

Authorised Version No. 032
Rail Safety (Local Operations) Act 2006

No. 9 of 2006

Authorised Version incorporating amendments as at
12 April 2017

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12 April 2017

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The main purpose of this Act is to facilitate the safe operation of railways in Victoria to which the Rail Safety National Law (Victoria) does not apply.

S. 1
amended by
No. 23/2013
s. 4.

2 Commencement

- (1) Subject to subsections (4) and (5), this Act (except sections 129 and 156) comes into operation on a day or days to be proclaimed.
- (2) Sections 129 and 156(2) come into operation on the day after the day this Act receives the Royal Assent.
- (3) Section 156(1) comes into operation on the day section 5 of the **Transport Legislation (Further Amendment) Act 2005** comes into operation.
- (4) If a provision of this Act (except section 123) does not come into operation before 1 January 2007, it comes into operation on that day.
- (5) If section 123 does not come into operation before 30 June 2008, it comes into operation on that day.

S. 2(1)
amended by
No. 47/2006
s. 39(1).

S. 2(4)
amended by
No. 47/2006
s. 39(2).

S. 2(5)
inserted by
No. 47/2006
s. 39(3).

3 Definitions and interpretation

(1) In this Act—

S. 3(1) def. of *accreditation* repealed by No. 23/2013 s. 5(1)(a). * * * * *

S. 3(1) def. of *accredited rail operations* repealed by No. 23/2013 s. 5(1)(a). * * * * *

S. 3(1) def. of *accredited rail operator* repealed by No. 23/2013 s. 5(1)(a). * * * * *

S. 3(1) def. of *accredited rail transport operator* inserted by No. 23/2013 s. 5(1)(b). *accredited rail transport operator* means a rail transport operator who is accredited under Part 5;

S. 3(1) def. of *accredited railway operations* inserted by No. 23/2013 s. 5(1)(b). *accredited railway operations* means railway operations carried out by a rail transport operator in respect of which the operator is accredited under Part 5;

S. 3(1) def. of *accredited tourist and heritage railway operator* inserted by No. 19/2010 s. 37, repealed by No. 23/2013 s. 5(1)(a). * * * * *

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* * * * *

S. 3(1) def. of *ambulance service* repealed by No. 23/2013 s. 5(1)(a).

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

approved health professional means—

S. 3(1) def. of *approved health professional* amended by No. 13/2010 s. 51(Sch. item 46.1).

- (a) a person registered under the Health Practitioner Regulation National Law—
 - (i) to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student); and
 - (ii) in the registered nurses division of that profession;
- (b) a person approved under section 8 to take a blood sample for the purposes of this Act;

associated railway track structures includes—

S. 3(1) def. of *associated railway track structures* inserted by No. 23/2013 s. 5(1)(b).

- (a) associated works (such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works); and
- (b) over-track structures and under-track structures (including tunnels under tracks);

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S. 3(1) def. of *binding access arrangement* amended by No. 6/2010 s. 203(1) (Sch. 6 item 40.1(a)) (as amended by No. 45/2010 s. 22).

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

S. 3(1) def. of *breath analysing instrument* repealed by No. 23/2013 s. 5(1)(a).

* * * * *

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

S. 3(1) def. of *Chief Investigator* substituted by No. 6/2010 s. 203(1) (Sch. 6 item 40.1(b)) (as amended by No. 45/2010 s. 22).

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

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

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

S. 3(1) def. of *coordinating road authority* inserted by No. 69/2007 s. 54(1)(a).

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

corresponding law means—

- (a) the **Rail Safety National Law Application Act 2013**; or
- (b) the Rail Safety National Law (Victoria); or
- (c) a law of another State or a Territory of the Commonwealth declared under section 9 to be a corresponding law;

S. 3(1) def. of *corresponding law* substituted by No. 23/2013 s. 5(1)(c).

* * * * *

S. 3(1) def. of *Country Fire Authority* repealed by No. 23/2013 s. 5(1)(a).

Department means the Department of Transport;

S. 3(1) def. of *Department* amended by No. 23/2013 s. 5(1)(d).

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

S. 3(1) def. of *dispute resolution decision* amended by No. 6/2010 s. 203(1) (Sch. 6 item 40.1(c)) (as amended by No. 45/2010 s. 22).

drug means—

- (a) a drug within the meaning of the Rail Safety National Law (Victoria); or
- (b) any other substance (other than alcohol) which, when consumed or used by a person, deprives that person (temporarily or permanently) of any of his or her normal mental or physical faculties;

S. 3(1) def. of *drug* substituted by No. 23/2013 s. 5(1)(e).

S. 3(1) def. of
*emergency
service*
substituted by
No. 23/2013
s. 5(1)(f).

emergency plan—see section 52;

emergency service means an emergency
services agency within the meaning of the
Emergency Management Act 1986;

S. 3(1) def. of
employee
inserted by
No. 23/2013
s. 5(1)(b).

employee includes a person employed under a
contract of training;

Energy Safe Victoria means Energy Safe Victoria
established under section 4 of the **Energy
Safe Victoria Act 2005**;

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

footpath has the same meaning as in the Road
Rules;

hazard means a source of potential harm;

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

S. 3(1) def. of
*interface
co-ordination
plan*
substituted by
No. 47/2006
s. 40,
repealed by
No. 69/2007
s. 54(1)(b).

* * * * *

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

level crossing means—

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

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

major incident means an incident or natural event that poses a serious and immediate risk to safety and includes a derailment of rolling stock, a collision, a fire or explosion;

* * * * *

S. 3(1) def. of *Metropolitan Fire and Emergency Services Board* repealed by No. 23/2013 s. 5(1)(a).

national regulations means the regulations made under section 264 of the Rail Safety National Law (Victoria);

S. 3(1) def. of *national regulations* inserted by No. 23/2013 s. 5(1)(b).

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

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

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

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 142.1).

* * * * *

S. 3(1) def. of *premises* repealed by No. 23/2013 s. 5(1)(a).

S. 3(1) def. of
*prescribed
concentration
of alcohol*
substituted by
No. 23/2013
s. 5(1)(g).

prescribed concentration of alcohol has the same meaning as in the Rail Safety National Law (Victoria);

S. 3(1) def. of
*prescribed
drug*
inserted by
No. 23/2013
s. 5(1)(b).

prescribed drug has the same meaning as in the Rail Safety National Law (Victoria);

S. 3(1) def. of
*prescribed
notifiable
occurrence*
inserted by
No. 23/2013
s. 5(1)(b).

prescribed notifiable occurrence has the same meaning as in the national regulations;

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

- (a) a marshalling yard;
- (b) a siding used mainly to enable rolling stock to pass other rolling stock that is on the same track;
- (c) a passenger terminal;
- (d) a siding of a kind that the regulations state is not a private siding;

S. 3(1) def. of
*public
highway*
inserted by
No. 69/2007
s. 54(1)(a).

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

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

S. 3(1) def. of *public pathway* inserted by No. 69/2007 s. 54(1)(a), substituted by No. 23/2013 s. 5(1)(h).

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

S. 3(1) def. of *public road* inserted by No. 69/2007 s. 54(1)(a).

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

S. 3(1) def. of *public roadway* inserted by No. 69/2007 s. 54(1)(a).

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

S. 3(1) def. of *public transport safety matter* substituted by No. 6/2010 s. 203(1) (Sch. 6 item 40.1(d)) (as amended by No. 45/2010 s. 22).

rail contractor means a person who—

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

infrastructure operations or rolling stock operations to that rail infrastructure manager or rolling stock operator, and includes a sub-contractor;

S. 3(1) def. of *rail infrastructure* substituted by No. 23/2013 s. 5(1)(i).

rail infrastructure means the facilities that are necessary to enable a railway to operate and includes—

- (a) railway tracks and associated railway track structures; and
- (b) service roads, signalling systems, communications systems, rolling stock control systems, train control systems and data management systems; and
- (c) notices and signs; and
- (d) electrical power supply and electric traction systems; and
- (e) associated buildings, workshops, depots and yards; and
- (f) plant, machinery and equipment; and
- (g) tram stops and tram stations;

but does not include—

- (h) rolling stock; or
- (i) any facility, or facility of a class, that is prescribed by the national regulations not to be rail infrastructure;

rail infrastructure manager means a person who controls rail infrastructure;

S. 3(1) def. of *rail infrastructure operations* repealed by No. 23/2013 s. 5(1)(a).

* * * * *

rail land includes—

- (a) any land specified in paragraphs (a) and (b) of the definition of ***railway premises***; and
- (b) any land occupied by a railway infrastructure manager under the relevant rail infrastructure lease;

S. 3(1) def. of ***rail land*** inserted by No. 23/2013 s. 5(1)(b).

* * * * *

S. 3(1) def. of ***rail operations*** repealed by No. 23/2013 s. 5(1)(a).

* * * * *

S. 3(1) def. of ***rail operator*** repealed by No. 23/2013 s. 5(1)(a).

rail or road crossing means—

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

S. 3(1) def. of ***rail or road crossing*** inserted by No. 69/2007 s. 54(1)(a).

rail safety work—see section 7;

rail safety worker means a person who has carried out, is carrying out or is about to carry out, rail safety work and includes—

S. 3(1) def. of ***rail safety worker*** amended by No. 23/2013 s. 5(1)(j).

- (a) a person who is employed or engaged by a rail transport operator to carry out rail safety work;
- (b) a person engaged by a person (other than by a rail transport operator) to carry out rail safety work;
- (c) a trainee;
- (d) a volunteer;

S. 3(1) def. of *Rail Track* inserted by No. 23/2013 s. 5(1)(b).

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

S. 3(1) def. of *rail transport operator* inserted by No. 23/2013 s. 5(1)(b).

rail transport operator means—

- (a) a rail infrastructure manager; or
- (b) a rolling stock operator; or
- (c) a person who is both a rail infrastructure manager and a rolling stock operator;

S. 3(1) def. of *rail workplace* inserted by No. 23/2013 s. 5(1)(b).

rail workplace means a place where rail safety work is carried out, and includes any place where a rail safety worker goes, or is likely to be, while doing rail safety work;

railway means a guided system designed for the movement of rolling stock that has the capability of transporting passengers or freight or both on a railway track with a railway track gauge of 600 millimetres or more, together with its rail infrastructure, and includes—

- (a) a heavy railway;
- (b) a light railway;
- (c) a monorail railway;

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- (d) an inclined railway;
- (e) a tramway;
- (f) a railway within a marshalling yard or passenger or freight terminal;
- (g) a private siding;
- (h) a railway that is prescribed by the regulations to be a railway;

Note

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

railway crossing means—

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

S. 3(1) def. of *railway crossing* inserted by No. 69/2007 s. 54(1)(a).

railway operations means any of the following—

- (a) the construction of a railway, railway tracks and associated railway track structures;
- (b) the construction of rolling stock;
- (c) the design, management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure;
- (d) the design, commissioning, use, modification, maintenance, repair or decommissioning of rolling stock;
- (e) the operation or movement, or causing the operation or movement by any means, of rolling stock on a railway (including for the purposes of construction or restoration of rail infrastructure);

S. 3(1) def. of *railway operations* inserted by No. 23/2013 s. 5(1)(b).

- (f) the movement, or causing the movement, of rolling stock for the purposes of operating a railway service;
- (g) the scheduling, control and monitoring of rolling stock being operated or moved on rail infrastructure;

S. 3(1) def. of *railway premises* substituted by No. 23/2013 s. 5(1)(k).

railway premises means—

- (a) land (including any premises on the land) on or in which is situated rail infrastructure; or
- (b) land (including any premises on the land) on or in which is situated any over-track or under-track structure or part of an over-track or under-track structure; or
- (c) workshops, freight depots or maintenance depots used in connection with the carrying out of railway operations; or
- (d) land (including any premises on land) on or in which documents or records required for, or relating to, the accreditation of an accredited rail transport operator are kept; or
- (e) premises including an office, building or housing used in connection with the carrying out of rail operations; or
- (f) rolling stock or other vehicles associated with railway operations; or
- (g) any other rail workplace;

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

registered employee organisation means an organisation, of which some or all of the members are employees, that is registered under the Fair Work (Registered

Organisations) Act 2009 of the
Commonwealth.

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

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

registered person means a rail transport operator who is registered under Division 7 of Part 5 but does not include a person whose registration has been suspended, surrendered or revoked or has otherwise ceased to have effect;

S. 3(1) def. of *registered person* inserted by No. 23/2013 s. 5(1)(b).

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

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

relevant road authority means—

S. 3(1) def. of *relevant road authority* inserted by No. 23/2013 s. 5(1)(b).

- (a) in relation to a public roadway, the coordinating road authority within the meaning of section 36 of the **Road Management Act 2004**;
- (b) in relation to a relevant roadway, relevant pathway or public pathway—the responsible road authority within the meaning of section 37 of the **Road Management Act 2004** or the owner or occupier of the land on which there is a relevant roadway or relevant pathway;

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S. 3(1) def. of *relevant road manager* inserted by No. 69/2007 s. 54(1)(a), repealed by No. 23/2013 s. 5(1)(a).

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

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

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

(b) a public highway—

but does not include a public roadway;

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

S. 3(1) def. of
road authority
inserted by
No. 23/2013
s. 5(1)(b).

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

S. 3(1) def. of
*road
infrastructure*
inserted by
No. 69/2007
s. 54(1)(a).

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

S. 3(1) def. of
Road Rules
inserted by
No. 69/2007
s. 54(1)(a),
substituted by
No. 23/2013
s. 5(1)(l).

Road Rules means the Road Safety Road Rules 2009;

S. 3(1) def. of
rolling stock
amended by
No. 23/2013
s. 5(1)(m).

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

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* * * * *

S. 3(1) def. of *rolling stock operations* repealed by No. 23/2013 s. 5(1)(a).

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

- (a) also the rail infrastructure manager who controls the railway on which the rolling stock is operated; or
- (b) a party to an agreement that allows them to operate rolling stock on that railway; or
- (c) allowed to operate rolling stock on that railway under a binding access arrangement or dispute resolution decision;

safety audit means an inspection of—

- (a) any of the following or a part of the following—
 - (i) rail infrastructure used in carrying out accredited railway operations;
 - (ii) rolling stock used in carrying out accredited railway operations;
 - (iii) accredited railway operations; or
- (b) the performance of, or any aspect of the performance of—
 - (i) the employees of an accredited rail transport operator; or

S. 3(1) def. of *safety audit* substituted by No. 69/2007 s. 54(2), amended by No. 23/2013 s. 5(1)(n).

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

S. 3(1) def. of *Safety Director* substituted by No. 6/2010 s. 203(1) (Sch. 6 item 40.1(e)) (as amended by No. 45/2010 s. 22).

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

S. 3(1) def. of *safety interface agreement* inserted by No. 69/2007 s. 54(1)(a).

safety interface agreement—see Division 2 of Part 4;

safety management system—see Division 4 of Part 3;

Secretary means the Secretary to the Department;

S. 3(1) def. of *shared path* inserted by No. 69/2007 s. 54(1)(a).

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

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

supply includes—

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

tourist and heritage railway operator means a rail transport operator declared under section 3B to be a tourist and heritage railway operator;

S. 3(1) def. of *tourist and heritage railway operator* inserted by No. 23/2013 s. 5(1)(b).

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

S. 3(1) def. of *transport safety officer* amended by No. 6/2010 s. 203(1) (Sch. 6 item 40.1(f)) (as amended by No. 45/2010 s. 22), substituted by No. 27/2014 s. 136.

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S. 3(1) def. of *Tribunal* repealed by No. 23/2013 s. 5(1)(a).

utility means—

- (a) an entity (whether publicly or privately owned) which provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like services under the authority of an Act of Victoria or the Commonwealth;
- (b) a road authority within the meaning of the **Road Management Act 2004**;

S. 3(1) def. of
*Victorian
Institute of
Forensic
Medicine
Director*
amended by
No. 77/2008
s. 129(Sch. 2
item 23.1).

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

S. 3(1) def. of
volunteer
amended by
No. 23/2013
s. 5(1)(c).

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

S. 3(1) def. of
*works
contractor*
inserted by
No. 23/2013
s. 5(1)(b).

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

S. 3(1) def. of
*works
manager*
inserted by
No. 23/2013
s. 5(1)(b).

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

S. 3(2)
amended by
No. 23/2013
s. 5(2).

- (2) For the purposes of this Act, a rail infrastructure
manager is taken to carry out railway operations
supplied to the rail infrastructure manager by—
- (a) a rail contractor engaged directly or
indirectly by the rail infrastructure manager
to supply those operations to the rail
infrastructure manager; or
 - (b) a sub-contractor of the rail contractor
referred to in paragraph (a).

S. 3(3)
amended by
No. 23/2013
s. 5(3).

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

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- (a) a rail contractor engaged directly or indirectly by the rolling stock operator to supply those operations to the rolling stock operator; or
- (b) a sub-contractor of the rail contractor referred to in paragraph (a).
- (4) For the purposes of this Act—
- (a) an accredited rail transport operator is taken to carry out railway operations supplied to the accredited rail transport operator by—
- (i) a rail contractor engaged directly or indirectly by the accredited rail transport operator to supply those operations to the accredited rail transport operator; or
- (ii) a sub-contractor of the rail contractor referred to in subparagraph (i); and
- (b) railway operations referred to in paragraph (a) are taken to be accredited railway operations.
- (5) For the purposes of this Act—
- (a) a rail infrastructure manager is taken to carry out railway operations carried out for that manager by a labour-hire contractor;
- (b) a rolling stock operator is taken to carry out railway operations carried out for that operator by a labour-hire contractor.

S. 3(4)(a)
amended by
No. 23/2013
s. 5(4)(a)–(c).

S. 3(4)(a)(i)
amended by
No. 23/2013
s. 5(4)(a).

S. 3(4)(b)
amended by
No. 23/2013
s. 5(4)(b)–(d).

S. 3(5)
inserted by
No. 69/2007
s. 54(3).

S. 3(5)(a)
amended by
No. 23/2013
s. 5(5)(a)(b).

S. 3(5)(b)
amended by
No. 23/2013
s. 5(5)(b)(c).

S. 3(6)
inserted by
No. 69/2007
s. 54(3).

(6) In subsection (5)—

S. 3(6) def. of
*labour-hire
contractor*
amended by
No. 23/2013
s. 5(6).

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

- (a) the person that employs or engages that individual; and
- (b) as the case requires, that manager or operator—

to carry out railway operations.

S. 3A
inserted by
No. 6/2010
s. 24(5)
(Sch. 1
item 13) (as
amended by
No. 45/2010
s. 5).

3A Transport Integration Act 2010

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

S. 3B
(Heading)
amended by
No. 23/2013
s. 6(1).

3B Tourist and heritage railway operator

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

S. 3B
inserted by
No. 19/2010
s. 38,
amended by
Nos 23/2013
s. 6(2),
21/2015
s. 3(Sch. 1
item 44.1).

S. 4
repealed by
No. 23/2013
s. 7.

* * * * *

5 Meaning of *control*

A person controls rail infrastructure if the person—

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

6 Railways to which this Act does not apply

- (1) This Act does not apply to—
 - (a) a railway in a mine that is underground, or chiefly underground, and that is used in connection with the performance of mining operations; or

S. 6
amended by
No. 23/2013
s. 8(4) (ILA
s. 39B(1)).

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No. 9 of 2006
Part 1—Preliminary

S. 6(1)(b)
substituted by
No. 23/2013
s. 8(1).

- (b) a railway that—
- (i) is used only for the purposes of an amusement structure; and
 - (ii) is operated only within an amusement park; and
 - (iii) does not operate on or cross a public road; and
 - (iv) is not connected with another railway in respect of a rail transport operator which is required to be accredited or registered under this Act;
- (c) a slipway; or
- (d) a railway used only to guide a crane; or
- (e) an aerial cable operated system; or
- (f) a railway that the regulations state is a railway to which this Act does not apply; or

S. 6(1)(f)
amended by
No. 23/2013
s. 8(2).

S. 6(1)(g)
inserted by
No. 23/2013
s. 8(3).

- (g) a railway to which the Rail Safety National Law (Victoria) applies.

S. 6(2)
inserted by
No. 23/2013
s. 8(4).

- (2) In this section, *amusement structure* means a structure or device operated for hire or reward, or provided on hire or lease—
- (a) that is used or designed to be used for amusement or entertainment and on which persons may be moved, carried, raised, lowered or supported by any part of the structure or device; and
 - (b) that is an arrangement of structural or mechanical elements (or both) that has as its prime functions the provision of movement of a passenger or passengers in a controlled manner so that the passenger or passengers

are not necessarily required to move themselves to obtain the desired effect.

7 Meaning of rail safety work

- (1) Subject to subsection (2), any of the following classes of work is *rail safety work* for the purposes of this Act—
- (a) driving or despatching rolling stock or any other activity which is capable of controlling or affecting the movement of rolling stock;
 - (b) signalling (and signalling operations), receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
 - (c) coupling or uncoupling rolling stock;
 - (d) maintaining, repairing, modifying, monitoring, inspecting or testing rolling stock, including checking that the rolling stock is working properly before being used;
 - (e) installation of components in relation to rolling stock;
 - (f) work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of the rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used;
 - (g) installation or maintenance of—
 - (i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure; or

S. 7
amended by
Nos 69/2007
s. 55, 49/2011
s. 21,
substituted by
No. 23/2013
s. 9.

- (ii) the means of supplying electricity directly to rail infrastructure, any rolling stock using rail infrastructure or a telecommunications system;
 - (h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
 - (i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
 - (j) work involving the development, management or monitoring of safe working systems for railways;
 - (k) work involving the management or monitoring of passenger safety on, in or at any railway;
 - (l) any work in relation to ensuring the safety of—
 - (i) rail safety workers on a railway;
 - (ii) any persons working on or near a railway, whether or not the person working on or near the railway track is carrying out rail safety work;
 - (m) any other work that is prescribed by the national regulations to be rail safety work.
- (2) For the purposes of this Act, ***rail safety work*** does not include any work, or any class of work, prescribed by the national regulations not to be rail safety work.

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

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

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

The Minister, by Order published in the Government Gazette, may declare a law of another State or a Territory of the Commonwealth that creates an offence substantially similar to an offence created by section 76(1) or 77(1) to be a corresponding law.

S. 9
amended by
No. 23/2013
s. 10.

* * * * *

S. 10
repealed by
No. 23/2013
s. 11.

11 Objects and principles of rail safety

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

- (a) the safety of railway operations;
- (b) the effective management of safety risks in railway operations;
- (c) continuous improvement in rail safety management;
- (d) public confidence in the safety of rail transport;
- (e) the involvement of relevant stakeholders in rail safety.

S. 11(1)(a)
amended by
No. 23/2013
s. 12.

S. 11(1)(b)
amended by
No. 23/2013
s. 12.

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

S. 11A
inserted by
No. 19/2010
s. 39,
substituted by
No. 23/2013
s. 13.

11A Consistency with Rail Safety National Law (Victoria)

It is the intention of Parliament that this Act regulates and promotes the safe operation of railways in Victoria in a manner consistent with the Rail Safety National Law (Victoria).

12 Crown to be bound

- (1) This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) To avoid doubt, the Crown is a body corporate for the purposes of this Act or the regulations.
- (3) No criminal liability attaches to the Crown itself (as distinct from its agents, instrumentalities, officers and employees) under this Act.

