

Queensland



**TRANSPORT
INFRASTRUCTURE AND
ANOTHER ACT AMENDMENT
ACT 2003**

Act No. 54 of 2003



TRANSPORT INFRASTRUCTURE AND ANOTHER ACT AMENDMENT ACT 2003

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Queensland



**Transport Infrastructure and Another Act
Amendment Act 2003**

Act No. 54 of 2003

**An Act to amend the *Transport Infrastructure Act 1994*, and for other
purposes**

[Assented to 18 September 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Transport Infrastructure and Another Act Amendment Act 2003*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF TRANSPORT INFRASTRUCTURE ACT 1994

3 Act amended in pt 2

This part amends the *Transport Infrastructure Act 1994*.

4 Amendment of s 2 (Objectives of this Act)

(1) Section 2(2)(d)(ii) to (v)—

renumber as section 2(2)(d)(iii) to (vi)

(2) Section 2(2)(d)—

insert—

‘(ii) provides for adequate levels of safety; and’.

5 Amendment of ch 6 hdg

Chapter 6, heading, after **INFRASTRUCTURE’**—

insert—

‘AND OTHER MATTERS’.

6 Amendment of s 74 (Ways of achieving objectives)

Section 74(c)—

omit, insert—

‘(c) providing for adequate levels of safety by having an accreditation system for railway managers and railway operators.’.

7 Amendment of s 75 (Scope of chapter)

(1) Section 75(1)—

omit, insert—

‘(1) This chapter applies to rail transport infrastructure and other rail infrastructure.’.

(2) Section 75(2)(d)(ii), ‘, or freight, for reward’—

omit, insert—

‘or freight’.

8 Replacement of s 80 (Definition for pt 4)

Section 80—

omit, insert—

‘Division 1—Introductory

‘80 Purposes of pt 4

‘The purposes of this part include providing for an accreditation system for railway managers and railway operators.’.

‘80A Part does not create civil cause of action

‘(1) This part does not—

- (a) create a civil cause of action based on a contravention of a provision of this part; or
- (b) affect or limit a civil right or remedy that exists apart from this part, whether at common law or otherwise.

‘(2) Without limiting subsection (1)(b), compliance with this part does not necessarily show that a civil obligation that exists apart from this part has been satisfied or has not been breached.

‘(3) The inclusion of this section in this part does not affect the interpretation of this Act other than this part.

‘80B Definitions for pt 4

‘In this part—

“accepted representations”—

- (a) for a proposed safety direction—see section 90C(2); and
- (b) for a show cause notice—see section 93C(2).

“approved safety management system” see section 80C.

“audit program” see section 92(1).

“certificate of accreditation” see section 84(7).

“disciplinary action”, about an accreditation for a railway or light rail, means 1 or more of the following—

- (a) cancelling the accreditation;
- (b) suspending, for a stated period, the accreditation;
- (c) varying the accreditation except if the variation is made because of an application of the accredited person;
- (d) directing an application to be made to amend an accredited person’s approved safety management system for a railway or the operation of rolling stock on a railway.

“dispute matter” see section 90A(1)(b).

“employee”, of an accredited person, means—

- (a) an employee of, or a contractor for, the accredited person; or
- (b) an employee of a contractor mentioned in paragraph (a); or

- (c) an individual who performs work for the accredited person without payment, while the person is performing that work.

Example of paragraph (c)—

An individual does work as a volunteer for an organisation of which the person is a member. The organisation is an accredited person. The volunteer is an employee of the accredited person when the volunteer is performing work for the accredited person.

“imposed condition” means a condition imposed on an accreditation by the chief executive, whether the condition was imposed on the accreditation at the time it was granted or at a later time.

“interim minor amendment”—

- (a) of an approved safety management system for a railway managed by a railway manager, means an amendment of the approved safety management system if the amendment—
- (i) has not been the subject of an application under section 88A; and
 - (ii) does not or will not increase the frequency or consequences of an existing hazard or risk, or allow a new hazard or risk to arise, relating to the management of the railway; or
- (b) of an approved safety management system for the operation of rolling stock on a railway by a railway operator, means an amendment of the approved safety management system if the amendment—
- (i) has not been the subject of an application under section 88A; and
 - (ii) does not or will not increase the frequency or consequences of an existing hazard or risk, or allow a new hazard or risk to arise, relating to the operation of rolling stock on the railway.

“proposed action” see section 93B(2)(a).

“railway” includes a railway proposed to be constructed on future railway land.

“regulation condition” see section 86(1).

“representation period” see section 90B(2)(c).

“safety direction”—

- (a) for a direction given by the chief executive—see section 90D(1);
or
- (b) for a direction given by a rail safety officer—see section 91A(1) or
91B(1).

“show cause notice” see section 93B(1).

“show cause period” see section 93B(2)(f).

“suspend”, an accreditation, means any of the following, as stated in the suspension, for a period stated in the suspension—

- (a) suspend the entire accreditation;
- (b) suspend that part of the accreditation relating to a particular railway managed by, or a particular operation of rolling stock by, the accredited person;
- (c) suspend that part of the accreditation relating to a particular part of the railway managed by, or a particular part of the operation of rolling stock by, the accredited person.

‘80C Meaning of “approved safety management system”

‘(1) As mentioned in section 84(2)(b) or (3)(b),¹ when the chief executive accredits a person under that section as a railway manager or railway operator for a railway, the chief executive must be satisfied the person has a safety management system that is appropriate.

‘(2) For the first year of accreditation for a railway managed by a railway manager, or for the operation of rolling stock on a railway by a railway operator, the **“approved safety management system”** in relation to the railway manager or railway operator is the safety management system for the railway mentioned in subsection (1).

‘(3) For the second year, or a later year, of accreditation for a railway managed by a railway manager, or for the operation of rolling stock on a railway by a railway operator, the **“approved safety management system”** in relation to the railway manager or railway operator is—

- (a) if a proposed safety management system for the year is approved under section 88D²—the system approved under that section; or

1 Section 84 (Granting accreditation)

2 Section 88D (Approval of proposed safety management system)

(b) if a proposed safety management system is not approved under section 88D for the year—the approved safety management system that was in force for the last preceding year of accreditation for which there was an approved safety management system, whether that system was—

- (i) the system mentioned in subsection (1); or
- (ii) a system approved under section 88D.

‘(4) An approved safety management system in force under subsection (2) or (3) is subject to an amendment of the system approved under section 88A.³

‘Division 2—Accreditation of railway managers and railway operators’.

