

RAIL SAFETY (NATIONAL UNIFORM LEGISLATION) BILL 2012

LEGISLATIVE ASSEMBLY OF THE
NORTHERN TERRITORY

MINISTER FOR TRANSPORT

RAIL SAFETY (NATIONAL UNIFORM LEGISLATION) BILL 2012 SERIAL NO. 5

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 States and the Northern Territory each adopted their own versions of the model laws. The Territory's version of the model law, the *Rail Safety Act*, came into force on 1 October 2010.

Each jurisdiction varied the model law to achieve their own local policy objectives and to provide their own provisions in areas where national agreement was not reached in the development of the model law.

The result was that rail infrastructure managers and rolling stock operators had to duplicate the accreditation process in each jurisdiction they operated in, and otherwise comply with the requirements of 7 different regulators, and seven sets of similar, but not identical, laws. In response to this, in December 2009, the Council of Australian Governments agreed to develop a uniform national rail safety law, based on the model legislation, to be administered by a single national regulator.

The objective of having a national law administered by a national regulator is to develop a seamless and coordinated national approach to rail safety regulation.

South Australia agreed to be the host jurisdiction for the national rail safety law, and on 10 May 2012, the *Rail Safety National Law (South Australia) Act 2012* received partial assent for the commencement of the administrative provisions of the Act in South Australia. This means that the National Regulator now exists as a legal entity in South Australia.

The stated objectives of the rail safety national law are:

- (a) to establish the Office of the National Rail Safety Regulator (the ONRSR); and

- (b) to make provision for the appointment, functions and powers of the National Rail Safety Regulator (the Regulator); and
- (c) to make provision for a national system of rail safety, including by providing a scheme for national accreditation of rail transport operators in respect of railway operations; and
- (d) to provide for the effective management of safety risks associated with railway operations; and
- (e) to provide for the safe carrying out of railway operations; and
- (f) to provide for continuous improvement of the safe carrying out of railway operations; and
- (g) to make special provision for the control of particular risks arising from railway operations; and
- (h) to promote public confidence in the safety of transport of persons or freight by rail; and
- (i) to promote the provision of advice, information, education and training for safe railway operations; and
- (j) to promote the effective involvement of relevant stakeholders, through consultation and cooperation, in the provision of safe railway operations.

The purpose of this Bill is to adopt the rail safety national law as set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* as a law of the Northern Territory, and to make provision for drug and alcohol testing for workers carrying out rail safety work. Because jurisdictional law enforcement agencies will be involved in the enforcement of the alcohol and drug offences in the RSNL, each jurisdiction has to adopt its own alcohol and drug testing procedures and evidential provisions.

NOTES ON CLAUSES IN THE BILL

Part 1 Preliminary

1 Short title

This clause provides that the short title of the application law is the *Rail Safety (National Uniform Legislation) Act 2012*.

2 Commencement

The Bill will come into operation on a day to be fixed by the Administrator and notified in the *Gazette*.

Different parts of the Bill may be commenced on different days.

3 Definitions

This clause contains definitions for the purposes of this measure. It also provides that a term used in the local application provisions of this measure (that is, the provisions other than the *Rail Safety National Law* (the *RSNL*) set out in the schedule to this measure) and also in the *RSNL* have the same meanings in those provisions as they have in the *RSNL* (to the extent that the context or subject matter does not otherwise indicate or require).

Part 2 Application of Rail Safety National Law

4 Adoption of Rail Safety National Law

This clause provides that the *RSNL*, as in force from time to time, and as set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012*;

- (a) applies as a law of the Territory; and
- (b) as so applying may be referred to as the *Rail Safety National Law (NT)*; and
- (c) applies as if it were an Act of the Territory.

5 Meaning of generic terms in the *Rail Safety National Law (NT)* for the purposes of this jurisdiction

This clause defines certain terms used in the *RSNL* in order to give them a particular meaning in the Territory. The terms defined for the Territory's purposes are: “court”; “emergency services”; “*Gazette*”; “Health Practitioner Regulation National Law”; “magistrate”; “medical practitioner”; “Minister and police officer”; “prescribed notifiable occurrence”; “public sector auditor”; “registered nurse”; “road”; “road vehicle”; “shared path”; and “the, or this, jurisdiction”.

This clause further provides that, for the purposes of this measure and the *RSNL* and any other Act or law—

- (a) the Office of the National Rail Safety Regulator is not an Agency of the Northern Territory Crown; and
- (b) employees of the Office of the National Rail Safety Regulator are not Northern Territory public sector employees.

However, the Office of the National Rail Safety Regulator may still be taken to act on behalf of

the Crown in right of the Territory and each other participating jurisdiction (see clause 12(3) of the RSNL).

6 No double jeopardy

This clause provides someone cannot be prosecuted under the *Rail Safety National Law (NT)* if they have already been convicted or found guilty in a participating jurisdiction of an offence that is substantially the same as the NT offence for the same conduct.

7 Exclusion of legislation of this jurisdiction

Because the RSNL has its own interpretation provisions in Schedule 1, this clause provides that the *Interpretation Act* does not apply to the *Rail Safety National Law (NT)* or to instruments made under that Law.

It also provides that the following Territory Acts, or parts of Acts, do not apply to the *Rail Safety National Law (NT)* or to instruments made under that Law

- (a) the *Audit Act*;
- (b) the *Financial Management Act*;
- (c) the information provisions in the *Information Act* (the privacy provisions within the *Information Act* still apply);
- (d) the *Ombudsman Act*;
- (e) the *Procurement Act*;
- (f) the *Public Information Act*;
- (g) the *Public Interest Disclosure Act*; and
- (h) the *Public Sector Employment and Management Act*.

However, these Acts and the information provisions in the *Information Act* continue to apply to Territory Agencies and bodies, and to employees of Territory Government Agencies and bodies, exercising functions under the *Rail Safety National Law (NT)*.

Part 3 National regulations

8 National regulations to be tabled in the Legislative Assembly

Section 264 of the RSNL sets out the process for making regulations (national regulations) under the RSNL.

This clause adds a requirement (similar to that of section 63(1)(c) of the *Information Act*) for national regulations to be tabled in the Legislative Assembly, within 3 days of their publication on the NSW legislation website.

If national regulations are not tabled within this time, they cease to apply in the Territory.

This clause reinstates the requirement under subsection 63(3)(c) of the *Interpretation Act* for the tabling of regulations made under the RSNL with modifications (subclause 7(1) of the Bill provides that the *Interpretation Act* not apply to the RSNL).

National regulations are to be tabled in the Legislative Assembly within 3 sitting days of the assembly after they have been published (and come into force) on the NSW legislation website.

If they are not tabled within that timeframe, they cease to apply as laws of the Territory.

Subclause (3) reinstates section 67 of the *Interpretation Act* to govern the tabling of National Regulations.

9 National Regulations disallowed by Legislative Assembly

If the Legislative Assembly passes a resolution disallowing national regulations, the disallowance has the same effect as a repeal of the regulations.

If the regulations that are disallowed had the effect of repealing previous regulations, the disallowance has the effect of reviving the repealed regulations from the date of the disallowance.

Part 4 Local provisions for alcohol and drug testing

Division 1 Preliminary matters

10 Interpretation

This clause contains definitions for the purposes of the drug and alcohol testing provisions in Part 4.

Division 2 Alcohol testing

11 Preliminary breath test or breath analysis

This clause states that a requirement made by an authorised person for a rail safety worker to submit to a preliminary breath test or breath analysis, is a direction for the purposes of section 126(3) of the RSNL. If a worker fails or refuses to comply with a request to submit to a preliminary breath test or breath analysis, they will commit an offence under the RSNL.

