

Authorised Version No. 013
Rail Safety National Law Application
Act 2013

No. 22 of 2013

Authorised Version incorporating amendments as at
2 December 2019

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Rail Safety National Law Application
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Authorised Version incorporating amendments as at
2 December 2019

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;

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

S. 3(1) def. of *Department* amended by Nos 70/2013 s. 4(Sch. 2 item 40.1), 41/2019 s. 4(b).

Department means Department of Transport;

S. 3(1) def. of *excluded local railway* repealed by No. 41/2019 s. 4(d).

* * * *

S. 3(1) def. of *public sector body* inserted by No. 41/2019 s. 4(a).

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

S. 3(1) def. of *public sector employee* inserted by No. 41/2019 s. 4(a).

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

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

S. 3(1) def. of *railway crossing* repealed by No. 41/2019 s. 4(d).

* * * *

S. 3(1) def. of *Road Rules* substituted by No. 7/2019 s. 36.

Road Rules has the same meaning as in section 3(1) of the **Road Safety Act 1986**;

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

S. 3(1) def. of *Safety Director* amended by No. 41/2019 s. 4(c).

* * * *

S. 3(1) def. of *service level agreement* repealed by No. 41/2019 s. 4(d).

* * * *

S. 3(1) def. of *transport safety officer* repealed by No. 41/2019 s. 4(d).

- (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.

* * * *

S. 4 repealed by No. 41/2019 s. 5.

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—

S. 6(a)
amended by
No. 41/2019
s. 6.

- (a) subject to Parts 4, 4A 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 in the **Victoria Police Act 2013**;

S. 7(1) def. of
police officer
substituted by
No. 37/2014
s. 10(Sch.
item 143).

Rail Safety National Law Application Act 2013
No. 22 of 2013
Part 2—Application of Rail Safety National Law

*	*	*	*	*	S. 7(1) def. of <i>public sector body</i> repealed by No. 41/2019 s. 7(1).
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*	*	*	*	*	S. 7(1) def. of <i>public sector employee</i> repealed by No. 41/2019 s. 7(1).
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Rail Safety National Law or *this Law* means the Rail Safety National Law (Victoria);

*	*	*	*	*	S. 7(1) def. of <i>railway</i> repealed by No. 41/2019 s. 7(1).
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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.

(3) For the purposes of this Act and the Rail Safety National Law (Victoria) and any other Act or law, the Office of the National Rail Safety Regulator is not an agency or instrumentality of the Crown in right of Victoria.

S. 7(3) inserted by No. 41/2019 s. 7(2).

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.

S. 9
repealed by
No. 41/2019
s. 8.

* * * * *

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**;

S. 11(1)(d)
repealed by
No. 41/2019
s. 9(a).

* * * * *

- (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); S. 11(1)(h)
amended by
No. 41/2019
s. 9(b).
 - (i) the **Fines Reform Act 2014**; S. 11(1)(i)
inserted by
No. 41/2019
s. 9(c).
 - (j) the **Infringements Act 2006**; S. 11(1)(j)
inserted by
No. 41/2019
s. 9(c).
 - (k) the **Privacy and Data Protection Act 2014**. S. 11(1)(k)
inserted by
No. 41/2019
s. 9(c).
- (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
 - (b) a reference in section 15(1) or 23(2)(a)(ii) 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.
- S. 12(1)(b)
amended by
No. 68/2017
s. 106.

- (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.

Rail Safety National Law Application Act 2013
No. 22 of 2013
Part 2—Application of Rail Safety National Law

* * * *

Pt 3
(Headings
and ss 13–38)
repealed by
No. 41/2019
s. 10.

Part 4—Modifications to the Rail Safety National Law and additional requirements

Pt 4 Div. 1
(Heading and
ss 39, 40)
repealed by
No. 41/2019
s. 11.

* * * *

Pt 4 Div. 1A
(Heading and
s. 40A)
inserted by
No. 41/2019
s. 12.

Division 1A—Additional rail safety duties

S. 40A
inserted by
No. 41/2019
s. 12.

40A Rail safety duties of persons providing railway operations by means of contracted personnel

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 53 of that Law there were inserted—

"53A Duties of persons providing railway operations by means of contracted personnel

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

that operator must, so far as is reasonably practicable, ensure that that individual is competent to carry out railway operations.

(3) In this section—

supply includes provide, grant or confer, whether as principal or agent."

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.

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Pt 4 Div. 3
(Heading and
s. 42)
repealed by
No. 41/2019
s. 13.

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Pt 4 Div. 4
(Heading and
s. 43)
amended by
No. 68/2017
s. 107,
repealed by
No. 41/2019
s. 13.

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."

Pt 4 Div. 7
(Heading and
s. 48)
substituted by
No. 41/2019
s. 14.

Division 7—Other matters

S. 48
substituted by
No. 41/2019
s. 14.

48 Authorisation of information disclosure in relation to notifiable occurrences

For the purposes of section 244(3)(e) of the Rail Safety National Law (Victoria), ONRSR, a member of ONRSR or a person authorised by ONRSR is authorised to disclose information in relation to notifiable occurrences to the following persons—

- (a) the Chief Investigator, Transport Safety;
- (b) the Secretary to the Department.

Part 4A—Alcohol and drug controls for rail safety workers

Division 1—Preliminary matters

48A Definitions

In this Part—

approved health professional means—

- (a) a person registered under the Health Practitioner Regulation National Law—
 - (i) to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student); and
 - (ii) in the registered nurses division of that profession;
- (b) a person approved under section 48B to take a blood sample for the purposes of the Rail Safety National Law (Victoria) and this Part;

assessment of drug impairment means an assessment under sections 48O and 48P;

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

breath analysis means an analysis of breath by a breath analysing instrument;

Chief Commissioner of Police means the Chief Commissioner of Police appointed under section 17 of the **Victoria Police Act 2013**;

corresponding law means a law of another State or a Territory that creates an offence substantially similar to an offence created by

Pt 4A
(Headings
and ss 48A–
48ZE)
inserted by
No. 41/2019
s. 17.

S. 48A
inserted by
No. 41/2019
s. 17.

section 128(1) of the Rail Safety National Law (Victoria) or section 48H(1);

drug screening test means a test by means of a device prescribed for the purpose of conducting drug screening tests;

oral fluid analysis means an analysis of oral fluid by means of a device prescribed for the purpose of conducting oral fluid analyses;

prescribed concentration of alcohol has the same meaning as in section 128(5) of the Rail Safety National Law (Victoria);

prescribed drug has the same meaning as in section 128(5) of the Rail Safety National Law (Victoria);

properly qualified analyst has the same meaning as in section 57B of the **Road Safety Act 1986**;

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

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

S. 48B
inserted by
No. 41/2019
s. 17.

48B Approval of person to take blood samples for the purposes of the Law and this Part

The Victorian Institute of Forensic Medicine Director may, in writing, approve a person to take blood samples for the purposes of the Rail Safety National Law (Victoria) and this Part if the Director is of the opinion that the person has the appropriate qualifications, training and experience to take such samples.

48C Assessment of drug impairment modification

Despite anything to the contrary in the Rail Safety National Law (Victoria), section 126(1) of that Law applies as a law of this jurisdiction as if—

- (a) in paragraph (e) of that subsection, for "occurrence," there were substituted "occurrence; or";
- (b) after paragraph (e) of that subsection there were inserted—
 - "(f) is required to undergo an assessment of drug impairment,".

S. 48C
inserted by
No. 41/2019
s. 17.

48D Presumptions in relation to presence of concentrations of alcohol and other drugs

- (1) For the purposes of Division 9 of Part 3 of the Rail Safety National Law (Victoria) and this Part, if it is established that at any time within 3 hours after an alleged offence against section 128(1)(a) or (c) of the Rail Safety National Law (Victoria) or section 48H(1)(a), a certain concentration of alcohol was present in the blood or breath of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that not less than that concentration of alcohol was present in the worker's blood or breath (as the case requires) at the time at which the offence is alleged to have been committed.
- (2) For the purposes of Division 9 of Part 3 of the Rail Safety National Law (Victoria) and this Part, if it is established that at any time within 3 hours after an alleged offence against section 128(1)(b) of the Rail Safety National Law (Victoria), a certain drug was present in the oral fluid or blood of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that that drug was present in the worker's oral

S. 48D
inserted by
No. 41/2019
s. 17.

fluid or blood at the time at which the offence is alleged to have been committed.

- (3) For the purposes of Division 9 of Part 3 of the Rail Safety National Law (Victoria) and this Part, if it is established that at any time within 3 hours after an alleged offence against section 128(1)(c) of the Rail Safety National Law (Victoria) or section 48H(1)(b), a certain drug was present in the body of the rail safety worker charged with the offence it must be presumed, until the contrary is proved, that the drug was present in the worker's body at the time at which the offence is alleged to have been committed.
 - (4) For the purposes of an alleged offence against section 48H(1)(i) or (j) it must be presumed that the concentration of alcohol indicated by an analysis to be present in the breath of the rail safety worker charged or found by an analyst to be present in the sample of blood taken from the worker charged (as the case requires) was not due solely to the consumption of alcohol after having carried out rail safety work unless the contrary is proved by the worker charged on the balance of probabilities by sworn evidence given by the worker which is corroborated by the material evidence of another person.
 - (5) For the purposes of an alleged offence against section 128(1)(b) or (c) of the Rail Safety National Law (Victoria) or section 48H(1)(b) it must be presumed that a drug found by an analyst to be present in the sample of blood or oral fluid taken from the rail safety worker charged was not due solely to the consumption or use of that drug after carrying out rail safety work unless the contrary is proved by the worker charged on the balance of probabilities by sworn evidence given by the worker which is corroborated by the material evidence of another person.
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48E When a rail safety worker is not to be taken to be impaired

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s. 17.

For the purposes of sections 48O to 48X, a rail safety worker is not to be taken to be impaired unless the worker's behaviour or appearance is such as to give rise to a reasonable suspicion that the worker is unable to carry out rail safety work properly.

48F When a rail safety worker is to be regarded as being about to carry out rail safety work

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For the purposes of Division 9 of Part 3 of the Rail Safety National Law (Victoria) and this Part, a rail safety worker is to be regarded as being about to carry out rail safety work if the worker has arrived at the worker's place of work but has not yet begun work.

48G Findings of guilt and convictions and subsequent offences

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If a rail safety worker who is found guilty or convicted of an offence against any one of the paragraphs of section 128(1) of the Rail Safety National Law (Victoria) or the paragraphs of section 48H(1), or against those sections, has at any time been found guilty or convicted of—

(a) an offence against the same or any other of those paragraphs or against either of those sections; or

(b) an offence against any corresponding law—the finding of guilt, or conviction of, the offence against that paragraph or section is to be taken to be a conviction for a subsequent offence.

Division 2—Offences and related evidentiary matters

**S. 48H
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No. 41/2019
s. 17.**

48H Additional offences involving alcohol and drugs

- (1) A rail safety worker is guilty of an offence if the worker—
- (a) carries out rail safety work while more than the prescribed concentration of alcohol is present in the worker's breath; or
 - (b) carries out rail safety work while impaired by a drug; or
 - (c) refuses or fails to comply with a requirement under section 48M(10); or
 - (d) refuses to undergo an assessment of drug impairment in accordance with sections 48O and 48P when required under those sections to do so or refuses to comply with a direction under section 48O(4); or
 - (e) refuses to immediately comply with a requirement under section 48Q(2) or a direction under section 48Q(4) or fails to comply with the obligation in section 48Q(5); or
 - (f) refuses to provide a sample of oral fluid in accordance with section 48R when required under that section to do so or refuses to immediately comply with any other requirement made under that section; or
 - (g) refuses to comply with a requirement made under section 48X(2) or (3); or
 - (h) refuses to comply with a requirement made under section 48V(2) or (3); or
 - (i) within 3 hours after having carried out rail safety work furnishes a sample of breath for analysis by a breath analysing instrument

under a requirement under section 48M
and—

- (i) the result of the analysis as recorded or shown by the breath analysing instrument indicates that more than the prescribed concentration of alcohol is present in the worker's breath; and
 - (ii) the concentration of alcohol indicated by the analysis to be present in the worker's breath was not due solely to the consumption of alcohol after having carried out the rail safety work; or
- (j) has had a sample of blood taken from the worker in accordance with section 48ZA within 3 hours after having carried out rail safety work and—
- (i) the sample has been analysed within 12 months after it was taken by a properly qualified analyst within the meaning of section 48ZB and the analyst has found that at the time of analysis more than the prescribed concentration of alcohol was present in that sample; and
 - (ii) the concentration of alcohol found by the analyst to be present in that sample was not due solely to the consumption of alcohol after having carried out the rail safety work.
- (2) A rail safety worker who is guilty of an offence under subsection (1) is liable to a fine not exceeding \$10 000.

