Version No. 016
Rail Safety Act 2006
No. 9 of 2006
Version incorporating amendments as at 1 July 2010

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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose
The main purpose of this Act is to provide for safe rail operations in Victoria.

2 Commencement
(1) Subject to subsections (4) and (5), this Act (except sections 129 and 156) comes into operation on a day or days to be proclaimed.

(2) Sections 129 and 156(2) come into operation on the day after the day this Act receives the Royal Assent.

(3) Section 156(1) comes into operation on the day section 5 of the Transport Legislation (Further Amendment) Act 2005 comes into operation.

(4) If a provision of this Act (except section 123) does not come into operation before 1 January 2007, it comes into operation on that day.

(5) If section 123 does not come into operation before 30 June 2008, it comes into operation on that day.
3 Definitions and interpretation

(1) In this Act—

accreditation means an accreditation under Part 5;

accredited rail operations means—

(a) rail infrastructure operations carried out by a rail infrastructure manager in respect of which the rail infrastructure manager is accredited under Part 5; or

(b) rolling stock operations carried out by a rolling stock operator in respect of which the rolling stock operator is accredited under Part 5;

accredited rail operator means a rail infrastructure manager or rolling stock operator who is accredited under Part 5;

accredited tourist and heritage railway operator means an accredited rail operator declared under section 3B to be an accredited tourist and heritage railway operator;

ambulance service has the same meaning as in the Ambulance Services Act 1986;

approved code of practice means a code of practice approved under Part 8 and includes an approved code of practice revised in accordance with that Part;

approved health professional means—

(a) a person registered under the Health Practitioner Regulation National Law—

(i) to practise in the nursing and midwifery profession as a nurse.
(other than as a midwife or as a student); and

(ii) in the registered nurses division of that profession;

(b) a person approved under section 8 to take a blood sample for the purposes of this Act;

*binding access arrangement* has the same meaning as in section 38A of the *Rail Management Act 1996*;

*breath analysing instrument* means a breath analysing instrument within the meaning of the *Road Safety Act 1986*;

*business day* means a day other than a Saturday, a Sunday or a public holiday appointed under the *Public Holidays Act 1993*;

*Chief Investigator* means the Chief Investigator, Transport Safety within the meaning of section 3 of the *Transport Integration Act 2010*;

*competence*, in relation to a rail safety worker, means sufficient education, training, experience, acquired knowledge, and skills to enable the rail safety worker to perform a specified task correctly;

*control*, in relation to a rail infrastructure—see section 5;

*coordinating road authority* has the same meaning as in the *Road Management Act 2004*;
corresponding law means, for the purposes of Part 6, a law of another State or a Territory of the Commonwealth declared under section 9 to be a corresponding law;

Country Fire Authority means the Country Fire Authority appointed under the Country Fire Authority Act 1958;

Department means the Department of Infrastructure;

dispute resolution decision has the same meaning as in section 38A of the Rail Management Act 1996;

drug means a substance that is a drug for the purposes of this Act by virtue of a declaration under section 4 or any other substance (other than alcohol) which, when consumed or used by a person, deprives that person (temporarily or permanently) of any of his or her normal mental or physical faculties;

emergency plan—see section 52;

emergency service means—
(a) the Chief Commissioner of Police;
(b) an ambulance service;
(c) the Country Fire Authority;
(d) the Metropolitan Fire and Emergency Services Board;

footpath has the same meaning as in the Road Rules;

hazard means a source of potential harm;

health and safety representative has the same meaning as in the Occupational and Health and Safety Act 2004;

level crossing means—

(a) an area where a public roadway or a relevant roadway and railway (other than a tramway or light railway) cross at substantially the same level, whether or not there is a level crossing sign on the roadway at all or any of the entrances to the area; or

(b) an area where a public roadway or a relevant roadway and a tramway or light railway cross at substantially the same level and that has a level crossing sign on the roadway at each entrance to the area;

major incident means an incident or natural event that poses a serious and immediate risk to safety and includes a derailment of rolling stock, a collision, a fire or explosion,
Metropolitan Fire and Emergency Services Board means the Metropolitan Fire and Emergency Services Board established under the Metropolitan Fire Brigades Act 1958;

officer of a body corporate, unincorporated body or association or partnership has the meaning given by section 9 of the Corporations Act;

person includes a body corporate, unincorporated body or association and a partnership;

premises includes any structure, building or place (whether built on or not), and any part of such structure, building or place;

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

private siding means a siding that is managed by a person other than a person who controls the rail infrastructure that the siding connects with, or has access to, but does not include—

(a) a marshalling yard;

(b) a siding used mainly to enable rolling stock to pass other rolling stock that is on the same track;

(c) a passenger terminal;

(d) a siding of a kind that the regulations state is not a private siding;

public highway has the same meaning as in the Road Management Act 2004;
**Part 1—Preliminary**

**Rail Safety Act 2006**
No. 9 of 2006

**Preliminary**

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**public pathway** means a footpath or shared path forming part of a public road;

**public road** has the same meaning as in the *Road Management Act 2004*;

**public roadway** means an area within the meaning of paragraph (a) of the definition of *roadway* within the meaning of section 3(1) of the *Road Management Act 2004*;

**public transport safety matter** has the same meaning as it has in section 3 of the *Transport Integration Act 2010*;

**rail contractor** means a person who—

(a) whether or not under an agreement with a rail infrastructure manager or rolling stock operator designs, commissions, constructs, manufactures, supplies, installs, erects, maintains, repairs, modifies or decommissions any thing that may be used as rail infrastructure or rolling stock; or

(b) is engaged directly or indirectly by a rail infrastructure manager or rolling stock operator to supply rail infrastructure operations or rolling stock operations to that rail infrastructure manager or rolling stock operator, and includes a sub-contractor;
rail infrastructure means the facilities that are necessary to operate a railway safely and includes, but is not limited to, railway track, associated track structures and works (such as cuttings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works), over-track structures, under-track structures, service roads, signalling systems, rolling stock control systems, communications systems, notices and signs, overhead electrical power supply systems, and associated buildings, workshops, depots, yards, plant, machinery and equipment, but does not include rolling stock;

rail infrastructure manager means a person who controls rail infrastructure;

rail infrastructure operations means designing, commissioning, constructing, manufacturing, erecting, installing, operating, maintaining, repairing, modifying, decommissioning or managing rail infrastructure;

rail operations means rail infrastructure operations or rolling stock operations;

rail operator means a rail infrastructure manager or rolling stock operator;

rail or road crossing means—
(a) a railway crossing; or
(b) a bridge carrying—
   (i) a public roadway or relevant roadway over a railway; or
   (ii) a public pathway or relevant pathway over a railway; or
(c) a bridge carrying a railway over—
   (i) a public roadway or relevant roadway; or
   (ii) a public pathway or relevant pathway;

rail safety work—see section 7;

rail safety worker means a person who has carried out, is carrying out or is about to carry out, rail safety work and includes—
   (a) a person who is employed or engaged by a rail operator to carry out rail safety work;
   (b) a person engaged by a person (other than by a rail operator) to carry out rail safety work;
   (c) a trainee;
   (d) a volunteer;

railway means a guided system designed for the movement of rolling stock that has the capability of transporting passengers or freight or both on a railway track with a railway track gauge of 600 millimetres or more, together with its rail infrastructure, and includes—
   (a) a heavy railway;
   (b) a light railway;
   (c) a monorail railway;
   (d) an inclined railway;
   (e) a tramway;
   (f) a railway within a marshalling yard or passenger or freight terminal;
   (g) a private siding;
(h) a railway that is prescribed by the regulations to be a railway;

Note
Section 6 sets out the railways to which this Act does not apply.

railway crossing means—
(a) a level crossing;
(b) any area where a public pathway or relevant pathway crosses a railway at substantially the same level;

railway premises means—
(a) land (including any premises on the land) on or in which is situated any item or part of an item of rail infrastructure; or
(b) land (including any premises on the land) on or in which is situated any over-track structure or part of an over-track structure, or on or in which is situated any under-track structure or part of an under-track structure; or
(c) land (including any premises on land) on or in which documents or records required for, or relating to, the accreditation of an accredited rail operator are kept; or
(d) freight centres or depots; or
(e) maintenance depots; or
(f) premises including an office, building or housing used in connection with the carrying out of rail operations; or
(g) rolling stock or other vehicles associated with the railway; or
(h) workshops; or
(i) any railway track, works or other thing that is part of anything mentioned in paragraphs (e) to (h)—
but does not include any residential premises;

*registered employee organisation* means an organisation, of which some or all of the members are employees, that is registered under the Fair Work (Registered Organisations) Act 2009 of the Commonwealth.

*registered medical practitioner* means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

*relevant pathway* means a footpath or shared path that does not form part of a public road;

*relevant road manager* means—
(a) in relation to a public roadway or public pathway—the coordinating road authority in respect of the public road of which that roadway or pathway is a part;

S. 3(1) def. of registered employee organisation amended by No. 74/2009 s. 19.

S. 3(1) def. of registered medical practitioner substituted by No. 13/2010 s. 51(Sch. item 46.2).

S. 3(1) def. of relevant pathway inserted by No. 69/2007 s. 54(1)(a).

S. 3(1) def. of relevant road manager inserted by No. 69/2007 s. 54(1)(a).
(b) in relation to a relevant roadway or relevant pathway—the person who has care and management of the relevant roadway or relevant pathway or is the owner or occupier of the land on which there is that relevant roadway or relevant pathway;

*relevant roadway* means an area that is developed for, or has as one of its main uses, the driving or riding of motor vehicles, whether or not that area is—

(a) open to or used by the public; or

(b) a public highway—

but does not include a public roadway;

*residential premises* means premises, or a part of premises, that is used for predominantly residential purposes;

*road infrastructure* has the same meaning as in the *Road Management Act 2004*;

*Road Rules* means the Road Rules within the meaning of the *Road Safety (Road Rules) Regulations 1999*;

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

**rolling stock operations** means—

(a) operating rolling stock; or

(b) designing, commissioning, constructing, manufacturing, maintaining, repairing or modifying rolling stock;

**rolling stock operator** means a person who is entitled to operate rolling stock on a railway because the person is—

(a) also the rail infrastructure manager who controls the railway on which the rolling stock is operated; or

(b) a party to an agreement that allows them to operate rolling stock on that railway; or

(c) allowed to operate rolling stock on that railway under a binding access arrangement or dispute resolution decision;

**safety audit** means an inspection of—

(a) any of the following or a part of the following—

(i) rail infrastructure used in carrying out accredited rail operations;

(ii) rolling stock used in carrying out accredited rail operations;

(iii) accredited rail operations; or
(b) the performance of, or any aspect of the performance of—

(i) the employees of an accredited rail operator; or

(ii) a rail contractor within the meaning of paragraph (b) of the definition of rail contractor who supplies rail operations to an accredited rail operator;

Safety Director means the Director, Transport Safety within the meaning of section 3 of the Transport Integration Act 2010;

safety interface agreement—see Division 2 of Part 4;

safety management system—see Division 4 of Part 3;

Secretary means the Secretary to the Department;

shared path has the same meaning as in Rule 242 of the Road Rules;

substance means substance in any form (whether gaseous, liquid, solid or other) and includes material, preparation, extract and admixture;
supply includes—

(a) in relation to goods—supply and resupply by way of sale, exchange, lease, hire or hire purchase, whether as principal or agent;

(b) in relation to services—provide, grant or confer, whether as principal or agent;

transport safety officer has the same meaning as it has in section 2(1) of the Transport (Compliance and Miscellaneous) Act 1983;

Tribunal means Victorian Civil and Administrative Tribunal established by the Victorian Civil and Administrative Tribunal Act 1998;

utility means—

(a) an entity (whether publicly or privately owned) which provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like services under the authority of an Act of Victoria or the Commonwealth;

(b) a road authority within the meaning of the Road Management Act 2004;

Victorian Institute of Forensic Medicine Director means the Director within the meaning of the Victorian Institute of Forensic Medicine Act 1985;
section 3

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

(2) For the purposes of this Act, a rail infrastructure manager is deemed to carry out rail infrastructure operations supplied to the rail infrastructure manager by—

(a) a rail contractor engaged directly or indirectly by the rail infrastructure manager to supply those operations to the rail infrastructure manager; or

(b) a sub-contractor of the rail contractor referred to in paragraph (a).

(3) For the purposes of this Act, a rolling stock operator is deemed to carry out rolling stock operations supplied to the rolling stock operator by—

(a) a rail contractor engaged directly or indirectly by the rolling stock operator to supply those operations to the rolling stock operator; or

(b) a sub-contractor of the rail contractor referred to in paragraph (a).

(4) For the purposes of this Act—

(a) an accredited rail operator is deemed to carry out rail infrastructure operations or rolling stock operations supplied to the accredited rail operator by—

(i) a rail contractor engaged directly or indirectly by the accredited rail operator to supply those operations to the accredited rail operator; or

(ii) a sub-contractor of the rail contractor referred to in subparagraph (i); and
(b) rail infrastructure operations or rolling stock operations referred to in paragraph (a) are deemed to be accredited rail operations.

(5) For the purposes of this Act—

(a) a rail infrastructure manager is deemed to carry out rail infrastructure operations carried out for that manager by a labour-hire contractor;

(b) a rolling stock operator is deemed to carry out rolling stock operations carried out for that operator by a labour-hire contractor.

(6) In subsection (5)—

labour-hire contractor means an individual whose services are supplied to a rail infrastructure manager or rolling stock operator under an agreement or arrangement between—

(a) the person that employs or engages that individual; and

(b) as the case requires, that manager or operator—

to carry out rail infrastructure operations or rolling stock operations (as the case requires).

3A Transport Integration Act 2010

This Act is transport legislation within the meaning of the Transport Integration Act 2010.

3B Accredited tourist and heritage railway operator

The Minister, by notice published in the Government Gazette, may declare an accredited rail operator to be an accredited tourist and heritage railway operator if the Minister considers
that the operator is carrying out accredited rail operations for the purpose of operating a tourist and heritage railway.

4 Declaration of substances to be a drug

The Minister, by Order published in the Government Gazette, may declare any substance to be a drug for the purposes of Part 6.

Note
An Order under this section is disallowable by either House of Parliament: see section 104.

5 Meaning of control

A person controls rail infrastructure if the person—

(a) owns the rail infrastructure and uses that infrastructure to—

(i) operate rolling stock on a railway forming part of that infrastructure; or

(ii) allow another person to operate rolling stock on a railway forming part of that infrastructure; or

(b) is entitled, under a right conferred by an Act or an agreement, to use rail infrastructure to—

(i) operate rolling stock on a railway forming part of that infrastructure; or

(ii) allow another person to operate rolling stock on a railway forming part of that infrastructure; or

(c) is required under a binding access arrangement or dispute resolution decision to allow another person to operate rolling stock on a railway forming part of rail infrastructure that the person—
(i) owns; or
(ii) uses under a right conferred by an Act or an agreement.

6 Railways to which this Act does not apply

This Act does not apply to—

(a) a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations; or
(b) a railway that is operated solely within an amusement or theme park; or
(c) a slipway; or
(d) a railway used only to guide a crane; or
(e) an aerial cable operated system; or
(f) a railway that the regulations state is a railway to which this Act does not apply.

7 Rail safety work

For the purposes of this Act, rail safety work means—

(a) driving, despatching, or any other activity which is capable of controlling or affecting the movement of rolling stock;
(b) signalling, and signalling operations, receiving and relaying of communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
(c) coupling or uncoupling rolling stock;
( ca) loading or unloading rolling stock;
Part 1—Preliminary

(d) designing, constructing, repairing, modifying, maintaining, monitoring, inspecting or testing of—

(i) rolling stock, including checking that the rolling stock is working properly before being used or operated; or

(ii) civil or electric traction infrastructure; or

(iii) signalling or telecommunications equipment;

(e) installing components in relation to rolling stock;

(f) any work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, monitoring, inspecting or testing of rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used or operated;

(g) installing or maintaining any part of rail infrastructure or of the telecommunications system relating to it or used in connection with it, or of the means of supplying electricity directly to a railway or to any rolling stock using the rail infrastructure or to the telecommunications system;

(h) receiving and relaying of communications;

(i) any work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
(j) any work involving the decommissioning or disposal of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;

(k) any work involving the development, management or monitoring of safe working systems for railways;

(l) any work in relation to ensuring the safety of—

(i) rail safety workers on a railway;

(ii) any persons working on or near a railway, whether or not the person working on or near the railway track is carrying out rail safety work;

(m) any other work that is prescribed by the regulations as rail safety work—

but does not include any work referred to in paragraphs (a) to (l) that is prescribed by the regulations not to be rail safety work.

8 Approval of person to take blood samples for the purposes of Part 6

The Victorian Institute of Forensic Medicine Director may, in writing, approve a person to take blood samples for the purposes of Part 6 if he or she is of the opinion that the person has the appropriate qualifications, training and experience to take such samples.

9 Declaration of an alcohol and drug control law of another State or Territory to be corresponding law

The Minister, by Order published in the Government Gazette, may declare a law of another State or a Territory of the Commonwealth
that creates an offence substantially similar to an offence created by section 76(1) to be a corresponding law.

10 References to contraventions of Acts to be read as including references to contraventions of regulations

A reference in this Act to the commission of an offence against, or a contravention of, this Act includes a reference to the commission of an offence against, or a contravention of, regulations made under this Act.

11 Objects and principles of rail safety

(1) The objects of this Act are to promote—

(a) the safety of rail operations;

(b) the effective management of safety risks in rail operations;

(c) continuous improvement in rail safety management;

(d) public confidence in the safety of rail transport;

(e) the involvement of relevant stakeholders in rail safety.

(2) The Parliament does not intend by Part 2 to create in any person any legal right or give rise to any civil cause of action.

11A National consistency

It is the intention of Parliament that this Act form part of a nationally consistent scheme that regulates and promotes the maintenance of, and continuous improvement in, rail safety.
12 Crown to be bound

(1) This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act or the regulations.
PART 2—PRINCIPLES OF RAIL SAFETY

13 Principle of shared responsibility

(1) Rail safety is the shared responsibility of—

(a) rail operators; and

(b) rail safety workers; and

(c) other persons who—

(i) design, commission, construct, manufacture, supply, install, erect, maintain, repair, modify or decommission rail infrastructure or rolling stock; and

(ii) supply rail infrastructure operations or rolling stock operations to rail operators; and

(d) the Safety Director; and

(e) the public.

(2) The level and nature of responsibility that a person referred to in subsection (1), or falling within a class of person referred to in subsection (1), has for rail safety is dependent on the nature of the risk to rail safety that the person creates from the carrying out of an activity (or the making of a decision) and the capacity that person has to control, eliminate or mitigate that risk.

14 Principle of accountability for managing safety risks

Managing risks associated with the carrying out of rail infrastructure operations or rolling stock operations is the responsibility of the person best able to control that risk.
15 **Principle of integrated risk management**

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

16 **Principle of enforcement**

Enforcement of this Act and regulations made under this Act should be undertaken for the purpose of—

(a) protecting public safety;

(b) promoting improvement in rail safety;

(c) removing incentive for any unfair commercial advantage that might be derived from contravening the rail safety requirements under this Act or the regulations; and

(d) influencing the attitude and behaviour of persons whose actions may have adverse impacts on rail safety.