9 Amendment of s 81 (Accreditation of managers and operators)

(1) Section 81(1), penalty—

omit, insert—

‘Maximum penalty—500 penalty units.’.

(2) Section 81(2), penalty—

omit, insert—

‘Maximum penalty—500 penalty units.’.

10 Amendment of s 82 (Applications for accreditation)

Section 82, after ‘apply’—

insert—

‘, in the approved form.’.

11 Amendment of s 84 (Granting accreditation)

(1) Section 84(6)(c), after ‘a condition’—

insert—

³ Section 88A (Amendment of approved safety management system)

‘of the type mentioned in section 85’.

(2) Section 84(7) and (8)—

renumber as section 84(8) and (9).

(3) Section 84—

insert—

‘(7) Also, the chief executive must give to the applicant a certificate about the accreditation (a“**certificate of accreditation**”).’.

(4) Section 84(9), as renumbered, ‘or (7)’—

omit, insert—

‘or (8)’.

12 Amendment of s 84A (Annual levy)

Section 84A(3) and (4)—

omit, insert—

‘(3) The chief executive must give each accredited person a signed notice stating—

- (a) the amount of the levy payable by the accredited person; and
- (b) a reasonable date by which the levy is to be paid to the chief executive.

‘(4) An accredited person given a notice under subsection (3) must pay the amount of the levy by the date stated in the notice.

‘(5) If the accredited person does not pay the amount of the levy by the date stated in the notice, the amount is a debt owed to the chief executive.’.

13 Amendment of s 85 (Accreditation conditions)

(1) Section 85(1), ‘conditions’—

omit, insert—

‘imposed conditions or regulation conditions’.

(2) Section 85(2), from ‘A condition’ to ‘only’—

omit, insert—

‘The chief executive may impose reasonable conditions on an accreditation that the chief executive considers appropriate, including matters relating’.

(3) Section 85(2)(c)(i) and (ii)—

omit, insert—

‘(i) the approved safety management system for the railway or the operation of rolling stock on the railway with which the accredited person must comply; or’.

(4) Section 85(2)(c)(iii)—

renumber as section 85(2)(c)(ii).

(5) Section 85(3)—

omit, insert—

‘(3) An accredited person must comply with each imposed condition on the person’s accreditation.

Maximum penalty for subsection (3)—200 penalty units.’.

14 Replacement of s 86 (Requiring accreditation conditions to be complied with)

Section 86—

omit, insert—

‘86 Regulation may prescribe a condition applying to an accreditation

‘(1) A regulation may prescribe—

- (a) a condition (a “**regulation condition**”) to which an accreditation of an accredited person is subject; and
- (b) a penalty for contravening the regulation condition.

‘(2) If there is an inconsistency between an imposed condition and a regulation condition, the regulation condition applies to the extent of the inconsistency.

‘(3) For the application of a regulation condition to an accreditation of an accredited person, it is irrelevant when the accreditation of the accredited person was granted.

‘86A Surrender of accreditation

‘(1) An accredited person may surrender the person’s accreditation by signed notice given to the chief executive.

‘(2) The accredited person must return to the chief executive the certificate of accreditation within 14 days after the surrender of the accreditation, unless the accredited person has a reasonable excuse.

Maximum penalty for subsection (2)—20 penalty units.’.

15 Amendment of s 88 (Amending accreditation conditions on application)

(1) Section 88, heading—

omit, insert—

‘88 Amendment of imposed conditions’.

(2) Section 88(1), ‘conditions of’—

omit, insert—

‘conditions imposed on’.

(3) Section 88—

insert—

‘(8) Despite subsection (1), an application for an amendment of an approved safety management system for a railway managed by an accredited person, or for the operation of rolling stock on a railway by an accredited person, must be made under section 88A.’.

16 Omission of ss 89–93

Sections 89 to 93—

omit.

17 Renumbering of s 93A

Section 93A—

renumber as section 93H.

18 Insertion of new s 88A and ch 6, pt 4, divs 3–8

After section 88—

insert—

‘88A Amendment of approved safety management system

‘(1) An accredited person may apply to the chief executive for approval of a proposed amendment of the approved safety management system for either of the following—

- (a) a railway managed by the accredited person;
- (b) the operation of rolling stock on a railway by the accredited person.

‘(2) The chief executive must consider the application and may approve, or refuse to approve, the proposed amendment.

‘(3) The chief executive may approve the proposed amendment only if reasonably satisfied the approved safety management system, as it will be amended, is consistent with generally accepted risk management principles.

‘(4) If the chief executive decides to approve the proposed amendment, the chief executive must give the applicant a signed notice stating the decision and the approved amendment.

‘(5) The approved amendment is taken to be incorporated into the approved safety management system for the railway, or for the operation of rolling stock on the railway, on the day stated in the signed notice.

‘(6) If the chief executive decides to refuse to approve the proposed amendment, the chief executive must give the applicant—

- (a) a signed notice stating the decision and the reason for the decision; and
- (b) an information notice for the decision.

‘(7) Nothing in this section requires an accredited person to apply to the chief executive for approval of an interim minor amendment of the approved safety management system for—

- (a) a railway managed by the accredited person; or

- (b) the operation of rolling stock on a railway by the accredited person.⁴

‘Division 3—Obligations of accredited persons

‘88B Accredited person must comply with approved safety management system

‘(1) An accredited person must, unless the person has a reasonable excuse, comply with—

- (a) the approved safety management system for the railway managed by the accredited person; or
- (b) the approved safety management system for the operation of rolling stock by the accredited person on a railway.

Maximum penalty—200 penalty units.

‘(2) It is a reasonable excuse if the accredited person complied with—

- (a) the approved safety management system amended by an interim minor amendment; or
- (b) the approved safety management system to the extent that was practicable while complying with a safety direction given to the accredited person.

‘(3) Subsection (2) does not limit the excuses that may be reasonable excuses.

‘88C Accredited person to review approved safety management system each year and related matters

‘(1) Before each anniversary of the accreditation of an accredited person for a railway that is managed by the accredited person, or for the operation of rolling stock on a railway by the accredited person, the accredited person must—

- (a) review the appropriateness of the approved safety management system for the railway or for the operation of rolling stock; and

⁴ See sections 88B(2) and 88C(2)(b) for provisions about interim minor amendments.

- (b) consider any safety directions given since the last approval; and
- (c) consider whether an amendment is required to the system.