12 When breath test of breath analysis may be required

An authorised person may require a rail safety worker to submit to a preliminary breath test or breath analysis on a random basis, or on a non random basis if:

- they suspect the worker has the prescribed concentration of alcohol present in their blood;
- or
- there has been a prescribed notifiable occurrence involving the worker.

The prescribed concentration of alcohol is defined in section 128(5) of the RSNL to be any concentration of alcohol in the blood.

Notifiable occurrences will be prescribed in national regulations made under the RSNL.

13 Rail safety worker not obliged to comply with requirement in certain circumstances

A rail safety worker who is still on railway premises after carrying out rail safety work, does not have to comply with a requirement to submit to a preliminary breath test or breath analysis if:

- they have not been involved in a notifiable occurrence; and
- more than 30 minutes have elapsed since they ceased carrying out rail safety work.

Where a worker has been involved in a prescribed notifiable occurrence, they do not have to submit to a preliminary breath test or breath analysis if:

- more than 4 hours have elapsed since the prescribed notifiable occurrence; or
- they have finished work and left their work location unaware that there has been a prescribed notifiable occurrence.

14 Authorised person must not make requirement in certain circumstances

An authorised person cannot require a rail safety worker to submit to a preliminary breath test or

breath analysis if:

- the worker is injured and to do so might be detrimental to their medical condition; or
- the worker suffers from a physical disability that would prevent them from providing a sufficient sample of breath

15 Conduct of breath analysis

In order to conduct a breath analysis, an authorised person must either be:

- a police officer specifically authorised by the Commissioner of Police (for the purposes of the RSNL or any other Act); or
- authorised by the National Regulator

to use a breath analysis instrument

16 Further breath analysis

This clause allows an authorised person to request that a rail safety worker undergo more than one preliminary breath test or breath analysis. This power is necessary for situations like equipment failure or a failure by the worker to provide a sufficient sample of breath.

17 Rail safety worker may request further breath analysis

This clause allows a worker who has provided a sample of breath for breath analysis to request a further analysis of their breath.

18 Breath analysis indicates prescribed BAC

If the result of a breath analysis indicates a rail safety worker has the prescribed blood alcohol content, the authorised person must promptly provide the worker with a statement setting out the date and time of the analysis and the result of the analysis.

19 Rail safety worker may request blood sample be taken after breath analysis

This clause allows a worker who has provided a sample of breath for breath analysis to request a blood test.

20 Rail safety worker may request blood sample be taken instead of preliminary breath test or breath analysis

A rail safety worker required to submit to a preliminary breath test or breath analysis, can request that a blood test be conducted instead, and by providing a blood sample for analysis, they will avoid prosecution for a failure to submit to a preliminary breath test or breath analysis.

Division 3 Drug testing

21 Drug screening test or oral fluid analysis

A requirement made by an authorised person for a rail safety worker to submit to a drug screening test or oral fluid analysis, is a direction for the purposes of section 127(3) of the RSNL. If a worker fails or refuses to comply with a request to submit to a drug screening test or oral fluid analysis, they will commit an offence under the RSNL.

22 When drug screening test or oral fluid analysis may be required

An authorised person may require a rail safety worker to submit to a drug screening test or oral fluid analysis on a random basis, or on a non random basis if:

- they suspect the worker has a prohibited drug in their body; or
- there has been a prescribed notifiable occurrence involving the worker.

Prohibited drugs are prescribed in section 128(5) of the RSNL and notifiable incidents will be prescribed in national regulations made under the RSNL.

23 Rail safety worker not obliged to comply with requirement in certain circumstances

A rail safety worker who is still on railway premises after carrying out rail safety work, does not have to comply with a requirement to submit to a drug screening test or oral fluid analysis if:

- they have not been involved in a prescribed notifiable occurrence; and
- more than 30 minutes have elapsed since they ceased carrying out rail safety work.

Where a worker has been involved in a prescribed notifiable occurrence, they do not have to submit to a drug screening test or oral fluid analysis if:

- more than 4 hours have elapsed since the prescribed notifiable occurrence; or
- they have finished work and left their work location unaware that there has been a prescribed notifiable occurrence.

24 Authorised person must not make requirement in certain circumstances

An authorised person cannot require a rail safety worker to submit to a drug screening test or oral fluid analysis if:

- the worker is injured and to do so might be detrimental to their medical condition; or
- the worker suffers from a physical disability that would prevent them from providing a sufficient sample for a drug screening test or oral fluid analysis.

Division 4 Blood sample

25 Provision of blood sample

This clause makes it clear that a requirement made by an authorised person for a rail safety worker to submit to a blood test is a direction for the purposes of section 127(3) of the RSNL. If a worker fails or refuses to comply with a request to submit to a blood test, they will commit an offence under the RSNL.

26 Blood sample after preliminary breath test or breath analysis requirement

An authorised officer can require a rail safety worker to undergo a blood test if the worker has refused, or failed to properly, provide a sufficient sample of breath for a preliminary breath test or breath analysis.

However such a request cannot be made if, under clause 13, the worker was not obliged to undergo a preliminary breath test or breath analysis.

An authorised officer can also require a rail safety worker to undergo a blood test if, as a result of a preliminary breath test under clause 12, the authorised person suspects that the worker might have the prescribed blood alcohol content, and it is not possible to conduct a breath analysis.

27 Blood sample after drug screening or oral fluid analysis requirement

In addition to the reasons specified in clause 26, an authorised officer can also require a rail safety worker to undergo a blood test in the following circumstances:

- the worker has failed to comply with a direction to undergo a drug screening test or oral fluid analysis or has failed to provide a sufficient sample;
- as a result of a drug screening test or oral fluid analysis, the authorised person suspects that the worker might have a prohibited drug in their body;
- the worker hasn't been required to undertake a drug screening test or oral fluid analysis either because they are:
 - Ø injured and to do so might be detrimental to their medical condition; or

- Ø suffering from a physical disability that would prevent them from providing a sufficient sample for a drug screening test or oral fluid analysis;
- the worker has been involved in a prescribed notifiable occurrence.

28 Rail safety worker not obliged to comply with requirement in certain circumstances

A rail safety worker who is still on railway premises after carrying out rail safety work, does not have to comply with a requirement to submit to a blood test if:

- they have not been involved in a prescribed notifiable occurrence; and
- more than 30 minutes have elapsed since they ceased carrying out rail safety work.

Where a worker has been involved in a prescribed notifiable occurrence, they do not have to submit to a blood test if:

- more than 4 hours have elapsed since the prescribed notifiable occurrence; or
- they have finished work and left their work location unaware that there has been a prescribed notifiable occurrence.

29 Compulsory blood testing following a prescribed notifiable occurrence

If a rail safety worker is injured in a prescribed notifiable occurrence and is admitted to hospital or seeks treatment at a health centre for their injury within four hours of the occurrence, the person in charge of the hospital or health centre must ensure that a blood sample is taken from the worker as soon as is practicable.

If the injured worker dies before they are admitted to hospital or taken to a health centre, or dies before a sample can be taken, the medical practitioner who, under the *Coroners Act*, has to report to the coroner, must either:

- take or cause a sample of blood to be taken from the deceased worker's body; or
- notify the coroner that a sample should be taken given the circumstances of death, whereupon the Coroner may direct a pathologist to take a sample from the body of the deceased worker.

Only one blood sample need be taken under this clause. A medical practitioner does not have to take a sample under this clause if another medical practitioner has already taken a sample.