17 **Principle of transparency and consistency**

Rail regulatory decision making processes should be timely, transparent and nationally consistent.

18 **Principle of participation, consultation and involvement of all affected persons**

The persons and classes of persons referred to in section 13 should—

(a) participate in or be able to participate in; and

(b) be consulted on; and
(c) be involved in—
the formulation and implementation of measures to manage risks to safety associated with rail operations.
PART 3—RAIL SAFETY DUTIES AND OTHER SAFETY REQUIREMENTS

Division 1—The concept of ensuring safety

19 The concept of ensuring safety

(1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety requires the person to—
   (a) eliminate risks to safety so far as is reasonably practicable; and
   (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.

(2) To avoid doubt, for the purposes of Divisions 2 and 3 or regulations made for the purposes of those Divisions, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety—
   (a) the likelihood of the hazard or risk concerned eventuating;
   (b) the degree of harm that would result if the hazard or risk eventuated;
   (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
   (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
(e) the cost of eliminating or reducing the hazard or risk.

Division 2—Safety duties of rail infrastructure managers and rolling stock operators

20 Duty of rail infrastructure managers to ensure safety of rail infrastructure operations

(1) A rail infrastructure manager must, so far as is reasonably practicable, ensure the safety of rail infrastructure operations carried out by the rail infrastructure manager.

Penalty: In the case of a natural person, 1800 penalty units;
In the case of a body corporate, 9000 penalty units.

(2) Without limiting subsection (1), a rail infrastructure manager contravenes that subsection if the rail infrastructure manager fails to do any of the following—

(a) provide or maintain rail infrastructure that is, so far as is reasonably practicable, safe;

(b) provide or maintain systems of rail safety work that are, so far as is reasonably practicable, safe;

(c) provide, so far as is reasonably practicable, such—

(i) information, instruction, training or supervision to rail safety workers as is necessary to enable those workers to perform their rail safety work in a way that is safe; and
(ii) information to persons on railway premises (other than rail safety workers) as is necessary to enable those persons to ensure their safety.

(3) An offence against subsection (1) is an indictable offence.

Note
However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

21 Duty of rolling stock operators to ensure safety of rolling stock operations

(1) A rolling stock operator must, so far as is reasonably practicable, ensure the safety of rolling stock operations carried out by the rolling stock operator.

Penalty: In the case of a natural person, 1800 penalty units;
In the case of a body corporate, 9000 penalty units.

(2) Without limiting subsection (1), a rolling stock operator contravenes that subsection if the rolling stock operator fails to do any of the following—

(a) provide or maintain rolling stock that is, so far as is reasonably practicable, safe;

(b) provide or maintain systems of rail safety work that are, so far as is reasonably practicable, safe;
(c) provide, so far as is reasonably practicable, such—

(i) information, instruction, training or supervision to rail safety workers as is necessary to enable those workers to perform their rail safety work in a way that is safe; and

(ii) information to persons on railway premises (other than rail safety workers) as is necessary to enable those persons to ensure their safety.

(3) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

Division 3—Safety duties of other persons

22 Rail contractor duties

(1) A rail contractor who—

(a) designs, commissions, constructs, manufactures, supplies, installs, erects, maintains, repairs, modifies or decommissions any thing; and

(b) knows, or ought reasonably to know, that the thing is to be or was used as rail infrastructure or rolling stock—

must—

(c) ensure, so far as is reasonably practicable—

(i) that the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed,
manufactured, supplied, installed, erected, maintained, repaired or modified; or

(ii) that the thing is decommissioned safely; and

(d) carry out, or arrange the carrying out, of such testing and examination as may be necessary for compliance with this section; and

(e) in the case of a thing to which paragraph (c)(i) applies, take such action as is necessary to ensure that there will be available in connection with the use of the thing adequate information about—

(i) the use for which the thing was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired or modified; and

(ii) the results of any testing or examination referred to in paragraph (d); and

(iii) any conditions necessary to ensure the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired or modified.

Penalty: In the case of a natural person, 1800 penalty units;
In the case of a body corporate, 9000 penalty units.
(2) A rail contractor who supplies rail infrastructure operations or rolling stock operations to a rail operator must, so far as is reasonably practicable, ensure the safety of those operations.

Penalty: In the case of a natural person, 1800 penalty units; In the case of a body corporate, 9000 penalty units.

(3) Without limiting subsection (2), a rail contractor contravenes that subsection if the rail contractor fails to do any of the following—

(a) in the case of a rail contractor that manages or operates rail infrastructure, provide or maintain rail infrastructure that is, so far as is reasonably practicable, safe;

(b) in the case of a rail contractor that operates rolling stock, provide or maintain rolling stock that is, so far as is reasonably practicable, safe;

(c) provide or maintain systems of rail safety work that are, so far as is reasonably practicable, safe;

(d) supply rail infrastructure operations or rolling stock operations in accordance with the safety management system of the rail operator that has engaged the rail contractor to supply rail infrastructure operations or rolling stock operations to them;

(e) provide, so far as is reasonably practicable, such—

   (i) information, instruction, training or supervision to rail safety workers as is necessary to enable those workers to perform their rail safety work in a way that is safe; and
Part 3—Rail Safety Duties and Other Safety Requirements

(ii) information to persons on railway premises (other than rail safety workers) as is necessary to enable those persons to ensure their safety.

(4) An offence against subsection (1) or (2) is an indictable offence.

Note
However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

(5) For the purposes of subsection (1), if the person who supplies the thing—

(a) carries on the business of financing the acquisition of the thing by customers; and

(b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and

(c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer—

the reference in subsection (1) to the person who supplies that thing is instead taken to be a reference to the third person.

22A Duties of persons providing rail operations by means of contracted personnel

(1) A person (a labour-hire entity) who under an agreement or arrangement supplies to a rail infrastructure manager the services of an individual that labour-hire entity employs or engages to carry out rail infrastructure operations for that manager must, so far as is reasonably practicable, ensure that that individual is
competent to carry out the rail infrastructure operations.

Penalty: In the case of a natural person, 1800 penalty units;
          In the case of a body corporate, 9000 penalty units.

(2) A person (a labour-hire entity) who under an agreement or arrangement supplies to a rolling stock operator the services of an individual that labour-hire entity employs or engages to carry out rolling stock operations for that operator must, so far as is reasonably practicable, ensure that that individual is competent to carry out rolling stock operations.

Penalty: In the case of a natural person, 1800 penalty units;
          In the case of a body corporate, 9000 penalty units.

(3) An offence against subsection (1) or (2) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

23 Duties of rail safety workers

(1) A rail safety worker, when carrying out rail safety work must—

(a) take reasonable care for his or her own safety; and

(b) take reasonable care for the safety of persons who may be affected by the rail safety worker's acts or omissions; and
(c) co-operate with the rail operator or rail contractor employing or engaging them with respect to any action taken by the rail operator to comply with a requirement imposed by or under this Act or the regulations.

Penalty: 1800 penalty units.

(2) A rail safety worker, when carrying out rail safety work, must not intentionally or recklessly interfere with or misuse anything provided to them by the rail operator or rail contractor employing or engaging them—

(a) in the interests of safety; or

(b) under this Act or the regulations.

Penalty: 1800 penalty units.

(3) A rail safety worker, when carrying out rail safety work, must not wilfully or recklessly place the safety of another person on or in the immediate vicinity of rail infrastructure at risk.

Penalty: 1800 penalty units.

(4) For the purposes of subsection (1)(a), (b) or (c), in determining whether a rail safety worker failed to take reasonable care, regard must be had to what the rail safety worker knew about the relevant circumstances.

(5) An offence against subsection (1), (2) or (3) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).
Division 4—Safety management systems

24 What is a safety management system?

A safety management system is the system and arrangements established and maintained by a rail operator in accordance with this Act and regulations made under this Act to ensure the safe management of the rail operations the rail operator carries out.

25 Form and contents of safety management systems

A safety management system must—

(a) be documented; and
(b) provide a comprehensive and integrated management system for all aspects of control measures adopted, including the measures adopted in accordance with section 51; and
(c) be so set out and expressed that its contents are readily accessible and comprehensible to persons who use it; and
(d) be prepared in accordance with the regulations; and
(e) contain the matters and information required by the regulations; and
(f) be kept and maintained in accordance with the regulations.

26 Rail operator must consult before establishing safety management system

A rail operator, before establishing a safety management system in relation to rail operations the rail operator carries out, must consult with—

(a) persons who work on or at railway premises or with rolling stock and any registered employee organisation representing them; and
Part 3—Rail Safety Duties and Other Safety Requirements

(b) every person employed by the rail operator who is a health and safety representative; and

c) any person with whom they have entered into a safety interface agreement.

Penalty: In the case of a natural person, 180 penalty units;

In the case of a body corporate, 900 penalty units.

27 Rail operator to have in place a safety management system

(1) A rail operator must at all times have in place a safety management system in respect of the rail operations that the rail operator carries out that complies with the requirements of this Act and the regulations.

Penalty: In the case of a natural person, 1800 penalty units;

In the case of a body corporate, 9000 penalty units.

(2) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).
28 Rail operator must comply with a safety management system

(1) A rail operator must comply with the safety management system the rail operator has in place in respect of the rail operations that the rail operator carries out.

Penalty: In the case of a natural person, 1800 penalty units;

In the case of a body corporate, 9000 penalty units.

(2) An offence against subsection (1) is an indictable offence.

Note
However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

28A Provision of access to SMS to Safety Director or transport safety officer

(1) The Safety Director may request, in writing, a rail operator to provide the Safety Director, or a transport safety officer, access to the railway premises of the rail operator, and any document or equipment at those railway premises, for the purpose of enabling the Safety Director, or the transport safety officer, to inspect the safety management system of the rail operator.

(2) A rail operator must comply with a request under subsection (1) within 7 days after receiving the request.

Penalty: 15 penalty units.
Division 5—Safety audits and audits of medical records of rail safety workers

29 Safety audits

The Safety Director may conduct, or cause to be conducted, a safety audit, to determine whether or not an accredited rail operator is satisfactorily complying with the requirements of Parts 3 and 5.

30 Audit of medical records of rail safety workers

(1) The Safety Director or a transport safety officer may from time to time, and in accordance with the regulations (if any), conduct an audit of any medical records of people employed or engaged to perform rail safety work that are held by the accredited rail operator or by a rail contractor of the accredited rail operator.

(2) An audit under this section consists of an inspection of the medical records to establish whether the accredited rail operator or rail contractor has in place appropriate medical examination procedures and health monitoring systems to ensure that people employed or engaged by the accredited rail operator or rail contractor to perform rail safety work are medically fit for the work they are required to perform.

(3) For the purposes of an audit under this section, an accredited rail operator or rail contractor must give the Safety Director or a transport safety officer access to the medical record of any person employed or engaged to perform rail safety work that is held by the accredited rail operator or rail contractor.

(4) The regulations may establish procedures for the conduct of audits under this section, including procedures to ensure the confidentiality of medical records.
Division 6—Other matters

31 Single charge for multiple contraventions of certain duties

(1) This section applies to—
   
   (a) a contravention of a provision of Division 2 or 3 by a person; and

   (b) a contravention of such a provision for which an officer of a body corporate, partnership or unincorporated body or association (including a body corporate, partnership or unincorporated body or association representing the Crown) is liable.

Note
For liability of officers, see Divisions 1 and 2 of Part 9.

(2) Subject to any contrary court order, two or more contraventions may be charged as a single offence if they arise out of the same factual circumstances.

(3) This section does not authorise contraventions of two or more provisions of Division 2 or 3 to be charged as a single offence.

(4) If two or more contraventions are charged as a single offence, a single penalty only may be imposed in respect of the contraventions.

32 Civil liability not affected by Division 2 or 3

Nothing in Division 2 or 3 is to be construed as—

(a) conferring a right of action in civil proceedings in respect of a contravention of a provision of those Divisions; or

(b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or
(c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be taken, with respect to breaches of duties or obligations imposed by the regulations.
PART 4—PROTECTION AND CONTROL OF RAIL OPERATIONS

Division 1—Rail operations and utility works

33 Safety Director may require utility works or rail operations to stop

(1) If—

(a) a utility is carrying out, or proposes to carry out, works on or in the immediate vicinity of rail infrastructure; and

(b) the Safety Director reasonably believes the works threaten, or are likely to threaten, the safety of rail operations—

the Safety Director may, subject to subsection (3), give the utility a written direction to stop, alter or not to start the works.

(2) If—

(a) a rail operator is carrying out, or proposes to carry out, rail operations on land on which there are works of a utility or within the immediate vicinity of the works of a utility; and

(b) the Safety Director reasonably believes the rail operations threaten, or are likely to threaten, the works or the safe provision by the utility of (as the case requires) gas, electricity or other like services—

the Safety Director may give the rail operator a written direction to stop, alter or not to start the rail operations.
(3) If the utility referred to in subsection (1) or (2) is a utility that provides, or intends to provide, gas, electricity or other like services, the Safety Director must consult with Energy Safe Victoria before giving a direction under either of those subsections.

(4) A utility must not fail, or refuse, to comply with a direction under subsection (1), unless the utility has a reasonable excuse.

Penalty: In the case of a natural person, 1800 penalty units;
         In the case of a body corporate, 9000 penalty units.

(5) A rail operator must not fail, or refuse, to comply with a direction under subsection (2), unless the rail operator has a reasonable excuse.

Penalty: In the case of a natural person, 1800 penalty units;
         In the case of a body corporate, 9000 penalty units.

(6) An offence against subsection (4) or (5) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

33A Safety Director may give directions in relation to safe arrangements for the conducting of works on rail land

(1) In this section—

*access* means a right to access any rail land for the purpose of conducting road works or ancillary rail works;
rail land includes—

(a) any land specified in paragraphs (a) and (b) of the definition of railway premises in section 3(1); and

(b) any land occupied by a railway infrastructure manager under the relevant rail infrastructure lease;

Rail Track means Victorian Rail Track within the meaning of section 3 of the Transport Integration Act 2010;

road authority has the same meaning as it has in section 3(1) of the Road Management Act 2004;

works contractor means any person engaged directly or indirectly by Rail Track or a road authority to conduct road works or ancillary rail works on behalf of Rail Track or the road authority, including a subcontractor;

works manager means Rail Track, a road authority or a works contractor.

(2) This section applies if—

(a) Rail Track or a road authority applies to the Safety Director for a direction under this section; and

(b) the Safety Director is satisfied that Rail Track, the road authority or a works contractor engaged by Rail Track or the road authority requires access; and

(c) the Safety Director is satisfied that—

(i) Rail Track or the road authority has made a reasonable attempt to obtain an agreement for access from the rail infrastructure manager and the rail infrastructure manager is unreasonably
refusing to enter such an agreement, or is otherwise unreasonably delaying the negotiation of such an agreement on the grounds of purported safety concerns; or

(ii) Rail Track or the road authority has entered into an agreement for access with the rail infrastructure manager and the rail infrastructure manager is unreasonably denying or limiting access on the grounds of purported safety concerns.

(3) If this section applies and the Safety Director is satisfied that arrangements for access can be made under which the proposed road works or ancillary rail works can be conducted safely, the Safety Director may issue a written notice to the rail infrastructure manager and Rail Track or the road authority warning that the Safety Director may issue a direction under this section.

(4) A notice under subsection (3)—

(a) must warn the rail infrastructure manager and Rail Track or the road authority of the Safety Director's powers under this section; and

(b) may contain suggested arrangements for access under which the proposed road works or ancillary rail works can be conducted safely; and

(c) may set a date by which—

(i) an agreement for access is to be entered into; or

(ii) if an agreement already exists, access is to be granted.
(5) If a notice is given specifying a date under subsection (4)(c) and no agreement has been entered into, or access has not been granted, by or on that date, the Safety Director may—

(a) determine the arrangements for access that are to apply; and

(b) direct the rail infrastructure manager and Rail Track or the road authority to give effect to the arrangements.

(6) A direction under subsection (5)—

(a) must be in writing; and

(b) must set out any arrangements determined by the Safety Director under that subsection; and

(c) must be accompanied by a copy of this section.

(7) A person who is given a direction under subsection (5) must comply with the direction.

Penalty: 100 penalty units.

(8) If a person is guilty of an offence against subsection (7), the person is—

(a) guilty of a further offence in respect of each day after the day on which the initial offence was committed during which the person fails to comply with the direction; and

(b) liable to a penalty of up to 100 penalty units for each further offence.

(9) The Safety Director must notify an applicant under this section of the Safety Director's decision—

(a) to refuse the application or to issue a written notice under subsection (3); and

(b) to issue a direction under subsection (5).
34 Safety Director may direct utility works or rail operations to be altered, demolished or taken away

(1) Subject to subsection (4), if works are carried out contrary to a direction under section 33(1), the Safety Director may, by written notice, direct the utility to alter, demolish or take away the works within a specified period of time.

(2) If rail operations are carried out contrary to a direction under section 33(3), the Safety Director may, by written notice, direct the rail operator who carried out the rail operations to—

(a) alter, demolish or take away any rail infrastructure within a specified period of time; or

(b) alter any rolling stock operations within a specified period of time.

(3) The period of time specified in a direction under subsection (1) or (2) must be a reasonable period of time.

(4) Before giving a direction under subsection (1) to a utility that provides, or intends to provide, gas, electricity or other like services, the Safety Director must consult with Energy Safe Victoria.

(5) A person given a direction under subsection (1) or (2) must not fail or refuse to comply with a direction under (as the case requires) subsection (1) or (2), unless the person has a reasonable excuse.

Penalty: In the case of a natural person, 1800 penalty units;

In the case of a body corporate, 9000 penalty units.
(6) An offence against subsection (5) is an indictable offence.

**Note**

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

### Division 2—Safety interface agreements

#### 34A What is a safety interface agreement?

A safety interface agreement is an agreement about managing risks to safety identified and assessed under this Division that includes provisions for—

(a) the implementation and maintenance of measures to manage those risks; and

(b) the evaluation, testing and, if appropriate, revision of those measures; and

(c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and

(d) the procedures by which each party to the agreement will monitor compliance with the obligations under the agreement; and

(e) a process for keeping the agreement under review.

#### 34B Safety interface assessment by rail operator—rail operations

(1) A rail operator must—

(a) identify and assess, so far as is reasonably practicable, risks to safety that may arise
from rail operations carried out by or on behalf of the rail operator because of, or partly because of, rail operations carried out by or on behalf of any other rail operator; and

(b) determine measures to manage, so far as is reasonably practicable, any risks identified and assessed.

(2) A rail operator must seek to enter into a safety interface agreement with the other rail operator carrying out rail operations for the purpose of managing the risks to safety identified and assessed under subsection (1).

Note
See also Division 4A of Part 4 of the Road Management Act 2004.