‘(2) At least 28 days before the anniversary, the accredited person must give to the chief executive—

- (a) a signed notice, in the approved form, stating how the accredited person complied with subsection (1); and
- (b) if there is a difference between the approved safety management system for the railway, or for the operation of rolling stock on the railway, for the current year of accreditation and the proposed safety management system for the following year, including, for example, interim minor amendments—
 - (i) a copy of the proposed system; and
 - (ii) a statement identifying the differences; and
 - (iii) an application under section 88D for approval of the proposed system.

Maximum penalty for subsection (2)—100 penalty units.

‘88D Approval of proposed safety management system

‘(1) This section applies if—

- (a) an accredited person for a railway has reviewed and considered matters as mentioned in section 88C(1); and
- (b) the person must give to the chief executive an application, as mentioned in section 88C(2)(b)(iii), for the approval of a proposed safety management system for the railway or for the operation of rolling stock on a railway; and
- (c) the person has given the application to the chief executive.

‘(2) The chief executive must consider the application and may approve, or refuse to approve, the proposed system.

‘(3) The chief executive may approve the proposed system only if reasonably satisfied the proposed system is consistent with generally accepted risk management principles.

‘(4) If the chief executive decides to approve the proposed system, the chief executive must give the applicant a signed notice stating the decision.

‘(5) If the chief executive decides to refuse to approve the proposed system, the chief executive must give the applicant—

- (a) a signed notice stating the decision and the reason for the decision; and
- (b) an information notice for the decision.

‘88E Financial capacity or insurance arrangements to meet potential accident liabilities

‘(1) A railway manager must have the financial capacity, or public risk insurance arrangements, at all times to meet reasonable potential accident liabilities relating to the railway managed by the railway manager.

Maximum penalty—400 penalty units.

‘(2) A railway operator must have the financial capacity, or public risk insurance arrangements, at all times to meet reasonable potential accident liabilities relating to the rolling stock operated on a railway by the railway operator.

Maximum penalty—400 penalty units.

‘(3) The chief executive may, by signed notice given to an accredited person, require the accredited person to satisfy the chief executive that the person has the financial capacity or public risk insurance arrangements as mentioned in subsection (1) or (2).

‘(4) An accredited person given a notice under subsection (3) must comply with the notice within 14 days after the notice is given to the accredited person.

Maximum penalty—40 penalty units.

‘(5) The chief executive may, under section 93D⁵, suspend an accreditation whether or not—

- (a) the chief executive has given the accredited person a notice under subsection (3); or
- (b) the period to comply with a notice under that subsection has ended.

5 Section 93D (Immediate suspension of an accreditation)

‘88F Notice of cancellation etc. of agreement mentioned in s 84(3)(d)

‘(1) This section applies to an agreement mentioned in section 84(3)(d).

‘(2) If the agreement is cancelled or suspended, each party to the agreement must give the chief executive a signed notice about the cancellation or suspension within 14 days after the cancellation or suspension.

Maximum penalty—200 penalty units.

‘Division 4—Disputes about or under agreements for access to rail transport infrastructure that relate to rail safety

‘89 Chief executive may decide matters on request

‘(1) This section applies if parties to negotiations for a proposed agreement about access to rail transport infrastructure are unable to agree about a safety matter.

‘(2) The chief executive may make a decision about the safety matter if—

- (a) the access is required to be given under an access undertaking and, under that undertaking, the QCA asks the chief executive to make a decision about the safety matter; or
- (b) there is no access undertaking but access is required to be given under the *Queensland Competition Authority Act 1997* and the QCA asks the chief executive to make a decision about the safety matter; or
- (c) the access is not required under an access undertaking or the *Queensland Competition Authority Act 1997*, but at least 1 of the parties to the negotiations asks the chief executive to make a decision about the safety matter and the chief executive reasonably considers it appropriate to make a decision.

‘(3) If a decision is made under subsection (2)(a) about a safety matter and the QCA is dealing with matters under the access undertaking that include the safety matter, the QCA must not make a decision relating to the safety matter that is inconsistent with the chief executive’s decision about the safety matter.

‘(4) If a decision is made under subsection (2)(b) and the QCA must exercise a power under the *Queensland Competition Authority Act 1997* relating to the safety matter, the QCA must have regard to the chief executive’s decision in exercising the power.

‘(5) If a decision is made under subsection (2)(c), the decision is binding on the parties to the negotiations only if the parties agreed to be bound by the decision.

‘(6) The chief executive may develop guidelines for making decisions under subsection (2).

‘(7) The chief executive must make any current guidelines mentioned in subsection (6) publicly available.

‘(8) In this section—

“**access undertaking**” see the *Queensland Competition Authority Act 1997*, the schedule.

“**QCA**” means the Queensland Competition Authority.

“**safety matter**” means a matter about rail safety.

90 Notice of dispute under agreement for access

‘(1) This section applies to a dispute under an agreement for accessing rail transport infrastructure if the dispute is about a matter relating to rail safety, including, for example, the following agreements—

- (a) an agreement mentioned in section 151(1)⁷;
- (b) an access agreement.

‘(2) A person who gives notice of the dispute to another party to the agreement may give the chief executive a signed notice stating details of the dispute.

‘(3) Each accredited person who is a party to the agreement must give the chief executive a signed notice stating details of the resolution of the dispute within 14 days after the resolution.

Maximum penalty—10 penalty units.

‘(4) In this section—

⁷ Section 151 (Non-accredited railways)

“**access agreement**” see the *Queensland Competition Authority Act 1997*, the schedule.

“**resolution**”, of a dispute, means the end of the dispute by—

- (a) agreement of the parties to the dispute; or
- (b) arbitration; or
- (c) a decision of an expert under the agreement; or
- (d) a decision of a court or the Queensland Competition Authority.

‘90A Helping in a dispute under agreement for access

‘(1) This section applies if the chief executive—

- (a) is given a notice under section 90(2); and
- (b) reasonably considers that it may be appropriate to give a safety direction about the matter stated in the notice as in dispute (the “**dispute matter**”).

‘(2) The chief executive must inform himself or herself about the dispute matter in any way the chief executive consider appropriate.

‘(3) Without limiting subsection (2), the chief executive may consult with 1 or more of the following persons about the dispute matter—

- (a) each accredited person who is a party to the agreement;
- (b) another person whom the chief executive reasonably believes may be able to help the chief executive in relation to the dispute matter, including, for example, the Queensland Competition Authority.

‘(4) For consulting with an accredited person, the chief executive may give a signed notice to the accredited person stating a reasonable time and place for a meeting with the accredited person.

‘(5) An accredited person given a notice under subsection (4) must attend the meeting at the time and place stated in the notice.

Maximum penalty for subsection (5)—10 penalty units.