S. 12(3)
inserted by
No. 23/2013
s. 14.

Part 2—Principles of rail safety

13 Principle of shared responsibility

(1) Rail safety is the shared responsibility of—

(a) rail transport operators; and

(b) rail safety workers; and

(c) other persons who—

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

(ii) supply railway operations to rail transport operators; and

(iii) in relation to the transport of freight by railway, load or unload freight on or from rolling stock; and

(d) the Safety Director; and

(e) the public.

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

S. 13
amended by
No. 69/2007
s. 56 (LA
s. 39B(1)).

S. 13(1)(a)
amended by
No. 23/2013
s. 15(1).

S. 13(1)(c)(ii)
amended by
No. 23/2013
s. 15(2).

S. 13(1)(c)(iii)
inserted by
No. 23/2013
s. 15(3).

S. 13(2)
inserted by
No. 69/2007
s. 56.

S. 14
amended by
No. 23/2013
s. 16.

14 Principle of accountability for managing safety risks

Managing risks associated with the carrying out of railway operations is the responsibility of the person best able to control that risk.

15 Principle of integrated risk management

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

16 Principle of enforcement

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

- (a) protecting public safety;
- (b) promoting improvement in rail safety;
- (c) removing incentive for any unfair commercial advantage that might be derived from contravening the rail safety requirements under this Act or the regulations; and
- (d) influencing the attitude and behaviour of persons whose actions may have adverse impacts on rail safety; and
- (e) securing compliance with this Act and the regulations through effective and appropriate compliance and enforcement measures.

S. 16(d)
amended by
No. 23/2013
s. 17(a).

S. 16(e)
inserted by
No. 23/2013
s. 17(b).

17 Principle of transparency and consistency

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

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

S. 18
amended by
No. 23/2013
s. 18.

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

- (a) participate in or be able to participate in; and
- (b) be consulted on; and
- (c) be involved in—

the formulation and implementation of measures to manage risks to safety associated with railway operations.

Part 3—Rail safety duties and other safety requirements

Division 1—Rail safety concepts and principles

Pt 3 Div. 1
(Heading)
substituted by
No. 23/2013
s. 19.

18A Principles applying to rail safety duties

S. 18A
inserted by
No. 23/2013
s. 20.

- (1) A duty under this Act or the regulations cannot be transferred to another person.
- (2) A person can have more than one duty under this Act or the regulations by virtue of being in more than one class of duty holder.
- (3) More than one person can concurrently have the same duty under this Act or the regulations and each duty holder must comply with that duty to the standard required by this Act even if another duty holder has the same duty.
- (4) If more than one person has a duty for the same matter, each person—
 - (a) retains responsibility for the person's duty in relation to the matter; and
 - (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter (or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity).

19 The concept of ensuring safety

- (1) To avoid doubt, a duty imposed on a person under this Act or the regulations to ensure, so far as is reasonably practicable, safety requires the person to—

- (a) eliminate risks to safety so far as is reasonably practicable; and
 - (b) if it is not reasonably practicable to eliminate risks to safety, to reduce those risks so far as is reasonably practicable.
- (2) To avoid doubt, for the purposes of Divisions 2 and 3 or regulations made for the purposes of those Divisions, regard must be had to the following matters in determining what is (or was at a particular time) reasonably practicable in relation to ensuring safety—
- (a) the likelihood of the hazard or risk concerned eventuating;
 - (b) the degree of harm that would result if the hazard or risk eventuated;
 - (c) what the person concerned knows, or ought reasonably to know, about the hazard or risk and any ways of eliminating or reducing the hazard or risk;
 - (d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
 - (e) the cost of eliminating or reducing the hazard or risk.

Division 2—Safety duties of rail transport operators

Pt 3 Div. 2
(Heading)
substituted by
No. 23/2013
s. 21.

20 Duties of rail transport operators

- (1) A rail transport operator must ensure, so far as is reasonably practicable, the safety of the operator's railway operations.

S. 20
amended by
No. 68/2009
s. 97(Sch.
item 101.1),
substituted by
No. 23/2013
s. 22.

Penalty: In the case of a natural person,
\$300 000 or imprisonment for 5 years
or both;

In the case of a body corporate,
\$3 000 000.

- (2) Without limiting subsection (1), a rail transport operator must ensure, so far as is reasonably practicable—
- (a) that safe systems for the carrying out of the operator's railway operations are developed and implemented; and
 - (b) that each rail safety worker who is to perform rail safety work in relation to the operator's railway operations—
 - (i) is of sufficient good health and fitness to carry out that work safely; and
 - (ii) is competent to undertake that work; and
 - (c) that rail safety workers do not carry out rail safety work in relation to the operator's railway operations, and are not on duty, while impaired by alcohol or a drug; and
 - (d) that rail safety workers who perform rail safety work in relation to the operator's railway operations do not carry out rail safety work while impaired by fatigue or if they may become so impaired; and
 - (e) the provision of adequate facilities for the safety of persons at any railway premises under the control or management of the operator; and

- (f) the provision of—
- (i) such information and instruction to, and training and supervision of, rail safety workers as is necessary to enable those workers to perform rail safety work in relation to the operator's railway operations in a way that is safe; and
 - (ii) such information to rail transport operators and other persons on railway premises under the control or management of the operator as is necessary to enable those persons to ensure their safety.
- (3) Without limiting subsection (1), a rail infrastructure manager must ensure, so far as is reasonably practicable—
- (a) the provision or maintenance of rail infrastructure that is safe; and
 - (b) that any design, construction, commissioning, use, installation, modification, maintenance, repair or decommissioning of the manager's rail infrastructure is done or carried out in a way that ensures the safety of railway operations; and
 - (c) that systems and procedures for the scheduling, control and monitoring of railway operations are established and maintained so as to ensure the safety of the manager's railway operations; and
 - (d) that communications systems and procedures are established and maintained so as to ensure the safety of the manager's railway operations.

- (4) Without limiting subsection (1), a rolling stock operator must ensure, so far as is reasonably practicable—
- (a) the provision or maintenance of rolling stock that is safe; and
 - (b) that any design, construction, commissioning, use, modification, maintenance, repair or decommissioning of the operator's rolling stock is done or carried out in a way that ensures safety; and
 - (c) compliance with the rules and procedures for the scheduling, control and monitoring of rolling stock that have been established by a rail infrastructure manager in relation to the use of the manager's rail infrastructure by the rolling stock operator; and
 - (d) that equipment, procedures and systems are established and maintained so as to minimise risks to the safety of the operator's railway operations; and
 - (e) that arrangements are made for ensuring safety in connection with the use, operation and maintenance of the operator's rolling stock; and
 - (f) that communications systems and procedures are established and maintained so as to ensure the safety of the operator's railway operations.
- (5) This section applies to a person (other than a rail transport operator) who carries out railway operations in the same way as it applies to a rail transport operator, but does not apply if the person carries out those operations as a rail safety worker or an employee.

* * * * *

S. 21
amended by
No. 68/2009
s. 97(Sch.
item 101.2),
repealed by
No. 23/2013
s. 23.

Division 3—Safety duties of other persons

22 Rail contractor duties

(1) A rail contractor who—

- (a) designs, commissions, constructs, manufactures, supplies, installs, erects, maintains, repairs, modifies or decommissions any thing; and
- (b) knows, or ought reasonably to know, that the thing is to be or was used as rail infrastructure or rolling stock—

must—

- (c) ensure, so far as is reasonably practicable—
 - (i) that the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired or modified; or
 - (ii) that the thing is decommissioned safely; and
- (d) carry out, or arrange the carrying out, of such testing and examination as may be necessary for compliance with this section; and
- (e) in the case of a thing to which paragraph (c)(i) applies, take such action as is necessary to ensure that there will be

S. 22(1)
amended by
No. 23/2013
s. 24(1).

available in connection with the use of the thing adequate information about—

- (i) the use for which the thing was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired or modified; and
- (ii) the results of any testing or examination referred to in paragraph (d); and
- (iii) any conditions necessary to ensure the thing is safe if it is used for a purpose for which it was designed, commissioned, constructed, manufactured, supplied, installed, erected, maintained, repaired or modified.

Penalty: In the case of a natural person,
\$300 000 or imprisonment for 5 years
or both;

In the case of a body corporate,
\$3 000 000.

S. 22(2)
amended by
No. 23/2013
s. 24(2).

- (2) A rail contractor who supplies railway operations to a rail transport operator must, so far as is reasonably practicable, ensure the safety of those operations.

Penalty: In the case of a natural person,
\$300 000 or imprisonment for 5 years
or both;

In the case of a body corporate,
\$3 000 000.

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

- (a) in the case of a rail contractor that manages or operates rail infrastructure, provide or maintain rail infrastructure that is, so far as is reasonably practicable, safe;
 - (b) in the case of a rail contractor that operates rolling stock, provide or maintain rolling stock that is, so far as is reasonably practicable, safe;
 - (c) provide or maintain systems of rail safety work that are, so far as is reasonably practicable, safe;
 - (d) supply railway operations in accordance with the safety management system of the rail transport operator that has engaged the rail contractor to supply railway operations to them;
 - (e) provide, so far as is reasonably practicable, such—
 - (i) information, instruction, training or supervision to rail safety workers as is necessary to enable those workers to perform their rail safety work in a way that is safe; and
 - (ii) information to persons on railway premises (other than rail safety workers) as is necessary to enable those persons to ensure their safety.
- (4) An offence against subsection (1) or (2) is an indictable offence.

Note

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

S. 22(3)(d)
amended by
No. 23/2013
s. 24(3).

Note to
s. 22(4)
amended by
No. 68/2009
s. 97(Sch.
item 101.3).

- (5) For the purposes of subsection (1), if the person who supplies the thing—
- (a) carries on the business of financing the acquisition of the thing by customers; and
 - (b) has, in the course of that business, acquired an interest in the thing solely for the purpose of financing its acquisition by a customer from a third person or its provision to a customer by a third person; and
 - (c) has not taken possession of the thing or has taken possession of it solely for the purpose of passing possession to that customer—

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

S. 22A
(Heading)
amended by
No. 23/2013
s. 25(1).

S. 22A
inserted by
No. 69/2007
s. 57.

S. 22A(1)
amended by
No. 23/2013
s. 25(2).

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

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

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

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

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

S. 22A(2)
amended by
No. 23/2013
s. 25(3).

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

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

Note

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

Note to
s. 22A(3)
amended by
No. 68/2009
s. 97(Sch.
item 101.4).

23 Duties of rail safety workers

- (1) A rail safety worker, when carrying out rail safety work must—
- (a) take reasonable care for his or her own safety; and
 - (b) take reasonable care for the safety of persons who may be affected by the rail safety worker's acts or omissions; and
 - (c) co-operate with the rail transport operator or rail contractor employing or engaging them with respect to any action taken by the rail transport operator to comply with a requirement imposed by or under this Act or the regulations.

S. 23(1)
amended by
No. 23/2013
s. 26(2).

S. 23(1)(c)
amended by
No. 23/2013
s. 26(1).

Penalty: \$300 000 or imprisonment for 5 years
or both.

S. 23(2)
amended by
No. 23/2013
s. 26(1)(3).

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

(a) in the interests of safety; or

(b) under this Act or the regulations.

Penalty: \$300 000 or imprisonment for 5 years or both.

S. 23(3)
amended by
No. 23/2013
s. 26(4).

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

Penalty: \$300 000 or imprisonment for 5 years or both.

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

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

Note to
s. 23(5)
amended by
No. 68/2009
s. 97(Sch.
item 101.5).

Note

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

S. 23A
inserted by
No. 49/2011
s. 22.

23A Duty of persons engaged in loading and unloading rolling stock

S. 23A(1)
amended by
No. 23/2013
s. 27.

(1) A person who loads goods or freight onto, or unloads goods or freight from, rolling stock in connection with the transport of those goods or freight by rail must, so far as is reasonably

practicable, ensure that the loading or unloading is carried out safely.

Penalty: In the case of a natural person,
\$300 000 or imprisonment for 5 years
or both;

In the case of a body corporate,
\$3 000 000.

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

Note

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

Division 4—Safety management systems

24 What is a safety management system?

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

S. 24
amended by
No. 23/2013
s. 28.

25 Form and contents of safety management systems

A safety management system must—

- (a) be documented; and
- (b) provide a comprehensive and integrated risk management system for compliance with Division 3 of Part 5 including—
 - (i) the identification and assessment of risks to safety in relation to railway operations in respect of which the operator is required to be accredited; and

S. 25(b)
substituted by
No. 23/2013
s. 29.

- (ii) the adoption of control measures to be adopted by the operator to manage identified risks to safety; and
- (c) be so set out and expressed that its contents are readily accessible and comprehensible to persons who use it; and
- (d) be prepared in accordance with the regulations; and
- (e) contain the matters and information required by the regulations; and
- (f) be kept and maintained in accordance with the regulations.

26 Accredited rail transport operator must consult before establishing safety management system

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

- (a) persons who work on or at railway premises or with rolling stock and any registered employee organisation representing them; and
- (b) every person employed by the accredited rail transport operator who is a health and safety representative; and
- (c) any person with whom they have entered into a safety interface agreement.

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

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

S. 26
(Heading)
amended by
Nos 49/2011
s. 15(1),
23/2013
s. 30(1).

S. 26
amended by
Nos 49/2011
s. 15(2),
23/2013
s. 30(2)(3).

S. 26(b)
amended by
Nos 49/2011
s. 15(2)(b),
23/2013
s. 30(2)(a).

S. 26(c)
amended by
No. 69/2007
s. 58.

27 Accredited rail transport operator to have in place a safety management system

S. 27
(Heading)
amended by
Nos 49/2011
s. 16(1),
23/2013
s. 31(1).

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

S. 27(1)
amended by
Nos 49/2011
s. 16(2),
23/2013
s. 31(2)(3).

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

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

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

Note

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

Note to
s. 27(2)
amended by
No. 68/2009
s. 97(Sch.
item 101.6).

28 Accredited rail transport operator must comply with a safety management system

S. 28
(Heading)
amended by
Nos 49/2011
s. 17(1),
23/2013
s. 32(1).

- (1) An accredited rail transport operator must comply with the safety management system the accredited rail transport operator has in place in respect of the railway operations that the accredited rail transport operator carries out.

S. 28(1)
amended by
Nos 49/2011
s. 17(2),
43/2012
s. 3(Sch.
item 41),
23/2013
s. 32(2)(3).

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

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

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

Note to
s. 28(2)
amended by
No. 68/2009
s. 97(Sch.
item 101.7).

Note

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

S. 28A
inserted by
No. 47/2006
s. 41.

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

S. 28A(1)
amended by
Nos 49/2011
s. 18(1),
23/2013 s. 33.

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

S. 28A(2)
amended by
Nos 49/2011
s. 18(2),
23/2013 s. 33.

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

Penalty: 15 penalty units.

S. 28B
(Heading)
amended by
No. 23/2013
s. 34(1).

28B Requirements of exempted rail transport operator

S. 28B
inserted by
No. 49/2011
s. 19.

S. 28B(1)
amended by
No. 23/2013
s. 34(2)(3).

- (1) A rail transport operator who holds an exemption granted under Division 5A of Part 5 or section 69B must establish a system and arrangements to ensure the safe management of the railway operations the rail transport operator carries out.

- (2) A rail transport operator referred to in subsection (1) must establish and maintain a system and arrangements that comply with subsection (4).

S. 28B(2)
amended by
No. 23/2013
s. 34(2).

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

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

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

Note

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

- (4) The system and arrangements must—
- (a) be documented; and
 - (b) be so set out and expressed that their contents are readily accessible and comprehensible to persons who use them; and
 - (c) contain the matters and information required by the regulations.

- (5) A rail transport operator who holds an exemption under Division 5A of Part 5 or section 69B must comply with the system and arrangements established by the rail transport operator under this section.

S. 28B(5)
inserted by
No. 23/2013
s. 34(4).

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

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

Division 5—Safety audits and audits of medical records of rail safety workers

29 Safety audits

S. 29
substituted by
No. 69/2007
s. 59,
amended by
No. 23/2013
s. 35.

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

30 Audit of medical records of rail safety workers

S. 30(1)
amended by
No. 23/2013
s. 36.

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

S. 30(2)
amended by
No. 23/2013
s. 36.

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

S. 30(3)
amended by
No. 23/2013
s. 36.

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

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

Division 6—Other matters

31 Single charge for multiple contraventions of certain duties

- (1) This section applies to—
- (a) a contravention of a provision of Division 2 or 3 by a person; and
 - (b) a contravention of such a provision for which an officer of a body corporate, partnership or unincorporated body or association (including a body corporate, partnership or unincorporated body or association representing the Crown) is liable.

Note

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

- (2) Subject to any contrary court order, two or more contraventions may be charged as a single offence if they arise out of the same factual circumstances.
- (3) This section does not authorise contraventions of two or more provisions of Division 2 or 3 to be charged as a single offence.
- (4) If two or more contraventions are charged as a single offence, a single penalty only may be imposed in respect of the contraventions.

32 Civil liability not affected by Division 2 or 3

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

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

- (b) conferring a defence to an action in civil proceedings or otherwise affecting a right of action in civil proceedings; or
- (c) affecting the extent (if any) to which a right of action arises, or civil proceedings may be taken, with respect to breaches of duties or obligations imposed by the regulations.

Part 4—Protection and control of railway operations

Pt 4 (Heading)
amended by
No. 23/2013
s. 37.

Division 1—Railway operations and utility works

Pt 4 Div. 1
(Heading)
inserted by
No. 69/2007
s. 60,
amended by
No. 23/2013
s. 38.

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

S. 33
(Heading)
amended by
No. 23/2013
s. 39(1).

(1) If—

- (a) a utility is carrying out, or proposes to carry out, works on or in the immediate vicinity of rail infrastructure; and
- (b) the Safety Director reasonably believes the works threaten, or are likely to threaten, the safety of railway operations—

S. 33(1)(b)
amended by
No. 23/2013
s. 39(2)(a).

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

(2) If—

S. 33(2)
amended by
No. 23/2013
s. 39(2).

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

S. 33(2)(a)
amended by
No. 23/2013
s. 39(2).

S. 33(2)(b)
amended by
No. 23/2013
s. 39(2)(a).

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

the Safety Director may give the rail transport operator a written direction to stop, alter or not to start the railway operations.

- (3) If the utility referred to in subsection (1) or (2) is a utility that provides, or intends to provide, gas, electricity or other like services, the Safety Director must consult with Energy Safe Victoria before giving a direction under either of those subsections.
- (4) A utility must not fail, or refuse, to comply with a direction under subsection (1), unless the utility has a reasonable excuse.

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

S. 33(5)
amended by
No. 23/2013
s. 39(2)(b).

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

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

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

Note to
s. 33(6)
amended by
No. 68/2009
s. 97(Sch.
item 101.8).

Note

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

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

S. 33A inserted by No. 26/2009 s. 11.

(1) In this section—

access means a right to access any rail land for the purpose of conducting road works or ancillary rail works.

S. 33A(1) def. of *access* amended by No. 23/2013 s. 40(a).

* * * * *

S. 33A(1) def. of *rail land* repealed by No. 23/2013 s. 40(b).

* * * * *

S. 33A(1) def. of *Rail Track* substituted by No. 6/2010 s. 203(1) (Sch. 6 item 40.2) (as amended by No. 45/2010 s. 22), repealed by No. 23/2013 s. 40(b).

* * * * *

S. 33A(1) def. of *road authority* repealed by No. 23/2013 s. 40(b).

* * * * *

S. 33A(1) def. of *works contractor* repealed by No. 23/2013 s. 40(b).

Rail Safety (Local Operations) Act 2006
No. 9 of 2006
Part 4—Protection and control of railway operations

S. 33A(1)
def. of
*works
manager*
repealed by
No. 23/2013
s. 40(b).

* * * * *

- (2) This section applies if—
- (a) Rail Track or a road authority applies to the Safety Director for a direction under this section; and
 - (b) the Safety Director is satisfied that Rail Track, the road authority or a works contractor engaged by Rail Track or the road authority requires access; and
 - (c) the Safety Director is satisfied that—
 - (i) Rail Track or the road authority has made a reasonable attempt to obtain an agreement for access from the rail infrastructure manager and the rail infrastructure manager is unreasonably refusing to enter such an agreement, or is otherwise unreasonably delaying the negotiation of such an agreement on the grounds of purported safety concerns; or
 - (ii) Rail Track or the road authority has entered into an agreement for access with the rail infrastructure manager and the rail infrastructure manager is unreasonably denying or limiting access on the grounds of purported safety concerns.

- (3) If this section applies and the Safety Director is satisfied that arrangements for access can be made under which the proposed road works or ancillary rail works can be conducted safely, the Safety Director may issue a written notice to the rail infrastructure manager and Rail Track or the road authority warning that the Safety Director may issue a direction under this section.
- (4) A notice under subsection (3)—
- (a) must warn the rail infrastructure manager and Rail Track or the road authority of the Safety Director's powers under this section; and
 - (b) may contain suggested arrangements for access under which the proposed road works or ancillary rail works can be conducted safely; and
 - (c) may set a date by which—
 - (i) an agreement for access is to be entered into; or
 - (ii) if an agreement already exists, access is to be granted.
- (5) If a notice is given specifying a date under subsection (4)(c) and no agreement has been entered into, or access has not been granted, by or on that date, the Safety Director may—
- (a) determine the arrangements for access that are to apply; and
 - (b) direct the rail infrastructure manager and Rail Track or the road authority to give effect to the arrangements.

- (6) A direction under subsection (5)—
- (a) must be in writing; and
 - (b) must set out any arrangements determined by the Safety Director under that subsection; and
 - (c) must be accompanied by a copy of this section.
- (7) A person who is given a direction under subsection (5) must comply with the direction.
- Penalty: 100 penalty units.
- (8) If a person is guilty of an offence against subsection (7), the person is—
- (a) guilty of a further offence in respect of each day after the day on which the initial offence was committed during which the person fails to comply with the direction; and
 - (b) liable to a penalty of up to 100 penalty units for each further offence.
- (9) The Safety Director must notify an applicant under this section of the Safety Director's decision—
- (a) to refuse the application or to issue a written notice under subsection (3);
 - (b) to issue a direction under subsection (5).

S. 34
(Heading)
amended by
No. 23/2013
s. 41(1).

34 Safety Director may direct utility works or railway operations to be altered, demolished or taken away

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

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

S. 34(2)
amended by
No. 23/2013
s. 41(2)(a)(b).

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

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

S. 34(2)(b)
amended by
No. 23/2013
s. 41(2)(c).

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

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

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

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

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

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

Note

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

Note to
s. 34(6)
amended by
No. 68/2009
s. 97(Sch.
item 101.9).

Division 2—Safety interface agreements

Pt 4 Div. 2
(Heading and
ss 34A–34K)
inserted by
No. 69/2007
s. 61 (as
amended by
No. 19/2010
s. 46).

S. 34A
inserted by
No. 69/2007
s. 61.

34A What is a safety interface agreement?

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

- (a) the implementation and maintenance of measures to manage those risks; and
- (b) the evaluation, testing and, if appropriate, revision of those measures; and
- (c) the respective roles and responsibilities of each party to the agreement in relation to those measures; and
- (d) the procedures by which each party to the agreement will exchange information about and monitor compliance with the obligations under the agreement; and
- (e) a process for keeping the agreement under review and its revision.