34C Safety interface assessment by rail infrastructure manager—rail infrastructure and public roadways or pathways

(1) A rail infrastructure manager must—

(a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from rail infrastructure operations carried out on or in relation to the rail infrastructure manager's rail infrastructure because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any public roadway or that is a public pathway; and

(b) determine measures to manage, so far as is reasonably practicable, any risks identified and assessed.
(2) A rail infrastructure manager must seek to enter into a safety interface agreement with the relevant road manager for that public roadway or public pathway for the purpose of managing the risks identified and assessed under subsection (1).

34D Safety interface assessment by rail infrastructure manager—rail infrastructure and relevant roadways or pathways

(1) A rail infrastructure manager must—

(a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from rail infrastructure operations carried out on or in relation to the rail infrastructure manager's rail infrastructure because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any relevant roadway or that is a relevant pathway; and

(b) consider and form an opinion about whether it is necessary to manage those risks to safety in conjunction with the relevant road manager for that relevant roadway or relevant pathway.

(2) If a rail infrastructure manager is of the opinion that it is necessary to manage the risks to safety identified and assessed under subsection (1) in conjunction with the relevant road manager, the rail infrastructure manager must—

(a) give the relevant road manager written notice of that opinion; and

(b) determine measures, so far as is reasonably practicable, to manage those risks to safety.

S. 34D inserted by No. 69/2007 s. 61.
(3) If the rail infrastructure manager is of the opinion that the risks to safety do not need to be managed in conjunction with the relevant road manager, the rail infrastructure manager must keep a written record of that opinion.

(4) Unless subsection (3) applies, a rail infrastructure manager must seek to enter into a safety interface agreement with the relevant road manager for the purpose of managing the risks identified and assessed under subsection (1).

34E Safety interface assessment by relevant road manager of public roadway or pathway

(1) A relevant road manager in relation to a public roadway or public pathway must—

(a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of that public roadway or that is a public pathway because of, or partly because of, rail infrastructure operations;

(b) determine measures to manage, so far as is reasonably practicable, any risks identified and assessed.

(2) A relevant road manager must have regard to—

(a) the principal object of road management; and

(b) the works and infrastructure management principles; and

(c) the functions, powers and duties of infrastructure managers under the Road Management Act 2004—

when determining measures to manage risks identified under subsection (1).
(3) A relevant road manager must seek to enter into a safety interface agreement with any rail infrastructure manager whose rail infrastructure operations are identified as contributing to a risk identified under subsection (1) for the purposes of managing that risk.

(4) In this section—

principal object of road management has the same meaning as in the Road Management Act 2004;

works and infrastructure management principles means the principles set out in section 20(2) of the Road Management Act 2004;

infrastructure manager has the same meaning as in the Road Management Act 2004.

34F Safety interface assessment by relevant road manager of relevant roadway or pathway

(1) If a relevant road manager receives written notice under section 34D(2)(a) in relation to a relevant roadway or relevant pathway, the relevant road manager must—

(a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure of that relevant roadway or that is a relevant pathway because of, or partly because of, rail infrastructure operations; and

(b) determine measures to manage, so far as is reasonably practicable, any risks identified and assessed.
(2) A relevant road manager in relation to a relevant roadway or relevant pathway must seek to enter into a safety interface agreement with any rail infrastructure manager whose rail infrastructure operations are identified as contributing to a risk identified under subsection (1) for the purposes of managing that risk.

34G Requirements under sections 34E and 34F not to affect relevant road manager's functions, obligations or powers

Nothing in section 34E or 34F authorises or requires a relevant road manager to act inconsistently with, or without regard to, the functions, obligations or powers conferred on the manager by or under an Act other than this Act.

34H Identification and assessment of risks

A rail operator or relevant road manager may identify and assess risks to safety as required under section 34B, 34C, 34D, 34E or 34F—

(a) by identifying and assessing those risks independently; or

(b) by identifying and assessing those risks jointly with, as the case requires, another rail operator or a relevant road manager; or

(c) by adopting the identification and assessment of those risks carried out by, as the case requires, another rail operator or a relevant road manager.

34I Safety interface agreements

A safety interface agreement under this Division may—

(a) be entered into by 2 or more rail operators or by one or more rail operators and one or more relevant road managers;
(b) include measures to manage any number of risks to safety that may arise because of, or partly because of, any rail operations;

(c) include measures to manage any number of risks to safety that may arise from any rail operations because of, or partly because of, the existence or use of any road infrastructure;

(d) make provision for or in relation to any matter by applying, adopting or incorporating any matter contained in any document;

(e) consist of 2 or more documents.

**34J Safety Director may give directions if persons fail to make safety interface agreements**

(1) This section applies if the Safety Director is satisfied that a rail operator or relevant road manager referred to in section 34B, 34C, 34D, 34E or 34F is—

(a) unreasonably refusing or failing to enter into a safety interface agreement with another person as required under this Division; or

(b) unreasonably delaying the negotiation of that agreement.

(2) The Safety Director may serve a written notice on the rail operator or relevant road manager (as the case requires).

(3) A written notice under subsection (2)—

(a) must warn the rail operator or relevant road manager (as the case requires) of the powers of the Safety Director under this section, including the power to issue a direction under subsection (5) at any time after a specified date; and
(b) must contain a copy of this section; and
(c) may contain suggested terms for inclusion in
a safety interface agreement.

(4) If the Safety Director serves a notice under
subsection (2) to a rail operator or relevant road
manager, the Safety Director may, in writing,
request the person served with the notice to
provide such information as the Safety Director
reasonably requires for the purposes of making a
direction under subsection (5).

(5) If a notice is issued under this section and a safety
interface agreement has not been entered into by
or on the date specified in that notice, the Safety
Director—

(a) may determine the arrangements to apply in
relation to the management of risks to safety
referred to in section 34B, 34C, 34D, 34E or
34F (as the case requires); and

(b) may direct either or both persons to whom
the notice is issued to give effect to those
arrangements; and

(c) must specify by when a direction must be
complied with.

(6) A direction under subsection (5)—

(a) must be in writing; and

(b) must set out any arrangements determined by
the Safety Director.

(7) A person who is given a direction under
subsection (5) must comply with the direction.

Penalty: In the case of a natural person,
20 penalty units;
In the case of a body corporate,
100 penalty units.
34K Register of safety interface agreements

(1) A rail operator must maintain a register of—

(a) safety interface agreements to which the rail operator is a party; and

(b) arrangements determined by the Safety Director under section 34J—

that are applicable to its rail operations.

Penalty: In the case of a natural person, 10 penalty units;

In the case of a body corporate, 50 penalty units.

(2) A relevant road manager must maintain a register of—

(a) safety interface agreements to which the road manager is a party; and

(b) arrangements determined by the Safety Director under section 34J—

that are applicable to any public roadway or public pathway or relevant roadway or relevant pathway in relation to which they are the relevant road manager.

Penalty: In the case of a natural person, 10 penalty units;

In the case of a body corporate, 50 penalty units.
PART 5—ACCREDITATION OF RAIL INFRASTRUCTURE AND ROLLING STOCK OPERATIONS

Division 1—Preliminary matters

35 Purpose of accreditation

The purpose of accreditation under this Part is to attest that a rail operator has demonstrated to the satisfaction of the Safety Director that the rail operator has the competence and capacity to manage the risks to safety associated with the rail operations for which accreditation was sought.

Division 2—Accreditation

36 Offence for certain rail infrastructure managers not to be accredited

A rail infrastructure manager must not operate, or allow to be operated, rolling stock on rail infrastructure the rail infrastructure manager controls unless the rail infrastructure manager—

(a) is accredited under this Part; or

(b) holds an exemption granted under section 63; or

(c) is exempted by the regulations from the requirement to be accredited under this Part.

Penalty: In the case of a natural person, 1000 penalty units or imprisonment for 12 months or both;

In the case of a body corporate, 2500 penalty units.
37 Rolling stock operators must not operate rolling stock unless accredited

A rolling stock operator must not operate rolling stock on rail infrastructure unless the rolling stock operator—

(a) is accredited under this Part; or
(b) holds an exemption granted under section 63; or
(c) is exempted by the regulations from the requirement to be accredited under this Part.

Penalty: In the case of a natural person, 1000 penalty units or imprisonment for 12 months or both;
In the case of a body corporate, 2500 penalty units.

38 Application for accreditation

(1) A rail infrastructure manager may apply to the Safety Director for accreditation in respect of the rail infrastructure operations the rail infrastructure manager carries out or intends to carry out.

(2) A rolling stock operator may apply to the Safety Director for accreditation in respect of the rolling stock operations the rolling stock operator carries out or intends to carry out.

(3) An application must be—

(a) made in the manner and form determined by the Safety Director; and

(b) accompanied by—

(i) the application fee set out in the regulations; and

(ii) any other things that are required by the regulations.
(4) The Safety Director may require an applicant to—
   (a) supply further information specified by the Safety Director;
   (b) verify, by statutory declaration, information supplied for the purposes of the application.

(5) The application, and any further information supplied by the applicant under subsection (4), must be signed in accordance with subsection (6) and declared by each signatory to be true and correct.

(6) The application must be signed—
   (a) if the applicant is a body corporate—
      (i) being a company within the meaning of the Corporations Act, in accordance with section 127 of that Act;
      (ii) in any other case, by each director, or each member of the committee of management, of the body corporate;
   (b) if the applicant is an unincorporated association or body, by each member of the committee of management of the association or body;
   (c) if the applicant is a partnership, by each partner;
   (d) if the applicant is an individual, by the individual.

(7) In addition, each signatory referred to in subsection (6) must declare that he or she is not a person who, under Part 2D.6 of the Corporations Act, is disqualified from managing corporations.
39 Criteria on which accreditation applications by rail infrastructure managers are to be assessed

The Safety Director must accredit a rail infrastructure manager in respect of the rail infrastructure operations the rail infrastructure manager carries out if the Safety Director is satisfied that—

(a) the rail infrastructure manager—

(i) is accredited in another State or a Territory of the Commonwealth to carry out rail infrastructure operations of a similar kind in that State or Territory; or

(ii) has the competence and capacity to carry out those operations safely; and

(b) the rail infrastructure manager has—

(i) taken all reasonable steps to comply with Division 3; and

(ii) demonstrated to the Safety Director that—

(A) the rail infrastructure manager's safety management system complies with Division 4 of Part 3; and

(B) the rail infrastructure manager has complied with section 26; and

(iii) the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the carrying out of rail infrastructure operations.
40 Criteria on which accreditation applications by rolling stock operators are to be assessed

The Safety Director must accredit a rolling stock operator in respect of the rolling stock operations the rolling stock operator carries out if the Safety Director is satisfied that—

(a) the rolling stock operator—

(i) is accredited in another State or a Territory of the Commonwealth to carry out rolling stock operations of a similar kind in that State or Territory; or

(ii) has the competence and capacity to carry out those operations safely; and

(b) the rolling stock operator has demonstrated to the Safety Director that—

(i) the rolling stock operator has taken all reasonable steps to comply with Division 3; and

(ii) the rolling stock operator's safety management system complies with Division 4 of Part 3; and

(iii) the rolling stock operator has complied with section 26; and

(c) the rolling stock operator has the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the carrying out of rolling stock operations; and
Part 5—Accreditation of Rail Infrastructure and Rolling Stock Operations

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(d) unless the rolling stock operator is also the rail infrastructure manager who controls the railway on which the rolling stock will be operated—the rolling stock operator has an agreement with the rail infrastructure manager who controls the railway on which the rolling stock operator wishes to operate particular rolling stock, and the agreement includes appropriate arrangements for the safe operation of the rolling stock.

41 Accreditation following direction

Despite section 40(d), the Safety Director may accredit a rolling stock operator in respect of the rolling stock operations the rolling stock operator carries out even though the rolling stock operator does not have the agreement referred to in section 40(d) if the Safety Director has directed the rolling stock operator under section 42 to give effect to any arrangements specified by the Safety Director.

42 Safety Director may give directions in relation to rolling stock operator applicants

(1) This section applies if—

(a) the Safety Director is satisfied that a rolling stock operator who has applied for accreditation of the rolling stock operations that they carry out, or intends to carry out, has made a reasonable attempt to obtain the agreement required by section 40(d) from the rail infrastructure manager who controls the railway on which the person proposes to operate rolling stock; and

(b) the Safety Director is satisfied that the rail infrastructure manager is unreasonably refusing to enter such an agreement, or is
otherwise unreasonably delaying the negotiation of such an agreement.

(2) The Safety Director may issue a written notice to the rolling stock operator and the rail infrastructure manager.

(3) A notice under subsection (2)—

(a) must warn the parties of the Safety Director's powers under this section; and

(b) must warn the parties that the Safety Director may issue a direction under subsection (4) at any time after a specified date; and

(c) must contain a copy of this section and section 41; and

(d) may contain suggested terms concerning the safe operation of the rolling stock.

(4) If a notice is given specifying a date under subsection (3)(b) and no agreement has been entered into by or on that date, the Safety Director—

(a) may determine the arrangements that are to apply to enable the safe operation of the rolling stock; and

(b) may direct either or both parties to give effect to the arrangements; and

(c) may specify by when a direction must be complied with.

(5) A direction under subsection (4)—

(a) must be in writing; and

(b) must set out any arrangements determined by the Safety Director under that subsection; and

(c) must be accompanied by a copy of this section and section 41.
(6) A person who is given a direction under subsection (4) must comply with the direction.

Penalty: 100 penalty units.

(7) If a person is guilty of an offence against subsection (6), the person is guilty of a further offence in respect of each day after the day on which the initial offence was committed during which the person fails to comply with the direction, and is liable to a penalty of up to 100 penalty units for each such further offence.

(8) This section applies regardless of when the relevant application for accreditation was made.

43 Safety Director may direct applicants to co-ordinate and cooperate in their accreditation applications

(1) If the Safety Director—

(a) receives applications from 2 or more rail operators for the accreditation of rail operations; and

(b) believes that the co-ordinated preparation of their applications is necessary to ensure that the rail operations of the applicants are carried out safely—

the Safety Director may give a direction to the rail operators to co-ordinate their applications.

(2) A direction under subsection (1) must be in writing.

(3) A direction under this section may require each rail operator that is the subject of the direction to provide to another rail operator, also subject to the direction, information concerning any circumstances in relation to the carrying out of rail operations by them that could constitute a hazard in relation to the carrying out of rail operations by the other rail operator.
(4) A person who is given a direction under subsection (1) must comply with the direction.
Penalty: 100 penalty units.

(5) A rail operator that has co-ordinated the preparation of their application in accordance with this section must include in the application reference to information given by the operator, or given to, another rail operator in accordance with a direction under this section.
Penalty: 100 penalty units.

44 Time within which Safety Director must make decision whether to accredit

(1) Subject to this section, the Safety Director must decide whether to accredit an applicant within 6 months of receiving an application from the applicant.

(2) The Safety Director may, before the expiry of the period specified in subsection (1), decide to extend the period within which he or she may decide whether to accredit an applicant.

(3) If the Safety Director decides to extend the period within which he or she may decide whether to accredit an applicant, the Safety Director must notify—

(a) the applicant of that decision and the new period within which the Safety Director intends to make his or her decision whether to accredit the applicant; and

(b) the Secretary of that decision.

(4) A notification under subsection (3) must be in writing.
(5) The Secretary must include in the Department's report of operations details of every decision made by the Safety Director under subsection (2) in the year to which the relevant report of operations relates.

45 Notification and reasons to be given if accreditation refused

(1) If the Safety Director refuses to accredit an applicant, the Safety Director must—

(a) notify the applicant—

(i) of that refusal; and

(ii) that they have a right to seek review of the Safety Director's decision under Part 7; and

(b) give the applicant a statement of reasons for the refusal to accredit the applicant.

(2) A notification under subsection (1)(a) and a statement of reasons under subsection (1)(b) must be—

(a) in writing; and

(b) given to the applicant as soon as practicable after the Safety Director makes his or her decision to refuse to accredit the applicant.

46 Restrictions and conditions concerning accreditation

(1) In accrediting a rail infrastructure manager or rolling stock operator, the Safety Director may limit the accreditation in any way the Safety Director thinks appropriate.

(2) Without limiting subsection (1), the Safety Director may—

(a) impose conditions on the accreditation; or
(b) restrict the scope of the accreditation so that it only applies—

(i) in the case of an accreditation of a rail infrastructure manager, in respect of part of a railway or of a particular type of service;

(ii) in the case of an accreditation of a rolling stock operator, in respect of part of a particular type of service or rolling stock.

(3) An accreditation is also subject to any condition set out in the regulations that applies to the accreditation.

(4) In addition, an accredited rail operator who is accredited in another State or a Territory of the Commonwealth to do anything that is similar to what the operator is accredited to do in Victoria is subject to the condition that he, she or it must advise the Safety Director in writing immediately if the operator's accreditation in the other State or the Territory expires or is cancelled, suspended, varied, surrendered, withdrawn or revoked.

(5) In addition, it is a condition of accreditation that an accredited rail operator must take reasonable steps to ensure that a rail safety worker who carries out, or is about to carry out, rail safety work for that operator—

(a) does not have more than the prescribed concentration of alcohol in his or her blood or breath; or

(b) is not impaired by a drug.

(6) If an accredited rail operator who has been accredited subject to a restriction carries out any action that is inconsistent with the restriction, the accredited rail operator is not accredited to carry
out that action for the purposes of section 36 or 37.

(7) A condition requiring compliance with any provision of a code of practice (whether approved under section 91 or not) is of no effect.

### 46A Initial and annual accreditation fees

(1) An accredited rail operator must pay to the Safety Director—

(a) for being accredited—

(i) an initial accreditation fee of 500 fee units; or

(ii) an initial accreditation fee specified or determined under the regulations in relation to that operator, if that fee is greater than 500 fee units; and

(b) an annual accreditation fee of 500 fee units or an annual accreditation fee specified or determined under the regulations in relation to that operator, if that fee is greater than 500 fee units.

(2) A fee referred to in subsection (1) must be paid to the Safety Director by the prescribed date and in accordance with the regulations.

(3) This section is a condition of accreditation unless the accredited rail operator is granted an exemption under section 46B.

### 46B Fee exemptions for accredited tourist and heritage railway operators

(1) An accredited tourist and heritage railway operator may apply to the Safety Director for an exemption from the requirement to pay a fee under section 46A.
(2) On receipt of an application under subsection (1), the Safety Director may grant or refuse to grant an exemption.

(3) If the Safety Director refuses to grant an exemption, the Safety Director must—

(a) notify the applicant—

(i) of that refusal; and

(ii) that they have a right to seek review of the Safety Director's decision under Part 7; and

(b) give the applicant a statement of reasons for the refusal.

(4) A notification under subsection (3)(a) and a statement of reasons under subsection (3)(b) must be—

(a) in writing; and

(b) given to the applicant as soon as practicable after the Safety Director makes his or her decision to refuse to grant the exemption.

47 How long accreditation lasts

(1) An accreditation remains in force until—

(a) it is cancelled or surrendered; or

(b) the expiry of any period of time specified by the Safety Director under section 59(3)(b)(iii) (for disciplinary reasons).

(2) The Safety Director may give a temporary accreditation for a period of less than 12 months.
48 Offence to fail to comply with conditions etc.

(1) An accredited rail operator must comply with any condition or restriction imposed on the accreditation that the operator has been given notice of.