- (3) It is a defence to a charge under subsection (1)(i) for the person charged to prove that the breath analysing instrument used was not on that occasion in proper working order or properly operated.
- (4) It is a defence to a charge under subsection (1)(j) for the person charged to prove that the result of the analysis was not a correct result.

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48I Additional circumstances when rail safety workers may be convicted or found guilty

A rail safety worker may be convicted or found guilty of an offence under section 126(3) or 127(3) of the Rail Safety National Law (Victoria) or section 48H(1)(d) even if—

- (a) in the case of an offence under section 126(3) of the Rail Safety National Law (Victoria) constituted by a failure to submit to a preliminary breath test or breath analysis—
 - (i) a breath analysing instrument was not available at the place where the requirement was made at the time it was made; or
 - (ii) a person authorised to operate a breath analysing instrument was not present at the place where the requirement was made at the time it was made;
- (b) in the case of an offence under section 127(3) of the Rail Safety National Law (Victoria) constituted by a failure to submit to a drug screening test, oral fluid analysis, blood test or urine test (or any combination of these)—

- (i) the authorised person requiring a sample of blood or urine had not nominated a registered medical practitioner or approved health professional to take the sample; or
 - (ii) if the worker was required under section 48R(3) to provide a sample of oral fluid for analysis by a properly qualified analyst, the authorised person requiring a sample of oral fluid had not nominated a registered medical practitioner or approved health professional to whom the sample was to be furnished for analysis;
- (c) in the case of an offence under section 48H(1)(d)—
 - (i) a requirement to undergo an assessment of drug impairment was not made at a place where such an assessment could have been carried out; or
 - (ii) a person authorised to carry out an assessment of drug impairment was not present at the place where the requirement was made at the time it was made;
- (d) in the case of an offence under section 127(3) of the Rail Safety National Law (Victoria)—
 - (i) a requirement to submit to a drug screening test, oral fluid analysis, blood test or urine test (or any combination of these) was not made at a place where such a test or analysis could have been carried out; or

- (ii) a person authorised to carry out the drug screening test, oral fluid analysis, blood test or urine test was not present at the place where the requirement was made at the time it was made.

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48J Evidence as to effect of the consumption of alcohol or consumption or use of a drug

- (1) In any proceeding for an offence under section 48H(1)(i) or (j) evidence as to the effect of the consumption of alcohol on the accused is admissible for the purpose of rebutting the presumption created by section 48D(4) but is otherwise inadmissible.
- (2) In any proceeding for an offence against section 128(1)(b) or (c) of the Rail Safety National Law (Victoria) or section 48H(1)(b) evidence as to the effect of the consumption or use of a drug on the accused is admissible for the purpose of rebutting the presumption created by section 48D(5) but is otherwise inadmissible.

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48K Existence of certain facts proof that rail safety worker was drug impaired while carrying out rail safety work

In any proceeding for an offence under section 48H(1)(b), proof that—

- (a) the rail safety worker was carrying out rail safety work; and
- (b) one or more drugs were present in the rail safety worker's body at the time at which the worker carried out rail safety work; and
- (c) the behaviour of the rail safety worker on an assessment of drug impairment carried out on the worker was consistent with the behaviour usually associated with a person who has consumed or used that drug or those drugs; and

- (d) the behaviour usually associated with a person who has consumed or used that drug or those drugs would result in the person being unable to carry out rail safety work properly—

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

Division 3—Testing and analysis

48L Additional matters for preliminary breath tests

- (1) This section applies if a rail safety worker is required by an authorised person to submit to testing by means of a preliminary breath test under section 126 of the Rail Safety National Law (Victoria).
- (2) The rail safety worker must undergo a preliminary breath test by exhaling continuously into a prescribed device to the satisfaction of the authorised person.
- (3) However, the rail safety worker is not obliged to submit to testing by means of a preliminary breath test under section 126 of the Rail Safety National Law (Victoria) if more than 3 hours have passed since the worker last carried out rail safety work.

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48M Additional matters for breath analyses

- (1) This section applies if a rail safety worker is required by an authorised person to submit to testing by means of a breath analysis under section 126 of the Rail Safety National Law (Victoria).
- (2) For the purposes of section 126 of the Rail Safety National Law (Victoria), a requirement of the authorised person under that section may be that

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the rail safety worker submit to testing by doing one or both of the following—

- (a) furnishing a sample of breath for analysis by a breath analysing instrument;
 - (b) furnishing one or more further samples if it appears to the authorised person that the breath analysing instrument is incapable of measuring the concentration of alcohol present in the sample, or each of the samples, previously furnished in grams per 210 litres of exhaled air—
 - (i) because the amount of sample furnished was insufficient; or
 - (ii) because of a power failure or malfunctioning of the instrument; or
 - (iii) for any other reason whatsoever.
- (3) In addition, for the purposes of section 126(1)(a) to (e) of the Rail Safety National Law (Victoria), the authorised person may require the rail safety worker to—
- (a) accompany the authorised person to a police station or other place where the sample of breath may be furnished; and
 - (b) remain there until the worker has furnished the sample of breath and been given the certificate referred to in subsection (8) or until 3 hours after the carrying out of the rail safety work, whichever is the sooner.
- (4) In addition, for the purposes of section 126(1)(f) of the Rail Safety National Law (Victoria), the authorised person may require the rail safety worker to remain at the place at which the worker is required to remain for the purposes of the drug assessment until—

- (a) the worker has furnished the sample of breath and been given the certificate referred to in subsection (8) and the drug assessment has been carried out; or
- (b) 3 hours after the carrying out of rail safety work—

whichever is the sooner.

Note

Section 126(1)(f) forms part of the Rail Safety National Law (Victoria)—see section 48C.

- (5) If the rail safety worker is required to furnish a sample of breath for analysis, the worker must do so by exhaling continuously into the instrument to the satisfaction of the person operating it.
- (6) However, a rail safety worker is not obliged to furnish a sample of breath under this section if more than 3 hours have passed since the worker last carried out rail safety work.
- (7) A breath analysing instrument referred to in this section must be operated by a person authorised to do so by the Chief Commissioner of Police.
- (8) As soon as practicable after a sample of a rail safety worker's breath is analysed by means of a breath analysing instrument the person operating the instrument must sign and give to the worker whose breath has been analysed a certificate containing the prescribed particulars produced by the breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the worker's breath.
- (9) A rail safety worker must not be convicted or found guilty of refusing to furnish under this section a sample of breath for analysis if the worker satisfies the court that there was some reason of a substantial character for the refusal,

other than a desire to avoid providing information which might be used against the worker.

- (10) The authorised person who required a sample of breath under section 126(1) of the Rail Safety National Law (Victoria) from a rail safety worker may require the worker to allow a registered medical practitioner or an approved health professional nominated by the person requiring the sample to take from the worker a sample of blood for analysis if it appears to the person that—
- (a) the worker is unable to furnish the required sample of breath on medical grounds or because of some physical disability; or
 - (b) the breath analysing instrument is incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by the worker for any reason whatsoever—

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

- (11) A rail safety worker who allows the taking of a sample of the worker's blood in accordance with subsection (10) must not be convicted or found guilty of refusing to furnish under section 126(1) of the Rail Safety National Law (Victoria) a sample of breath for analysis.
- (12) A person must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other person in accordance with subsection (10).

Penalty: \$10 000.

- (13) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood which the practitioner or approved health professional believed on reasonable grounds was allowed to be taken under subsection (10).

48N Evidentiary matters relating to breath analysis

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- (1) Evidence derived from a sample of breath furnished following a requirement made under section 126(1) of the Rail Safety National Law (Victoria) is not rendered inadmissible by a failure to comply with a request under section 48Y if reasonable efforts were made to comply with the request.
- (2) If the question of whether a breath analysing instrument was incapable of measuring in grams per 210 litres of exhaled air the concentration of alcohol present in any sample of breath furnished by a rail safety worker is relevant on a hearing for an offence against section 128(1) of the Rail Safety National Law (Victoria) or section 48H(1) then, without affecting the admissibility of any evidence which might be given apart from the provisions of this subsection, a document—
- (a) purporting to be a print-out produced by that instrument in respect of that sample; and
 - (b) purporting to be signed by the person who operated the instrument—

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

- (3) A document referred to in subsection (2) does not cease to be admissible in evidence or, in the absence of evidence to the contrary, to be proof of

the facts and matters contained in it only because of the fact that it refers to the **Road Safety Act 1986** and not to the Rail Safety National Law (Victoria) or the **Rail Safety National Law Application Act 2013** and the reference to the **Road Safety Act 1986** in that document and in each other document produced by the breath analysing instrument in respect of the sample of breath must be construed for all purposes as a reference to the Rail Safety National Law (Victoria) or the **Rail Safety National Law Application Act 2013** (as the case requires).

S. 48O
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48O Assessment of drug impairment

- (1) Subject to this section, a police officer may at any time require a rail safety worker who—
 - (a) is about to carry out rail safety work; or
 - (b) is carrying out rail safety work; or
 - (c) is attempting to carry out rail safety work; or
 - (d) is still on railway premises after carrying out rail safety work; or
 - (e) without limiting a preceding paragraph—is involved in a prescribed notifiable occurrence—to undergo an assessment of drug impairment.
- (2) Subject to this section, a police officer may require—
 - (a) a rail safety worker whom the officer believes on reasonable grounds has within the last 3 preceding hours carried out rail safety work on a railway when a notifiable occurrence or prescribed notifiable occurrence occurred involving the rail safety worker; or

- (b) a rail safety worker required under section 126(1) of the Rail Safety National Law (Victoria) to submit to a preliminary breath test; or
 - (c) a rail safety worker required under section 126(1) of the Rail Safety National Law (Victoria) to submit to a breath analysis—
to undergo an assessment of drug impairment.
- (3) A police officer may only require a rail safety worker to undergo an assessment of drug impairment under subsection (1) or (2) if the officer is of the opinion that the rail safety worker's behaviour or appearance indicates that the worker may be impaired for a reason other than alcohol alone.
- (4) A police officer may direct a rail safety worker required under subsection (1) or (2) to undergo an assessment of drug impairment to accompany the officer to a place where the assessment is to be carried out and to remain there until the assessment has been carried out or until 3 hours after the carrying out of the rail safety work, whichever is sooner.
- (5) A rail safety worker is not obliged to undergo an assessment of drug impairment if more than 3 hours have passed since the worker last carried out rail safety work.

48P Procedure for assessments of drug impairment

- (1) An assessment of drug impairment must be carried out by a police officer authorised to do so by the Chief Commissioner of Police.
- (2) An assessment of drug impairment must be carried out in accordance with the procedure specified in a notice published under section 55A(5) of the **Road Safety Act 1986**.

