

Version No. 002
Rail Safety National Law Application Act
2013

No. 22 of 2013

Version incorporating amendments as at
1 December 2013

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Version No. 002
Rail Safety National Law Application Act
2013

No. 22 of 2013

Version incorporating amendments as at
1 December 2013

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to provide for the application of a National Law to make provision for a national system of rail safety (the *Rail Safety National Law*); and
- (b) to make related amendments to other Acts.

2 Commencement

- (1) This Part comes into operation on the day after the day this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed which must be a day on or after the day specified in a notice under section 4.

3 Definitions

- (1) In this Act—

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

S. 3(1) def. of
Department
amended by
No. 70/2013
s. 4(Sch. 2
item 40.1).

Chief Investigator, Transport Safety means the person holding the position referred to in section 179(1) of the **Transport Integration Act 2010**;

Department means Department of Transport, Planning and Local Infrastructure;

excluded local railway means a railway declared to be an excluded local railway by Order in Council under section 9;

Rail Safety National Law (Victoria) or Law means the provisions applying in this jurisdiction because of section 6;

railway crossing—see section 40;

Road Rules means the Road Safety Road Rules 2009;

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

service level agreement means an agreement between the Minister, the Safety Director and ONRSR relating to—

- (a) the performance and exercise by the Safety Director of functions and powers of the National Rail Safety Regulator under the Rail Safety National Law (Victoria); and
- (b) the performance and exercise by rail safety officers of functions and powers under the Rail Safety National Law (Victoria);

transport safety officer means a person appointed under section 228T of the **Transport (Compliance and Miscellaneous) Act 1983**.

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- (2) Terms used in this Act and also the Rail Safety National Law set out in the Schedule to the Rail Safety National Law (South Australia) Act 2012 of South Australia have the same meanings in this Act as they have in that Law.
 - (3) This section does not apply to the extent that the context or subject matter otherwise indicates or requires.

4 Specification of date service level agreement takes effect

- (1) This section applies if the Minister and the Safety Director enter into a service level agreement.
- (2) The Minister, by notice published in the Government Gazette, may specify the day on which the service level agreement takes effect.

5 Transport Integration Act 2010

This Act and the Rail Safety National Law (Victoria) are transport legislation within the meaning of the **Transport Integration Act 2010**.

PART 2—APPLICATION OF RAIL SAFETY NATIONAL LAW

6 Application of Rail Safety National Law

The Rail Safety National Law, as in force from time to time, set out in the Schedule to the Rail Safety National Law (South Australia) Act 2012 of South Australia—

- (a) subject to Parts 3, 4 and 5, applies as a law of this jurisdiction; and
- (b) as so applying may be referred to as the Rail Safety National Law (Victoria); and
- (c) so applies as if it were an Act.

7 Interpretation of certain expressions

- (1) In the Rail Safety National Law (Victoria)—

court has the meaning given by section 8;

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

footpath has the same meaning as in the Road Rules;

Gazette means the Victoria Government Gazette;

Minister means the Minister for Public Transport;

police officer has the same meaning as *member of the force* has in the **Police Regulation Act 1958**;

public sector body has the same meaning as in the **Public Administration Act 2004**;

public sector employee has the same meaning as in the **Public Administration Act 2004**;

Rail Safety National Law or *this Law* means the Rail Safety National Law (Victoria);

railway does not include an excluded local railway;

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

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

the jurisdiction or *this jurisdiction* means Victoria.

- (2) For the purposes of paragraph (b) of the definition of *prescribed authority* in section 13(3) of the Rail Safety National Law (Victoria), the relevant authority in this jurisdiction is the Chief Investigator, Transport Safety.

8 Meaning of court

For the purposes of Division 6 of Part 5 and Division 6 of Part 10 of the Rail Safety National Law (Victoria), *court* means the Magistrates' Court.

9 Declaration of a railway to be an excluded local railway

- (1) The Governor in Council, by Order published in the Government Gazette, may declare a railway, or a railway of a specified class, to be an excluded local railway.
- (2) To avoid doubt, a railway referred to in subsection (1) must not be a railway that is prescribed by the national regulations for the purposes of section 7(1)(g) of the Rail Safety National Law (Victoria).

10 No double jeopardy

If—

- (a) an act or omission is an offence against the Rail Safety National Law (Victoria) and is also an offence against a law of another participating jurisdiction; and

- (b) the offender has been punished for the offence under the law of the other jurisdiction—

the offender is not liable to be punished for the offence against the Rail Safety National Law (Victoria).

11 Exclusion of legislation of this jurisdiction

- (1) The following Acts of this jurisdiction do not apply to the Rail Safety National Law (Victoria) or to instruments made under that law—
- (a) the **Audit Act 1994**;
 - (b) the **Financial Management Act 1994**;
 - (c) the **Interpretation of Legislation Act 1984**;
 - (d) the **Public Administration Act 2004**
(except to the extent that that Act applies to functions being exercised by a public sector employee);
 - (e) the **Ombudsman Act 1973**;
 - (f) the **Freedom of Information Act 1982**;
 - (g) the **Public Records Act 1973**;
 - (h) the **Subordinate Legislation Act 1994**
(except to the extent provided by section 12).
- (2) However, the Acts referred to in subsection (1) apply to a public sector body or a public sector employee exercising a function under the Rail Safety National Law (Victoria).

12 Disallowance of national regulations

- (1) Section 15(1) and Part 5 (except section 21(1)(j)) of the **Subordinate Legislation Act 1994** apply to a national regulation as if—
- (a) the national regulation were a statutory rule within the meaning of that Act; and

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- (b) a reference in section 15(1) of that Act to publication of notice of the making of the statutory rule in the Government Gazette under section 17(2) of that Act were a reference to the later of—
- (i) publication of the national regulation under section 265(1) of the Rail Safety National Law (Victoria);
 - (ii) the day this section comes into operation.
- (2) If a national regulation is disallowed in whole or in part under the **Subordinate Legislation Act 1994**, then despite anything to the contrary in that Act, the disallowed regulation does not, or the disallowed part does not, cease to have effect in this jurisdiction unless the disallowed regulation, or disallowed part, is disallowed in a majority of the participating jurisdictions.
- (3) In such a case, the disallowed regulation, or disallowed part, ceases to have effect on the date that regulation or part is disallowed in the last of the participating jurisdictions forming the majority of participating jurisdictions.
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PART 3—THE REGULATOR

Division 1—Ministerial declarations as to service level agreements

13 Declaration by Minister as to whether service level agreement between regulators is in effect

- (1) The Minister, by notice published in the Government Gazette, may declare that he or she is of the opinion that—
 - (a) there is no service level agreement in effect;
 - (b) there is a service level agreement that will have effect.
- (2) If the Minister makes a declaration under subsection (1)(b), the Minister must specify in the declaration the day on which the Minister is of the opinion the service level agreement will take effect.

Division 2—Modifications to the Law following Ministerial declaration

14 Safety Director is the Regulator if no service level agreement in effect

- (1) This section applies if the Minister makes a declaration under section 13 that there is no service level agreement in effect.
- (2) Despite section 6 and anything to the contrary in the Rail Safety National Law (Victoria), that Law applies as a law of this jurisdiction as if—
 - (a) in section 4 of that Law, for the definition of **Regulator** there were substituted—
"**Regulator** means Safety Director;"; and
 - (b) Part 2 of that Law (except sections 13 and 20 and Division 6) were omitted; and

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- (c) a reference to the ONRSR in section 13 and Division 6 of Part 2 (other than section 45(1)) of that Law were a reference to the Regulator; and
 - (d) section 50(1)(e) of that Law were omitted; and
 - (e) in section 224(3) of that Law, in the definition of *office holder*, for paragraph (a) there were substituted—
 - "(a) the Regulator; or"; and
 - (f) in section 225(6) of that Law, in the definition of *public authority* "ONRSR," were omitted; and
 - (g) in section 244(3)(c) of that Law—
 - (i) the first, third and fourth reference to "ONRSR" were a reference to "the Regulator"; and
 - (ii) ", a member of ONRSR," were omitted; and
 - (h) in section 244(5) of that Law, a reference to "ONRSR" were a reference to "the Regulator"; and
 - (i) in section 247(2) of that Law, a reference to "ONRSR" were a reference to "the Regulator"; and
 - (j) in section 247(3) of that Law, in the definition of *protected person*—
 - (i) for paragraphs (a), (b) and (c) there were substituted—
 - "(a) the Regulator;"; and
 - (ii) in paragraph (f), a reference to "ONRSR" were a reference to "the Regulator"; and
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- (iii) paragraphs (g) and (h) were omitted; and
 - (iv) in paragraph (i), for "(h)" there were substituted "(f)"; and
 - (k) in section 248(1) of that Law—
 - (i) for paragraphs (a) and (b) there were substituted—
 - "(a) the Regulator; or"; and
 - (ii) in paragraph (d), "ONRSR or" were omitted; and
 - (l) in section 249(4)(c) and (5) of that Law, for "ONRSR's" there were substituted "the Regulator's".

15 National Rail Safety Regulator is the Regulator if service level agreement is in effect

- (1) This section applies if—
 - (a) the Minister makes a declaration under section 13(1)(b); and
 - (b) section 14 had effect immediately before the publication of that declaration in accordance with section 13(1)(b).
- (2) Section 14 does not have effect during the period commencing on the day specified in the declaration as the day on which the service level agreement will take effect and ending on the day a declaration is published under section 13(1)(a).

Note

See also section 13(2).

**Division 3—Transition between regulators on the basis of
Ministerial declarations**

16 Definitions

In this Division—

application means—

- (a) an application for an accreditation under section 64 of the Law;
- (b) an application for a variation of an accreditation under section 68 of the Law;
- (c) an application for a variation of a condition or restriction to which an accreditation is subject under section 71 of the Law;
- (d) an application for registration in respect of a private siding under section 84 of the Law;
- (e) an application for a variation of registration under section 87 of the Law;
- (f) an application for a variation of a condition or restriction to which a registration is subject under section 90 of the Law;
- (g) an application for an exemption from a designated provision of the Law in respect of specified railway operations under section 205 of the Law;
- (h) an application for a variation of an exemption under section 208 of the Law;

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- (i) an application for a variation of a condition or restriction to which an exemption is subject under section 211 of the Law;
 - (j) an application under section 216 of the Law for review of a reviewable decision;

compliance and enforcement instrument

means—

- (a) a suspension of an accreditation under Division 4 of Part 3 of the Law;
- (b) a suspension of a registration under Division 5 of Part 3 of the Law;
- (c) a suspension of an exemption under Division 2 of Part 6 of the Law;

declaration day means—

- (a) if a declaration is made under section 13(1)(a), the day on which notice of the declaration is published in accordance with that section;
- (b) if a declaration is made under section 13(1)(b), the day specified in the declaration as the day on which the service level agreement will take effect;

Note

See also section 13(2).

regulator direction means—

- (a) a direction under section 66 of the Law;
 - (b) a direction under section 110 of the Law;
 - (c) a written notice under section 121(3) of the Law;
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- (d) a written notice under section 122(1) of the Law;
 - (e) a direction under section 198 of the Law;
 - (f) a direction under section 199(2) or (3) of the Law;

regulatory instrument means—

- (a) an accreditation under Division 4 of Part 3 of the Law;
- (b) a registration under Division 5 of Part 3 of the Law;
- (c) an exemption under Division 2 of Part 6 of the Law;
- (d) a notice under section 72 of the Law;
- (e) a notice under section 91 of the Law;
- (f) a notice under section 212 of the Law;

the new regulator means—

- (a) the Safety Director if the Minister makes a declaration under section 13(1)(a) that there is no service level agreement in effect;
- (b) the National Rail Safety Regulator if the Minister makes a declaration under section 13(1)(b) that there is a service level agreement that will have effect;

the previous regulator means—

- (a) the Safety Director if the Minister makes a declaration under section 13(1)(b) that there is a service level agreement that will have effect;

- (b) the National Rail Safety Regulator if the Minister makes a declaration under section 13(1)(a) that there is no service level agreement in effect.