Division 5 Evidence

30 Use of test or analysis result in court proceedings

This clause deems the drug and alcohol test and breath analysis results at the time a sample was

taken from a worker to be the result as at the “relevant time”, notwithstanding that the worker may have consumed drugs or alcohol between the time of the test and the “relevant time”.

In most cases, the time of a test or breath analysis conducted under this Part of the Bill and the “relevant time” will be the same thing, but where a worker is tested after they have finished carrying out rail safety work, the “relevant time” will be”

- if the worker has been involved in a prescribed notifiable occurrence – the time of the occurrence; or
- where the worker is still on railway premises but there has been no notifiable occurrence – the time that the worker last performed rail safety work.

If more than one breath analysis is conducted, the lower of the results indicated is taken to be the blood alcohol concentration of the worker at the relevant time.

31 Evidence by certificate

This clause allows for evidence to be admitted into Court in certificate form in the prosecution of a rail safety worker for a drug or alcohol related offence, without the need to call witnesses to prove the contents of the certificate.

The clause sets out the matters that can be included in a certificate and the conditions associated with the use of certificate evidence.

Certificate evidence cannot be used unless a copy of the certificate is given to the defendant at least 7 days before the hearing, and the defendant may prevent the use of certificate evidence by giving the court notice requiring the attendance at the trial of the person signing the certificate, within 2 days of the commencement of the trial.

The court can also require a person signing a certificate to attend at the trial.

Division 6 Other matters for this Part

32 Reports relating to worker's refusal or failure to comply with requirement of authorised person

If a rail safety worker is required by an authorised person to submit to:

- a preliminary breath test or breath analysis and:
- Ø refuses or fails to comply; and

- Ø does not provide a sample of blood as an alternative; or
- a drug screening test, oral fluid analysis or blood test,

and refuses or fails to do so, the authorised person must report the refusal or failure to both the National Regulator and the accredited rail transport operator for whom the rail safety worker performs rail safety work.

33 Duty of health practitioner who takes sample

This clause imposes an obligation on a health practitioner to take measures to ensure that a sample taken from a rail safety worker is not adulterated or allowed to be contaminated in such a way as would prevent proper analysis of the sample.

34 Protection from liability of health practitioners and analysts

This clause protects health practitioners and analysts from any criminal liability for acts carried by them in good faith under Part 5 of the Bill (*Local repeal and transitional provisions*) or under Part 3, Division 9 (*Drug and alcohol testing by Regulator*) of the *Rail Safety National Law (NT)*.

35 Self-incrimination no excuse

This clause prevents a rail safety worker from refusing to comply with a direction or requirement or direction to provide a sample of their breath, oral fluid or blood:

- on the grounds that the sample provided might provide evidence that could be used against them; or
- because they have consumed alcohol or drugs between the time they last performed rail safety work and the time the requirement or direction was made.

36 Local regulations

This clause creates a power to make regulations that are necessary or convenient for the purposes of Part 5 of the Bill (*Local repeal and transitional provisions*) and Part 3, Division 9 (*Drug and alcohol testing by Regulator*) of the *Rail Safety National Law (NT)*.

Part 5 Local repeal and transitional provisions

Division 1 Preliminary matters

37 Definitions

This clause defines “commencement day” and “repealed Act” for the purposes of the transition provisions in Part 5.

Division 2 Repeal

38 Repeal

The *Rail Safety Act* is repealed.

Division 3 Transitional provisions

39 Accreditation

Applications for accreditation or variations of accreditation that have not been decided before the commencement of the Bill are taken to be applications made under *Rail Safety National Law (NT)* and will be determined in accordance with that law.

Rail transport operators who are accredited under the *Rail Safety Act* are taken to be accredited under the *Rail Safety National Law (NT)*.

If at the commencement of the *Rail Safety National Law (NT)*, a rail transport operator’s accreditation has been suspended under the repealed *Rail Safety Act*, the accreditation that the operator is taken to have under the *Rail Safety National Law (NT)* is subject to the same suspension as applied under the repealed law.

40 Registration

This clause transfers registration of a private siding under the repealed *Rail Safety Act* to registration of the rail infrastructure manager responsible for the siding, under the *Rail Safety National Law (NT)*.

That registration will be subject to any conditions determined by the National Regulator by notice to the rails infrastructure manager, including the conditions that applied to the registration

of the siding under the repealed *Rail Safety Act*, and any additional conditions and restriction imposed by the National Regulator.

The Notice imposing conditions must be in writing, and must set out the reasons for their imposition.

A decision to impose conditions on registration is reviewable under the Part 7 of the *Rail Safety National Law (NT)*.

41 Police officers continue to be authorised

Police officers who are authorised to conduct breath analysis under the *Traffic Regulations* immediately before the commencement of the Bill, are taken to be authorised to use breath analysis instruments for the purposes of Part 5 of the Bill.

42 Alleged offences against repealed Act

Offences committed against the repealed *Rail Safety Act* before the commencement of the Bill, will continue to be dealt with under the *Rail Safety Act* as though it had not been repealed.

If conduct constituting a breach of the repealed *Rail Safety Act* occurs over a period of time that spans the commencement date of the Bill, the conduct is taken to have occurred before the commencement date and will be dealt with under the repealed Act.

43 Notifiable occurrences

Reports of notifiable occurrences made immediately before the commencement of the *Rail Safety National Law (NT)* will be dealt with under the *Rail Safety National Law (NT)* as if they were reports made under Part 3, Division 8 of the *Rail Safety National Law (NT)*.

Outstanding investigations into notifiable occurrences under the repealed *Rail Safety Act* will

continue as though they were investigations under Part 3, Division 8 of the *Rail Safety National Law (NT)*.

44 Notices

Improvement notices and prohibition notices in force before the commencement of the *Rail Safety National Law (NT)* will continue in force as though they were issued under Part 5 of the *Rail Safety National Law (NT)*.

45 Reviews and appeals

Where someone has the right to seek a review of a decision made under the *Rail Safety Act*, and the time for seeking that review expires after the commencement date of the *Rail Safety National Law (NT)*, this clause allows them to seek the review under the *Rail Safety National Law (NT)* after the commencement date and within the time allowed under the repealed Act.

If a review applicant successfully challenges a decision not to grant accreditation under the *Rail Safety Act* and they have not been accredited under that Act before its repeal and the commencement of the *Rail Safety National Law (NT)*, this clause provides for them to be accredited under the *Rail Safety National Law (NT)* subject to the same terms and conditions that would have applied had they been accredited under the repealed Act.

46 Provision of information and assistance by Director of Rail Safety

This clause authorises the Director of Rail Safety to pass on information in his possession and control to the National Regulator that is reasonably required by the National Regulator. This includes personal and confidential information that legally the Director might otherwise be prevented from passing onto a third party.

47 Transitional regulations

This clause creates a power to make regulations to facilitate the transition from the *Rail Safety Act* to the *Rail Safety National Law (NT)*.

It allows transitional regulations to have effect retrospectively from the commencement date of the *Rail Safety National Law (NT)*, so long as the regulations do not operate to decrease

someone's rights or impose additional liabilities upon anyone.

It also limits the operation of transition regulations to one year from the commencement of the *Rail Safety National Law (NT)*.

Part 6 Consequential amendments

48 AustralAsia Railway (Special Provisions) Act amended

This clause refers to the schedule which sets out consequential amendments to the *AustralAsia Railway (Special Provisions) Act*.

49 Expiry of Part 23

Part 6 of the Bill ceases to have effect on the day after it commences.

