out works near a railway

This clause makes it an offence to carry out works near a railway that threaten or might threaten either the safety or the operational integrity of the railway, without first getting the consent of the relevant rail infrastructure manager.

Division 4 Enforceable voluntary undertakings

Clause 153 Director may accept undertaking

This clause provides that a Director may, instead of or in addition to proceedings for a breach of an offence, accept an undertaking from the alleged offender. An undertaking may address such matters as the steps that will be taken by the alleged offender to ensure compliance in future and steps to remedy the alleged contravention.

Clause 154 Enforcement of undertaking

This clause enables the Director to apply to the Local Court for the enforcement of the undertaking if the Director considers the person who has entered into the undertaking has contravened the undertaking. It is an offence to contravene a Court order made under this clause.

Division 5 Court-based sanctions

Clause 155 Continuing offences

This clause provides for a maximum daily penalty of up to 10 penalty units to be imposed for ongoing contraventions of the rail safety laws.

Clause 156 Commercial benefits order

This clause provides for the imposition by a court of a penalty of up to three times of the estimated gross commercial benefit that was derived or could have been derived by a person or an associate of the person from the commission of an offence against the Bill.

An associate is defined for the purposes of this clause as a person who has a particular type of close personal or commercial relationship with the offender.

The clause also sets out factors that have to be considered or discounted in estimating the gross commercial benefit that would have accrued to the offender

Clause 157 Supervisory intervention order

This clause gives the court the power to make, upon the application of the prosecutor or the Director, a supervisory intervention order against an offender who is considered by the court to be a systematic and persistent offender against the rail safety laws.

The supervisory intervention order may require the offender to do such things as the court orders to improve the offender's compliance with the rail safety laws, including obtaining expert advice on how to maintain compliance and to publish safety performance reports.

Clause 158 Contravention of supervisory intervention order

This clause makes it an offence to fail to comply with a supervisory intervention order. A

reasonable excuse defence is available to a person charged with this offence.

Clause 159 Exclusion order

This clause provides that a court may also, upon the application of the prosecutor or the Director, exclude an offender who is considered by the court to be a systematic and persistent offender against the rail safety laws from carrying out all or specified railway operations for the period specified in the order.

An exclusion order may only be made if the court is satisfied that a supervisory intervention order is not appropriate.

Clause 160 Contravention of exclusion order

This clause makes it an offence to fail to comply with an exclusion order.

PART 8 GENERAL

Division 1 Confidentiality

Clause 161 Confidentiality

This clause prohibits a person (such as the Director of Rail Safety, or a rail safety officer) engaged or previously engaged in the administration of this Bill from disclosing information obtained in the course of that engagement unless:

- as required under this Bill or any other Act;
- with the consent of the person from whom the information was obtained or relates;
- in connection with the administration of this Bill and corresponding rail safety laws;
- for law enforcement purposes, rail safety inquiries or public safety; or
- in accordance with the regulations.

Division 2 Civil liability

Clause 162 Civil liability not affected

This clause provides that a breach of any duty in Division 1 or 4 of Part 3 does not automatically give rise to a civil action, and conversely, compliance with any duty in Division 1 or 4 of Part 3 does not automatically provide a defence to any civil action.

Clause 163 Act done in good faith

This clause protects the Territory, the Director, investigators, rail safety officers and persons appointed to assist rail safety officers and investigators from any civil or criminal liability for actions done honestly and in good faith in the course of their exercising powers under the Act.

Clause 164 Immunity for reporting unfit rail safety worker

This clause provides immunity from civil or other action to any medical practitioner, optometrist or physiotherapist who raises concerns in good faith about the fitness of a particular rail safety worker to the Director or to a rail transport operator or a person engaged by a rail transport operator, or who reports the results of any tests or examination performed on the rail safety worker or any opinion the practitioner has formed from such tests or examination.