17 Regulatory instrument of previous regulator is taken to be instrument of new regulator

On the declaration day, a regulatory instrument in effect immediately before that day is taken to have been granted or given by the new regulator.

18 Compliance and enforcement instrument of previous regulator is taken to be instrument of new regulator

On the declaration day, a compliance and enforcement instrument in effect immediately before that day is taken to have been given, issued or made by the new regulator.

19 Regulator direction of previous regulator is taken to be direction of new regulator

A regulator direction given before a declaration day is taken to have been given by the new regulator on that day.

20 Things done and commenced by previous regulator

- (1) Subject to this Division, anything done by the previous regulator under the Law before a declaration day is on that day taken to be a thing done by the new regulator.
- (2) Subject to this Division, anything commenced but not completed by the previous regulator under the Law before a declaration day may on and after that day be continued and completed by the new regulator.

21 Applications

- (1) An application made before a declaration day that has not been determined by the previous regulator on that day, may be determined by the new regulator on and after that day.
- (2) For the purposes of subsection (1), anything done by the previous regulator before the declaration day is taken to have been done by the new regulator.

22 Appointment of enforcement officials by regulators

- (1) An appointment of an authorised person before a declaration day by the previous regulator that is in effect immediately before that day is, on that day, taken to be an appointment of the authorised person by the new regulator.
- (2) An appointment of a rail safety officer before a declaration day by the previous regulator that is in effect immediately before that day is, on that day, taken to be an appointment of the rail safety officer by the new regulator.

23 Appointment of persons to review decisions of regulator

A person appointed by the previous regulator under section 216(2) of the Law in respect of an application under that section that has not been determined by the previous regulator before a declaration day is, on that day, taken to be an appointment of the person by the new regulator.

24 Infringement notices

- (1) An infringement notice served by the previous regulator under section 234 of the Law which has not been withdrawn before a declaration day is taken to have been served by the new regulator on that day.

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- (2) A withdrawal notice served by the previous regulator under section 238 of the Law before a declaration day is taken to have been served by the new regulator on that day.

25 Rail safety undertakings

A rail safety undertaking accepted by the previous regulator and in effect immediately before a declaration day is taken, on that day, to have been accepted by the new regulator.

26 Written agreements to withdraw or vary rail safety undertakings

- (1) This section applies if there is a written agreement in effect under section 256 of the Law immediately before a declaration day under which the previous regulator has agreed for a rail safety undertaking to be withdrawn or varied.
- (2) On that declaration day, the new regulator becomes a party to the agreement in place of the previous regulator and the agreement has effect as if the new regulator had always been a party to the agreement.

27 Delegations by the Safety Director

- (1) This section applies if an instrument of delegation made by the Safety Director under section 45(2) of the Law (as modified by section 14) is in force immediately before a declaration day.
- (2) On that declaration day, that instrument of delegation is taken to be an instrument of delegation made by the new regulator.

28 Delegations by the National Rail Safety Regulator

- (1) This section applies if an instrument of delegation made by the National Rail Safety Regulator under section 45(2) of the Law is in force immediately before a declaration day and the instrument delegates a function or power of the National Rail
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Safety Regulator under the Law or an Act to a person other than the Safety Director.

- (2) On that declaration day, that instrument of delegation is taken to be an instrument of delegation made by the new regulator.

29 Power to require production of documents and to answer questions

A direction given under section 154 of the Law by the previous regulator before a declaration day that has not been complied with before that declaration day is taken, on that day, to be a direction given under that section by the new regulator.

30 Forfeiture of seized things—reasonable inquiries

Any reasonable inquiries made by the previous regulator to find a person entitled to a seized thing referred to in section 162(1)(a) of the Law before a declaration day are taken, on that day, to be reasonable inquiries made by the new regulator referred to in that section.

31 Forfeiture of seized things—reasonable efforts

Any reasonable efforts made by the previous regulator to return a seized thing to the person entitled to a thing referred to in section 162(1)(b) of the Law before a declaration day are taken, on that day, to be reasonable efforts made by the new regulator referred to in that section.

32 Applications for the return of seized things

An application made to the previous regulator under section 163 of the Law before a declaration day is taken, on that day, to be an application made to the new regulator under section 163 of the Law.

33 Improvement notices

An improvement notice issued and served under section 175 of the Law before a declaration day by the previous regulator is taken, on that day, to be an improvement notice issued and served under that section by the new regulator.

34 Prohibition notices

A prohibition notice served under section 179 of the Law before a declaration day by the previous regulator is taken, on that day, to be a prohibition notice served under that section by the new regulator.

35 Proceedings

- (1) This section applies if immediately before a declaration day proceedings to which the previous regulator was a party under the Law were pending or existing in any court or VCAT.
- (2) On and after that declaration day, the new regulator is substituted for the previous regulator as a party to the proceedings and has the same rights in the proceedings as the previous regulator.

36 Provision of information and assistance by the previous regulator to the new regulator

- (1) On and after a declaration day, the previous regulator is authorised, on the regulator's own initiative or at the request of the new regulator—
 - (a) to provide the new regulator with such information (including information given in confidence) in the possession or control of the previous regulator that is reasonably required by the new regulator for the purposes of the Rail Safety National Law (Victoria) and this Act; and

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- (b) to provide the new regulator with such other assistance as is reasonably required by the new regulator to perform a function or duty, or exercise a power, conferred or imposed under the Rail Safety National Law (Victoria) and this Act.
- (2) Nothing done, or authorised to be done, by the previous regulator in acting under subsection (1)—
- (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
 - (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
 - (f) releases a surety or any other obligee wholly or in part from an obligation.
- (3) This section applies despite any other Act or law (other than the **Charter of Human Rights and Responsibilities Act 2006**).

37 References to the previous regulator in documents

- (1) Subject to this Division, on a declaration day, every reference to the previous regulator in a document (by whatever name called or however described) is taken to be a reference to the new regulator.

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- (2) Subsection (1) applies unless the context otherwise requires.

38 Regulations dealing with further transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the making of a declaration under section 13 and the application of sections 14 and 15.
- (2) Regulations made under this section may—
- (a) have a retrospective effect to a day on or from a date not earlier than a declaration day; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
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**PART 4—MODIFICATIONS TO THE RAIL SAFETY
NATIONAL LAW AND ADDITIONAL REQUIREMENTS**

Division 1—Definition modifications

**39 Modified definition of private siding—freight
terminals to be private sidings**

Despite anything to the contrary in the Rail Safety National Law (Victoria), that Law applies as a law of this jurisdiction as if in section 4 of that Law, in the definition of *private siding*, paragraph (d) were omitted.

40 Modified definition of *railway crossing* to apply

Despite anything to the contrary in the Rail Safety National Law (Victoria), that Law applies as a law of this jurisdiction as if in section 4 of that Law for the definition of *railway crossing* there were substituted—

"railway crossing means—

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

Division 2—Due diligence modification

41 National due diligence offence does not apply in Victoria

Despite anything to the contrary in the Rail Safety National Law (Victoria), that Law applies as a law of this jurisdiction as if section 55 of that Law were omitted.

Division 3—Delegation power modification

42 Restrictions on ONRSR and Regulator delegation powers

- (1) Despite anything to the contrary in the Rail Safety National Law (Victoria), section 45(1) of that Law applies as a law of this jurisdiction as if for "ONRSR" there were substituted "Subject to section 45B, ONRSR".
- (2) Despite anything to the contrary in the Rail Safety National Law (Victoria), section 45(2) of that Law applies as a law of this jurisdiction as if for "The Regulator" there were substituted "Subject to sections 45A and 45C, the Regulator".
- (3) Despite anything to the contrary in the Rail Safety National Law (Victoria), that Law applies as a law of this jurisdiction as if after section 45 of that Law there were inserted—

"45A Regulator requires consent of Safety Director for certain delegations

- (1) The Regulator must not, without the written consent of the Safety Director, delegate a function or power of the Regulator under this Law or an Act to any of the following persons—

- (a) a person holding an office or acting in an office specified by the Safety Director; or
 - (b) a person who is a corporation sole.
- (2) The Safety Director may give his or her consent under subsection (1) subject to any conditions determined by the Safety Director.

45B Delegations to the Safety Director cannot be amended or revoked without Ministerial consent

- (1) This section applies if there is an instrument of delegation in force under—
- (a) section 45(1) delegating a function or power of ONRSR under this Law or an Act to the Safety Director; or
 - (b) section 45(2) delegating a function or power of the Regulator under this Law or an Act to the Safety Director.
- (2) Despite anything to the contrary in this Law or that Act, ONRSR or the Regulator must not revoke or amend the instrument of delegation without the written consent of the Minister.

45C Delegations to certain persons cannot be amended or revoked without Safety Director's consent

- (1) This section applies if there is an instrument of delegation in force under section 45(2) delegating a function or power of the Regulator under this Law or an Act to—

- (a) a person holding an office or acting in an office specified by the Safety Director; or
 - (b) a person who is a corporation sole.
- (2) Despite anything to the contrary in this Law or that Act, the Regulator must not revoke or amend the instrument of delegation without the written consent of the Safety Director."