Schedule AustralAsia Railway (Special Provisions) Act amended

References to the “*Rail Safety Act*” in the *AustralAsia Railway (Special Provisions) Act* are replaced by the “*Rail Safety National Uniform Legislation) Act*”.

NOTES ON CLAUSES IN THE NATIONAL LAW

The following notes have been reproduced from the 2nd reading explanation of clauses for the *Rail Safety National Law (South Australia) Act 2012*, with minor modifications made to reflect the operation of the RSNL in the Territory.

Part 1—Preliminary

1—Short title

Provides that this Law may be referred to as the Rail Safety National Law (the RSNL).

2—Commencement

The RSNL will commence as provided by the application Act.

3—Purpose, objects and guiding principles of Law

Sets out the purpose, objects and guiding principles of the RSNL.

4—Interpretation

Sets out the definitions used in the RSNL.

5—Interpretation generally

Schedule 2 of the RSNL sets out the interpretation provisions that apply to the RSNL.

6—Declaration of substance to be drug

Provides for the declaration of substances as drugs for the purposes of the RSNL.

7—Railways to which this Law does not apply

Sets out railways that are not covered by the RSNL.

8—Meaning of rail safety work

Sets out the meaning of rail safety work.

9—Single national entity

Provides that the intention of Parliament is for the RSNL applied by this jurisdiction, together with other jurisdictions, to create 1 single national entity.

10—Extraterritorial operation of Law

Provides for the extraterritorial operation of the RSNL to the extent allowable.

11—Crown to be bound

Provides that the RSNL binds the Crown.

No criminal liability attaches to the Crown.

Part 2—Office of the National Rail Safety Regulator

Division 1—Establishment, functions, objectives, etc

12—Establishment

Establishes the Office of the National Rail Safety Regulator (ONRSR) as a body corporate. ONRSR would represent the Crown of each participating jurisdiction, but would not thereby become a Crown agency or instrumentality as such.

13—Functions and objectives

Sets out the functions and objectives of the ONRSR.

14—Independence of ONRSR

Provides that except as otherwise provided, the ONRSR is not subject to Ministerial direction in the exercise of its functions or powers.

15—Powers

Sets out the powers of the ONRSR.

Division 2—Office of the National Rail Safety Regulator

Subdivision 1—Constitution of ONRSR

16—Constitution of ONRSR

Sets out the membership of the ONRSR.

Subdivision 2—National Rail Safety Regulator

17—Appointment of Regulator

Provides for the appointment of the National Rail Safety Regulator (the Regulator).

18—Acting National Rail Safety Regulator

Provides for the appointment of an acting National Rail Safety Regulator.

19—Functions of Regulator

Sets out the functions of the Regulator

20—Power of Regulator to obtain information

Gives the Regulator the power to obtain information that will assist in monitoring or enforcing compliance with the RSNL.

Subdivision 3—Non-executive members

21—Appointment of non-executive members

Provides for the appointment of non-executive members of the ONRSR.

Subdivision 4—Miscellaneous provisions relating to membership

22—Vacancy in or removal from office

Sets out when the office of a member of the ONRSR becomes vacant or may be removed.

23—Member to give responsible Ministers notice of certain events

Sets out that a member of the ONRSR must notify the Minister of the member's bankruptcy or conviction of an offence.

24—Extension of term of office during vacancy in membership

Provides that a member's term of office may be extended until a vacancy is filled.

25—Members to act in public interest

Provides that members of the ONRSR must act in the public interest.

26—Disclosure of conflict of interest

Provides that members of ONRSR must give notice of any conflict of interest.

Division 3—Procedures

27—Times and places of meetings

Provides that meetings are to be held in order to conduct the business of the ONRSR.

28—Conduct of meetings

Sets out the requirements for the conduct of ONRSR meetings.

29—Defects in appointment of members

Provides that ONRSR business is not affected by irregularity in the appointment of a member.

30—Decisions without meetings

Provides for decisions of ONRSR without a meeting.

31—Common seal and execution of documents

Sets out provisions for the use of the common seal of the ONRSR.

Division 4—Finance

32—Establishment of Fund

Establishes the National Rail Safety Regulator Fund (the Fund).

33—Payments into Fund

Provides for payments into the Fund.

34—Payments out of Fund

Provides for payments out of the Fund.

35—Investment of money in Fund

Allows for investment of funds and requires records to be kept.

36—Financial management duties of ONRSR

Sets out the duties of the ONRSR in relation to its financial management.

Division 5—Staff

37—Chief executive

Provides that the Regulator is the chief executive of the ONRSR.

38—Staff

Provides for the employment of staff by the ONRSR.

39—Secondments to ONRSR

Provides for the secondment of staff to the ONRSR from government agencies.

40—Consultants and contractors

Provides that the ONRSR may engage contractors and consultants.

Division 6—Miscellaneous

41—Regulator may be directed to investigate rail safety matter

Provides that the Minister may direct the Regulator to investigate or provide information or advice about a rail safety matter.

42—National Rail Safety Register

Provides that the Regulator must establish and maintain the National Rail Safety Register and sets out what is to be included in the Register.

43—Annual report

Requires the Regulator to provide an annual report to the responsible Ministers and sets out the requirements for the report.

44—Other reporting requirements

Provides that the national regulations may stipulate other reporting requirements.

45—Delegation

Provides the ONRSR with the power to delegate its functions or powers.

Part 3—Regulation of rail safety

Division 1—Interpretation

46—Management of risks

Provides that safety duties imposed by the RSNL are to eliminate or minimise risks to safety so far as reasonably practicable.

47—Meaning of reasonably practicable

Sets out the meaning of 'reasonably practicable' in relation to duties of safety.

Division 2—Occupational health and safety and railway operations

48—Relationship between this Law and OHS legislation

Sets out the relationship between this Law and occupational health and safety legislation.

49—No double jeopardy

Provides that there is no double jeopardy in relation to offences under the RSNL or occupational health and safety legislation.

Division 3—Rail safety duties

Subdivision 1—Principles

50—Principles of shared responsibility, accountability, integrated risk management, etc

Provides that rail safety is the responsibility of rail transport operators, rail safety workers and others who work on, with or supply rolling stock or rail infrastructure.

51—Principles applying to rail safety duties

Sets out the principles that apply to duties under the RSNL.

Subdivision 2—Duties

52—Duties of rail transport operators

Sets out the rail safety duties of rail transport operators.

53—Duties of designers, manufacturers, suppliers etc

Sets out the rail safety duties of designers, manufacturers and suppliers and others involved in things used as or in connection with rail infrastructure or rolling stock.

54—Duties of persons loading or unloading freight

Sets out the rail safety duties of persons loading or unloading freight from rolling stock.

55—Duty of officers to exercise due diligence

Provides that officers of a person who has a duty or obligation under the RSNL must exercise due diligence to ensure the person complies with that duty or obligation and sets out the meaning of 'due diligence'.

56—Duties of rail safety workers

Sets out the duties of rail safety workers carrying out rail safety work.

Subdivision 3—Offences and penalties

57—Meaning of *safety duty*

Sets out the meaning of safety duty for the purposes of the subdivision.

58—Failure to comply with safety duty—reckless conduct—Category 1

Sets out what is a 'category 1' offence in relation to a breach of a safety duty.

59—Failure to comply with safety duty—Category 2

Sets out what is a 'category 2' offence in relation to a breach of a safety duty.

60—Failure to comply with safety duty—Category 3

Sets out what is a 'category 3' offence in relation to a breach of a safety duty.

Division 4—Accreditation

Subdivision 1—Purpose and requirement for accreditation

61—Purpose of accreditation

Sets out the purpose for accreditation.