S. 34A(d)
amended by
No. 23/2013
s. 42(a).

S. 34A(e)
amended by
No. 23/2013
s. 42(b).

34B Safety interface assessment by rail transport operator—railway operations

S. 34B
(Heading)
amended by
No. 23/2013
s. 43(1).
S. 34B
inserted by
No. 69/2007
s. 61 (as
amended by
No. 19/2010
s. 46).

(1) A rail transport operator must—

S. 34B(1)
amended by
No. 23/2013
s. 43(2)(a)(3).

- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out by or on behalf of the rail transport operator because of, or partly because of, railway operations carried out by or on behalf of any other rail transport operator; and
- (b) determine measures to manage, so far as is reasonably practicable, any risks identified and assessed.

S. 34B(1)(a)
amended by
No. 23/2013
s. 43(2).

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

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

S. 34B(2)
amended by
No. 23/2013
s. 43(2).

Note

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

S. 34C
inserted by
No. 69/2007
s. 61.

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

S. 34C(1)
amended by
No. 23/2013
s. 44(2).

(1) A rail infrastructure manager must—

S. 34C(1)(a)
amended by
No. 23/2013
s. 44(1).

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

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

S. 34C(2)
amended by
No. 23/2013
s. 44(3).

(2) A rail infrastructure manager must seek to enter into a safety interface agreement with the relevant road authority for that public roadway or public pathway for the purpose of managing the risks identified and assessed under subsection (1).

S. 34D
inserted by
No. 69/2007
s. 61.

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

S. 34D(1)
amended by
No. 23/2013
s. 45(2).

(1) A rail infrastructure manager must—

S. 34D(1)(a)
amended by
No. 23/2013
s. 45(1).

- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out on or in

relation to the rail infrastructure manager's rail infrastructure because of, or partly because of, the existence or use of any rail or road crossing that is part of the road infrastructure of any relevant roadway or that is a relevant pathway; and

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

S. 34D(1)(b)
amended by
No. 23/2013
s. 45(3).

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

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

S. 34D(2)
amended by
No. 23/2013
s. 45(3)(4).

- (a) give the relevant road authority written notice of that opinion; and
(b) determine measures, so far as is reasonably practicable, to manage those risks to safety.

S. 34D(2)(a)
amended by
No. 23/2013
s. 45(3).

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

- (3) If the rail infrastructure manager is of the opinion that the risks to safety do not need to be managed in conjunction with the relevant road authority, the rail infrastructure manager must keep a written record of that opinion.

S. 34D(3)
amended by
No. 23/2013
s. 45(3)(5).

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

S. 34D(4)
amended by
No. 23/2013
s. 45(3).

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

S. 34E
(Heading)
amended by
No. 23/2013
s. 46(1).

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

S. 34E
inserted by
No. 69/2007
s. 61.

S. 34E(1)
amended by
No. 23/2013
s. 46(2)(a)(3).

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

S. 34E(1)(a)
amended by
No. 23/2013
s. 46(2)(b).

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

Penalty: In the case of a natural person, \$50 000;

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

S. 34E(2)
amended by
No. 23/2013
s. 46(2)(a).

- (2) A relevant road authority must have regard to—
- (a) the principal object of road management; and
- (b) the works and infrastructure management principles; and

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

when determining measures to manage risks identified under subsection (1).

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

S. 34E(3)
amended by
No. 23/2013
s. 46(2).

- (4) In this section—

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

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

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

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

S. 34F
(Heading)
amended by
No. 23/2013
s. 47(1).
S. 34F
inserted by
No. 69/2007
s. 61.

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

S. 34F(1)
amended by
No. 23/2013
s. 47(2)(a)(3).

- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure

S. 34F(1)(a)
amended by
No. 23/2013
s. 47(2)(b).

of that relevant roadway or that is a relevant pathway because of, or partly because of, railway operations; and

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

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

S. 34F(2)
amended by
No. 23/2013
s. 47(2).

- (2) A relevant road authority in relation to a relevant roadway or relevant pathway must seek to enter into a safety interface agreement with any rail infrastructure manager whose railway operations are identified as contributing to a risk identified under subsection (1) for the purposes of managing that risk.

S. 34G
(Heading)
amended by
No. 23/2013
s. 48(1).

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

S. 34G
inserted by
No. 69/2007
s. 61,
amended by
No. 23/2013
s. 48(2).

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

S. 34H
inserted by
No. 69/2007
s. 61,
amended by
No. 23/2013
s. 49.

34H Identification and assessment of risks

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

S. 34H(b)
amended by
No. 23/2013
s. 49.

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

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

S. 34H(c)
amended by
No. 23/2013
s. 49.

34I Safety interface agreements

A safety interface agreement under this Division may—

S. 34I
inserted by
No. 69/2007
s. 61.

- (a) be entered into by 2 or more rail transport operators or by one or more rail transport operators and one or more relevant road authorities;
- (b) include measures to manage any number of risks to safety that may arise because of, or partly because of, any rail operations;
- (c) include measures to manage any number of risks to safety that may arise from any railway operations because of, or partly because of, the existence or use of any road infrastructure;
- (d) make provision for or in relation to any matter by applying, adopting or incorporating any matter contained in any document;
- (e) consist of 2 or more documents.

S. 34I(a)
amended by
No. 23/2013
s. 50(1)(2).

S. 34I(c)
amended by
No. 23/2013
s. 50(3).

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

S. 34J
inserted by
No. 69/2007
s. 61.

- (1) This section applies if the Safety Director is satisfied that a rail transport operator or relevant road authority referred to in section 34B, 34C, 34D, 34E or 34F is—
- (a) unreasonably refusing or failing to enter into a safety interface agreement with another person as required under this Division; or

S. 34J(1)
amended by
No. 23/2013
s. 51(1).

S. 34J(2)
amended by
No. 23/2013
s. 51(1).

- (b) unreasonably delaying the negotiation of that agreement.
- (2) The Safety Director may serve a written notice on the rail transport operator or relevant road authority (as the case requires).

S. 34J(3)(a)
amended by
No. 23/2013
s. 51(1).

- (3) A written notice under subsection (2)—
- (a) must warn the rail transport operator or relevant road authority (as the case requires) of the powers of the Safety Director under this section, including the power to issue a direction under subsection (5) at any time after a specified date; and
 - (b) must contain a copy of this section; and
 - (c) may contain suggested terms for inclusion in a safety interface agreement.

S. 34J(4)
amended by
No. 23/2013
s. 51(1).

- (4) If the Safety Director serves a notice under subsection (2) to a rail transport operator or relevant road authority, the Safety Director may, in writing, request the person served with the notice to provide such information as the Safety Director reasonably requires for the purposes of making a direction under subsection (5).
- (5) If a notice is issued under this section and a safety interface agreement has not been entered into by or on the date specified in that notice, the Safety Director—
- (a) may determine the arrangements to apply in relation to the management of risks to safety referred to in section 34B, 34C, 34D, 34E or 34F (as the case requires); and
 - (b) may direct either or both persons to whom the notice is issued to give effect to those arrangements; and
 - (c) must specify by when a direction must be complied with.

- (6) A direction under subsection (5)—
- (a) must be in writing; and
 - (b) must set out any arrangements determined by the Safety Director.

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

S. 34J(7)
amended by
No. 23/2013
s. 51(2).

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

34K Register of safety interface agreements

S. 34K
inserted by
No. 69/2007
s. 61.

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

S. 34K(1)
amended by
No. 23/2013
s. 52(1)(2).

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

S. 34K(1)(a)
amended by
No. 23/2013
s. 52(1)(a).

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

that are applicable to its railway operations.

Penalty: In the case of a natural person, \$5 000;
In the case of a body corporate,
\$25 000.

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

S. 34K(2)
amended by
No. 23/2013
s. 52(3).

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

S. 34K(2)(a)
amended by
No. 23/2013
s. 52(3).

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

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

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

Part 5—Accreditation of railway operations

Pt 5 (Heading)
amended by
No. 23/2013
s. 53.

Division 1—Preliminary matters

35 Purpose of accreditation

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

S. 35
amended by
No. 23/2013
s. 54.

35A Public Transport Development Authority is exempt

The Public Transport Development Authority is exempt from the requirement to be accredited under this Part.

S. 35A
inserted by
No. 61/2011
s. 22.

35B Secretary to the Department of Transport is exempt

The Secretary to the Department of Transport is exempt from the requirement to be accredited under this Part.

S. 35B
inserted by
No. 61/2011
s. 22.

35C Head, Transport for Victoria is exempt

The Head, Transport for Victoria is exempt from the requirement to be accredited under this Part.

S. 35C
inserted by
No. 3/2017
s. 50(Sch. 1
item 7.1).

Division 2—Accreditation

36 Offence for certain rail transport operators not to be accredited

A rail transport operator must not carry out railway operations unless the rail transport operator—

- (a) is accredited under this Part in respect of those operations; or

S. 36
substituted by
No. 23/2013
s. 55.

- (b) holds an exemption granted under Division 5A; or
- (c) is exempted by the regulations from the requirement to be accredited under this Part.

Penalty: In the case of a natural person,
\$150 000;
In the case of a body corporate,
\$1 500 000.

S. 37
repealed by
No. 23/2013
s. 56.

* * * * *

38 Application for accreditation

S. 38(1)
amended by
No. 23/2013
s. 57(1).

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

S. 38(2)
amended by
No. 23/2013
s. 57(2).

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

(3) An application must be—

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

(b) accompanied by—

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

(ii) any other things that are required by the regulations.

(4) The Safety Director may require an applicant to—

(a) supply further information specified by the Safety Director;

- (b) verify, by statutory declaration, information supplied for the purposes of the application.
- (5) The application, and any further information supplied by the applicant under subsection (4), must be signed in accordance with subsection (6) and declared by each signatory to be true and correct.
- (6) The application must be signed—
 - (a) if the applicant is a body corporate—
 - (i) being a company within the meaning of the Corporations Act, in accordance with section 127 of that Act;
 - (ii) in any other case, by each director, or each member of the committee of management, of the body corporate;
 - (b) if the applicant is an unincorporated association or body, by each member of the committee of management of the association or body;
 - (c) if the applicant is a partnership, by each partner;
 - (d) if the applicant is an individual, by the individual.
- (7) In addition, each signatory referred to in subsection (6) must declare that he or she is not a person who, under Part 2D.6 of the Corporations Act, is disqualified from managing corporations.

39 Criteria on which accreditation applications by rail transport operators are to be assessed

The Safety Director must accredit a rail transport operator in respect of the railway operations the operator carries out if the Safety Director is satisfied that—

S. 39
substituted by
No. 23/2013
s. 58.

- (a) the rail transport operator—
 - (i) is accredited in another State or a Territory of the Commonwealth to carry out railway operations of a similar kind in that State or Territory; or
 - (ii) has the competence and capacity to carry out those operations safely; and
- (b) the rail transport operator has demonstrated to the Safety Director that—
 - (i) the rail transport operator has taken all reasonable steps to comply with Division 3; and
 - (ii) the rail transport operator's safety management system complies with Division 4 of Part 3; and
 - (iii) the rail transport operator has complied with section 26; and
- (c) the rail transport operator has financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the carrying out of railway operations; and
- (d) in the case of a rail transport operator who is a rolling stock operator but is not the rail infrastructure manager who controls the railway on which the rolling stock will be operated—the rail transport operator has an agreement with the rail infrastructure manager who controls the railway on which the operator wishes to operate particular rolling stock, and the agreement includes appropriate arrangements for the safe operation of the rolling stock.

* * * * *

S. 40
repealed by
No. 23/2013
s. 59.

41 Accreditation following direction

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

S. 41
amended by
No. 23/2013
s. 60.

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

(1) This section applies if—

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

S. 42(1)(a)
amended by
No. 23/2013
s. 61.

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

- (3) A notice under subsection (2)—
- (a) must warn the parties of the Safety Director's powers under this section; and
 - (b) must warn the parties that the Safety Director may issue a direction under subsection (4) at any time after a specified date; and
 - (c) must contain a copy of this section and section 41; and
 - (d) may contain suggested terms concerning the safe operation of the rolling stock.
- (4) If a notice is given specifying a date under subsection (3)(b) and no agreement has been entered into by or on that date, the Safety Director—
- (a) may determine the arrangements that are to apply to enable the safe operation of the rolling stock; and
 - (b) may direct either or both parties to give effect to the arrangements; and
 - (c) may specify by when a direction must be complied with.
- (5) A direction under subsection (4)—
- (a) must be in writing; and
 - (b) must set out any arrangements determined by the Safety Director under that subsection; and
 - (c) must be accompanied by a copy of this section and section 41.
- (6) A person who is given a direction under subsection (4) must comply with the direction.

Penalty: 100 penalty units.

- (7) If a person is guilty of an offence against subsection (6), the person is guilty of a further offence in respect of each day after the day on which the initial offence was committed during which the person fails to comply with the direction, and is liable to a penalty of up to 100 penalty units for each such further offence.
- (8) This section applies regardless of when the relevant application for accreditation was made.

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

- (1) If the Safety Director—

S. 43(1)
amended by
No. 23/2013
s. 62(1)(a).

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

S. 43(1)(a)
amended by
No. 23/2013
s. 62(1)(a)(b).

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

S. 43(1)(b)
amended by
No. 23/2013
s. 62(1)(b).

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

- (2) A direction under subsection (1) must be in writing.
- (3) A direction under this section may require each rail transport operator that is the subject of the direction to provide to another rail transport operator, also subject to the direction, information concerning any circumstances in relation to the carrying out of railway operations by them that could constitute a hazard in relation to the carrying out of railway operations by the other rail transport operator.

S. 43(3)
amended by
No. 23/2013
s. 62(1)(b)(c).

S. 43(4)
amended by
No. 23/2013
s. 62(2).

- (4) A person who is given a direction under subsection (1) must comply with the direction.

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

S. 43(5)
amended by
No. 23/2013
s. 62(1)(c)(3).

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

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

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

- (1) Subject to this section, the Safety Director must decide whether to accredit an applicant within 6 months of receiving an application from the applicant.
- (2) The Safety Director may, before the expiry of the period specified in subsection (1), decide to extend the period within which he or she may decide whether to accredit an applicant.
- (3) If the Safety Director decides to extend the period within which he or she may decide whether to accredit an applicant, the Safety Director must notify—
 - (a) the applicant of that decision and the new period within which the Safety Director intends to make his or her decision whether to accredit the applicant; and

(b) the Secretary and the Head, Transport for Victoria of that decision.

S. 44(3)(b)
amended by
No. 3/2017
s. 50(Sch. 1
item 7.2).

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

45 Notification and reasons to be given if accreditation refused

- (1) If the Safety Director refuses to accredit an applicant, the Safety Director must—
- (a) notify the applicant—
 - (i) of that refusal; and
 - (ii) that they have a right to seek review of the Safety Director's decision under Part 7; and
 - (b) give the applicant a statement of reasons for the refusal to accredit the applicant.
- (2) A notification under subsection (1)(a) and a statement of reasons under subsection (1)(b) must be—
- (a) in writing; and
 - (b) given to the applicant as soon as practicable after the Safety Director makes his or her decision to refuse to accredit the applicant.

46 Restrictions and conditions concerning accreditation

S. 46(1)
amended by
No. 23/2013
s. 63(1).

- (1) In accrediting a rail transport operator, the Safety Director may limit the accreditation in any way the Safety Director thinks appropriate.
- (2) Without limiting subsection (1), the Safety Director may—
 - (a) impose conditions on the accreditation; or
 - (b) restrict the scope of the accreditation so that it only applies—
 - (i) in the case of an accreditation of a rail infrastructure manager, in respect of part of a railway or of a particular type of service;
 - (ii) in the case of an accreditation of a rolling stock operator, in respect of part of a particular type of service or rolling stock.
- (3) An accreditation is also subject to any condition set out in the regulations that applies to the accreditation.

S. 46(4)
amended by
No. 23/2013
s. 63(2).

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

S. 46(5)
amended by
No. 23/2013
s. 63(2).

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

- (a) does not have more than the prescribed concentration of alcohol in his or her blood or breath; or
 - (b) is not impaired by a drug.
- (6) If an accredited rail transport operator who has been accredited subject to a restriction carries out any action that is inconsistent with the restriction, the accredited rail transport operator is not accredited to carry out that action for the purposes of section 36 or 37.
- (7) A condition requiring compliance with any provision of a code of practice (whether approved under section 91 or not) is of no effect.

S. 46(6)
amended by
No. 23/2013
s. 63(2).

46A Initial and annual accreditation fees

S. 46A
inserted by
No. 19/2010
s. 40.

- (1) An accredited rail transport operator must pay to the Safety Director—
- (a) for being accredited—
 - (i) an initial accreditation fee of 500 fee units; or
 - (ii) an initial accreditation fee specified or determined under the regulations in relation to that operator, if that fee is greater than 500 fee units; and
 - (b) an annual accreditation fee of 500 fee units or an annual accreditation fee specified or determined under the regulations in relation to that operator, if that fee is greater than 500 fee units.
- (2) A fee referred to in subsection (1) must be paid to the Safety Director by the prescribed date and in accordance with the regulations.

S. 46A(1)
amended by
No. 23/2013
s. 64.

S. 46A(3)
amended by
No. 23/2013
s. 64.

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

S. 46B
(Heading)
amended by
No. 23/2013
s. 65(1).

46B Fee exemptions for tourist and heritage railway operators

S. 46B
inserted by
No. 19/2010
s. 40.

S. 46B(1)
amended by
No. 23/2013
s. 65(2).

- (1) A tourist and heritage railway operator may apply to the Safety Director for an exemption from the requirement to pay a fee under section 46A or Division 5A of Part 5.
- (2) On receipt of an application under subsection (1), the Safety Director may grant or refuse to grant an exemption.
- (3) If the Safety Director refuses to grant an exemption, the Safety Director must—
- (a) notify the applicant—
 - (i) of that refusal; and
 - (ii) that they have a right to seek review of the Safety Director's decision under Part 7; and
 - (b) give the applicant a statement of reasons for the refusal.
- (4) A notification under subsection (3)(a) and a statement of reasons under subsection (3)(b) must be—
- (a) in writing; and
 - (b) given to the applicant as soon as practicable after the Safety Director makes his or her decision to refuse to grant the exemption.

47 How long accreditation lasts

- (1) An accreditation remains in force until—
 - (a) it is cancelled or surrendered; or
 - (b) the expiry of any period of time specified by the Safety Director under section 59(3)(b)(iii) (for disciplinary reasons).
- (2) The Safety Director may give a temporary accreditation for a period of less than 12 months.

48 Offence to fail to comply with conditions etc.

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

S. 48(1)
amended by
No. 23/2013
s. 66.

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

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

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

S. 48(2)
amended by
No. 23/2013
s. 66(1).

Penalty: 2000 penalty units.

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

S. 48(3)
amended by
No. 23/2013
s. 66(1).

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

Note

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

Note to
s. 48(4)
amended by
No. 68/2009
s. 97(Sch.
item 101.10).

Division 3—Risk management requirements for accreditation

S. 49
repealed by
No. 23/2013
s. 67.

* * * * *

S. 50
substituted by
No. 23/2013
s. 68.

50 Identification of incidents and hazards, and risk assessment

- (1) A rail transport operator must—
 - (a) identify all incidents which could occur while carrying out any railway operations in respect of which the operator is accredited; and
 - (b) identify all hazards that could cause, or contribute to causing, those incidents.
- (2) A rail transport operator must document all aspects of any identification required by subsection (1), including the methods and criteria used for identifying the incidents and hazards.
- (3) A rail transport operator must conduct a comprehensive and systematic assessment in relation to all possible incidents and all hazards identified in accordance with subsection (1).
- (4) An assessment must involve an examination and analysis of the hazards and incidents identified so as to provide the rail transport operator with a detailed understanding of all aspects of risk to safety associated with the incidents, including—
 - (a) the nature of each hazard and incident; and
 - (b) the likelihood of each hazard causing an incident; and

- (c) in the event of an incident occurring—
 - (i) its magnitude; and
 - (ii) the severity of its consequences of the incident; and
- (d) the range of control measures considered to eliminate or minimise the risk to safety.
- (5) In conducting an assessment, the rail transport operator must—
 - (a) consider hazards cumulatively as well as individually; and
 - (b) use assessment methodologies (whether quantitative or qualitative, or both) that are appropriate to the hazards being considered.
- (6) The rail transport operator must document all aspects of the assessment, including—
 - (a) the incidents and hazards considered; and
 - (b) the likelihood and severity of consequences; and
 - (c) the range of control measures considered, including—
 - (i) statements as to their viability and effectiveness; and
 - (ii) reasons for selecting certain control measures and rejecting others.
- (7) In this section, *incident* includes major incident.

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

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

S. 51
amended by
No. 23/2013
s. 69(a).

S. 51(a)
amended by
No. 23/2013
s. 69(b).

(a) the likelihood of an incident occurring; or

S. 51(b)
amended by
No. 23/2013
s. 69(b).

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

52 Emergency planning

S. 52(1)
substituted by
No. 23/2013
s. 70.

- (1) A rail transport operator must prepare an
emergency plan for—
(a) any rail infrastructure that the operator
controls; and
(b) any railway operations the operator carries
out.

S. 52(2)
repealed by
No. 23/2013
s. 70.

* * * * *

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

(4) The emergency plan must—

S. 52(4)(a)
substituted by
No. 47/2006
s. 42.

- (a) at least address all—
(i) major incidents identified under
section 50; and
(ii) hazards identified under section 50 that
could cause or contribute to causing the
major incidents identified under that
section; and

- (ab) address and include any other matters or things that are prescribed; and
- (b) be prepared in—
 - (i) conjunction with emergency services and any other person who is prescribed; and
 - (ii) accordance with the regulations; and
- (c) be kept and maintained in accordance with the regulations; and
- (d) be provided to the emergency services and any other person who is prescribed; and
- (e) be tested in accordance with the regulations.

S. 52(4)(ab)
inserted by
No. 47/2006
s. 42.

Division 4—Variation and surrender of accreditation

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

S. 53
(Heading)
amended by
No. 23/2013
s. 71(1).

- (1) An accredited rail transport operator may apply to the Safety Director to—
 - (a) vary a condition or restriction of an accreditation; or
 - (b) revoke a condition or restriction of an accreditation.
- (2) An application must—
 - (a) be in writing; and
 - (b) set out the reasons for the variation or revocation of the condition or restriction.
- (3) The Safety Director must consider an application he or she receives under this section.

S. 53(1)
amended by
No. 23/2013
s. 71(2).

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

- (5) If the Safety Director refuses to grant a variation or refuses to agree to a revocation, the Safety Director must—

S. 53(5)(a)
amended by
No. 23/2013
s. 71(2).

- (a) notify the accredited rail transport operator—
 - (i) of that refusal; and
 - (ii) that they have a right to seek review of the Safety Director's decision under Part 7; and

S. 53(5)(b)
amended by
No. 23/2013
s. 71(2).

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

- (6) A notification under subsection (5)(a) and a statement of reasons under subsection (5)(b) must be—

- (a) in writing; and

S. 53(6)(b)
amended by
No. 23/2013
s. 71(2).

- (b) given to the accredited rail transport operator as soon as practicable after the Safety Director makes his or her decision to refuse to grant the variation or to agree to the revocation (as the case requires).