Division 4—Alcohol and drug controls for rail safety workers

43 Part 6 of the Rail Safety (Local Operations) Act 2006 forms part of the Law with modifications

- (1) This section applies despite anything to the contrary in the Rail Safety National Law (Victoria).
- (2) Part 6 of the **Rail Safety (Local Operations) Act 2006** is taken to form part of this Act subject to the following modifications—
 - (a) sections 75, 76, 83, 86A and 86F and Subdivision 1 of Division 3 of that Part were omitted;
 - (b) a reference in that Part to a rail safety worker were a reference to a rail safety worker within the meaning of the Law;
 - (c) a reference in that Part to rail safety work were a reference to rail safety work within the meaning of the Law;
 - (d) a reference in that Part to railway premises were a reference to railway premises within the meaning of the Law;
 - (e) a reference in that Part to the Safety Director were a reference to the Regulator;

- (f) a reference in that Part to section 76 were a reference to section 128 of the Law;
 - (g) a reference in that Part to section 82 were a reference to section 123 of the Law;
 - (h) a reference in that Part to section 83 were a reference to section 126 of the Law;
 - (i) a reference in that Part to section 86A were a reference to section 127 of the Law;
 - (j) a reference in that Part to section 86F were a reference to section 129 of the Law;
 - (k) in section 86H(5)(b), the reference to section 48(2) were a reference to section 78 of the Law;
 - (l) a reference to the **Rail Safety (Local Operations) Act 2006** in that Part were a reference to the Law and this Act;
 - (m) a reference to a transport safety officer were a reference to an authorised person;
 - (n) the definition of *police officer* and references to a police officer were omitted.
- (3) In addition, for the purposes of subsection (1), section 127 of the Rail Safety National Law (Victoria) applies as a law of this jurisdiction as if after subsection (4) of that section there were inserted—
- "(5) 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."

**Division 5—Additional compliance and enforcement
requirements**

44 Application

The Rail Safety National Law (Victoria) applies subject to this Division and despite anything to the contrary in that Law.

**45 Magistrates' Court Act 1989 applies to search
warrants under the Law**

- (1) A search warrant under section 150 of the Rail Safety National Law (Victoria) must be issued in accordance with the **Magistrates' Court Act 1989** and in the form set out in the regulations under that Act.
- (2) Despite section 78 of the **Magistrates' Court Act 1989**, a search warrant must not authorise a rail safety officer to arrest a person.
- (3) Subject to any provision to the contrary in section 150 of the Rail Safety National Law (Victoria), the rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

**46 Abrogation of self-incrimination—derivative use
immunity applies**

- (1) This section applies despite anything to the contrary in section 155 of the Rail Safety National Law (Victoria).
- (2) Without limiting section 155 of the Rail Safety National Law (Victoria), any answer to a question or information provided or document obtained as a direct result or indirect consequence of the answer, information or document being provided by a person under a requirement or direction of a rail safety officer under Part 4 of the Rail Safety National Law (Victoria) is not admissible as

evidence against that person in civil or criminal proceedings other than proceedings arising out of the false and misleading nature of the answer, information or document.

- (3) Despite section 155(2) of the Rail Safety National Law (Victoria) or subsection (2) of this section—
- (a) any information or document required to be kept under that Law that is provided by a person under a requirement under section 154 of that Law is admissible in evidence against the person in criminal proceedings;
 - (b) any information obtained from a person under Part 4 of that Law that is contained in any document or item that the person is required to keep under that Law is admissible in evidence against the person in criminal proceedings or may be used in any action, proceeding or process that may make a person liable to a penalty.

Division 6—Review of decisions

47 VCAT is the reviewing entity

Despite anything to the contrary in the Rail Safety National Law (Victoria), that Law applies as a law of this jurisdiction as if for section 217 of that Law there were substituted—

"217 Review by VCAT

- (1) A person may apply to VCAT for review of—
- (a) a reviewable decision made by the Regulator; or
 - (b) a decision made, or taken to have been made, by the Regulator under section 216 in respect of a reviewable

decision (including a decision concerning a stay of the operation of the reviewable decision)—

if the person is an eligible person in relation to the reviewable decision.

- (2) The application must be made—
- (a) within 28 days after the day on which the decision first came to the applicant's notice; or
 - (b) if the Regulator 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."

Division 7—Infringement notices

48 Certain infringements from national infringement notice regime do not apply

Despite anything to the contrary in the Rail Safety National Law (Victoria), section 233 of that Law applies as a law of this jurisdiction as if items 19 and 20 of the Table at the foot of that section were omitted.

PART 5—MISCELLANEOUS

Division 1—Director and officer criminal liability

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

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.
 - (2) For the purposes of subsection (1), the following provisions are specified—
 - (a) section 58(1) of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 52(1) of that Law;
 - (b) section 58(1) of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 53(1) of that Law;
 - (c) section 58(1) of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 53(3) of that Law;
 - (d) section 58(1) of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 54 of that Law;
 - (e) section 58(1) of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 56(1) of that Law;
 - (f) section 59 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 52(1) of that Law;
 - (g) section 59 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 53(1) of that Law;
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- (h) section 59 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 53(3) of that Law;
 - (i) section 59 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 54 of that Law;
 - (j) section 59 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 56(1) of that Law;
 - (k) section 60 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 52(1) of that Law;
 - (l) section 60 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 53(1) of that Law;
 - (m) section 60 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 53(3) of that Law;
 - (n) section 60 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 54 of that Law;
 - (o) section 60 of the Rail Safety National Law (Victoria) constituted by a failure to comply with section 56(1) of that Law;
 - (p) section 62(1) of the Rail Safety National Law (Victoria);
 - (q) section 66(3) and (4) of the Rail Safety National Law (Victoria);
 - (r) section 78 of the Rail Safety National Law (Victoria);
 - (s) section 83(1) of the Rail Safety National Law (Victoria);
 - (t) section 98(1) of the Rail Safety National Law (Victoria);
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- (u) section 99(1) of the Rail Safety National Law (Victoria);
 - (v) section 101(1) and (2) of the Rail Safety National Law (Victoria);
 - (w) section 110(6) of the Rail Safety National Law (Victoria);
 - (x) section 111(1) and (2) of the Rail Safety National Law (Victoria);
 - (y) section 121(1) and (4) of the Rail Safety National Law (Victoria);
 - (z) section 122(3) and (4) of the Rail Safety National Law (Victoria);
 - (za) section 199(4) and (6) of the Rail Safety National Law (Victoria).
- (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,
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the officer bears the same burden of proof that the body corporate would bear.

- (5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

Division 2—Other matters

50 Corporations Act displacement

Section 232 of the Rail Safety National Law (Victoria) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 2D of that Act.

Note

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

Division 3—Regulations

51 Regulations

- (1) The Governor in Council may make regulations for or with respect to 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) The regulations may—
 - (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;

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- (c) confer a discretionary authority or impose a duty on a specified person or a specified class of person.

52 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act and the **Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013**, including any repeals and amendments made as a result of the enactment of this Act and that Act.
- (2) Regulations made under this section may—
- (a) have a retrospective effect to a day on or from a date not earlier than the day on which this Act receives Royal Assent; and
 - (b) be of limited or general application; and
 - (c) leave any matter or thing to be decided by a specified person or class of person.
- (3) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act, the **Transport Legislation Amendment (Rail Safety Local Operations and Other Matters) Act 2013** or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
- (4) This section is **repealed** on the second anniversary of the day on which it comes into operation.
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PART 6—AMENDMENT OF OTHER ACTS

Division 1—EastLink Project Act 2004

53 Definitions

See:
Act No.
39/2004.
Reprint No. 3
as at
21 July 2011
and
amending
Act No.
61/2011.
LawToday:
www.
legislation.
vic.gov.au

In section 3 of the **EastLink Project Act 2004**, in the definition of *Utility*, for paragraphs (d) and (e) **substitute—**

"(d) a rail transport operator within the meaning of the Rail Safety National Law (Victoria);".

Division 2—Electricity Industry Act 2000

54 Definitions for the purposes of Part 5

See:
Act No.
68/2000.
Reprint No. 6
as at
17 March
2011
and
amending
Act Nos
74/2010,
50/2011,
59/2011,
64/2011,
21/2012 and
51/2012.
LawToday:
www.
legislation.
vic.gov.au

In section 85 of the **Electricity Industry Act 2000—**

(a) for the definition of *rail infrastructure* **substitute—**

"*rail infrastructure* means rail infrastructure within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);";

(b) for the definition of *rolling stock* **substitute—**

"*rolling stock* means rolling stock within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);";

(c) **insert** the following definitions—

"*rail transport operator* means a rail transport operator within the meaning of the **Rail Safety (Local Operations)**

Act 2006 or the Rail Safety National Law (Victoria);

railway operations means railway operations within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);".

(d) the definitions of *rail operations* and *rail operator* are repealed.

55 Notification of electricity corporations before rail operations carried out

- (1) In the heading to section 93C of the **Electricity Industry Act 2000**, for "rail operations" substitute "railway operations".
- (2) In section 93C(1) of the **Electricity Industry Act 2000**—
 - (a) for "rail operator" substitute "rail transport operator";
 - (b) for "rail operations" substitute "railway operations";
 - (c) for "rail operator's" substitute "rail transport operator's".

Division 3—Electricity Safety Act 1998

56 Definition of *railway* substituted

In section 3 of the **Electricity Safety Act 1998**, for the definition of *railway* substitute—

"railway means railway within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);".

See:
Act No.
25/1998.
Reprint No. 6
as at
3 November
2011
and
amending
Act Nos
59/2011 and
43/2012.
LawToday:
www.
legislation.
vic.gov.au

Division 4—Gas Industry Act 2001

57 New section 147A substituted

For section 147A of the **Gas Industry Act 2001** substitute—

"147A Definitions

In this Division—

rail infrastructure means rail infrastructure within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

rail transport operator means a rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

railway operations means railway operations within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

rolling stock means rolling stock within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria)."

58 Notification of gas distribution and transmission companies before railway operations carried out

- (1) In the heading to section 149C of the **Gas Industry Act 2001**, for "rail operations" substitute "railway operations".
- (2) In section 149C(1) of the **Gas Industry Act 2001**—
 - (a) for "rail operator" substitute "rail transport operator";

See:
Act No.
31/2001.
Reprint No. 5
as at
16 August
2012
and
amending
Act No.
51/2012.
LawToday:
www.
legislation.
vic.gov.au

- (b) for "rail operations" **substitute** "railway operations";
- (c) for "rail operator's" **substitute** "rail transport operator's".

Division 5—Interpretation of Legislation Act 1984

59 New section 38FA inserted

After section 38F of the **Interpretation of Legislation Act 1984** insert—

"38FA References to Rail Safety National Law

In an Act or subordinate instrument—

Rail Safety National Law (Victoria) means the provisions applying because of section 6 of the **Rail Safety National Law Application Act 2013**."

See:
Act No.
10096.
Reprint No. 11
as at
17 January
2013.
LawToday:
www.
legislation.
vic.gov.au

Division 6—Major Transport Projects Facilitation Act 2009

60 Definitions

In section 3 of the **Major Transport Projects Facilitation Act 2009**—

- (a) for the definition of *rail infrastructure* **substitute**—

"rail infrastructure means rail infrastructure within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);";

- (b) for the definition of *rolling stock* **substitute**—

"rolling stock means rolling stock within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);".