‘90B Notice of proposed safety direction

‘(1) If the chief executive reasonably considers himself or herself informed about a dispute matter and that it is reasonable to make a safety

direction about the matter, the chief executive must give each party to the agreement, and the Queensland Competition Authority, the proposed safety direction to be given to an accredited person.

‘(2) The proposed safety direction must include—

- (a) the grounds for the proposed safety direction; and
- (b) an outline of the facts and circumstances forming the basis for the grounds; and
- (c) an invitation to each person given the proposed safety direction to show, within a stated period (the “**representation period**”), why the proposed safety direction should not be given to an accredited person.

‘(3) The representation period must be a period ending at least 14 days after the day that the proposed safety direction is given to the parties to the agreement.

‘90C Consideration of representations

‘(1) Each person given a proposed safety direction under section 90B(1) may make written representations about the proposed safety direction to the chief executive in the representation period.

‘(2) The chief executive must consider all written representations (the “**accepted representations**”) made under subsection (1).

‘90D Chief executive’s actions after stated period

‘(1) After considering any accepted representations, the chief executive may give a direction (a “**safety direction**”) to 1 or more accredited persons to do or not to do an act stated in the safety direction.

‘(2) The safety direction must include—

- (a) the reason for the safety direction; and
- (b) the day by which the safety direction must be complied with, that must be reasonable having regard to the nature of the matters to be done under the safety direction.

‘(3) A directed person must comply with the safety direction, unless the directed person has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(4) The safety direction must be accompanied by an information notice about the chief executive’s decision to give the safety direction.

‘(5) Also, the chief executive must give to a dispute party a signed notice about the fact that a safety direction has been given to the directed person.

‘(6) In this section—

“**directed person**” means a person given a safety direction under subsection (1).

“**dispute party**” means a person given a proposed safety direction as mentioned in section 90B(1) who is not a directed person.

‘Division 5—Safety directions by rail safety officers

‘91 Application of division

‘This division applies if a rail safety officer reasonably believes, for either or both of the following reasons, it is necessary to give an accredited person, or a person who appears to the officer to be an employee of an accredited person, a safety direction—

- (a) to maintain an adequate level of safety in managing a railway or the operation of rolling stock on a railway;
- (b) to prevent a situation the rail safety officer reasonably considers to be unsafe.

‘91A Written direction by rail safety officer

‘(1) The rail safety officer may, by a written direction given to the accredited person or the employee (a “**safety direction**”), direct the accredited person or employee to do or not to do an act stated in the safety direction.

‘(2) The safety direction must state a date or, if applicable, a time on the day by which the safety direction must be complied with, that must be reasonable having regard to the nature of the matters to be done under the safety direction.

‘(3) A person to whom a safety direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—150 penalty units.

‘91B Spoken direction because written direction is not possible or reasonable

‘(1) If it is not possible or reasonable for the rail safety officer to give a safety direction in writing to the accredited person or the employee as mentioned in section 91A(1), the officer may direct the accredited person or employee (also a “**safety direction**”) to do or not to do a stated act by telling the accredited person or employee—

- (a) to do or not to do the stated act; and
- (b) the reason for the officer giving the safety direction.

‘(2) A person to whom a safety direction is given under subsection (1) must comply with it, unless the person has a reasonable excuse.

Maximum penalty—150 penalty units.

‘(3) It is a reasonable excuse if the officer did not tell the person that the person commits an offence if the person does not comply with the safety direction.

‘(4) Within 5 days after giving a person a safety direction under subsection (1), the rail safety officer must give the accredited person or employee a written notice stating the safety direction given under that subsection.

‘91C Direction under s 91A(1) or 91B(4) must include reasons and be accompanied by information notice

‘(1) This section applies to a rail safety officer when giving a safety direction under section 91A(1) or a written notice stating a safety direction under section 91B(4).

‘(2) The safety direction or notice must—

- (a) include the reasons for the safety direction; and
- (b) be accompanied by an information notice for the safety direction.

‘(3) If it is not possible or reasonable for a rail safety officer to comply with subsection (2) at the time the officer is giving the safety direction, the officer must comply with the subsection as soon as is reasonably practicable for the officer to do so.

‘91D Safety directions and relationship with Workplace Health and Safety Act 1995

‘(1) It is a defence in a proceeding against a person for a safety direction contravention for the person to prove—

- (a) the person committed the act or omission constituting the safety direction contravention as part of complying with the person’s workplace obligations; and
- (b) in committing the act or omission constituting the safety direction contravention, the person did each of the following to diminish the consequences of the safety direction contravention—
 - (i) chose an appropriate way;
 - (ii) took reasonable care and skill;
 - (iii) exercised proper diligence.

‘(2) In this section—

“**safety direction contravention**” means a contravention of an obligation imposed on the person under a safety direction.

“**workplace obligations**”, of a person, means the person’s obligations under the *Workplace Health and Safety Act 1995*, section 26 and part 3, divisions 2 and 3.⁸

‘Division 6—Audit regime

‘92 Audit program for inspecting activities of accredited person

‘(1) For each year, the chief executive must prepare a program (an **‘audit program’**) for inspecting the activities of railway managers and railway operators during the year.

‘(2) Without limiting subsection (1), an audit program may focus on the following—

- (a) particular railway managers or railway operators;

⁸ *Workplace Health and Safety Act 1995*, section 26 (How obligations can be discharged if regulation etc. made) and part 3 (Workplace health and safety obligations), divisions 2 (Obligations of employers and others) and 3 (Obligations of workers and other persons)

- (b) a particular criterion relating to railway managers or railway operators;
- (c) a particular aspect of safety.

‘92A When inspections may be carried out during a year

‘(1) During a year, the chief executive may inspect an accredited person under an audit program for the year.

‘(2) Also, the chief executive may inspect an accredited person if the chief executive reasonably believes—

- (a) an aspect of safety needs to be considered in relation to the particular accredited person or accredited persons generally; or
- (b) the accredited person has not, or is not, complying with a railway provision.

‘92B Requirement to give information or document for inspection

‘(1) For inspecting an accredited person, the chief executive may, by signed notice given to the accredited person, require the accredited person to give the chief executive information or a document the chief executive reasonably believes is relevant to the inspection.

‘(2) The notice must include—

- (a) a time, that is reasonable in the circumstances, by which the accredited person must comply with the requirement; and
- (b) a warning that it is an offence to fail to comply with the requirement, unless the accredited person has a reasonable excuse.

‘92C Failure to give information or document for inspection

‘(1) A person to whom a notice is given under section 92B must comply with the requirement in the notice within the time stated in it, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘(2) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

‘(3) The person does not commit an offence against this section if the information or document sought by the chief executive is not in fact relevant to the inspection.

