

Authorised Version

**Transport (Safety Schemes Compliance and
Enforcement) Act 2014**

No. 27 of 2014

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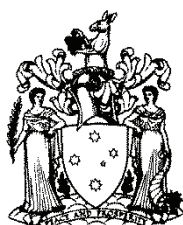
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Authorised Version



Victoria

**Transport (Safety Schemes Compliance
and Enforcement) Act 2014[†]**

No. 27 of 2014

[Assented to 8 April 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to provide a scheme for the enforcement of transport system safety legislation by—

- (a) re-enacting, with modifications, provisions of the scheme under the **Transport (Compliance and Miscellaneous) Act 1983** for the enforcement of transport system safety legislation; and

(b) adopting and adapting provisions from the Rail Safety National Law.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Definitions

In this Act—

accredited bus operator has the same meaning as in the **Bus Safety Act 2009**;

accredited rail transport operator has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

approved bus safety code of practice means a code of practice within the meaning of the **Bus Safety Act 2009**;

approved code of practice means—

- (a) an approved bus safety code of practice; or
- (b) an approved marine safety code of practice; or
- (c) an approved rail safety code of practice;

approved marine safety code of practice means a code of practice within the meaning of the **Marine Safety Act 2010**;

approved rail safety code of practice means a code of practice within the meaning of the **Rail Safety (Local Operations) Act 2006**;

authorised officer means a transport safety officer or a police officer;

bus has the same meaning as in the **Bus Safety Act 2009**;

bus premises means—

- (a) a depot or base of operations for a bus service; or
- (b) a place where bus safety work is carried out; or
- (c) premises, including an office or building, used in connection with the provision of bus services or where the provision of bus services is managed;

bus safety worker has the same meaning as in the **Bus Safety Act 2009**;

bus service has the same meaning as in the **Bus Safety Act 2009**;

business day means a day that is not—

- (a) a Saturday or a Sunday; or
- (b) a day that is appointed as a public holiday or public half-holiday throughout the whole of Victoria under the **Public Holidays Act 1993**;

compliance and investigative purposes includes purposes—

- (a) related to ascertaining whether this Act or a transport safety or infrastructure law has been, or is being, complied with, including whether an offence has been committed against this Act or a transport safety or infrastructure law; and
- (b) related to ascertaining whether an approved code of practice has been, or is being, complied with; and

- (c) related to an investigation into a public transport safety matter or a marine safety matter; and
- (d) related to an audit under Division 5 of Part 3 of the **Rail Safety (Local Operations) Act 2006**; and
- (e) related to an audit under section 20 of the **Bus Safety Act 2009**;

contractor, in relation to an accredited rail transport operator—

- (a) means a person engaged directly or indirectly by the accredited rail transport operator to supply rail infrastructure operations or rolling stock operations to that accredited rail transport operator; and
- (b) includes a sub-contractor;

Department means the Department of Transport, Planning and Local Infrastructure;

employee means a person employed under a contract of employment or contract of training;

exercise, in relation to a function, includes perform the function;

improvement notice means a notice served under section 50;

level crossing means—

- (a) an area where a road and railway tracks cross at substantially the same level, whether or not there is a level crossing sign on the road at all or any of the entrances to the area; or

- (b) an area where a road and tramway tracks cross at substantially the same level and that has a level crossing sign on the road at each entrance to the area;

Note

Rule 120 of the Road Safety Road Rules 2009 includes diagrams of level crossing signs.

marine incident has the same meaning as in the **Marine Safety Act 2010**;

marine operations has the same meaning as in the **Marine Safety Act 2010**;

marine or port infringement law means—

- (a) a provision of the **Marine Safety Act 2010** or any regulations made under that Act; or
- (b) a provision of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** or any regulations made under that Act; or
- (c) a provision of the **Port Management Act 1995** or any regulations made under that Act;

marine premises means—

- (a) a building or a facility used in connection with the undertaking of marine operations; and
- (b) land on which vessels are stored but does not include land used for residential purposes;

marine safety infrastructure has the same meaning as in the **Marine Safety Act 2010**;

marine safety infrastructure operations has the same meaning as in the **Marine Safety Act 2010**;

marine safety matter has the same meaning as in the **Transport Integration Act 2010**;

marine safety work has the same meaning as in the **Marine Safety Act 2010**;

non-disturbance notice means a notice served under section 71;

notifiable occurrence means—

- (a) a public transport safety matter; or
- (b) an accident or incident that is prescribed as a notifiable occurrence—

but does not include a public transport matter or accident or incident that is prescribed not to be a notifiable occurrence;

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

passenger transport company has the same meaning as in the **Transport (Compliance and Miscellaneous) Act 1983**;

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

police officer means a member of the force within the meaning of the **Police Regulation Act 1958**;

private siding has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

prohibition notice means a notice served under section 60;

Public Transport Development Authority has the same meaning as in the **Transport Integration Act 2010**;

public transport premises means—

- (a) railway premises; or
- (b) bus premises;

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

rail infrastructure has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

rail infrastructure manager has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

rail safety worker has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

rail transport operator has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

railway has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

railway operations has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

railway premises means *railway premises* (other than paragraph (f)) within the meaning of the **Rail Safety (Local Operations) Act 2006**;

registered bus operator has the same meaning as in the **Bus Safety Act 2009**;

residential premises means premises, rolling stock, a bus or a vessel, or a part of premises, rolling stock, a bus or a vessel, that is used for predominantly residential purposes;

road vehicle means any vehicle propelled by any form of motive power but does not include—

- (a) a bus; or
- (b) rolling stock;

rolling stock has the same meaning as in the **Rail Safety (Local Operations) Act 2006**;

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

safety work infringement means—

- (a) an offence under section 76(1)(a) or 77(1)(a), (f) or (g) of the **Rail Safety (Local Operations) Act 2006** in circumstances where—
 - (i) the concentration of alcohol in the blood or breath of the rail safety worker is less than 0·015 grams per 100 millilitres of blood or 0·015 grams per 210 litres of exhaled air (as the case requires); and
 - (ii) the offence is a first offence having regard to the provisions of section 74 of the **Rail Safety (Local Operations) Act 2006**;
- (b) an offence against section 128(1) of the Rail Safety National Law (Victoria) or section 77(1)(a), (f) or (g) of the **Rail Safety (Local Operations) Act 2006** (as it forms part of the **Rail Safety National Law Application Act 2013** by operation of section 43 of that Act) in circumstances where—

-
- (i) the concentration of alcohol in the blood or breath of the rail safety worker is less than 0·015 grams per 100 millilitres of blood or 0·015 grams per 210 litres of exhaled air (as the case requires); and
 - (ii) the offence is a first offence having regard to the provisions of section 74 of the **Rail Safety (Local Operations) Act 2006** (as it forms part of the **Rail Safety National Law Application Act 2013** by operation of section 43 of that Act);

searchable premises means public transport premises or marine premises or other premises entered by a transport safety officer under Part 2;

searchable rolling stock, bus or vessel means rolling stock, a bus or vessel entered or boarded by a transport safety officer under Part 2;

Secretary means the Secretary to the Department;

this Act includes regulations made under this Act;

transport safety infringement means an offence against a transport safety infringement law (other than a safety work infringement) that is prescribed for the purposes of this Act;

transport safety infringement law means—

- (a) in the case of an accredited bus operator or a registered bus operator— a provision of the **Bus Safety Act 2009** or the regulations made under that Act;

(b) in the case of a rail transport operator—
a provision of the **Rail Safety (Local Operations) Act 2006** or the
regulations made under that Act;

(c) a marine or port infringement law;

transport safety officer means a person appointed
under section 116;

transport safety or infrastructure law means—

- (a) the **Bus Safety Act 2009** or any
regulations made under that Act; or
- (b) the **Marine (Drug, Alcohol and
Pollution Control) Act 1988** or any
regulations made under that Act; or
- (c) the **Marine Safety Act 2010** or any
regulations made under that Act; or
- (d) the **Port Management Act 1995** or any
regulations made under that Act; or
- (e) the **Rail Safety (Local Operations)
Act 2006** or any regulations made
under that Act; or
- (f) section 93A, 93B or 93C of the
Electricity Industry Act 2000; or
- (g) section 149A, 149B or 149C of the **Gas
Industry Act 2001**; or
- (h) Division 4A of Part 4 of the **Road
Management Act 2004**; or
- (i) the **Transport Integration Act 2010** or
any regulations made under that Act; or
- (j) section 137A, 137B or 137C of the
Water Act 1989; or

- (k) section 23 of the **Crimes Act 1958** but only in relation to conduct engaged in by a person on or at, or in the immediate vicinity of, rail infrastructure or rolling stock that places or may place another person in danger of serious injury;

transport safety undertaking has the meaning given by section 83(1);

transport system has the same meaning as in the **Transport Integration Act 2010**;

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

vehicle means a conveyance that is designed to be propelled or drawn by any means, whether or not capable of being so propelled or drawn;

vessel has the same meaning as in the **Marine Safety Act 2010**;

vessel operations has the same meaning as in the **Marine Safety Act 2010**.

4 Transport Integration Act 2010

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

5 Act binds the Crown

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

PART 2—COMPLIANCE AND INVESTIGATORY POWERS

Division 1—Entry and boarding

6 Entry into public transport premises, marine premises, rolling stock or bus or boarding vessel

- (1) A transport safety officer, for compliance and investigative purposes, may at any time—
 - (a) enter a place that is, or that the officer reasonably suspects is—
 - (i) public transport premises; or
 - (ii) marine premises; or
 - (b) enter rolling stock or a bus while it is in use; or
 - (c) board a vessel while it is in use.
- (2) If a transport safety officer enters a place under subsection (1) and it is not public transport premises or marine premises, the officer must leave the place immediately.
- (3) A transport safety officer may enter a place that adjoins public transport premises or marine premises if the entry is urgently required for the purpose of dealing with—
 - (a) a public transport accident; or
 - (b) a marine incident.
- (4) An entry or boarding may be made under subsection (1) or (3) with or without the consent of the person with control or management of the place, rolling stock, bus or vessel.
- (5) If a transport safety officer exercises a power of entry or boarding under this section without the owner or occupier of the public transport premises or marine premises or adjoining place or person with the control or management of the rolling stock, bus or vessel being present the officer must,

on leaving the premises, place, rolling stock, bus or vessel, leave a notice setting out—

- (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of things done while on the premises, rolling stock, bus or vessel; and
 - (d) the time of departure; and
 - (e) the procedure for contacting the Safety Director for further details of the entry or boarding.
- (6) A transport safety officer may also enter any place, rolling stock or bus or board a vessel if the entry or boarding is authorised by a search warrant. Subsection (5) does not apply in respect of that kind of entry.

7 Notification of entry

- (1) A transport safety officer may enter a place, rolling stock or bus or board a vessel under section 6 without prior notice to any person.
- (2) A transport safety officer must, as soon as practicable after entry to a place that is, or that the officer reasonably suspects is, public transport premises or marine premises take all reasonable steps to notify the person with control or management of the premises of that officer's entry.
- (3) A transport safety officer must, as soon as practicable after entering rolling stock or a bus or boarding a vessel, take all reasonable steps to notify the operator and driver of the rolling stock or bus or master of the vessel of that officer's entry or boarding.

-
- (4) However, a transport safety officer is not required to notify any person if to do so would—
- (a) defeat the purpose for which the place, rolling stock or bus was entered or the vessel was boarded; or
 - (b) cause unreasonable delay.

Division 2—Powers on entry and boarding

8 General powers on entry or boarding

- (1) A transport safety officer who enters public transport premises or marine premises or rolling stock or bus or boards a vessel under section 6 may do any of the following—
- (a) search, inspect and examine the premises, rolling stock, bus or vessel;
 - (b) make inquiries at the premises or on the rolling stock, bus or vessel;
 - (c) inspect, examine or copy any thing (including a document) at the premises or on the rolling stock, bus or vessel;
 - (d) bring to the premises or onto the rolling stock, bus or vessel, and use at the premises or on the rolling stock, bus or vessel, any equipment or materials that may be required;
 - (e) enter or open, using reasonable force—
 - (i) rail infrastructure, a road vehicle or other thing at the railway premises; or
 - (ii) the rolling stock, bus or vessel or a thing on the rolling stock bus or vessel—

to examine the infrastructure, rolling stock, road vehicle, bus, vessel or other thing;

- (f) take measurements, make surveys and take levels at the premises and, for those purposes, dig trenches, break up the soil and set up any posts, stakes or markers at the premises;
- (g) conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings)—
 - (i) at the premises or on or of any road vehicle at the premises; or
 - (ii) on or of rolling stock or a bus or vessel;
- (h) mark, tag or otherwise identify—
 - (i) a road vehicle or other thing at the premises;
 - (ii) rolling stock or a bus or vessel or a thing on the rolling stock, bus or vessel;
- (i) seize any thing (including a document)—
 - (i) at the premises or in a road vehicle at the premises; or
 - (ii) on the rolling stock, bus or vessel—
if the officer reasonably believes the thing is evidence of an offence against a transport safety or infrastructure law;
- (j) seize any thing at the premises or on the rolling stock, bus or vessel if the transport safety officer believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;
- (k) take and remove for analysis, testing or examination a sample of any substance or thing from the premises or the rolling stock, bus or vessel without paying for it;

-
- (l) require the following persons to give the officer reasonable help to exercise the officer's powers under paragraphs (a) to (k)—
- (i) a person at the public transport premises or marine premises;
 - (ii) a rail safety worker at railway premises or on rolling stock;
 - (iii) the driver of the bus;
 - (iv) the master or a member of the crew of the vessel;
- (m) exercise any power that is reasonably necessary to be exercised by the officer for the purposes of a transport safety or infrastructure law.
- (2) A film, photograph, video or digital recording, or other image, taken under subsection (1)(g) at the public transport premises or marine premises or on the rolling stock, bus or vessel, is not inadmissible as evidence by reason only of the fact that it includes the likeness of one or more persons if the capturing of that likeness is incidental to the taking of the film, photograph, video or digital recording, or other image.
- (3) A person required to give reasonable help under subsection (1)(l) must not, without reasonable excuse, fail to comply with the requirement.

Penalty: In the case of a natural person, \$10 000;
In the case of a body corporate,
\$50 000.

(4) In this section—

reasonable help includes—

- (a) assistance to enable the transport safety officer to find and gain access to electronically stored material and information at the public transport premises or marine premises or on the rolling stock, bus or vessel; and
- (b) unloading rolling stock at the public transport premises; and
- (c) running the engine of—
 - (i) a locomotive at the public transport premises; or
 - (ii) the bus; and
- (d) operating the vessel; and
- (e) driving a train, tram or bus; and
- (f) giving the transport safety officer assistance to enter any rail infrastructure or any part of rail infrastructure, or open rolling stock or any part of rolling stock, at the public transport premises.

9 Directions powers as to operation and movement of rolling stock and vehicles

- (1) A transport safety officer who enters public transport premises, rolling stock or a bus under section 6 may give a direction to any person at the premises or on the rolling stock or bus that relates to the stopping or movement of—
 - (a) any road vehicle at the premises; or
 - (b) the rolling stock or bus.

- (2) A person must not refuse or fail to comply with a direction under subsection (1) unless the person has a reasonable excuse.