Division 3 Compliance codes and guidelines

Nationally approved guidelines are intended to guide regulator behaviour and provide rail organisations with a nationally consistent set of expectations regarding what rail safety regulators are looking for, the process to be followed by the regulators and the conduct of the regulators. They are intended to be detailed rules, procedures and technical standards for infrastructure, rolling stock, etc that can be voluntarily adopted by rail organisations with confidence of knowing that, if adhered to, the rail organisation will be ‘deemed to comply’ with the regulatory requirements to which the code or standard relates to. These instruments will be used to specify a means of compliance. They will not create regulatory requirements.

It is envisaged that compliance codes that will also address such matters as:

- Medical fitness assessments for Rail Safety Workers
- Management of Fatigue for Rail Safety Workers; and
- Drug and Alcohol testing programs for Rail Safety Workers.

Clause 165 Approval of compliance codes and guidelines

This clause:

- empowers the Minister to approve compliance codes and guidelines to provide guidance to persons who have duties or obligations under the Bill; and
- states that a compliance code or guideline takes effect the day it is published in the *Gazette* or any later date specified in the notice.

Approved compliance codes or guidelines must be made available for inspection by members of

the public without charge.

Clause 166 Effect of compliance code

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

Clause 167 Effect of complying with a compliance code

A person who complies with a compliance code that makes provision for a duty or obligation imposed by the Act or regulations is deemed to have complied with that duty or obligation.

Division 4 Miscellaneous matters

Clause 168 Recovery of certain costs

This clause allows the Director to recover as a debt from a rail transport operator, the reasonable costs of entry and inspection of railway infrastructure, rolling stock or railway premises in respect of which the person is accredited.

Clause 169 Recovery of amounts due

This clause enables amounts due under the Act or regulations to be recovered by the Director as a debt due to the Territory.

Clause 170 Compliance with conditions of accreditation

An accredited person who complies with a condition or restriction of accreditation that makes provision for a duty or obligation under the Act or regulations is deemed to have complied with that duty or obligation.

Clause 171 Contracting out prohibited

This clause provides that any contract or agreement that purports to exclude or limit or modify the operation of the Act or of any provision of the Act is void.

PART 9 ADMINISTRATION

Division 1 Director of Rail Safety

Clause 172 Director of Rail Safety

This clause provides for the appointment of the Director of Rail Safety by the Minister.

Clause 173 Functions of Director

This clause sets out additional functions of the Director of Rail Safety including:

- to administer, audit and review the accreditation regime under this Bill;
- to work with parties involved in railway operations to improve rail safety in this jurisdiction and nationally;
- to provide information to corresponding rail safety regulators;
- to collect and publish information relating to rail safety;
- to provide or facilitate the provision or advice, education and training in relation to rail safety; and
- to monitor, investigate and enforce compliance with this Bill.

Clause 174 Annual report

This clause sets out the information to be included in annual reports by the Director, which includes:

- information on the development of rail safety including statistics reported to the Director under this Bill or the Regulations in respect of the year; and
- information on any improvements and important changes in relation to the regulation of rail safety.

The report may be included as part of the annual report of the Agency responsible for the administration of the Bill.

An annual report for the year ending 30 June has to be provided on or before 31 October in each year.

Clause 175 Delegation

This clause enables the Director to delegate any of his or her functions under this Bill or under the regulations to a rail safety officer or to any other person.

Clause 176 Director may exercise functions of rail safety officer

This clause enables the Director to exercise any function conferred on a rail safety officer under

this Bill or the regulations.

Division 2 Rail Safety Officers

Clause 177 Appointment of rail safety officers

This clause provides for the appointment by the Director of appropriately qualified or experienced individuals as rail safety officers under this Bill, and also enables the Director to appoint a class of persons who hold the appropriate qualifications and experience as rail safety officers under this Bill. An appointment may be subject to conditions such as:

- a restriction on the functions under this Bill that can be exercised by the rail safety officer; or
- a limitation on the circumstances or manner in which a function under this Bill can be exercised by the rail safety officer.