See:
Act No.
56/2009.
Reprint No. 1
as at
16 August
2012.
LawToday:
www.
legislation.
vic.gov.au

Division 7—Melbourne City Link Act 1995

61 Definitions

See:
Act No.
107/1995.
Reprint No. 8
as at
1 August 2011
and
amending
Act Nos
35/2011,
61/2011,
17/2012 and
82/2012.
LawToday:
www.
legislation.
vic.gov.au

In section 21(1) of the **Melbourne City Link Act 1995**, in the definition of *Utility*, for paragraphs (d) and (e) **substitute**—

"(d) a rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);".

62 Approvals of public bodies not required

For section 39(2)(b) of the **Melbourne City Link Act 1995 substitute**—

"(b) the **Rail Safety (Local Operations) Act 2006**; and

(ba) the Rail Safety National Law (Victoria);
and".

Division 8—Rail Management Act 1996

63 Definitions for the purposes of Part 2A

See:
Act No.
79/1996.
Reprint No. 5
as at
1 July 2010
and
amending
Act Nos
29/2011 and
61/2011.
LawToday:
www.
legislation.
vic.gov.au

In section 38A of the **Rail Management Act 1996**—

(a) in the definition of *access provider*, for paragraphs (a) and (b) **substitute**—

"(a) an accredited rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006**;

(b) an accredited person within the meaning of the Rail Safety National Law (Victoria);

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- (ba) a rail transport operator who is exempted under Division 5A of Part 5 of the **Rail Safety (Local Operations) Act 2006**, or regulations made under that Act, from the requirement to be accredited under that Act; or
- (bb) a rail infrastructure manager (within the meaning of the Rail Safety National Law (Victoria)) who is registered under Division 5 of Part 3 of that Law;";
- (b) **insert** the following definitions—
- "rail transport operator* means a rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);
- railway operations* means railway operations within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);";
- (c) the definitions of *rail infrastructure manager* and *rail infrastructure operations* are **repealed**.

64 Decisions must not interfere with certain directions of the Safety Director

In section 38ZZE of the **Rail Management Act 1996**, after "Safety" insert "(Local Operations)".

65 Relevant rail operator to whom this section applies may clear trees without obtaining permit

- (1) In the heading to section 60A of the **Rail Management Act 1996**, after "rail" insert "transport".
- (2) In section 60A(1) and (2) of the **Rail Management Act 1996**, after "rail" (wherever occurring) insert "transport".
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- (3) In section 60A(3) of the **Rail Management Act 1996**, after "*rail*" insert "*transport*".

Division 9—Road Management Act 2004

66 Definitions

See:
Act No.
12/2004.
Reprint No. 3
as at
16 June 2011
and
amending
Act Nos
61/2011,
50/2012 and
70/2012.
LawToday:
www.
legislation.
vic.gov.au

In section 3(1) of the **Road Management Act 2004**, in the definition of *road management function*, for paragraph (a)(v) substitute—

- "(v) any other Act or law dealing with the management of roads including Division 2 of Part 4 of the **Rail Safety (Local Operations) Act 2006** and Subdivision 2 of Division 6 of Part 3 of Rail Safety National Law (Victoria);".

67 New section 48A substituted

For section 48A of the **Road Management Act 2004** substitute—

"48A Definitions

In this Division—

rail infrastructure means rail infrastructure within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

rail transport operator means a rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

railway operations means railway operations within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

rolling stock means rolling stock within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

works contractor means a person engaged directly or indirectly by a responsible road authority or an infrastructure manager or works manager to carry out works on behalf of the responsible road authority or infrastructure manager or works manager, and includes a sub-contractor."

68 Duties in relation to works on or in immediate vicinity of rail infrastructure or rolling stock

In section 48B of the **Road Management Act 2004**, in the note at the foot of the section—

- (a) after "**Safety**" insert "**(Local Operations)**";
- (b) after "**2006**" insert "and Subdivision 2 of Division 6 of Part 3 of the Rail Safety National Law (Victoria)".

69 Duty of rail transport operator in relation to works on or in immediate vicinity of road infrastructure

- (1) In the heading to section 48DB of the **Road Management Act 2004**, after "**rail**" insert "**transport**".
- (2) In section 48DB of the **Road Management Act 2004**, after "**rail**" insert "**transport**".

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- (3) In section 48DB of the **Road Management Act 2004**, in the note at the foot of the section—
- (a) after "**Safety**" insert "**(Local Operations)**";
 - (b) after "**2006**" insert "and Subdivision 2 of Division 6 of Part 3 of the Rail Safety National Law (Victoria)".

70 Notification by responsible road authority, infrastructure manager or works manager or works contractor

In sections 48EA(3) and 48EB(3) of the **Road Management Act 2004**, in note 2 at the foot of each of the subsections—

- (a) after "**Safety**" insert "**(Local Operations)**";
- (b) after "**2006**" insert "and the Rail Safety National Law (Victoria)".

71 Notification by rail operator

- (1) In the heading to section 48EC of the **Road Management Act 2004**, after "rail" insert "transport".
- (2) In section 48EC(1) of the **Road Management Act 2004**, after "rail" insert "transport".
- (3) In section 48EC(3) of the **Road Management Act 2004**, in note 2 at the foot of the subsection—
 - (a) after "**Safety**" insert "**(Local Operations)**";
 - (b) after "**2006**" insert "and the Rail Safety National Law (Victoria)".

72 Notification of road authorities before railway operations carried out

- (1) In the heading to section 48F of the **Road Management Act 2004**, for "rail" substitute "railway".

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- (2) In section 48F(1) of the **Road Management Act 2004**—
- (a) for "rail operator" **substitute** "rail transport operator";
 - (b) for "rail operations" **substitute** "railway operations";
 - (c) for "rail operator's" **substitute** "rail transport operator's".
- (3) In section 48F(2)(b) of the **Road Management Act 2004**, for "rail operations" **substitute** "railway operations".
- (4) In section 48F(3) of the **Road Management Act 2004**—
- (a) for "rail operations" **substitute** "railway operations";
 - (b) in note 2 at the foot of the subsection, after "**Safety**" **insert** "**(Local Operations)**";
 - (c) in note 2 at the foot of the subsection, after "**2006**" **insert** "and the Rail Safety National Law (Victoria)".

73 Duty to give notice to other infrastructure manager or works manager

In clause 8 of Schedule 7 to the **Road Management Act 2004**, in note 2 at the foot of the clause—

- (a) after "**Safety**" **insert** "**(Local Operations)**";
- (b) after "**2006**" **insert** "and the Rail Safety National Law (Victoria)".

Division 10—Road Safety Act 1986

74 Disclosure of information

See:
Act No.
127/1986.
Reprint No. 14
as at
27 April 2012
and
amending
Act Nos
19/1991,
32/2011,
34/2011,
65/2011,
21/2012,
43/2012,
45/2012,
50/2012,
52/2012,
75/2012,
76/2012 and
83/2012.
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legislation.
vic.gov.au

For section 92(3)(ca) of the **Road Safety Act 1986 substitute—**

- "(ca) to or by a public transport regulator for the purposes of performing a function or exercising a power of the public transport regulator under the **Transport Integration Act 2010**, the **Transport (Compliance and Miscellaneous) Act 1983**, the **Bus Services Act 1995**, the **Rail Safety (Local Operations) Act 2006**, the **Bus Safety Act 2009** or the regulations made under any of those Acts; or
- (cab) the Rail Safety National Regulator for the purposes of performing a function or exercising a power under the Rail Safety National Law (Victoria); or".

Division 11—Tourist and Heritage Railways Act 2010

75 Definitions

See:
Act No.
79/2010
and
amending
Act No.
61/2011.
LawToday:
www.
legislation.
vic.gov.au

In section 3 of the **Tourist and Heritage Railways Act 2010—**

- (a) in the definition of *rail asset*, for paragraph (b) **substitute—**
- "(b) rolling stock;"
- (b) in the definition of *tourist and heritage railway operator*, for paragraph (a)(iii) **substitute—**
- "(iii) is a rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006**, an accredited person within the meaning of the Rail Safety National Law (Victoria) or an entity which provides those services

with rolling stock that is operated on behalf of the entity by an accredited rail transport operator or accredited person; but";

(c) after the definition of *Registrar* insert—

"rolling stock means rolling stock within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);".

76 Regulations

In section 31(1)(i) of the **Tourist and Heritage Railways Act 2010** omit ", within the meaning of section 3(1) of the **Rail Safety Act 2006**,".

Division 12—Water Act 1989

77 Safety duties in relation to works on or in immediate vicinity of rail infrastructure or rolling stock

In section 137A(4) of the **Water Act 1989**, for the definitions of *rail infrastructure* and *rolling stock* substitute—

"rail infrastructure means rail infrastructure within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

rolling stock means rolling stock within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);".

See:
Act No.
80/1989.
Reprint No. 10
as at
1 January
2011
and
amending
Act Nos
50/2010,
29/2011,
50/2011,
63/2011,
17/2012 and
20/2012.
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78 Notification of owners or occupiers of land on which there is rail infrastructure or rolling stock

For section 137B(2) of the **Water Act 1989** substitute—

"(2) In this section—

rail infrastructure means rail infrastructure within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

rolling stock means rolling stock within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria).".

79 New section 137C substituted

For section 137C of the **Water Act 1989** substitute—

"137C Notification of Authorities before railway operations carried out

- (1) A rail transport operator must, before carrying out railway operations that will threaten, or are likely to threaten, the safety of an Authority's works, notify the Authority of the rail transport operator's intention to carry out those operations.

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

- (2) In this section—

rail transport operator means a rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

railway operations means railway operations within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria)."

Division 13—Criminal Procedure Act 2009

80 Indictable offences that may be heard and determined summarily

For item 25 of Schedule 2 to the **Criminal Procedure Act 2009** substitute—

"25 Rail Safety (Local Operations) Act 2006

25.1 Indictable offences under the **Rail Safety (Local Operations) Act 2006**.

25A Rail Safety National Law (Victoria)

25A.1 Indictable offences under the Rail Safety National Law (Victoria)."

See:
Act No.
7/2009.
Reprint No. 2
as at
18 March
2012
and
amending
Act Nos
65/2010,
20/2012,
26/2012,
48/2012,
49/2012,
74/2012 and
82/2012.
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Division 14—Transport Integration Act 2010

81 Definitions

(1) In section 3 of the **Transport Integration Act 2010** insert the following definitions—

"Australian Transport Safety Bureau or *ATSB* means the Australian Transport Safety Bureau established under section 12 of the Transport Safety Investigation Act 2003 of the Commonwealth;

Office of the National Rail Safety Regulator has the same meaning as in the Rail Safety National Law (Victoria);

See:
Act No.
6/2010.
Reprint No. 3
as at
24 January
2013
and
amending
Act Nos
6/2010,
34/2011 and
61/2011.
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legislation.
vic.gov.au

National Rail Safety Regulator means the Regulator within the meaning of the Rail Safety National Law (Victoria);

rail safety officer has the same meaning as in the Rail Safety National Law (Victoria);".