54 Application for variation of accreditation is required in certain cases

S. 54(1)
substituted by
No. 69/2007
s. 62(1),
amended by
No. 23/2013
s. 72.

- (1) This section applies if an accredited rail transport operator proposes to make a change to, or to the manner of carrying out, accredited railway operations that may reasonably be expected—

- (a) to change the nature, character and scope of the accredited railway operations ; or
S. 54(1)(a) amended by No. 23/2013 s. 72(b).
- (b) to not be within the competence and capacity for which the accredited rail transport operator is accredited.
S. 54(1)(b) amended by No. 23/2013 s. 72(a).
- (1A) The accredited rail transport operator must apply to the Safety Director for a variation of its accreditation.
S. 54(1A) inserted by No. 69/2007 s. 62(1), amended by No. 23/2013 s. 72(a).
- (2) An accredited rail transport operator must not make any change to, or to the manner of carrying out, accredited railway operations if—
S. 54(2) amended by No. 23/2013 s. 72.
- (a) the change requires the accredited rail transport operator to apply for variation to the conditions or restrictions of the accreditation to which the accredited rail transport operator is subject; and
S. 54(2)(a) amended by No. 23/2013 s. 72(a).
- (b) the variation has not been granted.
- Penalty: In the case of a natural person,
1000 penalty units or imprisonment for 12 months or both;
In the case of a body corporate,
2500 penalty units.
- (3) An application under this section must—
S. 54(3) substituted by No. 69/2007 s. 62(2).
- (a) be in writing; and
- (b) describe—
S. 54(3)(b)(i) amended by No. 23/2013 s. 72(b).
- (i) the nature, character and scope of the change in railway operations; or

Rail Safety (Local Operations) Act 2006
No. 9 of 2006
Part 5—Accreditation of railway operations

S. 54(3)(b)(ii)
amended by
No. 23/2013
s. 72(a).

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

(c) contain the prescribed information (if any).

S. 54(3A)
inserted by
No. 69/2007
s. 62(3),
amended by
No. 23/2013
s. 72(a).

(3A) The Safety Director may require an accredited rail transport operator who has applied for a variation—

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

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

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

S. 54(5)
substituted by
No. 69/2007
s. 62(4).

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

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

S. 54(6)(a)
amended by
No. 23/2013
s. 72(a).

(a) notify the accredited rail transport operator—

(i) of that refusal; and

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

S. 54(6)(b)
amended by
No. 23/2013
s. 72(a).

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

S. 54(7)
substituted by
No. 69/2007
s. 62(5).

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

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

(9) In this section—

S. 54(9)
inserted by
No. 69/2007
s. 62(6).

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

S. 54(9) def. of
*relevant
period*
amended by
No. 23/2013
s. 72(a).

- (a) 6 months after the application for that variation was received by the Safety Director; or
- (b) if the Safety Director requests further information for the purposes of making that decision, 6 months, or such other period, as is agreed between the Safety Director and the accredited rail transport operator, after the Safety Director receives the last of the information requested; or
- (c) if the Safety Director, by notice in writing given to the accredited rail transport operator before the expiry of the relevant 6 months, specifies another period, that period—

whichever is longer.

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

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

S. 54A
(Heading)
amended by
No. 23/2013
s. 73.
S. 54A
inserted by
No. 69/2007
s. 63.

S. 54B
inserted by
No. 69/2007
s. 63,
amended by
No. 23/2013
s. 74.

54B Prescribed conditions and restrictions

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

S. 55
(Heading)
amended by
No. 23/2013
s. 75(1).

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

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

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

(b) impose a new condition or restriction.

(2) Before taking action under this section, the Safety Director must—

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

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

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

(3A) If the Safety Director takes immediate action under subsection (3), the Safety Director must notify the accredited rail transport operator within 48 hours of making the decision.

S. 55(1)(a)
amended by
No. 23/2013
s. 75(2).

S. 55(2)(a)
amended by
No. 23/2013
s. 75(4).

S. 55(2)(b)
amended by
No. 23/2013
s. 75(4).

S. 55(3A)
inserted by
No. 13/2009
s. 85,
amended by
No. 23/2013
s. 75(4).

(4) The Safety Director must—

(a) give the accredited rail transport operator—

S. 55(4)(a)
amended by
No. 23/2013
s. 75(4).

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

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

S. 55(4)(a)(ii)
amended by
No. 23/2013
s. 75(3).

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

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

S. 55(4)(b)
amended by
No. 23/2013
s. 75(4).

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

56 Surrender of accreditation

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

S. 56(1)
amended by
No. 23/2013
s. 76.

(2) A request must be in writing.

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

(4) If the Safety Director refuses to consent to the
surrender of an accreditation, the Safety Director
must—

(a) notify the accredited rail transport operator—

S. 56(4)(a)
amended by
No. 23/2013
s. 76(1).

(i) of that refusal; and

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

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

57 False or misleading information

S. 57(1)
amended by
No. 23/2013
s. 77.

- (1) A person must not in, or in relation to an application for—
 - (a) an accreditation; or
 - (b) a variation of accreditation; or
 - (c) a variation of a condition or restriction of an accreditation—

give information that is false or misleading in a material detail.

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

- (2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to prove that at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds—
 - (a) in the case of false information—that the information was true; or
 - (b) in the case of misleading information—that the information was not misleading.

Division 5—Disciplinary action

58 Power of immediate suspension

- (1) The Safety Director may, subject to and in accordance with the regulations (if any), immediately suspend an accreditation if the Safety Director considers it necessary to do so—
 - (a) in the interests of public safety; or
 - (b) to protect the safety of rail safety workers.
- (2) The Safety Director may immediately suspend an accreditation under this section without holding an inquiry under section 59.
- (3) A suspension under this section may be for a specified period or until a specified event or until a further determination is made by the Safety Director.
- (4) An accredited rail transport operator whose accreditation has been suspended under this section may, by notice served on the Safety Director, require the Safety Director to hold an inquiry under section 59.
- (5) The Safety Director must commence an inquiry under section 59 within 7 days after the service on him or her of a notice under subsection (4).
- (6) If an inquiry is held under section 59, a suspension under this section, if then still in effect, ceases to have effect on the completion of that inquiry.
- (7) Nothing in this section limits any power of the Safety Director under section 59.

S. 58(4)
amended by
No. 23/2013
s. 78.

S. 59
(Heading)
amended by
No. 23/2013
s. 79(1).

59 Disciplinary action against an accredited rail transport operator

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

S. 59(2)(a)
amended by
No. 6/2010
s. 203(1)
(Sch. 6
item 40.3) (as
amended by
No. 45/2010
s. 22).

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

- (b) has not complied with Division 4 of Part 3; or

S. 59(2)(c)
amended by
No. 23/2013
s. 79(2).

- (c) does not have the financial capacity, or public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the carrying out of railway operations; or

S. 59(2)(d)
amended by
No. 23/2013
s. 79(2).

- (d) has not demonstrated to the Safety Director that the person is able to carry out railway operations safely; or

- (e) obtained the accreditation improperly; or

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

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

- (a) reprimand the relevant person;

- (b) if the relevant person is an accredited rail transport operator—
- (i) warn the person that should further proper cause for taking disciplinary action be found to exist, the person may be disqualified from holding an accreditation;
 - (ii) impose one or more new conditions or restrictions of the accreditation;
 - (iii) impose an expiry date on the accreditation;
 - (iv) suspend the accreditation for a specified period or until a specified event or until a further determination is made by the Safety Director;
 - (v) cancel the accreditation immediately or with effect from a specified later date;
- (c) disqualify the relevant person from holding an accreditation—
- (i) until a specified event; or
 - (ii) until a further determination is made by the Safety Director.

S. 59(3)(b)
amended by
No. 23/2013
s. 79(3).

(4) In this section—

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

S. 59(4) def. of
relevant person
amended by
No. 23/2013
s. 79(4).

60 Procedure and powers concerning disciplinary inquiries

- (1) In exercising his or her powers under section 59, the Safety Director—
 - (a) must act fairly and according to equity and good conscience without regard to technicalities or legal forms; and
 - (b) is not required to conduct himself or herself in a formal manner; and
 - (c) is not bound by rules or practice as to evidence but may inform himself or herself in relation to any matter in any manner that he or she thinks fit.
- (2) For the purpose of, and in connection with, any inquiry under section 59, the Safety Director has the powers conferred by sections 14, 15, 16, 20, 20A and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, on a board appointed by the Governor in Council and those sections apply as if the Safety Director was the sole member of the board.
- (3) The procedure of the Safety Director on or in connection with an inquiry under section 59 is in his or her discretion.

S. 60(2)
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 42),
67/2014
s. 147(Sch. 2
item 32).

61 Effect of suspension

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

Division 5A—Exemptions granted by the Safety Director

Pt 5 Div. 5A
(Heading and
ss 61A–61K)
inserted by
No. 23/2013
s. 80.

61A Definitions

In this Division, *designated provision* means any or all of the following—

S. 61A
inserted by
No. 23/2013
s. 80.

- (a) Division 4 of Part 3;
- (b) Divisions 1 to 4 of Part 5;
- (c) regulations made for the purposes of Division 4 of Part 3 or Divisions 1 to 4 of Part 5.

61B Accreditation exemption for rail transport operators

S. 61B
inserted by
No. 23/2013
s. 80.

- (1) A rail transport operator may apply to the Safety Director for an exemption from a designated provision in respect of specified railway operations carried out, or proposed to be carried out, by or on behalf of the operator.
- (2) An application must be made in the manner and form approved by the Safety Director and—
 - (a) must specify the scope and nature of the railway operations in respect of which an exemption is sought; and
 - (b) if the railway operations include the operation or movement of rolling stock on a railway—must include details about the operation or movement of rolling stock; and
 - (c) must contain any prescribed information; and
 - (d) must be accompanied by the prescribed application fee (if any).

- (3) The Safety Director may require a rail transport operator who has applied for an exemption—
- (a) to supply further information requested by the Safety Director; and
 - (b) to verify by statutory declaration any information supplied to the Safety Director.

S. 61C
inserted by
No. 23/2013
s. 80.

61C What applicant must demonstrate

The Safety Director must not grant an exemption to an applicant unless satisfied that the applicant has demonstrated—

- (a) that the applicant is, or is to be, a tourist and heritage railway operator, rail infrastructure manager or rolling stock operator in relation to the railway operations in respect of which the exemption is sought; and
- (b) that the applicant—
 - (i) has the financial capacity, or has public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the railway operations; and
 - (ii) has complied with the requirements prescribed by the regulations (if any) for the purposes of this section.

S. 61D
inserted by
No. 23/2013
s. 80.

61D Determination of application

- (1) Subject to this section, the Safety Director must, within the relevant period—
- (a) if the Safety Director is satisfied as to the matters referred to in section 61C—notify the applicant that an exemption from a designated provision of this Act or the regulations has been granted, with or without conditions or restrictions; or

- (b) if the Safety Director is not satisfied as to the matters referred to in section 61C—notify the applicant that the application has been refused.
- (2) An exemption under this Division is subject to—
- (a) any conditions or restrictions prescribed by the regulations for the purposes of this section that are applicable to the exemption; and
 - (b) any other condition or restriction imposed on the exemption by the Safety Director.
- (3) Notification under this section—
- (a) must be in writing and given to the applicant; and
 - (b) if the exemption has been granted, must specify—
 - (i) the details of the applicant; and
 - (ii) the scope and nature of the railway operations, and the manner in which they are to be carried out, in respect of which the exemption is granted; and
 - (iii) any condition or restriction imposed by the Safety Director under this section on the exemption; and
 - (iv) any other prescribed information; and
 - (c) if a condition or restriction has been imposed on the exemption, must include—
 - (i) the reasons for imposing the condition or restriction; and
 - (ii) information about the right of review under Part 7; and

- (d) if the application has been refused must include—
 - (i) the reasons for the decision to refuse to grant the application; and
 - (ii) information about the right of review under Part 7; and
 - (e) if the relevant period in relation to an application has been extended, must include information about the right of review under Part 7.
- (4) In this section, *relevant period*, in relation to an application, means—
- (a) 6 months after the application was received by the Safety Director; or
 - (b) if the Safety Director requested further information, 6 months, or such other period, as is agreed between the Safety Director and the applicant, after the Safety Director receives the last information so requested; or
 - (c) if the Safety Director, by written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period—
- whichever is the longer.

S. 61E
inserted by
No. 23/2013
s. 80.

61E Application for variation of an exemption

- (1) A rail transport operator who has been granted an exemption under this Division may, at any time, apply to the Safety Director for a variation of the exemption.
- (2) A rail transport operator who has been granted an exemption under this Division must apply to the Safety Director for a variation of the exemption if—

- (a) the applicant proposes to vary the scope and nature of the railway operations in respect of which the exemption has been granted; or
 - (b) any other variation is proposed in respect of the railway operations in respect of which the exemption has been granted that should be reflected in the exemption.
- (3) An application for variation must be made in the manner and form approved by the Safety Director and—
- (a) must specify the details of the variation being sought; and
 - (b) must contain any prescribed information; and
 - (c) must be accompanied by the prescribed application fee (if any).
- (4) The Safety Director may require an applicant for a variation—
- (a) to supply further information requested by the Safety Director; and
 - (b) to verify by statutory declaration any information supplied to the Safety Director.

61F Determination of application for variation

- (1) Subject to this section, the Safety Director must, within the relevant period—
- (a) if the Safety Director is satisfied as to the matters referred to in section 61C (so far as they are applicable to the proposed variation)—notify the applicant that the exemption has been varied, with or without conditions or restrictions; or
 - (b) if the Safety Director is not so satisfied—notify the applicant that the application has been refused.

S. 61F
inserted by
No. 23/2013
s. 80.

- (2) Notification under this section—
- (a) must be in writing and given to the applicant; and
 - (b) if the exemption has been varied, must specify—
 - (i) the details of the applicant; and
 - (ii) the variation to the exemption so far as it applies to the scope and nature of the railway operations, or the manner in which they are to be carried out; and
 - (iii) any conditions and restrictions imposed by the Safety Director on the exemption as varied; and
 - (iv) any other prescribed information; and
 - (c) if a condition or restriction has been imposed on the exemption as varied, must include—
 - (i) the reasons for imposing the condition or restriction; and
 - (ii) information about the right of review under Part 7; and
 - (d) if the application has been refused, must include—
 - (i) the reasons for the decision to refuse to grant the application; and
 - (ii) information about the right of review under Part 7; and
 - (e) if the relevant period in relation to an application has been extended, must include information about the right of review under Part 7.

- (3) In this section, *relevant period*, in relation to an application, means—
- (a) 6 months after the application was received by the Safety Director; or
 - (b) if the Safety Director requested further information, 6 months, or such other period, as is agreed between the Safety Director and the applicant, after the Safety Director receives the last information so requested; or
 - (c) if the Safety Director, by written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period—

whichever is the longer.

61G Prescribed conditions and restrictions

An exemption granted to a rail transport operator that is varied under this Division is subject to any conditions or restrictions prescribed by the regulations that are applicable to the exemption as varied.

S. 61G
inserted by
No. 23/2013
s. 80.

61H Variation of conditions and restrictions

- (1) A rail transport operator who has been granted an exemption under this Division may, at any time, apply to the Safety Director for a variation of a condition or restriction imposed by the Safety Director to which the exemption is subject.
- (2) An application for variation of a condition or restriction must be made as if it were an application for variation of an exemption under section 61E.
- (3) The Safety Director must consider the application and, if satisfied as to the matters referred to in sections 61C and 61D (so far as they are applicable to the proposed variation), notify the applicant in accordance with the provisions of this

S. 61H
inserted by
No. 23/2013
s. 80.

Division applicable to the granting of an exemption (so far as is practicable) that the variation has been granted or refused.

- (4) Notification under subsection (3) that a variation has been refused must include the reasons for the decision to refuse to grant the variation and information about the right of review under Part 7.

S. 61I
inserted by
No. 23/2013
s. 80.

61I Safety Director may make changes to conditions or restrictions

- (1) The Safety Director may, subject to this section, at any time, vary or revoke a condition or restriction imposed by the Safety Director on an exemption granted to a rail transport operator under this Division or impose a new condition or restriction.
- (2) Before taking action under this section, the Safety Director must—
- (a) give the rail transport operator written notice of the action that the Safety Director proposes to take; and
 - (b) allow the operator to make written representations about the intended action within 28 days (or any other period that the Safety Director and the operator agree on); and
 - (c) consider any representations made under paragraph (b) and not withdrawn.
- (3) The Safety Director must, by written notice given to the rail transport operator, provide—
- (a) details of any action taken under this section; and
 - (b) a statement of reasons for any action taken under this section; and
 - (c) information about the right of review under Part 7.

61J Revocation or suspension of an exemption

S. 61J
inserted by
No. 23/2013
s. 80.

- (1) This section applies to a rail transport operator who has been granted an exemption under this Division if—
- (a) the Safety Director considers that the operator—
 - (i) is no longer able to demonstrate to the satisfaction of the Safety Director the matters referred to in section 61C or to satisfy the conditions, or to comply with the restrictions, of the exemption; or
 - (ii) is not managing the rail infrastructure, or is not operating rolling stock in relation to any rail infrastructure, to which the exemption relates and has not done so for at least the preceding 12 months; or
 - (b) the operator contravenes this Act or the regulations.
- (2) The Safety Director may—
- (a) suspend the exemption for a period determined by the Safety Director; or
 - (b) revoke the exemption with immediate effect or with effect from a specified future date; or
 - (c) impose conditions or restrictions on the exemption; or
 - (d) vary conditions or restrictions to which the exemption is subject.

- (3) Before making a decision under subsection (2), the Safety Director—
 - (a) must notify the rail transport operator in writing—
 - (i) that the Safety Director is considering making a decision under subsection (2) of the kind, and for the reasons, specified in the notice; and
 - (ii) that the person may, within 28 days or such longer period as is specified in the notice, make written representations to the Safety Director showing cause why the decision should not be made; and
 - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (4) If the Safety Director suspends or revokes the exemption, the Safety Director must include in the notice of suspension or revocation the reasons for the suspension or revocation and information about the right of review under Part 7.
- (5) The Safety Director may withdraw a suspension of the exemption by written notice given to the rail transport operator.

S. 61K
inserted by
No. 23/2013
s. 80.

61K Penalty for breach of condition or restriction

A rail transport operator who has been granted an exemption under this Division must not contravene a condition or restriction of the exemption applying under this Division.

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

**Division 6—Miscellaneous provisions
regarding accreditation**

Pt 5 Div. 6
(Heading)
amended by
No. 23/2013
s. 81.

62 Accreditation cannot be transferred

- (1) An accreditation—
 - (a) is personal to the person who holds it;
 - (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it;
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer, assignment or lease of an accreditation and any other purported dealing with an accreditation by the person who holds it is of no effect.
- (3) This section has effect despite anything in any Act or rule of law to the contrary.

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

S. 62A
inserted by
No. 47/2006
s. 43.

- (1) This section applies if the Safety Director receives an application for accreditation under Division 2, or for variation of accreditation or the conditions or restrictions of accreditation under Division 4, that indicates that the applicant is accredited, or is seeking accreditation in another State or a Territory of the Commonwealth under a corresponding law to carry out railway operations of a similar kind to those the subject of the application under Division 2 or 4.

S. 62A(1)
amended by
No. 23/2013
s. 82.

- (2) The Safety Director must, as soon as possible and before deciding whether or not to grant the application, consult with the relevant corresponding Rail Safety Regulator, or Regulators, in relation to the application with a view to the outcome of the application being consistent with the outcome of applications made in the other jurisdiction or jurisdictions.
- (3) The Safety Director, in complying with subsection (2), must take into account any guidelines prepared under subsection (5).
- (4) If the Safety Director does not, in relation to an application, act consistently with the provisions of any guidelines prepared under subsection (5), the Safety Director must give the applicant reasons for not so acting.
- (5) The Minister may prepare guidelines about the manner of the consultation the Safety Director is required to undertake under subsection (2).
- (6) In this section—

corresponding law means—

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

corresponding Rail Safety Regulator means—

- (a) the person who, or body that, has functions or powers under a corresponding law that substantially

correspond to the functions and powers of the Safety Director under this Part; or

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

* * * * * S. 63 amended by No. 69/2007 s. 64, repealed by No. 23/2013 s. 83.

* * * * * Ss 64, 65 repealed by No. 23/2013 s. 83.

* * * * * S. 66 amended by No. 19/2010 s. 41, repealed by No. 23/2013 s. 83.

67 Accredited rail transport operator must investigate railway accidents and incidents

S. 67 (Heading) amended by No. 23/2013 s. 84(1).

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

S. 67(1) amended by No. 23/2013 s. 84(2).

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

S. 68
(Heading)
amended by
No. 23/2013
s. 85(1).

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

S. 68(1)
amended by
No. 23/2013
s. 85(2)(3).

- (1) An accredited rail transport operator who has prepared an emergency plan must put the emergency plan into effect without delay if—
- (a) a major incident occurs; or
 - (b) an incident occurs which could reasonably be expected to lead to a major incident.

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

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

Note to
s. 68(2)
amended by
No. 68/2009
s. 97(Sch.
item 101.11).

Note

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

S. 69
(Heading)
amended by
No. 23/2013
s. 86(1).

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

S. 69(1)
amended by
No. 23/2013
s. 86(2)(3).

- (1) An accredited rail transport operator must, immediately after becoming aware of the occurrence of a major incident, notify—
- (a) the emergency services with whom the accredited rail transport operator prepared the emergency plan in conjunction with; and
 - (b) the Safety Director; and

S. 69(1)(a)
amended by
No. 23/2013
s. 86(2).

(c) the Chief Investigator—
of the occurrence of the major incident.

Penalty: In the case of a natural person, \$20 000;

In the case of a body corporate,
\$100 000.

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

Note

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

Note to
s. 69(2)
amended by
No. 68/2009
s. 97(Sch.
item 101.12).

69A Accredited rail transport operators to provide information

S. 69A
(Heading)
amended by
No. 23/2013
s. 87(1).

S. 69A
inserted by
No. 69/2007
s. 65.

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

S. 69A(1)
amended by
No. 23/2013
s. 87(2).

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

S. 69A(1)(a)
amended by
No. 23/2013
s. 87(2).

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

S. 69A(1)(b)
amended by
No. 23/2013
s. 87(2).

S. 69A(1)(c)
amended by
No. 23/2013
s. 87(2).

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

S. 69A(2)
amended by
No. 23/2013
s. 87(2)(3).

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

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

S. 69A(3)
amended by
No. 23/2013
s. 87(2)(4).

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

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

Pt 5 Div. 7
(Heading and
ss 69B–69R)
inserted by
No. 23/2013
s. 88.

Division 7—Registration of rail transport operators of private sidings

S. 69B
inserted by
No. 23/2013
s. 88.

69B Exemption from accreditation in respect of certain private sidings

A rail transport operator of a private siding is not required to be accredited under this Part in respect of railway operations (other than those involving the operation of rolling stock) carried out in the private siding.

69C Requirement for operators of certain private sidings to be registered

S. 69C
inserted by
No. 23/2013
s. 88.

- (1) A rail transport operator of a private siding that is to be (or continue to be) connected with, or to have access to, a railway of an accredited rail transport operator or another private siding, must be registered in respect of the private siding in accordance with this Division.

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

- (2) A rail transport operator of a private siding that is to be (or continue to be) connected with, or to have access to, a railway of an accredited rail transport operator or another private siding must—

- (a) comply with the requirements of Division 2 of Part 4 so far as they are relevant to the railway operations carried out in the private siding; and
- (b) seek to enter into a safety interface agreement with the accredited rail transport operator or rail transport operator of the other private siding (as the case may be).