Penalty: In the case of a natural person, 1800 penalty units or imprisonment for 12 months or both;

In the case of a body corporate, 9000 penalty units.

(2) An accredited rail operator must comply with the condition of accreditation set out in section 46(5).

Penalty: 2000 penalty units.

(3) In any proceedings for an offence under subsection (2) against an accredited rail operator, the fact that a rail safety worker has been found guilty of an offence against section 76(1)(a) or (b) while carrying out rail safety work for that operator is admissible in evidence.

(4) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

Division 3—Risk management requirements for accreditation

49 Application of Division

(1) This Division applies to every rail infrastructure manager and rolling stock operator who applies under Division 2 to be accredited under this Part in respect of (as the case requires) the rail infrastructure operations or rolling stock operations they carry out or intend to carry out.
(2) The rail infrastructure manager or rolling stock operator must, as part of their application, include information, in writing, that evidences that they have taken all reasonable steps to comply with the requirements of this Division.

50 Identification of incidents and hazards, and risk assessment

(1) A rail infrastructure manager must—
   (a) identify all incidents which could occur on or at rail infrastructure or while carrying out rail infrastructure operations; and
   (b) identify all hazards that could cause, or contribute to causing, those incidents.

(2) A rolling stock operator must—
   (a) identify all incidents which could occur while carrying out rolling stock operations; and
   (b) identify all hazards that could cause, or contribute to causing, those incidents.

(3) A rail infrastructure manager or rolling stock operator must document all aspects of any identification required by (as the case requires) subsection (1) or (2), including the methods and criteria used for identifying the incidents and hazards.

(4) A rail operator must conduct a comprehensive and systematic assessment in relation to all possible incidents and all hazards identified in accordance with (as the case requires) subsection (1) or (2).

(5) An assessment must involve an examination and analysis of the hazards and incidents identified in accordance with (as the case requires) subsection (1) or (2) that provide the rail operator with a detailed understanding of all aspects of risk.
to safety associated with the incidents, including—

(a) the nature of each hazard and incident; and

(b) the likelihood of each hazard causing an incident; and

(c) in the event of an incident occurring—
   (i) its magnitude; and
   (ii) the severity of its consequences of the incident; and

(d) the range of control measures considered.

(6) In conducting an assessment, the rail operator must—

(a) consider hazards cumulatively as well as individually; and

(b) use assessment methodologies (whether quantitative or qualitative, or both) that are appropriate to the hazards being considered.

(7) The rail operator must document all aspects of the assessment, and the documentation must—

(a) describe the methodology used in the examination and analysis; and

(b) state all the matters specified in subsection (5)(a) to (d); and

(c) contain judgments as to the matters specified in subsection (5)(a) and (b), and reasons for those judgments; and

(d) contain, in relation to the range of control measures considered—
   (i) statements as to their viability and effectiveness; and
   (ii) reasons for selecting certain control measures and rejecting others.
(8) In this section—

*incident* includes major incident.

51 Measures to control likelihood, magnitude and severity of consequences of incidents

A rail operator must adopt measures that eliminate or, if it is not practicable to eliminate, that reduce, so far as is reasonably practicable—

(a) the likelihood of an incident referred to in section 50 occurring; or

(b) in the event of an incident referred to in section 50 occurring—

(i) the magnitude of the incident; and

(ii) the severity of the consequences of the incident.

52 Emergency planning

(1) A rail infrastructure manager must prepare an emergency plan for—

(a) the rail infrastructure the rail infrastructure manager controls; and

(b) the rail infrastructure operations the rail infrastructure manager carries out.

(2) A rolling stock operator must prepare an emergency plan for the rolling stock operations the rolling stock operator carries out.

(3) The emergency plan so prepared by a rail infrastructure manager or rolling stock operator must be included among the measures adopted under section 51.

(4) The emergency plan must—

(a) at least address all—

(i) major incidents identified under section 50; and
(ii) hazards identified under section 50 that could cause or contribute to causing the major incidents identified under that section; and

(ab) address and include any other matters or things that are prescribed; and

(b) be prepared in—

(i) conjunction with emergency services and any other person who is prescribed; and

(ii) accordance with the regulations; and

(c) be kept and maintained in accordance with the regulations; and

(d) be provided to the emergency services and any other person who is prescribed; and

(e) be tested in accordance with the regulations.

Division 4—Variation and surrender of accreditation

53 Accredited rail operator may apply for variation or revocation of conditions and restrictions

(1) An accredited rail operator may apply to the Safety Director to—

(a) vary a condition or restriction of an accreditation; or

(b) revoke a condition or restriction of an accreditation.

(2) An application must—

(a) be in writing; and

(b) set out the reasons for the variation or revocation of the condition or restriction.
(3) The Safety Director must consider an application he or she receives under this section.

(4) The Safety Director may, as the case requires—
   (a) grant or refuse to grant the variation; or
   (b) agree or refuse to agree to the revocation.

(5) If the Safety Director refuses to grant a variation or refuses to agree to a revocation, the Safety Director must—
   (a) notify the accredited rail operator—
       (i) of that refusal; and
       (ii) that they have a right to seek review of the Safety Director's decision under Part 7; and
   (b) give the accredited rail operator a statement of reasons for the refusal.

(6) A notification under subsection (5)(a) and a statement of reasons under subsection (5)(b) must be—
   (a) in writing; and
   (b) given to the accredited rail operator as soon as practicable after the Safety Director makes his or her decision to refuse to grant the variation or to agree to the revocation (as the case requires).

54 Application for variation of accreditation is required in certain cases

(1) This section applies if an accredited rail operator proposes to make a change to, or to the manner of carrying out, accredited rail operations that may reasonably be expected—
   (a) to change the nature, character and scope of the accredited rail operations; or
(b) to not be within the competence and capacity for which the accredited rail operator is accredited.

(1A) The accredited rail operator must apply to the Safety Director for a variation of its accreditation.

(2) An accredited rail operator must not make any change to, or to the manner of carrying out, accredited rail operations if—

(a) the change requires the accredited rail operator to apply for variation to the conditions or restrictions of the accreditation to which the accredited rail operator is subject; and

(b) the variation has not been granted.

Penalty: In the case of a natural person, 1000 penalty units or imprisonment for 12 months or both; In the case of a body corporate, 2500 penalty units.

(3) An application under this section must—

(a) be in writing; and

(b) describe—

(i) the nature, character and scope of the change in rail operations; or

(ii) how those operations are not, or may not be, within the competence and capacity for which the accredited rail operator is accredited; and

(c) contain the prescribed information (if any).
(3A) The Safety Director may require an accredited rail operator who has applied for a variation—

(a) to supply further information requested by the Safety Director;

(b) to verify by statutory declaration any information supplied to the Safety Director.

(4) The Safety Director must consider an application he or she receives under this section.

(5) The Safety Director must grant or refuse to grant the variation within the relevant period.

(6) If the Safety Director refuses to grant a variation, the Safety Director must—

(a) notify the accredited rail operator—

(i) of that refusal; and

(ii) that they have a right to seek review of the Safety Director's decision under Part 7; and

(b) give the accredited rail operator a statement of reasons for the refusal.

(7) A notification under subsection (6)(a) and a statement of reasons under subsection (6)(b) must be in writing.

(8) The Safety Director may issue guidelines relating to the identification of changes that require applications for variation of an accreditation.

(9) In this section—

relevant period, in relation to a decision to grant or refuse to grant a variation, means—

(a) 6 months after the application for that variation was received by the Safety Director; or
(b) if the Safety Director requests further information for the purposes of making that decision, 6 months, or such other period, as is agreed between the Safety Director and the accredited rail operator, after the Safety Director receives the last of the information requested; or

(c) if the Safety Director, by notice in writing given to the accredited rail operator before the expiry of the relevant 6 months, specifies another period, that period—

whichever is longer.

54A Where application for variation relates to co-operative rail operations

Sections 43 and 62A apply to an application for variation of an accreditation as if a reference in those sections to an application for accreditation were a reference to an application for variation of accreditation.

54B Prescribed conditions and restrictions

The accreditation of a rail operator that is varied under this Part is subject to any conditions or restrictions prescribed by the regulations and that are applicable to the accreditation as varied.

55 Safety Director may vary, revoke or impose new conditions or restrictions of an accreditation on own initiative

(1) The Safety Director may at any time on his or her own initiative—

(a) vary or revoke a condition or restriction of an accreditation; or

(b) impose a new condition or restriction.
(2) Before taking action under this section, the Safety Director must—

(a) give the accredited rail operator written notice of the action that the Safety Director proposes to take; and

(b) allow the accredited rail operator to make written representations about the intended action within 10 business days (or any other period that the Safety Director and the accredited rail operator agree upon).

(3) Subsection (2) does not apply if the Safety Director considers it necessary to take immediate action in the interests of public safety.

(4) The Safety Director must—

(a) give the accredited rail operator—

(i) details of any action taken under subsection (1); and

(ii) details of any change to the conditions or restrictions of the accreditation that occur as a result of any amendment to the regulations; and

(iii) a statement of reasons for any action taken under subsection (1); and

(b) notify the accredited rail operator that the operator has a right to seek review of the Safety Director's decision under Part 7.

(5) The Safety Director must give the details, the statement of reasons and notice under subsection (4) in writing.
56 Surrender of accreditation

(1) An accredited rail operator may request the Safety Director to consent to the surrender of the accredited rail operator's accreditation.

(2) A request must be in writing.

(3) On receipt of a request, the Safety Director may consent to the surrender of the accreditation.

(4) If the Safety Director refuses to consent to the surrender of an accreditation, the Safety Director must—
   (a) notify the accredited rail operator—
       (i) of that refusal; and
       (ii) that they have a right to seek review of the Safety Director's decision under Part 7; and
   (b) give the rail operator a statement of reasons for the refusal.

(5) A notification under subsection (4)(a) and a statement of reasons under subsection (4)(b) must be—
   (a) in writing; and
   (b) given to the rail operator as soon as practicable after the Safety Director makes his or her decision to refuse consent to the surrender of the accreditation.

57 False or misleading information

(1) A person must not in, or in relation to an application for—
   (a) an accreditation; or
   (b) a variation of accreditation; or
(c) a variation of a condition or restriction of an accreditation—
give information that is false or misleading in a material detail.

Penalty: In the case of a natural person,
60 penalty units or 6 months
imprisonment or both;
In the case of a body corporate,
300 penalty units.

(2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—

(a) in the case of false information—that the information was true; or

(b) in the case of misleading information—that the information was not misleading.

Division 5—Disciplinary action

58 Power of immediate suspension

(1) The Safety Director may, subject to and in accordance with the regulations (if any), immediately suspend an accreditation if the Safety Director considers it necessary to do so—

(a) in the interests of public safety; or

(b) to protect the safety of rail safety workers.

(2) The Safety Director may immediately suspend an accreditation under this section without holding an inquiry under section 59.
(3) A suspension under this section may be for a specified period or until a specified event or until a further determination is made by the Safety Director.

(4) An accredited rail operator whose accreditation has been suspended under this section may, by notice served on the Safety Director, require the Safety Director to hold an inquiry under section 59.

(5) The Safety Director must commence an inquiry under section 59 within 7 days after the service on him or her of a notice under subsection (4).

(6) If an inquiry is held under section 59, a suspension under this section, if then still in effect, ceases to have effect on the completion of that inquiry.

(7) Nothing in this section limits any power of the Safety Director under section 59.

59 Disciplinary action against an accredited rail operator

(1) The Safety Director may hold an inquiry for the purpose of determining whether proper cause exists for taking disciplinary action against a relevant person.

(2) There is proper cause for taking disciplinary action against a relevant person if the relevant person—

(a) has contravened this Act or Division 4B of Part VII of the Transport (Compliance and Miscellaneous) Act 1983 (regardless of whether or not the person has been prosecuted in relation to that contravention); or

(b) has not complied with Division 4 of Part 3; or
(c) does not have the financial capacity, or public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the carrying out of rail infrastructure operations or rolling stock operations (as the case requires); or

(d) has not demonstrated to the Safety Director that the person is able to carry out rail infrastructure operations or rolling stock operations (as the case requires) safely; or

(e) obtained the accreditation improperly; or

(f) has not paid any fee required by the regulations.

(3) If, following an inquiry, the Safety Director is satisfied that proper cause for taking disciplinary action against the relevant person exists, the Safety Director may do one or more of the following—

(a) reprimand the relevant person;

(b) if the relevant person is an accredited rail operator—

   (i) warn the person that should further proper cause for taking disciplinary action be found to exist, the person may be disqualified from holding an accreditation;

   (ii) impose one or more new conditions or restrictions of the accreditation;

   (iii) impose an expiry date on the accreditation;

   (iv) suspend the accreditation for a specified period or until a specified event or until a further determination is made by the Safety Director;
(v) cancel the accreditation immediately or with effect from a specified later date;

(c) disqualify the relevant person from holding an accreditation—
    (i) until a specified event; or
    (ii) until a further determination is made by the Safety Director.

(4) In this section—

    relevant person means an accredited rail operator or a person who was an accredited rail operator.

60 Procedure and powers concerning disciplinary inquiries

(1) In exercising his or her powers under section 59, the Safety Director—

    (a) must act fairly and according to equity and good conscience without regard to technicalities or legal forms; and

    (b) is not required to conduct himself or herself in a formal manner; and

    (c) is not bound by rules or practice as to evidence but may inform himself or herself in relation to any matter in any manner that he or she thinks fit.

(2) For the purpose of, and in connection with, any inquiry under section 59, the Safety Director has the powers conferred by sections 14, 15, 16, 20, 20A and 21A of the Evidence (Miscellaneous Provisions) Act 1958 on a board appointed by the Governor in Council and those sections apply as if the Safety Director was the sole member of the board.
(3) The procedure of the Safety Director on or in connection with an inquiry under section 59 is in his or her discretion.

61 Effect of suspension

A person whose accreditation is suspended is not accredited during the period of suspension.

Division 6—Miscellaneous

62 Accreditation cannot be transferred

(1) An accreditation—

(a) is personal to the person who holds it;
(b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it;
(c) does not vest by operation of law in any other person.

(2) A purported transfer, assignment or lease of an accreditation and any other purported dealing with an accreditation by the person who holds it is of no effect.

(3) This section has effect despite anything in any Act or rule of law to the contrary.

62A Co-ordination between Safety Director and corresponding Rail Safety Regulator

(1) This section applies if the Safety Director receives an application for accreditation under Division 2, or for variation of accreditation or the conditions or restrictions of accreditation under Division 4, that indicates that the applicant is accredited, or is seeking accreditation in another State or a Territory of the Commonwealth under a corresponding law to carry out rail operations of a similar kind to those the subject of the application under Division 2 or 4.
(2) The Safety Director must, as soon as possible and before deciding whether or not to grant the application, consult with the relevant corresponding Rail Safety Regulator, or Regulators, in relation to the application with a view to the outcome of the application being consistent with the outcome of applications made in the other jurisdiction or jurisdictions.

(3) The Safety Director, in complying with subsection (2), must take into account any guidelines prepared under subsection (5).

(4) If the Safety Director does not, in relation to an application, act consistently with the provisions of any guidelines prepared under subsection (5), the Safety Director must give the applicant reasons for not so acting.

(5) The Minister may prepare guidelines about the manner of the consultation the Safety Director is required to undertake under subsection (2).

(6) In this section—

corresponding law means—

(a) the law of another State or a Territory of the Commonwealth corresponding, or substantially corresponding, to this Act; or

(b) a law of another State or a Territory of the Commonwealth that is declared under the regulations to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;
corresponding Rail Safety Regulator means—

(a) the person who, or body that, has functions or powers under a corresponding law that substantially correspond to the functions and powers of the Safety Director under this Part; or

(b) a person prescribed by the regulations as the corresponding Rail Safety Regulator for another State or a Territory of the Commonwealth for the purposes of this Act.

63 Accreditation exemptions for private siding rail operations

(1) The following persons may apply to the Safety Director for an exemption from the requirement to be accredited under this Part—

(a) a rail infrastructure manager who carries out rail infrastructure operations using or in relation to a private siding;

(b) a rolling stock operator who carries out rolling stock operations in a private siding.

(2) An application under this section must be—

(a) in writing; and

(b) accompanied by—

(i) a safety interface agreement; and

(ii) such other information as the Safety Director reasonably requires to enable the application to be considered; and

(iii) the prescribed fee.
(3) On receipt of an application under this section, the Safety Director may grant or refuse to grant an exemption.

(4) In deciding whether to exempt a rail infrastructure manager or rolling stock operator under subsection (3), the Safety Director must have regard to—

(a) the scale and complexity of the private siding; and
(b) the extent of the railway track layout and other rail infrastructure of the private siding; and
(c) the risks to safety associated with the operation and use of the private siding; and
(d) the safety interface agreement accompanying the application; and
(e) any other matters that the Safety Director considers relevant.

(5) An exemption granted under this section is subject to the terms, conditions and limitations specified in the exemption that are—

(a) imposed by the Safety Director; or
(b) prescribed by the regulations.

(6) A person granted an exemption under this section must comply with the terms, conditions and limitations that are specified in the exemption.

Penalty: In the case of a natural person, 1000 penalty units or imprisonment for 12 months or both;

In the case of a body corporate, 2500 penalty units.
(7) If the Safety Director refuses to grant an exemption, the Safety Director must—

(a) notify the applicant—

(i) of that refusal; and

(ii) that they have a right to seek review of the Safety Director's decision under Part 7; and

(b) give the applicant a statement of reasons for the refusal.

(8) A notification under subsection (7)(a) and a statement of reasons under subsection (7)(b) must be—

(a) in writing; and

(b) given to the applicant as soon as practicable after the Safety Director makes his or her decision to refuse to grant the exemption.

(9) The Safety Director may issue guidelines as to how the Safety Director will have regard to the criteria set out in subsection (4).

64 Revocation of accreditation exemptions for private siding rail operations

(1) If the Safety Director considers that a private siding—

(a) used by an exempted rail infrastructure manager for the carrying out of rail infrastructure operations; or

(b) in relation to which an exempted rail infrastructure manager carries out rail infrastructure operations; or

(c) in which an exempted rolling stock operator carries out rolling stock operations—

no longer meets the criteria set out in section 63(4), the Safety Director may, by notice, revoke
(as the case requires) the exempted rail infrastructure manager's or exempted rolling stock operator's exemption.

(2) A notice must be—
   (a) in writing; and
   (b) given to the exempted rail infrastructure manager or exempted rolling stock operator as soon as practicable after the Safety Director makes his or her decision to revoke the exemption.

(3) A revocation takes effect on the date stated in the notice.

(4) In this section—

   exempted rail infrastructure manager means a rail infrastructure manager who holds an exemption granted under section 63;

   exempted rolling stock operator means a rolling stock operator who holds an exemption granted under section 63;

   exemption means an exemption granted under section 63.

65 Accredited rail operators must demonstrate ongoing compliance with risk management requirements

(1) An accredited rail operator must, within the relevant period, demonstrate to the Safety Director that the accredited rail operator has taken all reasonable steps to comply with the requirements in sections 50 to 52.
(2) In this section—

**relevant period** means—

(a) 5 years after the date on which the accredited rail operator was accredited in respect of the rail operations the operator carries out or any other period that is prescribed for the purposes of this paragraph; and

(b) every 5 years or any other period that is prescribed thereafter.