Penalty: \$10 000.

10 Directions powers in relation to vessels

- (1) A transport safety officer who enters marine premises or boards, or proposes to board, a vessel under section 6 may do any of the following—
- (a) direct the master of a vessel or the person operating a vessel to do anything necessary to enable the effective and safe detention of the vessel;
 - (b) direct the master or owner of a vessel or the person operating a vessel to supply information, answer questions or produce documents for the purpose of determining whether the vessel is a domestic commercial vessel within the meaning of the Marine Safety (Domestic Commercial Vessel) National Law.
- (2) A transport safety officer, for compliance and investigative purposes, may direct the master of the vessel, or person operating the vessel, to—
- (a) stop the vessel; or
 - (b) manoeuvre the vessel in a specified manner or to a specified place; or
 - (c) secure the vessel in a specified manner; or
 - (d) produce, for inspection, equipment specified in the direction.

Example

A direction under subsection (2) may be a direction to manoeuvre the vessel to a berth.

- (3) A person must not refuse or fail to comply with a direction under subsection (1) or (2) unless the person has a reasonable excuse.

Penalty: \$10 000.

11 Detention of vessels for 48 hours

A transport safety officer who boards a vessel under section 6 may detain the vessel for so long as is necessary (but no longer than 48 hours) for the purposes of exercising a power under section 8.

12 Magistrates' Court may extend period of detention of vessel

- (1) A transport safety officer may apply to the Magistrates' Court for an extension of the period a vessel has been detained under section 11.
- (2) An application must be made within the maximum 48 hour detention period permitted under section 11 or within a period extended by the Court under this section.
- (3) The Court may order such an extension if satisfied that the continued detention of a vessel is necessary—
- (a) for the purposes of an investigation into whether an offence has been committed against a transport safety or infrastructure law; or
 - (b) to enable evidence of an offence against a transport safety or infrastructure law to be obtained for the purposes of a prosecution; or
 - (c) because the vessel is, or is likely to be, required for the purposes of an investigation into a marine safety matter.
- (4) The Court may adjourn an application to enable notice of the application to be given to any person.

13 Persons assisting transport safety officers

- (1) A person (the *assistant*), including an interpreter, may accompany a transport safety officer entering public transport premises or marine premises or other place, or rolling stock or bus or boarding a vessel under this Part to assist the officer if the officer considers the assistance necessary.
- (2) The assistant—
 - (a) may do such things at the premises or place or on the rolling stock, bus or vessel and in such manner as the transport safety officer reasonably requires to assist the officer in the exercise of his or her powers under this Act or a transport safety or infrastructure law; but
 - (b) must not do anything that the officer does not have power to do, except as permitted under a search warrant.
- (3) Anything done lawfully by the assistant is taken for all purposes to have been done by the transport safety officer.

14 Use of electronic equipment

- (1) Without limiting section 8, if—
 - (a) a thing found at searchable premises or on a searchable rolling stock, bus or vessel is, or includes, a disk, tape or other device for the storage, receipt or transmission of information; and
 - (b) the equipment at searchable premises or on a searchable rolling stock, bus or vessel, may be used with the disk, tape or other device—the transport safety officer, or a person assisting the officer, may operate the equipment to access the information.

- (2) If the transport safety officer, or a person assisting the transport safety officer, finds that a disk, tape, or other device for the storage, receipt or transmission of information at searchable premises or on a searchable rolling stock, bus or vessel contains information the officer believes on reasonable grounds is relevant to determining whether a provision of this Act or a transport safety or infrastructure law has been contravened, the officer or person assisting the officer may—
- (a) put the information in documentary form and seize the documents so produced; or
 - (b) copy the information to another disk, tape or other storage device and remove that storage device from the searchable premises or searchable rolling stock, bus or vessel; or
 - (c) if it is not practicable to put the information in documentary form nor to copy the information, seize the disk, tape or other storage device and the equipment that enables the information to be accessed.
- (3) A transport safety officer, or a person assisting a transport safety officer, must not operate or seize equipment for the purpose mentioned in this section unless the officer or person assisting believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.
- (4) In this section—

information has the same meaning as in the **Electronic Transactions (Victoria) Act 2000**.

15 Use of equipment to examine or process things

- (1) Without limiting section 8, a transport safety officer exercising a power under this Part may bring to, onto, or into searchable premises or a searchable rolling stock, bus or vessel any equipment reasonably necessary for the examination or processing of things found at the premises or on or in the rolling stock, bus or vessel in order to determine whether they are things that may be seized.
- (2) The transport safety officer, or a person assisting the officer, may operate equipment already at searchable premises or on a searchable rolling stock, bus or vessel to carry out the examination or processing of a thing found in or at the premises or on or in the rolling stock, bus or vessel in order to determine whether it is a thing that may be seized, if the officer or person assisting believes on reasonable grounds that—
 - (a) the equipment is suitable for the examination or the processing; and
 - (b) the examination or processing can be carried out without damage to the equipment.

16 Securing a site or restricting access to rolling stock, bus or vessel

- (1) For the purpose of protecting evidence that might be relevant for compliance and investigative purposes, an authorised officer may—
 - (a) secure the perimeter of any site at any place; or
 - (b) restrict access to rolling stock, a bus or vessel.

- (2) An authorised officer may secure the perimeter of a site or restrict access to rolling stock, a bus or vessel under subsection (1) by whatever means the authorised officer considers appropriate.
- (3) A person must not, without the permission of an authorised officer—
 - (a) enter or remain at a site the perimeter of which is secured under this section; or
 - (b) enter or board or remain on rolling stock, a bus or vessel access to which has been restricted under this section.

Penalty: \$10 000.

- (4) Subsection (3) does not apply if the person—
 - (a) enters or remains at the site or enters or boards or remains on the rolling stock, bus or vessel to ensure the safety of persons; or
 - (b) enters or remains at the site or enters or boards or remains on the rolling stock, bus or vessel to remove deceased persons or animals from the site or bus or vessel; or
 - (c) enters or remains at the site to move a road vehicle, or the wreckage of a road vehicle, to a safe place; or
 - (d) enters or remains at the site or enters or boards or remains on the rolling stock, bus or vessel to protect the environment from significant damage or pollution.
- (5) An authorised officer must not unreasonably withhold a permission referred to in subsection (3).

17 Directions for the protection of evidence

- (1) For the purpose of protecting evidence that might be relevant for compliance and investigative purposes, a transport safety officer may direct the person in control of a specified thing or class of specified things that the specified thing, or class of specified things, must not be removed or interfered with except with the permission of the transport safety officer.
- (2) A person must not fail or refuse to comply with a direction under subsection (1).
Penalty: \$10 000.
- (3) Subsection (2) does not apply if the conduct concerned was necessary—
 - (a) to ensure the safety of persons, animals or property; or
 - (b) for the movement of deceased persons or animals; or
 - (c) to move rolling stock or a bus, or the wreckage of rolling stock or a bus, to a safe place; or
 - (d) to protect the environment from significant damage or pollution.
- (4) A transport safety officer must not unreasonably withhold his or her permission under subsection (1).
- (5) In this section—

in control, in relation to a thing or a specified class of things, means having, or reasonably appearing to a transport safety officer as having, authority to exercise control over the thing or specified class of things.

Division 3—Search warrants

18 Search warrants

- (1) A transport safety officer may apply to a magistrate for a search warrant for a place, rolling stock, a bus or vessel.
- (2) The magistrate may refuse to consider the application until the transport safety officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example

The magistrate may require additional information supporting the application to be given by statutory declaration.

- (3) The magistrate may issue a search warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act or a transport safety or infrastructure law; and
 - (b) the evidence is, or may be within the next 72 hours, at the place or on the rolling stock or on the bus or vessel.
- (4) The search warrant must state—
 - (a) that a stated transport safety officer may, with necessary and reasonable help and force, enter the place, rolling stock or bus, or board the vessel, and exercise the powers of the officer; and
 - (b) the offence for which the search warrant is sought; and
 - (c) the evidence that may be seized under the search warrant; and

- (d) the hours of the day or night when the place, rolling stock or bus may be entered or vessel may be boarded; and
 - (e) the date, within 7 days after the search warrant's issue, the search warrant ends.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form set out in the rules of court under that Act.
- (6) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise a transport safety officer to arrest a person.
- (7) Subject to any provision to the contrary in this Division, the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

19 Seizure of things not mentioned in the warrant

A search warrant authorises the transport safety officer executing the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize any thing which is not of the kind described in the warrant if—

- (a) the transport safety officer believes, on reasonable grounds, that the thing—
 - (i) is of a kind which could have been included in a warrant issued under this Part; or
 - (ii) will afford evidence about the commission of an offence against this Act or a transport safety or infrastructure law; and
- (b) the transport safety officer believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in

the commission of an offence against this Act or a transport safety or infrastructure law.

20 Announcement before entry or boarding on warrant

- (1) Before executing a search warrant, the transport safety officer named in the warrant or an assistant to the officer must—
 - (a) announce that he or she is authorised by the warrant to enter the place, rolling stock or bus or board the vessel; and
 - (b) give any person at the place or on the rolling stock, bus or vessel an opportunity to allow that entry or boarding.
- (2) However, the transport safety officer or an assistant to the officer need not comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the place, or into the rolling stock or bus, or boarding of the vessel is needed to ensure—
 - (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.

21 Copy of warrant to be given to person with control or management of place, rolling stock, bus or vessel

If the person who has, or appears to have, control or management of a place, rolling stock, a bus or vessel is present at the place or on the rolling stock, bus or vessel when a search warrant is being executed, the transport safety officer must—

- (a) identify himself or herself to that person by producing his or her identity card for inspection; and
- (b) give that person a copy of the warrant.

Division 4—Other related investigatory powers

22 Power to require production of documents, devices or other things and answers to questions

- (1) A transport safety officer who enters searchable premises or boards a searchable rolling stock, bus or vessel may, for compliance and investigative purposes—
 - (a) require a person at the premises or on the rolling stock, bus or vessel to tell the officer who has custody of, or access to, a document, device or other thing; or
 - (b) require a person at the premises or on the rolling stock, bus or vessel who has custody of, or access to, a document, device or other thing to produce that document, device or other thing to the officer while the officer is at the premises or on the rolling stock, bus or vessel, or within a specified period; or
 - (c) require a person at the premises or on the rolling stock, bus or vessel to answer any questions put by the officer.
- (2) A requirement under subsection (1)(b) must be made by written notice unless the circumstances require the transport safety officer to have immediate access to the document, device or other thing.
- (3) An interview conducted by a transport safety officer under subsection (1)(c) must be conducted in private if—
 - (a) the transport safety officer considers it appropriate; or
 - (b) the person being interviewed so requests.

- (4) Subsection (3) does not limit the operation of section 13 or prevent a representative of the person being interviewed from being present at the interview.
- (5) Subsection (3) may be invoked during an interview by—
 - (a) the transport safety officer; or
 - (b) the person being interviewed—in which case the subsection applies to the remainder of the interview.
- (6) A person must not, without reasonable excuse, fail to comply with a requirement under this section.
Penalty: In the case of a natural person, \$5 000;
In the case of a body corporate,
\$25 000.

23 Abrogation of privilege against self-incrimination

- (1) A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.
- (2) However—
 - (a) any answer to a question or information or a document provided by a person under this Part is not admissible as evidence against that person in a criminal proceeding or a proceeding for the imposition of a civil penalty other than a proceeding arising out of the false or misleading nature of the answer, information or document; and
 - (b) any information provided or document obtained as a direct result or indirect consequence of the answer, information or

document being provided by a natural person under a requirement or direction under this Part is not admissible as evidence against that person in a criminal proceeding or a proceeding for the imposition of a civil penalty other than a proceeding arising out of the false and misleading nature of the answer, information or document.

- (3) Despite section (1) or (2)—
- (a) any information or document required to be kept under a transport safety or infrastructure law that is provided by a person under a requirement under section 22 is admissible in evidence against the person in a criminal proceeding; and
 - (b) any information obtained from a person under this Part that is contained in any document or item that the person is required to keep under a transport safety or infrastructure law is admissible in evidence against the person in a criminal proceeding or may be used in any action, proceeding or process that may make a person liable to a penalty.

24 Warning to be given

- (1) Before requiring a person to answer a question or provide information or a document under this Part, a transport safety officer must—
 - (a) identify himself or herself to the person as a transport safety officer by producing the officer's identity card or in some other way; and
 - (b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and

- (c) warn the person about the effect of section 23; and
 - (d) advise the person about the effect of section 127.
- (2) It is not an offence for a natural person to refuse to answer a question put by a transport safety officer or provide information or a document to a transport safety officer under this Part on the ground that the question, information or document might tend to incriminate him or her, unless he or she was first given the warning in subsection (1)(c).
- (3) Nothing in this section prevents a transport safety officer from obtaining and using evidence given to the officer voluntarily by any person.

25 Power to copy and retain documents

A transport safety officer may—

- (a) make copies of, or take extracts from, a document given to the officer in accordance with a requirement under a transport safety or infrastructure law or seized under this Part; and
- (b) keep that document for the period that the officer considers necessary.

26 Inspecting and copying documents in custody of a transport safety officer under this Part

While a transport safety officer retains custody of a document, the officer must permit the following persons to inspect or make copies of the document at all reasonable times—

- (a) the person who produced the document;
- (b) the owner of the document;
- (c) a person authorised by a person referred to in paragraph (a) or (b).

27 Securing seized things

On seizing a thing under this Part, a transport safety officer may—

- (a) move the thing from the public transport premises, marine premises, place, rolling stock, bus or vessel where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take steps to restrict access to it; or
- (c) in relation to equipment that is seized, make the equipment inoperable.

28 Offence to tamper with seized thing

- (1) If a transport safety officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without a transport safety officer's permission.

Penalty: \$10 000.

- (2) If a transport safety officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without a transport safety officer's permission.

Penalty: \$10 000.

29 Directions relating to seizure

- (1) To enable a thing to be seized under this Part, a transport safety officer may direct the person in control of it—
 - (a) to take it to a specified place within a specified time; and
 - (b) if necessary, to remain in control of it at the specified place for a period specified in the direction.

- (2) A direction under subsection (1)—
- (a) must be given by signed written notice given to the person; or
 - (b) if for any reason it is not practicable to give signed written notice to the person—may be given orally and confirmed by signed written notice given to the person as soon as is practicable.
- (3) A further direction may be made under this section about the thing if it is necessary and reasonable to make the further direction.

Example

A further direction may (for example) be that the thing be transported during stated off-peak hours, be transported along a particular route, or be transported in a particular way.

- (4) A person given a direction under subsection (1) or (3) must comply with that direction unless the person has a reasonable excuse.
- Penalty: \$5 000.
- (5) Without limiting what may otherwise be a reasonable excuse under subsection (4), it is a reasonable excuse for a person in control of a thing not to comply with a direction under subsection (1) or (3) if, in all the circumstances, the direction was unreasonable.
- (6) The cost of complying with a direction under subsection (1) or (3) must be borne by the person.
- (7) In this section—
- in control***, in relation to a thing, means having, or reasonably appearing to a transport safety officer as having, authority to exercise control over the thing.