‘Division 7—Disciplinary action against accredited persons

‘93 Happening that may give rise to a belief that a ground for disciplinary action exists

‘(1) The chief executive may consider that a ground for disciplinary action about an accreditation of an accredited person exists after any of the following—

- (a) an inspection under an audit program;
- (b) an inspection other than under an audit program;
- (c) a report of a serious incident;
- (d) an investigation of an incident.

‘(2) However, subsection (1) does not limit the matters that may cause the chief executive to consider a ground for disciplinary action exists.

‘93A Grounds for disciplinary action about the accreditation of an accredited person

‘Each of the following is a ground to take disciplinary action about an accreditation of an accredited person—

- (a) the accredited person contravened a provision of this part, part 5A or 6 or chapter 8AA,⁹ whether or not—
 - (i) a penalty is provided for the provision that the accredited person contravened; or
 - (ii) a proceeding for a railway offence, or another action under this Act relating to a railway provision, is started against the person; or

⁹ Parts 5A (Rail safety officers), 6 (Railway incidents) and chapter 8AA (Transporting dangerous goods by rail)

- (iii) the person is convicted of a railway offence, or another action is taken in relation to the person under this Act;
- (b) the accredited person failed to comply with a condition of the accreditation.

‘93B Show cause notice

‘(1) If the chief executive reasonably believes a ground exists to take disciplinary action about an accreditation of an accredited person, the chief executive must give the accredited person a signed notice (a **“show cause notice”**).

‘(2) The show cause notice must state each of the following—

- (a) the disciplinary action the chief executive proposes taking under this division (the **“proposed action”**);
- (b) the grounds for the proposed action;
- (c) an outline of the facts and circumstances forming the basis for the grounds;
- (d) if the proposed action includes suspension—the proposed suspension including the proposed period of the suspension;
- (e) if the proposed action includes varying the accreditation—the change that it is proposed to make to an imposed condition or a new condition it is proposed to impose on the accreditation;
- (f) an invitation to the accredited person to show, within a stated period (the **“show cause period”**), why the proposed action should not be taken.

‘(3) The show cause period must be a period ending at least 28 days after the day the show cause notice is given to the accredited person.

‘93C Consideration of representations

‘(1) The accredited person may make written representations about the show cause notice to the chief executive in the show cause period.

‘(2) The chief executive must consider all written representations (the **“accepted representations”**) made under subsection (1).

‘93D Immediate suspension of an accreditation

‘(1) This section applies if the chief executive reasonably believes—

- (a) a ground to take disciplinary action about an accreditation requires the immediate suspension of the accreditation—
 - (i) to ensure the safety of persons; or
 - (ii) to prevent damage to rail transport infrastructure or other rail infrastructure; or
- (b) an accredited person does not have the financial capacity or public risk insurance arrangements required under section 88E(1) or (2).¹⁰

‘(2) The chief executive may suspend the accreditation immediately.

‘(3) The suspension can be effected only by the chief executive giving the accredited person all of the following—

- (a) a signed notice stating the suspension and the reason for the suspension;
- (b) an information notice for the suspension;
- (c) a show cause notice.

‘(4) The suspension—

- (a) takes effect immediately all the documents mentioned in subsection (3) are given to the accredited person; and
- (b) continues to operate until the show cause notice is finally dealt with.

‘93E Action by chief executive

‘(1) This section applies if—

- (a) there are no accepted representations for the show cause notice; or
- (b) after considering the accepted representations for the show cause notice, the chief executive still believes the ground for disciplinary action exists relating to the accreditation.

¹⁰ Section 88E (Financial capacity or insurance arrangements to meet potential accident liabilities)

‘(2) The chief executive may—

- (a) if the proposed action is a direction to apply to amend the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the accredited person—direct the accredited person to apply for the proposed amendment by a stated time; or
- (b) if the proposed action is to suspend the accreditation—suspend the accreditation for not longer than the proposed period of suspension; or
- (c) if the proposed action is to vary the accreditation—vary the accreditation in the proposed way, or another way to which the accredited person has consented in writing, including by varying an existing condition or by imposing a new condition; or
- (d) if the proposed action is to cancel the accreditation—cancel the accreditation or suspend the accreditation for a period.

‘(3) More than 1 type of disciplinary action about an accreditation of an accredited person may be taken under this section.

‘(4) If the chief executive decides to take action under subsection (2), the chief executive must immediately give the accredited person—

- (a) a signed notice stating—
 - (i) the decision; and
 - (ii) for a direction as mentioned in subsection (2)(a)—that the accreditation will be suspended in its entirety under subsection (5) without further notice until the accredited person makes the application for the proposed amendment; and
 - (iii) the reasons for the decision; and
- (b) an information notice for the decision.

‘(5) If the chief executive directs the accredited person to apply for a proposed amendment by a stated time and the person does not make the application by the stated time, the accredited person’s accreditation is suspended in its entirety from that time until the day after the day the accredited person gives the chief executive the application.

‘(6) If the chief executive’s decision is to cancel the accreditation, the notice mentioned in subsection (4)(a) must include a direction to the

accredited person to return the certificate of accreditation to the chief executive, within 14 days after receiving the notice.

‘(7) A person who is directed under subsection (6) to return a certificate of accreditation must comply with the direction within 14 days after receiving the direction.

Maximum penalty—40 penalty units.

‘(8) The decision takes effect on the later of the following—

- (a) the day the signed notice mentioned in subsection (4)(a) is given to the accredited person;
- (b) the day of effect stated in the signed notice.

‘93F Decision by chief executive not to take action under s 93E

‘(1) This section applies if—

- (a) there are accepted representations for the show cause notice; and
- (b) after considering the accepted representations for the show cause notice, the chief executive no longer believes a ground for disciplinary action exists relating to the accreditation.

‘(2) The chief executive must give the accredited person a signed notice stating the chief executive does not intend to take action under section 93E and the matter is completed.

‘Division 8—Information about safety issues

‘93G Chief executive may publish safety bulletin

‘(1) The chief executive may publish, in a way that the chief executive considers appropriate, a document containing information about safety issues for railways (a “**safety bulletin**”).

‘(2) Without limiting the information that may be included in a safety bulletin, the chief executive may include any of the following information—

- (a) information arising out of a report of an incident or an investigation into an incident, including a serious incident;
- (b) information arising out of an inspection of an accredited person;

- (c) other information about safety issues, including information from outside Queensland.