Clause 178 Reciprocal powers of rail safety officers

This clause allows the making of agreements between the Minister and the responsible Minister of another jurisdiction to allow rail safety officers appointed in one jurisdiction to exercise powers under the corresponding rail safety laws of the other jurisdiction.

Clause 179 Identification cards for rail safety officers

This clause provides that the Director must issue a rail safety officer with an identification card.

It also allows the Director to designate an identification card issued by a rail safety regulator in another jurisdiction to be an identification card for the purposes of this Bill.

Clause 180 Exercise of functions without identification card

A rail safety officer must not exercise powers conferred under this Bill unless he or she has been issued with an identification card.

Clause 181 Display and production of identification card

A rail safety officer exercising a power under this Bill must display his or her identification card if the officer is not wearing an approved uniform or badge or if requested to do so, or as soon as practicable after the request is made.

Clause 182 **Return of identification card**

This clause requires a person who has ceased to be a rail safety officer to return his or her identification card to the Director of Rail Safety within 14 days of their ceasing to be a rail safety officer.

Division 3 **Miscellaneous administrative provisions**

Clause 183 **Forms**

This clause empowers the Director of Rail Safety to approve forms for the purposes of this Bill and provides that substantial compliance with an approved form will be sufficient.

Clause 184 **Exemption from application of Act**

This clause allows the Director to exempt people and railways from the requirements of the Act and Regulations by written notice, or by *Gazette* notice where the exemption relates to a class of person or railway.

Exemptions may be subject to conditions and subclause (3) makes non-compliance with a condition of an exemption, an offence.

Clause 185 **Effect of contravention of condition of exemption**

This clause provides that if someone is granted a conditional exemption, and fails to meet the conditions attached to the exemption, the exemption will not operate to exempt them from compliance with the requirements of this Bill or any regulations made under this Bill.

The Director of Rail Safety will have a choice of whether to prosecute the person for a breach of the rail safety law that the exemption was supposed to excuse the person from, or for a breach of the condition imposed under the previous section. A person cannot be prosecuted for both offences.

Clause 186 **Regulations**

This clause includes heads of power for the making of regulations. Regulations can allow for:

- the adoption or incorporation of instruments;
- penalties for offences;

- the creation of strict and absolute liability offences;
- trespassing on railways;
- fees;
- the conduct of passengers and other people on railway property; and
- the regulation of railway crossings.

It also allows for the creation of offences, and the prescription of fees, by regulation.

PART 10 REPEAL AND TRANSITIONAL MATTERS

This Part deals with transition issues that arise as a consequence of the repeal of the current legislation, the *Northern Territory Rail Safety Act* (“the repealed Act”), and the imposition of new obligations upon operators accredited under the repealed Act

Division 1 Repeal

Clause 187 Repeal

This clause repeals the *Northern Territory Rail Safety Act*.

Division 2 Transitional matters for Rail Safety Act 2009

Clause 188 Definitions

This clause defines *repealed Act* (the *Northern Territory Rail Safety Act*) and *commencement* (the commencement of this Part of the Bill) for the purposes of the transitional provisions in this Part.

Clause 189 Continuation of appointments

The Director of Rail Safety under the repealed Act will be the Director of Rail Safety under this Bill as though he was appointed under clause 169 of the Bill.

Inspectors appointed under the repealed Act will be rail safety officers as though they were appointed under clause 174 of the Bill.

Clause 190 Application for accreditation under repealed Act

An application not finalised under the repealed Act before its repeal will be dealt with as an application made under this Bill.

Clause 191 Accreditation under repealed Act

People holding accreditation under the repealed Act will be taken to be accredited under this Bill and any conditions applying to the accreditation granted under the repealed Act will continue to apply as if imposed under this Bill.

Clause 192 Refusal to grant accreditation under repealed Act

This clause deals with refusals to grant accreditation under the repealed Act where the unsuccessful applicant has a right of review or appeal against the refusal that either they had not exercised before the repeal date, or the review or appeal had not been dealt with before the repeal date. Such reviews and appeals will continue to be dealt with under the provisions of the repealed Act as though it had not been repealed, but where the review or appeal is successful and order is made that accreditation be granted, that order must state that accreditation is granted under this Bill.