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- (3) The carrying out of an assessment of drug impairment on a rail safety worker must be video-recorded if the worker was involved in a notifiable occurrence or prescribed notifiable occurrence unless the prosecution satisfies the court that a video-recording has not been made because of exceptional circumstances.
- (4) If the rail safety worker on whom an assessment of drug impairment was carried out is subsequently charged with an offence under section 48H(1)(b), and the carrying out of the assessment of drug impairment is video-recorded, a copy of the video-recording must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.
- (5) Subject to subsection (6), the video-recording of the carrying out of an assessment of drug impairment on a rail safety worker is only admissible in a proceeding against that worker for an offence against Division 9 of Part 3 of the Rail Safety National Law (Victoria) or this Part for the purpose of establishing that the assessment of drug impairment was carried out in accordance with the procedure specified in a notice under section 55A(5) of the **Road Safety Act 1986**.
- (6) Evidence obtained as a result of an assessment of drug impairment carried out on a rail safety worker is inadmissible as part of the prosecution case in proceedings against that worker for any offence if the video-recording of the assessment and any related material and information should have been but has not been destroyed as required by section 48Z.
- (7) In any proceeding under Division 9 of Part 3 of the Rail Safety National Law (Victoria) or this Part—

- (a) the statement of a police officer that on a particular date the officer was authorised by the Chief Commissioner of Police under subsection (1) to carry out an assessment of drug impairment; or
- (b) a certificate purporting to be signed by the Chief Commissioner of Police that a police officer named in it is authorised by the Chief Commissioner of Police under subsection (1) to carry out an assessment of drug impairment—

is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that police officer.

48Q Drug screening tests

S. 48Q
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s. 17.

- (1) This section applies if an authorised person requires a rail safety worker to submit to a drug screening test under section 127(1) of the Rail Safety National Law (Victoria).
- (2) The authorised person may, for the purposes of carrying out a drug screening test, require the rail safety worker to place a prescribed device, or the collection unit of a prescribed device, into the worker's mouth and carry out the physical actions that are necessary to ensure that, in the opinion of the authorised person, a sufficient sample of oral fluid has been captured by the device or unit.
- (3) A device prescribed for the purposes of carrying out drug screening tests may be comprised of a collection unit and a testing unit and one or more other parts.
- (4) The authorised person who carries out a drug screening test may give any reasonable direction as to the physical actions that are necessary for the test to be carried out.

- (5) The rail safety worker must remain at the place at which the drug screening test is being carried out until the sample of oral fluid collected in accordance with subsection (2) has been tested by a prescribed device.
- (6) The rail safety worker is not obliged to undergo a drug screening test under this section if more than 3 hours have passed since the worker—
 - (a) last carried out or attempted to carry out rail safety work; or
 - (b) was involved in a prescribed notifiable occurrence.

S. 48R
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s. 17.

48R Oral fluid analysis

- (1) This section applies if a rail safety worker is—
 - (a) required—
 - (i) to undergo an assessment of drug impairment under section 48O; or
 - (ii) to submit to a drug screening test under section 127(1) of the Rail Safety National Law (Victoria); and
 - (b) in the opinion of the authorised person who carries out that assessment or test—
 - (i) the assessment or test indicates that the worker's oral fluid contains a prescribed drug; or
 - (ii) the worker has refused or failed to carry out the assessment or test in the manner described in section 48P or 48Q(2) (as the case requires).
- (2) An authorised person may require the rail safety worker to provide a sample of oral fluid for testing by a prescribed device.

- (3) If an authorised person considers it necessary, the person may require the rail safety worker to provide a sample of oral fluid for analysis by a properly qualified analyst.
- (4) If the authorised person considers it necessary for the purposes of subsection (2) or (3), the person may require the rail safety worker—
 - (a) to accompany any authorised person to a place or vehicle where a sample is to be provided; and
 - (b) to remain there until the earlier of the following—
 - (i) the worker has provided the sample and any further sample required to be provided under subsection (5) and the sample has been tested by a prescribed device;
 - (ii) 3 hours after the worker last carried out or attempted to carry out the rail safety work or was involved in a prescribed notifiable occurrence.
- (5) The authorised person who required a sample of oral fluid to be provided under subsection (2) may require the rail safety worker who provided it to provide one or more further samples if it appears to the person that the prescribed device is incapable of testing for the presence of a prescribed drug in the sample or samples because—
 - (a) the amount of sample provided was insufficient; or
 - (b) of a power failure or malfunctioning of the device.

- (6) If the authorised person requires a sample of oral fluid to be provided under subsection (3), the person may require the rail safety worker who provided it to provide one or more further samples if it appears to the person that the amount of sample provided was insufficient for the purposes of testing for the presence of a prescribed drug.
- (7) An authorised person who is a police officer may only carry out the procedure for the provision of a sample of oral fluid under this section if the police officer is authorised in writing by the Chief Commissioner of Police for the purposes of this section.
- (8) The Chief Commissioner of Police may authorise a police officer for the purposes of this section if satisfied that the officer has the appropriate training to carry out the prescribed procedure for the provision of a sample.
- (9) A device prescribed for the purposes of the collection of a sample of oral fluid may be comprised of a collection unit and a testing unit and one or more other parts.

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No. 41/2019
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48S Provision of oral fluid samples for oral fluid analysis

- (1) A rail safety worker required to provide a sample of oral fluid under section 48R must do so by placing the prescribed device, or the collection unit of the device, into the worker's mouth and carrying out the physical actions that are necessary to ensure that, in the opinion of the authorised person to whom the sample is being provided, a sufficient sample of oral fluid has been captured by the device or unit.
- (2) An authorised person who requires a rail safety worker to provide a sample of oral fluid under section 48R may give any reasonable direction as

to the physical actions that are necessary for the sample to be provided.

- (3) A rail safety worker is not obliged to provide a sample of oral fluid under section 48R if more than 3 hours have passed since the worker—
 - (a) last carried out or attempted to carry out rail safety work; or
 - (b) was involved in a prescribed notifiable occurrence.
- (4) The provision of a sample of oral fluid under this section must be carried out in accordance with the prescribed procedure.
- (5) A rail safety worker must not be convicted or found guilty of refusing to provide under section 48R a sample of oral fluid if the worker satisfies the court that there was some reason of a substantial character for the refusal, other than a desire to avoid providing information which might be used against the worker.
- (6) A device prescribed for the purposes of the collection of a sample of oral fluid may be comprised of a collection unit and a testing unit and one or more other parts.

48T Part of oral fluid sample to be delivered to rail safety worker if drugs detected

S. 48T
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No. 41/2019
s. 17.

If a test of a sample of oral fluid provided under section 48R by a rail safety worker indicates, in the opinion of the authorised person who carried out the procedure in the course of which the sample was provided, that the oral fluid contains a prescribed drug, the person may—

- (a) if the person who carried out the procedure was not the authorised person who required the sample to be provided, deliver a part of

the sample to the person who required the sample to be provided; and

- (b) deliver another part of the sample to the worker.

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No. 41/2019
s. 17.

48U Rail safety worker required to provide oral fluid sample may request sample of blood to be taken

- (1) This section applies if a rail safety worker is required under section 48R to provide a sample of oral fluid.
- (2) The rail safety worker may request the authorised person who required the sample to arrange for the taking in the presence of an authorised person of a sample of the worker's blood for analysis at the worker's own expense by a registered medical practitioner or an approved health professional nominated by the person.
- (3) Nothing in this section relieves a rail safety worker from any penalty under section 48H(1)(f) for refusing to provide a sample of oral fluid.

S. 48V
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No. 41/2019
s. 17.

48V Authorised person may require blood sample if oral fluid sample insufficient

- (1) This section applies if an authorised person requires a rail safety worker to provide a sample of oral fluid under section 48R for analysis and in the opinion of the person—
- (a) the worker is unable to furnish the required sample of oral fluid on medical grounds or because of some physical disability; or
- (b) the prescribed device is incapable of testing for the presence in the sample of a prescribed drug for any reason whatsoever.

- (2) The authorised person may require the rail safety worker to allow a registered medical practitioner or an approved health professional nominated by the person who required the sample to take from the worker a sample of blood for analysis.
- (3) For the purposes of subsection (2), an authorised person may require the rail safety worker—
 - (a) to accompany any authorised person to a place where the sample of the worker's blood is to be taken; and
 - (b) to remain there until the earlier of the following—
 - (i) the sample is taken;
 - (ii) 3 hours after the worker last carried out or attempted to carry out rail safety work or was involved in a prescribed notifiable occurrence.
- (4) A rail safety worker who allows the taking of a sample of the worker's blood in accordance with this section must not be convicted or found guilty of refusing to provide a sample of oral fluid in accordance with section 48R.
- (5) A rail safety worker must not hinder or obstruct a registered medical practitioner or an approved health professional attempting to take a sample of the blood of any other rail safety worker in accordance with this section.

Penalty: \$10 000.
- (6) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood that the practitioner or approved health professional believed on reasonable grounds was required to be

taken from any rail safety worker under this section.

S. 48W
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48W Evidentiary matters relating to oral fluid analysis

- (1) Evidence derived from a sample of oral fluid provided following a requirement made under section 48R or 48V is not rendered inadmissible by a failure to comply with a request under section 48U if reasonable efforts were made to comply with the request.
- (2) In any proceeding under Division 9 of Part 3 of the Rail Safety National Law (Victoria) or this Part, the following are admissible in evidence and, in the absence of evidence to the contrary, are proof of the authority of the police officer—
 - (a) the statement of a police officer that on a particular date the officer was authorised for the purposes of section 48R(8);
 - (b) a certificate purporting to be signed by the Chief Commissioner of Police that a police officer named in it is authorised for the purposes of section 48R(8).

S. 48X
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No. 41/2019
s. 17.

48X Blood and urine tests

- (1) This section applies if a rail safety worker—
 - (a) is required by an authorised person to submit to a blood test or urine test under section 127(1) of the Rail Safety National Law (Victoria); or
 - (b) undergoes an assessment of drug impairment when required under section 48O to do so and the assessment, in the opinion of the police officer carrying it out, indicates that the rail safety worker may be impaired by a drug or drugs.

- (2) An authorised person may require the rail safety worker to—
 - (a) allow a registered medical practitioner or an approved health professional nominated by the person to take from the worker a sample of that worker's blood for analysis;
 - (b) furnish to a registered medical practitioner, an approved health professional or a person appointed under section 124 of the Rail Safety National Law (Victoria) nominated by the authorised person a sample of the worker's urine for analysis.
- (3) For the purpose of subsection (2), an authorised person may require the rail safety worker—
 - (a) to accompany any authorised person to a place where the sample is to be taken or furnished; and
 - (b) to remain there until the earlier of the following—
 - (i) the sample is taken or furnished;
 - (ii) 3 hours after the worker last carried out or attempted to carry out rail safety work or was involved in a prescribed notifiable occurrence.
- (4) An authorised person must not require a rail safety worker to allow a sample of the worker's blood to be taken for analysis under subsection (2) if that worker has already had a sample of blood taken under section 48Y after carrying out rail safety work.

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

Penalty: \$10 000.

- (6) No action lies against a registered medical practitioner or an approved health professional in respect of anything properly and necessarily done by the practitioner or approved health professional in the course of taking any sample of blood, or being furnished with any sample of urine, which the practitioner or approved health professional believed on reasonable grounds was required to be taken from, or furnished by, a rail safety worker under this section.
- (7) If the rail safety worker on whom an assessment of drug impairment was carried out is subsequently charged with an offence under section 48H(1)(b), a copy of a written report on that assessment prepared by the police officer who carried it out and containing the prescribed particulars must be served with the summons or, if a summons is not issued, within 7 days after the filing of the charge-sheet charging the offence.

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48Y Rail safety worker may request sample of blood to be taken for analysis

- (1) This section applies if—
- (a) a rail safety worker is required under section 126(1) of the Rail Safety National Law (Victoria) to submit to testing by means of a breath analysis; and
 - (b) the rail safety worker does so by furnishing a sample of breath for analysis in accordance with section 48M.

- (2) The rail safety worker may, immediately after being given the certificate referred to in section 48M(8), request the authorised person who required the sample to arrange for the taking in the presence of an authorised person of a sample of the worker's blood for analysis at the worker's own expense by a registered medical practitioner or an approved health professional nominated by the person.
- (3) Nothing in subsection (2) relieves a rail safety worker from any penalty under section 126(3) of the Rail Safety National Law (Victoria).