(2) In section 3 of the **Transport Integration Act 2010**—

(a) in the definitions of *rail infrastructure* and *rail safety worker*, after "Safety" insert "(Local Operations)";

(b) in the definition of *transport body*, after paragraph (h) insert—

"(ha) the Office of the National Rail Safety Regulator;

(hb) the National Rail Safety Regulator;";

(c) in the definition of *transport legislation*, for paragraph (m) substitute—

"(m) the **Rail Safety (Local Operations) Act 2006**;

(ma) the **Rail Safety National Law Application Act 2013**;

(mb) the Rail Safety National Law (Victoria);";

(d) for the definition of *railway* substitute—

"*railway* has the same meaning as in the Rail Safety National Law (Victoria);";

(e) for the definition of *rolling stock* substitute—

"*rolling stock* has the same meaning as in the Rail Safety National Law (Victoria);".

82 Object of Director, Transport Safety

In section 172(2)(c) of the **Transport Integration Act 2010**, after "Safety" insert "(Local Operations)".

83 Functions of Director, Transport Safety

In section 173(1) of the **Transport Integration Act 2010**—

- (a) in paragraph (a)(i) and (ii)—
 - (i) after "**Rail Safety**" insert "(Local Operations)";
 - (ii) after "**1983**" insert ", the **Rail Safety National Law Application Act 2013**";
 - (iii) after "or any other Act" insert "or the Rail Safety National Law (Victoria)";
- (b) in paragraphs (b)(ii), (iii) and (iv) and (e), after "**Rail Safety**" insert "(Local Operations)";
- (c) in paragraph (e), for "accredited rail operators" substitute "rail transport operators".

84 Information disclosure by Director, Transport Safety

In section 177(2)(b) of the **Transport Integration Act 2010**, after "Safety" insert "(Local Operations)".

85 Delegation by Director, Transport Safety

In section 178(1) of the **Transport Integration Act 2010**, after "**Rail Safety**" insert "(Local Operations)".

86 New section 180 substituted

For section 180 of the **Transport Integration Act 2010** substitute—

**"180 Object of the Chief Investigator,
Transport Safety**

The object of the Chief Investigator,
Transport Safety is to seek to improve
transport safety by—

- (a) providing for the independent no-blame investigation of transport safety matters consistent with the vision statement and the transport system objectives; and
- (b) liaising collaboratively with the Australian Transport Safety Bureau."

87 Functions of the Chief Investigator, Transport Safety

After section 181(3)(a) of the **Transport Integration Act 2010** insert—

"(ab) to, under an arrangement referred to in section 182A, perform services in connection with the ATSB's functions or the exercise of the ATSB's functions;"

88 New section 182A inserted

After section 182 of the **Transport Integration Act 2010** insert—

"182A Arrangements with Australian Transport Safety Bureau

- (1) The Chief Investigator, Transport Safety may enter into arrangements with the Chief Executive Officer of the Australian Transport Safety Bureau to perform services in connection with the Bureau's functions or the exercise of the Bureau's functions or to

make available any staff of the Chief Investigator to perform such services.

- (2) The Chief Investigator, Transport Safety may exercise any functions conferred on the Chief Investigator under an arrangement entered into under this section, whether those functions are to be exercised in this State or another State or Territory.

Note

Section 16A of the Transport Safety Investigation Act 2003 of the Commonwealth authorises the Chief Executive Officer of the Australian Transport Safety Bureau to enter into arrangements of a kind referred to in this section with the appropriate authority or officer of the government of a State or Territory."

89 Definitions for the purposes of Part 7A

In section 197A of the **Transport Integration Act 2010**, for the definitions of *decision*, *regulated body* and *regulator substitute*—

"*decision*, of a regulator, includes any determination made, or direction given, by the regulator in the performance of the regulator's statutory functions and duties but does not include—

- (a) a direction given by the Director, Transport Safety under Division 2 of Part 4 of the **Rail Safety (Local Operations) Act 2006**; or
- (b) a direction given by the National Rail Safety Regulator under Subdivision 2 of Division 6 of Part 3 of the Rail Safety National Law (Victoria);

regulated body means—

- (a) an operator within the meaning of the **Bus Safety Act 2009**;
- (b) a rail transport operator within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);

regulator, in relation to an activity carried out by a regulated body, means—

- (a) the Director, Transport Safety; or
- (b) the National Rail Safety Regulator; or
- (c) a road authority;".

**Division 15—Transport (Compliance and Miscellaneous)
Act 1983**

90 Financial assistance to train drivers following fatal incidents

See:
Act No.
9921.
Reprint No. 17
as at
26 July 2012
and
amending
Act Nos
34/2011,
61/2011,
20/2012,
61/2012,
66/2012 and
82/2012.
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In section 12(3) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "**Rail Safety Act 2006**" substitute "**Rail Safety (Local Operations) Act 2006** or Division 4 of Part 4 of the **Rail Safety National Law Application Act 2013** or Division 9 of Part 3 of the Rail Safety National Law (Victoria)".

91 Application of definitions to Part relating to Chief Investigator, Transport Safety

- (1) In section 82C(1) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "**Rail Safety Act 2006**" substitute "**Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria)".
- (2) After section 82C(2) of the **Transport (Compliance and Miscellaneous) Act 1983** insert—
 - "(3) In this Part, the expression *relevant transport safety law* includes the Rail Safety National Law (Victoria)."

92 Replacement of out of date reference to Executive Director of Transport Safety Investigations

- (1) In the heading to section 85H of the **Transport (Compliance and Miscellaneous) Act 1983**, for "official" substitute "agency".
- (2) In section 85H of the **Transport (Compliance and Miscellaneous) Act 1983**, for "Executive Director of Transport Safety Investigations appointed" substitute "Australian Transport Safety Bureau established".

93 New definition of *rail safety worker* substituted

In section 208 of the **Transport (Compliance and Miscellaneous) Act 1983**, for the definition of *rail safety worker* substitute—

"rail safety worker means a rail safety worker within the meaning of the **Rail Safety (Local Operations) Act 2006** or the Rail Safety National Law (Victoria);".

94 New definition of *safety work infringement* substituted

In section 208 of the **Transport (Compliance and Miscellaneous) Act 1983**, for the definition of *safety work infringement* substitute—

"safety work infringement means—

- (a) an offence under section 76(1)(a), (g) or (h) of the **Rail Safety (Local Operations) Act 2006** in circumstances where—
 - (i) the concentration of alcohol in the blood or breath of the rail safety worker is less than 0.015 grams per 100 millilitres of blood or 0.015 grams per 210 litres of exhaled air (as the case requires); and
 - (ii) the offence is a first offence having regard to the provisions of section 74 of the **Rail Safety (Local Operations) Act 2006**;
- (b) an offence against section 128(1) of the Rail Safety National Law (Victoria) or section 77(1)(a), (f) or (g) of the **Rail Safety (Local Operations) Act 2006** (as it forms part of the **Rail Safety National Law Application Act 2013** by operation of section 43 of that Act) in circumstances where—
 - (i) the concentration of alcohol in the blood or breath of the rail safety worker is less than 0.015 grams per 100 millilitres of blood or 0.015 grams per 210 litres of exhaled air (as the case requires); and

- (ii) the offence is a first offence having regard to the provisions of section 74 of the **Rail Safety (Local Operations) Act 2006** (as it forms part of the **Rail Safety National Law Application Act 2013** by operation of section 43 of that Act);".

95 Inclusion of reference to the Rail Safety National Law Application Act 2013 and National Law

In section 215B(8) of the **Transport (Compliance and Miscellaneous) Act 1983**, for "**Rail Safety Act 2006**" substitute "**Rail Safety (Local Operations) Act 2006** or Division 4 of Part 4 of the **Rail Safety National Law Application Act 2013** or Division 9 of Part 3 of the Rail Safety National Law (Victoria)".

96 Release on the giving of a safety undertaking

- (1) In section 230E(3)(a) and (c) of the **Transport (Compliance and Miscellaneous) Act 1983**, after "Safety Director" insert ", the National Rail Safety Regulator".
- (2) After section 230E(7) of the **Transport (Compliance and Miscellaneous) Act 1983** insert—

"(8) In this section—

National Rail Safety Regulator means the Regulator within the meaning of the Rail Safety National Law (Victoria);

relevant law includes the Rail Safety National Law (Victoria)."

Division 16—Repeal of amending Part

97 Repeal of Part

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

Note

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

PART 7—SAVINGS AND TRANSITIONALS

Division 1—Preliminary matters

98 Definitions

In this Part—

commencement day means the day on which section 6 comes into operation;

old scheme safety management system means a safety management system within the meaning of the RS Act;

relevant person means—

- (a) an employee of a transitioning rail transport operator; or
- (b) a contractor of a transitioning rail transport operator; or
- (c) a rail safety worker within the meaning of the RS Act; or
- (d) a utility within the meaning of section 228S of the TCM Act; or
- (e) a person referred to paragraph (g), (h) or (i) of the definition of *relevant person* as defined by section 228S of the TCM Act;

relevant road manager has the same meaning as in the RS Act;

RS Act means the **Rail Safety Act 2006** as in force from time to time before the commencement day;

RS Act accreditation means an accreditation under the RS Act;

RS Act railway premises means railway premises (within the meaning of the RS Act) of a transitioning rail transport operator that are, on the commencement day, railway premises;

TCM Act means the **Transport (Compliance and Miscellaneous) Act 1983** as in force from time to time before the commencement day;

TCM Act improvement notice means an improvement notice within the meaning of the TCM Act;

TCM Act prohibition notice means a prohibition notice within the meaning of the TCM Act;

transitioning rail infrastructure manager means a rail infrastructure manager within the meaning of the RS Act who on and after the commencement day is a rail infrastructure manager within the meaning of the Law;

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

transitioning rolling stock operator means a rolling stock operator within the meaning of the RS Act who on and after the commencement day is a rolling stock operator within the meaning of the Law;

transport safety officer means a person appointed under section 228T of the TCM Act whose appointment is in effect immediately before the commencement day.

99 Application of Interpretation of Legislation Act 1984

This Part does not affect or take away from the **Interpretation of Legislation Act 1984**.

Division 2—Transition from the Rail Safety Act 2006

100 Declaration of drug

On the commencement day, a declaration under section 4 of the RS Act that is in effect immediately before that day is taken to be a declaration under section 6 of the Law.

101 Approval of persons to take blood samples

On the commencement day, a person approved under section 8 of the RS Act whose approval is in effect immediately before that day is taken to have been appointed as an authorised person.