66 Exemption from ongoing compliance with risk management requirements

(2) An accredited tourist and heritage railway operator may apply to the Safety Director for an exemption from the requirement to comply with section 65.

(3) An application under this section must be—

(a) in writing; and

(b) accompanied by—

(i) such other information as the Safety Director reasonably requires to enable the application to be considered; and

(ii) the prescribed fee.

(4) On receipt of an application under this section, the Safety Director may grant or refuse to grant an exemption.
(5) In deciding whether to grant an exemption, the Safety Director must have regard to—

(a) the scale and complexity of the accredited rail operations carried out by the accredited tourist and heritage railway operator; and

(b) the extent of the railway track layout and other rail infrastructure used for the carrying out by the accredited tourist and heritage railway operator of accredited rail operations; and

(c) the risks to safety associated with the carrying out by the accredited tourist and heritage railway operator of accredited rail operations; and

(d) any other matters that the Safety Director considers relevant.

(6) An exemption granted under this section is subject to the terms, conditions and limitations specified in the exemption that are—

(a) imposed by the Safety Director; or

(b) prescribed by the regulations.

(7) If the Safety Director refuses to grant an exemption, the Safety Director must—

(a) notify the applicant—

   (i) of that refusal; and

   (ii) that they have a right to seek review of the Safety Director's decision under Part 7; and

(b) give the applicant a statement of reasons for the refusal.
(8) A notification under subsection (7)(a) and a statement of reasons under subsection (7)(b) must be—

(a) in writing; and

(b) given to the applicant as soon as practicable after the Safety Director makes his or her decision to refuse to grant the exemption.

(9) The Safety Director may issue guidelines as to how the Safety Director will have regard to the criteria set out in subsection (5).

67 Accredited rail operator must investigate railway accidents and incidents

(1) An accredited rail operator must investigate and prepare a report into any railway accident or incident that may affect accredited rail operations the operator carries out.

(2) A report under subsection (1) must be prepared in accordance with the regulations.

68 Accredited rail operator must put into effect emergency plan without delay

(1) An accredited rail operator who has prepared an emergency plan must put the emergency plan into effect without delay if—

(a) a major incident occurs; or
(b) an incident occurs which could reasonably be expected to lead to a major incident.

Penalty: In the case of a natural person, 1800 penalty units or imprisonment for 12 months or both;

In the case of a body corporate, 9000 penalty units.

(2) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

69 Accredited rail operator must notify emergency services and others of a major incident

(1) An accredited rail operator must, immediately after becoming aware of the occurrence of a major incident, notify—

(a) the emergency services with whom the accredited rail operator prepared the emergency plan in conjunction with; and

(b) the Safety Director; and

(c) the Chief Investigator—

of the occurrence of the major incident.

Penalty: In the case of a natural person, 1800 penalty units or imprisonment for 12 months or both;

In the case of a body corporate, 9000 penalty units.
(2) An offence against subsection (1) is an indictable offence.

Note

However, the offence may be heard and determined summarily (see section 28 of the Criminal Procedure Act 2009).

69A Accredited rail operators to provide information

(1) The Safety Director may, by notice in writing given to an accredited rail operator, require the accredited rail operator to provide to the Safety Director on or before a specified date and in a manner and form approved by the Safety Director, any or all of the following—

(a) information concerning measures taken by the accredited rail operator to promote rail safety;

(b) information relating to the financial capacity or insurance arrangements of the accredited rail operator;

(c) other matters relating to rail safety or the accreditation of the accredited rail operator that the Safety Director reasonably requires.

(2) An accredited rail operator must comply with a notice given to the accredited rail operator under subsection (1).

Penalty: In the case of a natural person, 60 penalty units;
         In the case of a body corporate, 300 penalty units.

(3) An accredited rail operator must provide to the Safety Director, in a manner and form approved by the Safety Director and at the prescribed times and in respect of the prescribed periods,
information prescribed by the regulations for the purposes of this subsection relating to rail safety or accreditation.

Penalty: In the case of a natural person, 60 penalty units;
In the case of a body corporate, 300 penalty units.
PART 6—ALCOHOL AND OTHER DRUG CONTROLS FOR RAIL SAFETY WORKERS

Division 1—Preliminary matters

70 Definitions

In this Part—

*accident* means an occurrence on a railway that involves the death or injury of a person or damage to property arising out of the operation of rolling stock;

*irregular incident* means an occurrence on a railway that is not an accident but involves a breach of the operating rules or procedures of the railway.

71 Presumptions in relation to presence of concentrations of alcohol and other drugs

(1) For the purposes of this Part if it is established that at any time within 3 hours after an alleged offence against section 76(1)(a), a certain concentration of alcohol was present in the blood or breath of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that not less than that concentration of alcohol was present in the worker's blood or breath (as the case requires) at the time at which the offence is alleged to have been committed.

(2) For the purposes of this Part if it is established that at any time within 3 hours after an alleged offence against section 76(1)(b), a certain drug was present in the body of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the worker's body at the time at which the offence is alleged to have been committed.
(3) For the purposes of an alleged offence against section 76(1)(g) or (h) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the breath of the rail safety worker charged or found by an analyst to be present in the sample of blood taken from the worker charged (as the case requires) was not due solely to the consumption of alcohol after having carried out rail safety work unless the contrary is proved by the worker charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.

(4) For the purposes of an alleged offence against section 76(1)(b) it must be presumed that a drug found by an analyst to be present in the sample of blood or urine taken from the rail safety worker charged was not due solely to the consumption or use of that drug after carrying out rail safety work unless the contrary is proved by the worker charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.

72 When a rail safety worker is not to be taken to be impaired

For the purposes of sections 79 and 80, a rail safety worker is not to be taken to be impaired unless his or her behaviour or appearance is such as to give rise to a reasonable suspicion that he or she is unable to carry out rail safety work properly.
73 When a rail safety worker is to be regarded as being about to carry out rail safety work

For the purposes of this Part, a rail safety worker is to be regarded as being about to carry out rail safety work if the worker has arrived at his or her place of work but has not yet begun work.

74 Findings of guilt and convictions and subsequent offences

If a rail safety worker who is found guilty or convicted of an offence against any one of the paragraphs of section 76(1) or against that section has at any time been found guilty or convicted of—

(a) an offence against the same or any other of those paragraphs or against that section; or

(b) an offence against any corresponding law—

the finding of guilt, or conviction, of the offence against that paragraph or section is to be taken to be a conviction for a subsequent offence.

75 Entry into residential premises not allowed without a warrant

For the avoidance of doubt it is declared that nothing in this Part, or Division 4B of Part VII of the Transport (Compliance and Miscellaneous) Act 1983, requires a person who is in residential premises to allow a transport safety officer or a member of the police force to enter that premises without a warrant.
Division 2—Offences, testing and analysis

76 Offences involving alcohol

(1) A rail safety worker is guilty of an offence if he or she—

(a) carries out rail safety work while more than the prescribed concentration of alcohol is present in his or her blood or breath; or

(b) carries out rail safety work while impaired by a drug; or

(c) refuses to undergo a preliminary breath test in accordance with section 77 when required under that section to do so; or

(d) refuses to undergo an assessment of drug impairment in accordance with section 79 when required under that section to do so or refuses to comply with any other requirement made under section 79(1); or

(e) refuses to comply with a requirement made under section 78(1), (2) or (9); or

(f) refuses to comply with a requirement made under section 80(1); or

(g) within 3 hours after having carried out rail safety work furnishes a sample of breath for analysis by a breath analysing instrument under section 78 and—

(i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that more than the prescribed concentration of alcohol is present in his or her breath; and
(ii) the concentration of alcohol indicated by the analysis to be present in his or her breath was not due solely to the consumption of alcohol after having carried out the rail safety work; or

(h) has had a sample of blood taken from him or her in accordance with section 78 or 82 within 3 hours after having carried out rail safety work and—

(i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 83 and the analyst has found that at the time of analysis more than the prescribed concentration of alcohol was present in that sample; and

(ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after having carried out the rail safety work.

(2) A rail safety worker may be convicted or found guilty of an offence under subsection (1)(c), (d), (e) or (f) even if—

(a) in the case of an offence under paragraph (c), a prescribed device was not presented to the worker at the time of the making of the requirement; and

(b) in the case of an offence under paragraph (d)—

(i) a requirement to undergo an assessment of drug impairment was not made at a place where such an assessment could have been carried out; and
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(ii) a person authorised to carry out an assessment of drug impairment was not present at the place where the requirement was made at the time it was made; and

(c) in the case of an offence under paragraph (e)—

(i) a breath analysing instrument was not available at the place where the requirement was made at the time it was made; and

(ii) a person authorised to operate a breath analysing instrument was not present at the place where the requirement was made at the time it was made; and

(iii) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(iv) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made; and

(d) in the case of an offence under paragraph (f)—

(i) the person requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; and

(ii) the person requiring a sample of urine had not nominated a registered medical practitioner or approved health professional to whom the sample was to be furnished for analysis; and
(iii) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made.

(3) To avoid doubt, in proceedings for an offence under subsection (1)(e) a state of affairs or circumstance referred to in subsection (2)(c)(i) or (ii) is not a reason of a substantial character for a refusal for the purposes of section 78(8).

(4) A rail safety worker who is guilty of an offence under subsection (1) is liable—

(a) in the case of a first offence, to a fine not exceeding 12 penalty units; and

(b) in the case of a subsequent offence, to a fine not exceeding 25 penalty units or to imprisonment for a term of not more than 3 months.

(5) In proceedings for an offence under subsection (1)(b), proof that—

(a) the rail safety worker was carrying out rail safety work; and

(b) one or more drugs were present in the rail safety worker's body at the time at which he or she carried out rail safety work; and

(c) the behaviour of the rail safety worker on an assessment of drug impairment carried out under section 79 was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and
(d) the behaviour usually associated with a person who has consumed or used that drug or those drugs would result in the person being unable to carry out rail safety work properly—

is, in the absence of evidence to the contrary, proof that the rail safety worker carried out rail safety work while impaired by a drug.

(6) It is a defence to a charge under subsection (1)(g) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.

(7) It is a defence to a charge under subsection (1)(h) for the person charged to prove that the result of the analysis was not a correct result.

(8) In any proceedings for an offence under subsection (1)(g) or (h) evidence as to the effect of the consumption of alcohol on the accused is admissible for the purpose of rebutting the presumption created by section 71(3) but is otherwise inadmissible.

(9) On convicting a rail safety worker, or finding a rail safety worker guilty, of an offence under subsection (1) the court must cause to be entered in the records of the court—

(a) in the case of an offence under subsection (1)(a), the level of concentration of alcohol found to be present in that person's blood or breath; and

(b) in the case of an offence under subsection (1)(g), the level of concentration of alcohol found to be recorded or shown by the breath analysing instrument; and
(c) in the case of an offence under subsection (1)(h), the level of concentration of alcohol found to be present in the sample of blood.

77 Preliminary breath tests

(1) A transport safety officer may at any time require a rail safety worker whom he or she believes on reasonable grounds is about to carry out rail safety work to undergo a preliminary breath test by a prescribed device before carrying out that work.

(2) A transport safety officer or, subject to subsection (3), a member of the police force may require—

(a) a rail safety worker whom he or she believes on reasonable grounds—

(i) is carrying out rail safety work; and

(ii) has alcohol present in his or her breath; or

(b) a rail safety worker whom he or she believes on reasonable grounds has within the last 3 preceding hours carried out rail safety work on a railway when an accident or irregular incident occurred involving the rail safety worker—


to undergo a preliminary breath test by a prescribed device.

(3) A member of the police force only has power to require a rail safety worker to undergo a preliminary breath test under subsection (2)(b) in the case of an irregular incident if—

(a) he or she has contacted a person nominated for the purposes of this provision by the person or body responsible for the operation of the railway; and
(b) the person contacted has confirmed that an irregular incident did occur and has agreed that it is appropriate to conduct a preliminary breath test; and

(c) that person is unable or likely to be unable, after making all reasonable efforts, to arrange for a preliminary breath test to be conducted on the rail safety worker by a transport safety officer within the 3 hours period.

(4) A rail safety worker required to undergo a preliminary breath test must do so by exhaling continuously into the device to the satisfaction of the transport safety officer or member of the police force.

(5) A rail safety worker is not obliged to undergo a preliminary breath test if more than 3 hours have passed since the rail safety worker last carried out rail safety work.

(6) A rail safety worker who, in the course of a period of duty is unexpectedly required to carry out rail safety work, may request a transport safety officer to conduct on him or her a preliminary breath test by a prescribed device.

(7) A transport safety officer must comply with a request made under subsection (6).

Penalty: 12 penalty units.

(8) The result of a preliminary breath test conducted under this section is not admissible against the rail safety worker tested in a proceeding for an offence against section 76(1).
(9) However, the result of a preliminary breath test that was conducted under this section is admissible against the rail safety worker tested in a disciplinary proceeding unless the test was conducted at the request of the rail safety worker under subsection (6).

(10) A member of the police force who conducts a preliminary breath test under this section must ensure that the operation of the railway is disrupted no more than is reasonably necessary as a result of the testing.

78 Breath analysis

(1) If a rail safety worker undergoes a preliminary breath test when required by a transport safety officer or a member of the police force under section 77 to do so and—

   (a) the test in the opinion of the transport safety officer or member of the police force in whose presence it is made indicates that the rail safety worker's breath contains alcohol; or

   (b) the rail safety worker, in the opinion of the transport safety officer or member of the police force, refuses or fails to carry out the test in the manner specified in section 77(4)—

any transport safety officer or, if the requirement for the preliminary breath test was made by a member of the police force, any member of the police force may require the rail safety worker to furnish a sample of breath for analysis by a breath analysing instrument and for that purpose may further require the rail safety worker to accompany a transport safety officer or member of the police force to a police station or other place where the sample of breath is to be furnished and
to remain there until the rail safety worker has furnished the sample of breath and been given the certificate referred to in subsection (5) or until 3 hours after the carrying out of the rail safety work, whichever is sooner.

(2) A transport safety officer or member of the police force may require any rail safety worker who is required to undergo a drug assessment under section 79 to furnish a sample of breath for analysis by a breath analysing instrument and may, for that purpose, require the rail safety worker to remain at the place at which the rail safety worker is required to remain for the purposes of the drug assessment until—

(a) the person has furnished the sample of breath and been given the certificate referred to in subsection (5) and the drug assessment has been carried out; or

(b) 3 hours after the carrying out of rail safety work— whichever is the sooner.

(3) The person who required a sample of breath under subsection (1) or (2) may require the rail safety worker who furnished it to furnish one or more further samples if it appears to him or her that the breath analysing instrument is incapable of measuring the concentration of alcohol present in the sample, or each of the samples, previously furnished in grams per 210 litres of exhaled air because the amount of sample furnished was insufficient or because of a power failure or malfunctioning of the instrument or for any other reason whatsoever.
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(4) A breath analysing instrument must be operated by a person authorised to do so by the Chief Commissioner of Police.

(5) As soon as practicable after a sample of a rail safety worker's breath is analysed by means of a breath analysing instrument the person operating the instrument must sign and give to the rail safety worker whose breath has been analysed a certificate containing the prescribed particulars produced by the breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in his or her breath.

(6) A rail safety worker who furnishes a sample of breath under this section must do so by exhaling continuously into the instrument to the satisfaction of the person operating it.

(7) A rail safety worker is not obliged to furnish a sample of breath under this section if more than 3 hours have passed since the rail safety worker last carried out rail safety work.

(8) A rail safety worker must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis if he or she satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her.

(9) The person who required a sample of breath under subsection (1), (2) or (3) from a rail safety worker may require the rail safety worker to allow a registered medical practitioner or an approved health professional nominated by the person requiring the sample to take from him or her a sample of blood for analysis if it appears to him or her that—
(a) the rail safety worker is unable to furnish the required sample of breath on medical grounds or because of some physical disability; or

(b) the breath analysing instrument is incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by the rail safety worker for any reason whatsoever—

and for that purpose may further require that rail safety worker to accompany a transport safety officer or a member of the police force to a place where the sample is to be taken and to remain there until the sample has been taken or until 3 hours after the carrying out of the rail safety work, whichever is sooner.

(10) The registered medical practitioner or approved health professional who takes a sample of blood under subsection (9) must deliver a part of the sample to the person who required it to be taken and another part to the rail safety worker from whom it was taken.

(11) A rail safety worker who allows the taking of a sample of his or her blood in accordance with subsection (9) must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis.

(12) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with subsection (9).

Penalty: 12 penalty units.
(13) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional believed on reasonable grounds was allowed to be taken under subsection (9).

(14) A rail safety worker who is required under this section to furnish a sample of breath for analysis may, immediately after being given the certificate referred to in subsection (5), request the person making the requirement to arrange for the taking in the presence of a member of the police force of a sample of the rail safety worker's blood for analysis at the rail safety worker's own expense by a registered medical practitioner or an approved health professional nominated by the member of the police force.

(15) A part of a sample of blood taken under subsection (14) must be delivered to the person who required the sample of breath under this section.

(16) Nothing in subsection (14) relieves a rail safety worker from any penalty under section 76(1)(e) for refusing to furnish a sample of breath.

(17) Evidence derived from a sample of breath furnished in accordance with a requirement made under this section is not rendered inadmissible by a failure to comply with a request under subsection (14) if reasonable efforts were made to comply with the request.

(18) If the question whether a breath analysing instrument was incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by a rail safety worker is relevant on a hearing for
an offence against section 76(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this subsection, a document—

(a) purporting to be a print-out produced by that instrument in respect of that sample; and

(b) purporting to be signed by the person who operated the instrument—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(19) A document referred to in subsection (18) does not cease to be admissible in evidence or, in the absence of evidence to the contrary, to be proof of the facts and matters contained in it only because of the fact that it refers to the Road Safety Act 1986 and not to the Rail Safety Act 2006 and the reference to the Road Safety Act 1986 in that document and in each other document produced by the breath analysing instrument in respect of the sample of breath must be construed for all purposes as a reference to the Rail Safety Act 2006.

79 Drug assessment

(1) A transport safety officer may at any time require a rail safety worker whom he or she believes on reasonable grounds is about to carry out, or is carrying out, rail safety work to undergo an assessment of drug impairment if in the opinion of the transport safety officer, that rail safety worker's behaviour or appearance indicates that the rail safety worker may be impaired for a reason other than alcohol alone.
(2) A transport safety officer or, subject to subsection (3), a member of the police force, may require—

(a) a rail safety worker whom he or she believes on reasonable grounds has within the last 3 preceding hours carried out rail safety work on a railway when an accident or irregular incident occurred involving the rail safety worker; or

(b) a rail safety worker whom he or she has required under section 77 to undergo a preliminary breath test; or

(c) a rail safety worker required under section 78 to furnish a sample of breath or from whom a sample of blood was required to be taken under section 78(9)—

to undergo an assessment of drug impairment if, in the opinion of the transport safety officer or member of the police force, that rail safety worker's behaviour or appearance indicates that he or she may be impaired for a reason other than alcohol alone and for that purpose may further require the rail safety worker to accompany a transport safety officer or member of the police force (as the case requires) to a place where the assessment is to be carried out and to remain there until the assessment has been carried out or until 3 hours after the carrying out of the rail safety work, whichever is sooner.