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

69D Application for registration

S. 69D
inserted by
No. 23/2013
s. 88.

- (1) A rail transport operator of a private siding to which section 69C applies may apply to the Safety Director for registration in respect of the private siding.

- (2) An application must be made in the manner and form approved by the Safety Director and must contain—
- (a) details about the scale and complexity of the private siding; and
 - (b) details about the extent of the railway track layout and other rail infrastructure of the private siding; and
 - (c) details about the railway operations to be carried out in the private siding; and
 - (d) if the private siding is to be (or continue to be) connected with, or to have access to—
 - (i) a railway of an accredited rail transport operator—the prescribed details about the railway and the accredited rail transport operator; or
 - (ii) another private siding—the prescribed details about that siding and the rail infrastructure manager of that siding; and
 - (e) any other prescribed information.
- (3) An application must be accompanied by the prescribed application fee.
- (4) The Safety Director may require an applicant for registration—
- (a) to supply further information requested by the Safety Director; and
 - (b) to verify by statutory declaration any information supplied to the Safety Director.

S. 69E
inserted by
No. 23/2013
s. 88.

69E What applicant must demonstrate

The Safety Director must not grant registration to an applicant unless satisfied that the applicant has demonstrated—

- (a) that the applicant is, or is to be, the rail transport operator of the private siding; and
- (b) that the railway operations to be carried out (or continue to be carried out) in the private siding are such that registration of the applicant (rather than accreditation of the applicant in respect of the railway operations) is, in the opinion of the Safety Director, the appropriate action; and
- (c) that the applicant has complied with the requirements prescribed by the regulations (if any) for the purposes of this section.

69F Determination of application

- (1) Subject to this section, the Safety Director must, within the relevant period—
 - (a) if the Safety Director is satisfied as to the matters referred to in section 69E—notify the applicant that registration has been granted, with or without conditions or restrictions; or
 - (b) if the Safety Director is not so satisfied—notify the applicant that the application has been refused.
- (2) Registration is subject to—
 - (a) any conditions or restrictions prescribed by the regulations for the purposes of this section; and
 - (b) any other condition or restriction imposed on the registration by the Safety Director.
- (3) Notification under this section—
 - (a) must be in writing and given to the applicant; and

S. 69F
inserted by
No. 23/2013
s. 88.

- (b) if registration has been granted, must specify—
 - (i) the prescribed details of the applicant; and
 - (ii) the prescribed details of the private siding; and
 - (iii) any conditions and restrictions imposed by the Safety Director on the registration; and
 - (iv) any other prescribed information; and
 - (c) if a condition or restriction has been imposed on the registration, must include—
 - (i) the reasons for imposing the condition or restriction; and
 - (ii) information about the right of review under Part 7; and
 - (d) if the application has been refused, must include—
 - (i) the reasons for the decision to refuse to grant the application; and
 - (ii) information about the right of review under Part 7; and
 - (e) if the relevant period in relation to the application has been extended, must include information about the right of review under Part 7.
- (4) In this section, *relevant period*, in relation to an application, means—
- (a) 6 months after the application was received by the Safety Director; or
 - (b) if the Safety Director requested further information, 6 months, or such other period, as is agreed between the Safety Director and

the applicant, after the Safety Director receives the last information so requested; or

- (c) if the Safety Director, by written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period—

whichever is the longer.

69G Application for variation of registration

- (1) A registered person may, at any time, apply to the Safety Director for a variation of the registration.
- (2) A registered person must apply to the Safety Director for a variation of the registration if—
- (a) the applicant proposes to vary the scale and complexity of the private siding in respect of which the applicant is registered; or
- (b) the applicant proposes to vary the railway operations to be carried out in the private siding in respect of which the applicant is registered; or
- (c) any other variation is proposed in relation to the private siding in respect of which the applicant is registered that should be reflected in the registration.
- (3) An application for variation must be made in the manner and form approved by the Safety Director and—
- (a) must specify the details of the variation being sought; and
- (b) must contain the prescribed information; and
- (c) must be accompanied by the prescribed application fee.

S. 69G
inserted by
No. 23/2013
s. 88.

- (4) The Safety Director may require a registered person who has applied for a variation under this section—
- (a) to supply further information requested by the Safety Director; and
 - (b) to verify by statutory declaration any information supplied to the Safety Director.

S. 69H
inserted by
No. 23/2013
s. 88.

69H Determination of application for variation

- (1) Subject to this section, the Safety Director must, within the relevant period—
- (a) if the Safety Director is satisfied as to the matters referred to in section 69E (so far as they are applicable to the proposed variation), notify the applicant that registration has been varied, with or without conditions or restrictions; or
 - (b) if the Safety Director is not so satisfied— notify the applicant that the application has been refused.
- (2) Notification under this section—
- (a) must be in writing and given to the applicant; and
 - (b) if registration has been varied, must specify—
 - (i) the prescribed details of the applicant; and
 - (ii) the variation to the registration; and
 - (iii) any conditions and restrictions imposed by the Safety Director on the registration as varied; and
 - (iv) any other prescribed information; and

- (c) if a condition or restriction has been imposed on the registration as varied, must include—
 - (i) the reasons for imposing the condition or restriction; and
 - (ii) information about the right of review under Part 7; and
 - (d) if the application has been refused, must include—
 - (i) the reasons for the decision to refuse to grant the application; and
 - (ii) information about the right of review under Part 7; and
 - (e) if the relevant period in relation to an application has been extended, must include information about the right of review under Part 7.
- (3) In this section, *relevant period*, in relation to an application, means—
- (a) 6 months after the application was received by the Safety Director; or
 - (b) if the Safety Director requested further information, 6 months, or such other period, as is agreed between the Safety Director and the applicant, after the Safety Director receives the last information so requested; or
 - (c) if the Safety Director, by written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period—
- whichever is the longer.

S. 69I
inserted by
No. 23/2013
s. 88.

69I Prescribed conditions and restrictions

The registration of a person that is varied under this Division is subject to any conditions or restrictions prescribed by the regulations that are applicable to the registration as varied.

S. 69J
inserted by
No. 23/2013
s. 88.

69J Variation of conditions and restrictions

- (1) A registered person may, at any time, apply to the Safety Director for a variation of a condition or restriction imposed by the Safety Director to which the registration is subject.
- (2) An application for variation of a condition or restriction must be made as if it were an application for variation of registration (and section 69G applies accordingly).
- (3) The Safety Director must consider the application and, if satisfied as to the matters referred to in section 69E (so far as they are applicable to the proposed variation), notify the registered person in accordance with the provisions of this Division applicable to a grant of registration (so far as is practicable), that the variation has been granted or refused.
- (4) Notification under subsection (3) that a variation has been refused must include the reasons for the decision to refuse to grant the variation and information about the right of review under Part 7.

S. 69K
inserted by
No. 23/2013
s. 88.

69K Safety Director may make changes to conditions or restrictions

- (1) The Safety Director may, subject to this section, at any time, vary or revoke a condition or restriction imposed by the Safety Director to which the registration of a registered person is subject or impose a new condition or restriction.

- (2) Before taking action under this section, the Safety Director must—
 - (a) give the registered person written notice of the action that the Safety Director proposes to take; and
 - (b) allow the registered person to make written representations about the intended action within 28 days (or any other period that the Safety Director and the registered person agree on); and
 - (c) consider any representations made under paragraph (b) and not withdrawn.
- (3) Subsection (2) does not apply if the Safety Director considers it necessary to take immediate action in the interests of safety.
- (4) The Safety Director must, by written notice given to the registered person, provide—
 - (a) details of any action taken under subsection (1); and
 - (b) a statement of reasons for any action taken under subsection (1); and
 - (c) information about the right of review under Part 7.

69L Revocation or suspension of registration

- (1) This section applies in respect of a registered person if—
 - (a) the Safety Director considers that the registered person—
 - (i) is no longer able to demonstrate to the satisfaction of the Safety Director the matters referred to in section 69E or to satisfy the conditions, or to comply with the restrictions, of the registration;

S. 69L
inserted by
No. 23/2013
s. 88.

- (ii) is not controlling or managing the private siding and has not done so for at least the preceding 12 months; or
 - (b) the registered person contravenes this Act.
- (2) The Safety Director may—
 - (a) suspend the registration of the registered person for a period determined by the Safety Director; or
 - (b) revoke the registration of the registered person with immediate effect or with effect from a specified future date; or
 - (c) impose conditions or restrictions on the registration; or
 - (d) vary conditions or restrictions to which the registration is subject.
- (3) Before making a decision under subsection (2), the Safety Director—
 - (a) must notify the person in writing—
 - (i) that the Safety Director is considering making a decision under subsection (2) of the kind, and for the reasons, specified in the notice; and
 - (ii) that the person may, within 28 days or such longer period as is specified in the notice, make written representations to the Safety Director showing cause why the decision should not be made; and
 - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (4) If the Safety Director suspends or revokes the registration of the registered person, the Safety Director must include in the notice of suspension or revocation the reasons for the suspension or

revocation and information about the right of review under Part 7.

- (5) The Safety Director may withdraw a suspension of the registration of a person by written notice given to the person.

69M Immediate suspension of registration

S. 69M
inserted by
No. 23/2013
s. 88.

- (1) If the Safety Director considers that there is, or would be, an immediate and serious risk to safety unless a registration is suspended immediately, the Safety Director may, without complying with section 69L(3) or (4), by written notice given to the registered person, immediately suspend the registration of the person for a specified period, not exceeding 6 weeks.
- (2) The Safety Director may, by written notice given to a person whose registration is suspended—
- (a) reduce the period of suspension specified in a notice under subsection (1); or
 - (b) extend the period of suspension specified in a notice under subsection (1) but not so that the suspension continues for more than 6 weeks after the date of the notice under that subsection.
- (3) The Safety Director may withdraw a suspension of the registration of a person by written notice given to the person.
- (4) Before making a decision under subsection (2)(b) to extend a period of suspension, the Safety Director—
- (a) must notify the person in writing—
 - (i) that the Safety Director is considering extending the period of suspension for the reasons specified in the notification; and

- (ii) that the person may, within 7 days or such longer period as is specified in the notification, make written representations to the Safety Director showing cause why the suspension should not be extended; and
 - (b) must consider any representations made under paragraph (a)(ii) and not withdrawn.
- (5) If the Safety Director extends the suspension of the person, the Safety Director must notify the person in writing that the suspension is being extended and include in the notice the reasons for the extension and information about the right of review under Part 7.

S. 69N
inserted by
No. 23/2013
s. 88.

69N Surrender of registration

- (1) Registration may only be surrendered in accordance with this section.
- (2) If a registered person intends to surrender registration, the registered person must—
 - (a) give the Safety Director written notice of the intention to surrender the registration; and
 - (b) provide the Safety Director with details as to the arrangements proposed in relation to the cessation of the person's railway operations in respect of the private siding.
- (3) If the Safety Director is satisfied as to the arrangements proposed in relation to the cessation of the registered person's railway operations, the Safety Director must, as soon as reasonably practicable, by written notice given to the person, inform the person that the person's registration may be surrendered in accordance with the proposed arrangements on the date specified in the notice.

- (4) If the Safety Director is not satisfied as to the arrangements proposed in relation to the cessation of the registered person's railway operations, the Safety Director must, as soon as reasonably practicable, by written notice given to the person, inform the person—
- (a) that the Safety Director is not satisfied as to the proposed arrangements; and
 - (b) of the reasons for the Safety Director's dissatisfaction; and
 - (c) that the person's registration may not be surrendered until the Safety Director is satisfied as to the proposed arrangements.

690 Annual fees

- (1) A registered person must pay the annual fee prescribed by the regulations.
- (2) The annual fee must be paid by a registered person at the time registration is granted and thereafter on an annual basis on or before the prescribed date.
- (3) The Safety Director may accept payment of an annual fee in accordance with an agreement (that provides, for example, for the payment of fees by instalments) made with the person who is liable to pay the fee.
- (4) The regulations may—
 - (a) fix different fees for different kinds of registration; and
 - (b) fix various methods for the calculation of various fees; and
 - (c) fix fees which may be differential, varying according to any factor determined by the Safety Director; and

S. 690
inserted by
No. 23/2013
s. 88.

- (d) impose additional fees for the late payment of fees under this section.

S. 69P
inserted by
No. 23/2013
s. 88.

69P Waiver of fees

The Safety Director may waive, or refund, the whole or part of any fee payable under this Division.

S. 69Q
inserted by
No. 23/2013
s. 88.

69Q Registration cannot be transferred or assigned

- (1) Registration—
- (a) is personal to the person who holds it; and
 - (b) is not capable of being transferred or assigned to any other person or otherwise dealt with by the person who holds it; and
 - (c) does not vest by operation of law in any other person.
- (2) A purported transfer or assignment of a registration or any other purported dealing with a registration by the person who holds it is of no effect.
- (3) This section has effect despite anything in this Act, an Act or a rule of law to the contrary.

S. 69R
inserted by
No. 23/2013
s. 88.

69R Offences relating to registration

- (1) A registered person must not contravene a condition or restriction of the registration.
- Penalty: In the case of a natural person, \$50 000;
In the case of a body corporate,
\$500 000.
- (2) A registered person must ensure that the notice of registration, and any other document prescribed by the regulations for the purposes of this section, is available for inspection—

- (a) if the person is a body corporate—at the person's registered office during ordinary business hours;
- (b) if the person is not a body corporate—at the person's principal place of business during ordinary business hours (or, if the Safety Director approves another place and time, at that place and time).

Penalty: In the case of a natural person, \$5 000;
In the case of a body corporate,
\$25 000.

- (3) A person who is required under subsection (2) to make available documents for inspection must maintain a register of those documents for inspection.

Penalty: In the case of a natural person, \$5 000;
In the case of a body corporate,
\$25 000.

Pt 6 (Heading and ss 70–86) amended by Nos 77/2008 s. 129(Sch. 2 item 23.2), 68/2009 s. 97(Sch. items 101.13–101.16), 6/2010 s. 203(1) (Sch. 6 item 40.4) (as amended by No. 45/2010 s. 22), substituted as Pt 6 (Heading and ss 70–86L) by No. 23/2013 s. 89.

Part 6—Alcohol and drug controls for rail safety workers

Division 1—Preliminary matters

S. 70 substituted by No. 23/2013 s. 89.

70 Definitions

In this Part—

assessment of drug impairment means an assessment under sections 86B and 86C;

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

breath analysis means an analysis of breath by a breath analysing instrument;

drug screening test means a test by means of a device prescribed for the purpose of conducting drug screening tests;

oral fluid analysis means an analysis of oral fluid by means of a device prescribed for the purpose of conducting oral fluid analyses;

* * * * *

**S. 70 def. of
police officer
repealed by
No. 37/2014
s. 10(Sch.
item 142.2).**

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

**S. 71
substituted by
No. 23/2013
s. 89.**

- (1) For the purposes of this Part, if it is established that at any time within 3 hours after an alleged offence against section 76(1)(a) or (c) or 77(1)(a), a certain concentration of alcohol was present in the blood or breath of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that not less than that concentration of alcohol was present in the worker's blood or breath (as the case requires) at the time at which the offence is alleged to have been committed.
- (2) For the purposes of this Part, if it is established that at any time within 3 hours after an alleged offence against section 76(1)(b), a certain drug was present in the oral fluid or blood of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the worker's oral fluid or blood at the time at which the offence is alleged to have been committed.
- (3) For the purposes of this Part, if it is established that at any time within 3 hours after an alleged offence against section 76(1)(c) or 77(1)(b), a certain drug was present in the body of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that the drug was present in the worker's body at the time at which the offence is alleged to have been committed.

- (4) For the purposes of an alleged offence against section 77(1)(f) or (g) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the breath of the rail safety worker charged or found by an analyst to be present in the sample of blood taken from the worker charged (as the case requires) was not due solely to the consumption of alcohol after having carried out rail safety work unless the contrary is proved by the worker charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.
- (5) For the purposes of an alleged offence against section 76(1)(b) or (c) or 77(1)(b) it must be presumed that a drug found by an analyst to be present in the sample of blood or oral fluid taken from the rail safety worker charged was not due solely to the consumption or use of that drug after carrying out rail safety work unless the contrary is proved by the worker charged on the balance of probabilities by sworn evidence given by him or her which is corroborated by the material evidence of another person.

S. 72
substituted by
No. 23/2013
s. 89.

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

For the purposes of sections 86B to 86D, a rail safety worker is not to be taken to be impaired unless his or her behaviour or appearance is such as to give rise to a reasonable suspicion that he or she is unable to carry out rail safety work properly.

73 When a rail safety worker is to be regarded as being about to carry out rail safety work

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

S. 73
substituted by
No. 23/2013
s. 89.

74 Findings of guilt and convictions and subsequent offences

If a rail safety worker who is found guilty or convicted of an offence against any one of the paragraphs of section 76(1) or 77(1) or against those sections has at any time been found guilty or convicted of—

(a) an offence against the same or any other of those paragraphs or against either of those sections; or

(b) an offence against any corresponding law—the finding of guilt, or conviction of, the offence against that paragraph or section is to be taken to be a conviction for a subsequent offence.

S. 74
substituted by
No. 23/2013
s. 89.

75 Entry into residential premises by transport safety officer or police restricted

Despite anything else in this Part or Division 4B of Part VII of the **Transport (Compliance and Miscellaneous) Act 1983**, the powers of a transport safety officer under this Part or Division 4B of Part VII of the **Transport (Compliance and Miscellaneous) Act 1983** or a police officer in relation to entering a place are not exercisable in respect of any part of a place that is used only for residential purposes except—

(a) with the consent of the person with control or management of the place; or

(b) under the authority conferred by a search warrant; or

S. 75
substituted by
No. 23/2013
s. 89.

- (c) for the sole purpose of gaining access to suspected railway premises, but only—
 - (i) if the transport safety officer or police officer reasonably believes that no reasonable alternative access is available; and
 - (ii) at a reasonable time, having regard to the times at which the transport safety officer or police officer believes rail safety work is being carried out at the place to which access is sought.

Division 2—Offences and related evidentiary matters

76 Offence relating to prescribed concentration of alcohol or prescribed drug

S. 76
substituted by
No. 23/2013
s. 89.

- (1) A rail safety worker must not carry out, or attempt to carry out, rail safety work—
 - (a) while there is present in his or her blood the prescribed concentration of alcohol; or
 - (b) while a prescribed drug is present in his or her oral fluid or blood; or
 - (c) while so much under the influence of alcohol or a drug as to be incapable of effectively discharging a function or duty of a rail safety worker.

Penalty: \$10 000.

- (2) For the purposes of subsection (1)(c), a person is incapable of effectively discharging a function or duty of a rail safety worker if, owing to the influence of alcohol or a drug, the use of any mental or physical faculty of that person is lost or appreciably impaired (but this subsection does not restrict in any way the operation of subsection (1)(c)).

- (3) Subject to subsection (4), it is a defence to a charge of an offence against subsection (1)(b) if the defendant proves that he or she did not knowingly consume the prescribed drug present in his or her oral fluid or blood.
- (4) Subsection (3) does not apply if the defendant consumed the prescribed drug believing that he or she was consuming a substance unlawfully but was mistaken as to, unaware of, or indifferent to, the identity of the prescribed drug.

77 Additional offences involving alcohol and drugs

S. 77
substituted by
No. 23/2013
s. 89.

- (1) A rail safety worker is guilty of an offence if he or she—
- (a) carries out rail safety work while more than the prescribed concentration of alcohol is present in his or her breath; or
 - (b) carries out rail safety work while impaired by a drug; or
 - (c) refuses or fails to comply with a direction under section 85(10); or
 - (d) refuses to undergo an assessment of drug impairment in accordance with sections 86B and 86C when required under that section to do so or refuses to comply with any other requirement made under section 86B(1); or
 - (e) refuses to comply with a requirement made under section 86D(2); or
 - (f) within 3 hours after having carried out rail safety work furnishes a sample of breath for analysis by a breath analysing instrument under a direction under section 85 and—
 - (i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that more than the

- prescribed concentration of alcohol is present in his or her breath; and
- (ii) the concentration of alcohol indicated by the analysis to be present in his or her breath was not due solely to the consumption of alcohol after having carried out the rail safety work; or
- (g) has had a sample of blood taken from him or her in accordance with section 86H within 3 hours after having carried out rail safety work and—
- (i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 86I and the analyst has found that at the time of analysis more than the prescribed concentration of alcohol was present in that sample; and
 - (ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after having carried out the rail safety work.
- (2) A rail safety worker who is guilty of an offence under subsection (1) is liable to a fine not exceeding \$10 000.
- (3) It is a defence to a charge under subsection (1)(f) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.
- (4) It is a defence to a charge under subsection (1)(g) for the person charged to prove that the result of the analysis was not a correct result.

78 Additional circumstances when rail safety workers may be convicted or found guilty

**S. 78
substituted by
No. 23/2013
s. 89.**

A rail safety worker may be convicted or found guilty of an offence under section 83(3), 77(1)(d) or 86A(3) even if—

- (a) in the case of an offence under section 83(3) constituted by a failure to submit to a preliminary breath test or breath analysis—
 - (i) a breath analysing instrument was not available at the place where the requirement was made at the time it was made; or
 - (ii) a person authorised to operate a breath analysing instrument was not present at the place where the requirement was made at the time it was made;
- (b) in the case of an offence under section 86A(3) constituted by a failure to submit to a drug screening test, oral fluid analysis or blood test (or any combination of these)—
 - (i) the transport safety officer or police officer requiring a sample of blood had not nominated a registered medical practitioner or approved health professional to take the sample; or
 - (ii) the transport safety officer or police officer requiring a sample of oral fluid had not nominated a registered medical practitioner or approved health professional to whom the sample was to be furnished for analysis; or

- (iii) a registered medical practitioner or approved health professional was not present at the place where the requirement was made at the time it was made;
- (c) in the case of an offence under section 77(1)(d)—
 - (i) a requirement to undergo an assessment of drug impairment was not made at a place where such an assessment could have been carried out; or
 - (ii) a person authorised to carry out an assessment of drug impairment was not present at the place where the requirement was made at the time it was made;
- (d) in the case of an offence under section 86A(3)—
 - (i) a requirement to submit to a drug screening test, oral fluid analysis or blood test (or any combination of these) was not made at a place where such a test or analysis could have been carried out; or
 - (ii) a person authorised to carry out the drug screening test, oral fluid analysis or blood test was not present at the place where the requirement was made at the time it was made.

S. 79
substituted by
No. 23/2013
s. 89.

79 Evidence as to effect of the consumption of alcohol or consumption or use of a drug

- (1) In any proceedings for an offence under section 77(1)(f) or (g) evidence as to the effect of the consumption of alcohol on the accused is admissible for the purpose of rebutting the

presumption created by section 71(4) but is otherwise inadmissible.

- (2) In any proceedings for an offence against section 76(1)(b) or (c) or 77(1)(b) evidence as to the effect of the consumption or use of a drug on the accused is admissible for the purpose of rebutting the presumption created by section 71(5) but is otherwise inadmissible.