62—Accreditation required for railway operations

Sets out the accreditation requirements for a person carrying out railway operations.

63—Purposes for which accreditation may be granted

Sets out the purposes for which a rail transport operator may be granted accreditation.

Subdivision 2—Procedures for granting accreditation

64—Application for accreditation

Sets out the application process and requirements for accreditation.

65—What applicant must demonstrate

Sets out what an applicant for accreditation must show.

66—Regulator may direct applicants to coordinate applications

Provides that applicants may have to coordinate the preparation of applications for accreditation for rail safety reasons.

67—Determination of application

Sets out the process for granting accreditation and for imposing restrictions and conditions on accreditation.

Subdivision 3—Variation of accreditation

68—Application for variation of accreditation

Provides for an accredited person to apply for the variation of the accreditation.

69—Determination of application for variation

Provides for the determination of an application for variation of accreditation.

70—Prescribed conditions and restrictions

Provides that a varied accreditation is subject to any conditions and restrictions prescribed by the national regulations.

71—Variation of conditions and restrictions

Provides that an accredited person may apply to the Regulator to vary or revoke any conditions or restrictions on the accreditation.

72—Regulator may make changes to conditions or restrictions

Gives the Regulator the power to vary or revoke a condition of accreditation at any time and sets out the process for so doing.

Subdivision 4—Revocation, suspension or surrender of accreditation

73—Revocation or suspension of accreditation

Provides that the Regulator may revoke or suspend a person's accreditation in particular circumstances.

74—Immediate suspension of accreditation

In the case of an immediate and serious risk to safety the Regulator may suspend an accreditation immediately.

75—Surrender of accreditation

Sets out the manner in which a person may surrender his or her accreditation.

Subdivision 5—Miscellaneous

76—Annual fees

Provides for the payment of accreditation fees.

77—Waiver of fees

Gives the Regulator the power to waive or refund fees.

78—Penalty for breach of condition or restriction

Provides that it is an offence to breach a condition or restriction of accreditation that applies under Part 3.

79—Accreditation cannot be transferred or assigned

Provides that it is not possible to transfer or assign an accreditation.

80—Sale or transfer of railway operations by accredited person

Provides for the waiver by the Regulator of compliance with certain requirements of Part 3 in relation to the application for accreditation by a person proposing to purchase railway operations of an accredited person.

81—Keeping and making available records for public inspection

Requires that current notices of accreditation or exemptions or other prescribed documents must be available for inspection.

Division 5—Registration of rail infrastructure managers of private sidings

Subdivision 1—Exemptions relating to certain private sidings

82—Exemption from accreditation in respect of certain private sidings

Provides for the exemption from accreditation for railway operations carried out by a rail infrastructure manager in a private siding.

83—Requirement for managers of certain private sidings to be registered

Provides that a rail infrastructure manager of a private siding that is connected with, or has access to, the railway of an accredited person or another private siding, must be registered in relation to that private siding.

Subdivision 2—Procedures for granting registration

84—Application for registration

Sets out the application process for the registration of a rail infrastructure manager in relation to a private siding.

85—What applicant must demonstrate

Sets out what the Regulator must be satisfied of before granting registration to an applicant.

86—Determination of application

Sets out the process for the determination of an application for registration and the imposition of conditions and restrictions

Subdivision 3—Variation of registration

87—Application for variation of registration

Provides that a registered person may apply to the Regulator for the variation of registration at any time, and sets out the process required.

88—Determination of application for variation

Sets out the process for determining an application for the variation of registration.

89—Prescribed conditions and restrictions

Provides that registration as varied is subject to any conditions or restrictions prescribed by the national regulations.

90—Variation of conditions and restrictions

Provides for the application by a registered person for the variation or revocation of conditions or restrictions of registration.

91—Regulator may make changes to conditions or restrictions

Provides that the Regulator may vary, revoke or impose new conditions or restrictions on the registration of a registered person.

Subdivision 4—Revocation, suspension or surrender of registration

92—Revocation or suspension of registration

Provides that the Regulator may suspend or revoke registration of a registered person in certain circumstances.

93—Immediate suspension of registration

Provides that registration may be suspended immediately by the Regulator if there is an immediate and serious risk to safety.

94—Surrender of registration

Provides that a person may surrender his or her registration and sets out the process required.

Subdivision 5—Miscellaneous

95—Annual fees

Provides for fees prescribed by the national regulations to be paid by a registered person.

96—Waiver of fees

Provides that the Regulator may waive or refund fees.

97—Registration cannot be transferred or assigned

Provides that it is not possible to transfer or assign registration.

98—Offences relating to registration

Sets out the offences in relation to registration including breach of a condition or restriction of registration.

Division 6—Safety management

Subdivision 1—Safety management systems

99—Safety management system

Requires a rail transport operator to have a safety management system in relation to the railway operations for which he or she is required to be accredited. Sets out the requirements for that safety management system.

100—Conduct of assessments for identified risks

Sets out the manner in which a rail transport operator must make an assessment of risks for the purposes of the safety management system.

101—Compliance with safety management system

It is an offence for a rail transport operator to fail to comply with the operator's safety management system.

102—Review of safety management system

A rail transport operator must review the safety management system in accordance with the national regulations.

103—Safety performance reports

Requires a rail transport operator to give the Regulator a safety performance report in relation to the operator's railway operations.

104—Regulator may direct amendment of safety management system

Provides that the Regulator may direct a person to amend the person's safety management system.

Subdivision 2—Interface agreements

105—Requirements for and scope of interface agreements

Sets out the requirements for an interface agreement between 2 or more rail transport operators or a rail transport operator and 1 or more road managers to manage risks to safety.

106—Interface coordination—rail transport operators

Requires a rail transport operator to identify and assess risks to safety arising from the operator's railway operations due to the operations of any other rail transport operator. Provides for entering into an interface agreement in order to manage those risks.

107—Interface coordination—rail infrastructure and public roads

Requires a rail infrastructure manager to identify and assess risks to safety arising from railway operations carried out on the manager's rail infrastructure in relation to a public road or any rail or road crossing that is part of a public road. Provides for entering into an interface agreement with a road manager in order to manage those risks.

108—Interface coordination—rail infrastructure and private roads

Requires a rail infrastructure manager to identify and assess risks to safety arising from railway operations carried out on the manager's rail infrastructure due to the existence of any rail or road crossing that is part of the road infrastructure of a private road. Provides for entering into an interface agreement with the road manager in order to manage those risks.

109—Identification and assessment of risks

Provides for the manner of identification and assessment of risks by rail transport operators, rail infrastructure managers or road managers.

110—Regulator may give directions

Provides for the Regulator to give directions in certain circumstances in relation to the entering into of an interface agreement by various parties. The Regulator may, in the absence of an interface agreement, determine the arrangements that are to apply in relation to the management of identified risks to safety.

111—Register of interface agreements

Provides that a rail transport operator or road manager must keep a register of any interface agreements to which it is a party, or any arrangements determined by the Regulator to apply under clause 110.

Subdivision 3—Other safety plans and programs

112—Security management plan

Requires a rail transport operator to have a security management plan in relation to the operator's railway operations and sets out the requirements for that plan.

113—Emergency management plan

Requires a rail transport operator to have an emergency management plan in relation to the operator's railway operations and sets out the requirements for that plan.

114—Health and fitness management program

Requires a rail transport operator to prepare and implement a health and fitness program for rail safety workers who carry out rail safety work in relation to the operator's railway operations. The program to comply with requirements prescribed by the national regulations.