(3) A member of the police force only has power to require a rail safety worker to undergo an assessment of drug impairment under subsection (2)(a) in the case of an irregular incident if—

(a) he or she has contacted a person nominated for the purposes of this provision by the person or body responsible for the operation of the railway; and
(b) the person contacted has confirmed that an irregular incident did occur and has agreed that it is appropriate to conduct an assessment of drug impairment.

(4) A rail safety worker is not obliged to undergo an assessment of drug impairment if more than 3 hours have passed since the rail safety worker last carried out rail safety work.

(5) An assessment of drug impairment must be carried out by—

(a) a transport safety officer authorised to do so by the Safety Director; or

(b) a member of the police force authorised to do so by the Chief Commissioner of Police.

(6) An assessment of drug impairment must be carried out in accordance with the procedure specified in a notice under subsection (7).

(7) The Safety Director may, by notice published in the Government Gazette, specify the procedure to be followed in assessing drug impairment.

(8) The carrying out of an assessment of drug impairment on a rail safety worker must be video-recorded if the rail safety worker was involved in an accident or irregular incident unless the prosecution satisfies the court that a video-recording has not been made because of exceptional circumstances.

(9) If the rail safety worker on whom an assessment of drug impairment was carried out is subsequently charged with an offence under section 76(1)(b), and the carrying out of the assessment of drug impairment is video-recorded, a copy of the video-recording must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.
(10) Subject to subsection (11), the video-recording of the carrying out of an assessment of drug impairment on a rail safety worker is only admissible in a proceeding against that rail safety worker for an offence against this Act for the purpose of establishing that the assessment of drug impairment was carried out in accordance with the procedure specified in a notice under subsection (7).

(11) Evidence obtained as a result of an assessment of drug impairment carried out on a rail safety worker is inadmissible as part of the prosecution case in proceedings against that rail safety worker for any offence if the video-recording of the assessment and any related material and information should have been but has not been destroyed as required by section 81.

(12) In any proceeding under this Act—

(a) the statement of a transport safety officer that on a particular date he or she was authorised by the Safety Director under subsection (5)(a) to carry out an assessment of drug impairment; or

(b) the statement of a member of the police force that on a particular date he or she was authorised by the Chief Commissioner of Police under subsection (5)(b) to carry out an assessment of drug impairment; or

(c) a certificate purporting to be signed by the Safety Director that a transport safety officer named in it is authorised by the Safety Director under subsection (5) to carry out an assessment of drug impairment; or
(d) a certificate purporting to be signed by the Chief Commissioner of Police that a member of the police force named in it is authorised by the Chief Commissioner of Police under subsection (5) to carry out an assessment of drug impairment—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that transport safety officer or member of the police force (as the case requires).

80 Blood and urine samples

(1) If a rail safety worker undergoes an assessment of drug impairment when required under section 79 to do so and the assessment, in the opinion of the transport safety officer or member of the police force (as the case requires) carrying it out, indicates that the rail safety worker may be impaired by a drug or drugs, the transport safety officer or member of the police force (as the case requires) may require the rail safety worker to do either or both of the following—

(a) allow a registered medical practitioner or an approved health professional nominated by that transport safety officer or member of the police force to take from the rail safety worker a sample of that rail safety worker's blood for analysis;

(b) furnish to a registered medical practitioner or an approved health professional nominated by that transport safety officer or member of the police force a sample of that rail safety worker's urine for analysis—

and for that purpose may further require the person to accompany the transport safety officer or member of the police force to a place where the sample is to be taken or furnished and to remain
there until the sample has been taken or furnished or until 3 hours after the carrying out of the rail safety work, whichever is sooner.

(2) A transport safety officer or member of the police force must not require a rail safety worker to allow a sample of his or her blood to be taken for analysis under subsection (1)(a) if that rail safety worker has already had a sample of blood taken from him or her under section 78 after carrying out rail safety work.

(3) The registered medical practitioner or approved health professional who takes a sample of blood or is furnished with a sample of urine under this section must deliver a part of the sample to the transport safety officer or member of the police force who required it to be taken or furnished and another part to the rail safety worker from whom it was taken or by whom it was furnished.

(4) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood, or be furnished with a sample of the urine, of any other person in accordance with this section.

Penalty: 12 penalty units.

(5) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood, or being furnished with any sample of urine, which the practitioner or approved health professional believed on reasonable grounds was required to be taken from, or be furnished by, any person under this section.
(6) If the person on whom an assessment of drug impairment was carried out is subsequently charged with an offence under section 76(1)(b), a copy of a written report on that assessment prepared by the transport safety officer or member of the police force who carried it out and containing the prescribed particulars must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.

81 Destruction of identifying information

(1) In this section, relevant offence means—

(a) an offence under section 76(1)(b) or (f); or

(b) any other offence arising out of the same circumstances; or

(c) any other offence in respect of which the evidence obtained as a result of the assessment of drug impairment has probative value.

(2) If an assessment of drug impairment has been carried out on a rail safety worker under section 79 and—

(a) the rail safety worker has not been charged with a relevant offence at the end of the period of 12 months after the assessment; or

(b) the rail safety worker has been so charged but the charge is not proceeded with, the prosecution for the offence is discontinued or the rail safety worker is not found guilty of the offence, whether on appeal or otherwise, before the end of that period—

the Safety Director or Chief Commissioner of Police (as the case requires) must, subject to subsection (4), destroy, or cause to be destroyed, at the time specified in subsection (3) any video-
recording made of the assessment and any related material and information.

(3) A video-recording and any related material and information referred to in subsection (2) must be destroyed—

(a) in a case to which subsection (2)(a) applies, immediately after that period of 12 months; or

(b) in a case to which subsection (2)(b) applies—

(i) within 1 month after the conclusion of the proceeding and the end of any appeal period; or

(ii) if the proceeding has been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month after dismissal under that section.

(4) A transport safety officer or member of the police force (as the case requires) may, before the end of a period referred to in subsection (3)(b), apply without notice to the Magistrates' Court for an order extending that period and, if the Court makes such an order, the reference to the period in subsection (3) is a reference to that period as so extended.

(5) If the Magistrates' Court makes an order under subsection (4), it must give reasons for its decision and cause a copy of the order to be served on the person on whom the assessment of drug impairment was carried out.

(6) If a video-recording or related material and information is required to be destroyed in accordance with this section, the Safety Director or Chief Commissioner of Police (as the case requires) must, if the rail safety worker on whom the assessment was carried out so requests, within
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14 days after receiving the request, notify that rail safety worker in writing whether the destruction has occurred.

(7) A person who knowingly—
   (a) fails to destroy; or
   (b) uses, or causes or permits to be used—
       a video-recording or related material and information required by this section to be destroyed is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.

(8) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any video-recording or related material and information required by this section to be destroyed except in good faith for the purposes of a relevant offence is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.

82 Blood samples to be taken in certain cases

(1) In this section—
    doctor means a registered medical practitioner and includes a police surgeon.

(2) If a rail safety worker enters or is brought to a place for examination or treatment in consequence of an accident (whether within Victoria or not), the rail safety worker must allow a doctor to take from the rail safety worker at that place a sample of his or her blood for analysis.

Penalty: For a first offence, 12 penalty units;
          For a subsequent offence, 25 penalty units or imprisonment for 3 months.
(3) Subsection (2) does not apply if—

(a) in the opinion of the doctor first responsible for the examination or treatment of the rail safety worker the taking of a blood sample from the rail safety worker would be prejudicial to his or her proper care and treatment; or

(b) a transport safety officer or a member of the police force has notified the doctor first responsible for the examination or treatment of the rail safety worker, in writing, that the rail safety worker has undergone a preliminary breath test which did not indicate that the prescribed concentration of alcohol was exceeded; or

(c) the doctor first responsible for the examination or treatment of the rail safety worker believed on reasonable grounds that the rail safety worker was not a rail safety worker; or

(d) a member of the police force or a doctor has notified the doctor first responsible for the examination or treatment of the rail safety worker, in writing, that a sample of the rail safety worker's blood was taken by a doctor before the person entered or was brought to the place for examination or treatment.

(4) A rail safety worker to whom subsection (2) applies and who is unconscious or otherwise unable to communicate must be taken to allow the taking of a sample of his or her blood by a doctor at a place which he or she enters or to which he or she is brought for examination or treatment.
(5) If a sample of a rail safety worker's blood is taken in accordance with this section, evidence of the taking of it, the analysis of it or the results of the analysis must not be used in evidence in any legal proceeding except—

(a) for the purposes of section 83; or

(b) for a proceeding for an offence against section 48(2); or

(c) for the purposes of the Transport Accident Act 1986—

but may be given—

(d) to the Transport Accident Commission and, for the purposes of a review under the Transport Accident Act 1986, to the Tribunal; and

(e) to the Department for the purposes of accident research.

(6) A person must not hinder or obstruct a doctor attempting to take a sample of the blood of any other person in accordance with this section.

Penalty: 12 penalty units.

(7) No action lies against a doctor in respect of anything properly and necessarily done by the doctor in the course of taking any sample of blood which the doctor believes on reasonable grounds was required or allowed to be taken from a rail safety worker under this section.
83 Evidentiary provisions—blood tests

(1) In this section—

approved analyst means a person who by virtue of subsection (2) is to be taken to be a properly qualified analyst for the purposes of this section;

approved expert means a person who by virtue of subsection (3) is to be taken to be a properly qualified expert for the purposes of this section;

properly qualified analyst means—

(a) an approved analyst; or

(b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (6) or (7), as the case requires;

properly qualified expert means—

(a) an approved expert; or

(b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under subsection (8).

(2) A person who is an approved analyst within the meaning of section 57 of the Road Safety Act 1986 is to be taken to be a properly qualified analyst for the purposes of this section.
(3) A person who is an approved expert within the meaning of section 57 of the Road Safety Act 1986 is to be taken to be a properly qualified expert for the purposes of this section.

(4) If—

(a) the question whether a rail safety worker was or was not at any time under the influence of alcohol or any other drug; or

(b) the presence of alcohol or any other drug, or the concentration of alcohol in the blood of a rail safety worker at any time; or

(c) a finding on the analysis of a blood sample of a rail safety worker—

is relevant on a hearing for an offence against section 76(1) or in any inquest or investigation held by a coroner then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the taking, within 3 hours after the rail safety worker carried out rail safety work, of a sample of blood from the rail safety worker by a registered medical practitioner or an approved health professional, of the analysis of that sample of blood by a properly qualified analyst within 12 months after it was taken, of the presence of alcohol and, if alcohol is present, of the concentration of alcohol expressed in grams per 100 millilitres of blood found by that analyst to be present in that sample of blood at the time of analysis and, if a drug is present, evidence may be given by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a person's ability to carry out rail safety work properly).
(5) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(6) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the concentration of alcohol expressed in grams per 100 millilitres of blood found in any sample of blood analysed by the analyst is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(7) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of blood analysed by the analyst of a substance that is, or is capable of being, a drug for the purposes of this Part is admissible in evidence in any proceedings referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(8) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly) is admissible in evidence in any proceedings referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
(9) A certificate given under this section must not be tendered in evidence in a proceeding referred to in subsection (4) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

(10) A copy of a certificate given under this section may be served on the accused by—

(a) delivering it to the accused personally; or

(b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

(11) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence in a proceeding referred to in subsection (4) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.

(12) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.
(13) The court must not grant leave under subsection (12) unless it is satisfied—

(a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the blood referred to in a certificate given by an analyst under subsection (6) was not that of the accused; or

(ii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that the blood alcohol concentration found on analysis was higher than it would have been had the blood not been contaminated in that way; or

(iii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the blood not been contaminated in that way; or

(iv) there is a reasonable possibility that the sample was not taken in accordance with the Code of Practice for Taking Blood Samples from Road Accident Victims; or
(v) for some other reason the giving of evidence by the person who gave the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken would materially assist the court to ascertain relevant facts.

(14) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken, to attend the court on the hearing of an application for leave under subsection (12).

(15) If a registered medical practitioner or an approved health professional is requested to make an examination or to collect a sample of blood for the purposes of this section and if the rail safety worker to be examined or from whom a sample of blood is to be collected has expressed consent to that examination or collection, no action lies against the registered medical practitioner or approved health professional who acts in accordance with that consent even if it subsequently appears that the rail safety worker was in fact incapable by reason of his or her mental condition from effectively giving consent to the examination or collection.

(16) Except as provided in sections 78(9), 80 and 82, a blood sample must not be taken and evidence of the result of an analysis of a blood sample must not be tendered unless the rail safety worker from whom the blood has been collected has expressed consent to the collection of the blood and the onus of proving that expression of consent is on the prosecution.
(17) The mere failure or refusal of a rail safety worker to express consent must not be used in evidence against the rail safety worker or referred to in any way against the rail safety worker's interests in any proceeding.

(18) A certificate purporting to be signed by a person—
   
   (a) who took a blood sample; or
   
   (b) who analysed a blood sample—
   
in accordance with the provisions of an Act of another State or a Territory that substantially corresponds to section 82 of this Act and in accordance with any regulations made under the corresponding Act is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(19) Subsections (7), (10), (11) and (12) apply in respect of a certificate referred to in subsection (18) as if the certificate was given under this section.

84 Evidentiary provisions—urine tests

(1) In this section—

approved analyst means a person who by virtue of subsection (2) is to be taken to be a properly qualified analyst for the purposes of this section;

approved expert means a person who by virtue of subsection (3) is to be taken to be a properly qualified expert for the purposes of this section;
properly qualified analyst means—
(a) an approved analyst; or
(b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (6);

properly qualified expert means—
(a) an approved expert; or
(b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under subsection (7).

(2) A person who is an approved analyst within the meaning of section 57A of the Road Safety Act 1986 is to be taken to be a properly qualified analyst for the purposes of this section.

(3) A person who is an approved expert within the meaning of section 57A of the Road Safety Act 1986 is to be taken to be a properly qualified expert for the purposes of this section.

(4) If a question as to the presence of a drug in the body of a rail safety worker at any time is relevant on a hearing for an offence against section 76(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—
(a) of the furnishing by that rail safety worker, within 3 hours after that rail safety worker carried out rail safety work, of a sample of urine to a registered medical practitioner or an approved health professional;

(b) of the analysis of that sample of urine by a properly qualified analyst within 12 months after it was taken;

(c) of the presence of a drug in that sample of urine at the time of analysis;

(d) by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly).

(5) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(6) A certificate containing the prescribed particulars purporting to be signed by an approved analyst as to the presence in any sample of urine analysed by the analyst of a substance that is, or is capable of being, a drug for the purposes of this Part is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
(7) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly) is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(8) A certificate given under this section must not be tendered in evidence at a hearing referred to in subsection (4) without the consent of the accused unless a copy of the certificate is proved to have been personally served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

(9) An affidavit or statutory declaration by the person who has personally served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (4) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.

(10) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.
(11) The court must not grant leave under subsection (10) unless it is satisfied—

(a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and

(b) that—

(i) there is a reasonable possibility that the urine referred to in a certificate given by an analyst under subsection (6) was not that of the accused; or

(ii) there is a reasonable possibility that the urine referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the urine not been contaminated in that way; or

(iii) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

(12) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of urine was furnished, to attend the court on the hearing of an application for leave under subsection (10).
85 Evidentiary provisions—breath tests

(1) If—

(a) the question whether a rail safety worker was or was not at any time under the influence of alcohol; or

(b) the presence, or the concentration, of alcohol in the breath of a rail safety worker at any time; or

(c) a result of a breath analysis of a rail safety worker—

is relevant on a hearing for an offence against section 76(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the concentration of alcohol indicated to be present in the breath of that person by a breath analysing instrument operated by a person authorised to do so by the Chief Commissioner of Police under section 78 and the concentration of alcohol so indicated is, subject to compliance with section 78(4), evidence of the concentration of alcohol present in the breath of that person at the time his or her breath is analysed by the instrument.

(2) A document purporting to be a certificate containing the prescribed particulars produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the breath of a person and purporting to be signed by the person who operated the instrument is admissible in evidence in a proceeding referred to in subsection (1) and, subject to subsection (8), is conclusive proof of—

(a) the facts and matters contained in it; and
(b) the fact that the instrument used was a breath analysing instrument within the meaning of this Act; and

(c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 78; and

(d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and

(e) the fact that the instrument was in proper working order and properly operated; and

(f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the instrument and given to the accused person as soon as practicable after the sample of breath was analysed—

unless the accused person gives notice in writing to the informant not less than 28 days before the hearing, or any shorter period ordered by the court or agreed to by the informant, that he or she requires the person giving the certificate to be called as a witness or that he or she intends to adduce evidence in rebuttal of any such fact or matter.

(3) A certificate referred to in subsection (2) does not cease to be admissible in evidence or to be conclusive proof of the facts and matters referred to in that subsection only because of the fact that it refers to the Road Safety Act 1986 and not to the Rail Safety Act 2006 and the reference to the Road Safety Act 1986 in that certificate and in each other certificate produced by the breath analysing instrument in respect of the sample of
breath must be construed for all purposes as a reference to the **Rail Safety Act 2006**.

(4) A notice under subsection (2) must specify any fact or matter with which issue is taken and indicate the nature of any expert evidence which the accused person intends to have adduced at the hearing.

(5) The accused person may not, except with the leave of the court, introduce expert evidence at the hearing if the nature of that evidence was not indicated in a notice under subsection (2).

(6) If an accused person gives notice to the informant in accordance with subsection (2) that he or she requires the person giving a certificate to be called as a witness and the court is satisfied that that person—

(a) is dead; or

(b) is unfit by reason of his or her bodily or mental condition to testify as a witness; or

(c) has ceased to be a member of the police force or is out of Victoria and it is not reasonably practicable to secure his or her attendance; or

(d) cannot with reasonable diligence be found—the court must order that subsection (2) has effect as if the notice had not been given.

(7) A certificate referred to in subsection (2) remains admissible in evidence even if the accused person gives a notice under that subsection but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that subsection.
(8) Nothing in subsection (2) prevents the informant adducing evidence to explain any fact or matter contained in a certificate referred to in subsection (2) and, if the informant does so, the certificate remains admissible in evidence but ceases to be conclusive proof of that fact or matter only.

(9) In any proceeding under this Act—

(a) the statement of any person that on a particular date he or she was authorised by the Chief Commissioner of Police under section 78(4) to operate breath analysing instruments; or

(b) a certificate purporting to be signed by the Chief Commissioner of Police that a person named in it is authorised by the Chief Commissioner of Police under section 78(4) to operate breath analysing instruments—is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that person.