S. 79(2)
amended by
No. 21/2015
s. 3(Sch. 1
item 44.2).

80 Existence of certain facts proof that rail safety worker was drug impaired while carrying out rail safety work

S. 80
substituted by
No. 23/2013
s. 89.

In proceedings for an offence under section 77(1)(b), proof that—

- (a) the rail safety worker was carrying out rail safety work; and
- (b) one or more drugs were present in the rail safety worker's body at the time at which he or she carried out rail safety work; and
- (c) the behaviour of the rail safety worker on an assessment of drug impairment carried out on the worker was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and
- (d) the behaviour usually associated with a person who has consumed or used that drug or those drugs would result in the person being unable to carry out rail safety work properly—

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

S. 81
substituted by
No. 23/2013
s. 89.

81 Recording of drug and alcohol convictions by a court

On convicting a rail safety worker, or finding a rail safety worker guilty, of an offence under or section 76(1) or 77(1), a court must cause to be entered in the records of the court—

- (a) in the case of an offence under section 76(1)(a), the level of concentration of alcohol found to be present in that person's blood; and
- (b) in the case of an offence under section 77(1)(a), the level of concentration of alcohol found to be present in that person's breath; and
- (c) in the case of an offence under section 77(1)(f), the level of concentration of alcohol found to be recorded or shown by the breath analysing instrument; and
- (d) in the case of an offence under section 77(1)(g), the level of concentration of alcohol found to be present in the sample of blood.

Division 3—Testing and analysis

Subdivision 1—General power for testing of rail safety workers

82 Testing for presence of drugs or alcohol

S. 82
substituted by
No. 23/2013
s. 89.

A rail safety worker may be required to undertake a test for the presence of alcohol or a drug in accordance with this Division.

Subdivision 2—Preliminary breath tests or breath analyses

83 Transport safety officer and police may require preliminary breath test or breath analysis

S. 83
substituted by
No. 23/2013
s. 89.

- (1) Subject to this section, a transport safety officer or police officer may at any time require a rail safety worker who—
- (a) is about to carry out rail safety work; or
 - (b) is carrying out rail safety work; or
 - (c) is attempting to carry out rail safety work; or
 - (d) is still on railway premises after carrying out rail safety work; or
 - (e) without limiting a preceding paragraph—is involved in a prescribed notifiable occurrence; or
 - (f) is required to undergo an assessment of drug impairment—

to submit to testing by means of a preliminary breath test or breath analysis (or both).

- (2) For the purposes of making a requirement that a rail safety worker submit to a preliminary breath test or breath analysis, a transport safety officer or police officer may—
- (a) require the worker to provide the worker's name and residential address; and
 - (b) give any other reasonable direction to the worker.

Example

A transport safety officer or police officer may (for example) direct the rail safety worker to accompany the transport safety officer or police officer and attend at a place specified by the transport safety officer or police officer for the purposes of carrying out the preliminary breath test or breath analysis.

- (3) A rail safety worker must immediately comply with a direction given by a transport safety officer or police officer for the purpose of requiring the worker to submit to a preliminary breath test or breath analysis.

Penalty: \$10 000.

S. 84
substituted by
No. 23/2013
s. 89.

84 Additional matters for preliminary breath tests

- (1) This section applies if a rail safety worker is required by a transport safety officer or police officer to submit to testing by means of a preliminary breath test under section 83(1).
- (2) The rail safety worker must undergo a preliminary breath test by exhaling continuously into a prescribed device to the satisfaction of the transport safety officer or police officer.
- (3) However, the rail safety worker is not obliged to submit to testing by means of a preliminary breath test under section 83 if more than 3 hours have passed since the rail safety worker last carried out rail safety work.
- (4) A rail safety worker who, in the course of a period of duty is unexpectedly required to carry out rail safety work, may request a transport safety officer to conduct on him or her a preliminary breath test by a prescribed device.
- (5) A transport safety officer must comply with a request made under subsection (4).

Penalty: \$10 000.

- (6) The result of a preliminary breath test conducted under section 83 and this section is not admissible against the rail safety worker tested in a proceeding for an offence against section 76(1) or section 77(1).

- (7) However, the result of a preliminary breath test that was conducted under section 83 and this section is admissible against the rail safety worker tested in a disciplinary proceeding unless the test was conducted at the request of the rail safety worker under subsection (4).
- (8) A police officer who conducts a preliminary breath test under this section must ensure that the operation of a railway is disrupted no more than is reasonably necessary as a result of the testing.

85 Additional matters for breath analyses

- (1) This section applies if a rail safety worker is required by a transport safety officer or police officer to submit to testing by means of a breath analysis under section 83(1).
- (2) For the purposes of section 83(1), a requirement of the transport safety officer or police officer under that section may be that the rail safety worker submit to testing by doing one or both of the following—
 - (a) furnishing a sample of breath for analysis by a breath analysing instrument;
 - (b) furnishing one or more further samples if it appears to the transport safety officer or police officer that the breath analysing instrument is incapable of measuring the concentration of alcohol present in the sample, or each of the samples, previously furnished in grams per 210 litres of exhaled air—
 - (i) because the amount of sample furnished was insufficient; or

S. 85
substituted by
No. 23/2013
s. 89.

- (ii) because of a power failure or malfunctioning of the instrument; or
 - (iii) for any other reason whatsoever.
- (3) In addition, for the purposes of section 83(1)(a) to (e), the transport safety officer or police officer may require the rail safety worker to—
- (a) accompany the transport safety officer or police officer to a police station or other place where the sample of breath may be furnished; and
 - (b) remain there until he or she has furnished the sample of breath and been given the certificate referred to in subsection (8) or until 3 hours after the carrying out of the rail safety work, whichever is the sooner.
- (4) In addition, for the purposes of section 83(1)(f), the transport safety officer or police officer may require the rail safety worker to remain at the place at which the rail safety worker is required to remain for the purposes of the drug assessment until—
- (a) the person has furnished the sample of breath and been given the certificate referred to in subsection (8) and the drug assessment has been carried out; or
 - (b) 3 hours after the carrying out of rail safety work—
- whichever is the sooner.
- (5) If the rail safety worker is required to furnish a sample of breath for analysis, the rail safety worker must do so by exhaling continuously into the instrument to the satisfaction of the person operating it.

- (6) However, a rail safety worker is not obliged to furnish a sample of breath under this section if more than 3 hours have passed since the rail safety worker last carried out rail safety work.
- (7) A breath analysing instrument referred to in this section must be operated by a person authorised to do so by the Chief Commissioner of Police.
- (8) As soon as practicable after a sample of a rail safety worker's breath is analysed by means of a breath analysing instrument the person operating the instrument must sign and give to the rail safety worker whose breath has been analysed a certificate containing the prescribed particulars produced by the breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in his or her breath.
- (9) A rail safety worker must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis if he or she satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against him or her.
- (10) The person who required a sample of breath under section 83(1) from a rail safety worker may require the rail safety worker to allow a registered medical practitioner or an approved health professional nominated by the person requiring the sample to take from him or her a sample of blood for analysis if it appears to him or her that—
 - (a) the rail safety worker is unable to furnish the required sample of breath on medical grounds or because of some physical disability; or

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

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

- (11) The registered medical practitioner or approved health professional who takes a sample of blood under subsection (10) must deliver a part of the sample to the person who required it to be taken and another part to the rail safety worker from whom it was taken.
- (12) A rail safety worker who allows the taking of a sample of his or her blood in accordance with subsection (10) must not be convicted or found guilty of refusing to furnish under section 83(1) a sample of breath for analysis.
- (13) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with subsection (10).
- Penalty: \$10 000.
- (14) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional

believed on reasonable grounds was allowed to be taken under subsection (10).

86 Evidentiary matters relating to breath analysis

S. 86
substituted by
No. 23/2013
s. 89.

- (1) Evidence derived from a sample of breath furnished following a requirement made under section 83(1) is not rendered inadmissible by a failure to comply with a request under section 86E if reasonable efforts were made to comply with the request.
- (2) If the question whether a breath analysing instrument was incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by a rail safety worker is relevant on a hearing for an offence against section 76(1) or 77(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this subsection, a document—
 - (a) purporting to be a print-out produced by that instrument in respect of that sample; and
 - (b) purporting to be signed by the person who operated the instrument—

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

- (3) A document referred to in subsection (2) does not cease to be admissible in evidence or, in the absence of evidence to the contrary, to be proof of the facts and matters contained in it only because of the fact that it refers to the **Road Safety Act 1986** and not to the **Rail Safety (Local Operations) Act 2006** and the reference to the **Road Safety Act 1986** in that document and in each other document produced by the breath analysing instrument in respect of the sample of breath must be construed for all purposes as a

reference to the **Rail Safety (Local Operations) Act 2006**.

Subdivision 3—Testing for drugs, oral fluid analyses and blood tests

S. 86A
inserted by
No. 23/2013
s. 89.

86A Transport safety officer or police officer may require drug screening test, oral fluid analysis and blood test

- (1) Subject to this section, a transport safety officer or police officer may at any time require a rail safety worker who—
 - (a) is about to carry out rail safety work; or
 - (b) is carrying out rail safety work; or
 - (c) is attempting to carry out rail safety work; or
 - (d) is still on railway premises after carrying out rail safety work; or
 - (e) without limiting a preceding paragraph—
is involved in a prescribed notifiable occurrence—

to submit to a drug screening test, oral fluid analysis or blood test (or any combination of these).

- (2) For the purposes of making a requirement that a rail safety worker submit to a drug screening test, oral fluid analysis or blood test, a transport safety officer or police officer may—
 - (a) require the worker to provide the worker's name and residential address; and
 - (b) give any other reasonable direction to the worker.

Example

A transport safety officer or police officer may (for example) direct the rail safety worker to accompany the transport safety officer or police officer and attend at

a place specified by the transport safety officer or police officer for the purposes of carrying out the drug screening test, oral fluid analysis or blood test.

- (3) A rail safety worker must immediately comply with a direction given by a transport safety officer or police officer for the purpose of requiring the worker to submit to a drug screening test, oral fluid analysis or blood test (or any combination of these).

Penalty: \$10 000.

- (4) For the purposes of subsection (1), a requirement to submit to a drug screening test, oral fluid analysis or blood test (or any combination of these) includes a requirement under section 86D.

86B Assessment of drug impairment

S. 86B
inserted by
No. 23/2013
s. 89.

- (1) Subject to this section, a transport safety officer or police officer may at any time direct a rail safety worker who—
- (a) is about to carry out rail safety work; or
 - (b) is carrying out rail safety work; or
 - (c) is attempting to carry out rail safety work; or
 - (d) is still on railway premises after carrying out rail safety work; or
 - (e) without limiting a preceding paragraph—
is involved in a prescribed notifiable occurrence—

to submit to an assessment of drug impairment.

- (2) Subject to this section a transport safety officer or police officer may require—
- (a) a rail safety worker whom he or she believes on reasonable grounds has within the last 3 preceding hours carried out rail safety work on a railway when a notifiable occurrence or prescribed notifiable

- occurrence occurred involving the rail safety worker; or
- (b) a rail safety worker whom he or she has directed under section 83(3) to submit to a preliminary breath test; or
 - (c) a rail safety worker required under section 83(3) to furnish a sample of breath—
to undergo an assessment of drug impairment.
- (3) A transport safety officer or police officer may only give a direction under subsection (1) or (2) if the transport safety officer or police officer is of the opinion that the rail safety worker's behaviour or appearance indicates that the rail safety worker may be impaired for a reason other than alcohol alone.
- (4) A transport safety officer or police officer may direct a rail safety worker given a direction under subsection (1) or (2) to accompany the transport safety officer or police officer to a place where the assessment is to be carried out and to remain there until the assessment has been carried out or until 3 hours after the carrying out of the rail safety work, whichever is sooner.
- (5) A rail safety worker is not obliged to undergo an assessment of drug impairment if more than 3 hours have passed since the rail safety worker last carried out rail safety work.

S. 86C
inserted by
No. 23/2013
s. 89.

86C Procedure for assessments of drug impairment

- (1) An assessment of drug impairment must be carried out by—
- (a) a transport safety officer authorised to do so by the Safety Director after consultation with Chief Commissioner of Police; or
 - (b) a police officer authorised to do so by the Chief Commissioner of Police.

- (2) An assessment of drug impairment must be carried out in accordance with the procedure specified in a notice under subsection (3).
- (3) The Safety Director may, by notice published in the Government Gazette, specify the procedure to be followed in assessing drug impairment.
- (4) The carrying out of an assessment of drug impairment on a rail safety worker must be video-recorded if the rail safety worker was involved in a notifiable occurrence or prescribed notifiable occurrence unless the prosecution satisfies the court that a video-recording has not been made because of exceptional circumstances.
- (5) If the rail safety worker on whom an assessment of drug impairment was carried out is subsequently charged with an offence under section 77(1)(b), and the carrying out of the assessment of drug impairment is video-recorded, a copy of the video-recording must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.
- (6) Subject to subsection (7), the video-recording of the carrying out of an assessment of drug impairment on a rail safety worker is only admissible in a proceeding against that rail safety worker for an offence against this Act for the purpose of establishing that the assessment of drug impairment was carried out in accordance with the procedure specified in a notice under subsection (3).
- (7) Evidence obtained as a result of an assessment of drug impairment carried out on a rail safety worker is inadmissible as part of the prosecution case in proceedings against that rail safety worker for any offence if the video-recording of the assessment and any related material and

information should have been but has not been destroyed as required by section 86G.

- (8) In any proceeding under this Act—
- (a) the statement of a transport safety officer that on a particular date he or she was authorised by the Safety Director under subsection (1)(a) to carry out an assessment of drug impairment; or
 - (b) the statement of a police officer that on a particular date he or she was authorised by the Chief Commissioner of Police under subsection (1)(b) to carry out an assessment of drug impairment; or
 - (c) a certificate purporting to be signed by the Safety Director that a transport safety officer named in it is authorised by the Safety Director under subsection (1) to carry out an assessment of drug impairment; or
 - (d) a certificate purporting to be signed by the Chief Commissioner of Police that a police officer named in it is authorised by the Chief Commissioner of Police under subsection (1) to carry out an assessment of drug impairment—

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

S. 86D
inserted by
No. 23/2013
s. 89.

86D Oral fluid analysis and blood tests

- (1) This section applies if a rail safety worker—
- (a) is required by a transport safety officer or police officer to submit to an oral fluid analysis or blood test (or a combination of these) under section 86A(1); or

- (b) undergoes an assessment of drug impairment when required under sections 86B and 86C to do so and the assessment, in the opinion of the transport safety officer or police officer carrying it out, indicates that the rail safety worker may be impaired by a drug or drugs.
- (2) A transport safety officer or police officer may require the rail safety worker to do either or both of the following—
- (a) allow a registered medical practitioner or an approved health professional nominated by the transport safety officer or police officer to take from the rail safety worker a sample of that rail safety worker's blood for analysis;
 - (b) furnish to a registered medical practitioner or an approved health professional nominated by the transport safety officer or police officer a sample of that rail safety worker's oral fluid for analysis—

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

- (3) A transport safety officer or police officer must not require a rail safety worker to allow a sample of his or her blood to be taken for analysis under subsection (2)(a) if that rail safety worker has already had a sample of blood taken from him or her under section 86E after carrying out rail safety work.

- (4) The registered medical practitioner or approved health professional who takes a sample of blood or is furnished with a sample of oral fluid under this section must deliver a part of the sample to the transport safety officer or police officer who required it to be taken or furnished and another part to the rail safety worker from whom it was taken or by whom it was furnished.
- (5) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood, or be furnished with a sample of oral fluid, of any other person in accordance with this section.

Penalty: \$10 000.

- (6) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood, or being furnished with any sample of oral fluid, which the practitioner or approved health professional believed on reasonable grounds was required to be taken from, or be furnished by, any person under this section.
- (7) If the person on whom an assessment of drug impairment was carried out is subsequently charged with an offence under section 77(1)(b), a copy of a written report on that assessment prepared by the transport safety officer or police officer who carried it out and containing the prescribed particulars must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.

86E Rail safety worker may request sample of blood to be taken for analysis

S. 86E
inserted by
No. 23/2013
s. 89.

- (1) This section applies if—
 - (a) a rail safety worker is required under section 83(1) to submit to testing by means of a breath analysis; and
 - (b) the rail safety worker does so by furnishing a sample of breath for analysis in accordance with section 85.
- (2) The rail safety worker may, immediately after being given the certificate referred to in section 85(8), request the transport safety officer or police officer making the requirement to arrange for the taking in the presence of a transport safety officer or police officer of a sample of the rail safety worker's blood for analysis at the rail safety worker's own expense by a registered medical practitioner or an approved health professional nominated by the officer.
- (3) A part of a sample of blood taken under subsection (2) must be delivered to the person who required the sample of breath under this section.
- (4) Nothing in subsection (2) relieves a rail safety worker from any penalty under section 83(3).

86F Oral fluid or blood sample or results of analysis etc. not to be used for other purposes

S. 86F
inserted by
No. 23/2013
s. 89.

A sample of oral fluid or blood taken under this Part (and any other forensic material taken incidentally during a drug screening test, oral fluid analysis or blood test) must not be used for a purpose other than that contemplated by this Part, in connection with the control or management of any work or activity associated with railway operations, or for the purpose of disciplinary proceedings against a rail safety worker.

S. 86G
inserted by
No. 23/2013
s. 89.

86G Destruction of identifying information

- (1) In this section, *relevant offence* means—
- (a) an offence under section 77(1)(b) or (e) or section 86A(3); or
 - (b) any other offence arising out of the same circumstances; or
 - (c) any other offence in respect of which the evidence obtained as a result of the assessment of drug impairment has probative value.
- (2) If a rail safety worker submits to an oral fluid analysis or blood test (or a combination of these) under section 86A(1) or an assessment of drug impairment has been carried out on the rail safety worker under sections 86B and 86C and—

S. 86G(2)(a)
amended by
No. 21/2015
s. 3(Sch. 1
item 44.3).

- (a) the rail safety worker has not been charged with a relevant offence at the end of the period of 12 months after the submission to oral fluid analysis or blood test or the assessment of drug impairment (as the case requires); or
- (b) the rail safety worker has been so charged but the charge is not proceeded with, the prosecution for the offence is discontinued or the rail safety worker is not found guilty of the offence, whether on appeal or otherwise, before the end of that period—

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

- (3) A video-recording and any related material and information referred to in subsection (2) must be destroyed—
- (a) in a case to which subsection (2)(a) applies, immediately after that period of 12 months; or
 - (b) in a case to which subsection (2)(b) applies—
 - (i) within 1 month after the conclusion of the proceeding and the end of any appeal period; or
 - (ii) if the proceeding has been adjourned under section 75 of the **Sentencing Act 1991**, within 1 month after dismissal under that section.
- (4) A transport safety officer or police officer may, before the end of a period referred to in subsection (3)(b), apply without notice to the Magistrates' Court for an order extending that period and, if the Court makes such an order, the reference to the period in subsection (3) is a reference to that period as so extended.
- (5) If the Magistrates' Court makes an order under subsection (4), it must give reasons for its decision and cause a copy of the order to be served on the person on whom the assessment of drug impairment was carried out.
- (6) If a video-recording or related material and information is required to be destroyed in accordance with this section, the Safety Director or Chief Commissioner of Police (as the case requires) must, if the rail safety worker on whom the assessment was carried out so requests, within 14 days after receiving the request, notify that rail safety worker in writing whether the destruction has occurred.

- (7) A person who knowingly—
- (a) fails to destroy; or
 - (b) uses, or causes or permits to be used—
a video-recording or related material and information required by this section to be destroyed is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.
- (8) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any video-recording or related material and information required by this section to be destroyed except in good faith for the purposes of a relevant offence is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.

S. 86H
inserted by
No. 23/2013
s. 89.

86H Blood samples to be taken in certain cases

- (1) In this section—
- doctor* means a registered medical practitioner and includes a police surgeon.
- (2) If a rail safety worker enters or is brought to a place for examination or treatment in consequence of a notifiable occurrence (whether within Victoria or not), the rail safety worker must allow a doctor or approved health professional to take from the rail safety worker at that place a sample of his or her blood for analysis.
- Penalty: \$10 000.
- (3) Subsection (2) does not apply if—
- (a) in the opinion of the doctor or approved health professional first responsible for the examination or treatment of the rail safety

- worker the taking of a blood sample from the rail safety worker would be prejudicial to his or her proper care and treatment; or
- (b) a transport safety officer or police officer has notified the doctor first responsible for the examination or treatment of the rail safety worker, in writing, that the rail safety worker has undergone a preliminary breath test which did not indicate that the prescribed concentration of alcohol was exceeded; or
 - (c) the doctor or approved health professional first responsible for the examination or treatment of the rail safety worker believed on reasonable grounds that the rail safety worker was not a rail safety worker; or
 - (d) a police officer or a doctor has notified the doctor first responsible for the examination or treatment of the rail safety worker, in writing, that a sample of the rail safety worker's blood was taken by a doctor before the person entered or was brought to the place for examination or treatment.
- (4) A rail safety worker to whom subsection (2) applies and who is unconscious or otherwise unable to communicate must be taken to allow the taking of a sample of his or her blood by a doctor or approved health professional at a place which he or she enters or to which he or she is brought for examination or treatment.
- (5) If a sample of a rail safety worker's blood is taken in accordance with this section, evidence of the taking of it, the analysis of it or the results of the analysis must not be used in evidence in any legal proceeding except—

- (a) for the purposes of section 86I; or
- (b) for a proceeding for an offence against section 48(2); or
- (c) for the purposes of the **Transport Accident Act 1986**—

but may be given—

- (d) to the Transport Accident Commission and, for the purposes of a review under the **Transport Accident Act 1986**, to the Tribunal; and
 - (e) to the Department for the purposes of accident research.
- (6) A person must not hinder or obstruct a doctor or approved health professional attempting to take a sample of the blood of any other person in accordance with this section.
- Penalty: \$10 000.
- (7) No action lies against a doctor or approved health professional in respect of anything properly and necessarily done by the doctor or approved health professional in the course of taking any sample of blood which the doctor or approved health professional believes on reasonable grounds was required or allowed to be taken from a rail safety worker under this section.

Division 4—Evidentiary provisions

86I Evidentiary provisions—blood tests

- (1) In this section—

approved analyst means a person who by virtue of subsection (2) is to be taken to be a properly qualified analyst for the purposes of this section;

S. 86I
inserted by
No. 23/2013
s. 89.

approved expert means a person who by virtue of subsection (3) is to be taken to be a properly qualified expert for the purposes of this section;

approved laboratory means an approved laboratory within the meaning of section 57 of the **Road Safety Act 1986**;

S. 86(1)
def. of
*approved
laboratory*
inserted by
No. 5/2016
s. 10(1)(b).

properly qualified analyst means—

- (a) an approved analyst; or
- (ab) a person who carries out an analysis in an approved laboratory; or
- (b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies him or her to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (6) or (7), as the case requires;

S. 86(1)
def. of
*properly
qualified
analyst*
amended by
No. 5/2016
s. 10(1)(a).

properly qualified expert means—

- (a) an approved expert; or
 - (b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies him or her to express an opinion as to the facts and matters contained in a certificate under subsection (8).
- (2) A person who is an approved analyst within the meaning of section 57 of the **Road Safety Act 1986** is to be taken to be a properly qualified analyst for the purposes of this section.

- (3) A person who is an approved expert within the meaning of section 57 of the **Road Safety Act 1986** is to be taken to be a properly qualified expert for the purposes of this section.
- (4) If—
- (a) the question whether a rail safety worker was or was not at any time under the influence of alcohol or any other drug; or
 - (b) the presence of alcohol or any other drug, or the concentration of alcohol in the blood of a rail safety worker at any time; or
 - (c) a finding on the analysis of a blood sample of a rail safety worker—

is relevant on a hearing for an offence against section 76 or 77, or in any inquest or investigation held by a coroner then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the taking, within 3 hours after the rail safety worker carried out rail safety work, of a sample of blood from the rail safety worker by a registered medical practitioner or an approved health professional, of the analysis of that sample of blood by a properly qualified analyst within 12 months after it was taken, of the presence of alcohol and, if alcohol is present, of the concentration of alcohol expressed in grams per 100 millilitres of blood found by that analyst to be present in that sample of blood at the time of analysis and, if a drug is present, evidence may be given by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a person's ability to carry out rail safety work properly).