48Z Destruction of identifying information

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- (1) In this section, *relevant offence* means—
 - (a) an offence under section 127(3) of the Rail Safety National Law (Victoria) or section 48H(1)(b) or (g); or
 - (b) any other offence arising out of the same circumstances; or
 - (c) any other offence in respect of which the evidence obtained as a result of the assessment of drug impairment has probative value.
- (2) If a rail safety worker undergoes an assessment of drug impairment that has been carried out on the rail safety worker under sections 48O and 48P and—
 - (a) the rail safety worker has not been charged with a relevant offence at the end of the period of 12 months after the undergoing of the assessment of drug impairment; or
 - (b) the rail safety worker has been so charged but the charge is not proceeded with, the prosecution for the offence is discontinued or the rail safety worker is not found guilty of

the offence, whether on appeal or otherwise,
before the end of that period—

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

- (3) A video-recording and any related material and
information referred to in subsection (2) must be
destroyed—
- (a) in a case to which subsection (2)(a) applies,
immediately after that period of 12 months;
or
 - (b) in a case to which subsection (2)(b)
applies—
 - (i) within one month after the conclusion
of the proceeding and the end of any
appeal period; or
 - (ii) if the proceeding has been adjourned
under section 75 of the **Sentencing
Act 1991**, within one month after
dismissal under that section.
- (4) A police officer may, before the end of a period
referred to in subsection (3)(b), apply without
notice to the Magistrates' Court for an order
extending that period and, if the Court makes such
an order, the reference to the period in subsection
(3) is a reference to that period as so extended.
- (5) If the Magistrates' Court makes an order under
subsection (4), it must give reasons for its decision
and cause a copy of the order to be served on the
rail safety worker on whom the assessment of
drug impairment was carried out.

- (6) If a video-recording or related material and information is required to be destroyed in accordance with this section, the Chief Commissioner of Police must, if the rail safety worker on whom the assessment was carried out so requests, within 14 days after receiving the request, notify that worker in writing whether the destruction has occurred.
- (7) A person who knowingly—
 - (a) fails to destroy; or
 - (b) uses, or causes or permits to be used—
a video-recording or related material and information required by this section to be destroyed is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.
- (8) A person who at any time uses, or causes or permits to be used, or otherwise disseminates information derived from any video-recording or related material and information required by this section to be destroyed except in good faith for the purposes of a relevant offence is guilty of an offence punishable by a fine of not more than 120 penalty units or to imprisonment for a term of not more than 12 months.

48ZA Blood samples to be taken in certain cases

- (1) In this section—
doctor means a registered medical practitioner and includes a police surgeon.
- (2) If a rail safety worker enters or is brought to a place for examination or treatment in consequence of a notifiable occurrence (whether within Victoria or not), the worker must allow a doctor or approved health professional to take from the

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worker at that place a sample of the worker's blood for analysis.

Penalty: \$10 000.

(3) Subsection (2) does not apply if—

- (a) in the opinion of the doctor or approved health professional first responsible for the examination or treatment of the rail safety worker the taking of a blood sample from the worker would be prejudicial to the worker's proper care and treatment; or
- (b) the doctor or approved health professional first responsible for the examination or treatment of the rail safety worker believed on reasonable grounds that the worker was not a rail safety worker.

(4) A rail safety worker to whom subsection (2) applies and who is unconscious or otherwise unable to communicate must be taken to allow the taking of a sample of the worker's blood by a doctor or approved health professional at a place which the worker enters or to which the worker is brought for examination or treatment.

(5) If a sample of a rail safety worker's blood is taken in accordance with this section, evidence of the taking of it, the analysis of it or the results of the analysis must not be used in evidence in any legal proceeding except—

- (a) for the purposes of section 48ZB; or
- (b) for the purposes of the **Transport Accident Act 1986**—

but may be given—

- (c) to the Transport Accident Commission under the **Transport Accident Act 1986** and, for the purposes of applications relating to that Act, to VCAT; and

- (d) to the Department for the purposes of accident research.
- (6) A rail safety worker must not hinder or obstruct a doctor or approved health professional attempting to take a sample of the blood of any other person in accordance with this section.
- Penalty: \$10 000.
- (7) No action lies against a doctor or approved health professional in respect of anything properly and necessarily done by the doctor or approved health professional in the course of taking any sample of blood which the doctor or approved health professional believes on reasonable grounds was required or allowed to be taken from a rail safety worker under this section.

Division 4—Evidentiary provisions

48ZB Evidentiary provisions—blood tests

- (1) In this section—

approved analyst means a person who by virtue of subsection (2) is to be taken to be a properly qualified analyst for the purposes of this section;

approved expert means a person who by virtue of subsection (3) is to be taken to be a properly qualified expert for the purposes of this section;

approved laboratory means an approved laboratory within the meaning of section 57 of the **Road Safety Act 1986**;

properly qualified analyst means—

- (a) an approved analyst; or
- (b) a person who carries out an analysis in an approved laboratory; or

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- (c) a person who is considered by the court to have scientific qualifications, training and experience that qualifies the person to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (6) or (7), as the case requires;

properly qualified expert means—

- (a) an approved expert; or
 - (b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies the person to express an opinion as to the facts and matters contained in a certificate under subsection (8).
- (2) A person who is an approved analyst within the meaning of section 57 of the **Road Safety Act 1986** is to be taken to be a properly qualified analyst for the purposes of this section.
 - (3) A person who is an approved expert within the meaning of section 57 of the **Road Safety Act 1986** is to be taken to be a properly qualified expert for the purposes of this section.
 - (4) If—
 - (a) the question whether a rail safety worker was or was not at any time under the influence of alcohol or any other drug; or
 - (b) the presence of alcohol or any other drug, or the concentration of alcohol in the blood of a rail safety worker at any time; or

- (c) a finding on the analysis of a blood sample of a rail safety worker—

is relevant on a hearing for an offence against section 128 of the Rail Safety National Law (Victoria) or section 48H, or in any inquest or investigation held by a coroner then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the taking, within 3 hours after the rail safety worker carried out rail safety work, of a sample of blood from the worker by a registered medical practitioner or an approved health professional, of the analysis of that sample of blood by a properly qualified analyst within 12 months after it was taken, of the presence of alcohol and, if alcohol is present, of the concentration of alcohol expressed in grams per 100 millilitres of blood found by that analyst to be present in that sample of blood at the time of analysis and, if a drug is present, evidence may be given by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a person's ability to carry out rail safety work properly).

- (5) A certificate containing the prescribed particulars purporting to be signed by a registered medical practitioner or an approved health professional is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (6) A certificate, containing the prescribed particulars, as to the concentration of alcohol expressed in grams per 100 millilitres of blood found in any sample of blood—
- (a) purporting to be signed by an approved analyst; and

(b) stating that the sample of blood was analysed in an approved laboratory—

is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(7) A certificate, containing the prescribed particulars, as to the presence in any sample of blood of a substance that is, or is capable of being, a prescribed drug for the purposes of this Part—

(a) purporting to be signed by an approved analyst; and

(b) stating that the sample of blood was analysed in an approved laboratory—

is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(8) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly) is admissible in evidence in any proceedings referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

(9) A certificate given under this section must not be tendered in evidence in a proceeding referred to in subsection (4) without the consent of the accused unless a copy of the certificate is proved to have been served on the accused more than 10 days before the day on which the certificate is tendered in evidence.

- (10) A copy of a certificate given under this section may be served on the accused by—
 - (a) delivering it to the accused personally; or
 - (b) leaving it for the accused at the accused's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.
- (11) An affidavit or statutory declaration by a person who has served a copy of the certificate on the accused is admissible in evidence in a proceeding referred to in subsection (4) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.
- (12) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.
- (13) The court must not grant leave under subsection (12) unless it is satisfied—
 - (a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and
 - (b) that—
 - (i) there is a reasonable possibility that the blood referred to in a certificate given by an analyst under subsection (6) or (7) was not that of the accused; or

- (ii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that the blood alcohol concentration found on analysis was higher than it would have been had the blood not been contaminated in that way; or
 - (iii) there is a reasonable possibility that the blood referred to in a certificate given by a registered medical practitioner or an approved health professional had become contaminated in such a way that a drug found on analysis would not have been found had the blood not been contaminated in that way; or
 - (iv) for some other reason the giving of evidence by the person who gave the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken would materially assist the court to ascertain relevant facts.
- (14) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any other person employed, or engaged to provide services at, the place at which the sample of blood was taken, to attend the court on the hearing of an application for leave under subsection (12).
- (15) If a registered medical practitioner or an approved health professional is requested to make an examination or to collect a sample of blood for the purposes of this section and if the rail safety worker to be examined or from whom a sample of

blood is to be collected has expressed consent to that examination or collection, no action lies against the registered medical practitioner or approved health professional who acts in accordance with that consent even if it subsequently appears that the worker was in fact incapable by reason of the worker's mental condition from effectively giving consent to the examination or collection.

- (16) Except as provided in sections 48X and 48ZA, a blood sample must not be taken and evidence of the result of an analysis of a blood sample must not be tendered unless the rail safety worker from whom the blood has been collected has expressed consent to the collection of the blood and the onus of proving that expression of consent is on the prosecution.
- (17) The mere failure or refusal of a rail safety worker to express consent must not be used in evidence against the worker or referred to in any way against the worker's interests in any proceeding.
- (18) A certificate purporting to be signed by a person—
 - (a) who took a blood sample; or
 - (b) who analysed a blood sample—

in accordance with the provisions of an Act of another State or a Territory that substantially correspond to section 48ZA of this Act and in accordance with any regulations made under the corresponding Act is admissible in evidence in a proceeding referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.

- (19) Subsections (9), (10), (11) and (12) apply in respect of a certificate referred to in subsection (18) as if the certificate was given under this section.

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48ZC Evidentiary provisions—oral fluid samples

- (1) In this section—

approved analyst means a person who by virtue of subsection (2) is to be taken to be a properly qualified analyst for the purposes of this section;

approved expert means a person who by virtue of subsection (3) is to be taken to be a properly qualified expert for the purposes of this section;

approved laboratory means an approved laboratory within the meaning of section 57B of the **Road Safety Act 1986**;

properly qualified analyst means—

- (a) an approved analyst; or
- (b) a person who carries out an analysis in an approved laboratory; or
- (c) a person who is considered by the court to have scientific qualifications, training and experience that qualifies the person to carry out the analysis and to express an opinion as to the facts and matters contained in a certificate under subsection (6);

properly qualified expert means—

- (a) an approved expert; or
- (b) a person who is considered by the court to have scientific qualifications, training and experience that qualifies the person to express an opinion as to

the facts and matters contained in a certificate under subsection (7).

- (2) A person who is an approved analyst within the meaning of section 57B of the **Road Safety Act 1986** is to be taken to be a properly qualified analyst for the purposes of this section.
- (3) A person who is an approved expert within the meaning of section 57A of the **Road Safety Act 1986** is to be taken to be a properly qualified expert for the purposes of this section.
- (4) If a question as to the presence of a drug in the body of a rail safety worker at any time is relevant in a hearing for an offence against section 128 of the Rail Safety National Law (Victoria) or section 48H then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given—
 - (a) of the furnishing by that rail safety worker, within 3 hours after that rail safety worker carried out rail safety work, of a sample of oral fluid;
 - (b) of the analysis of that sample of oral fluid by a properly qualified analyst within 12 months after it was taken;
 - (c) of the presence of a drug in that sample of oral fluid at the time of analysis;
 - (d) by a properly qualified expert of the usual effect of that drug on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly).

- (5) A certificate containing the prescribed particulars purporting to be signed by the person who carried out the procedure in the course of which the sample was provided is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (6) A certificate, containing the prescribed particulars, as to the presence in any sample of oral fluid of a substance that is, or is capable of being, a prescribed drug for the purposes of Division 9 of Part 3 of the Rail Safety National Law (Victoria) and this Part—
 - (a) purporting to be signed by an approved analyst; and
 - (b) stating that the sample of oral fluid was analysed in an approved laboratory—is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (7) A certificate containing the prescribed particulars purporting to be signed by an approved expert as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly) is admissible in evidence in any hearing referred to in subsection (4) and, in the absence of evidence to the contrary, is proof of the facts and matters contained in it.
- (8) A certificate given under this section must not be tendered in evidence at a hearing referred to in subsection (4) without the consent of the accused unless a copy of the certificate is proved to have been personally served on the accused more than

10 days before the day on which the certificate is tendered in evidence.