Clause 193 Variation of accreditation

If a notice proposing a variation of the terms of a person's accreditation is issued under the repealed Act and is either not responded to or a response has been made but no decision is made by the Director of Rail Safety, before the repeal date, the notice is taken to have been given under clause 42 of this Bill.

Clause 194 Variation, suspension and cancellation of accreditation

Where the Director has issued a notice to an accredited person under the repealed Act proposing to take action against them and no action is taken before the repeal date, the matter will continue to be dealt with under the repealed Act as though it had not been repealed.

Clause 195 Immediate variation or suspension of accreditation

Where a person's accreditation has been varied or suspended under the repealed Act, their accreditation will continue in force under this Bill, subject to the same variation or suspension.

Clause 196 Registration of private siding

Any private siding that was registered under the repealed Act and which is required to be registered under this Bill will continue to be registered under this Bill, subject to any conditions

in force before the repeal date.

Clause 197 Directions under repealed Act for remedial safety work

Any direction given by the Director under the repealed Act for remedial safety work to be carried out that is still outstanding upon the repeal of that Act will be taken to be an improvement notice issued under the provisions of this Bill.

Clause 198 Power to require works to stop

A stop work notice issued under the repealed Act will have effect under this Bill as though it were a prohibition notice issued under clause 106 of this Bill.

Clause 199 Reports on notifiable occurrences

Any notice issued under the repealed Act requiring a report on a notifiable occurrence that is still outstanding upon the repeal of the repealed Act, is taken to be a notice issued under clause 74(1) of this Bill.

Clause 200 Investigation not completed

This clause provides that any investigation commenced under the repealed Act that is not completed before the repeal date will continue under the provisions of the repealed Act as though it had not been repealed.

Clause 201 Search warrant

A search warrant issued under the repealed Act can be exercised within seven days of its repeal as though it had not been repealed.

Clause 202 Offences

Offences committed under the repealed Act will continue to be dealt with under that Act as though it had not been repealed.

Clause 203 Condition of accreditation or registration

If someone breaches a condition of their accreditation or registration under the repealed Act

before the repeal date, that breach will be dealt with under the repealed Act as though it had not been repealed.

Clause 204 Seized things

A thing seized under the repealed Act is taken to have been seized under this Bill.

Clause 205 Non-disclosure of information

If someone acquires information under the repealed Act and discloses that information after its repeal, they will be taken to have committed an offence under clause 158 of the Bill as if the information had been acquired in the administration of the Bill.

Clause 206 References to repealed Act

This clause provides that in an Act or another document, a reference to the *Northern Territory Rail Safety Act* may, if the context permits, be taken to be a reference to this Bill. For example the reference in clause 3 of the AustralAsia Railway (Occupational Crossings) Protocol made under the *AustralAsia Railway (Special Provisions) Act* to the *Northern Territory Rail Safety Act* would be taken to be a reference to this Bill after it commences.

Clause 207 Interpretation Act not limited

This clause makes it clear that this part is not intended to limit the application of Part III of the *Interpretation Act* which deals with the consequences of the repeal of legislation.

Clause 208 Transitional regulations

This clause provides an additional regulation making power to address any unforeseen transitional issues that might arise after the passage of the Bill. This power will expire 12 months after the commencement of the Bill.

PART 11 CONSEQUENTIAL AMENDMENTS

Clause 209 Amendments of AustralAsia Railway (Special Provisions) Act

This clause changes all the references to the *Northern Territory Rail Safety Act* appearing in the *AustralAsia (Special Provisions) Act* to the *Rail Safety Act*.

Clause 210 Expiry of Part

This clause provides that this Part of the Bill will expire on the day after the Bill commences.

SCHEDULE REVIEWABLE DECISIONS

The Schedule sets out the relevant administrative decisions under the Bill which may be reviewed, and the persons who are eligible to seek review of a decision, for the purposes of Part 5 of this Bill.