30 Transport safety officer may direct a thing's return

- (1) If a transport safety officer has directed a person to take a thing to a specified place within a specified time under section 29(1), a transport safety officer may direct the person to return the thing to the place from which it was taken.
- (2) A person given a direction under subsection (1) must comply with that direction unless the person has a reasonable excuse.

Penalty: \$5 000.

- (3) Without limiting what may otherwise be a reasonable excuse under subsection (2), it is a reasonable excuse for a person not to comply with a direction under subsection (1) if, in all the circumstances, the direction was unreasonable.
- (4) The cost of complying with a direction under subsection (1) must be borne by the person.

31 Receipt for seized things

- (1) After a transport safety officer seizes a thing under this Part, the officer must give a receipt for it to the person from whom the thing was seized or the owner of the thing.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the transport safety officer must leave the receipt in a conspicuous position and in a reasonably secure way—
 - (a) at the place of seizure; or
 - (b) if the thing was seized from rolling stock, a bus or vessel, on the rolling stock, bus or vessel.
- (3) The receipt must describe generally the thing seized and its condition.

- (4) This section does not apply if it would be impracticable or unreasonable to expect the transport safety officer to account for the thing, given its condition, nature and value.

32 Copies of certain seized things to be given

- (1) If, under this Part, a transport safety officer seizes—
- (a) a document; or
 - (b) a thing that can be readily copied; or
 - (c) a storage device containing information that can be readily copied—

the transport safety officer must give a copy of the thing or information to the owner or custodian of the document, thing or device as soon as practicable after the seizure.

- (2) Subsection (1) does not apply—
- (a) to any document, thing or device moved under section 27(a) or 29; or
 - (b) if the transport safety officer is unable to discover the identity of the owner or custodian of any document, thing or device seized.

33 Forfeiture of seized things

- (1) A thing seized under this Part is forfeited to the State if the Safety Director—
- (a) cannot find the person entitled to the thing after making reasonable inquiries; or
 - (b) cannot return it to the person entitled to it, after making reasonable efforts; or
 - (c) reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act or a transport safety or infrastructure law.

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- (2) Subsection (1)(a) does not require the Safety Director to make inquiries if it would be unreasonable to make inquiries to find the person entitled to the thing.
 - (3) Subsection (1)(b) does not require the Safety Director to make efforts if it would be unreasonable to make efforts to return the thing to the person entitled to it.
 - (4) If the Safety Director decides to forfeit the thing under subsection (1)(c), the Safety Director must tell the person entitled to the thing of the decision by written notice.
 - (5) Subsection (4) does not apply if—
 - (a) the Safety Director cannot find the person entitled to the thing after making reasonable inquiries; or
 - (b) it is impracticable or would be unreasonable to give the notice.
 - (6) The notice must state—
 - (a) the reasons for the decision; and
 - (b) information about the right of review under Part 5.
 - (7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard must be had to the thing's nature, condition and value.
 - (8) Any costs reasonably incurred by the Safety Director in storing or disposing of a thing forfeited under subsection (1)(c) may be recovered in a court of competent jurisdiction as a debt due to the Safety Director from the person entitled.

(9) In this section—

person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

34 Return of seized things

- (1) If a seized thing has not been forfeited under this Part, the person entitled to the thing may apply to the Safety Director for the return of the thing after the end of 6 months after it was seized.
- (2) The Safety Director must return the thing to the applicant under subsection (1) unless the Safety Director has reasonable grounds to retain the thing.
- (3) For the purposes of subsection (2), a reasonable ground to retain the thing is—
 - (a) for the purposes of an investigation into whether an offence has been committed against this Act or a transport safety or infrastructure law; or
 - (b) to enable evidence of an offence against this Act or a transport safety or infrastructure law to be obtained for the purposes of a prosecution; or
 - (c) because the thing is, or is likely to be, required for the purposes of—
 - (i) an investigation into a public transport safety matter; or
 - (ii) an audit under Division 3 of Part 3 of the **Bus Safety Act 2009** or Division 5 of Part 3 of the **Rail Safety (Local Operations) Act 2006**.

(4) The Safety Director may impose any conditions on the return of the thing under this section that the Safety Director considers appropriate to eliminate or minimise any risk to safety related to the thing.

(5) In this section—

person entitled to a thing means the person entitled to possess the thing or the owner of the thing.

35 Access to seized thing

(1) Until a thing seized under this Part is forfeited or returned under this Part, a transport safety officer must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or it would be unreasonable to allow the inspection or copying.

Division 5—Damage and compensation

36 Damage etc to be minimised

In the exercise, or purported exercise, of a power under a transport safety or infrastructure law or under this Part, a transport safety officer must take all reasonable steps to ensure that the officer, and any assistant to the officer, cause as little inconvenience, detriment and damage as is practicable.

37 Transport safety officer to give notice of damage

(1) This section applies if a transport safety officer or an assistant to a transport safety officer damages a thing when exercising or purporting to exercise a power under a transport safety or infrastructure law or under this Part.

- (2) The transport safety officer must, as soon as practicable, give written notice of the damage to the person whom the officer believes on reasonable grounds is the person in control of the thing.
- (3) If the transport safety officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's or assistant's control, the officer may state it in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the transport safety officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the transport safety officer reasonably believes is trivial.

38 Compensation

- (1) A person may claim compensation from the Safety Director if the person incurs damage because of the exercise or purported exercise of a power under this Part.
- (2) In determining the amount of compensation payable in relation to any damage caused to electronic equipment, regard is to be had to whether the occupier of the public transport premises or marine premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

39 Limits on compensation

The Safety Director is not liable to pay compensation to a person for any damage caused during any inspection or search conducted under this Part, or under a search warrant executed in accordance with this Part, if—

- (a) the thing that was the object of the inspection or search provides evidence of—
 - (i) the commission of an offence against this Act or a transport safety or infrastructure law; or
 - (ii) non-compliance with a transport safety or infrastructure law or an approved code of practice; and
- (b) the damage caused was no more than was reasonably necessary in inspecting, or searching for, the thing.

40 Compensation may be claimed as part of a court proceeding

- (1) Compensation may be claimed and ordered in a proceeding—
 - (a) commenced in a court of competent jurisdiction; or
 - (b) for an offence against this Act or a transport safety or infrastructure law commenced against the person claiming compensation.
- (2) The court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (3) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

Division 6—Directions powers

41 Transport safety officers may require name and address

- (1) A transport safety officer may require a person to provide the person's name and residential address if—
 - (a) the officer finds the person committing an offence against this Act or a transport safety or infrastructure law; or
 - (b) the officer finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has committed an offence against this Act or a transport safety or infrastructure law; or
 - (c) the officer reasonably believes that the person may be able to assist in the investigation of an offence against this Act or a transport safety or infrastructure law.
- (2) When asking a person to provide the person's name and residential address, the transport safety officer must—
 - (a) tell the person the reason for the requirement to provide the person's name and residential address; and
 - (b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.
- (3) If the transport safety officer reasonably believes that the name or residential address is false, the officer may require the person to give evidence of its correctness.

- (4) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1) or (3).

Penalty: \$5 000.

42 Master or person operating vessel must stop vessel and provide licence or certificates when directed

- (1) A police officer or a transport safety officer may, by signalling or otherwise, require the master of, or person operating, a vessel that is moving to stop the vessel.
- (2) A police officer or a transport safety officer may require the master of, or person operating, a vessel to produce for inspection a certificate, licence or exemption issued under the **Marine Safety Act 2010** that is required to lawfully operate the vessel.
- (3) A police officer or a transport safety officer may require the master of, or person operating, a vessel to allow the officer to inspect any document that is required by regulations made under the **Marine Safety Act 2010** to be displayed in or on the vessel.
- (4) A person given a requirement under subsection (1), (2) or (3) must not refuse or fail to comply with the requirement.

Penalty: \$1 500.

- (5) Subsection (4) (as it applies to a requirement under subsection (2)) does not apply if the licence, certificate, exemption or other document is not on the vessel at the time the requirement for its production is made.

43 Direction to provide certain information

- (1) A transport safety officer may direct, for compliance and investigative purposes—
- (a) a rail operator or a rail safety worker who is associated with particular rolling stock—
 - (i) to state the name, home address and business address of any other person who is associated with the rolling stock;
 - (ii) to give any information that is within the power of the person to give that may lead to the identification of the owner or operator of the rolling stock on any occasion;
 - (b) a provider of a bus service or a bus safety worker who is associated with a particular bus—
 - (i) to state the name, home address and business address of any other person who is associated with the bus;
 - (ii) to give any information that is within the power of the person to give that may lead to the identification of the owner or operator of the bus on any occasion;
 - (c) a person whom the transport safety officer believes has information concerning the identity or location of the owner or master of a vessel to provide all the information the person has regarding the identity and location of the owner and master of the vessel.
- (2) A person must not refuse or fail to comply with a direction under subsection (1).

Penalty: \$5 000.

(3) It is not an offence for a person to fail to comply with subsection (2) if the transport safety officer did not inform the person, at the time the direction was made, that it is an offence to fail to comply with the direction.

(4) In this section—

associated with means the owner or operator of, or in charge or apparently in charge of.

44 Manner in which transport safety officers may give directions under this Part

(1) A transport safety officer may give a direction under this Part orally or in writing.

(2) If giving a direction orally, the transport safety officer giving the direction—

(a) must state whether it is to be complied with immediately or within a specified period; and

(b) must warn the person to whom the direction is given that it is an offence under this Act to fail to comply with a direction.

(3) If giving a direction in writing, the transport safety officer must ensure that the direction—

(a) states the period within which it is to be complied with; and

(b) states that it is an offence under this Act to fail to comply with a direction.

(4) A written direction may be given to, or sent by post to, the person to whom it is directed.

45 Directions may be given under more than one provision

(1) A transport safety officer may, on the same occasion, give directions under one or more provisions of this Part.

- (2) Without limiting subsection (1), a transport safety officer, in the course of exercising powers under a provision of this Part, may do either or both of the following—
- (a) give further directions under the provision;
 - (b) give further directions under one or more other provisions of this Part.

Division 7—Other matters

46 Residential premises

Despite anything else in this Part, the powers of a transport safety officer under this Part in relation to entering a place, rolling stock or bus or boarding a vessel are not exercisable in respect of any part of the place, rolling stock, bus or vessel that are residential premises except—

- (a) with the consent of—
 - (i) the person with control or management of the residential premises; or
 - (ii) a person at the premises; or
 - (iii) a resident of the premises; or
- (b) under the authority conferred by a search warrant; or
- (c) for the sole purpose of gaining access to suspected public transport premises, but only—
 - (i) if the officer reasonably believes that no reasonable alternative access is available; and
 - (ii) at a reasonable time, having regard to the times at which the officer believes rail safety work or bus safety work is being carried out at the premises to which access is sought.

47 Use of force

A power conferred under this Act to enter a place, rolling stock or a bus or board a vessel, or to do anything in or on that place or on that rolling stock, bus or vessel, may not be exercised unless the transport safety officer or a person assisting a transport safety officer proposing to exercise the power, uses no more force than is reasonably necessary to effect the entry or boarding or to do the thing for which the entry or boarding is effected.

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

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

49 Manner in which transport safety officers must exercise powers

In exercising powers under this Part, a transport safety officer must—

- (a) cause as little inconvenience as possible; and
 - (b) not remain at any place or on any rolling stock, bus or vessel any longer than is reasonably necessary.
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PART 3—ENFORCEMENT MEASURES

Division 1—Improvement notices

50 Service of improvement notices

- (1) This section applies if a transport safety officer reasonably believes that a person—
 - (a) is contravening a provision of a transport safety or infrastructure law; or
 - (b) has contravened a provision of a transport safety or infrastructure law in circumstances that make it likely that the contravention will continue or be repeated; or
 - (c) is carrying out or has carried out—
 - (i) railway operations or marine operations that threaten safety; or
 - (ii) other operations that threaten rail safety or marine safety; or
 - (d) providing bus services that threaten safety or other services that threaten bus safety.
- (2) Subject to this section, the transport safety officer may serve an improvement notice requiring the person—
 - (a) to remedy the contravention; or
 - (b) to prevent a likely contravention from occurring; or
 - (c) to remedy the things or operations causing the contravention or likely contravention; or
 - (d) to carry out railway operations or marine operations or provide bus services so that safety is not threatened or likely to be threatened.

Note

A decision whether to serve an improvement notice is a mandatory transport safety decision—see section 175 of the **Transport Integration Act 2010**.

- (3) Before serving an improvement notice under this section, a transport safety officer must inform the Safety Director of his or her intention to do so.

51 Improvement notices—closures of level crossings, bridges or other structures

- (1) Without limiting section 50, an improvement notice may require a person to close a level crossing, a bridge or other structure passing over or under a railway—
- (a) that the person owns or controls; or
 - (b) for which the person is responsible.
- (2) If an improvement notice requires a person to close a level crossing or a bridge or other structure passing over or under a railway, the person must publish a notice of the required closure in a newspaper circulating—
- (a) generally in the State; and
 - (b) in the area in which the level crossing or bridge or other structure is located.

52 Contents of improvement notices

- (1) An improvement notice must—
- (a) if the notice relates to a contravention or likely contravention of a transport safety or infrastructure law—
 - (i) state that the transport safety officer believes the person—
 - (A) is contravening a provision of a transport safety or infrastructure law; or

- (B) has contravened a provision of a transport safety or infrastructure law in circumstances that make it likely that the contravention will continue or be repeated; and
 - (ii) state the provision the officer believes is being, or has been, contravened; and
 - (iii) briefly, state how the provision is being, or has been, contravened; and
 - (iv) state the day before which the person is required to remedy the contravention or likely contravention; and
- (b) in any other case—
- (i) state that the transport safety officer believes the person—
 - (A) is carrying out or has carried out railway operations or marine operations that threaten safety, or other operations that threaten rail safety or marine safety; or
 - (B) is providing bus services or has provided bus services that threaten safety, or other services that threaten bus safety; and
 - (ii) briefly, state how—
 - (A) the railway operations, marine operations or bus services are threatening, or have threatened, safety; or
 - (B) the other operations or services are threatening, or have threatened, rail safety, marine safety or bus safety; and

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- (iii) state the day before which the person is required to carry out railway operations, or marine operations or other operations, or provide bus services or other services, so that safety is not threatened or likely to be threatened; and
- (c) if a cost-benefit analysis has been carried out under section 175 of the **Transport Integration Act 2010**, set out the results of that analysis; and
- (d) set out the penalty for non-compliance with the notice; and
- (e) include information about the right to a review under Part 5 of the decision to serve the notice; and
- (f) state that the notice is served under section 50.
- (2) An improvement notice served on a person on a ground stated in section 50(1)(a) or (b) may include directions concerning the action to be taken to remedy the contravention or prevent the likely contravention, or the things or operations causing the contravention or likely contravention, to which the notice relates.
- (3) An improvement notice served on a person on the ground stated in section 50(1)(c) may include directions concerning the action to be taken by which railway operations or other operations to which the notice relates may be carried out so that safety is not threatened or likely to be threatened.
- (4) An improvement notice may include recommendations.

- (5) The day stated for compliance with the improvement notice must be reasonable in all the circumstances.