- (9) An affidavit or statutory declaration by the person who has personally served a copy of the certificate on the accused is admissible in evidence at a hearing referred to in subsection (4) and, as to the service of the copy, is proof, in the absence of evidence to the contrary, of the facts and matters deposed to in the affidavit or stated in the statutory declaration.
- (10) An accused who has been served with a copy of a certificate given under this section may, with the leave of the court and not otherwise, require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was furnished, to attend at all subsequent proceedings for cross-examination and that person must attend accordingly.
- (11) The court must not grant leave under subsection (10) unless it is satisfied—
 - (a) that the informant has been given at least 7 days' notice of the hearing of the application for leave and has been given an opportunity to make a submission to the court; and
 - (b) that—
 - (i) there is a reasonable possibility that the oral fluid referred to in a certificate given by an analyst under subsection (6) was not that of the accused; or
 - (ii) there is a reasonable possibility that the oral fluid referred to in a certificate given under subsection (5) had become contaminated in such a way that a drug found on analysis would not have been

found had the oral fluid not been contaminated in that way; or

- (iii) for some other reason the giving of evidence by the person who gave the certificate would materially assist the court to ascertain relevant facts.

- (12) An accused who has been served with a copy of a certificate given under this section may not require the person who has given the certificate or any person employed, or engaged to provide services at, the place at which the sample of oral fluid was furnished, to attend the court on the hearing of an application for leave under subsection (10).

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48ZD Evidentiary provisions—breath tests

- (1) If—

- (a) the question whether a rail safety worker was or was not at any time under the influence of alcohol; or
- (b) the presence, or the concentration, of alcohol in the breath of a rail safety worker at any time; or
- (c) a result of a breath analysis of a rail safety worker—

is relevant on a hearing for an offence against section 128 of the Rail Safety National Law (Victoria) or section 48H then, without affecting the admissibility of any evidence which might be given apart from the provisions of this section, evidence may be given of the concentration of alcohol indicated to be present in the breath of that person by a breath analysing instrument operated by a person authorised to do so by the Chief Commissioner of Police under section 48M and the concentration of alcohol so indicated is, subject to compliance with section 48M(6),

evidence of the concentration of alcohol present in the breath of that person at the time that person's breath is analysed by the instrument.

- (2) A document purporting to be a certificate containing the prescribed particulars produced by a breath analysing instrument of the concentration of alcohol indicated by the analysis to be present in the breath of a person and purporting to be signed by the person who operated the instrument is admissible in evidence in a proceeding referred to in subsection (1) and, subject to subsection (8), is conclusive proof of—
- (a) the facts and matters contained in it; and
 - (b) the fact that the instrument used was a breath analysing instrument; and
 - (c) the fact that the person who operated the instrument was authorised to do so by the Chief Commissioner of Police under section 48M; and
 - (d) the fact that all relevant regulations relating to the operation of the instrument were complied with; and
 - (e) the fact that the instrument was in proper working order and properly operated; and
 - (f) the fact that the certificate is identical in its terms to another certificate produced by the instrument in respect of the sample of breath and that it was signed by the person who operated the breath analysing instrument and given to the accused person as soon as practicable after the sample of breath was analysed—

unless the accused person gives notice in writing to the informant not less than 28 days before the hearing, or any shorter period ordered by the court or agreed to by the informant, that the accused

person requires the person giving the certificate to be called as a witness or that the accused person intends to adduce evidence in rebuttal of any such fact or matter.

- (3) A certificate referred to in subsection (2) does not cease to be admissible in evidence or to be conclusive proof of the facts and matters referred to in that subsection only because of the fact that it refers to the **Road Safety Act 1986** and not to the Rail Safety National Law (Victoria) or the **Rail Safety National Law Application Act 2013** and the reference to the **Road Safety Act 1986** in that certificate and in each other certificate produced by the breath analysing instrument in respect of the sample of breath must be construed for all purposes as a reference to the Rail Safety National Law (Victoria) or the **Rail Safety National Law Application Act 2013** (as the case requires).
- (4) A notice under subsection (2) must specify any fact or matter with which issue is taken and indicate the nature of any expert evidence which the accused person intends to have adduced at the hearing.
- (5) The accused person may not, except with the leave of the court, introduce expert evidence at the hearing if the nature of that evidence was not indicated in a notice under subsection (2).
- (6) If an accused person gives notice to the informant in accordance with subsection (2) that the accused person requires the person giving a certificate to be called as a witness and the court is satisfied that that person—
 - (a) is dead; or
 - (b) is unfit by reason of the person's bodily or mental condition to testify as a witness; or

- (c) has ceased to be a police officer or is out of Victoria and it is not reasonably practicable to secure the person's attendance; or
 - (d) cannot with reasonable diligence be found—
the court must order that subsection (2) has effect as if the notice had not been given.
- (7) A certificate referred to in subsection (2) remains admissible in evidence even if the accused person gives a notice under that subsection but, in that event, the certificate ceases to be conclusive proof of the facts and matters referred to in that subsection.
- (8) Nothing in subsection (2) prevents the informant adducing evidence to explain any fact or matter contained in a certificate referred to in subsection (2) and, if the informant does so, the certificate remains admissible in evidence but ceases to be conclusive proof of that fact or matter only.
- (9) In any proceeding under the Rail Safety National Law (Victoria) or this Act—
- (a) the statement of any person that on a particular date the person was authorised by the Chief Commissioner of Police under section 48M(7) to operate breath analysing instruments; or
 - (b) a certificate purporting to be signed by the Chief Commissioner of Police that a person named in it is authorised by the Chief Commissioner of Police under section 48M(7) to operate breath analysing instruments—
- is admissible in evidence and, in the absence of evidence to the contrary, is proof of the authority of that person.

- (10) Evidence by a person authorised to operate a breath analysing instrument under section 48M—
- (a) that an apparatus used by the person on any occasion under that section was a breath analysing instrument;
 - (b) that the breath analysing instrument was on that occasion in proper working order and properly operated by that person;
 - (c) that, in relation to the breath analysing instrument, all regulations with respect to breath analysing instruments were complied with—

is, in the absence of evidence to the contrary, proof of those facts.

- (11) The statement on oath of a person authorised to operate a breath analysing instrument under section 48M when called as a witness that any apparatus used by the person on any occasion under section 48M had written, inscribed or impressed on some portion of it or on a plate attached to it the expressions—

- (a) "Alcotest 7110" and "3530791"; or
- (b) "Alcotest 9510AUS" and "8320869"—

whether with or without other expressions or abbreviations of expressions, commas, full stops, hyphens or other punctuation marks and whether or not all or any of the numbers are boxed in is, in the absence of evidence to the contrary, proof that the apparatus is a breath analysing instrument.

Division 5—Other matters

48ZE Approvals

- (1) An authority given under or for the purposes of section 48M, 48P or 48R by the Chief Commissioner of Police may be revoked at any time in the manner in which it was given and on revocation ceases to have any effect.
- (2) If it is provided by or under this Part that the Minister or the Chief Commissioner of Police or any other person may approve of any type or kind of apparatus or equipment—
 - (a) the approval must be given by notice published in the Government Gazette; and
 - (b) any withdrawal of approval must be made by notice published in the Government Gazette.

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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;

- (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);

- (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,

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.
- (1A) The Governor in Council may make regulations for or with respect to—
- (a) devices for the purposes of sections 126 and 127 of the Rail Safety National Law (Victoria) and section 48L including—

**S. 51(1A)
inserted by
No. 41/2019
s. 18(1).**

- (i) the handling, storage, use and maintenance of those devices;
 - (ii) the precautions to be taken and the procedures and methods to be employed in the use of those devices for ensuring that they give accurate and reliable results;
- (b) the handling, storage, use and maintenance of breath analysing instruments used for the purposes of Division 9 of Part 3 of the Rail Safety National Law (Victoria) and Division 3 of Part 4A and the procedures and methods to be employed in the use of those instruments for ensuring that they give accurate and reliable results;
- (c) the methods and conditions to be observed by—
 - (i) registered medical practitioners and approved health professionals in collecting blood, oral fluid or urine samples; and
 - (ii) authorised persons in collecting oral fluid samples;
- (d) the persons responsible for the safe-keeping of samples of blood, oral fluids and urine taken under Division 9 of Part 3 of the Rail Safety National Law (Victoria) and Division 3 of Part 4A;
- (e) the delivering of portions of a sample of blood, oral fluids or urine taken under Division 9 of Part 3 of the Rail Safety National Law (Victoria) and Division 3 of Part 4A to the rail safety worker from whom it was taken and to the person who required it to be taken or a police officer;

- (f) the methods to be used by analysts in determining the concentration of alcohol in a blood sample;
 - (g) the methods to be used by analysts in determining the presence of a substance in a blood, oral fluid or urine sample;
 - (h) the procedures to be adopted in transmitting samples of blood, oral fluid or urine to an analyst for analysis;
 - (i) the regulation and control of people concerned in the taking, safe-keeping, delivering and analysis of blood, oral fluid or urine samples.
- (2) The regulations may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstances;
 - (ba) require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of person; or
 - (iii) as specified in both subparagraphs (i) and (ii);
 - (bb) apply, adopt or incorporate any matter contained in any document whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as in force at a particular time or as in force from time to time;

S. 51(2)(ba)
inserted by
No. 41/2019
s. 18(2).

S. 51(2)(bb)
inserted by
No. 41/2019
s. 18(2).

Rail Safety National Law Application Act 2013
No. 22 of 2013
Part 5—Miscellaneous

S. 51(2)(bc)
inserted by
No. 41/2019
s. 18(2).

(bc) provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified;

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

S. 52
repealed by
No. 22/2013
s. 52(4).

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Pt 6 (Heading and ss 53–97),
amended by
No. 27/2014
s. 157,
repealed by
No. 22/2013
s. 97.

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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.

- (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.

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—

- (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

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—

- (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—

- (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

- 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.

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—

- (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.
- (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.

**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.

- (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

- (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

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).

- (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.

- (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

- (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

- (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.
- (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).

Pt 7 Div. 5
(Heading and
s. 155)
amended by
No. 70/2013
s. 4(Sch. 2
item 40.2),
repealed by
No. 41/2019
s. 15.

* * * *

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.
- (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.

* * * * *

**S. 157
repealed by
No. 41/2019
s. 16.**

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
 - (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 **Privacy and Data
Protection Act 2014**.

S. 158(5)
def. of
*personal
information*
amended by
No. 60/2014
s. 140(Sch. 3
item 40).

Pt 8
(Headings
and ss 159–
213)
inserted by
No. 41/2019
s. 19.

Part 8—Savings and transitionals—Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019

Division 1—Preliminary

S. 159
inserted by
No. 41/2019
s. 19.

159 Definitions

In this Part—

amending Act means the **Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019**;

approved rail safety code of practice means a code of practice within the meaning of the Local Operations Act;

commencement day means the day on which section 118 of the amending Act comes into operation;

Note

Section 118 of the **Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019** repeals the **Rail Safety (Local Operations) Act 2006**.