(5) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(6) A certificate, containing the prescribed particulars, as to the concentration of alcohol expressed in grams per 100 millilitres of blood found in any sample of blood—

**S. 86(6)
substituted by
No. 5/2016
s. 10(2).**

(a) purporting to be signed by an approved analyst; and

(b) stating that the sample of blood was analysed in an approved laboratory—

is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(7) A certificate, containing the prescribed particulars, as to the presence in any sample of blood of a substance that is, or is capable of being, a prescribed drug for the purposes of this Part—

**S. 86(7)
substituted by
No. 5/2016
s. 10(2).**

(a) purporting to be signed by an approved analyst; and

(b) stating that the sample of blood was analysed in an approved laboratory—

is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(8) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used

(including its effect on a rail safety worker's ability to carry out rail safety work properly) is admissible in evidence in any proceedings referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

- (9) A certificate given under this section must not be tendered in evidence in a proceeding referred to in subsection (4) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.
- (10) A copy of a certificate given under this section may be served on the accused by—
- (a) delivering it to the accused personally; or
 - (b) leaving it for the accused at his or her last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.
- (11) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence in a proceeding referred to in subsection (4) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.
- (12) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken to attend at all subsequent proceedings for

cross-examination and that person must attend accordingly.

- (13) The court must not grant leave under subsection (12) unless it is satisfied—
- (a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and
 - (b) that—
 - (i) there is a reasonable possibility that the blood referred to in a certificate given by an analyst under subsection (6) was not that of the accused; or
 - (ii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that the blood alcohol concentration found on analysis was higher than it would have been had the blood not been contaminated in that way; or
 - (iii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the blood not been contaminated in that way; or
 - (iv) there is a reasonable possibility that the sample was not taken in accordance with the Code of Practice for Taking Blood Samples from Road Accident Victims; or

- (v) for some other reason the giving of evidence by the person who gave the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken would materially assist the court to ascertain relevant facts.
- (14) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken, to attend the court on the hearing of an application for leave under subsection (12).
- (15) If a registered medical practitioner or an approved health professional is requested to make an examination or to collect a sample of blood for the purposes of this section and if the rail safety worker to be examined or from whom a sample of blood is to be collected has expressed consent to that examination or collection, no action lies against the registered medical practitioner or approved health professional who acts in accordance with that consent even if it subsequently appears that the rail safety worker was in fact incapable by reason of his or her mental condition from effectively giving consent to the examination or collection.
- (16) Except as provided in sections 86D and 86H, a blood sample must not be taken and evidence of the result of an analysis of a blood sample must not be tendered unless the rail safety worker from whom the blood has been collected has expressed consent to the collection of the blood and the onus of proving that expression of consent is on the prosecution.

- (17) The mere failure or refusal of a rail safety worker to express consent must not be used in evidence against the rail safety worker or referred to in any way against the rail safety worker's interests in any proceeding.
- (18) A certificate purporting to be signed by a person—
- (a) who took a blood sample; or
 - (b) who analysed a blood sample—
- in accordance with the provisions of an Act of another State or a Territory that substantially corresponds to section 86H of this Act and in accordance with any regulations made under the corresponding Act is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (19) Subsections (7), (10), (11) and (12) apply in respect of a certificate referred to in subsection (18) as if the certificate was given under this section.

86J Evidentiary provisions—oral fluid samples

- (1) In this section—

approved analyst means a person who by virtue of subsection (2) is to be taken to be a properly qualified analyst for the purposes of this section;

approved expert means a person who by virtue of subsection (3) is to be taken to be a properly qualified expert for the purposes of this section;

S. 86J
inserted by
No. 23/2013
s. 89.

S. 86J(1)
def. of
*approved
laboratory*
inserted by
No. 5/2016
s. 11(1)(b).

approved laboratory means an approved
laboratory within the meaning of section 57B
of the **Road Safety Act 1986**;

S. 86J(1)
def. of
*properly
qualified
analyst*
amended by
No. 5/2016
s. 11(1)(a).

properly qualified analyst means—

- (a) an approved analyst; or
- (ab) a person who carries out an analysis in
an approved laboratory; or
- (b) a person who is considered by the court
to have scientific qualifications,
training and experience that qualifies
him or her to carry out the analysis and
to express an opinion as to the facts and
matters contained in a certificate under
subsection (6);

properly qualified expert means—

- (a) an approved expert; or
- (b) a person who is considered by the court
to have scientific qualifications,
training and experience that qualifies
him or her to express an opinion as to
the facts and matters contained in a
certificate under subsection (7).

S. 86J(2)
amended by
No. 49/2014
s. 63.

- (2) A person who is an approved analyst within the
meaning of section 57B of the **Road Safety
Act 1986** is to be taken to be a properly qualified
analyst for the purposes of this section.
- (3) A person who is an approved expert within the
meaning of section 57A of the **Road Safety
Act 1986** is to be taken to be a properly qualified
expert for the purposes of this section.

- (4) If a question as to the presence of a drug in the body of a rail safety worker at any time is relevant in a hearing for an offence against section 76 or 77 then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—
- (a) of the furnishing by that rail safety worker, within 3 hours after that rail safety worker carried out rail safety work, of a sample of oral fluid to a registered medical practitioner or an approved health professional;
 - (b) of the analysis of that sample of oral fluid by a properly qualified analyst within 12 months after it was taken;
 - (c) of the presence of a drug in that sample of oral fluid at the time of analysis;
 - (d) by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly).
- (5) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (6) A certificate, containing the prescribed particulars, as to the presence in any sample of oral fluid of a substance that is, or is capable of being, a prescribed drug for the purposes of this Part—
- (a) purporting to be signed by an approved analyst; and

**S. 86J(6)
substituted by
No. 5/2016
s. 11(2).**

(b) stating that the sample of oral fluid was analysed in an approved laboratory—

is admissible in evidence in any proceedings referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

- (7) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly) is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (8) A certificate given under this section must not be tendered in evidence at a hearing referred to in subsection (4) without the consent of the accused unless a copy of the certificate is proved to have been personally served on the accused more than 10 days before the day on which the certificate is tendered in evidence.
- (9) An affidavit or statutory declaration by the person who has personally served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (4) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.
- (10) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was

furnished, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.

- (11) The court must not grant leave under subsection (10) unless it is satisfied—
- (a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and
 - (b) that—
 - (i) there is a reasonable possibility that the oral fluid referred to in a certificate given by an analyst under subsection (6) was not that of the accused; or
 - (ii) there is a reasonable possibility that the oral fluid referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the oral fluid not been contaminated in that way; or
 - (iii) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.
- (12) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was furnished, to attend the court on the hearing of an application for leave under subsection (10).

S. 86K
inserted by
No. 23/2013
s. 89.

86K Evidentiary provisions—breath tests

(1) If—

- (a) the question whether a rail safety worker was or was not at any time under the influence of alcohol; or
- (b) the presence, or the concentration, of alcohol in the breath of a rail safety worker at any time; or
- (c) a result of a breath analysis of a rail safety worker—

is relevant on a hearing for an offence against section 76 or 77 then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the concentration of alcohol indicated to be present in the breath of that person by a breath analysing instrument operated by a person authorised to do so by the Chief Commissioner of Police under section 85 and the concentration of alcohol so indicated is, subject to compliance with section 85(6), evidence of the concentration of alcohol present in the breath of that person at the time his or her breath is analysed by the instrument.

- (2) A document purporting to be a certificate containing the prescribed particulars produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the breath of a person and purporting to be signed by the person who operated the instrument is admissible in evidence in a proceeding referred to in subsection (1) and, subject to subsection (8), is conclusive proof of—
- (a) the facts and matters contained in it; and
 - (b) the fact that the instrument used was a breath analysing instrument; and

- (c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 85; and
- (d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and
- (e) the fact that the instrument was in proper working order and properly operated; and
- (f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the breath analysing instrument and given to the accused person as soon as practicable after the sample of breath was analysed—

unless the accused person gives notice in writing to the informant not less than 28 days before the hearing, or any shorter period ordered by the court or agreed to by the informant, that he or she requires the person giving the certificate to be called as a witness or that he or she intends to adduce evidence in rebuttal of any such fact or matter.

- (3) A certificate referred to in subsection (2) does not cease to be admissible in evidence or to be conclusive proof of the facts and matters referred to in that subsection only because of the fact that it refers to the **Road Safety Act 1986** and not to the **Rail Safety (Local Operations) Act 2006** and the reference to the **Road Safety Act 1986** in that certificate and in each other certificate produced by the breath analysing instrument in respect of the sample of breath must be construed for all purposes as a reference to the **Rail Safety (Local Operations) Act 2006**.

- (4) A notice under subsection (2) must specify any fact or matter with which issue is taken and indicate the nature of any expert evidence which the accused person intends to have adduced at the hearing.
- (5) The accused person may not, except with the leave of the court, introduce expert evidence at the hearing if the nature of that evidence was not indicated in a notice under subsection (2).
- (6) If an accused person gives notice to the informant in accordance with subsection (2) that he or she requires the person giving a certificate to be called as a witness and the court is satisfied that that person—
- (a) is dead; or
 - (b) is unfit by reason of his or her bodily or mental condition to testify as a witness; or
 - (c) has ceased to be a police officer or is out of Victoria and it is not reasonably practicable to secure his or her attendance; or
 - (d) cannot with reasonable diligence be found—
- the court must order that subsection (2) has effect as if the notice had not been given.
- (7) A certificate referred to in subsection (2) remains admissible in evidence even if the accused person gives a notice under that subsection but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that subsection.
- (8) Nothing in subsection (2) prevents the informant adducing evidence to explain any fact or matter contained in a certificate referred to in subsection (2) and, if the informant does so, the certificate remains admissible in evidence but

ceases to be conclusive proof of that fact or matter only.

(9) In any proceeding under this Act—

- (a) the statement of any person that on a particular date he or she was authorised by the Chief Commissioner of Police under section 85(6) to operate breath analysing instruments; or
- (b) a certificate purporting to be signed by the Chief Commissioner of Police that a person named in it is authorised by the Chief Commissioner of Police under section 85(6) to operate breath analysing instruments—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that person.

(10) Evidence by a person authorised to operate a breath analysing instrument under section 85—

- (a) that an apparatus used by him or her on any occasion under that section was a breath analysing instrument;
- (b) that the breath analysing instrument was on that occasion in proper working order and properly operated by him or her;
- (c) that, in relation to the breath analysing instrument, all regulations with respect to breath analysing instruments were complied with—

is, in the absence of evidence to the contrary, proof of those facts.

(11) The statement on oath of a person authorised to operate a breath analysing instrument under section 85 when called as a witness that any apparatus used by him or her on any occasion under section 85 had written, inscribed or

impressed on some portion of it or on a plate attached to it the expressions—

- (a) "Alcotest 7110" and "3530791"; or
- (b) "Alcotest 9510AUS" and "8320869"—

whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument.

Division 5—Other matters

86L Approvals

S. 86L
inserted by
No. 23/2013
s. 89.

- (1) An authority given under or for the purposes of—
 - (a) section 85 or 86C(1)(b) by the Chief Commissioner of Police; or
 - (b) section 86C(1)(a) by the Safety Director—may be revoked at any time in the manner in which it was given and on revocation ceases to have any effect.
- (2) If it is provided by or under this Part that the Minister or the Chief Commissioner of Police or any other person may approve of any type or kind of apparatus or equipment—
 - (a) the approval must be given by notice published in the Government Gazette; and
 - (b) any withdrawal of approval must be made by notice published in the Government Gazette.

Part 7—Review of decisions

87 Reviewable decisions

- (1) The following table sets out—
- (a) decisions made under this Act that are reviewable in accordance with this Part (*reviewable decisions*); and
 - (b) who is eligible to apply for a review of a reviewable decision (the *eligible person* in relation to the reviewable decision).
- (2) To avoid doubt, sections 4 and 5 of the **Victorian Civil and Administrative Tribunal Act 1998** apply for the purposes of this Act.

Note

Under section 4 of that Act, a person makes a decision if the person refuses to make a decision or an instrument, imposes a condition or restriction or does or refuses to do any other act or thing. Section 5 of that Act sets out when a person's interests are affected by a decision.

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
1	Division 2 of Part 5 (refusal to accredit)	A rail transport operator who has applied to be accredited in respect of the railway operations the rail transport operator carries out.
2	Section 42(2) (issue of written notice)	A rolling stock operator or rail infrastructure manager to whom a written notice has been issued.
3	Section 42(4) (direction)	A person given a direction under section 42.

S. 87(2) Table amended by Nos 47/2006 s. 44, 19/2010 s. 42, substituted by No. 23/2013 s. 90.

Rail Safety (Local Operations) Act 2006

No. 9 of 2006

Part 7—Review of decisions

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
4	Section 43 (direction to co-ordinate accreditation applications)	A person given a direction under section 43.
5	Section 44 (failure to accredit within the period of time specified in the section or the extended period)	A rail transport operator who has applied to be accredited in respect of the railway operations the rail transport operator carries out.
6	Section 46 (decision to impose conditions or restrictions of accreditation)	An accredited rail transport operator whose interests are affected by the decision.
7	Section 46B (decision to grant a fee exemption to a tourist and heritage railway operator)	A tourist and heritage railway operator whose interests are affected by the decision.
8	Section 53 (refusal to grant variation of condition or restriction of accreditation)	A rail transport operator whose interests are affected by the decision.
9	Section 53 (refusal to agree to revocation of condition or restriction of accreditation)	A rail transport operator whose interests are affected by the decision.
10	Section 54 (refusal to grant variation of accreditation)	A rail transport operator whose interests are affected by the decision.

Rail Safety (Local Operations) Act 2006
No. 9 of 2006
Part 7—Review of decisions

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
11	Section 55 (variation of condition or restriction of accreditation)	A rail transport operator whose interests are affected by the decision.
12	Section 55 (revocation of condition or restriction of accreditation)	A rail transport operator whose interests are affected by the decision.
13	Section 55 (imposition of new condition or restriction of accreditation)	A rail transport operator whose interests are affected by the decision.
14	Section 56 (refusal to consent to surrender of accreditation)	A rail transport operator whose interests are affected by the decision.
15	Section 58 (immediate suspension of accreditation)	A rail transport operator whose interests are affected by the decision.
16	Section 59(3) (decision as to any one or more of the things listed in section 59(3)—for example, suspend or immediately cancel an accreditation or disqualify a person from holding an accreditation)	(1) A rail transport operator whose interests are affected by the decision. (2) A person who was previously a rail transport operator whose interests are affected by the decision.

Rail Safety (Local Operations) Act 2006

No. 9 of 2006

Part 7—Review of decisions

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
17	Section 61D (refusal to grant exemption, decision to grant exemption subject to conditions or restrictions, or decision to extend relevant period of an application for exemption)	A rail transport operator who carries out railway operations whose interests are affected by the decision.
18	Section 61F (refusal to grant variation of conditions or restrictions on an exemption)	A rail transport operator whose interests are affected by the decision.
19	Section 61I (decision to vary conditions or restrictions on an exemption)	A rail transport operator whose interests are affected by the decision.
20	Section 61J (decision to revoke or suspend an exemption)	A rail transport operator whose interests are affected by the decision.
21	Section 62A(3) (Safety Director not acting in accordance with guidelines)	A rail transport operator who has applied for accreditation under Division 2, or for variation of accreditation or the conditions or restrictions of accreditation under Division 4.

Rail Safety (Local Operations) Act 2006
No. 9 of 2006
Part 7—Review of decisions

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
22	Section 69F (decision to grant registration subject to conditions, refusal to grant registration, decision to extend relevant period of an application for registration)	A rail transport operator whose interests are affected by the decision.
23	Section 69H (refusal to grant variation of registration, decision to grant variation subject to conditions or restrictions, or decision to extend relevant period of an application for variation of registration)	A rail transport operator whose interests are affected by the decision.
24	Section 69J (refusal to grant variation of condition of or restriction on registration)	A rail transport operator whose interests are affected by the decision.
25	Section 69K (variation or revocation of condition of or restriction on registration)	A rail transport operator whose interests are affected by the decision.
26	Section 69L (decision to revoke or suspend registration)	A rail transport operator 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>
27	Section 69M (decision to extend suspension of registration)	A rail transport operator whose interests are affected by the decision.

88 Internal review

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the Safety Director, may apply to the Safety Director for review of the decision within—
 - (a) 28 days after the day on which the decision first came to the eligible person's notice; or
 - (b) such longer period as the Safety Director allows.
- (2) The application must be in the form approved (in writing) by the Safety Director.
- (3) If an application is made to the Safety Director in accordance with this section, the Safety Director must make a decision—
 - (a) to affirm or vary the reviewable decision; or
 - (b) to set aside the reviewable decision and substitute another decision that the Safety Director considers appropriate.
- (4) The Safety Director must give a written notice to the applicant setting out—
 - (a) the Safety Director's decision under subsection (3) and the reasons for the decision; and

(b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based—

and must do so within 28 days after the application is made.

- (5) If the Safety Director has not notified an applicant of a decision in accordance with subsection (4), the Safety Director is taken to have made a decision to affirm the reviewable decision.
- (6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Safety Director, on his or her own initiative or on the application of the applicant for review, stays the operation of the decision pending the determination of the review.
- (7) The Safety Director must make a decision on an application for a stay within 24 hours after the making of the application.
- (8) If the Safety Director has not made a decision in accordance with subsection (7), the Safety Director is taken to have made a decision to grant a stay.
- (9) The Safety Director may attach any conditions to a stay of the operation of a reviewable decision that he or she considers appropriate.

89 Review by VCAT

- (1) A person may apply to VCAT for review of—
- (a) a reviewable decision made by the Safety Director; or

**S. 89
(Heading)
amended by
No. 23/2013
s. 91(1).**

**S. 89(1)
amended by
No. 23/2013
s. 91(2).**

(b) a decision made, or taken to have been made, by the Safety Director under section 88 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision)—

if the person is an eligible person in relation to the reviewable decision.

(2) To avoid doubt, subsection (1) does not apply to a decision of the Safety Director to hold an inquiry under section 59.

(3) The application must be made—

(a) within 28 days after the day on which the decision first came to the applicant's notice;
or

(b) if the Safety Director is required by the **Victorian Civil and Administrative Tribunal Act 1998** to give the applicant a statement of reasons, within 28 days after the day on which the applicant is given the statement—

whichever period ends last.

90 Special right of review concerning interstate applicants

(1) This section only applies if—

(a) a rail transport operator who applies to the Safety Director for accreditation and—

(i) is not a company that is taken to be registered in Victoria under the Corporations Act; or

(ii) does not have his or her principal place of residence in Victoria, in the case of a natural person; and

S. 90(1)(a)
amended by
No. 23/2013
s. 92(1).

Rail Safety (Local Operations) Act 2006
No. 9 of 2006
Part 7—Review of decisions

- (b) the Safety Director refuses to accredit the rail transport operator or does not accredit the rail transport operator—
- S. 90(1)(b)
amended by
No. 23/2013
s. 92(1).
- (i) within 6 months after the rail transport operator applies for accreditation; or
- (ii) if the Safety Director extends the period of time within which he or she may decide to accredit the applicant under section 44—within that extended period.
- S. 90(1)(b)(i)
amended by
No. 23/2013
s. 92(1).
- (2) The rail transport operator may, by notice, require the Safety Director to have the refusal or failure independently mediated or conciliated or both by a mediator or conciliator agreed upon by the rail transport operator and the Safety Director.
- S. 90(2)
amended by
No. 23/2013
s. 92(1).
- (3) The Safety Director must comply with such a notice as soon as is practicable after receiving it.
- (4) The right conferred on a rail transport operator by this section is in addition to a right of review conferred by section 88 or 89.
- S. 90(4)
amended by
No. 23/2013
s. 92(1).
- (5) However, the right conferred on a rail transport operator under this section can only be exercised before VCAT gives a final decision in relation to the matter.
- S. 90(5)
amended by
No. 23/2013
s. 92.

Part 8—Codes of practice

91 Codes of practice

S. 91(1)
amended by
No. 23/2013
s. 93(1).

(1) For the purpose of providing practical guidance to accredited rail transport operators and any other person who may be placed under an obligation by or under this Act, the Minister may, subject to section 95, approve one or more codes of practice.

(2) A code of practice—

S. 91(2)(a)
amended by
No. 23/2013
s. 93(2).

(a) may consist of any code, standard, rule, specification or provision relating to any aspect of railway operations; and

(b) may apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the code of practice is approved, or as amended, formulated or published from time to time.

(3) The approval of a code of practice takes effect on the day on which notice of the approval is published in the Government Gazette, or on any later day specified in the notice.

Note

A code of practice approved under this section is disallowable by either House of Parliament: see section 104.

92 Revisions to approved codes of practice

(1) Subject to section 95, the Minister may—

(a) approve any revision of the whole, or any part, of an approved code of practice;

(b) revoke the approval of a code of practice.

- (2) The approval of a revision to an approved code of practice takes effect on the day on which notice of the approval of the revision is published in the Government Gazette, or on any later day specified in the notice.

93 Revocation of approvals of codes of practice

The approval of an approved code of practice ceases to be of effect at the end of the day on which notice of the revocation of the approval is published in the Government Gazette, or on any later day specified in the notice.

94 Availability of approved codes of practice

The Minister must cause—

- (a) a current copy of every approved code of practice; and
- (b) a copy of every document applied, incorporated or referred to in an approved code of practice (in the form in which that document has effect in the approved code of practice)—

to be made available for inspection by members of the public without charge at the office of the Safety Director during normal office hours.

95 Minister must consult before approving code of practice or revision to code of practice

Before the Minister approves a code of practice or any revision of the whole, or any part, of an approved code of practice under section 91 or 92, the Minister must consult with any person or body that may be affected by the approved code of practice, or revision of an approved code of practice, to be approved.

96 Effect of approved code of practice

A person is not liable to any civil or criminal proceedings by reason only that he, she or it has failed to observe any provision of an approved code of practice.

Note

A person who complies with a compliance code may however, be taken to have complied with this Act (see section 102).

Part 9—General

Division 1—Offences by bodies corporate

97 Imputing conduct to bodies corporate

For the purposes of this Act and the regulations, any conduct engaged in or on behalf of a body corporate by an employee, agent or officer (within the meaning given by section 9 of the Corporations Act) of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

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

S. 98
substituted by
No. 23/2013
s. 94.

- (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.
- (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 20(1);
 - (b) section 22(1) and (2);
 - (c) section 22A(1) and (2);
 - (d) section 23(1), (2) and (3);
 - (e) section 23A(1);
 - (f) section 26;
 - (g) section 27;
 - (h) section 28(1);
 - (i) section 28A(2);

- (j) section 28B(2);
 - (k) section 33(4) and (5);
 - (l) section 34(5);
 - (m) section 34J(7);
 - (n) section 34K(2);
 - (o) section 36;
 - (p) section 42(6);
 - (q) section 43(4) and (5);
 - (r) section 48(1);
 - (s) section 54(2);
 - (t) section 57(1);
 - (u) section 61K;
 - (v) section 68(1);
 - (w) section 69(1);
 - (x) section 69A(2) and (3);
 - (y) section 69R(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.
- (6) In this section, *body corporate* has the same meaning as corporation has in section 57A of the Corporations Act.