‘(3) The chief executive must consult with an accredited person about information the chief executive proposes to publish that may identify, or be reasonably expected to identify, the accredited person.

‘(4) Also, the chief executive must consult with an accredited person, or any other person, about information the chief executive proposes to publish in which the accredited person or the other person has a proprietary interest.’.

19 Omission of s 101 (Reporting serious incidents)

Section 101—

omit.

20 Insertion of new ch 6, pt 5A

After section 100—

insert—

‘PART 5A—RAIL SAFETY OFFICERS

‘Division 1—Definitions

‘100A Definitions for pt 5A

‘In this part—

“**enter**”, rolling stock, includes board rolling stock.

“**place**” includes the following—

- (a) land;
- (b) a building or other structure, or part of a building or other structure, of any type;
- (c) a group of buildings or other structures, or part of a group of buildings or other structures, of any type.

“**public place**” means—

- (a) a place, or part of a place, that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or
- (b) a place, or part of a place, that the occupier allows members of the public to enter, whether or not on payment of money.

“railway workplace” means either of the following places —

- (a) a place that is, or at which is located, rail transport infrastructure or other rail infrastructure;
- (b) another place used by an accredited person to conduct activities in relation to managing a railway or operating rolling stock on a railway.

‘Division 2—Rail safety officers including provisions about appointment

‘100B Rail safety officers

‘(1) Each police officer is a rail safety officer.

‘(2) The chief executive may appoint an officer of the department, or any other person, as a rail safety officer.

‘(3) However, the chief executive may appoint a person under subsection (2) only if the chief executive is reasonably satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

‘(4) Sections 100C(1)(a) and (b), 100D and 100E do not apply to a rail safety officer who is a police officer.

‘100C Appointment conditions and limit on powers

‘(1) A rail safety officer holds office on any conditions stated in—

- (a) the officer’s instrument of appointment; or
- (b) a signed notice by the chief executive given to the officer; or
- (c) a regulation.

Example for subsection (1)(a)—

The instrument of appointment of a rail safety officer may provide that if the officer is an employee of a railway manager or railway operator for a railway, the officer is

appointed only to investigate, or may not investigate, a matter under section 103(2) about a specific railway.

‘(2) The instrument of appointment, a signed notice given to the officer or a regulation may limit the officer’s powers under a railway provision.

‘100D Issue of identity card to each rail safety officer

‘(1) The chief executive must issue an identity card to each rail safety officer.

‘(2) The identity card must—

- (a) contain a recent photo of the officer; and
- (b) contain a copy of the officer’s signature; and
- (c) identify the person as a rail safety officer under this Act; and
- (d) state an expiry date for the card.

‘(3) This section does not prevent the issuing of a single identity card to a person for this Act and other purposes.

‘100E Production or display of identity card

‘(1) In exercising a power under a railway provision in relation to a person, a rail safety officer must—

- (a) produce the officer’s identity card for the person’s inspection before exercising the power; or
- (b) have the identity card displayed so that it is clearly visible to the person when exercising the power.

‘(2) However, if it is not practicable to comply with subsection (1), the officer must produce the identity card for the person’s inspection at the first reasonable opportunity.

‘(3) For subsection (1), a rail safety officer does not exercise a power in relation to a person only because the officer, as authorised under this Act, enters—

- (a) a public place when it is open to the public; or
- (b) a place for the purpose of asking the occupier of the place for consent to enter.

‘100F When rail safety officer ceases to hold office

‘(1) A rail safety officer ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) the officer ceases to hold office under another condition of office;
- (c) the officer’s resignation under section 100G takes effect.

‘(2) Subsection (1) does not limit the ways a rail safety officer may cease to hold office.

‘(3) In this section—

“**condition of office**” means a condition on which the officer holds office.

‘100G Resignation

‘A rail safety officer may resign by signed notice given to the chief executive.

‘100H Return of identity card

‘A person who ceases to be a rail safety officer must return the person’s identity card to the chief executive within 21 days after ceasing to be an officer, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘Division 3—Entry to places by rail safety officers

‘100I Power to enter places

‘(1) A rail safety officer may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is a railway workplace and the entry is made when the place is—

- (i) open for carrying on activities for which the place is a railway workplace; or
- (ii) otherwise open for entry; or
- (iii) required to be open for inspection under an accreditation; or
- (iv) not open, or required to be open, as mentioned in subparagraphs (i) to (iii) but the entry is urgently required to investigate the circumstances of a serious incident.

‘(2) For the purpose of asking the occupier of a place for consent to enter, the officer may, without the occupier’s consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

‘(3) A rail safety officer who enters a railway workplace under subsection (1)(d) must not unnecessarily impede any activities being conducted at the workplace.

‘(4) If a rail safety officer may enter a place under subsection (1)(d), the officer is not authorised to enter any part of the place that is a home.

‘(5) In this section—

“**home**” means a building, caravan or other structure in which an individual lives.

‘100J Procedure for entry with consent

‘(1) This section applies if a rail safety officer intends to ask an occupier of a place to consent to the officer or another rail safety officer entering the place.

‘(2) Before asking for the consent, the officer must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

‘(3) If the consent is given, the officer may ask the occupier to sign an acknowledgment of the consent.

‘(4) The acknowledgment must state—

- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the officer consent to enter the place and exercise powers under a railway provision; and
- (d) the time and date the consent was given.

‘(5) If the occupier signs the acknowledgment, the officer must immediately give a copy to the occupier.

‘(6) If—

- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
- (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

‘100K Procedure for other entries without warrant

‘(1) This section applies if—

- (a) a rail safety officer intends to enter a place without the consent of an occupier of the place or a warrant, as authorised under section 100I(1)(d); and
- (b) an occupier is present at the place.

‘(2) Before entering the place, the officer must tell, or make a reasonable attempt to tell, the occupier—

- (a) the purpose of the entry; and
- (b) that the officer is permitted under section 100I(1)(d) to enter the place without the occupier’s consent or a warrant.

‘100L Application for warrant

‘(1) A rail safety officer may apply to a magistrate for a warrant relating to a place.

‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The magistrate may refuse to consider the application until the officer gives the magistrate all of the information the magistrate requires about the application in the way the magistrate requires.

Example for subsection (3)—

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

‘100M Issue of warrant

‘(1) A magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the“**evidence**”) that may provide evidence of a railway offence; or
- (b) the evidence is at the place or, within the next 7 days, may be at the place.