115—Drug and alcohol management program

Requires a rail transport operator to prepare and implement a drug and alcohol management program for rail safety workers who carry out rail safety work in relation to the operator's railway operations. The program to comply with requirements prescribed by the national regulations.

116—Fatigue risk management program

Requires a rail transport operator to prepare and implement a program for the management of fatigue of rail safety workers who carry out rail safety work in relation to the operator's railway operations. The program to comply with requirements prescribed by the national regulations.

Subdivision 4—Provisions relating to rail safety workers

117—Assessment of competence

Requires a rail transport operator to ensure that a rail safety worker carrying out rail safety work is competent to do so. Sets out the process for assessing that competence.

118—Identification of rail safety workers

Requires a rail safety worker to carry identification that allows for the checking of training or competence by a rail safety officer.

Subdivision 5—Other persons to comply with safety management system

119—Other persons to comply with safety management system

Requires persons other than employees carrying out railway operations in relation to rail infrastructure or rolling stock of a rail transport operator, to comply with the operator's safety management system.

Division 7—Information about rail safety etc

120—Power of Regulator to obtain information from rail transport operators

Gives the Regulator the power to obtain certain information from rail transport operators.

Division 8—Investigating and reporting by rail transport operators

121—Notification of certain occurrences

Requires a rail transport operator to provide information about a notifiable occurrence that happens on or in relation to the operator's railway premises or operations.

122—Investigation of notifiable occurrences

Regulator may require an operator to investigate a notifiable occurrence or other occurrences that have endangered safety.

Division 9—Drug and alcohol testing by Regulator

123—Testing for presence of drugs or alcohol

Provides that a rail safety worker may be tested for the presence of drugs and alcohol in accordance with the RSNL and the application Act.

124—Appointment of authorised persons

Provides that the Regulator may appoint authorised persons in relation to drug and alcohol testing.

125—Identity cards

Requires authorised persons to have identity cards.

126—Authorised person may require preliminary breath test or breath analysis

Provides for an authorised person to require a rail safety worker to submit to breath testing.

127—Authorised person may require drug screening test, oral fluid analysis and blood test

Provides for an authorised person to require a rail safety worker to submit to a drug screening test, oral fluid analysis or blood test.

128—Offence relating to prescribed concentration of alcohol or prescribed drug

Sets out the offences for a rail safety worker in relation to undertaking rail safety work while there is the prescribed concentration of alcohol present in his or her blood, or a prescribed drug present in his or her oral fluid or blood or is under the influence of drugs or alcohol.

129—Oral fluid or blood sample or results of analysis etc not to be used for other purposes

Restricts the use of samples of oral fluid or blood or other forensic material collected for drug and alcohol testing for the purposes of the RSNL.

Division 10—Train safety recordings

130—Interpretation

Defines the meaning of '*train safety recording*'.

131—Disclosure of train safety recordings

Provides for restrictions on the disclosure of train safety recordings.

132—Admissibility of evidence of train safety recordings in civil proceedings

Restricts the use of train safety recordings in civil proceedings.

Division 11—Audit of railway operations by Regulator

133—Audit of railway operations by Regulator

Provides for the audit of the railway operations of a rail transport operator by the Regulator.

Part 4—Securing compliance

Division 1—Guiding principle

134—Guiding principle

Sets out the guiding principles in relation to the enforcement of the RSNL.

Division 2—Rail safety officers

135—Appointment

Provides for the appointment of rail safety officers by the Regulator.

136—Identity cards

Requires rail safety officers to have identity cards.

137—Accountability of rail safety officers

Sets out requirements for the accountability of rail safety officers.

138—Suspension and ending of appointment of rail safety officers

Provides that the Regulator may suspend or terminate the appointment of a rail safety officer.

Division 3—Regulator has functions and powers of rail safety officers

139—Regulator has functions and powers of rail safety officers

Provides that the Regulator has the functions and powers of a rail safety officer under the RSNL, and a reference to a rail safety officer includes a reference to the Regulator.

Division 4—Functions and powers of rail safety officers

140—Functions and powers

Sets out the functions and powers of rail safety officers.

141—Conditions on rail safety officers' powers

The powers of a rail safety officer are subject to any conditions set out in his or her instrument of appointment.

142—Rail safety officers subject to Regulator's directions

Provides that the Regulator may give directions to a rail safety officer in the exercise of his or her powers.

Division 5—Powers relating to entry

Subdivision 1—General powers of entry

143—Powers of entry

Sets out a rail safety officer's powers of entry.

144—Notification of entry

Provides that notification of entry by a rail safety officer may not be required.

145—General powers on entry

Sets out the general powers of a rail safety officer on entry to a place.

146—Persons assisting rail safety officers

Persons assisting a rail safety officer may accompany the officer on entering a place.

147—Use of electronic equipment

Provides that equipment present at a place of entry may be used by a rail safety officer in order to access information found.

148—Use of equipment to examine or process things

Provides that a rail safety officer may bring equipment to a place in order to examine or process things found at the place entered in order to determine if they may be seized.

149—Securing a site

Sets out the powers of an authorised officer (rail safety officer or police officer) to secure a site to protect evidence.

Subdivision 2—Search warrants

150—Search warrants

Sets out procedures and requirements for search warrants.

151—Announcement before entry on warrant

Provides that an announcement is required before entering a place on a warrant.

152—Copy of warrant to be given to person with control or management of place

Requires a copy of a warrant to be given to the person in charge of a place.

Subdivision 3—Limitation on entry powers

153—Places used for residential purposes

Sets out limitations on the power of entry in relation to residential premises.

Subdivision 4—Specific powers on entry

154—Power to require production of documents and answers to questions

Provides that a rail safety officer may require a person to produce documents or answer questions on entry to a place.

155—Abrogation of privilege against self-incrimination

Provides that a person cannot refuse to answer a question or give information on the grounds of self-incrimination. However, such answers or information cannot be used against them in civil or criminal proceedings other than those for providing false or misleading information.

156—Warning to be given

Provides that a rail safety officer must give a person certain warnings before requiring a person to answer a question or provide information.

157—Power to copy and retain documents

Gives a rail safety officer the power to copy and retain documents.

Subdivision 5—Powers to support seizure

158—Power to seize evidence etc

Gives a rail safety officer the power to seize anything that he or she reasonably believes may be evidence of an offence against the RSNL.

159—Directions relating to seizure

Provides that, in order to seize something, a rail safety officer may give certain directions to a person who has control of it.

160—Rail safety officer may direct a thing's return

Provides that a rail safety officer may also give directions in relation to the return of something.

161—Receipt for seized things

Provides that a receipt is to be provided for anything seized.

162—Forfeiture of seized things

Provides for the forfeiture of things seized in certain circumstances.

163—Return of seized things

Provides that a person may apply to the Regulator for the return of a thing that has been seized.

164—Access to seized thing

Provides that a person may be given access by a rail safety officer to something that has been seized.

Division 6—Damage and compensation

165—Damage etc to be minimised

Provides that in the exercise of a power under the RSNL, a rail safety officer must take reasonable steps to cause as little damage, detriment and inconvenience as is practicable.

166—Rail safety officer to give notice of damage

Provides for a rail safety officer to give notice of any damage to a thing in exercising a power under the RSNL.

167—Compensation

Provides that a person may apply for compensation from the Regulator for any loss or expense incurred due to the exercise of a power under Part 4 Division 5 of the RSNL.

Division 7—Other matters

168—Power to require name and address

Provides that a rail safety officer may require a person to give his or her name and address in certain circumstances.

169—Rail safety officer may take affidavits

Gives rail safety officers the authority to take an affidavit.