53 Directions in improvement notices

A direction included in an improvement notice may—

- (a) refer to an approved code of practice; and
- (b) offer the person on whom it is served a choice of ways in which to remedy the contravention.

54 Amendment of improvement notice

- (1) An improvement notice served by a transport safety officer may be amended by any transport safety officer or the Safety Director.
- (2) An amendment of an improvement notice is effected by serving on the person affected a notice stating the terms of the amendment.
- (3) An amendment of an improvement notice is ineffective if it purports to deal with a contravention of a different provision of a transport safety or infrastructure law from that dealt with in the improvement notice as first served.
- (4) A notice of an amendment of an improvement notice must—
 - (a) state the reasons for the amendment; and
 - (b) include information about obtaining a review of the decision to amend the notice; and
 - (c) state that it is served under this section.

55 Cancellation of improvement notices

- (1) An improvement notice served on a person may only be cancelled by the Safety Director.
- (2) Notice of cancellation of an improvement notice is required to be served on the person affected.

56 Clearance certificates for improvement notices

- (1) This section applies if the Safety Director or a transport safety officer is satisfied that a person on whom an improvement notice has been served has complied with all the requirements of, or a requirement of, that notice.
- (2) The Safety Director or a transport safety officer must serve a clearance certificate on the person to the effect that (as the case requires)—
 - (a) all of the requirements of the improvement notice have been complied with; or
 - (b) the specific requirement of the improvement notice has been complied with.
- (3) The clearance certificate must be served as soon as practicable after the Safety Director or a transport safety officer is so satisfied.
- (4) A requirement of the improvement notice to which the clearance certificate relates ceases to be operative on receipt by the person of that certificate.

57 Proceedings for offences not affected by improvement notices or clearance certificates

- (1) The service, amendment or cancellation of an improvement notice does not affect any proceeding for an offence against a transport safety or infrastructure law in connection with any matter in respect of which the improvement notice was served.

- (2) The service of a clearance certificate under section 56 in respect of an improvement notice does not affect any proceeding for an offence against a transport safety or infrastructure law in connection with any matter in respect of which the improvement notice was served.

58 Compliance with improvement notice

- (1) A person on whom an improvement notice is served must comply with the notice within the period specified in the notice unless the person has a reasonable excuse.

Penalty: In the case of a natural person \$50 000;
In the case of a body corporate,
\$500 000.

- (2) It is not an offence to fail to comply with recommendations in an improvement notice.

59 Extension of time for compliance with improvement notices

- (1) This section applies if a person has been served with an improvement notice.
- (2) A transport safety officer may, by written notice given to the person, extend the compliance period for the improvement notice.
- (3) However, the transport safety officer may only extend the compliance period if the period has not ended.

- (4) In this section—

compliance period means the period stated in the improvement notice under section 50, and includes that period as extended under this section.

Division 2—Prohibition notices

60 Service of prohibition notice

- (1) This section applies if a transport safety officer reasonably believes that—
- (a) an activity is occurring in relation to railway operations, bus services or public transport premises that involves or will involve an immediate risk to safety; or
 - (b) an activity may occur in relation to railway operations, bus services or public transport premises that, if it occurs, will involve an immediate risk to safety; or
 - (c) an activity may occur at, on, or in the immediate vicinity of rail infrastructure, rolling stock or a bus stopping point that, if it occurs, will involve an immediate risk to safety; or
 - (d) an activity is occurring on, or in relation to marine operations or marine premises that involves or will involve an immediate risk to safety; or
 - (e) an activity is occurring on, or in relation to the operation of, a vessel, that involves or will involve an immediate risk to safety; or
 - (f) an activity is occurring at marine premises or a place where vessels are operated, stored, moored, berthed or placed that involves or will involve an immediate risk to safety; or
 - (g) an activity may, if it occurs at or in relation to, marine premises or a place where vessels are operated, stored, moored, berthed or placed, involve an immediate risk to safety.

- (2) The transport safety officer may serve a prohibition notice on a person who has, or appears to have, control over the activity prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way.
- (3) Despite section 77, a prohibition notice may be given orally, but must be confirmed by written notice served on the person as soon as practicable after it was given.

61 Contents of prohibition notice

- (1) A prohibition notice must—
 - (a) state that the transport safety officer believes that grounds for the service of the prohibition notice exist and the basis for that belief; and
 - (b) briefly, state the activity that the officer believes involves or will involve the risk and the matters that give or will give rise to the risk; and
 - (c) state the provision (if any) of a transport safety or infrastructure law that the officer believes is being, or is likely to be, contravened by that activity; and
 - (d) set out the penalty for contravening the notice; and
 - (e) include information about the right to a review under Part 5 of the decision to serve the notice; and
 - (f) state that the notice is served under this section.
- (2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (1)(c).

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- (3) A direction in a prohibition notice may offer the person on whom the notice has been served a choice of ways to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention mentioned in subsection (1)(c).
- (4) Without limiting section 60, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following—
- (a) premises, or part of premises, at which the activity is not to be carried out;
 - (b) infrastructure at or on which, or in the immediate vicinity of, the activity is not to be carried out;
 - (c) any thing that is not to be used in connection with the activity;
 - (d) that a vessel is not to be operated;
 - (e) any procedure that is not to be followed in connection with the activity.
- (5) A prohibition notice may include recommendations.

62 Directions in prohibition notices

A direction included in a prohibition notice may—

- (a) refer to an approved code of practice; and
- (b) offer the person on whom it is served a choice of ways in which to remedy the matters or matter that involve, or will involve, an immediate risk to safety.

63 Compliance with prohibition notice

- (1) A person on whom a prohibition notice is served must comply with the notice unless the person has a reasonable excuse.

Penalty: In the case of a natural person
\$150 000;

In the case of a body corporate,
\$1 500 000.

- (2) It is not an offence to fail to comply with recommendations in a prohibition notice.

64 Amendment of prohibition notice

- (1) A prohibition notice served by a transport safety officer may be amended by any transport safety officer or the Safety Director.
- (2) An amendment of a prohibition notice served is effected by service on the person affected of a notice stating the terms of the amendment.
- (3) An amendment of a prohibition notice served is ineffective if it purports to prohibit the carrying out of an activity that is different from the activity prohibited by the prohibition notice as first served.
- (4) A notice of an amendment of a prohibition notice must—
- (a) state the reasons for the amendment; and
 - (b) include information about obtaining a review of the decision to amend the notice; and
 - (c) state that it is served under this section.

65 Withdrawal of prohibition notices

- (1) A prohibition notice served on a person may only be withdrawn by the Safety Director.
- (2) Notice of the withdrawal of a prohibition notice is required to be served on the person affected.

66 Certificates that matters that give rise to immediate risks to safety remedied

- (1) This section applies if the Safety Director or a transport safety officer is satisfied that a person served with a prohibition notice has remedied all of the matters or a matter—
 - (a) that gave, or will give, rise to an immediate risk to safety; and
 - (b) specified in the prohibition notice.
- (2) The Safety Director or a transport safety officer must serve a certificate on the person to the effect that (as the case requires)—
 - (a) all of the matters or the matter that gave rise to an immediate risk to safety because of the activity specified in the prohibition notice have been remedied; or
 - (b) all of the matters or the matter that could have given rise to an immediate risk to safety because of the activity specified in the prohibition notice have been remedied.
- (3) The certificate must be served as soon as practicable after the Safety Director or transport safety officer is so satisfied.
- (4) A matter raised in the prohibition notice that has been remedied to the satisfaction of the Safety Director or transport safety officer, and to which the certificate relates, ceases to be operative on receipt by the person of that certificate.

67 Proceedings for offences not affected by prohibition notices or certificates

- (1) The service or withdrawal of a prohibition notice or amendment of a prohibition notice does not affect any proceeding for an offence against a transport safety or infrastructure law in connection

with any matter in respect of which the prohibition notice was served.

- (2) The service of a certificate under section 66 in respect of a prohibition notice does not affect any proceeding for an offence against a transport safety or infrastructure law in connection with any matter in respect of which the prohibition notice was served.

Division 3—Remedial action in relation to prohibition notices

68 When Safety Director may carry out action

- (1) This section applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.
- (2) The Safety Director may take any remedial action the Safety Director believes reasonable to make the public transport premises, marine premises, vessel or situation safe after giving written notice to the person on whom the prohibition notice was served of—
 - (a) the Safety Director's intention to take that action; and
 - (b) the owner's or person's liability for the costs of that action.

69 Power of Safety Director to take other remedial action

- (1) This section applies if the Safety Director reasonably believes that—
 - (a) circumstances in which a prohibition notice can be served exist; and
 - (b) a prohibition notice cannot be served at public transport premises or marine premises or in relation to a vessel because, after taking reasonable steps, the person with control or

management of the premises or vessel cannot be found.

- (2) The Safety Director may take any remedial action necessary to make the public transport premises, marine premises or vessel safe.

70 Costs of remedial or other action

The Safety Director may recover, as a debt due to the Safety Director in a court of competent jurisdiction, the reasonable costs of any remedial action taken under—

- (a) section 68 from the person on whom the prohibition notice is served; or
- (b) section 69 from any person to whom the prohibition notice could have been served in respect of the matter.

Division 4—Non-disturbance notices

71 Service of non-disturbance notice

A transport safety officer may serve a non-disturbance notice on a person with control or management of any of the following places or things if the officer reasonably believes that it is necessary to do so to facilitate the exercise of his or her powers under a transport safety or infrastructure law—

- (a) public transport premises; or
- (b) marine premises; or
- (c) rolling stock; or
- (d) a bus; or
- (e) a vessel.

72 Contents of non-disturbance notice

- (1) A non-disturbance notice may require the person to—
 - (a) in the case of public transport premises or marine premises—
 - (i) preserve the site at which a notifiable occurrence has occurred for a specified period; or
 - (ii) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances;
 - (b) in the case of rolling stock, a bus or vessel—
 - (i) preserve the rolling stock, bus or vessel in respect of which a notifiable occurrence has occurred for a specified period; or
 - (ii) prevent the disturbance of a particular rolling stock or a particular bus or a particular vessel in other circumstances for a specified period that is reasonable in the circumstances.
- (2) A non-disturbance notice must specify the period (of no more than 7 days) for which it applies and set out—
 - (a) the obligations of the person on whom the notice is served; and
 - (b) the measures to be taken to—
 - (i) preserve a site, rolling stock, bus or vessel; or
 - (ii) prevent disturbance of a site, rolling stock, bus or vessel; and

- (c) information about the right to a review under Part 5 of the decision to serve the notice; and
 - (d) the penalty for contravening the notice.
- (3) In subsection (1), a reference to a site includes any plant, substance, structure or thing associated with the site.
- (4) A non-disturbance notice does not prevent any action—
- (a) to assist an injured person or animal; or
 - (b) to remove a deceased person or animal; or
 - (c) that is essential to make the site, bus or vessel safe or prevent a further incident; or
 - (d) that is associated with a police investigation; or
 - (e) in respect of which a transport safety officer has given permission; or
 - (f) to protect the environment from significant damage or pollution.

73 Compliance with non-disturbance notice

A person on whom a non-disturbance notice is served must comply with the notice unless the person has a reasonable excuse.

Penalty: In the case of a natural person, \$20 000;
In the case of a body corporate,
\$100 000.

74 Service of subsequent non-disturbance notices

- (1) If a transport safety officer considers it necessary to do so, he or she may serve one or more subsequent non-disturbance notices to a person under section 71.

- (2) A non-disturbance notice referred to in subsection (1) may be served before or after the expiry of a previous notice.
- (3) Each subsequent non-disturbance notice must comply with section 72.

75 Cancellation of a non-disturbance notice

A transport safety officer may cancel a non-disturbance notice.

Division 5—General requirements applying to notices

76 Definition

In this Division—

notice means—

- (a) an improvement notice; or
- (b) a prohibition notice; or
- (c) a non-disturbance notice.

77 Notice to be in writing

A notice must be in writing.

78 Minor variations of notices by transport safety officer

A transport safety officer may make minor changes to a notice—

- (a) for clarification; or
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

79 Formal irregularities or defects in notice

A notice is not invalid merely because of—

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or

- (b) a failure to use the correct name of the person on whom the notice is served if the notice sufficiently identifies the person and is served or given to the person in accordance with section 80.

80 Serving notices

- (1) A notice may be served on a person—
 - (a) in accordance with section 131; or
 - (b) by leaving it for the person at the public transport premises, marine premises, or on the rolling stock, bus or vessel, to which the notice relates with a person who is or appears to be the person with control or management of the premises, rolling stock, bus or vessel; or
 - (c) in a prescribed manner.
- (2) The regulations may prescribe—
 - (a) the manner of serving a notice; and
 - (b) the steps a person on whom a notice is served must take to bring it to the attention of other persons.

Division 6—Injunctions

81 Definition

In this Division—

notice means—

- (a) an improvement notice; or
- (b) a prohibition notice; or
- (c) a non-disturbance notice.

82 Injunctions for non-compliance with notices

- (1) The Safety Director may apply to the Magistrates' Court for an injunction—
 - (a) compelling a person to comply with a notice; or
 - (b) restraining a person from contravening a notice.
- (2) The Safety Director may do so—
 - (a) whether or not a proceeding has been commenced for an offence against a transport safety of infrastructure law in connection with any matter in respect of which the notice was issued; and
 - (b) whether or not any period for compliance with the notice has expired.

Division 7—Enforceable voluntary undertakings

83 Enforceable voluntary undertaking

- (1) The Safety Director may accept (by written notice) a written undertaking (a *transport safety undertaking*) given by an accredited bus operator or rail transport operator in connection with a matter relating to a contravention or alleged contravention by the person of a transport safety or infrastructure law.
- (2) The Safety Director must not accept a transport safety undertaking under subsection (1) if—
 - (a) the undertaking is in connection with a matter relating to a contravention or alleged contravention of an indictable offence under a transport safety or infrastructure law; and
 - (b) the Safety Director considers that it would be appropriate for him or her to prosecute that offence.

- (3) The giving of a transport safety undertaking does not constitute an admission of guilt by the operator giving it in respect of the contravention or alleged contravention to which the undertaking relates.

84 Notice of decisions and reasons for decision

The Safety Director must give the accredited bus operator or rail transport operator seeking to make a transport safety undertaking written notice of—

- (a) the Safety Director's decision to accept or reject the undertaking; and
- (b) the reasons for the decision.

85 When a transport safety undertaking is enforceable

A transport safety undertaking takes effect and becomes enforceable—

- (a) when the Safety Director's decision to accept the undertaking is given to the accredited bus operator or rail transport operator who made the undertaking; or
- (b) at any later date specified by the Safety Director.

86 Compliance with transport safety undertaking

An accredited bus operator or rail transport operator who has made a transport safety undertaking that is in effect must not contravene the undertaking.

Penalty: In the case of a natural person, \$10 000;
In the case of a body corporate,
\$50 000.