Division 2—Offences by partnerships and unincorporated bodies or associations

99 Liability of officers of partnerships and unincorporated bodies or associations

- (1) Subject to subsection (2), if—
- (a) this Act imposes a duty on a person or provides that a person is guilty of an offence; and
 - (b) the person is a partnership or an unincorporated body or association (including a partnership or an unincorporated body or association representing the Crown)—

the reference to the person is taken to be instead a reference to each officer of the partnership, body or association (as the case may be).

- (2) If an offence against this Act is committed by an officer of a partnership or an unincorporated body or association because of the effect of subsection (1), the officer is only guilty of the offence if the commission of the offence is attributable to the officer failing to take reasonable care.
- (3) The penalty to which an officer of a partnership or an unincorporated body or association is liable for an offence committed by him or her because of the effect of subsection (1) is a fine not exceeding the maximum fine that could be imposed by a court on a natural person found guilty of the same offence committed at the same time (otherwise than because of the effect of subsection (1)).
- (4) In determining whether an officer of a partnership or unincorporated body or association is guilty of an offence, regard must be had to—
 - (a) what the officer knew about the matter concerned; and
 - (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the partnership, body or association in relation to the matter concerned; and
 - (c) whether the commission of the offence is also attributable to an act or omission of any other person; and
 - (d) any other relevant matter.
- (5) An officer of a partnership or unincorporated body or association who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Notes

- 1 *Officer* of a partnership or unincorporated body or association includes a person who makes or participates in the making of decisions that affect the

whole or a substantial part of the business of the partnership, body or association and a person who has the capacity to affect significantly the financial standing of the partnership, body or association (see section 3).

- 2 For *volunteer*, see section 3.

Division 3—Proceedings against the Crown

100 Responsible agency for the Crown

- (1) If proceedings are brought against the Crown for an offence against this Act or the regulations the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.
- (2) In this section, the *responsible agency* in respect of an offence is the agency of the Crown—
 - (a) whose acts or omissions are alleged to constitute the offence; or
 - (b) if that agency has ceased to exist, that is the successor of that agency; or
 - (c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.
- (3) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

S. 100(5)
amended by
No. 6/2010
s. 203(1)
(Sch. 6
item 40.5) (as
amended by
No. 45/2010
s. 22),
repealed by
No. 61/2011
s. 25(Sch. 1
item 9).

* * * * *

Division 4—Other matters

101 Interaction with the Occupational Health and Safety Act 2004

- (1) If a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act (*OHS provision*) applies to an activity in respect of which a duty is imposed under Division 2 or 3 of Part 3, the OHS provision continues to apply, and must be observed in addition to Division 2 or 3 of Part 3 and any regulations made under this Act made for the purposes of those Divisions.

Note

See also section 51 of the **Interpretation of Legislation Act 1984**.

- (2) If a provision of this Act or the regulations made under this Act is inconsistent with a provision of the **Occupational Health and Safety Act 2004** or the regulations made under that Act, the **Occupational Health and Safety Act 2004** or the regulations made under it prevail to the extent of the inconsistency.
- (3) Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against

the **Occupational Health and Safety Act 2004** or the regulations made under that Act.

- (4) Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the **Occupational Health and Safety Act 2004** or the regulations made under that Act.

101A No double jeopardy—Occupational Health and Safety Act 2004

S. 101A
inserted by
No. 23/2013
s. 95.

If—

- (a) an act or omission is an offence against this Act and is also an offence against the **Occupational Health and Safety Act 2004**; and
- (b) the offender has been punished for the offence under the **Occupational Health and Safety Act 2004**—

the offender is not liable to be punished for the offence against this Act.

101B No double jeopardy—Rail Safety National Law

S. 101B
inserted by
No. 23/2013
s. 95.

(1) If—

- (a) an act or omission is an offence against this Act and is also an offence against the Rail Safety National Law (Victoria) or the Rail Safety National Law as it applies as a law of another State or a Territory; and
- (b) the offender has been punished for the offence under the Rail Safety National Law (Victoria) or that other Law—

the offender is not liable to be punished for the offence against this Act.

(2) In this section—

Rail Safety National Law means the Schedule to the Rail Safety National Law (South Australia) Act 2012 of South Australia.

102 Effect of compliance with regulations or approved codes of practice

If—

- (a) the regulations or an approved code of practice make provision for or with respect to a duty or obligation imposed by this Act or the regulations; and
- (b) a person complies with the regulations or the approved code of practice to the extent that it makes that provision—

the person is, for the purposes of this Act and the regulations, taken to have complied with this Act or the regulations in relation to that duty or obligation.

103 Fees for service

The Safety Director may charge the prescribed fee (if any) for any safety audit conducted under Part 3, or other service supplied, by her or him under Part 5.

104 Tabling and disallowance of certain Orders, notices and approved codes of practice

(1) In this section—

disallowable instrument means—

- (a) an Order under section 4;
- (b) a notice under section 79(7);
- (c) an approved code of practice.

- (2) On or before the 6th sitting day after a disallowable instrument is published in the Government Gazette, the Minister must ensure that a copy of that instrument is laid before each House of the Parliament.
- (3) A failure to comply with subsection (2) does not affect the operation or effect of the disallowable instrument but the Scrutiny of Acts and Regulations Committee of the Parliament may report the failure to each House of the Parliament.
- (4) A disallowable instrument may be disallowed in whole or in part by either House of Parliament.
- (5) Part 5 of the **Subordinate Legislation Act 1994** applies a disallowable instrument as if—
 - (a) a reference in that Part to a "statutory rule" were a reference to a disallowable instrument; and
 - (b) a reference in section 23(1)(c) of that Act to "section 15(1)" were a reference to subsection (1).
- (6) A reference to a disallowable instrument in this section includes a reference to any amendment to, or revision of the whole or any part of, a disallowable instrument.

104A Reciprocal powers of rail safety officers

- (1) This section has effect in relation to another jurisdiction while there is in force a corresponding rail safety law that contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement with a Minister of another jurisdiction for the purposes of this section, including an agreement to amend or revoke any such agreement.

S. 104A
inserted by
No. 49/2011
s. 23.

- (3) To the extent envisaged by an agreement—
- (a) transport safety officers of this jurisdiction may exercise functions conferred on rail safety officers of the other jurisdiction under the corresponding rail safety law of that other jurisdiction; and
 - (b) rail safety officers of that other jurisdiction may exercise functions conferred on transport safety officers under this Act.
- (4) Anything done or omitted to be done by a transport safety officer of this jurisdiction under subsection (3) is taken to have been done under this Act as well as under the corresponding rail safety law.
- (5) The regulations may make provision for or with respect to the exercise of functions under this section.
- (6) Nothing in this section affects the appointment under section 228T of the **Transport (Compliance and Miscellaneous) Act 1983** of persons as transport safety officers for the purposes of this Act.
- (7) In this section—

S. 104A(7)
def. of
another jurisdiction
inserted by
No. 23/2013
s. 96(a).

another jurisdiction means a State other than Victoria or a Territory;

corresponding rail safety law means—

- (a) the law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of another jurisdiction that is declared under the regulations to be a corresponding rail safety law;

rail safety officer, of another jurisdiction, means an officer appointed under a law of that jurisdiction with functions corresponding to those of a transport safety officer in relation to rail safety;

S. 104A(7)
def. of
*rail safety
officer*
amended by
No. 23/2013
s. 96(b).

this jurisdiction means Victoria.

S. 104A(7)
def. of
*this
jurisdiction*
inserted by
No. 23/2013
s. 96(a).

Division 5—Regulations

105 Accreditation

The Governor in Council may make regulations for or with respect to—

- (a) exempting any person or class of persons from the requirement to be accredited;
- (b) accreditation fees, including annual accreditation fees and additional fees for the late payment of annual accreditation fees;
- (c) investigations carried out by accredited rail transport operators under section 67.

S. 105(b)
amended by
No. 47/2006
s. 45(1).

S. 105(c)
amended by
No. 23/2013
s. 97.

106 Safety duties and risk management requirements and minimisation

The Governor in Council may make regulations for or with respect to—

- (a) the way in which duties or obligations imposed by this Act or the regulations are performed;
- (b) regulating or prohibiting specified railway operations or a specified class of railway operations—

S. 106(b)
amended by
No. 23/2013
s. 98.

S. 106(c)
amended by
No. 23/2013
s. 98.

S. 106(d)
amended by
No. 23/2013
s. 98.

- (i) at railway premises or a specified class of railway premises; or
- (ii) by a specified class of persons on whom duties or obligations are imposed by this Act—
to eliminate or reduce risks to safety;
- (c) regulating or requiring the taking of any action to avoid a hazard or incident (including a major incident) at railway premises or while railway operations are being carried out;
- (d) regulating, requiring or prohibiting the taking of any action in the event of an incident (including a major incident) at railway premises or while railway operations are being carried out;
- (e) regulating or requiring the examination, testing, maintenance or repair of rail infrastructure or rolling stock.

107 Safety management systems

The Governor in Council may make regulations for or with respect to—

- (a) the preparation of safety management systems;
- (b) the matters and information that safety management systems must contain;
- (c) how safety management systems are to be kept and maintained.

107A Systems and arrangements for exempt rail transport operators

The Governor in Council may make regulations for or with respect to—

- (a) the matters and information that must be contained in the system and arrangements required to be established and maintained by a rail transport operator under section 28B;
- (b) requiring a rail transport operator to review and revise the system and arrangements referred to in paragraph (a).

S. 107A
(Heading)
amended by
No. 23/2013
s. 99(1).
S. 107A
inserted by
No. 49/2011
s. 20.

S. 107A(a)
amended by
No. 23/2013
s. 99(2).

S. 107A(b)
amended by
No. 23/2013
s. 99(2).

108 Rail safety work

The Governor in Council may make regulations for or with respect to—

- (a) a scheme for certificates of competence (or provisional certificates of competence) for rail safety workers employed or engaged to carry out rail safety work, and for the duration, variation, suspension and cancellation of those certificates;
- (b) prohibiting the carrying out of rail safety work by a person—
 - (i) who does not hold an appropriate certificate of competence; or
 - (ii) who does not hold specified qualifications, training or experience; or
 - (iii) who is not supervised by a person holding an appropriate certificate of competence or specified qualifications, training or experience;

S. 108(a)
amended by
No. 47/2006
s. 45(2)(a).

S. 108(c)
substituted by
No. 47/2006
s. 45(2)(b),
amended by
No. 23/2013
s. 100.

- (c) requiring a rail transport operator to ensure that rail safety workers employed or engaged by them or employed or engaged by a rail contractor engaged directly or indirectly by the rail transport operator to supply railway operations to that rail transport operator—
- (i) are fit to carry out rail safety work;
 - (ii) are competent or appropriately trained or qualified to carry out rail safety work;

S. 108(d)
amended by
No. 47/2006
s. 45(2)(c).

- (d) the testing, assessment and monitoring of rail safety workers employed or engaged to carry out rail safety work to ensure that those rail safety workers are fit to carry out that work;
- (e) application fees and fees for the issuing and holding of certificates of competence.

109 Alcohol and other drug controls

The Governor in Council may make regulations for or with respect to—

S. 109(a)
amended by
No. 23/2013
s. 101(a).

- (a) devices for the purposes of sections 83, 84 and 86A including—
- (i) the handling, storage, use and maintenance of those devices;
 - (ii) the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results;

S. 109(b)
amended by
No. 23/2013
s. 101(b).

- (b) the handling, storage, use and maintenance of breath analysing instruments used for the purposes of Subdivision 1 of Division 3 of Part 6 and the procedures and methods to be employed in the use of those instruments for ensuring that they give accurate and reliable results;

- | | |
|---|---|
| (c) the methods and conditions to be observed by registered medical practitioners and approved health professionals in collecting blood samples, oral fluids or urine samples; | S. 109(c)
amended by
No. 23/2013
s. 101(c). |
| (d) the persons responsible for the safe-keeping of samples of blood and oral fluids taken under Division 3 of Part 6; | S. 109(d)
substituted by
No. 23/2013
s. 101(d). |
| (e) the delivering of portions of a sample of blood or oral fluids taken under Division 3 of Part 6 to the rail safety worker from whom it was taken and to the person who required it to be taken or a police officer; | S. 109(e)
amended by
Nos 23/2013
s. 101(e),
37/2014
s. 10(Sch.
item 142.3). |
| (f) the methods to be used by analysts in determining the concentration of alcohol in a blood sample; | |
| (g) the methods to be used by analysts in determining the presence of a substance in a blood, oral fluid or urine sample; | S. 109(g)
amended by
No. 23/2013
s. 101(f). |
| (h) the procedures to be adopted in transmitting samples of blood, oral fluid or urine to an analyst for analysis; | S. 109(h)
amended by
No. 23/2013
s. 101(f). |
| (i) the regulation and control of people concerned in the taking, safe-keeping, delivering and analysis of blood, oral fluid or urine samples. | S. 109(i)
amended by
No. 23/2013
s. 101(f). |

110 General regulation making powers

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) requiring records of prescribed activities, matters or things to be kept by prescribed persons;

Rail Safety (Local Operations) Act 2006
No. 9 of 2006
Part 9—General

S. 110(1)(b)
substituted by
No. 47/2006
s. 45(3).

(b) requiring notice of, reports and information about, prescribed activities, matters or things to be given to the Safety Director or a transport safety officer;

S. 110(1)(ba)
inserted by
No. 47/2006
s. 45(3).

(ba) the content, manner and form of a notice, reports and information referred to in paragraph (b) to be given to the Safety Director or a transport safety officer;

S. 110(1)(bb)
inserted by
No. 47/2006
s. 45(3),
substituted by
No. 69/2007
s. 66.

(bb) matters or things safety interface agreements may provide for;

S. 110(1)(bc)
inserted by
No. 47/2006
s. 45(3),
amended by
No. 23/2013
s. 102(1).

(bc) requiring a rail transport operator to undertake reviews about railway operations the rail transport operator carries out, including—

(i) the subject matter of the reviews;

S. 110(1)
(bc)(ii)
amended by
No. 23/2013
s. 102(1)(a).

(ii) requiring the rail transport operator to give reports to the Safety Director of findings made in the reviews;

(c) fees for the purposes of this Act and the refund or waiver of such fees;

S. 110(1)(ca)
inserted by
No. 23/2013
s. 102(2).

(ca) prescribing forms to be used for the purposes of this Act;

(d) any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

- (2) Regulations made under this Act—
- (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstance; and
 - (c) may require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
 - (d) may apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time; and
 - (e) may confer a discretionary authority or impose a duty on a specified person or a specified class of person; and
 - (f) may provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and
 - (g) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations; and

S. 110(2)(h)
amended by
No. 23/2013
s. 102(3).

- (h) may provide that an application may be made to VCAT for the review of a decision made under the regulations.
- (3) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—
- (a) specific fees;
 - (b) maximum or minimum fees;
 - (c) maximum and minimum fees;
 - (d) the payment of fees either generally or under specified conditions or in specified circumstances;
 - (e) the reduction, waiver or refund, in whole or in part, of the fees.
- (4) If under subsection (3)(e) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain accreditations or classes of accreditations; or
 - (b) in respect of certain audits of medical records under section 30 or classes of such audits; or
 - (c) in respect of certificates of compliance referred to in section 108 or classes of such certificates; or
 - (d) when an event happens; or
 - (e) in respect of certain persons or classes of persons; or

(f) in respect of any combination of such accreditations, audits, certificates, events or persons—

and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.

Pt 10
(Heading and
ss 111–129)
amended by
No. 47/2006
ss 46–51, 53,
repealed by
No. 6/2010
s. 203(1)
(Sch. 6
item 40.6) (as
amended by
No. 45/2010
s. 22),
new Pt 10
(Heading
and s. 111)
inserted by
No. 23/2013
s. 104.

Part 10—Savings and transitionals— Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013

New s. 111
inserted by
No. 23/2013
s. 104.

111 Renaming of Act—Savings provision

- (1) On and from the commencement of section 103 of the **Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013**, any reference in any Act (other than this Act), regulation, subordinate instrument, or other document whatsoever to the **Rail Safety Act 2006** is to be construed as a reference to the **Rail Safety (Local Operations) Act 2006**, unless the contrary intention appears.
- (2) Except as in this Act expressly or by necessary implication provided, all persons, things and circumstances appointed or created by or under this Act or existing or continuing under this Act immediately before the commencement of section 103 of the **Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013** continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if this Act had not been amended by that section.

Rail Safety (Local Operations) Act 2006

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Part 10—Savings and transitionals—Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013

(3) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

* * * * *

Pt 11
(Heading and ss 130–170)
amended by
Nos 47/2006
s. 52, 69/2007
s. 67 (as
amended by
No. 29/2011
s. 3(Sch. 1
item 99)),
6/2010
s. 203(1)
(Sch. 6
item 40.7) (as
amended by
No. 45/2010
s. 22), 19/2010
s. 43,
repealed by
No. 23/2013
s. 105.



Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 6 October 2005

Legislative Council: 28 March 2006

The long title for the Bill for this Act was "to provide for safe rail operations in Victoria, to amend the **Transport Act 1983**, the **Public Transport Competition Act 1995**, the **Rail Corporations Act 1996**, the **Electricity Industry Act 2000**, the **Gas Industry Act 2001**, the **Magistrates' Court Act 1989**, the **Road Management Act 2004**, the **Water Act 1989**, the **Water Industry Act 1994** and for other purposes."

The **Rail Safety Act 2006** was assented to on 4 April 2006 and came into operation as follows:

Section 156(1) on 1 January 2006: section 2(3); sections 129 and 156(2) on 5 April 2006: section 2(2); section 147 on 25 July 2006; rest of Act (except sections 122 and 123) on 1 August 2006: Special Gazette (No. 181) 25 July 2006 page 1; section 122 on 1 January 2007: section 2(4); section 123 on 30 June 2008: section 2(5).

The title of this Act was changed from the **Rail Safety Act 2006** to the **Rail Safety (Local Operations) Act 2006** by section 103 of the **Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013**, No. 23/2013.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

Rail Safety (Local Operations) Act 2006
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Endnotes

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Rail Safety (Local Operations) Act 2006
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Endnotes

2 Table of Amendments

This publication incorporates amendments made to the **Rail Safety (Local Operations) Act 2006** by Acts and subordinate instruments.

Transport Legislation (Further Amendment) Act 2006, No. 47/2006

Assent Date: 25.7.06
Commencement Date: Ss 39–53 on 26.7.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Transport Legislation Amendment Act 2007, No. 69/2007 (as amended by Nos 19/2010, 29/2011)

Assent Date: 11.12.07
Commencement Date: Ss 54(2), 56, 59, 67 on 12.12.07: s. 2(1); s. 55 on 1.3.08: s. 2(8); s. 65 on 15.3.08: Government Gazette 28.2.08 p. 369; ss 54(3), 57 on 1.7.08: Government Gazette 28.2.08 p. 369; ss 62, 63 on 1.7.08: s. 2(9); ss 54(1), 58, 60, 61, 64, 66 on 1.7.10: s. 2(7)
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Coroners Act 2008, No. 77/2008

Assent Date: 11.12.08
Commencement Date: S. 129(Sch. 2 item 23) on 1.11.09: s. 2
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Bus Safety Act 2009, No. 13/2009

Assent Date: 7.4.09
Commencement Date: S. 85 on 31.12.10: s. 2(3)
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Transport Legislation General Amendments Act 2009, No. 26/2009

Assent Date: 17.6.09
Commencement Date: S. 11 on 31.7.09: Special Gazette (No. 259) 28.7.09 p. 1
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

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Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 101) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 42) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Fair Work (Commonwealth Powers) Amendment Act 2009, No. 74/2009

Assent Date: 1.12.09
Commencement Date: S. 19 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Transport Integration Act 2010, No. 6/2010 (as amended by No. 45/2010)

Assent Date: 2.3.10
Commencement Date: Ss 24(5)(Sch. 1 item 13), 203(1)(Sch. 6 item 40) on 1.7.10: Special Gazette (No. 256) 30.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 46) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Transport Legislation Amendment (Compliance, Enforcement and Regulation) Act 2010, No. 19/2010

Assent Date: 18.5.10
Commencement Date: Ss 37, 38, 40–43 on 22.5.10: Government Gazette 20.5.10 p. 988; s. 39 on 11.6.10: Government Gazette 10.6.10 p. 1149
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

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**Transport Legislation Amendment (Public Transport Safety) Act 2011,
No. 49/2011**

Assent Date: 22.9.11
Commencement Date: Ss 15–23 on 5.10.11: Special Gazette (No. 313)
4.10.11 p. 1 (see Erratum: Special Gazette
(No. 315) 4.10.11 p. 1)
Current State: This information relates only to the provision/s
amending the **Rail Safety (Local Operations)
Act 2006**

**Transport Legislation Amendment (Public Transport Development Authority)
Act 2011, No. 61/2011**

Assent Date: 15.11.11
Commencement Date: Ss 22, 25 on 15.12.11: Special Gazette (No. 407)
13.12.11 p. 1; Sch. 1 item 9 on 2.4.12: Special
Gazette (No. 101) 27.3.12 p. 1
Current State: This information relates only to the provision/s
amending the **Rail Safety (Local Operations)
Act 2006**

Statute Law Revision Act 2012, No. 43/2012

Assent Date: 27.6.12
Commencement Date: S. 3(Sch. item 41) on 28.6.12: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Rail Safety (Local Operations)
Act 2006**

**Transport Legislation Amendment (Rail Safety Local Operations and Other
Matters) Act 2013, No. 23/2013**

Assent Date: 23.4.13
Commencement Date: Ss 4–105 on 19.5.14: Special Gazette (No. 148)
13.5.14 p. 1
Current State: This information relates only to the provision/s
amending the **Rail Safety (Local Operations)
Act 2006**

Transport (Safety Schemes Compliance and Enforcement) Act 2014, No. 27/2014

Assent Date: 8.4.14
Commencement Date: S. 136 on 19.5.14: Special Gazette (No. 148) 13.5.14
pp 1, 2
Current State: This information relates only to the provision/s
amending the **Rail Safety (Local Operations)
Act 2006**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014,
No. 37/2014**

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 142) on 1.7.14: Special Gazette
(No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s
amending the **Rail Safety (Local Operations)
Act 2006**

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Road Safety Amendment Act 2014, No. 49/2014

Assent Date: 1.7.14
Commencement Date: S. 63 on 2.7.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Inquiries Act 2014, No. 67/2014

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 32) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Statute Law Revision Act 2015, No. 21/2015

Assent Date: 16.6.15
Commencement Date: S. 3(Sch. 1 item 44) on 1.8.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Road Legislation Amendment Act 2016, No. 5/2016

Assent Date: 16.2.16
Commencement Date: Ss 10, 11 on 15.4.16: Special Gazette (No. 92) 12.4.16 p. 1
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

Transport Integration Amendment (Head, Transport for Victoria and Other Governance Reforms) Act 2017, No. 3/2017

Assent Date: 14.2.17
Commencement Date: S. 50(Sch. 1 item 7) on 12.4.17: Special Gazette (No. 117) 12.4.17 p. 1
Current State: This information relates only to the provision/s amending the **Rail Safety (Local Operations) Act 2006**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

No entries at date of publication.