102 Safety management systems

- (1) This section applies if a transitioning rail transport operator has in place an old scheme safety management system immediately before the commencement day.
- (2) On the commencement day the old scheme safety management system is taken to be a safety management system approved by the Regulator under Division 6 of Part 3 of the Law.

103 Consultations for the purpose of safety management systems

- (1) This section applies if a transitioning rail transport operator has commenced but not determined, before the commencement day, consultation for the purposes of establishing an old scheme safety management system.
- (2) On and after the commencement day, that consultation is taken to be consultation to which section 99(3) of the Law applies.

104 System and arrangements established by an old scheme rail operator who is exempt from accreditation

A system and arrangements established by a transitioning rail transport operator pursuant to section 28B of the RS Act that are in effect immediately before the commencement day are taken, on that day, to be a safety management system established under Subdivision 1 of Division 6 of Part 3 of the Law.

105 Directions to stop rail operation or utility works

- (1) On the commencement day, a direction—
- (a) given under section 33(1) of the RS Act to a person that is a utility within the meaning of that Act; and
 - (b) that is in effect immediately before that day—

is taken to be a direction given to that person under section 199(2) of the Law.

- (2) On the commencement day, a direction given to a transitioning rail transport operator under section 33(2) of the RS Act that is in effect immediately before that day is taken to be a direction given to that operator under section 199(3) of the Law.

106 Directions to alter, demolish or take away works

- (1) On the commencement day, a direction—
- (a) given under section 34(1) of the RS Act to a person that is a utility within the meaning of that Act and who has care, control or management of the land where the works are situated; and

(b) that is in effect immediately before that day—

is taken to be a direction given to that person under section 199(5) of the Law.

(2) On the commencement day, a direction—

(a) given under section 34(1) of the RS Act to a transitioning rail transport operator who has care, control or management of the land where the rail infrastructure the operator controls is situated; and

(b) that is in effect immediately before that day—

is taken to be a direction given to that operator under section 199(5) of the Law.

107 Safety interface agreements—rail operations

A safety interface agreement entered into by a transitioning rail transport operator pursuant to section 34B of the RS Act that is in effect immediately before the commencement day is taken, on that day, to be an interface agreement entered into by the operator pursuant to section 106 of the Law.

108 Safety interface agreements—rail infrastructure and public roadways or pathways

A safety interface agreement entered into by a transitioning rail infrastructure manager pursuant to section 34C of the RS Act that is in effect immediately before the commencement day is taken, on that day, to be an interface agreement entered into by the manager pursuant to section 107(1) of the Law.

109 Safety interface agreements—rail infrastructure and relevant roadways or pathways

A safety interface agreement entered into by a transitioning rail infrastructure manager pursuant to section 34D of the RS Act that is in effect immediately before the commencement day is taken, on that day, to be an interface agreement entered into by the manager pursuant to section 108(1) of the Law.

110 Safety interface agreements—assessment by road managers of public roadways or pathways

A safety interface agreement entered into by a relevant road manager pursuant to section 34E of the RS Act that is in effect immediately before the commencement day is taken, on that day, to be an interface agreement entered into by the manager pursuant to section 107(2) of the Law.

111 Safety interface agreements—assessment by road managers of relevant roadways or pathways

A safety interface agreement entered into by a relevant road manager pursuant to section 34F of the RS Act that is in effect immediately before the commencement day is taken, on that day, to be an interface agreement entered into by the manager pursuant to section 108(2) of the Law.

112 Written notices of Safety Director in relation to safety interface agreements

On the commencement day, a written notice served on a transitioning rail transport operator or a relevant road manager under section 34J(2) of the RS Act that is in effect immediately before that day is taken to be a written notice given to that person under section 110(2) of the Law.

113 Directions of Safety Director in relation to safety interface agreements

On the commencement day, a direction under section 34J(5)(b) of the RS Act that is in effect immediately before that day is taken to be a direction under section 110(4)(b) of the Law.

114 Registers of safety interface agreements

(1) A register maintained by a transitioning rail transport operator pursuant to section 34K(1) of the RS Act is taken, on and after the commencement day, to be a register maintained by the operator pursuant to section 111(1) of the Law.

S. 114(1)
amended by
No. 70/2013
s. 3(Sch. 1
item 44.1).

(2) A register maintained by a relevant road manager pursuant to section 34K(2) of the RS Act is taken, on and after the commencement day, to be a register maintained by the manager pursuant to section 111(2) of the Law.

S. 114(2)
amended by
No. 70/2013
s. 3(Sch. 1
item 44.2).

115 Accredited rail operators are accredited persons

A transitioning rail transport operator who is an accredited rail operator within the meaning of the RS Act is taken, on the commencement day, to be an accredited person.

116 Accreditations under Rail Safety Act 2006 are accreditations under the Law

Subject to section 123, an accreditation within the meaning of the RS Act held by a transitioning rail transport operator is taken, on the commencement day, to be—

- (a) an accreditation under the Law; and
- (b) subject to the same conditions and restrictions that applied to the accreditation under the RS Act.

117 Accreditations to be registered in National Rail Safety Register

- (1) On the commencement day, the Safety Director must give to the Regulator details of every accreditation within the meaning of the RS Act to which sections 116 and 123 apply.
- (2) The Regulator must record in the National Rail Safety Register the details given to the Regulator under subsection (1).

118 Applications for accreditation

- (1) This section applies if—
 - (a) an application has been made under section 38(1) or (2) of the RS Act before the commencement day by a transitioning rail transport operator; and
 - (b) the Safety Director has not determined that application under Division 2 of Part 5 of the RS Act before that day.
- (2) On the commencement day that application is taken to be an application under section 64 of the Law and must be determined under that Law on and after that day.
- (3) For the purposes of subsection (2), anything done by the Safety Director under the RS Act in respect of that application before the commencement day is taken on that day to have been done by the Regulator under the Law.

119 Directions to coordinate accreditation applications

A direction of the Safety Director under section 43 of the RS Act that is in effect immediately before the commencement day is taken, on that day, to be a direction of the Regulator under section 66 of the Law.

120 Discretionary applications for variations of accreditation

- (1) This section applies if—
 - (a) an application has been made under section 53 of the RS Act before the commencement day by a transitioning rail transport operator; and
 - (b) the Safety Director has not determined that application before that day.
- (2) On the commencement day that application is taken to be an application under section 68(1) of the Law and must be determined under that section on and after that day.
- (3) For the purposes of subsection (2), anything done by the Safety Director under the RS Act in respect of that application before the commencement day is taken on that day to have been done by the Regulator under the Law.

121 Mandatory applications for variations of accreditation

- (1) This section applies if—
 - (a) an application has been made under section 54 of the RS Act before the commencement day by a transitioning rail transport operator; and
 - (b) the Safety Director has not determined that application before that day.
 - (2) On the commencement day that application is taken to be an application under section 68(2) of the Law and must be determined under that section on and after that day.
-

-
- (3) For the purposes of subsection (2), anything done by the Safety Director under the RS Act in respect of that application before the commencement day is taken on that day to have been done by the Regulator under the Law.

122 Variation, revocation or imposition of condition of or restriction on accreditation by Safety Director

- (1) This section applies if before the commencement day—
- (a) the Safety Director has—
 - (i) decided under section 55(1) of the RS Act to vary or revoke a condition or restriction of an accreditation within the meaning of that Act held by a transitioning rail transport operator; and
 - (ii) given written notice to the operator under section 55(2)(a) of that Act before the commencement day; and
 - (b) the Safety Director has not taken any action under that section before that day.
- (2) On and after the commencement day—
- (a) that decision is taken to be a decision of the Regulator under section 72 of the Law; and
 - (b) that notice is taken to be notice given to the transitioning rail transport operator by the Regulator under section 72(2)(a) of the Law; and
 - (c) the Regulator may continue to act under section 72 of the Law as if the Regulator took the decision to do so under that section.
-

123 Suspended accreditations

- (1) This section applies if—
 - (a) an accreditation within the meaning of the RS Act held by a transitioning rail transport operator has been suspended under section 58 or 59 of the RS Act; and
 - (b) that suspension is in effect immediately before the commencement day.
- (2) On the commencement day, that suspension is taken to be a suspension of that operator's accreditation under section 73 or 74 of the Law, as the case requires.
- (3) In addition, that suspension continues in effect until the date set by the Safety Regulator under the RS Act.

124 Surrender of accreditation

- (1) This section applies if—
 - (a) a transitioning rail transport operator holds an accreditation within the meaning of the RS Act; and
 - (b) has requested the Safety Director to consent to the surrender of that accreditation under section 56 of that Act before the commencement day; and
 - (c) the Safety Director has not given his or her consent before that day.
 - (2) On the commencement day, that request is taken to be written notice of the intention to surrender the accreditation under section 75(2)(a) of the Law and the Regulator must deal with it under that section.
-

**Division 3—Transition of pending internal review decisions
under Rail Safety Act 2006**

125 Review of decision to refuse to accredit

- (1) This section applies if—
 - (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a refusal of its application for accreditation under Division 2 of Part 5 of that Act; and
 - (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act and section 118 does not apply to the application while the review under section 88 of the RS Act is on foot.
- (3) If the effect of the decision of the Safety Director under section 88 of the RS Act is that the transitioning rail transport operator is accredited, that operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law that is subject to the same conditions and restrictions the Safety Director imposes in his or her decision.

126 Review of decision to give direction to co-ordinate applications

- (1) This section applies if—
 - (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 43 of the RS Act to direct the operator to co-ordinate

- its application for accreditation under Division 2 of Part 5 of that Act; and
- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act and section 119 does not apply to the direction that is the subject of the review under section 88 of the RS Act.
- (3) If the effect of the decision of the Safety Director under section 88 of the RS Act is that the transitioning rail transport operator must co-ordinate its application for accreditation under Division 2 of Part 5 of that Act, the direction that is the subject of the review is taken, on the day the decision of the Safety Director takes effect, to be a direction of the Regulator under section 66 of the Law.

S. 126(3)
amended by
No. 70/2013
s. 3(Sch. 1
item 44.3).

127 Review of decision to impose condition or restriction on accreditation

- (1) This section applies if—
- (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 46 of the RS Act to impose a condition on or restrict the scope of the operator's accreditation (the *reviewable decision*); and
- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.