170—Attendance of rail safety officer at inquiries

Provides that a rail safety officer may participate in an inquiry in relation to an incident involving rail safety.

171—Directions may be given under more than 1 provision

Provides for a rail safety officer to be able to give one or more directions in relation to an exercise of power.

Division 8—Offences in relation to rail safety officers

172—Offence to hinder or obstruct rail safety officer

Provides that it is an offence to hinder or obstruct a rail safety officer in the performance of his or her duties.

173—Offence to impersonate rail safety officer

Provides that a person must not impersonate a rail safety officer.

174—Offence to assault, threaten or intimidate rail safety officer

Provides that it is an offence to assault, threaten or intimidate a rail safety officer.

Part 5—Enforcement measures

Division 1—Improvement notices

175—Issue of improvement notices

Provides for the issue of improvement notices by a rail safety officer in certain circumstances.

176—Contents of improvement notices

Sets out the required contents of an improvement notice.

177—Compliance with improvement notice

Requires a person issued with an improvement notice to comply with it.

178—Extension of time for compliance with improvement notices

Allows for an extension of time in order to comply with an improvement notice.

Division 2—Prohibition notices

179—Issue of prohibition notice

Provides for the issue of a prohibition notice by a rail safety officer in certain circumstances which involve an immediate risk to safety.

180—Contents of prohibition notice

Sets out the required contents of the prohibition notice.

181—Compliance with prohibition notice

Requires a person to comply with a prohibition notice or direction under this Division.

Division 3—Non-disturbance notices

182—Issue of non-disturbance notice

Provides that a rail safety officer may issue a non-disturbance notice to a person with the control or management of a railway premises in order to facilitate the exercise of his or her powers under the RSNL.

183—Contents of non-disturbance notice

Sets out the required contents of a non-disturbance notice.

184—Compliance with non-disturbance notice

Provides that a person must comply with a non-disturbance notice unless they have a reasonable excuse.

185—Issue of subsequent notices

Provides that further notices may be issued if a rail safety officer considers it necessary.

Division 4—General requirements applying to notices

186—Application of Division

Provides that this Division applies to an improvement notice, prohibition notice or non-disturbance notice.

187—Notice to be in writing

Provides that a notice must be in writing and if given orally must be reduced to writing as soon as practicable.

188—Directions in notices

Provides that directions contained in a notice may refer to an approved code of practice or offer a person a choice of ways in which to remedy a contravention.

189—Recommendations in notice

Provides that an improvement notice or a prohibition notice may include recommendations.

190—Variation or cancellation of notice by rail safety officer

Provides that a rail safety officer may make minor changes to a notice.

191—Formal irregularities or defects in notice

Provides that irregularities in a notice will not invalidate the notice.

192—Serving notices

Sets out provisions for the service of notices.

Division 5—Remedial action

193—When Regulator may carry out action

Provides that the Regulator may take remedial action to make a situation or premises safe where a person fails to take reasonable steps to comply with a prohibition notice.

194—Power of Regulator to take other remedial action

Provides that the Regulator may take remedial action where the person with the control or management of premises cannot be found and thus no prohibition order could be issued.

195—Costs of remedial or other action

Provides that reasonable costs of remedial action may be recovered by the Regulator.

Division 6—Injunctions

196—Application of Division

Provides that this Division applies to an improvement notice, a prohibition notice or a non-disturbance notice.

197—Injunctions for non-compliance with notices

Provides that the Regulator may apply to the court for an injunction in relation to a notice.

Division 7—Miscellaneous

198—Response to certain reports

Provides that in response to certain reports, the Regulator may give directions in a notice to a rail transport operator to install safety or protective systems, devices, equipment or appliances in relation to rail infrastructure or rolling stock, as specified in the notice. Sets out the requirements for such a direction.

199—Power to require works to stop

Sets out provisions to ensure the safety or operational integrity of a railway in relation to works being carried out near a railway.

200—Temporary closing of railway crossings, bridges etc

Provides that an authorised officer may close temporarily a railway crossing, bridge, subway or other structure for crossing over or under a railway, if there is an immediate threat to safety.

201—Use of force

Provides that in exercising a power to enter railway premises or do anything in or on railway premises, a rail safety officer must not use more force than is reasonably necessary.

202—Power to use force against persons to be exercised only by police officers

Provides that force against a person must not be used by a person who is not a police officer.

Part 6—Exemptions

Division 1—Ministerial exemptions

203—Ministerial exemptions

Provides for exemptions from the RSNL granted by the Minister, after consultation with the Regulator.

Division 2—Exemptions granted by Regulator

Subdivision 1—Interpretation

204—Interpretation

Provides that this Division applies to specified provisions of the RSNL.

Subdivision 2—Procedures for conferring exemptions

205—Application for exemption

Provides for a rail transport operator to apply to the Regulator for an exemption from a particular provision of the RSNL .

206—What applicant must demonstrate

Sets out what an applicant for an exemption must demonstrate before an exemption may be granted by the Regulator.

207—Determination of application

Sets out the provisions for the determination of an application for an exemption by the Regulator.

Subdivision 3—Variation of an exemption

208—Application for variation of an exemption

Provides that a rail transport operator may apply to the Regulator for a variation of an exemption.

209—Determination of application for variation

Provides for the determination of an application for the variation of an exemption by the Regulator.

210—Prescribed conditions and restrictions

Provides that an exemption granted by the Regulator that is varied is subject to any conditions or restrictions prescribed by the national regulations.

211—Variation of conditions and restrictions

Provides that a rail transport operator who has been granted an exemption may apply to the Regulator for the variation of a condition or restriction imposed on the exemption.

212—Regulator may make changes to conditions or restrictions

Provides that the Regulator may at any time vary or revoke a condition or restriction imposed on an exemption, or impose a new condition or restriction.

Subdivision 4—Revocation or suspension of an exemption

213—Revocation or suspension of an exemption

Gives the Regulator the power to suspend or revoke an exemption in certain circumstances.

Subdivision 5—Penalty for breach of condition or restriction

214—Penalty for breach of condition or restriction

It is an offence for a rail transport operator to contravene a condition or restriction of an exemption granted by the Regulator.

Part 7—Review of decisions

215—Reviewable decisions

Sets out the decisions made under the RSNL that are reviewable (a reviewable decision) and who is eligible to apply for a review.

216—Review by Regulator

Sets out the process that applies in respect of a reviewable decision made by the Regulator.

217—Appeals

Provides for an appeal to the court in respect of certain decisions.

Part 8—General liability and evidentiary provisions

Division 1—Legal proceedings

Subdivision 1—General matters

218—Period within which proceedings for offences may be commenced

Sets out the period in which proceedings for an offence may be commenced.

219—Multiple contraventions of rail safety duty provision

Provides that 2 or more contraventions of a rail safety duty arising out of the same factual circumstances may be charged as a single offence or as separate offences.

220—Authority to take proceedings

Provides that certain legal proceedings will first require the approval of the Minister or the Regulator.

Subdivision 2—Imputing conduct to bodies corporate

221—Imputing conduct to bodies corporate

Provides for certain conduct to be imputed to bodies corporate.

Subdivision 3—Records and evidence

222—Records and evidence from records

Provides that the Regulator may sign a certificate that certifies as to matters required to be recorded in the National Safety Register for the purposes of legal proceedings.

223—Certificate evidence

Provides for the Regulator, a rail safety officer or a police officer to provide a certificate as to any matter that appears in certain records, that is admissible as evidence in court proceedings.

224—Proof of appointments and signatures unnecessary

Provides that it is not necessary to prove appointments or signatures.