87 Contravention of transport safety undertaking

- (1) This section applies if the Safety Director considers that an accredited bus operator or rail transport operator has contravened an undertaking accepted by the Safety Director from that operator.
- (2) The Safety Director may apply to the Magistrates' Court for enforcement of the undertaking.
- (3) If the Magistrates' Court is satisfied that the accredited bus operator or rail transport operator has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make any of the following orders—
 - (a) an order that the operator must comply with the undertaking or take specified action to comply with the undertaking;
 - (b) an order discharging the undertaking;
 - (c) an order directing the person to pay to the Safety Director—
 - (i) the costs of the proceeding; and
 - (ii) the reasonable costs of the Safety Director in monitoring compliance with the transport safety undertaking in the future;
 - (d) any other order that it considers appropriate in the circumstances.
- (4) An accredited bus operator or rail transport operator must not fail to comply with an order under this section.

Penalty: In the case of a natural person, \$10 000;
In the case of a body corporate,
\$50 000.

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- (5) Nothing in this section prevents a proceeding being commenced for the contravention or alleged contravention of a transport safety or infrastructure law to which the transport safety undertaking relates.

88 Withdrawal or variation of transport safety undertaking

- (1) An accredited bus operator or rail transport operator who has made a transport safety undertaking may withdraw or vary the undertaking with the written agreement of the Safety Director.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of a transport safety or infrastructure law.

89 Proceedings for alleged contravention

- (1) Subject to this section, no proceeding for a contravention or alleged contravention of a transport safety or infrastructure law may be commenced against a person if a transport safety undertaking is in effect in relation to that contravention.
- (2) No proceeding may be commenced for a contravention or alleged contravention of a transport safety or infrastructure law against an accredited bus operator or rail transport operator who has—
- (a) made a transport safety undertaking in respect of that contravention; and
 - (b) completely discharged the transport safety undertaking.

- (3) The Safety Director may accept a transport safety undertaking in respect of a contravention or alleged contravention before a proceeding in respect of that contravention has been finalised.
- (4) If the Safety Director accepts a transport safety undertaking before a proceeding is finalised, the Safety Director must take all reasonable steps to have the proceeding discontinued as soon as possible.

Division 8—Additional enforcement measures relating to rail and bus safety

90 Response to certain safety reports

- (1) This section applies if the Safety Director is of the opinion that, as a result of a safety report, action is necessary for the purpose of—
 - (a) the safe construction or operation of a railway;
 - (b) the safe operation of a bus service.
- (2) The Safety Director, by written notice, may direct—
 - (a) a rail transport operator to install on or with respect to the infrastructure of the railway, or on or with respect to rolling stock, safety or protective systems, devices, equipment or appliances specified in the notice;
 - (b) an operator of a bus service to install, on a bus or buses the operator operates, safety or protective systems, devices, equipment or appliances specified in the notice.
- (3) A direction under subsection (2) must—
 - (a) specify the time within which the safety or protective systems, devices, equipment or appliances specified in the notice must be installed;

- (b) state the reasons why the Safety Director considers it is necessary for the rail transport operator to take the action specified in the direction; and
 - (c) include information about the right of review under Part 5.
- (4) An operator of a bus service or rail transport operator must not, without reasonable excuse, fail to comply with a direction under this section.

Penalty: In the case of a natural person,
\$150 000;

In the case of a body corporate,
\$1 500 000.

- (5) In this section—

safety report means—

- (a) a report relating to bus safety or rail safety (including any recommendations) in response to or relating to an inquest held by the Coroners Court under the **Coroners Act 2008**; or
- (b) a report of an investigation held under the Transport Safety Investigation Act 2003 of the Commonwealth; or
- (c) any other report of an investigation into a matter relating to rail safety or bus safety.

91 Power to require works to stop

- (1) A person (other than a rail transport operator) must, before carrying out any works near a railway that threaten, or are likely to threaten—
- (a) the safety of the railway; or

(b) the operational integrity of the railway—
notify the relevant rail infrastructure manager of
the intention to carry out those works.

Penalty: In the case of a natural person, \$20 000;
In the case of a body corporate,
\$100 000.

(2) If—

- (a) a person is carrying out, or proposes to carry out, works near a railway; and
- (b) the Safety Director believes on reasonable grounds that the works threaten, or are likely to threaten—
 - (i) the safety of the railway; or
 - (ii) the operational integrity of the railway—

the Safety Director may, by written notice, give the person a direction to stop, alter or not to commence the work.

(3) If—

- (a) a rail transport operator is carrying out, or proposes to carry out, railway operations on or near land on which there is infrastructure, or works, of a utility; and
- (b) the Safety Director believes on reasonable grounds that the railway operations threaten, or are likely to threaten—
 - (i) the safety of the utility infrastructure or works; or

- (ii) the safe provision by the utility of water, gas or electricity or other like services—

the Safety Director may, by written notice, give the operator a direction to stop, alter or not to commence the railway operations.

- (4) A person who is given a notice under subsection (2) or (3) must comply with the direction set out in the notice unless the person has a reasonable excuse.

Penalty: In the case of a natural person, \$20 000;
In the case of a body corporate,
\$100 000.

- (5) If a person carries out work in contravention of subsection (1) or a direction given under subsection (2) or (3), the Safety Director may, by written notice, direct a person who has the care, control or management of the land where the infrastructure or works are situated to alter, demolish or take away the work within a reasonable time specified in the notice.

- (6) A person who is given a notice under subsection (5) must comply with the requirement unless the person has a reasonable excuse.

Penalty: In the case of a natural person, \$10 000;
In the case of a body corporate,
\$50 000.

- (7) A notice under this section must—

- (a) include information about the right to a review under Part 5 of the decision to serve the notice; and
(b) state that the notice is served under this section.

92 Temporary closing of railway crossings, bridges etc.

- (1) An authorised officer may close temporarily or regulate a railway crossing, bridge, subway or other structure for crossing or passing over or under a railway if satisfied it is necessary because of an immediate threat to safety.
- (2) If an authorised officer decides to close temporarily or regulate a railway crossing, bridge, subway or other structure, the authorised officer must, as soon as practicable after its closure or regulation, notify the person or authority responsible for the railway crossing, bridge, subway or other structure of its closure or regulation.
- (3) In this section—
authorised officer means—
 - (a) a person who holds a specific authority from the Safety Director for the purposes of this section; or
 - (b) a person who holds a specific authority issued by an accredited rail transport operator for the purposes of this section.

PART 4—INFRINGEMENT NOTICES

Division 1—Transport safety infringement notices

93 Transport safety infringements

- (1) A transport safety officer who has reason to believe that a person has committed a transport safety infringement may serve a transport safety infringement notice on that person.
- (2) A police officer who has reason to believe that a person has committed a transport safety infringement in relation to a marine or port infringement law may serve a transport safety infringement notice on that person.
- (3) An offence referred to in subsection (1) or (2) for which a transport safety infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (4) The penalty for the purposes of this section in respect of any transport safety infringement is the amount prescribed in respect of that infringement.

Division 2—Safety work infringements

94 Safety work infringements

- (1) A police officer who has reason to believe that a rail safety worker has committed a safety work infringement may serve a safety work infringement notice on the rail safety worker.
- (2) An offence referred to in subsection (1) for which a safety work infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) For the purposes of subsection (1), a safety work infringement notice—
 - (a) must be in the form required by section 13 of the **Infringements Act 2006**; and

- (b) must include the concentration of alcohol alleged to have been present in the person's blood or breath; and
 - (c) may contain any additional prescribed details.
- (4) A safety work infringement notice may be withdrawn, whether the appropriate penalty has been paid or not, at any time within 28 days after the service of the notice, by serving on the alleged offender, in accordance with the regulations, a withdrawal notice in the prescribed form.
- (5) The penalty for the purposes of this section in respect of any safety work infringement is the amount prescribed in respect of that infringement.

95 Effect of safety work infringement

- (1) Subject to section 96, a safety work infringement takes effect, 28 days after the date of the notice, as a conviction of the offence specified in the notice, unless the rail safety worker to whom the notice was issued objects, within that time and in accordance with this section, to the infringement notice.
- (2) A rail safety worker may object to the safety work infringement notice by giving written notice of the objection to the person specified for that purpose in the safety work infringement notice.
- (3) A notice of objection must state—
- (a) that the rail safety worker to whom the safety work infringement notice was issued refuses to pay the penalty; and
 - (b) that the rail safety worker requests that the matter be dealt with by a court; and
 - (c) that the rail safety worker intends to defend any charge arising out of the facts specified in the safety work infringement notice.

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- (4) The giving of notice of objection to the safety work infringement notice has the effect that—
- (a) the safety work infringement notice is cancelled; and
 - (b) the rail safety worker to whom the safety work infringement notice was issued may only be proceeded against by the filing of a charge-sheet charging the alleged offence.

96 Extension of time to object if no actual notice

- (1) If a safety work infringement notice is not delivered personally to the rail safety worker to whom it was issued, and the rail safety worker is not in fact aware, before the notice takes effect as a conviction, that it had been issued, the rail safety worker may, within 7 days after becoming aware of it, apply in accordance with the regulations to the Magistrates' Court to have the time for objecting to the notice extended.
- (2) The court must not grant an extension of time unless it is satisfied that the rail safety worker was not in fact aware, before the infringement notice took effect as a conviction, that it had been issued.
- (3) If the court grants an extension of time, and if a notice of objection is given, in accordance with section 95(2) or with any order made by the court, before the expiry of the extended time, the giving of the notice has the effect that—
 - (a) the conviction is set aside; and
 - (b) any of the procedures set out in the **Infringements Act 2006** that are being used for the enforcement of the amount specified in the safety work infringement notice as payable in respect of the offence for which the notice was issued must be discontinued and any warrant issued under that Act ceases to have effect; and

- (c) the safety work infringement notice is cancelled; and
 - (d) the rail safety worker may only be proceeded against by the filing of a charge-sheet charging the alleged offence.
- (4) Despite anything to the contrary in any other Act, a charge-sheet referred to in subsection (3)(d) may be filed not later than 12 months after the date of the notice of objection.

97 Application of Infringements Act 2006

Subject to this Division, the procedures set out in the **Infringements Act 2006** may be used for the enforcement of the amount specified in a safety work infringement notice as payable in respect of the infringement for which the notice was issued.

98 Proof of prior convictions

- (1) If a rail safety worker is served with a summons to answer to a charge of a safety work infringement, and it is alleged that he or she has been previously convicted or found guilty of any such infringement or infringements, a separate document setting out particulars of the alleged prior convictions or findings of guilt, and that meets the requirements under subsection (2), may be served with the summons.
- (2) The document setting out the alleged prior convictions or findings of guilt—
 - (a) must be in the prescribed form; and
 - (b) must be signed by the informant; and
 - (c) must be endorsed with a notice in the prescribed form; and
 - (d) may be served in any manner in which the summons to answer to the charge may be served.

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- (3) If the court by which a rail safety worker is convicted or found guilty is satisfied that a copy of the document referred to in subsection (1) was served on the rail safety worker at least 14 days before the hearing of the charge, the document is admissible in evidence for the purpose of establishing—
- (a) that the rail safety worker was convicted or found guilty of the offences alleged in the document; and
 - (b) the particulars relating to the convictions or findings of guilt set out in the document.
- (4) A document referred to in subsection (1) may not be tendered in evidence without the consent of the accused if the accused is present at the hearing of the charge.
- (5) Without limiting Part 3.4 of Chapter 3 of the **Criminal Procedure Act 2009**, if evidence of prior convictions or findings of guilt has been tendered under this section, the court may set aside, on any terms as to costs or otherwise that the court thinks just, the sentence within the meaning of that Act imposed by it if it has reasonable grounds to believe that—
- (a) the document tendered in evidence was not in fact brought to the notice of the accused; or
 - (b) the accused was not in fact convicted, or found guilty, of the offences as alleged in the document.
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PART 5—REVIEW OF DECISIONS

99 Reviewable decisions

- (1) The following table sets out—
- (a) decisions made under this Act that are reviewable in accordance with this Act (*reviewable decisions*); and
 - (b) who is eligible to apply for 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

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
1	Section 33 (forfeiture of seized things)	The person entitled to the thing.
2	Section 50 (service of improvement notice)	The person on whom the improvement notice is served. A rail transport operator or an operator of a bus service whose interests are affected by the decision.

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
3	Section 59 (extension of time for compliance with improvement notice)	The person on whom the improvement notice is served. A rail transport operator or an operator of a bus service whose interests are affected by the decision.
4	Section 54 (amendment of improvement notice)	The person served with the improvement notice that is being amended. A rail transport operator or an operator of a bus service whose interests are affected by the decision.
5	Section 56 (clearance certificate to the effect that all or any specified requirements of improvement notice have been complied with)	The person on whom the improvement notice was served. A rail transport operator or an operator of a bus service whose interests are affected by the decision.
6	Section 60 (service of prohibition notice)	The person on whom the prohibition notice is served. A rail transport operator or an operator of a bus service whose interests are affected by the decision.
7	Section 64 (amendment of prohibition notice)	The person served the prohibition notice that is being amended. A rail transport operator or an operator of a bus service whose interests are affected by the decision.

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Part 5—Review of Decisions

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
8	Section 66 (certificate that prohibition notice matters have been remedied)	The person served the prohibition notice. A rail transport operator or an operator of a bus service whose interests are affected by the decision.
9	Section 71 (service of non-disturbance notice)	The person on whom a non-disturbance notice is served. A rail transport operator or an operator of a bus service whose interests are affected by the decision.
10	Section 74 (service of subsequent non-disturbance notice)	The person on whom a subsequent non-disturbance notice is served. A rail transport operator or an operator of a bus service whose interests are affected by the decision.
11	Section 90 (direction to take specified action following safety report)	The rail transport operator or operator of a bus service given the direction.
12	Section 91(2) (direction to stop, alter or not to commence work)	The person given a direction to stop, alter or not commence work. A rail transport operator whose interests are affected by the decision.
13	Section 91(3) (direction to stop, alter or not to commence the railway operations)	The rail transport operator given the direction. A utility whose interests are affected by the decision.

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- (3) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to—
- (a) include information about the right to a review under Part 5 of the decision to serve the notice; or
 - (b) state that the notice is served under this section; or
 - (c) making, suspending, revoking or refusing to make a determination or decision; or
 - (d) giving, suspending, revoking or refusing to give a direction, approval, consent or permission; or
 - (e) making a declaration, demand or requirement; or
 - (f) retaining, or refusing to deliver up, an article; or
 - (g) doing or refusing to do any other act or thing.

- (4) In this section—

person entitled to a thing means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

100 Review by Safety Director

- (1) An eligible person—
- (a) in relation to a reviewable decision made by the Safety Director—may, within 28 days after the decision was made, apply to the Safety Director for a review of the decision;

- (b) 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—
 - (i) 28 days after the day on which the decision first came to the eligible person's notice; or
 - (ii) such longer period as the Safety Director allows.
- (2) The Safety Director may appoint a person to review decisions on applications under subsection (1)(a) (who must not be the person who made the decision the subject of the review).
- (3) An application for a review must be in the form approved (in writing) by the Safety Director.
- (4) If an application is made to the Safety Director in accordance with this section, the Safety Director may 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.
- (5) 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 the Safety Director's own initiative or on the application of the applicant for review, stays the operation of the decision (not being a prohibition notice) pending the determination of the review.
- (6) The Safety Director must make a decision on an application for a stay by the end of the next business day following the day on which the application is made.