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- (2) On and after the commencement day, the review must be completed in accordance with the RS Act and section 118 does not apply to the application while the review under section 88 of the RS Act is on foot.
 - (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law that is subject to the conditions and restrictions the Safety Director affirmed in his or her decision.
 - (4) If under section 88 of the RS Act the Safety Director varies the reviewable decision and varies the conditions or restrictions of accreditation being imposed by the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law that is subject to the conditions and restrictions as varied by the Safety Director in his or her decision.
 - (5) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision and substitutes a new decision which imposes different conditions or restrictions of accreditation, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law that is subject to the conditions and restrictions imposed by the Safety Director under his or her decision.
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128 Review of decision to refuse to vary or revoke condition or restriction of accreditation

- (1) This section applies if—
- (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 53 of that Act (the *reviewable decision*) to—
 - (i) refuse to grant a variation of a condition or restriction of the operator's accreditation; or
 - (ii) refuse to agree to a revocation of a condition or restriction of the operator's accreditation; and
 - (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
- (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law that is subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
- (4) If under section 88 of the RS Act the Safety Director varies or sets aside the reviewable decision and grants a variation of the condition or restriction of the transitioning rail transport operator's accreditation, the operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law that is subject to—
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- (a) the condition and restriction as varied by the Safety Director in his or her decision; and
 - (b) all the other conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
- (5) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision and agrees to a revocation of the condition or restriction of the transitioning rail transport operator's accreditation, the operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law that is subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision except the condition and restriction which was the subject of the application for review.

129 Review of decision to refuse to vary accreditation

- (1) This section applies if—
 - (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 54 of that Act (the *reviewable decision*) to refuse to vary the operator's accreditation; and
 - (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
 - (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
 - (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an
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accreditation under the Law subject to the conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.

- (4) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision and agrees to vary the transitioning rail transport operator's accreditation, the operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law as varied by the Safety Director in his or her decision.

130 Review of decision to vary, revoke, or impose a new, condition or restriction on accreditation

- (1) This section applies if—
- (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 55 of the RS Act (the *reviewable decision*) to—
 - (i) vary or revoke a condition or restriction on the operator's accreditation; or
 - (ii) impose a condition or restriction on the operator's accreditation; and
 - (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
- (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law—
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- (a) if the reviewable decision varies a condition or restriction on the operator's accreditation, subject to—
- (i) the varied condition or restriction which was the subject of the application for review; and
 - (ii) all the other conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision;
- (b) if the reviewable decision revokes a condition or restriction on the operator's accreditation, subject to the conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision (except the condition or restriction which was the subject of the application for review);
- (c) if the reviewable decision imposes a condition or restriction on the operator's accreditation, subject to—
- (i) the new condition or restriction which was the subject of the application for review; and
 - (ii) all the other conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
- (4) If under section 88 of the RS Act the Safety Director varies the reviewable decision or sets aside the reviewable decision and substitutes a new decision (the *new decision*), the transitioning rail transport operator is taken, on the day the new decision takes effect, to be an accredited person holding an accreditation under the Law—
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- (a) if the new decision varies the condition or restriction the subject of the application for review condition, subject to—
 - (i) the varied condition or restriction; and
 - (ii) all the other conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision;
 - (b) if the new decision imposes a condition or restriction on the operator's accreditation different from that imposed under the reviewable decision, subject to—
 - (i) the condition or restriction imposed under the new decision; and
 - (ii) all the other conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
- (5) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision (the *new decision*), the transitioning rail transport operator is taken, on the day the new decision takes effect, to be an accredited person holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.

131 Review of decision to consent to surrender of accreditation

- (1) This section applies if—
 - (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 56 of the RS Act (the *reviewable decision*) to refuse to
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- consent to the surrender of the operator's accreditation; and
- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
- (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
- (4) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision and agrees to the surrender of the transitioning rail transport operator's accreditation, the operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law—
- (a) subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision; and
- (b) until such time as the accreditation is surrendered in accordance with that Law.
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132 Review of decision to immediately suspend accreditation

- (1) This section applies if—
 - (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 58 of the RS Act (the *reviewable decision*) to immediately suspend the operator's accreditation; and
 - (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
 - (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
 - (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person—
 - (a) holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision; and
 - (b) whose accreditation has been suspended by the Regulator under section 74 of the Law until the day on which the suspension ends.
 - (4) If under section 88 of the RS Act the Safety Director varies or sets aside the reviewable decision and imposes a new period of suspension, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person—
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- (a) holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision; and
 - (b) whose accreditation has been suspended by the Regulator under section 74 of the Law until the day on which that new period of suspension ends.
- (5) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.

**133 Review of decision to take disciplinary action—
imposition of new condition or restriction**

- (1) This section applies if—
- (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 59 of the RS Act (the *reviewable decision*) to impose a condition or restriction on the operator's accreditation; and
- Note**
See section 59(3)(b)(ii) of the **Rail Safety Act 2006**.
- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
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- (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law subject to—
- (a) the new condition or restriction which was the subject of the application for review; and
 - (b) all the other conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
- (4) If under section 88 of the RS Act the Safety Director varies or sets aside the reviewable decision and imposes a condition or restriction on the operator's accreditation different from that imposed under the reviewable decision (the *new decision*), the transitioning rail transport operator is taken, on the day the new decision takes effect, to be an accredited person holding an accreditation under the Law subject to—
- (a) the condition or restriction imposed under the new decision; and
 - (b) all the other conditions or restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
- (5) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.
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**134 Review of decision to take disciplinary action—
imposition of expiry date on accreditation**

- (1) This section applies if—
- (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 59 of the RS Act (the *reviewable decision*) to impose an expiry date on the operator's accreditation; and
- Note**
- See section 59(3)(b)(iii) of the **Rail Safety Act 2006**.
- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
- (3) If under section 88 of the RS Act the Safety affirms the reviewable decision, the transitioning rail transport operator's accreditation is taken, on the day the decision of the Safety Director takes effect, to be revoked by the Regulator under section 73(2)(b) of the Law with effect from the date specified in the reviewable decision as the date of expiry of the accreditation.
- (4) If under section 88 of the RS Act the Safety Director varies or sets aside the reviewable decision and imposes a date of expiry on the operator's accreditation different from that imposed under the reviewable decision (the *new decision*), the transitioning rail transport operator's accreditation is taken, on the day the new decision takes effect, to be revoked by the Regulator under section 73(2)(b) of the Law with effect from the date specified in the new decision as the date of expiry of the accreditation.
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- (5) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.

**135 Review of decision to take disciplinary action—
suspension**

- (1) This section applies if—
- (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 59 of the RS Act (the *reviewable decision*) to suspend the operator's accreditation; and
- Note**
See section 59(3)(b)(iv) of the **Rail Safety Act 2006**.
- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
- (3) If the effect of the decision of the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person—
- (a) holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision; and
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- (b) whose accreditation has been suspended by the Regulator under section 73 of the Law until the day on which the suspension ends.
 - (4) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision and imposes a new period of suspension, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person—
 - (a) holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision; and
 - (b) whose accreditation has been suspended by the Regulator under section 73(2)(a) of the Law until the day on which that new period of suspension ends.
 - (5) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.

136 Review of decision to take disciplinary action—cancellation

- (1) This section applies if—
 - (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 59 of the RS Act (the *reviewable decision*) to cancel the operator's accreditation; and
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Note

See section 59(3)(b)(v) of the **Rail Safety Act 2006**.

- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
- (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator's accreditation is taken, on the day the decision of the Safety Director takes effect, to be revoked by the Regulator under section 73(2)(b) of the Law.
- (4) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to be an accredited person holding an accreditation under the Law subject to the conditions and restrictions which applied to the operator's RS Act accreditation immediately before the reviewable decision.

137 Review of decision to refuse to grant exemption from requirement to be accredited

- (1) This section applies if—
 - (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 63 of that Act (the *reviewable decision*) to refuse to exempt the operator from the requirement to be accredited under Part 5 of that Act; and

S. 137(1)(a)
amended by
No. 70/2013
s. 3(Sch. 1
item 44.4).

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- (b) the review as provided under that section has not been completed before the commencement day.
- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
- (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, not to be an accredited person under the Law.
- (4) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision and grants the exemption from the requirement to be accredited under Part 5 of the RS Act, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to have been granted an exemption under Division 5 of Part 3 of the Law subject to any terms, conditions or limitations specified in the decision of the Safety Director.

138 Review of decision to revoke exemption from requirement to be accredited

- (1) This section applies if—
- (a) an application is made under section 88 of the RS Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 64 of the RS Act (the *reviewable decision*) to revoke an exemption granted to the operator from the requirement to be accredited under Part 5 of that Act; and
- (b) the review as provided under section 88 of the RS Act has not been completed before the commencement day.
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- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
 - (3) If under section 88 of the RS Act the Safety Director affirms the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, not to be an accredited person under the Law or to hold an exemption under Division 5 of Part 3 of the Law.
 - (4) If under section 88 of the RS Act the Safety Director sets aside the reviewable decision, the transitioning rail transport operator is taken, on the day the decision of the Safety Director takes effect, to have been granted an exemption under Division 5 of Part 3 of the Law subject to the same terms, conditions or limitations that applied to the exemption granted to the operator under 63 of RS Act that was the subject of the application for review.

Division 4—Transition from the Transport (Compliance and Miscellaneous) Act 1983

139 Securing a site

A site at RS Act railway premises that is secured under section 228ZC of the TCM Act immediately before the commencement day is taken on and after that day to be secured under section 149 of the Law.

140 Things seized under seizure power

- (1) This section applies if—
 - (a) a transport safety officer seizes a thing under section 228ZE of the TCM Act from RS Act railway premises before the commencement day; and

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- (b) the thing seized is in the possession or control of the officer or Safety Director immediately before that day.
 - (2) On the commencement day, the thing seized is taken to have been seized from railway premises under section 158 of the Law by that officer as a rail safety officer.

141 Things seized under a search warrant

- (1) This section applies if—
 - (a) a transport safety officer seizes a thing under a search warrant issued under section 228ZG of the TCM Act from RS Act railway premises; and
 - (b) the thing seized is in the possession or control of the officer or Safety Director immediately before that day.
- (2) On the commencement day, the thing seized is taken to have been seized from railway premises under section 158 of the Law by that officer as a rail safety officer.

142 Search warrant

- (1) This section applies if—
 - (a) a search warrant has been issued under section 228ZG of the TCM Act in relation to RS Act railway premises; and
 - (b) the search warrant has not been executed before the commencement day.
- (2) On and after the commencement day, the search warrant is taken to have been issued under section 150 of the Law in relation to those premises.

143 Power to require production of documents and to answer questions

A direction given under section 228ZK of the TCM Act to a transitioning rail transport operator or a relevant person that relates to a transitioning rail transport operator before the commencement day that has not been complied with before the commencement day is taken, on that day, to be a requirement made under section 154(1)(b) of the Law to that operator or person.

144 Direction to provide reasonable assistance

A direction given under section 228ZL of the TCM Act to a transitioning rail transport operator or a relevant person that relates to a transitioning rail transport operator before the commencement day that has not been complied with before the commencement day is taken, on that day, to be a requirement made under section 145(1)(k) of the Law to that operator or person.

145 Powers to support seizure

A direction given to a person under section 228ZR of the TCM Act that relates to a transitioning rail transport operator before the commencement day that has not been complied with before the commencement day is taken, on that day, to be a direction given under section 159 of the Law to that person.