‘(2) The warrant must state—

- (a) that a stated rail safety officer may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise powers under a railway provision; and
- (b) the railway offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

‘100N Special warrants

‘(1) A rail safety officer may apply for a warrant (a“**special warrant**”) by phone, fax, radio or another form of communication if the officer reasonably believes it necessary because of—

- (a) urgent circumstances; or

(b) other special circumstances, including, for example, the officer's remote location.

'(2) Before applying for the special warrant, the officer must prepare an application stating the grounds on which the warrant is sought.

'(3) The officer may apply for the warrant before the application is sworn.

'(4) After issuing the special warrant, the magistrate must immediately fax or otherwise electronically communicate a copy (a "**facsimile warrant**") to the officer if it is reasonably practicable to do so.

'(5) If it is not reasonably practicable to fax or electronically communicate a copy to the officer—

(a) the magistrate must tell the officer—

(i) what the terms of the special warrant are; and

(ii) the date and time the special warrant is issued; and

(b) the officer must complete a form of warrant (a "**warrant form**") and write on it—

(i) the magistrate's name; and

(ii) the date and time the magistrate issued the special warrant; and

(iii) the terms of the special warrant.

'(6) The facsimile warrant, or the warrant form properly completed by the officer, authorises the entry and the exercise of the other powers stated in the special warrant issued.

'(7) The officer must, at the first reasonable opportunity, send the magistrate—

(a) the sworn application; and

(b) if the officer completed a warrant form—the completed warrant form.

'(8) On receiving the documents, the magistrate must attach them to the special warrant.

'(9) If—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and

(b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

‘1000 Warrants—procedure before entry

‘(1) This section applies if—

- (a) a rail safety officer stated in a warrant issued under this division for a place is intending to enter the place under the warrant; and
- (b) a person is present at the place.

‘(2) Before entering the place, the officer must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the officer’s identity card or other document evidencing the officer’s appointment;
- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form, a copy of the facsimile warrant or warrant form;
- (c) tell the person the officer is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the officer immediate entry to the place without using force.

‘(3) However, the officer need not comply with subsection (2) if the officer reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

‘(4) Subsection (2)(a) does not apply to a rail safety officer who is a police officer.¹¹

11 See the *Police Powers and Responsibilities Act 2000*, section 394 (Supplying police officer’s details).

‘Division 4—General powers of rail safety officers

‘100P General powers after entering place

‘(1) This division applies to a rail safety officer who, under division 3, enters a place.

‘(2) However if, under section 100I(2),¹² the officer enters a place to ask the occupier’s consent to enter a place, this division applies to the officer only if the consent is given or the entry is otherwise authorised.

‘(3) To the extent the officer reasonably considers it necessary for an inspection or investigation under a railway provision, the officer may do any of the following—

- (a) search any part of the place;
- (b) enter or open, using reasonable force, a structure, rolling stock, vehicle or other thing to examine the structure, rolling stock, vehicle or other thing;
- (c) inspect, film, photograph, videotape or otherwise record an image of a document, structure, rolling stock, vehicle or other thing at the place;
- (d) take, or authorise another person to take, for analysis a thing, or a sample of or from the thing, at the place;
- (e) mark, tag or otherwise identify rolling stock, a vehicle or other thing at the place;
- (f) take an extract from, or copy, a document at the place;
- (g) take into the place the equipment, materials or persons the officer reasonably requires for exercising a power under this part;
- (h) take a necessary step to allow a power under paragraphs (a) to (g) to be exercised.

‘(4) If the officer takes a sample or thing for analysis under subsection (3)(d), the officer must—

- (a) give a receipt for the sample or thing to the person in charge of the thing or place from which it was taken; and

12 Section 100I (Power to enter places)

- (b) for a sample or thing with an intrinsic value—at the end of 6 months after the sample or thing was taken, return it to the person who appears to be the owner of it or the person in charge of the thing or place from which it was taken!¹³

‘(5) However, if for any reason it is not practicable to comply with subsection (4)(a), the officer must leave the receipt at the place in a conspicuous position and in a reasonably secure way.

‘100Q Procedure before entering or opening rolling stock or vehicle

‘(1) If a relevant person is present at rolling stock or a vehicle, the rail safety officer must do or make a reasonable attempt to do the following before entering the rolling stock or vehicle under section 100P—

- (a) tell the relevant person the purpose of the entry;
- (b) ask for the consent of the relevant person to the entry;
- (c) tell the relevant person the officer is permitted under a railway provision to enter the rolling stock or vehicle without consent;
- (d) for a vehicle—if the relevant person is not the owner of the vehicle, advise the vehicle’s owner of the officer’s intention to enter it.

‘(2) If a relevant person is not present at rolling stock or a vehicle, before entering the rolling stock or vehicle, the officer must—

- (a) take reasonable steps to find a relevant person for the rolling stock or vehicle; and
- (b) comply with subsection (1)(a) to (c) for the relevant person if found.

‘(3) Subsections (1)(d) and (2) do not require the officer to take a step the officer reasonably believes may frustrate or otherwise hinder an inspection or investigation under a railway provision or the purpose of the intended entry.

‘(4) In this section—

“relevant person” means—

13 See section 101I(1) (Forfeiture by rail safety officer) for what happens if a sample or thing can not be returned to its owner or the owner can not be found.

- (a) for rolling stock—a person who is the driver or guard of, or engineer for, the rolling stock; or
- (b) for a vehicle—a person who appears to be the driver, or to be in control, of the vehicle.

‘100R Power to require reasonable help or information

‘(1) A rail safety officer may require the occupier of, or someone else at, a place entered into under division 3 to give the officer—

- (a) reasonable help to exercise a power under a railway provision; or
- (b) information to help the officer ascertain whether a railway provision is being complied with.

Example for subsection (1)—

When inspecting rolling stock, a rail safety officer may ask the driver of the rolling stock to accompany the officer or to explain how a piece of equipment is used as part of the accredited person’s approved safety management system for the railway or for the operation of rolling stock on the railway.

‘(2) When making a requirement under subsection (1), the officer must warn the person that it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

‘(3) A person required to give reasonable help under subsection (1)(a), or give information under subsection (1)(b), must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(4) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement to give information if complying with the requirement might tend to incriminate the person.

‘100S Power to stop rolling stock or vehicle that may be entered or opened

‘(1) If rolling stock or a vehicle that a rail safety officer may enter or open under a railway provision is moving or about to move, the officer may—

- (a) require the accredited person for the rolling stock or vehicle to stop the rolling stock or vehicle at, not move the rolling stock or vehicle from, or move the rolling stock or vehicle to, a stated place; or

- (b) ask or signal the person in control of the rolling stock or vehicle to stop the rolling stock or vehicle at, or not move the rolling stock or vehicle from, a stated place.