Local Operations Act means the **Rail Safety (Local Operations) Act 2006** as in force from time to time before the commencement day;

Local Operations Act accreditation means an accreditation under the Local Operations Act that is in effect immediately before the commencement day;

Local Operations Act rail infrastructure means rail infrastructure within the meaning of the Local Operations Act;

Local Operations Act safety management system
means a safety management system within
the meaning of the Local Operations Act;

rail compliance and investigative purposes means
purposes—

- (a) related to ascertaining whether a rail safety law has been, or is being, complied with, including whether an offence has been committed against the rail safety law; and
- (b) related to ascertaining whether an approved rail safety code of practice has been, or is being, complied with; and
- (c) related to an investigation into a rail safety matter; and
- (d) related to an audit under Division 5 of Part 3 of the Local Operations Act;

rail safety law means—

- (a) the Local Operations Act or any regulations made under that Act; or
- (b) a provision of the T(SSCE) Act that but for the amendment of that Act by the amending Act would still be in force; or
- (c) section 23 of the **Crimes Act 1958** but only in relation to conduct engaged in by a person on or at, or in the immediate vicinity of, Local Operations Act rail infrastructure or rolling stock that places or may place another person in danger of serious injury;

rail safety matter means an incident involving Local Operations Act rail infrastructure or rolling stock that resulted in, or that had the potential to result in, the death of, or injury

to, any person, or in damage to any property or equipment, and includes, for example—

- (a) any derailment of any rolling stock;
- (b) any collision involving any rolling stock;
- (c) any incident resulting from the construction, maintenance or operation of a railway;
- (d) any failure of any part of rail infrastructure or any rolling stock or any part of any rolling stock;
- (e) any failure or breach of any practice or procedure involving rolling stock;
- (f) any fire, explosion or other similar occurrence involving rolling stock;
- (g) any incident in which there is evidence of systematic safety deficiencies;

rail T(SSCE) Act improvement notice means an improvement notice within the meaning of the T(SSCE) Act served in relation to—

- (a) the contravention of a provision of a rail safety law; or
- (b) railway operations that threaten safety or other operations that threaten rail safety;

rail T(SSCE) Act non-disturbance notice means a non-disturbance notice within the meaning of the T(SSCE) Act served in relation to T(SSCE) Act railway premises or rolling stock;

rail T(SSCE) Act prohibition notice means a prohibition notice within the meaning of the T(SSCE) Act served in relation to railway operations, T(SSCE) Act railway premises,

Local Operations Act rail infrastructure or rolling stock;

registered person has the same meaning as in the Local Operations Act;

relevant road authority has the same meaning as in the Local Operations Act;

transitioning rail infrastructure manager means a rail infrastructure manager within the meaning of the Local Operations 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) a transitioning rail infrastructure manager; or
- (b) a transitioning rolling stock operator; or
- (c) a person who is both a transitioning rail infrastructure manager and a transitioning rolling stock operator;

transitioning rolling stock operator means a rolling stock operator within the meaning of the Local Operations 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 116 of the T(SSCE) Act whose appointment is in effect from time to time before the commencement day;

T(SSCE) Act means the **Transport (Safety Schemes Compliance and Enforcement) Act 2014** as in force from time to time before the commencement day;

T(SSCE) Act railway premises means railway premises within the meaning of the T(SSCE) Act.

S. 160
inserted by
No. 41/2019
s. 19.

160 Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Part, and any regulations made under this Part, do not affect or take away from the **Interpretation of Legislation Act 1984**.

Division 2—Transition from the Rail Safety (Local Operations) Act 2006

S. 161
inserted by
No. 41/2019
s. 19.

161 Persons approved to take blood samples

On the commencement day, a person approved under section 8 of the Local Operations Act whose approval is in effect immediately before that day is taken to have been approved under section 48B for the purposes of this Act and the Law.

Note

See also paragraph (b) of the definition of *approved health professional* in section 48A.

S. 162
inserted by
No. 41/2019
s. 19.

162 Safety management systems

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

163 Consultations for the purpose of safety management systems

S. 163
inserted by
No. 41/2019
s. 19.

- (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 a Local Operations Act 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.

164 System and arrangements established by transitioning rail operator who is exempt from accreditation

S. 164
inserted by
No. 41/2019
s. 19.

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

165 Safety audits

S. 165
inserted by
No. 41/2019
s. 19.

A safety audit conducted under section 29 of the Local Operations Act in relation to a transitioning rail transport operator before the commencement day is taken on that day to be an audit under section 133 of the Law.

166 Directions to stop railway operations or utility works

S. 166
inserted by
No. 41/2019
s. 19.

- (1) A direction given under section 33(1) of the Local Operations Act to a person that is a utility within the meaning of that Act that is in effect immediately before the commencement day is taken, on that day, to be a direction given to that person under section 199(2) of the Law.

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

S. 167
inserted by
No. 41/2019
s. 19.

167 Directions to alter, demolish or take away works

- (1) On the commencement day, a direction—
- (a) given under section 34(1) of the Local Operations 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 Local Operations Act to a transitioning rail transport operator who has care, control or management of the land where the Local Operations Act 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.

S. 168
inserted by
No. 41/2019
s. 19.

168 Safety interface agreements—railway operations

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

entered into by them pursuant to section 106 of the Law.

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

S. 169
inserted by
No. 41/2019
s. 19.

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

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

S. 170
inserted by
No. 41/2019
s. 19.

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

171 Safety interface agreements—assessment by relevant road authorities of public roadways or pathways

S. 171
inserted by
No. 41/2019
s. 19.

A safety interface agreement entered into by a relevant road authority pursuant to section 34E of the Local Operations Act that is in effect immediately before the commencement day is taken, on that day, to be an interface agreement entered into by them pursuant to section 107(2) of the Law if they are, on and after that day, a road manager under that Law.

S. 172
inserted by
No. 41/2019
s. 19.

172 Safety interface agreements—assessment by relevant road authorities of relevant roadways or pathways

A safety interface agreement entered into by a relevant road authority pursuant to section 34F of the Local Operations Act that is in effect immediately before the commencement day is taken, on that day, to be an interface agreement entered into by them pursuant to section 108(2) of the Law if they are, on and after that day, a road manager under that Law.

S. 173
inserted by
No. 41/2019
s. 19.

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

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

S. 174
inserted by
No. 41/2019
s. 19.

174 Directions of Safety Director in relation to safety interface agreements

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

S. 175
inserted by
No. 41/2019
s. 19.

175 Registers of safety interface agreements

- (1) A register maintained by a transitioning rail transport operator pursuant to section 34K(1) of the Local Operations 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.

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

176 Accredited rail transport operators are accredited persons

S. 176
inserted by
No. 41/2019
s. 19.

A transitioning rail transport operator who is an accredited rail transport operator within the meaning of the Local Operations Act immediately before the commencement day is taken, on that day, to be an accredited person.

177 Accreditations under Rail Safety (Local Operations) Act 2006 are accreditations under the Law

S. 177
inserted by
No. 41/2019
s. 19.

An accreditation within the meaning of the Local Operations Act that is in effect before the commencement day is taken, on that day, to be—

- (a) an accreditation under the Law; and
- (b) subject to conditions and restrictions that are the same as the conditions and restrictions that applied to the accreditation under the Local Operations Act immediately before the commencement day.

Note

See also section 187 for accreditations that are in effect on the commencement day but will be cancelled on or after that day.

178 Accreditations to be registered in National Rail Safety Register

S. 178
inserted by
No. 41/2019
s. 19.

- (1) On and after the commencement day, the Safety Director must give to the Regulator details of every accreditation within the meaning of the Local Operations Act to which sections 177 and 187 apply.

- (2) The Regulator must record in the National Rail Safety Register the details given to the Regulator under subsection (1).

S. 179
inserted by
No. 41/2019
s. 19.

179 Applications for accreditation

- (1) This section applies if—
- (a) a transitioning rail transport operator has made an application under section 38(1) or (2) of the Local Operations Act before the commencement day (an ***accreditation application***); and
 - (b) the Safety Director has not determined the accreditation application under Division 2 of Part 5 of the Local Operations Act before that day; and
 - (c) an application has not been made under section 88 of the Local Operations Act in relation to the accreditation application before that day.

Note

For initial accreditations in relation to which there are internal reviews that have not been completed before the commencement day, see section 189.

- (2) On the commencement day, the accreditation application is taken to be an application under section 64 of the Law and the Regulator must determine the application under that Law on and after that day.
- (3) For the purposes of subsection (2), anything done by the Safety Director under the Local Operations Act in respect of the accreditation application before the commencement day is taken on that day to have been done by the Regulator under the Law.

(4) In addition—

- (a) any period during which the Safety Director is considering the accreditation application under the Local Operations Act before the commencement day is taken, on that day, to form part of the relevant period for the purposes of section 67 of the Law; and
- (b) any notification under section 44(3) of the Local Operations Act in relation to the accreditation application is taken, on the commencement day, to be a written notice under paragraph (c) of the definition of *relevant period* (as defined under section 67(5) of the Law).

180 Directions to coordinate accreditation applications

- (1) Subject to subsection (2), a direction of the Safety Director under section 43 of the Local Operations 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.
- (2) Subsection (1) does not apply to a direction under section 43 of the Local Operations Act that is in effect immediately before the commencement day and is the subject of a review under section 88 of that Act that has not been completed before that day.

S. 180
inserted by
No. 41/2019
s. 19.

Note

See also section 189.

181 Emergency plan

An emergency plan prepared by a transitioning rail transport operator that is in effect for the purposes the Local Operations Act before the commencement day is taken, on that day, to be an emergency management plan that the rail

S. 181
inserted by
No. 41/2019
s. 19.

transport operator is required to have under
section 113 of the Law.

S. 182
inserted by
No. 41/2019
s. 19.

**182 Discretionary applications for variations of
accreditation**

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

S. 183
inserted by
No. 41/2019
s. 19.

**183 Mandatory applications for variations of
accreditation**

- (1) This section applies if—
 - (a) a transitioning rail transport operator has made an application under section 54 of the Local Operations Act before the commencement day (a *mandatory variation application*); and
 - (b) the Safety Director has not determined the mandatory variation application before that day.

- (2) On the commencement day the mandatory variation application is taken to be an application under section 68(2) of the Law and the Regulator must determine the application under that Law on and after that day.
- (3) For the purposes of subsection (2), anything done by the Safety Director under the Local Operations Act in respect of the mandatory variation application before the commencement day is taken on that day to have been done by the Regulator under the Law.

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

S. 184
inserted by
No. 41/2019
s. 19.

- (1) This section applies if before the commencement day—
 - (a) the Safety Director has—
 - (i) decided under section 55(1) of the Local Operations Act to vary or revoke a condition of or restriction on, or impose a new condition of or restriction on, 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) the decision under section 55(1) of the Local Operations Act 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 act under section 72 of the Law as if the Regulator took the decision to do so under that section.
- (3) For the purposes of subsection (2)(b), any period of days within which the transitioning rail transport operator is allowed to make written representations under section 55(2)(b) of the Local Operations Act before the commencement day is taken, on the commencement day, to form part of the period of days allowed for written representations under section 72(2)(b) of the Law.

S. 185
inserted by
No. 41/2019
s. 19.

185 Surrender of accreditation

- (1) This section applies if—
- (a) a transitioning rail transport operator holds an accreditation within the meaning of the Local Operations 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 their consent before that day.
- (2) On the commencement day, that request is taken to be written notice of an intention to surrender the accreditation under section 75(2)(a) of the Law and the Regulator must deal with it under that section.

186 Suspended accreditations

S. 186
inserted by
No. 41/2019
s. 19.

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

187 Cancellations of accreditations that have not taken effect

S. 187
inserted by
No. 41/2019
s. 19.

- (1) This section applies if—
 - (a) an accreditation within the meaning of the Local Operations Act held by a transitioning rail transport operator has been cancelled under section 59 of the Local Operations Act before the commencement day; and
 - (b) that cancellation will take effect on or after the commencement day.
- (2) On the commencement day, the cancellation is taken to be a cancellation of that operator's accreditation under section 73(2)(b) of the Law on the day on which that cancellation would have taken effect if the Local Operations Act had not been repealed.

S. 188
inserted by
No. 41/2019
s. 19.

188 Accreditation of rail infrastructure managers of registered private sidings that are freight terminals

- (1) This section applies if immediately before the commencement day a transitioning rail infrastructure manager is a registered person in respect of a private siding that is a freight terminal.
- (2) On the commencement day, the transitioning rail infrastructure manager is taken to be an accredited person under the Law who holds an accreditation under the Law that is subject to conditions and restrictions that are the same as the conditions and restrictions that applied to the manager's registration under Division 7 of Part 5 of the Local Operations Act immediately before the commencement day.