(10) Evidence by a person authorised to operate a breath analysing instrument under section 78—

(a) that an apparatus used by him or her on any occasion under that section was a breath analysing instrument;

(b) that the breath analysing instrument was on that occasion in proper working order and properly operated by him or her;

(c) that, in relation to the breath analysing instrument, all regulations with respect to breath analysing instruments were complied with—is, in the absence of evidence to the contrary, proof of those facts.
(11) The statement on oath of a person authorised to operate a breath analysing instrument under section 78 when called as a witness that any apparatus used by him or her on any occasion under section 78 had written, inscribed or impressed on some portion of it or on a plate attached to it the expressions "Alcotest 7110" and "3530791" whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument within the meaning of this Part.

**Division 4—Other matters**

**86 Approvals**

(1) An authority given under or for the purposes of—

(a) section 78 or 79(5)(b) by the Chief Commissioner of Police; or

(b) section 79(5)(a) by the Safety Director—

may be revoked at any time in the manner in which it was given and on revocation ceases to have any effect.

(2) If it is provided by or under this Part that the Minister or the Chief Commissioner of Police or any other person may approve of any type or kind of apparatus or equipment—

(a) the approval must be given by notice published in the Government Gazette; and

(b) any withdrawal of approval must be made by notice published in the Government Gazette.
PART 7—REVIEW OF DECISIONS

87 Reviewable decisions

(1) The following table sets out—

(a) decisions made under this Act that are reviewable in accordance with this Part (reviewable decisions); and

(b) who is eligible to apply for a review of a reviewable decision (the eligible person in relation to the reviewable decision).

(2) To avoid doubt, sections 4 and 5 of the Victorian Civil and Administrative Tribunal Act 1998 apply for the purposes of this Act.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Provision under which reviewable decision is made</th>
<th>Eligible person in relation to reviewable decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Division 2 of Part 5 (refusal to accredit)</td>
<td>(1) A rail infrastructure manager who has applied to be accredited in respect of the rail infrastructure operations the rail infrastructure manager carries out.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) A rolling stock operator who has applied to be accredited in respect of the rolling stock operations the rolling stock operator carries out.</td>
</tr>
<tr>
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<tr>
<td>2</td>
<td>Section 42(2) (issue of written notice)</td>
<td>A rolling stock operator and rail infrastructure manager to whom a written notice has been issued.</td>
</tr>
<tr>
<td>3</td>
<td>Section 42(4) (direction)</td>
<td>A person given a direction under section 42.</td>
</tr>
<tr>
<td>4</td>
<td>Section 43 (direction to co-ordinate accreditation applications)</td>
<td>A person given a direction under section 43.</td>
</tr>
<tr>
<td>5</td>
<td>Section 44 (failure to accredit within period of time specified in the section or the extended period)</td>
<td>A rail infrastructure manager who has applied to be accredited in respect of the rail infrastructure operations the rail infrastructure manager carries out. A rolling stock operator who has applied to be accredited in respect of the rolling stock operations the rolling stock operator carries out.</td>
</tr>
<tr>
<td>6</td>
<td>Section 46 (decision to impose conditions or restrictions of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>6A</td>
<td>Section 46B (refusal to grant exemption)</td>
<td>An accredited tourist and heritage railway operator whose interests are affected by the decision.</td>
</tr>
</tbody>
</table>
## Rail Safety Act 2006
### No. 9 of 2006
#### Part 7—Review of Decisions

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<td>7</td>
<td>Section 53 (refusal to grant variation of condition or restriction of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>8</td>
<td>Section 53 (refusal to agree to revocation of condition or restriction of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>9</td>
<td>Section 54 (refusal to grant variation of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>10</td>
<td>Section 55 (variation of condition or restriction of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>11</td>
<td>Section 55 (revocation of condition or restriction of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>12</td>
<td>Section 55 (imposition of new condition or restriction of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>13</td>
<td>Section 56 (refusal to consent to surrender of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td>14</td>
<td>Section 58 (immediate suspension of accreditation)</td>
<td>An accredited rail operator whose interests are affected by the decision.</td>
</tr>
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### Rail Safety Act 2006

**No. 9 of 2006**

**Part 7—Review of Decisions**

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| 15   | Section 59(3) (decision as to any one or more of the things listed in section 59(3)—for example, suspend or immediately cancel an accreditation or disqualify a person from holding an accreditation) | (1) An accredited rail operator whose interests are affected by the decision.  
(2) A person who was previously an accredited rail operator whose interests are affected by the decision. |
| 15A  | Section 62A(3) (Safety Director not acting in accordance with guidelines) | A rail operator who has applied for accreditation under Division 2, or for variation of accreditation or the conditions or restrictions of accreditation under Division 4. |
| 16   | Section 63 (refusal to grant exemption) | (1) A rail infrastructure manager who carries out rail infrastructure operations using or in relation to a private siding.  
(2) A rolling stock operator who carries out rolling stock operations in a private siding. |
| 17   | Section 64 (decision to revoke exemption granted under section 63) | (1) An exempted rail infrastructure manager (within the meaning of section 64(4)) whose interests are affected by the decision. |
### 88 Internal review

(1) An eligible person in relation to a reviewable decision, other than a decision made by the Safety Director, may apply to the Safety Director for review of the decision within—

- (a) 28 days after the day on which the decision first came to the eligible person's notice; or
- (b) such longer period as the Safety Director allows.

(2) The application must be in the form approved (in writing) by the Safety Director.

(3) If an application is made to the Safety Director in accordance with this section, the Safety Director must make a decision—

- (a) to affirm or vary the reviewable decision; or
- (b) to set aside the reviewable decision and substitute another decision that the Safety Director considers appropriate.

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<td>18</td>
<td>Section 66 (refusal to grant exemption)</td>
<td>An accredited tourist and heritage railway operator whose interests are affected by the decision.</td>
</tr>
<tr>
<td></td>
<td>(2) An exempted rolling stock operator (within the meaning of section 64(4)) whose interests are affected by the decision.</td>
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</tr>
</tbody>
</table>
(4) The Safety Director must give a written notice to the applicant setting out—

(a) the Safety Director's decision under subsection (3) and the reasons for the decision; and

(b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based—

and must do so within 28 days after the application is made.

(5) If the Safety Director has not notified an applicant of a decision in accordance with subsection (4), the Safety Director is taken to have made a decision to affirm the reviewable decision.

(6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Safety Director, on his or her own initiative or on the application of the applicant for review, stays the operation of the decision pending the determination of the review.

(7) The Safety Director must make a decision on an application for a stay within 24 hours after the making of the application.

(8) If the Safety Director has not made a decision in accordance with subsection (7), the Safety Director is taken to have made a decision to grant a stay.

(9) The Safety Director may attach any conditions to a stay of the operation of a reviewable decision that he or she considers appropriate.
89 Review by the Tribunal

(1) A person may apply to the Tribunal for review of—

(a) a reviewable decision made by the Safety Director; or

(b) a decision made, or taken to have been made, by the Safety Director under section 88 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision)—

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

(2) To avoid doubt, subsection (1) does not apply to a decision of the Safety Director to hold an inquiry under section 59.

(3) The application must be made—

(a) within 28 days after the day on which the decision first came to the applicant's notice; or

(b) if the Safety Director is required by the Victorian Civil and Administrative Tribunal Act 1998 to give the applicant a statement of reasons, within 28 days after the day on which the applicant is given the statement—

whichever period ends last.
90 Special right of review concerning interstate applicants

(1) This section only applies if—

(a) a rail operator who applies to the Safety Director for accreditation and—

(i) is not a company that is taken to be registered in Victoria under the Corporations Act; or

(ii) does not have his or her principal place of residence in Victoria, in the case of a natural person; and

(b) the Safety Director refuses to accredit the rail operator or does not accredit the rail operator—

(i) within 6 months after the rail operator applies for accreditation; or

(ii) if the Safety Director extends the period of time within which he or she may decide to accredit the applicant under section 44—within that extended period.

(2) The rail operator may, by notice, require the Safety Director to have the refusal or failure independently mediated or conciliated or both by a mediator or conciliator agreed upon by the rail operator and the Safety Director.

(3) The Safety Director must comply with such a notice as soon as is practicable after receiving it.

(4) The right conferred on a rail operator by this section is in addition to a right of review conferred by section 88 or 89.
(5) However, the right conferred on a rail operator under this section can only be exercised before the Tribunal gives a final decision in relation to the matter.
PART 8—CODES OF PRACTICE

91 Codes of practice

(1) For the purpose of providing practical guidance to accredited rail operators and any other person who may be placed under an obligation by or under this Act, the Minister may, subject to section 95, approve one or more codes of practice.

(2) A code of practice—

(a) may consist of any code, standard, rule, specification or provision relating to any aspect of rail infrastructure operations or rolling stock operations; and

(b) may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved, or as amended, formulated or published from time to time.

(3) The approval of a code of practice takes effect on the day on which notice of the approval is published in the Government Gazette, or on any later day specified in the notice.

Note
A code of practice approved under this section is disallowable by either House of Parliament: see section 104.

92 Revisions to approved codes of practice

(1) Subject to section 95, the Minister may—

(a) approve any revision of the whole, or any part, of an approved code of practice;

(b) revoke the approval of a code of practice.
(2) The approval of a revision to an approved code of practice takes effect on the day on which notice of the approval of the revision is published in the Government Gazette, or on any later day specified in the notice.

93 Revocation of approvals of codes of practice

The approval of an approved code of practice ceases to be of effect at the end of the day on which notice of the revocation of the approval is published in the Government Gazette, or on any later day specified in the notice.

94 Availability of approved codes of practice

The Minister must cause—

(a) a current copy of every approved code of practice; and

(b) a copy of every document applied, incorporated or referred to in an approved code of practice (in the form in which that document has effect in the approved code of practice)—

to be made available for inspection by members of the public without charge at the office of the Safety Director during normal office hours.

95 Minister must consult before approving code of practice or revision to code of practice

Before the Minister approves a code of practice or any revision of the whole, or any part, of an approved code of practice under section 91 or 92, the Minister must consult with any person or body that may be affected by the approved code of practice, or revision of an approved code of practice, to be approved.
96 Effect of approved code of practice

A person is not liable to any civil or criminal proceedings by reason only that he, she or it has failed to observe any provision of an approved code of practice.

Note
A person who complies with a compliance code may however, be taken to have complied with this Act (see section 102).
PART 9—GENERAL

Division 1—Offences by bodies corporate

97 Imputing conduct to bodies corporate

For the purposes of this Act and the regulations, any conduct engaged in or on behalf of a body corporate by an employee, agent or officer (within the meaning given by section 9 of the Corporations Act) of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

98 Liability of officers of bodies corporate

(1) If a body corporate (including a body corporate representing the Crown) contravenes a provision of this Act or the regulations and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to a fine not exceeding the maximum fine for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate.

(2) An offence against subsection (1) is summary or indictable in nature according to whether the offence constituted by the contravention by the body corporate is summary or indictable.
(3) In determining whether an officer of a body corporate is guilty of an offence, regard must be had to—

(a) what the officer knew about the matter concerned; and

(b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and

(c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and

(d) any other relevant matter.

(4) An officer of a body corporate may be convicted or found guilty of an offence in accordance with subsection (1) whether or not the body corporate has been convicted or found guilty of the offence committed by it.

(5) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Notes

1 Officer of a body corporate includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the body corporate's business and a person who has the capacity to affect significantly the body corporate's financial standing (see section 3).

2 For volunteer, see section 3.
Division 2—Offences by partnerships and unincorporated bodies or associations

99 Liability of officers of partnerships and unincorporated bodies or associations

(1) Subject to subsection (2), if—

(a) this Act imposes a duty on a person or provides that a person is guilty of an offence; and

(b) the person is a partnership or an unincorporated body or association (including a partnership or an unincorporated body or association representing the Crown)—

the reference to the person is taken to be instead a reference to each officer of the partnership, body or association (as the case may be).

(2) If an offence against this Act is committed by an officer of a partnership or an unincorporated body or association because of the effect of subsection (1), the officer is only guilty of the offence if the commission of the offence is attributable to the officer failing to take reasonable care.

(3) The penalty to which an officer of a partnership or an unincorporated body or association is liable for an offence committed by him or her because of the effect of subsection (1) is a fine not exceeding the maximum fine that could be imposed by a court on a natural person found guilty of the same offence committed at the same time (otherwise than because of the effect of subsection (1)).

(4) In determining whether an officer of a partnership or unincorporated body or association is guilty of an offence, regard must be had to—
(a) what the officer knew about the matter concerned; and

(b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the partnership, body or association in relation to the matter concerned; and

(c) whether the commission of the offence is also attributable to an act or omission of any other person; and

(d) any other relevant matter.

(5) An officer of a partnership or unincorporated body or association who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Notes

1 Officer of a partnership or unincorporated body or association includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the business of the partnership, body or association and a person who has the capacity to affect significantly the financial standing of the partnership, body or association (see section 3).

2 For volunteer, see section 3.

Division 3—Proceedings against the Crown

100 Responsible agency for the Crown

(1) If proceedings are brought against the Crown for an offence against this Act or the regulations the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.

(2) In this section, the responsible agency in respect of an offence is the agency of the Crown—

(a) whose acts or omissions are alleged to constitute the offence; or
(b) if that agency has ceased to exist, that is the successor of that agency; or

(c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

(3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.

(4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

(5) In this section—

agency includes the Director within the meaning of the Transport Integration Act 2010.

Division 4—Other matters

101 Interaction with the Occupational Health and Safety Act 2004

(1) If a provision of the Occupational Health and Safety Act 2004 or the regulations made under that Act (OHS provision) applies to an activity in respect of which a duty is imposed under Division 2 or 3 of Part 3, the OHS provision continues to apply, and must be observed in addition to Division 2 or 3 of Part 3 and any regulations made under this Act made for the purposes of those Divisions.

Note

See also section 51 of the Interpretation of Legislation Act 1984.
(2) If a provision of this Act or the regulations made under this Act is inconsistent with a provision of the Occupational Health and Safety Act 2004 or the regulations made under that Act, the Occupational Health and Safety Act 2004 or the regulations made under it prevail to the extent of the inconsistency.

(3) Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the Occupational Health and Safety Act 2004 or the regulations made under that Act.

(4) Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the Occupational Health and Safety Act 2004 or the regulations made under that Act.

102 Effect of compliance with regulations or approved codes of practice

If—

(a) the regulations or an approved code of practice make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and

(b) a person complies with the regulations or the approved code of practice to the extent that it makes that provision—

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

The Safety Director may charge the prescribed fee (if any) for any safety audit conducted under Part 3, or other service supplied, by her or him under Part 5.

104 Tabling and disallowance of certain Orders, notices and approved codes of practice

(1) In this section—

*disallowable instrument* means—

(a) an Order under section 4;
(b) a notice under section 79(7);
(c) an approved code of practice.

(2) On or before the 6th sitting day after a disallowable instrument is published in the Government Gazette, the Minister must ensure that a copy of that instrument is laid before each House of the Parliament.

(3) A failure to comply with subsection (2) does not affect the operation or effect of the disallowable instrument but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.

(4) A disallowable instrument may be disallowed in whole or in part by either House of Parliament.

(5) Part 5 of the **Subordinate Legislation Act 1994** applies a disallowable instrument as if—

(a) a reference in that Part to a "statutory rule" were a reference to a disallowable instrument; and

(b) a reference in section 23(1)(c) of that Act to "section 15(1)" were a reference to subsection (1).
(6) A reference to a disallowable instrument in this section includes a reference to any amendment to, or revision of the whole or any part of, a disallowable instrument.

Division 5—Regulations

105 Accreditation

The Governor in Council may make regulations for or with respect to—

(a) exempting any person or class of persons from the requirement to be accredited;

(b) accreditation fees, including annual accreditation fees and additional fees for the late payment of annual accreditation fees;

(c) investigations carried out by accredited rail operators under section 67.

106 Safety duties and risk management requirements and minimisation

The Governor in Council may make regulations for or with respect to—

(a) the way in which duties or obligations imposed by this Act or the regulations are performed;

(b) regulating or prohibiting specified rail operations or a specified class of rail operations—

(i) at railway premises or a specified class of railway premises; or

(ii) by a specified class of persons on whom duties or obligations are imposed by this Act—

to eliminate or reduce risks to safety;
(c) regulating or requiring the taking of any action to avoid a hazard or incident (including a major incident) at railway premises or while rail operations are being carried out;

(d) regulating, requiring or prohibiting the taking of any action in the event of an incident (including a major incident) at railway premises or while rail operations are being carried out;

(e) regulating or requiring the examination, testing, maintenance or repair of rail infrastructure or rolling stock.

107 Safety management systems

The Governor in Council may make regulations for or with respect to—

(a) the preparation of safety management systems;

(b) the matters and information that safety management systems must contain;

(c) how safety management systems are to be kept and maintained.

108 Rail safety work

The Governor in Council may make regulations for or with respect to—

(a) a scheme for certificates of competence (or provisional certificates of competence) for rail safety workers employed or engaged to carry out rail safety work, and for the duration, variation, suspension and cancellation of those certificates;
(b) prohibiting the carrying out of rail safety work by a person—
   (i) who does not hold an appropriate certificate of competence; or
   (ii) who does not hold specified qualifications, training or experience; or
   (iii) who is not supervised by a person holding an appropriate certificate of competence or specified qualifications, training or experience;
(c) requiring a rail operator to ensure that rail safety workers employed or engaged by them or employed or engaged by a rail contractor engaged directly or indirectly by the rail operator to supply rail operations to that rail operator—
   (i) are fit to carry out rail safety work;
   (ii) are competent or appropriately trained or qualified to carry out rail safety work;
(d) the testing, assessment and monitoring of rail safety workers employed or engaged to carry out rail safety work to ensure that those rail safety workers are fit to carry out that work;
(e) application fees and fees for the issuing and holding of certificates of competence.
109 Alcohol and other drug controls

The Governor in Council may make regulations for or with respect to—

(a) devices for the purposes of section 77 including—

(i) the handling, storage, use and maintenance of those devices;

(ii) the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results;

(b) the handling, storage, use and maintenance of breath analysing instruments used for the purposes of section 78 and the procedures and methods to be employed in the use of those instruments for ensuring that they give accurate and reliable results;

(c) the methods and conditions to be observed by registered medical practitioners and approved health professionals in collecting blood samples or urine samples;

(d) the persons responsible for the safe-keeping of samples of blood taken under section 78, 79, 80 or 82 and the methods of storage to be used by them;

(e) the delivering of portions of a sample of blood taken under section 78, 79, 80 or 82 to the rail safety worker from whom it was taken and to the person who required it to be taken or a member of the police force;

(f) the methods to be used by analysts in determining the concentration of alcohol in a blood sample;
(g) the methods to be used by analysts in determining the presence of a substance in a blood or urine sample;

(h) the procedures to be adopted in transmitting samples of blood or urine to an analyst for analysis;

(i) the regulation and control of people concerned in the taking, safe-keeping, delivering and analysis of blood or urine samples.