146 Power to direct a thing's return

A direction given to a person under section 228ZS of the TCM Act in relation to a thing seized from RS Act railway premises before the commencement day that has not been complied with before the commencement day is taken, on that day, to be a direction given under section 160 of the Law to that person.

147 Receipt of seized things

- (1) This section applies if—
 - (a) a thing has been seized under Division 4B of Part VII of the TCM Act from RS Act railway premises before the commencement day; and
 - (b) a receipt was given under section 228ZT of the TCM Act in respect of that thing before the commencement day; and
 - (c) that thing is taken under section 140 or 141 to be a thing seized under section 158 of the Law.
- (2) On the commencement day, the receipt is taken to be a receipt given under section 161 of the Law.

148 Improvement notices

- (1) A TCM Act improvement notice served on a relevant person before the commencement day that has not been withdrawn under section 228ZZG of the TCM Act before the commencement day is taken, on that day, to be an improvement notice issued under section 175 of the Law that has been served on that person under section 175 of the Law.
- (2) Subsection (1) does not apply to a TCM Act improvement notice to which section 153 applies.

149 Prohibition notices

- (1) A TCM Act prohibition notice served on a specified person before the commencement day that has not been cancelled under section 228ZZM of the TCM Act before the commencement day is taken, on that day, to be a prohibition notice issued under section 179 of the Law to that person.

(2) Subsection (1) does not apply to a TCM Act prohibition notice to which section 154 applies.

(3) In this section—

specified person means—

- (a) a person who has or appears to have control over an activity occurring at RS Act railway premises that involves or will involve an immediate risk to the safety of persons;
- (b) a person who has or appears to have control over an activity which may occur at RS Act railway premises that, if it occurs, will involve an immediate risk to the safety of persons;
- (c) a person who has or appears to have control over an activity at, on, or in the immediate vicinity of, rail infrastructure or rolling stock of a transitioning rail transport operator that, if it occurs, will involve an immediate risk to the safety of members of the public or the railway operations of the operator.

150 Oral directions given before a prohibition notice is served

(1) This section applies if—

- (a) an oral direction has been given to a specified person under section 228ZZKA of the TCM Act before the commencement day; and
- (b) that oral direction has not been complied with before the commencement day; and

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- (c) a prohibition notice has not been served on the specified person in accordance with section 228ZZKA(5) of that Act before the commencement day.
- (2) On the commencement day, the oral direction is taken to be a prohibition notice under section 179 of the Law that has been issued orally.
- (3) Despite anything to the contrary in the Law, the prohibition notice to which this section applies ceases to have effect on the day that is 5 days after the day on which notice was given as an oral direction under section 228ZZKA of the TCM Act unless written notice of the prohibition notice is given in accordance with section 179(3) of the Law before the day the notice ceases to have effect.
- (4) In this section, *specified person* has the same meaning as in section 149(3).

151 Enforceable undertakings

- (1) This section applies if—
- (a) the Safety Director has accepted an undertaking by a transitioning rail transport operator under section 228ZZSB of the TCM Act before the commencement day; and
- (b) that undertaking has not been withdrawn before the commencement day.
- (2) On the commencement day, the undertaking is taken to be a rail safety undertaking accepted by the Regulator under section 251 of the Law.

152 Withdrawal or variation of enforceable undertakings

- (1) This section applies if—
- (a) a transitioning rail transport operator has applied to the Safety Director under section 228ZZSC of the TCM Act for a variation or withdrawal of an undertaking before the commencement day; and
 - (b) the Safety Director has not made a decision in respect of that application before the commencement day.
- (2) On and after the commencement day—
- (a) the undertaking is taken to be a rail safety undertaking accepted by the Regulator under section 251 of the Law; and
 - (b) that application is taken to be a request to the Regulator to agree to vary or withdraw the rail safety undertaking under section 256 of the Law.

153 Reviewable decision—service of improvement notice

- (1) This section applies if—
- (a) an application is made under section 228ZZR of the TCM Act before the commencement day in relation to the service of an improvement notice on a relevant person under section 228ZZC of that Act; and
 - (b) the review as provided under that section has not been completed before the commencement day.

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- (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
 - (3) If the effect of the decision of the Safety Director under section 228ZZR of the TCM Act is to affirm the service of the improvement notice, that improvement notice is taken, on the day the decision of the Safety Director takes effect, to be an improvement notice served on that relevant person under section 175 of the Law.

154 Reviewable decision—service of prohibition notice

- (1) This section applies if—
 - (a) an application is made under section 228ZZR of the TCM Act before the commencement day in relation to the service of a prohibition notice on a specified person under section 228ZZJ of that Act; and
 - (b) the review as provided under that section has not been completed before the commencement day.
 - (2) On and after the commencement day, the review must be completed in accordance with the RS Act.
 - (3) If the effect of the decision of the Safety Director under section 228ZZR of the TCM Act is to affirm the service of the prohibition notice, that prohibition notice is taken, on the day the decision of the Safety Director takes effect, to be a prohibition notice served on that specified person under section 179 of the Law.
 - (4) In this section, *specified person* has the same meaning as in section 149(3).
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Division 5—Exemption from requirement to be accredited

155 Regional Rail Link entities are exempted from the requirement to be accredited for 3 years

(1) Despite anything to the contrary in the Law, section 62 of that Law does not apply to a Regional Rail Link entity for the period commencing on the commencement day and ending on the third anniversary of the commencement day.

(2) In this section—

project authority means—

- (a) the project proponent; or
- (b) an entity appointed as the project authority for Regional Rail Link 1 or Regional Rail Link 2 under section 6 of the **Major Transport Projects Facilitation Act 2009**;

project proponent means the person appointed under section 15 of the **Major Transport Projects Facilitation Act 2009** as the project proponent for—

- (a) Regional Rail Link 1; or
- (b) Regional Rail Link 2;

Regional Rail Link Authority means the administrative office established by Order in Council under section 11 of the **Public Administration Act 2004** dated 24 August 2010 and published in the Government Gazette on 26 August 2010;

Regional Rail Link entity means—

- (a) the Regional Rail Link Authority; or
- (b) the chief executive officer of the Regional Rail Link Authority; or

S. 155(2)
def. of
*Regional Rail
Link entity*
amended by
No. 70/2013
s. 4(Sch. 2
item 40.2).

- (c) a member of the board of the Regional Rail Link Authority; or
- (d) the Secretary to the Department of Transport, Planning and Local Infrastructure; or
- (e) the project proponent for Regional Rail Link 1 or Regional Rail Link 2; or
- (f) a contractor engaged by the Regional Rail Link Authority for the purposes of Regional Rail Link 1 or Regional Rail Link 2; or
- (g) a subcontractor engaged by a contractor referred to in paragraph (f) for the purposes of Regional Rail Link 1 or Regional Rail Link 2;

Regional Rail Link 1 means the Regional Rail Link 1 project declared to be a declared project under a declaration under section 10(b) of the **Major Transport Projects Facilitation Act 2009** published in the Government Gazette on 6 July 2010;

Regional Rail Link 2 means the Regional Rail Link 2 project declared to be a declared project under a declaration under section 10(b) of the **Major Transport Projects Facilitation Act 2009** published in the Government Gazette on 6 July 2010.

Division 6—Private siding accreditation exemptions

156 Rail infrastructure manager holding private siding exemption is a registered person under Law

- (1) This section applies if, immediately before the commencement day, a transitioning rail infrastructure manager held an exemption granted under section 63 of the RS Act.

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- (2) On the commencement day—
- (a) the transitioning rail infrastructure manager is taken to be a registered person granted registration under Division 5 of Part 3 of the Law; and
 - (b) the exemption that transitioning rail infrastructure manager held is taken to be registration under that Division; and
 - (c) the terms, conditions and limitations that are specified in that exemption are taken to be conditions or restrictions (as the case requires) to which that transitioning rail infrastructure manager's registration is subject.

157 Rolling stock operator holding private siding exemption is an accredited person under Law for 3 years after commencement day

- (1) This section applies if, immediately before the commencement day, a transitioning rolling stock operator held an exemption under section 63 of the RS Act.
- (2) On the commencement day—
- (a) the transitioning rolling stock operator is taken to be an accredited person; and
 - (b) the exemption that rolling stock operator held is taken to be an accreditation under the Law; and
 - (c) the terms, conditions and limitations that are specified in that exemption are taken to be conditions or restrictions (as the case requires) to which that transitioning rolling stock operator's accreditation is subject.

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- (3) Despite anything to the contrary in the Law, an accreditation to which this section applies expires on the third anniversary of the commencement day.

Division 7—Other matters

158 Provision of information and assistance by the Safety Director to the Regulator

- (1) On and after the commencement day, the Safety Director is authorised, on his or her own initiative or at the request of the Regulator—
- (a) to provide the Regulator with such information (including information given in confidence) in the possession or control of the Safety Director that is reasonably required by the Regulator or for the purposes of the Law and this Act; and
 - (b) to provide the Regulator with such other assistance as is reasonably required by the Regulator to perform a function or duty or exercise a power conferred or imposed under the Law and this Act.
- (2) In subsection (1), *information* includes health information and personal information collected by the Safety Director in the exercise or performance of a function or power under the RS Act.
- (3) Nothing done, or authorised to be done, by the previous regulator in acting under subsection (1)—
- (a) constitutes a breach of, or default under, an Act or other law; or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking; or
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- (c) constitutes a breach of a duty of confidence (whether arising by contract, in equity or by custom) or in any other way; or
 - (d) constitutes a civil or criminal wrong; or
 - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy; or
 - (f) releases a surety or any other obligee wholly or in part from an obligation.
- (4) This section applies despite any other Act or law (other than the **Charter of Human Rights and Responsibilities Act 2006**).
- (5) In this section—
- health information* has the meaning given in section 3(1) of the **Health Records Act 2001**;
- personal information* has the meaning given in section 3(1) of the **Health Records Act 2001** and section 3 of the **Information Privacy Act 2000**.
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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 7 March 2013

Legislative Council: 21 March 2013

The long title for the Bill for this Act was "A Bill for an Act to make provision for a national system of rail safety and to make related amendments to other Acts and for other purposes."

The **Rail Safety National Law Application Act 2013** was assented to on 23 April 2013 and came into operation as follows:

Sections 1–5 on 24 April 2013; section 2(1); rest of Act not yet proclaimed.

2. Table of Amendments

This Version incorporates amendments made to the **Rail Safety National Law Application Act 2013** by Acts and subordinate instruments.

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13

Commencement Date: Ss 3(Sch. 1 item 44), 4(Sch. 2 item 40) on 1.12.13:
s. 2(1)

Current State: This information relates only to the provision/s
amending the **Rail Safety National Law Application Act 2013**

Endnotes

3. Explanatory Details

No entries at date of publication.