S. 189
inserted by
No. 41/2019
s. 19.

189 Pending applications for internal review

- (1) This section applies if—
 - (a) an application has been made under section 88 of the Local Operations Act before the commencement day in relation to a decision specified in the Table (a *review application*); and
 - (b) the review as provided under section 88 of the Local Operations Act has not been completed before the commencement day.

Table

<i>Item</i>	<i>Decision</i>
1	Decision that refuses an application for accreditation under Division 2 of Part 5 of the Local Operations Act
2	Decision under section 43 of the Local Operations Act that directs a person to co-ordinate their application for accreditation under Division 2 of Part 5 of that Act

Rail Safety National Law Application Act 2013

No. 22 of 2013

Part 8—Savings and transitionals—Rail Safety Legislation Amendment
(National Services Delivery and Related Reforms) Act 2019

<i>Item</i>	<i>Decision</i>
3	Decision under section 46 of the Local Operations Act that imposes a condition on, or restricts the scope of, a transitioning rail transport operator's accreditation under Division 2 of Part 5 of that Act
4	Decision under section 53 of the Local Operations Act that refuses to grant a variation of a condition or restriction of a transitioning rail transport operator's Local Operations Act accreditation
5	Decision under section 53 of the Local Operations Act that refuses to agree to a revocation of a condition or restriction of a transitioning rail transport operator's Local Operations Act accreditation
6	Decision under section 54 of the Local Operations Act that refuses to vary a transitioning rail transport operator's accreditation
7	Decision under section 55 of the Local Operations Act that varies or revokes a condition of or restriction on a transitioning rail transport operator's Local Operations Act accreditation
8	Decision under section 55 of the Local Operations Act that imposes a condition of or restriction on a transitioning rail transport operator's Local Operations Act accreditation
9	Decision under section 56 of the Local Operations Act that refuses consent to the surrender of a transitioning rail transport operator's Local Operations Act accreditation
10	Decision under section 58 of the Local Operations Act that immediately suspends a transitioning rail transport operator's Local Operations Act accreditation

- (2) On the commencement day the review application is taken to be an application under section 216 of the Law in a form approved by the Regulator under that section and the Regulator must determine the application on and after that day in accordance with the Law.
- (3) For the purposes of subsection (2)—
 - (a) anything done by the Safety Director under the Local Operations Act in respect of the review application before the commencement day is taken on that day to have been done by the Regulator under the Law; and
 - (b) the commencement day is taken to be the day on which the review application was made.

S. 190
inserted by
No. 41/2019
s. 19.

190 Internal 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 Local Operations Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 59 of the Local Operations Act that imposes a condition or restriction on the operator's Local Operations Act accreditation (the *reviewable decision*); and

Note

See section 59(3)(b)(ii) of the **Rail Safety (Local Operations) Act 2006**.

- (b) the review as provided under section 88 of the Local Operations Act has not been completed before the commencement day.

- (2) Despite the repeal of the Local Operations Act, on and after the commencement day, the Regulator must complete the review in accordance with that Act as if—
 - (a) that Act were still in force; and
 - (b) a reference to the Safety Director in that Act were a reference to the Regulator.
- (3) If under section 88 of the Local Operations Act the Regulator affirms 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) a condition or restriction that is the same as the condition or restriction imposed under the reviewable decision; and
 - (b) conditions and restrictions that are the same as all the other conditions or restrictions that applied to the operator's Local Operations Act accreditation immediately before the reviewable decision.
- (4) If under section 88 of the Local Operations Act the Regulator varies or sets aside the reviewable decision and imposes a condition or restriction on the operator's Local Operations Act accreditation that differs 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) conditions and restrictions that are the same as all the other conditions or restrictions that applied to the operator's Local Operations

Act accreditation immediately before the reviewable decision.

- (5) If under section 88 of the Local Operations Act the Regulator 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 that are the same as the conditions and restrictions that applied to the operator's Local Operations Act accreditation immediately before the reviewable decision.

S. 191
inserted by
No. 41/2019
s. 19.

191 Internal 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 Local Operations Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 59 of the Local Operations Act (the *reviewable decision*) that imposes an expiry date on the operator's Local Operations Act accreditation; and

Note

See section 59(3)(b)(iii) of the **Rail Safety (Local Operations) Act 2006**.

- (b) the review as provided under section 88 of the Local Operations Act has not been completed before the commencement day.
- (2) Despite the repeal of the Local Operations Act, on and after the commencement day, the Regulator must complete the review in accordance with that Act as if—
- (a) that Act were still in force; and

- (b) a reference to the Safety Director in that Act were a reference to the Regulator.
- (3) If under section 88 of the Local Operations Act the Regulator affirms the reviewable decision (the *new decision*), the transitioning rail transport operator's Local Operations Act accreditation is taken, on the day the new decision takes effect, to be cancelled 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 Local Operations Act the Regulator varies or sets aside the reviewable decision and imposes a date of expiry on the operator's accreditation that differs from that imposed under the reviewable decision (the *new decision*), the transitioning rail transport operator's Local Operations Act accreditation is taken, on the day the new decision takes effect, to be cancelled 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.
- (5) If under section 88 of the Local Operations Act the Regulator sets aside the reviewable decision (the *new decision*), the transitioning rail transport operator is taken, on the day the new decision of the Regulator takes effect, to be an accredited person holding an accreditation under the Law subject to conditions and restrictions that are the same as the conditions and restrictions that applied to the operator's Local Operations Act accreditation immediately before the reviewable decision.

S. 192
inserted by
No. 41/2019
s. 19.

192 Internal review of decision to take disciplinary action—suspension

- (1) This section applies if—
- (a) an application is made under section 88 of the Local Operations Act by a transitioning rail transport operator before the commencement day in relation to a decision under section 59 of the Local Operations Act to suspend the operator's Local Operations Act accreditation (the *reviewable decision*); and
- Note**
- See section 59(3)(b)(iv) of the **Rail Safety (Local Operations) Act 2006**.
- (b) the review as provided under section 88 of the Local Operations Act has not been completed before the commencement day.
- (2) Despite the repeal of the Local Operations Act, on and after the commencement day, the Regulator must complete the review in accordance with that Act as if—
- (a) that Act were still in force; and
 - (b) a reference to the Safety Director in that Act were a reference to the Regulator.
- (3) If under section 88 of the Local Operations Act the Regulator affirms 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—
- (a) holding an accreditation under the Law subject to conditions and restrictions that are the same as the conditions and restrictions that applied to the operator's Local Operations 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 the suspension ends.
- (4) If under section 88 of the Local Operations Act the Regulator varies the reviewable decision and imposes a new period of suspension (the *new decision*), the transitioning rail transport operator is taken, on the day the new decision takes effect, to be an accredited person—
 - (a) holding an accreditation under the Law subject to conditions and restrictions that are the same as the conditions and restrictions that applied to the operator's Local Operations 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 Local Operations Act the Regulator 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 conditions and restrictions that are the same as the conditions and restrictions that applied to the operator's Local Operations Act accreditation immediately before the reviewable decision.

193 Internal review of decision to take disciplinary action—cancellation

- (1) This section applies if—
 - (a) an application is made under section 88 of the Local Operations Act by a transitioning rail transport operator before the

S. 193
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No. 41/2019
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commencement day in relation to a decision under section 59 of the Local Operations Act (the *reviewable decision*) to cancel the operator's Local Operations Act accreditation; and

Note

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

- (b) the review as provided under section 88 of the Local Operations Act has not been completed before the commencement day.
- (2) Despite the repeal of the Local Operations Act, on and after the commencement day, the Regulator must complete the review in accordance with that Act as if—
 - (a) that Act were still in force; and
 - (b) a reference to the Safety Director in that Act were a reference to the Regulator.
- (3) If under section 88 of the Local Operations Act the Regulator affirms the reviewable decision (the *new decision*), the transitioning rail transport operator's Local Operations Act accreditation is taken, on the day the new decision takes effect, to be cancelled by the Regulator under section 73(2)(b) of the Law.
- (4) If under section 88 of the Local Operations Act the Regulator 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 conditions and restrictions that are the same as the conditions and restrictions that applied to the operator's Local Operations Act accreditation immediately before the reviewable decision.

Division 3—Transition on amendment of the Transport (Safety Schemes Compliance and Enforcement) Act 2014

194 Things seized under seizure power

S. 194
inserted by
No. 41/2019
s. 19.

- (1) This section applies if—
- (a) a transport safety officer seizes a thing under section 8 of the T(SSCE) Act at T(SSCE) Act railway premises or on rolling stock before the commencement day; 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 at railway premises under section 158 of the Law by that officer as if they were a rail safety officer.

195 Securing a site or restricting access to rolling stock

S. 195
inserted by
No. 41/2019
s. 19.

A site, the perimeter of which is secured for rail compliance and investigative purposes, or rolling stock to which access is restricted, under section 16 of the T(SSCE) Act immediately before the commencement day is taken on and after that day to be secured under section 149 of the Law.

196 Things seized under a search warrant

S. 196
inserted by
No. 41/2019
s. 19.

- (1) This section applies if—
- (a) a transport safety officer seizes a thing under a search warrant issued under section 18 of the T(SSCE) Act; and
 - (b) the search warrant was issued in relation to an offence against a rail safety law; and
 - (c) 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 under a search warrant issued under section 150 of the Law by that officer as if they were a rail safety officer.

S. 197
inserted by
No. 41/2019
s. 19.

197 Search warrant

- (1) This section applies if—
- (a) a search warrant has been issued under section 18 of the T(SSCE) Act in relation to a rail safety law; 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.

S. 198
inserted by
No. 41/2019
s. 19.

198 Direction to require production of document

- (1) This section applies if—
- (a) a transport safety officer has given a direction to a person under section 22 of the T(SSCE) Act before the commencement day to produce a document within a specified period that ends on or after that day; and
 - (b) the person has not produced that document before that day.
- (2) On the commencement day, the direction is taken to be a direction under section 168A of the Law given by the Regulator and the day that the specified period ends is taken to be a specified time for the purposes of section 168A of that Law.

S. 199
inserted by
No. 41/2019
s. 19.

199 Powers to support seizure

- (1) A relevant direction given under section 29 of the T(SSCE) Act before the commencement day that has not been complied with before that day is taken, on that day, to be a direction given under section 159 of the Law.

(2) In this section—

relevant direction means a direction that relates to the seizure of a thing—

- (a) at T(SSCE) Act railway premises or on rolling stock; or
- (b) under a search warrant issued—
 - (i) under section 18 of the T(SSCE) Act; and
 - (ii) in relation to an offence against a rail safety law.

200 Power to direct a things return

- (1) A relevant direction given under section 30 of the T(SSCE) Act before the commencement day that has not been complied with before that day is taken, on that day, to be a direction given under section 160 of the Law.

(2) In this section—

relevant direction means a direction in relation to a thing seized—

- (a) at T(SSCE) Act railway premises or on rolling stock; or
- (b) under a search warrant issued—
 - (i) under section 18 of the T(SSCE) Act; and
 - (ii) in relation to an offence against a rail safety law.

201 Receipt of seized things

- (1) This section applies if—

- (a) a receipt was given under section 31 of the T(SSCE) Act before the commencement day in respect of a thing seized—

S. 200
inserted by
No. 41/2019
s. 19.

S. 201
inserted by
No. 41/2019
s. 19.

- (i) at T(SSCE) Act railway premises or on rolling stock; or
- (ii) under a search warrant issued—
 - (A) under section 18 of the T(SSCE) Act; and
 - (B) in relation to an offence against a rail safety law; and
- (b) that thing is taken under section 194 or 196 to be a thing seized under section 158 or 150 of the Law, as the case requires.
- (2) On the commencement day, the receipt is taken to be a receipt given under section 161 of the Law.

S. 202
inserted by
No. 41/2019
s. 19.

202 Power to require production of documents and to answer questions

A direction given under section 43 of the T(SSCE) Act for rail compliance and investigative purposes 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 of the Law.