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- (7) If the Safety Director has not made a decision in accordance with subsection (6), the Safety Director is taken to have made a decision to grant a stay.
 - (8) The Safety Director may attach any conditions to a stay of the operation of a reviewable decision that the Safety Director considers appropriate.

101 Notification of decision of Safety Director

- (1) The Safety Director must give a written notice to the applicant setting out—
 - (a) the Safety Director's decision under section 100(4) 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.
- (2) A notice under subsection (1) must be given—
 - (a) within 14 days after the application is made; or
 - (b) within 7 days after the application is made if the reviewable decision was made under Division 1, 2, 3 or 4 of Part 3.
- (3) If the Safety Director has not notified an applicant of a decision in accordance with subsection (1), the Safety Director is taken to have made a decision to affirm the reviewable decision.

102 Review by VCAT

- (1) A person may apply to VCAT 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 100 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) 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.

PART 6—GENERAL LIABILITY AND COURT PROCESSES

Division 1—General matters

103 Offence to give false or misleading information

- (1) A person must not give information in complying or purportedly complying with this Act or a transport safety or infrastructure law or a direction or requirement under this Act or a transport safety or infrastructure law that the person knows—
- (a) to be false or misleading in a material particular; or
 - (b) omits any matter or thing without which the information is misleading.

Penalty: In the case of a natural person, \$20 000;
In the case of a body corporate,
\$100 000.

- (2) A person must not produce a document in complying or purportedly complying with this Act or a transport safety or infrastructure law or a direction or requirement under this Act or a transport safety or infrastructure law that the person knows to be false or misleading in a material particular without—
- (a) indicating the respect in which it is false or misleading and, if practicable, providing correct information; or
 - (b) accompanying the document with a written certificate—
 - (i) stating that the document is, to the knowledge of the first mentioned person, false or misleading in a material particular; and

- (ii) setting out, or referring to, the material particular in which the document is, to the knowledge of the first mentioned person, false or misleading.

Penalty: In the case of a natural person, \$20 000;
In the case of a body corporate,
\$100 000.

- (3) A person must not recklessly give information or produce a document in complying or purportedly complying with—
 - (a) this Act or a transport safety or infrastructure law; or
 - (b) a direction or requirement under this Act or a transport safety or infrastructure law—that is false or misleading in a material particular.

Penalty: In the case of a natural person, \$20 000;
In the case of a body corporate,
\$100 000.

- (4) Subsection (1), (2) or (3) do not apply to information to which section 41 or 43 apply.

Division 2—Director and officer criminal liability

104 Criminal liability of officers of bodies corporate— failure to exercise due diligence

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

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- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 8(3);
 - (b) section 22(6);
 - (c) section 29(4);
 - (d) section 43(2);
 - (e) section 58(1);
 - (f) section 63(1);
 - (g) section 73;
 - (h) section 86;
 - (i) section 90(4);
 - (j) section 91(4) or (6);
 - (k) section 103(1), (2) or (3);
 - (l) section 110(9);
 - (m) section 111(5);
 - (n) section 126.
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.

- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) In this section—
- body corporate* has the same meaning as corporation has in section 57A of the Corporations Act;
- officer* in relation to a body corporate means—
- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

Division 3—Proceedings and evidentiary provisions

105 Who may commence proceedings for offences against this Act or a transport safety or infrastructure law

- (1) A proceeding under this Act or a transport safety or infrastructure law (including a proceeding for an offence against this Act or a transport safety or infrastructure law) may only be commenced by—
- (a) the Safety Director; or

- (b) a transport safety officer with the written authorisation of the Safety Director (either generally or in a particular case); or
 - (c) a police officer.
- (2) An authorisation under subsection (1)(b) is sufficient authority to continue a proceeding in any case where the court amends the charge-sheet, warrant or summons.
 - (3) A transport safety officer who commences a proceeding may conduct the proceeding before the court.
 - (4) Without limiting section 328 of the **Criminal Procedure Act 2009**, the person commencing a proceeding under subsection (1) may appear—
 - (a) by another person authorised by the Safety Director; or
 - (b) even if the informant is not a police officer, by a police prosecutor.
 - (5) Despite subsection (1), the Director of Public Prosecutions may commence a proceeding for an indictable offence against this Act or a transport safety or infrastructure law.

106 Limited period for prosecution of transport safety or infrastructure law indictable offences

A proceeding for an indictable offence against this Act or a transport safety or infrastructure law may be commenced—

- (a) within 3 years after the offence is committed or the Safety Director becomes aware the offence was committed; or
- (b) at any time with the written authorisation of the Director of Public Prosecutions.

107 Evidentiary certificates—this Act or transport safety or infrastructure laws

(1) In any proceeding for an offence against this Act or a transport safety or infrastructure law, a certificate signed, or purporting to be signed, by the Safety Director or a transport safety officer stating any of the following matters is admissible in evidence and, in the absence of evidence to the contrary, is proof of the matters stated—

(a) a stated document is one of the following things made, given, served or issued under a transport safety or infrastructure law or regulations made under a transport safety or infrastructure law, or this Act—

(i) an appointment or a decision;

(ii) a notice, notification, direction or requirement;

(iii) an accreditation, a bus registration, a rail registration or an exemption;

(b) a stated document is one of the following things served—

(i) an improvement notice or an amendment to an improvement notice already served;

(ii) a prohibition notice or an amendment to a prohibition notice already served;

(iii) a clearance certificate served under section 56;

(iv) a certificate served under section 66;

(v) a non-disturbance notice or a subsequent non-disturbance notice;

(c) a stated document is a copy of a thing referred to in paragraph (a) or (b);

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- (d) on a stated day, or during a stated period, a stated person—
 - (i) was or was not an accredited bus operator, accredited rail transport operator or registered bus operator; or
 - (ii) held or did not hold an exemption;
 - (e) on a stated day, or during a stated period, an accreditation, a bus registration, a rail registration or an exemption—
 - (i) was or was not in force or effect; or
 - (ii) was or was not subject to a stated term, condition, limitation or restriction;
 - (f) on a stated day, or during a stated period, an accreditation, a rail registration or an exemption was suspended;
 - (g) on a stated day an accreditation was cancelled, varied or surrendered;
 - (h) on a stated day a rail registration was varied or revoked or surrendered;
 - (i) on a stated day an exemption was varied or revoked or surrendered;
 - (j) on a stated day a condition or restriction on an accreditation or exemption was varied or revoked;
 - (k) on a stated day or during a stated period, an appointment as a transport safety officer was, or was not, in force for a stated person;
 - (l) on a stated day a stated person was given a stated notice, notification or direction under this Act or a transport safety or infrastructure law;

- (m) on a stated day a person was served—
 - (i) an improvement notice, prohibition notice or non-disturbance notice; or
 - (ii) an amendment to an improvement notice or prohibition notice already served;
 - (n) on a stated day—
 - (i) an improvement notice was cancelled; or
 - (ii) a prohibition notice was withdrawn;
 - (o) on a stated day a clearance certificate under section 56 was served;
 - (p) on a stated day a certificate under section 66 was served;
 - (q) on a stated day a stated requirement was made of a stated person;
 - (r) that a stated amount is payable under the **Bus Safety Act 2009**, the **Marine Safety Act 2010** or the **Rail Safety (Local Operations) Act 2006** by a stated person and has not been paid.
- (2) In this section—
- accreditation** means—
- (a) an accreditation within the meaning of the **Bus Safety Act 2009**;
 - (b) an accreditation within the meaning of the **Rail Safety (Local Operations) Act 2006**;
- bus registration** means a registration within the meaning of the **Bus Safety Act 2009**;

exemption means an exemption under—

- (a) Division 7A of Part 4 of the **Bus Safety Act 2009**; or
- (b) Division 5A of Part 5 of the **Rail Safety (Local Operations) Act 2006**; or
- (c) regulations made under the **Rail Safety (Local Operations) Act 2006**;

rail registration means registration under Division 7 of Part 5 of the **Rail Safety (Local Operations) Act 2006**.

Division 4—Court based sanctions

108 Definitions

In this Division—

Australian rail safety law means—

- (a) the Rail Safety National Law (Victoria); or
- (b) the Rail Safety National Law, as in force from time to time, set out in the Schedule to the Rail Safety National Law (South Australia) Act 2012 of South Australia as applied as a law of a participating jurisdiction (within the meaning of that Law); or
- (c) a previous enactment of a participating jurisdiction which corresponds, or substantially corresponds, to the Rail Safety National Law (Victoria);

relevant law means—

- (a) a provision of the **Bus Safety Act 2009** or any regulations made under that Act; or
- (b) a provision of the **Rail Safety (Local Operations) Act 2006** or any regulations made under that Act;

relevant marine law means—

- (a) a provision of the **Marine Safety Act 2010** or any regulations made under that Act; or
- (b) a provision of the **Marine (Drug, Alcohol and Pollution Control) Act 1988** or any regulations made under that Act.

109 Commercial benefits order

- (1) A court that finds a person guilty of an offence against this Act or a relevant law may, on the application of the prosecutor or the Safety Director, make an order under this section.
- (2) The court may make a commercial benefits order requiring the person to pay, as a fine, an amount not exceeding 3 times the amount estimated by the court to be the gross commercial benefit that—
 - (a) was received or receivable, by the person or by an associate of the person, from commission of the offence; and
 - (b) in the case of a journey that was interrupted or not commenced because of action taken by a transport safety officer in connection with commission of the offence, would have been received or receivable, by the person or by an associate of the person—from commission of the offence had the journey been completed.

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- (3) In estimating the gross commercial benefit that was or would have been received or receivable from commission of the offence, the court may take into account—
- (a) benefits of any kind, whether monetary or otherwise; and
 - (b) monetary savings or a reduction in any operating or capital expenditure of any kind achieved because of commission of the offence; and
 - (c) any other matters that it considers relevant, including (for example)—
 - (i) the value per tonne or per kilometre of the carriage of the goods involved in the offence as freight; and
 - (ii) the distance over which any such goods were or were to be carried.
- (4) However, in estimating the gross commercial benefit that was or would have been received or receivable from commission of the offence, the court is required to disregard any costs, expenses or liabilities incurred by the person or by an associate of the person.
- (5) Nothing in this section prevents the court from ordering payment of an amount that is—
- (a) less than 3 times the estimated gross commercial benefit; or
 - (b) less than the estimated gross commercial benefit.
- (6) For the purposes of this section, a person is an **associate** of another if—
- (a) one is a spouse, de facto partner, parent, brother, sister or child of the other; or
 - (b) they are members of the same household; or

- (c) they are partners; or
 - (d) they are both trustees or beneficiaries of the same trust, or one is a trustee and the other is a beneficiary of the same trust; or
 - (e) one is a body corporate and the other is a director or member of the governing body of the body corporate; or
 - (f) one is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
 - (g) they are related bodies corporate within the meaning of the Corporations Act; or
 - (h) a chain of relationships can be traced between them under any one or more of the above paragraphs.
- (7) For the purposes of subsection (6), a beneficiary of a trust includes an object of a trust.

110 Supervisory intervention order

- (1) A court that finds a person guilty of an offence against this Act or a relevant law may, on the application of the prosecutor or the Safety Director, if the court considers the person to be a systematic or persistent offender against this Act or a relevant law, make an order under this section.
- (2) The court may make a supervisory intervention order requiring the person (at the person's own expense and for a specified period not exceeding one year) to do all or any of the following—
 - (a) to do specified things that the court considers will improve the person's compliance with this Act or a relevant law or specified aspects of this Act or a relevant law, including (for example) the following—

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- (i) appointing or removing staff to or from particular activities or positions;
 - (ii) training and supervising staff;
 - (iii) obtaining expert advice as to maintaining appropriate compliance;
 - (iv) installing monitoring, compliance, managerial or operational equipment;
 - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures;
- (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Safety Director or a person nominated by the Safety Director;
- (c) to furnish compliance reports to the Safety Director or the court or both as specified in the order;
- (d) to appoint a person to have responsibilities—
- (i) to assist the person in improving compliance with this Act or the relevant law or specified aspects of this Act or the relevant law; and
 - (ii) to monitor the person's performance in complying with this Act or the relevant law or specified aspects of this Act or the relevant law and in complying with the requirements of the order; and
 - (iii) to furnish compliance reports to the Safety Director or the court or both as specified in the order.

- (3) The court may specify matters that are to be dealt with in compliance reports and the form and manner in which, and frequency with which, compliance reports are to be prepared and furnished.
- (4) The court may require that compliance reports or aspects of compliance reports be made public, and may specify the form and manner in which, and frequency with which, they are to be made public.
- (5) The court may only make a supervisory intervention order if it is satisfied that the order is capable of improving the person's ability or willingness to comply with this Act or the relevant law, having regard to, as the case requires—
 - (a) the offences against this Act, a relevant law or an Australian rail safety law of which the person has been previously found guilty;
 - (b) the offences against this Act, a relevant law or an Australian rail safety law for which the person has been proceeded against by way of unwithdrawn expiation notices or infringement notices;
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with, as the case requires—
 - (i) railway operations; or
 - (ii) bus services.
- (6) For the purposes of subsection (5)(b), the court may have regard to—
 - (a) an infringement notice that has been served on the person in relation to an offence under corresponding interstate law that—
 - (i) has not been withdrawn or cancelled; and

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- (ii) is not taken to be a charge in relation to the offence by operation of section 40(1)(b) of the **Infringements Act 2006**; and
- (b) an infringement notice of the kind referred to in paragraph (a) that has been served on the person in relation to an offence referred to in that paragraph in relation to which information lodged under section 71(1)(a) of the **Infringements Act 2006** is not taken to be a charge by operation of section 71(1)(b) of that Act; and
- (c) in relation to an infringement notice referred to in paragraph (a) or (b)—
- (i) the nature and gravity of the infringement offence for which the infringement notice was served; and
 - (ii) when the infringement offence for which the infringement notice was served was alleged to have been committed; and
 - (iii) whether the infringement offence for which the infringement notice was served still exists; and
 - (iv) the age of the person at the time of the infringement offence for which the infringement notice was served; and
 - (v) the person's behaviour since the alleged commission of the infringement offence for which the infringement notice was served; and
 - (vi) the likelihood of the person committing another infringement offence for which the infringement notice was served; and

- (vii) whether the infringement offence for which the infringement notice was served has been expiated; and
 - (viii) whether the decision to serve the infringement notice has been subject to internal review under Division 3 of Part 2 of the **Infringements Act 2006**; and
 - (ix) any information that the person has given the Safety Director in relation to the infringement notice, including reasons why the infringement penalty stated in the infringement notice was paid; and
 - (x) any other matter that the court considers relevant.
- (7) The order may direct that any other penalty or sanction imposed for the offence by the court is suspended until the court determines that there has been a substantial failure to comply with the order.
- (8) A court that has power to make supervisory intervention orders may revoke or amend a supervisory intervention order on the application of—
- (a) the Safety Director; or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

- (9) A person who is subject to a requirement of a supervisory intervention order must not engage in conduct that results in a contravention of the requirement.

Penalty: In the case of a natural person, \$10 000;
In the case of a body corporate,
\$50 000.