110 General regulation making powers

(1) The Governor in Council may make regulations for or with respect to—

(a) requiring records of prescribed activities, matters or things to be kept by prescribed persons;

(b) requiring notice of, reports and information about, prescribed activities, matters or things to be given to the Safety Director or a transport safety officer;

(ba) the content, manner and form of a notice, reports and information referred to in paragraph (b) to be given to the Safety Director or a transport safety officer;

(bb) matters or things safety interface agreements may provide for;

(bc) requiring a rail operator to undertake reviews about rail operations the rail operator carries out, including—

(i) the subject matter of the reviews;
(ii) requiring the rail operator to give reports to the Safety Director of findings made in the reviews;

(c) fees for the purposes of this Act and the refund or waiver of such fees;

(d) any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) Regulations made under this Act—

(a) may be of general or limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may require a matter affected by the regulations to be—

(i) in accordance with a specified standard or specified requirement; or

(ii) approved by or to the satisfaction of a specified person or a specified class of person; or

(iii) as specified in both subparagraphs (i) and (ii); and

(d) may apply, adopt or incorporate any matter contained in any document whether—

(i) wholly or partially or as amended by the regulations; or

(ii) as in force at a particular time or as in force from time to time; and

(e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
(f) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

(g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations; and

(h) may provide that an application may be made to the Tribunal for the review of a decision made under the regulations.

(3) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

(a) specific fees;

(b) maximum or minimum fees;

(c) maximum and minimum fees;

(d) the payment of fees either generally or under specified conditions or in specified circumstances;

(e) the reduction, waiver or refund, in whole or in part, of the fees.

(4) If under subsection (3)(e) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—

(a) in respect of certain accreditations or classes of accreditations; or
(b) in respect of certain audits of medical records under section 30 or classes of such audits; or

(c) in respect of certificates of compliance referred to in section 108 or classes of such certificates; or

(d) when an event happens; or

(e) in respect of certain persons or classes of persons; or

(f) in respect of any combination of such accreditations, audits, certificates, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
PART 11—OTHER AMENDMENTS TO ACTS, SAVINGS AND TRANSITIONALS

Division 4—Savings and transitional provisions

163 Definitions

In this Division—

* accredited commercial rail operator means a person (other than an accredited tourist and heritage rail operator) who—

(a) under a transitional accreditation carries out rail infrastructure operations or rolling stock operations; or

(b) by operation of section 170(4) holds a post new scheme accreditation under which the person carries out rail infrastructure operations or rolling stock operations;
accredited tourist and heritage rail operator means a person who—

(a) under a transitional accreditation carries out rail infrastructure operations or rolling stock operations—

(i) that are tourist and heritage rail operations; or

(ii) for the purpose of operating a tourist and heritage railway; or

(b) by operation of section 170(4) holds a post new scheme accreditation under which the person carries out rail infrastructure operations or rolling stock operations—

(i) that are tourist and heritage rail operations; or

(ii) for the purpose of operating a tourist and heritage railway;

commencement day means the day on which section 119 comes into operation;

manage, in relation to rail infrastructure, has the meaning given to it by section 107 of the Transport Act 1983 (as in force immediately before the commencement day);

old accreditation means an accreditation under Division 3 of Part VI of the Transport Act 1983;

operate, in relation to rolling stock, has the meaning given to it by section 109(2) of the Transport Act 1983 (as in force immediately before the commencement day);
post new scheme accreditation means an accreditation under Part 5 referred to in section 170(4);

private siding has the same meaning as in section 104(1) of the Transport Act 1983 (as in force immediately before the commencement day);

provide, in relation to rolling stock, has the meaning given to it by section 109(1) of the Transport Act 1983 (as in force immediately before the commencement day);

rail infrastructure has the same meaning as in section 104(1) of the Transport Act 1983 (as in force immediately before the commencement of section 119);

railway has the same meaning as in section 104(1) of the Transport Act 1983 (as in force immediately before the commencement day);

rolling stock has the same meaning as in section 104(1) of the Transport Act 1983 (as in force immediately before the commencement day);

tourist and heritage rail operations means rail infrastructure operations or rolling stock operations carried out by a person named in an Order under section 166 that have been declared under that Order to be tourist and heritage rail operations;

tourist and heritage railway means a railway named in an Order under section 166 that is declared under that Order to be a tourist and heritage railway;

transitional accreditation has the meaning given by section 172(1).
164 General transitional provision

This Division does not affect or take away from the Interpretation of Legislation Act 1984.

165 Savings and transitional regulations

The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the repeal of Divisions 2 and 3 of Part VI of the Transport Act 1983.

166 Declaration Order in relation to tourist and heritage operation and railways

The Minister, by Order published in the Government Gazette, may, for the purposes of this Division, declare—

(a) rail infrastructure operations or rolling stock operations carried out by a person named in the Order to be tourist and heritage rail operations;

(b) a railway named in the Order to be a tourist and heritage railway.

167 Orders and approvals relating to alcohol and other drug controls under the Transport Act 1983

On the commencement day—

(a) an Order made under section 93(1AA) of the Transport Act 1983, and in force immediately before the commencement day, is deemed to be an Order made under section 4 and may be amended or revoked accordingly;

(b) an approval under section 93(1A) of the Transport Act 1983, and in force
immediately before the commencement day, is deemed to be an Order made under section 8 and may be amended or revoked accordingly;

(c) an Order made under the **Transport Act 1983** for the purposes of the definition of corresponding law as defined by section 93(1) of that Act, and in force immediately before the commencement day, is deemed to be an Order made under section 9 and may be amended or revoked accordingly.

### 168 Authorities for the purposes of Part 6

On the commencement day—

(a) an authority given under or for the purposes of section 96(3) of the **Transport Act 1983** by the Chief Commissioner of Police, and in force immediately before the commencement day, is deemed to be an authority given under or for the purposes of section 78(4) by the Chief Commissioner of Police and may be amended or revoked accordingly;

(b) an authority given under or for the purposes of section 96A(5)(b) of the **Transport Act 1983** by the Chief Commissioner of Police, and in force immediately before the commencement day, is deemed to be an authority given under or for the purposes of section 79(5)(b) by the Chief Commissioner of Police and may be amended or revoked accordingly;

(c) an authority given under or for the purposes of section 96A(5)(a) of the **Transport Act 1983** by the Secretary, and in force immediately before the commencement day, is deemed to be an authority given under or for the purposes of section 79(5)(a) by the
Safety Director and may be amended or revoked accordingly.

169 Specified procedures for carrying out assessment of drug impairment

On the commencement day, a procedure for the carrying out of an assessment of drug impairment specified by the Secretary under section 96A(7) of the Transport Act 1983, and in force immediately before the commencement day, is deemed to be a procedure for the carrying out of an assessment of drug impairment specified by the Safety Director under section 79(7) and may be amended or revoked accordingly.

170 Existing applications for accreditation

(1) Despite section 119, an application under section 111 of the Transport Act 1983—

(a) for accreditation as a manager of rail infrastructure by a person who manages or proposes to manage rail infrastructure; and

(b) in respect of which the Secretary has not made a decision under Division 3 of Part VI of that Act to accredit or refuse to accredit the person as a manager of rail infrastructure before the commencement day—

must, on and from the commencement day, be dealt with and decided by the Safety Director under Division 3 of Part VI of that Act as if—

(c) Division 3 of Part VI of the Transport Act 1983 was not repealed by section 119; and

(d) a reference to the Secretary in Division 3 of Part VI of the Transport Act 1983 were a reference to the Safety Director.

(2) Despite section 119, an application under section 111 of the Transport Act 1983—
(a) for accreditation as a provider of rolling stock by a person who provides, or proposes to provide, rolling stock; and

(b) in respect of which the Secretary has not made a decision under Division 3 of Part VI of that Act to accredit or refuse to accredit the person as a provider of rolling stock before the commencement day—

must, on and from the commencement day, be dealt with and decided by the Safety Director under Division 3 of Part VI of that Act as if—

(c) Division 3 of Part VI of the Transport Act 1983 was not repealed by section 119; and

(d) a reference to the Secretary in Division 3 of Part VI of the Transport Act 1983 were a reference to the Safety Director.

(3) Despite section 119, an application under section 111 of the Transport Act 1983—

(a) for accreditation as an operator of rolling stock by a person who operates, or proposes to operate, rolling stock; and

(b) in respect of which the Secretary has not made a decision under Division 3 of Part VI of that Act to accredit or refuse to accredit the person as an operator of rolling stock before the commencement day—

must, on and from the commencement day, be dealt with and decided by the Safety Director under Division 3 of Part VI of that Act as if—

(c) Division 3 of Part VI of the Transport Act 1983 was not repealed by section 119; and

(d) a reference to the Secretary in Division 3 of Part VI of the Transport Act 1983 were a reference to the Safety Director.
(4) If, by force of subsection (1), (2) or (3), the Safety Director decides to accredit a person who made an application referred to in those subsections, that person is deemed, on the accreditation of that person, to hold—

(a) in the case of a person accredited as a manager of rail infrastructure and who is a rail infrastructure manager, an accreditation under Part 5 in respect of the rail infrastructure operations the person carries out;

(b) in the case of a person accredited as a provider of rolling stock and who is a rolling stock operator, an accreditation under Part 5 in respect of the rolling stock operations the person carries out;

(c) in the case of a person accredited as an operator of rolling stock and who is a rolling stock operator, an accreditation under Part 5 in respect of the rolling stock operations the person carries out.

171 Review of decisions in relation to applications of accreditation transitioned under this Division

Despite section 119, section 129B of the Transport Act 1983 applies to an application referred to in section 170 as if—

(a) section 129B of that Act were not repealed; and

(b) a reference to the Secretary in section 129B of that Act were a reference to the Safety Director.

172 Existing accreditations deemed to be accreditations under this Act
(1) A person who, immediately before the commencement day, held an old accreditation is, on the commencement day, deemed to hold an accreditation under Part 5 (transitional accreditation) as an accredited rail operator—

(a) if the person is a rail infrastructure manager, in respect of the rail infrastructure operations the operator carries out;

(b) if the person is a rolling stock operator, in respect of the rolling stock operations the operator carries out.

(2) Subject to this Division, the transitional accreditation is deemed to be subject to the conditions and restrictions—

(a) to which the old accreditation was subject immediately before the commencement day; and

(b) that are not inconsistent with this Act.

(3) However, the conditions set out in section 117(4) and (4A) of the Transport Act 1983 and any condition specified in the regulations made under that Act applying to an old accreditation do not continue to apply to the transitional accreditation.

(4) To avoid doubt, the conditions set out in section 46(4) and (5), and any condition specified in the regulations, apply to the transitional accreditation.
173 **Expiry of transitional accreditations and post new scheme accreditations**

Despite anything to the contrary in Part 5, a transitional accreditation or post new scheme accreditation—

(a) held by an accredited commercial operator expires on 1 July 2008;

(b) held by an accredited tourist and heritage rail operator expires on 1 July 2009.

174 **Conditions and restrictions of transitional accreditations may be varied in accordance with Division 4 of Part 5**

To avoid doubt, the conditions or restrictions to which a transitional accreditation is subject may be varied or revoked by the Safety Director under sections 53 and 55 as if those conditions or restrictions had been imposed by the Safety Director under section 46.

175 **Transitional accreditations may be surrendered**

To avoid doubt, a transitional accreditation may be surrendered to the Safety Director in accordance with section 56 as if that accreditation were an accreditation under Part 5.

176 **Existing application for changes of conditions or restrictions of accreditation**

(1) An application under section 119 of the [Transport Act 1983](#)—

(a) for a variation of (as the case requires) a restriction or condition of an old accreditation; and
(b) in respect of which the Secretary has not, before the commencement day, made a decision under that section whether to vary the restriction or condition the subject of the application—

is deemed, on and from the commencement day, to be an application under section 53 for a variation of (as the case requires) a restriction or condition of an accreditation.

(2) An application under section 119 of the *Transport Act 1983*—

(a) for the revocation of (as the case requires) a restriction or condition of an old accreditation; and

(b) in respect of which the Secretary has not, before the commencement day, made a decision under that section whether to revoke the restriction or condition the subject of the application—

is deemed, on and from the commencement day, to be an application under section 53 for a revocation of (as the case requires) a restriction or condition of an accreditation.

(3) This Act applies to an application referred to in subsection (1) or (2).

**177 Change of conditions or restrictions on accreditation on initiative of Secretary**

(1) A variation or revocation of (as the case requires) a restriction or condition of an old accreditation proposed by the Secretary under section 119 of the *Transport Act 1983*, and in respect of which the Secretary has not varied or revoked (as the case requires) the restriction or condition of the old accreditation, is deemed, on and from the
commencement day, to be a proposal by the Safety Director, under section 55, to vary or revoke (as the case requires) a restriction or condition of an accreditation.

(2) This Act applies to an application referred to in subsection (1).

178 Compliance with certain provisions not required while accreditations under Division are in force

Despite anything to the contrary in this Act, a rail operator who holds a transitional accreditation or post new scheme accreditation is not required to comply with any of the following while the transitional accreditation or post new scheme accreditation is in force—

(a) Division 4 of Part 3;

(b) section 54.

179 Accreditations transitioned under Division not Part 5 accreditations for purposes of section 65

Despite anything to the contrary in this Act, a transitional accreditation or post new scheme accreditation is not be taken to be an accreditation for the purposes of section 65.

180 Private sidings

(1) A person who, immediately before the commencement day, was registered under regulation 12 of the Transport (Rail Safety) Regulations 1998 to manage a private siding is, on the commencement day, deemed to have been granted an exemption under section 63.
(2) An exemption referred to in subsection (1) is subject to the same conditions that—

(a) applied to the registration under regulation 12 of the Transport (Rail Safety) Regulations 1998 immediately before the commencement day; and

(b) are not inconsistent with this Act.

(3) However, despite anything to the contrary in section 63 or 64, an exemption referred to in subsection (1), expires on the second anniversary of the commencement day.

181 References to Secretary in transitional accreditations to be read as references to Safety Director

On and from the commencement day, every reference in a transitional accreditation to the Secretary is to be read as the Safety Director unless the context otherwise requires.

182 Codes of Practice

On the commencement day, a code of practice approved by the Minister under section 129WA of the Transport Act 1983, and in force immediately before the commencement day, is deemed to be an approved code of practice and may be amended or revoked accordingly.

Division 5—Other matters

183 Validation of payment of certain annual accreditation fees

(1) A relevant fee paid to the Safety Director by an accredited rail operator who is a rail infrastructure manager before the commencement of section 43
of the **Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010** is, on that commencement, taken to be and to have always been an annual accreditation fee paid under section 46A(1)(b) as if that section had been in force on the date of payment.

(2) In subsection (1) *relevant fee* means—

(a) a fee of 500 fee units as at 29 September 2006;

(b) a fee of 500 fee units as at 29 September 2007;

(c) a fee of 500 fee units as at 29 September 2008.

### 184 Annual accreditation fee is payable for 2009–2010

(1) This section applies to an accredited rail operator (a **relevant operator**) who—

(a) is a rail infrastructure manager; and

(b) if section 46A had been in force before 30 September 2009, would have been required by that section to pay an annual accreditation fee of 500 fee units to the Safety Director before that date for the year commencing 30 September 2009; and

(c) is not an accredited tourist and heritage railway operator that has been granted an exemption under section 46B.

(2) A relevant operator must, before 1 July 2010, pay for the year commencing 30 September 2009 an annual accreditation fee of 500 fee units to the Safety Director.

(3) Subsection (2) applies despite anything to the contrary in this Act, the regulations or the conditions of a relevant operator's accreditation.
Part 11—Other Amendments to Acts, Savings and Transitionals

Rail Safety Act 2006
No. 9 of 2006

185 Existing initial and annual accreditation fee exemptions taken to be exemptions under this Act

An exemption granted under regulation 52(3) or 53(3) of the Rail Safety Regulations 2006 as in force immediately before the commencement of section 40 of the Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010 is on that commencement taken to be an exemption granted under section 46B.

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ENDNOTES

1. General Information

Minister's second reading speech—
Legislative Assembly: 6 October 2005
Legislative Council: 28 March 2006

The long title for the Bill for this Act was "to provide for safe rail operations in Victoria, to amend the Transport Act 1983, the Public Transport Competition Act 1995, the Rail Corporations Act 1996, the Electricity Industry Act 2000, the Gas Industry Act 2001, the Magistrates' Court Act 1989, the Road Management Act 2004, the Water Act 1989, the Water Industry Act 1994 and for other purposes."

The Rail Safety Act 2006 was assented to on 4 April 2006 and came into operation as follows:
Section 156(1) on 1 January 2006: section 2(3); sections 129 and 156(2) on 5 April 2006: section 2(2); section 147 on 25 July 2006; rest of Act (except sections 122 and 123) on 1 August 2006: Special Gazette (No. 181) 25 July 2006 page 1; section 122 on 1 January 2007: section 2(4); section 123 on 30 June 2008: section 2(5).
2. Table of Amendments

This Version incorporates amendments made to the Rail Safety Act 2006 by Acts and subordinate instruments.

<table>
<thead>
<tr>
<th>Act Title</th>
<th>Assent Date</th>
<th>Commencement Date</th>
<th>Current State</th>
</tr>
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<tbody>
<tr>
<td>Transport Legislation (Further Amendment) Act 2006, No. 47/2006</td>
<td>25.7.06</td>
<td>Ss 39–53 on 26.7.06: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Rail Safety Act 2006</td>
</tr>
<tr>
<td>Transport Legislation Amendment Act 2007, No. 69/2007 (as amended by No. 19/2010)</td>
<td>11.12.07</td>
<td>Ss 54(2), 56, 59, 67 on 12.12.07: s. 2(1); s. 55 on 1.3.08: s. 2(8); s. 65 on 15.3.08: Government Gazette 28.2.08 p. 369; ss 54(3), 57 on 1.7.08: Government Gazette 28.2.08 p. 369; ss 62, 63 on 1.7.08: s. 2(9); ss 54(1), 58, 60, 61, 64, 66 on 1.7.10: s. 2(7)</td>
<td>This information relates only to the provision/s amending the Rail Safety Act 2006</td>
</tr>
<tr>
<td>Coroners Act 2008, No. 77/2008</td>
<td>11.12.08</td>
<td>S. 129(Sch. 2 item 23) on 1.11.09: s. 2</td>
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<tr>
<td>Transport Legislation General Amendments Act 2009, No. 26/2009</td>
<td>17.6.09</td>
<td>S. 11 on 31.7.09: Special Gazette (No. 259) 28.7.09 p. 1</td>
<td>This information relates only to the provision/s amending the Rail Safety Act 2006</td>
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<td>Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009</td>
<td>24.11.09</td>
<td>S. 54(Sch. Pt 2 item 42) on 1.1.10: s. 2(2)</td>
<td>This information relates only to the provision/s amending the Rail Safety Act 2006</td>
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Assent Date: 1.12.09
Commencement Date: S. 19 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the Rail Safety Act 2006

Transport Integration Act 2010, No. 6/2010

Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 13), 203(1)(Sch. 6 item 40) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the Rail Safety Act 2006

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 46) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the Rail Safety Act 2006

Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010, No. 19/2010

Assent Date: 18.5.10
Commencement Date: Ss 37, 38, 40–43 on 22.5.10: Government Gazette 20.5.10 p. 988; s. 39 on 11.6.10: Government Gazette 10.6.10 p. 1149
Current State: This information relates only to the provision/s amending the Rail Safety Act 2006
3. **Explanatory Details**

No entries at date of publication.