S. 203
inserted by
No. 41/2019
s. 19.

203 Improvement notices

A rail T(SSCE) Act improvement notice served before the commencement day that has not been cancelled under section 55 of the T(SSCE) Act before the commencement day is taken, on that day, to be an improvement notice issued under section 175 of the Law.

S. 204
inserted by
No. 41/2019
s. 19.

204 Prohibition notices

A rail T(SSCE) Act prohibition notice served before the commencement day that has not been withdrawn under section 65 of the T(SSCE) Act before the commencement day is taken, on that day, to be a prohibition notice issued under section 179 of the Law.

205 Non-disturbance notices

A rail T(SSCE) Act non-disturbance notice served before the commencement day that has not been cancelled under section 75 of the T(SSCE) Act before the commencement day is taken, on that day, to be a non-disturbance notice issued under section 182 of the Law.

S. 205
inserted by
No. 41/2019
s. 19.

206 Injunctions for non-compliance with notices

- (1) A relevant injunction granted after an application under section 82 of the T(SSCE) Act before the commencement day and that is still in effect on the commencement day is taken, on that day, to be an injunction granted after an application under section 197 of the Law.

S. 206
inserted by
No. 41/2019
s. 19.

- (2) In this section—

relevant injunction means an injunction granted in relation to—

- (a) a rail T(SSCE) Act improvement notice; or
- (b) a rail T(SSCE) Act prohibition notice; or
- (c) a rail T(SSCE) Act non-disturbance notice.

207 Enforceable undertakings

- (1) This section applies if—
- (a) the Safety Director has accepted an undertaking by a transitioning rail transport operator under section 83 of the T(SSCE) Act before the commencement day; and
 - (b) that undertaking has not been withdrawn before the commencement day.

S. 207
inserted by
No. 41/2019
s. 19.

- (2) On the commencement day, the undertaking is taken to be a rail safety undertaking by the transitioning rail transport operator accepted by the Regulator under section 251 of the Law.

S. 208
inserted by
No. 41/2019
s. 19.

208 Pending applications for internal review

- (1) This section applies if—
- (a) an application has been made under section 100 of the T(SSCE) Act before the commencement day in relation to a decision specified in the Table (a *review application*); and
 - (b) the review as provided under section 100 of the T(SSCE) Act has not been completed before the commencement day.

Table

<i>Item</i>	<i>Decision</i>
1	Decision under section 33 of the T(SSCE) Act in relation to a thing seized under section 8 of that Act at T(SSCE) Act railway premises or on rolling stock
2	Decision under section 33 of the T(SSCE) Act in relation to a thing seized under a search warrant issued under section 18 of that Act in relation to an offence against a rail safety law
3	Decision under section 50 of the T(SSCE) Act to serve a rail T(SSCE) Act improvement notice
4	Decision under section 59 of the T(SSCE) Act to extend the compliance period for a rail T(SSCE) Act improvement notice
5	Decision under section 60 of the T(SSCE) Act to serve a rail T(SSCE) Act prohibition notice
6	Decision under section 71 of the T(SSCE) Act to serve a rail T(SSCE) Act non-disturbance notice

Rail Safety National Law Application Act 2013
No. 22 of 2013
Part 8—Savings and transitionals—Rail Safety Legislation Amendment
(National Services Delivery and Related Reforms) Act 2019

<i>Item</i>	<i>Decision</i>
7	Decision under section 90 of the T(SSCE) Act directing the taking of specified action following a safety report (as defined by section 90(5) of that Act)
8	Decision under section 91(2) of the T(SSCE) Act directing work be stopped, altered or not commenced
9	Decision under section 91(3) of the T(SSCE) Act directing railway operations be stopped, altered or not commenced

- (2) On the commencement day the review application is taken to be an application under section 216 of the Law in a form approved by the Regulator under that section and the Regulator must determine the application on and after that day in accordance with the Law.
- (3) For the purposes of subsection (2)—
- (a) anything done by the Safety Director under the Local Operations Act in respect of the review application before the commencement day is taken on that day to have been done by the Regulator under the Law; and
 - (b) the commencement day is taken to be the day on which the review application was made.

209 Internal review of decision to serve clearance certificate—improvement notice

S. 209
inserted by
No. 41/2019
s. 19.

- (1) This section applies if—
- (a) an application has been made under section 100 of the T(SSCE) Act before the commencement day in relation to a decision to serve a clearance certificate for a rail T(SSCE) Act improvement notice under

- section 56(2)(a) of that Act (the *reviewable decision*); and
- (b) the review as provided under section 100 of the T(SSCE) Act has not been completed before the commencement day.
- (2) On and after the commencement day, the Regulator must complete the review in accordance with the T(SSCE) Act as if—
- (a) that Act had not been amended by Part 3 of the amending Act; and
- (b) a reference to the Safety Director in that Act were a reference to the Regulator.
- (3) If under section 100 of the T(SSCE) Act the Regulator affirms the reviewable decision (the *new decision*), the rail T(SSCE) Act improvement notice is taken, on the day the new decision takes effect, to be cancelled under section 190 of the Law.
- (4) If under section 100 of the T(SSCE) Act the Regulator sets aside the reviewable decision and substitutes a new decision under which no clearance certificate is issued in relation to the rail T(SSCE) Act improvement notice (the *new decision*), the rail T(SSCE) Act improvement notice is taken, on the day the new decision takes effect, to be an improvement notice issued under section 175 of the Law subject to all the requirements of the improvement notice.

S. 210
inserted by
No. 41/2019
s. 19.

210 Internal review of decision to serve certificate—prohibition notice

- (1) This section applies if—
- (a) an application has been made under section 100 of the T(SSCE) Act before the commencement day in relation to a decision to serve a certificate for a rail T(SSCE) Act

- prohibition notice under section 66 of that Act (the *reviewable decision*); and
- (b) the review as provided under section 100 of the T(SSCE) Act has not been completed before the commencement day.
- (2) On and after the commencement day, the Regulator must complete the review in accordance with the T(SSCE) Act as if—
- (a) that Act had not been amended by Part 3 of the amending Act; and
- (b) a reference to the Safety Director in that Act were a reference to the Regulator.
- (3) If under section 100 of the T(SSCE) Act the Regulator affirms the reviewable decision (the *new decision*), the rail T(SSCE) Act prohibition notice is taken, on the day the new decision takes effect, to be cancelled under section 190 of the Law.
- (4) If under section 100 of the T(SSCE) Act the Regulator sets aside the reviewable decision and substitutes a new decision under which no certificate is issued in relation to the rail T(SSCE) Act prohibition notice (the *new decision*), the rail T(SSCE) Act prohibition notice is taken, on the day the new decision takes effect, to be a prohibition notice issued under section 179 of the Law subject to all the matters specified in the prohibition notice.

211 Effect of amendments on a proceeding for an offence against rail safety law committed before commencement day

Despite the amendments made to the T(SSCE) Act by Part 3 of the amending Act, the T(SSCE) Act continues to apply to a proceeding for an offence against a rail safety law committed before the commencement day.

S. 211
inserted by
No. 41/2019
s. 19.

Division 4—General

S. 212
inserted by
No. 41/2019
s. 19.

212 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 their 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 (as amended by the **Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019**); 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 Local Operations Act.
- (3) Nothing done, or authorised to be done, by the Safety Director 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.
- (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 **Privacy and Data Protection Act 2014**.

213 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 the **Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019**, including any repeals and amendments made by or as a result of the enactment of that Act.
- (2) Regulations made under this section may—
- (a) have a retrospective effect to a day on or after a date not earlier than the day on which the **Rail Safety Legislation Amendment (National Services Delivery and Related Reforms) Act 2019** receives the Royal Assent;

S. 213
inserted by
No. 41/2019
s. 19.

- (b) be of limited or general application;
 - (c) differ according to time, place or circumstance;
 - (d) leave any matter or thing to be decided by a specified person or class of person.
- (3) To the extent to which any provision of the regulations under this section takes effect from a date that is earlier than the date of its making, the provision does not operate so as—
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its making; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its making.
- (4) 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.
- (5) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to any regulations made under this section.
- (6) This section expires on the second anniversary of the day on which it comes into operation.
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 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 on 19 May 2014:
Special Gazette (No. 148) 13 May 2014 page 2.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

Rail Safety National Law Application Act 2013
No. 22 of 2013
Endnotes

2 Table of Amendments

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

Rail Safety National Law Application Act 2013, No. 22/2013

<i>Assent Date:</i>	23.4.13
<i>Commencement Date:</i>	S. 97 on 19.5.15: s. 97; s. 52 on 19.5.14: Special Gazette (No. 148) 13.5.14 p. 2
<i>Note:</i>	S. 54(4) repealed s. 52 on 19.5.16
<i>Current State:</i>	This information relates only to the provision/s amending the Rail Safety National Law Application Act 2013

Statute Law Revision Act 2013, No. 70/2013

<i>Assent Date:</i>	19.11.13
<i>Commencement Date:</i>	Ss 3(Sch. 1 item 44), 4(Sch. 2 item 40) on 1.12.13: s. 2(1)
<i>Current State:</i>	This information relates only to the provision/s amending the Rail Safety National Law Application Act 2013

Transport (Safety Schemes Compliance and Enforcement) Act 2014, No. 27/2014

<i>Assent Date:</i>	8.4.14
<i>Commencement Date:</i>	S. 157 on 18.5.14: Special Gazette (No. 148) 13.5.14 pp 1, 2
<i>Current State:</i>	This information relates only to the provision/s amending the Rail Safety National Law Application Act 2013

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

<i>Assent Date:</i>	3.6.14
<i>Commencement Date:</i>	S. 10(Sch. item 143) on 1.7.14: Special Gazette (No. 200) 24.6.14, p. 2
<i>Current State:</i>	This information relates only to the provision/s amending the Rail Safety National Law Application Act 2013

Privacy and Data Protection Act 2014, No. 60/2014

<i>Assent Date:</i>	2.9.14
<i>Commencement Date:</i>	S. 140(Sch. 3 item 40) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
<i>Current State:</i>	This information relates only to the provision/s amending the Rail Safety National Law Application Act 2013

Rail Safety National Law Application Act 2013
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**Transport Legislation Amendment (Road Safety, Rail and Other Matters)
Act 2017, No. 68/2017**

Assent Date: 19.12.17
Commencement Date: Ss 106, 107 on 31.1.18: Special Gazette (No. 443)
19.12.17 p. 2
Current State: This information relates only to the provision/s
amending the **Rail Safety National Law Application
Act 2013**

**Transport Legislation Amendment (Better Roads Victoria and Other
Amendments) Act 2019, No. 7/2019**

Assent Date: 26.3.19
Commencement Date: S. 36 on 27.3.19: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Rail Safety National Law Application
Act 2013**

**Rail Safety Legislation Amendment (National Services Delivery and Related
Reforms) Act 2019, No. 41/2019**

Assent Date: 6.11.19
Commencement Date: Ss 4–19 on 2.12.19: Special Gazette (No. 480)
26.11.19 p. 1
Current State: This information relates only to the provision/s
amending the **Rail Safety National Law Application
Act 2013**

3 Amendments Not in Operation

This publication does not include amendments made to the **Rail Safety National Law Application Act 2013** by the following Act/s.

Rail Safety National Law Application Act 2013, No. 22/2013

<i>Assent Date:</i>	23.4.13
<i>Commencement Date:</i>	S. 213(6) inserted on 2.12.19 by No. 41/2019 s. 19: Special Gazette (No. 480) 26.11.19 p. 1
<i>Note:</i>	S. 213(6) provides that s. 213 expires on 2.12.21
<i>Current State:</i>	This information relates only to the provision/s amending the Rail Safety National Law Application Act 2013

At the date of this publication, the following provisions amending the **Rail Safety National Law Application Act 2013** were Not in Operation:

Amending Act/s:

Rail Safety National Law Application Act 2013, No. 22/2013

213 Regulations dealing with transitional matters

- (6) This section expires on the second anniversary of the day on which it comes into operation.

4 Explanatory details

No entries at date of publication.