- (10) In this section—

compliance report, in relation to a person in respect of whom a supervisory intervention order is made, means a report relating to—

- (a) the performance of the person in complying with—
- (i) this Act or the relevant law or specified aspects of this Act or the relevant law specified in the order; and
 - (ii) the requirements of the order; and
- (b) without limiting the above—
- (i) things done by the person to ensure that any failure by the person to comply with this Act or the relevant law or specified aspects of this Act or the relevant law does not continue; and
 - (ii) the results of those things having been done;

corresponding interstate law means—

- (a) the Rail Safety National Law, as in force from time to time, set out in the Schedule to the Rail Safety National Law (South Australia) Act 2012 of South Australia as applied as a law of a

participating jurisdiction (within the meaning of that Law); or

- (b) a law of the Commonwealth, another State or a Territory that corresponds or substantially corresponds to a relevant law.

111 Exclusion orders

- (1) A court that finds a person guilty of an offence against this Act or a relevant law may, on the application of the prosecutor or the Safety Director, if the court considers the person to be a systematic or persistent offender against this Act or a relevant law, make an order under this section.
- (2) For the purpose of restricting opportunities for the person to commit or be involved in the commission of further offences against this Act or a relevant law, the court may, if it considers it appropriate to do so, make an exclusion order prohibiting the person, for a specified period, from—
 - (a) managing rail infrastructure, or operating rolling stock, or managing or operating a particular type of rail infrastructure or rolling stock; or
 - (b) providing, or managing the provision of, bus services; or
 - (c) being a director, secretary or officer concerned in the management of a body corporate involved in—
 - (i) managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction; or
 - (ii) providing, or managing the provision of, bus services in this jurisdiction; or

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- (d) being involved in managing rail infrastructure that is in this jurisdiction or operating rolling stock in this jurisdiction except by driving a train or rolling stock.
- (3) The court may only make an order under this section if it is satisfied that the person should not continue the things the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to—
- (a) the offences against this Act or a relevant law or an Australian rail safety law of which the person has previously been found guilty; and
 - (b) the offences against this Act or a relevant law or an Australian rail safety law for which the person has been proceeded against by way of unwithdrawn expiation notices or infringement notices; and
 - (c) any other offences or other matters that the court considers to be relevant to the conduct of the person in connection with railway operations or the provision of bus services.
- (4) A court that has power to make an exclusion order may revoke or amend an exclusion order on the application of—
- (a) the Safety Director; or
 - (b) the person in respect of whom the order was made, but in that case only if the court is satisfied that there has been a change of circumstances warranting revocation or amendment.

- (5) A person who is subject to an exclusion order must not engage in conduct that results in a contravention of the order.

Penalty: In the case of a natural person \$20 000;
In the case of a body corporate,
\$100 000.

112 Adverse publicity order

- (1) A court that finds a person guilty of an offence against this Act, a relevant law or relevant marine law may, on the application of the prosecutor, the Safety Director, make an order under this section.
- (2) The court may make an adverse publicity order requiring the offender to do all or any of the following—
- (a) to take either or both of the following actions within the period specified in the order—
 - (i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;
 - (ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and
 - (b) to give, the Safety Director within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.

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- (3) The court may make an order under this section in addition to—
- (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.
- (4) This section does not limit a court's powers under any other provision of this Act.

113 Release on the giving of a safety undertaking

- (1) If a court convicts a person or finds a person guilty of an offence against this Act or a relevant law the court may (with or without recording a conviction) adjourn the proceeding for a period of up to 2 years and make an order for the release of the offender on the offender giving an undertaking with specified conditions.
- (2) An undertaking must specify the following conditions—
- (a) that the offender appears before the court if called on to do so during the period of the adjournment and, if the court so specifies, at the time to which the further hearing is adjourned;
 - (b) that the offender does not commit, during the period of the adjournment, any offence against this Act or a relevant law;
 - (c) that the offender observes any special conditions imposed by the court.
- (3) Without limiting subsection (2)(c), the court may impose on an offender special conditions that the offender—
- (a) engage a consultant, who is approved in writing by the Safety Director, to advise on or assist with safety matters; and

- (b) develop and implement a systematic approach to managing risks to safety that arise or may arise in the conduct of the offender's undertaking; and
 - (c) arrange for the carrying out of an audit of the offender's undertaking in relation to safety by an independent person who is approved in writing by the Safety Director.
- (4) An offender who has given an undertaking under this section may be called on to appear before the court—
 - (a) by order of the court; or
 - (b) by notice issued by the proper officer (within the meaning of section 72(4) of the **Sentencing Act 1991**) of the court.
- (5) An order or notice under subsection (4) must be served on the offender not less than 4 days before the time specified in it for the appearance.
- (6) If the court is satisfied at the time to which a further hearing of a proceeding is adjourned that the offender has observed the conditions of the undertaking, it must discharge the offender without any further hearing of the proceeding.
- (7) The court may make an order under this section in relation to an offender in addition to or instead of—
 - (a) imposing a penalty on the offender; or
 - (b) making any other order that the court may make in relation to the offence.

114 Variation or contravention of orders under section 113

Section 78 and Part 3C of the **Sentencing Act 1991** (and any definitions in that Act of terms used in that section or Part) apply to an order under section 113 of this Act for the release of an offender as though they were incorporated into this Act and as though—

- (a) a reference to Subdivision (2) or (3) were instead a reference to section 99 of this Act ;
and
 - (b) a reference to section 72 or 75 were a reference to section 113 of this Act; and
 - (c) a reference to a prescribed person, a member of a prescribed class of persons, the informant or a police prosecutor were instead a reference to the Safety Director; and
 - (d) the reference in section 83AC of the **Sentencing Act 1991** to a level 10 fine were instead a reference to a fine not exceeding 10 penalty units for a natural person or 50 penalty units for a body corporate; and
 - (e) any other necessary modifications were made.
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**PART 7—THE SAFETY DIRECTOR AND TRANSPORT
SAFETY OFFICERS**

Division 1—The Safety Director

**115 Safety Director has functions and powers of a
transport safety officer**

- (1) The Safety Director has all the functions and powers that a transport safety officer has under this Act.
- (2) Accordingly, a reference in this Act to a *transport safety officer* includes a reference to the Safety Director.
- (3) Subsection (2) applies unless the context otherwise requires.

Division 2—Transport safety officers

Subdivision 1—Appointment

116 Appointment

- (1) The Safety Director, by instrument, may appoint as a transport safety officer any person who is suitably qualified or trained to exercise the powers of a transport safety officer under this Act or a transport safety or infrastructure law.

Note

A person appointed under subsection (1) may but need not be a person employed in the Department under Part 3 of the **Public Administration Act 2004**.

- (2) An appointment under subsection (1) is for a term, and subject to the conditions, specified in the instrument.
- (3) Without limiting the conditions to which the appointment of a transport safety officer may be subject, a condition may specify one or more of the following—

- (a) the functions and powers under this Act or a transport safety or infrastructure law that may not be performed or exercised by the transport safety officer;
 - (b) the only functions and powers under this Act or a transport safety or infrastructure law that may be performed or exercised by the transport safety officer;
 - (c) the circumstances or manner in which a function or power under this Act or a transport safety or infrastructure law may be performed or exercised by the transport safety officer.
- (4) To avoid doubt, a transport safety officer is an officer of the State.

117 Identity cards

- (1) The Safety Director must issue an identity card to a transport safety officer appointed under section 116.
- (2) An identity card must—
 - (a) state the transport safety officer's name and their appointment as a transport safety officer; and
 - (b) include any other matter that is prescribed.

118 Return of identity cards

If a person to whom an identity card has been issued ceases to be a transport safety officer, the person must return the identity card to the Safety Director as soon as practicable.

Penalty: \$5 000.

119 Production of identity card

- (1) A transport safety officer must produce his or her identity card for inspection—
 - (a) before exercising a power under this Act or a transport safety or infrastructure law; or
 - (b) if asked to do so by any person at any time during the exercise of a power under this Act or a transport safety or infrastructure law.
- (2) However, a transport safety officer need not produce his or her identity card when asked to do so if—
 - (a) the officer reasonably believes that the production of his or her identity card would—
 - (i) affect the safety or welfare of any person; or
 - (ii) frustrate the effective exercise of a power under this Act or a transport safety or infrastructure law; or
 - (b) the request to produce his or her identity card is made by a person to whom the officer has already produced that identity card on the same day before exercising a power under this Act or a transport safety or infrastructure law.
- (3) Any action taken or thing done by a transport safety officer under this Act or a transport safety or infrastructure law is not invalidated by his or her failure to produce his or her identity card.

Subdivision 2—Functions and powers of transport safety officers

120 Functions and powers

- (1) A transport safety officer has the functions and powers conferred on a transport safety officer under—
 - (a) this Act; and
 - (b) a transport safety or infrastructure law.
- (2) In addition, a transport safety officer has the following functions—
 - (a) to provide information and advice about compliance with this Act or a transport safety or infrastructure law;
 - (b) to require compliance with this Act or a transport safety or infrastructure law through the issuing of notices;
 - (c) to investigate contraventions of this Act or a transport safety or infrastructure law;
 - (d) to assist in the prosecution of offences against this Act or a transport safety or infrastructure law.

121 Transport safety officers subject to Safety Director's direction

- (1) The Safety Director may give a direction to a transport safety officer in relation to that officer's performance or exercise of a function or power under this Act or a transport safety or infrastructure law.
- (2) A direction under subsection (1) may—
 - (a) be of general nature;
 - (b) relate to a specified matter or class of matter.

122 Transport safety officer may take affidavits

A transport safety officer is authorised to take affidavits for any purpose relating or incidental to the performance or exercise of his or her functions or powers under this Act or a transport safety or infrastructure law.

123 Attendance of transport safety officer at inquiries

A transport safety officer may participate in any inquiry into—

- (a) the cause of any death or injury of a person while carrying out, as the case requires, bus safety work, marine safety work or rail safety work; or
- (b) any other incident or event relevant to safety at public transport premises or marine premises, or on rolling stock, a bus or vessel.

Subdivision 3—Offences in relation to transport safety officers

124 Offence to hinder or obstruct transport safety officer

A person must not intentionally hinder or obstruct a transport safety officer in exercising his or her powers under this Act or a transport safety or infrastructure law, or induce or attempt to induce any other person to do so.

Penalty: \$10 000.

125 Offence to impersonate transport safety officer

A person who is not a transport safety officer must not, in any way, hold himself or herself out to be a transport safety officer.

Penalty: \$10 000.

126 Offence to assault, threaten or intimidate transport safety officer

A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, a transport safety officer or a person assisting a transport safety officer.

Penalty: In the case of a natural person, \$50 000 or imprisonment for 2 years, or both;

In the case of a body corporate,
\$250 000.

PART 8—GENERAL

127 Legal professional privilege

Nothing in this Act or a transport safety or infrastructure law requires a person to produce a document that would disclose information or otherwise provide information that is the subject of legal professional privilege.

128 Recovery of costs

- (1) The Safety Director may recover from a rail transport operator as a debt due to the Safety Director, in a court of competent jurisdiction, the reasonable costs of entry and inspection of railway infrastructure, rolling stock or railway premises under this Act.
- (2) The Safety Director may recover from a person with control or management of bus premises or marine premises or a bus or vessel as a debt due to the Safety Director, in a court of competent jurisdiction, the reasonable costs of—
 - (a) entry and inspection of the premises under this Act; or
 - (b) inspection of the bus or vessel under this Act.
- (3) To avoid doubt—
 - (a) subsection (1) does not apply to the costs of an inspection forming part of a safety audit conducted under section 29 of the **Rail Safety (Local Operations) Act 2006**; and
 - (b) subsection (2) does not apply to the costs of an inspection forming part of a safety audit conducted under section 20 of the **Bus Safety Act 2009**.

129 Corporations Act displacement

Section 111 is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 2D of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

130 Civil liability not affected by a relevant rail safety duty law

- (1) Nothing in a relevant rail safety duty law is to be construed as—
- (a) conferring a right of action in a civil proceeding in respect of a contravention of a relevant rail safety duty law; or
 - (b) conferring a defence to an action in a civil proceeding or otherwise affecting a right of action in a civil proceeding.

- (2) In this section—

relevant rail safety duty law means—

- (a) section 93A(1) or (2) of the **Electricity Industry Act 2000**;
- (b) section 149A(1) or (2) of the **Gas Industry Act 2001**;
- (c) section 48B or 48D of the **Road Management Act 2004**;
- (d) section 137A(1) or (2) of the **Water Act 1989**.

131 Service of documents

- (1) A notice or document required or authorised by or under this Act or a transport safety or infrastructure law to be given or served on a person may be served on the person—
- (a) by delivering it personally to the person; or
 - (b) by sending it by post addressed to the person to the person's last known address; or
 - (c) if the person holds an accreditation or registration, or has been granted an exemption, under a transport safety or infrastructure law—
 - (i) by sending it by post addressed to the person to that person's address for service; or
 - (ii) be left for the person at the person's address for service with someone apparently over the age of 16 years.

- (2) In this section—

address for service of a person is the address last provided by the person in writing to the Safety Director as the address for service.

132 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing transport safety infringements for which a transport safety infringement notice may be served; and
 - (b) in addition to the requirements of section 13 of the **Infringements Act 2006**, any particulars, not inconsistent with that Act, to be contained in a transport safety infringement notice; and

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- (c) any additional prescribed details to be included in a safety work infringement notice; and
 - (d) the method of service of a safety work infringement notice; and
 - (e) the penalty for any transport safety infringement or safety work infringement; and
 - (f) the form of a withdrawal notice; and
 - (g) the method of service of a withdrawal notice; and
 - (h) the form of the document setting out particulars of prior convictions or findings of guilt; and
 - (i) the form of notices to be endorsed on the document setting out particulars of prior convictions; and
 - (j) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may—
- (a) provide that a transport safety infringement applies, or does not apply, at times, on days, in circumstances or at places identified in the regulations; and
 - (b) provide that a transport safety infringement applies, or does not apply, to a person or a class of person, specified in the regulations; and

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- (c) allow for a different amount of penalty for a transport safety infringement according to the circumstances in which the offence is committed or the extent of the contravention constituting the offence.
- (3) Regulations made under this section may—
- (a) be of general or of limited application; and
 - (b) differ according to differences in time, place or circumstance; and
 - (c) confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (d) provide in a specified case or class of case for the exemption of persons or things from any of the provisions of this Act or the regulations, whether unconditionally or on specified conditions, and either wholly or to such an extent as is specified; and
 - (e) impose a penalty not exceeding 20 penalty units for a contravention of the regulations.
- (4) Regulations made for the purposes of subsection (1)(a) or (b) must not be inconsistent with the **Infringements Act 2006**.
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PART 9—AMENDMENT OF OTHER ACTS AND REPEALS

Division 1—Bus Safety Act 2009

133 Definitions

- (1) In section 3(1) of the **Bus Safety Act 2009** insert the following definition—

"body corporate has the same meaning as corporation has in section 57A of the Corporations Act;"

- (2) In section 3(1) of the **Bus Safety Act 2009**, for the first and second definitions of *officer* substitute—

"officer in relation to a body corporate (other than an incorporated association) means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate;"

134 New section 69 substituted

For section 69 of the **Bus Safety Act 2009** substitute—

"69 Criminal liability of officers of bodies corporate—failure to exercise due diligence

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to

See:
Act No.
13/2009.
Reprint No. 2
as at
1 September
2013
and
amending
Act Nos
9/2013 and
70/2013.
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legislation.
vic.gov.au

- prevent the commission of the offence by the body corporate.
- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 15(1);
 - (b) section 17(1);
 - (c) section 18(1);
 - (d) section 22A(1), (2), (3) or (4);
 - (e) section 24;
 - (f) section 36;
 - (g) section 41(1), (3) or (6);
 - (h) section 54(2);
 - (i) section 56(2);
 - (j) section 65;
 - (k) section 66(1).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.

- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision."

Division 2—Marine Safety Act 2010

135 Definitions

In section 3(1) of the **Marine Safety Act 2010**, for the definition of *transport safety officer substitute*—

"transport safety officer has the same meaning as in the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**;"

Division 3—Rail Safety Act 2006

136 Definitions

In section 3(1) of the **Rail Safety Act 2006**, for the definition of *transport safety officer substitute*—

"transport safety officer has the same meaning as in the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**;"

**Division 4—Transport (Compliance and Miscellaneous)
Act 1983**

137 Definitions

See:
Act No.
9921.
Reprint No. 18
as at
27 March
2013
and
amending
Act Nos
34/2011,
9/2013,
22/2013,
23/2013,
30/2013,
32/2013,
36/2013,
43/2013,
70/2013 and
80/2013.
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- (1) In section 2(1) of the **Transport (Compliance and Miscellaneous) Act 1983**—
- (a) in the definition of *mandatory bus safety decision*—
- (i) in paragraph (b)(ii), for "section 228ZZF" substitute "section 54 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**";
- (ii) in paragraph (c)(ii), for "section 228ZZL" substitute "section 64 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**";
- (b) in the definition of *mandatory marine safety decision*—
- (i) in paragraph (a), for "this Act" substitute "the **Marine Safety Act 2010**";
- (ii) in paragraph (b)(i) omit "to";
- (iii) in paragraph (b)(ii), for "section 228ZZF" substitute "section 54 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**";
- (iv) in paragraph (c)(ii), for "section 228ZZL" substitute "section 64 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**";

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- (c) in the definition of *mandatory rail safety decision*—
- (i) in paragraph (b)(ii), for "section 228ZZF" substitute "section 54 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**";
 - (ii) in paragraph (c)(ii), for "section 228ZZL" substitute "section 64 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**".
- (2) In section 2(1) of the **Transport (Compliance and Miscellaneous) Act 1983**—
- (a) for the definition of *improvement notice* substitute—
"*improvement notice* has the same meaning as in the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**";
 - (b) for the definition of *prohibition notice* substitute—
"*prohibition notice* has the same meaning as in the **Transport (Safety Schemes Compliance and Enforcement) Act 2014**";
- (3) In section 2(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, the definitions of *relevant marine safety law* and *relevant transport safety law* are repealed.

138 Application of definitions to this Part

(1) In section 82C(1) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "*railway*".

(2) For section 82C(2) of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

"(2) In this Part, the expression *vessel* has the same meaning as in section 3(1) of the **Marine Safety Act 2010**."

139 Section 84 substituted

For section 84 of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

'84 Specific investigation powers—public transport safety matters or marine safety matters

For the purposes of this Part, Part 2 of the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** applies—

(a) as if a reference in that Part—

(i) to public transport premises includes a reference to any place where an incident involving a bus occurred and where the bus, or anything that is, or that is possibly, relevant to an investigation into the incident, is still present; and

(ii) to compliance and investigative purposes were a reference to the purpose of carrying out an investigation into a public transport safety matter or a marine safety matter; and

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- (iii) to a transport safety officer were a reference to the Chief Investigator, Transport Safety; and
- (b) as if for the purpose of the application of Part 2, in section 3 there were inserted the following definition after the definition of *Secretary*—
- "specified person* means—
- (a) a rail transport operator; or
 - (b) an operator of any bus service; or
 - (c) an employee of a rail transport operator; or
 - (d) a driver of a bus used to provide a bus service; or
 - (e) a contractor of a rail transport operator; or
 - (f) a procurer of a bus service within the meaning of the **Bus Safety Act 2009**; or
 - (g) a rail safety worker; or
 - (h) a bus safety worker; or
 - (i) a utility; or
 - (j) an employee of a utility; or
 - (k) a works contractor within the meaning of section 85 of the **Electricity Industry Act 2000**, section 48A of the **Road Management Act 2004**, section 137A(4) of the **Water Act 1989**; or

- (l) a person authorised in writing by a gas distribution company or gas transmission company under section 148(7) or 149(6) of the **Gas Industry Act 2001**;
 - (m) a person whom the Chief Investigator believes on reasonable grounds may be able to provide information, documents or assistance for the purpose of carrying out an investigation into a public transport safety matter or a marine safety matter;" and
- (c) as if for section 8(1)(i) there were substituted—
- "(i) seize any thing (including a document)—
 - (i) at the premises or in a road vehicle at the premises; or
 - (ii) on the rolling stock, bus or vessel—
- if the Chief Investigator reasonably believes that seizure of the thing is necessary for the purpose of carrying out an investigation into a public transport safety matter or a marine safety matter;" and
- (d) as if for section 8(1)(m) there were substituted—
- "(m) exercise any power that is reasonably necessary to be exercised by the Chief Investigator for the purposes of an

investigation into a public transport safety matter or a marine safety matter."; and

- (e) as if for section 12(3) there were substituted—

"(3) The Magistrates' Court may order such an extension if satisfied that the continued detention of a vessel is necessary—

- (a) for the purposes of an investigation into a marine safety matter; or
(b) because the vessel is, or is likely to be, required for the purposes of an investigation into a marine safety matter."; and

- (f) as if in section 13(2)(a) for "this Act or a transport safety or infrastructure law" there were substituted "this Part"; and

- (g) as if in section 14(2) for "determining whether a provision of this Act or a transport safety or infrastructure law has been contravened" there were substituted "an investigation into a public transport safety matter or marine safety matter"; and

- (h) as if for section 18(3)(a) there were substituted—

"(a) there is a particular thing or activity (the *evidence*) that may be significant to an investigation into a public transport safety matter or a marine safety matter; and"; and

(i) as if for section 18(4)(b) there were substituted—

"(b) a brief description of the investigation in respect of which the warrant is sought; and"; and

(j) as if for section 19(a)(ii) there were substituted—

"(ii) is of significance to an investigation into a public transport safety matter or a marine safety matter; and"; and

(k) as if in section 19(b) the words "or its use in the commission of an offence against this Act or a transport safety or infrastructure law" were omitted; and

(l) as if for section 22 there were substituted—

"22 Power to require production of documents and related items

(1) The Chief Investigator may, for the purposes of an investigation into a public transport safety matter or a marine safety matter, direct a specified person to provide to the Chief Investigator—

(a) any document required to be kept under a relevant transport safety or infrastructure law; and

(b) any documents, devices or other things in his, her or its possession or control relating to—

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- (i) the provision of bus services; or
 - (ii) railway operations; or
 - (iii) marine operations.
 - (2) The direction must state where and to whom the documents, devices or other things are to be produced.
 - (3) In giving a direction, the Chief Investigator may specify particular documents, devices or other things, or particular classes of documents, devices or other things.
 - (4) The Chief Investigator may do any or all of the following—
 - (a) inspect any documents, devices or other things that are produced;
 - (b) copy any documents, devices or other things that are produced;
 - (c) seize and remove any documents, devices or other things that are produced that the Chief Investigator believes on reasonable grounds are significant for the purposes of the investigation into the public transport safety matter or a marine safety matter."; and

- (m) as if section 23(3) were omitted; and
- (n) as if after section 24(3) there were inserted—
 - "(4) Nothing in this section limits the powers of the Chief Investigator under section 84AB."; and
- (o) as if for section 33(1)(c) there were substituted—
 - "(c) reasonably believes it is necessary to forfeit the thing for the purpose of carrying out an investigation into a public transport safety matter or a marine safety matter."; and
- (p) as if for section 34(3) there were substituted—
 - "(3) For the purposes of subsection (2), a reasonable ground to retain the thing is for the purpose of carrying out an investigation into a public safety matter or a marine safety matter."; and
- (q) as if in section 36, the words "under a transport safety or infrastructure law or" were omitted; and
- (r) as if in section 37(1), the words "under a transport safety or infrastructure law or" were omitted; and
- (s) as if section 39(a) were omitted; and
- (t) as if section 40(1)(b) were omitted; and

(u) as if for section 41(1) there were substituted—

"(1) The Chief Investigator may require a person to provide the person's name and residential address if the Chief Investigator believes, on reasonable grounds, that the person is a specified person."; and

(v) as if section 42 were omitted;" ' .

140 New sections 84A and 84AA inserted

After section 84 of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"84A Chief Investigator, Transport Safety to carry photo identification

The Chief Investigator must carry photo identification when exercising a power conferred on him or her under section 84.

84AA Production of photo identification

- (1) The Chief Investigator must produce his or her photo identification for inspection—
 - (a) before exercising a power under section 84; or
 - (b) if asked to do so by any person at any time during the exercise of a power under section 84.
- (2) However, the Chief Investigator need not produce his or her photo identification when asked to do so if—
 - (a) the Chief Investigator reasonably believes that the production of his or her identity card would—

- (i) affect the safety or welfare of any person; or
 - (ii) frustrate the effective exercise of a power under section 84; or
- (b) the request to produce his or her photo identification is made by a person to whom the Chief Investigator has already produced that identification on the same day before exercising a power under section 84.
- (3) Any action taken or thing done by the Chief Investigator under section 84 is not invalidated by his or her failure to produce his or her photo identification."

141 Identity cards

In section 84B(1) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "or 84A".

142 Division 2A of Part VII repealed

Division 2A of Part VII of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

143 New section 226 substituted

For section 226 of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—

"226 Criminal liability of officers of bodies corporate—failure to exercise due diligence

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

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- (2) For the purposes of subsection (1), the following provisions are specified—
- (a) section 131;
 - (b) section 131A(1);
 - (c) section 133B;
 - (d) section 135F(5);
 - (e) section 137(3);
 - (f) section 137A(4);
 - (g) section 137C;
 - (h) section 144(1A) or (4);
 - (i) section 150A(1);
 - (j) section 158(1) or (3);
 - (k) section 158AA;
 - (l) section 158AB(1);
 - (m) section 158B(1), (2) or (4);
 - (n) section 169WA(2);
 - (o) section 224(1);
 - (p) section 225(2) or (3);
 - (q) section 225B;
 - (r) section 225C(2);
 - (s) section 228DA;
 - (t) section 228DB;
 - (u) section 228G;
 - (v) section 228H(1), (4) or (6);
 - (w) section 228QA(6).

- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (6) In this section—
- body corporate*** has the same meaning as corporation has in section 57A of the Corporations Act;

officer in relation to a body corporate
means—

- (a) a person who is an officer
(as defined by section 9 of the
Corporations Act) of the body
corporate; or
- (b) a person (other than a person
referred to in paragraph (a)), by
whatever name called, who is
concerned in, or takes part in, the
management of the body
corporate."

144 Division 4B of Part VII repealed

Division 4B of Part VII of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

145 Section 229A repealed

Section 229A of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

146 Section 229B repealed

Section 229B of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

147 Section 230A repealed

Section 230A of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

148 Definitions for the purposes of Division 6 of Part VII

In section 230AI of the **Transport (Compliance and Miscellaneous) Act 1983**, in the definition of *relevant law*, paragraph (a) is repealed.

149 Commercial benefits penalty order

- (1) Section 230B(1)(b) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

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- (2) In section 230B(2)(b) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "a transport safety officer or".
 - (3) For section 230B(3)(c) of the **Transport (Compliance and Miscellaneous) Act 1983** substitute—
" (c) any other matter that it considers relevant."

150 Supervisory intervention order

- (1) Section 230C(1)(b) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (2) In section 230C(2)(b) of the **Transport (Compliance and Miscellaneous) Act 1983**—
 - (a) subparagraph (i) is repealed;
 - (b) omit "the Safety Director or".
- (3) Section 230C(2)(c)(i) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (4) Section 230C(2)(d)(iii)(A) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (5) Section 230C(5)(c)(i) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (6) Section 230C(7)(a) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (7) In section 230C(8) of the **Transport (Compliance and Miscellaneous) Act 1983**, in the definition of *compliance report*, in paragraphs (a)(i) and (b)(i) omit "transport safety" (where twice occurring).

151 Exclusion orders

- (1) Section 230DA(1)(b) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (2) Section 230DA(2)(a) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.
- (3) In section 230DA(2)(e) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "(a)".
- (4) In section 230DA(2)(f) of the **Transport (Compliance and Miscellaneous) Act 1983**—
 - (a) omit "(a),";
 - (b) in subparagraph (i) omit "a train or rolling stock or".
- (5) In section 230DA(3) of the **Transport (Compliance and Miscellaneous) Act 1983**—
 - (a) in paragraph (a) omit "transport safety";
 - (b) in paragraph (b), for "rail operations" substitute "the operation of a taxi-cab or hire car".
- (6) Section 230DA(4)(a) of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

152 Release on the giving of undertaking

In section 230E(3)(a) and (c) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "the Safety Director,".

153 Variation or contravention of orders under section 230E

In section 230F(b) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Safety Director" substitute "licensing authority".

154 Adverse publicity order

- (1) In section 230FA(1) of the **Transport (Compliance and Miscellaneous) Act 1983** omit ", the Safety Director".
- (2) In section 230FA(2)(b) of the **Transport (Compliance and Miscellaneous) Act 1983** omit "as the case requires, the Safety Director or".

155 Definitions for the purposes of Division 7 of Part VII

In section 230G of the **Transport (Compliance and Miscellaneous) Act 1983**, in the definitions of *relevant rail protection law* and *relevant rail safety duty law*, paragraph (e) is repealed.

156 Section 230H repealed

Section 230H of the **Transport (Compliance and Miscellaneous) Act 1983** is repealed.

Division 5—Rail Safety National Law Application Act 2013

157 Repeal of references to Rail Safety National Law (Victoria)

- (1) In section 91(1) of the **Rail Safety National Law Application Act 2013** omit "or the Rail Safety National Law (Victoria)".
- (2) Section 91(2) of the **Rail Safety National Law Application Act 2013** is repealed.

Division 6—Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013

158 Statute law revision

Section 108 of the **Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013** is repealed.

Division 7—Victoria Police Act 2013 consequential amendment

159 Consequential amendment to the definition of *police officer*

In section 3(1), for the definition of *police officer substitute*—

"police officer has the same meaning as in the **Victoria Police Act 2013**;"

Division 8—Repeal of amending Part

160 Repeal

This Part is **repealed** on the first anniversary of the first day on which all of its provisions are in operation.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

- † *Minister's second reading speech—*
Legislative Assembly: 20 February 2014
Legislative Council: 27 March 2014

The long title for the Bill for this Act was "A Bill for an Act to provide a scheme for the enforcement of transport system safety legislation by re-enacting, with modifications, provisions of the scheme under the **Transport (Compliance and Miscellaneous) Act 1983** for the enforcement of transport system safety legislation and adopting and adapting provisions from the Rail Safety National Law and for other purposes."