Division 2—Discrimination against employees

225—Dismissal or other victimisation of employee

Provides that it is an offence for an employer to victimise an employee who has assisted or made a complaint in relation to a breach or alleged breach of an Australian rail safety law.

Division 3—Offences

226—Offence to give false or misleading information

Provides that it is an offence to give false or misleading information or documents.

227—Not to interfere with train, tram etc

Provides that it is an offence to interfere with rolling stock, rail infrastructure or equipment of a rail transport operator.

228—Applying brake or emergency device

Provides that it is an offence to apply a brake or emergency device on a train or tram or on railway premises without a reasonable excuse.

229—Stopping a train or tram

Provides that it is an offence to stop a tram or train without reasonable excuse.

Division 4—Court-based sanctions

230—Commercial benefits order

Provides for a court to make a commercial benefits order on the application of the prosecutor or the Regulator if a person is found guilty of an offence.

231—Supervisory intervention order

Provides for a court to make a supervisory intervention order on the application of the prosecutor or the Regulator if a person is found guilty of an offence and the court considers the person to be a systematic and persistent offender against the rail safety laws.

232—Exclusion orders

Provides for a court to make an exclusion order on the application of the prosecutor or the Regulator if a person is found guilty of an offence and the court considers the person to be a systematic and persistent offender against the rail safety laws.

Part 9—Infringement notices

233—Meaning of infringement penalty provision

Sets out the meaning of an '*infringement penalty provision*'.

234—Power to serve notice

Provides the Regulator with the power to serve an infringement notice on a person who has breached an infringement penalty provision.

235—Form of notice

Sets out the requirements for an infringement notice.

236—Regulator cannot institute proceedings while infringement notice on foot

Provides that the Regulator must not institute proceedings in relation to a breach for which an infringement notice has been served and is current.

237—Late payment of penalty

Provides for payment of an infringement penalty after the time for payment has expired.

238—Withdrawal of notice

Provides that the Regulator may withdraw an infringement notice at any time.

239—Refund of infringement penalty

Provides that if an infringement notice is withdrawn by the Regulator, any infringement penalty paid must be refunded.

240—Payment exiates breach of infringement penalty provision

Provides that if an infringement penalty is paid and a notice has not been withdrawn, then no proceedings can be taken in respect of the alleged breach.

241—Payment not to have certain consequences

Provides that payment of an infringement penalty is not to be taken to be an admission of liability for the purpose of any proceedings instituted in respect of the breach.

242—Conduct in breach of more than 1 infringement penalty provision

Provides that if a person's conduct constitutes a breach of 2 or more infringement penalty provisions, an infringement notice may be served in relation to the breach of any 1 or more of those provisions. However, a person is liable to pay no more than one infringement penalty in respect of the same conduct.

Part 10—General

Division 1—Delegation by Minister

243—Delegation by Minister

Provides that the Minister may delegate a function or power of the Minister under the RSNL.

Division 2—Confidentiality of information

244—Confidentiality of information

Provides for the protection of confidential information.

Division 3—Law does not affect legal professional privilege

245—Law does not affect legal professional privilege

Provides that information or documents that are subject to legal professional privilege are protected.

Division 4—Civil liability

246—Civil liability not affected by Part 3 Division 3 or Division 6

Provides that nothing in Part 3 Division 3 (*Rail safety duties*) or Division 6 (*Safety management*) affects civil proceedings.

247—Protection from personal liability for persons exercising functions

Provides that certain persons exercising a function under the RSNL are protected from personal liability for things done or omitted in good faith. Any liability attaches instead to the ONRSR.

248—Immunity for reporting unfit rail safety worker

Provides certain health professionals with immunity for providing information that discloses a rail safety worker as unfit to carry out rail safety work.

Division 5—Codes of practice

249—Approved codes of practice

Provides that responsible Ministers may approve a code of practice for the purposes of the RSNL.

250—Use of codes of practice in proceedings

Provides that an approved code of practice may be used in proceedings for an offence against the RSNL as evidence of whether or not a duty or obligation has been complied with.

Division 6—Enforceable voluntary undertakings

251—Enforceable voluntary undertaking

Provides that the Regulator may accept a written rail safety undertaking in relation to a contravention or alleged contravention of the RSNL (other than for a Category 1 offence).

252—Notice of decisions and reasons for decision

Provides that the Regulator must give notice and reasons of the Regulator's decision to accept or reject an undertaking and must publish a notice of the decision to accept a rail safety undertaking and the reasons for doing so.

253—When a rail safety undertaking is enforceable

Provides that a rail safety undertaking accepted by the Regulator is enforceable.

254—Compliance with rail safety undertaking

Provides that it is an offence for a person to fail to comply with a rail safety undertaking made by that person.

255—Contravention of rail safety undertaking

Provides that the Regulator may apply to the court for enforcement of a rail safety undertaking.

256—Withdrawal or variation of rail safety undertaking

Provides that a person who has made a rail safety undertaking may, with the written agreement of the Regulator, withdraw or vary the undertaking.

257—Proceedings for alleged contravention

Provides that no proceedings for a contravention or alleged contravention of the RSNL may be brought against a person if there is a rail safety undertaking in effect in relation to that contravention. A rail safety undertaking may be accepted by the Regulator in relation to proceedings that have not been finalised, in which case the proceedings are to be discontinued.

Division 7—Other matters

258—Service of documents

Sets out the procedures for service.

259—Recovery of certain costs

Provides for the recovery by the Regulator from a rail transport operator of the reasonable costs of inspection of railway infrastructure, rolling stock or railway premises (other than an inspection under Part 3 Division 11).

260—Recovery of amounts due

Provides that fees, charges and other amounts payable under the RSNL may be recovered as a debt due to the Regulator.

261—Compliance with conditions of accreditation or registration

Provides that a person who complies with a condition or restriction of accreditation or registration, will be taken to have complied with the RSNL.

262—Contracting out prohibited

Prohibits the ability for a contract or agreement to exclude, limit or modify the operation of the RSNL or any duty under the RSNL.

Division 8—Application of certain South Australian Acts to this Law

263—Application of certain South Australian Acts to this Law

Applies the South Australian *Freedom of Information Act 1991*, *Ombudsman Act 1972*, *Public Finance and Audit Act 1987* and *State Records Act 1997* to the RSNL and provides that the national regulations may modify these South Australian Acts for the purposes of the RSNL.

These South Australian oversight laws do not apply to the extent that functions are being exercised under the RSNL by a State or Territory entity other than a South Australian entity.

Territory entities exercising powers and functions under the RSNL will continue to be bound by the equivalent Territory oversight laws.

Division 9—National regulations

264—National regulations

Sets out provisions governing the making of the national regulations. The Governor of the State of South Australia may make national regulations on the unanimous recommendation of the Ministers nominated by each participating state and Territory as responsible for the RSNL in their jurisdiction.

265—Publication of national regulations

National regulations are to be published on the NSW legislation website in accordance with Part 6A of the *Interpretation Act 1987* of New South Wales.

National Regulations commence on the day they are specified to commence and that date cannot be earlier than the publication date.

Schedule 1—National regulations

This Schedule sets out the matters in relation to which the national regulations may be made.

Schedule 2—Miscellaneous provisions relating to interpretation

This Schedule sets out provisions governing the interpretation of the RSNL. These provisions combined with provisions in jurisdictional application laws (such as subclause 7(1) of the Bill) to dis-apply jurisdictional statutory interpretation laws, will ensure that the RSNL is interpreted under the same rules in all participating jurisdictions.