‘(2) Before making a request or giving a signal under subsection (1)(b) relating to rolling stock, the officer must—

- (a) consult with the train controller for the rolling stock about whether it is safe to stop the rolling stock at, or not move the rolling stock from, the place taking into account other rolling stock; and
- (b) disrupt the operation of rolling stock on the railway only to the extent that is reasonably necessary.

‘(3) An accredited person of whom a requirement is made under subsection (1)(a) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

‘(4) The person in control of rolling stock, or a vehicle, to whom a request is made or signal given under subsection (1)(b) must comply with the request or signal, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(5) It is a reasonable excuse for the person in control of rolling stock or a vehicle not to comply with the request or signal if—

- (a) to immediately comply with the request or signal would—
 - (i) endanger the person or someone else; or
 - (ii) cause damage to rail transport infrastructure, rolling stock or a vehicle; and
- (b) the person complies with the request or signal as soon as is practicable to comply with it.

‘(6) In this section—

“train controller”, for rolling stock, means an individual who is in control of train control signalling and communication for the section of track on which the rolling stock is moving or stationary.

‘100T Other powers about rolling stock or vehicles that may be entered

‘(1) If a rail safety officer enters or opens rolling stock or a vehicle under a railway provision, the officer may require the person in control of the rolling stock or vehicle—

- (a) to give the officer reasonable help to enter or open the rolling stock or vehicle; or
- (b) to bring the rolling stock or vehicle to a stated reasonable place and remain in control of the rolling stock or vehicle for a reasonable period to allow the officer to exercise a power under a railway provision.

‘(2) When making a requirement under subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

‘(3) A person must not fail to comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—100 penalty units.

‘Division 5—Seizure

‘101 Power to seize evidence if entry without consent or warrant

‘A rail safety officer who enters a place under a railway provision, without consent and without a warrant, may seize a thing at the place only if the officer reasonably believes—

- (a) the thing is evidence of a railway offence; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) destroyed, hidden or lost; or
 - (ii) used to commit, continue or repeat, a railway offence.

‘101A Power to seize evidence if entry with consent or warrant

‘(1) This section applies if a rail safety officer enters a place under a power under a railway provision with the necessary consent of a person or with a warrant.

‘(2) If the officer enters a place with the necessary consent, the officer may seize a thing at the place if—

- (a) the officer reasonably believes the thing is evidence of a railway offence; and
- (b) seizure of the thing is consistent with the purpose of entry as told to the person when asking for the person’s consent.

‘(3) If the officer enters the place with a warrant, the officer may seize a thing that is the evidence for which the warrant was issued.

‘(4) The officer may seize anything else at the place if the officer reasonably believes—

- (a) the thing is evidence of a railway offence; and
- (b) the seizure is necessary to prevent the thing being—
 - (i) destroyed, hidden or lost; or
 - (ii) used to commit, continue or repeat a railway offence.

‘101B Securing seized things

‘Having seized a thing, a rail safety officer may—

- (a) move the thing from the place where it was seized (the **“place of seizure”**); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or

Examples of restricting access to a thing—

1. Marking, sealing, tagging or otherwise identifying the thing to show access to it is restricted.
2. Sealing the entrance to a room where the thing is situated and marking the entrance to show access to the thing is restricted.

- (c) for equipment—make it inoperable.

Example of making equipment inoperable—

Dismantling equipment or removing a component of equipment without which the equipment is not capable of being used.

‘101C Offence to tamper with seized thing

‘(1) If a rail safety officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without a rail safety officer’s approval.

Maximum penalty—60 penalty units.

‘(2) If a rail safety officer makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without a rail safety officer’s approval.

Maximum penalty—60 penalty units.

‘101D Powers to support seizure

‘(1) To enable a thing to be seized, a rail safety officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.

‘(2) The requirement—

- (a) must be made by signed notice given to the person; or
- (b) if for any reason it is not practicable to give a signed notice to the person—may be made orally and confirmed by signed notice given to the person as soon as is practicable.

‘(3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.

Examples of a further requirement—

A requirement that the thing—

- be transported during stated off-peak hours
- be transported along a particular route
- be transported in a particular way.

‘(4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘(5) Subject to the provisions of this part providing for compensation,¹⁴ the cost of complying with subsection (1) or (3) must be borne by the person.

‘(6) For this section, a person is “**in control**” of a thing if the person has, or reasonably appears to a rail safety officer to have, authority to exercise control over the thing.

‘101E Rail safety officer may require thing’s return

‘(1) If a rail safety officer has required a person to take a thing to a stated reasonable place by a stated reasonable time under a railway provision, the officer may require the person to return the thing to the place from which it was taken.

‘(2) A person of whom a requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(3) Subject to the provisions of this part providing for compensation, the cost of complying with subsection (1) must be borne by the person.

‘101F Receipt for seized thing

‘(1) After a rail safety officer seizes a thing, the officer must give a receipt for it to the person from whom the thing was seized.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

‘(3) The receipt must describe generally the thing seized and its condition.

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

‘101G Return of seized thing

‘(1) This section applies to a seized thing if—

14 See section 101W (Compensation).

- (a) the thing has some intrinsic value; and
- (b) the thing has not been forfeited under division 6.

‘(2) A rail safety officer must return the thing to its owner—

- (a) at the end of 6 months after the seizure; or
- (b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding

‘(3) Despite subsection (2), the officer must return a thing seized as evidence if the officer stops being satisfied—

- (a) its continued retention as evidence is necessary; and
- (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, an offence.

‘101H Access to seized thing

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

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

‘Division 6—Forfeiture

‘101I Forfeiture by rail safety officer

‘(1) A sample or thing taken for analysis under section 100P(3)(d)¹⁵ or a thing seized under division 5, is forfeited to the State if the rail safety officer who took, or arranged the taking of, the sample or thing or who seized the thing—

- (a) after making reasonable efforts, can not return it to its owner; or
- (b) after making reasonable inquiries, can not find its owner.

‘(2) For subsection (1), the officer is not required to—

15 Section 100P (General powers after entering place)

- (a) make efforts if it would be unreasonable to make efforts to return the sample or thing to its owner; or
- (b) make inquiries if it would be unreasonable to make inquiries to find the owner.

Example for paragraph (b)—

The owner of the sample or thing has migrated to another country.

‘(3) Regard must be had to the sample’s or thing’s condition, nature and value in deciding—

- (a) whether it is reasonable to make efforts or inquiries; and
- (b) if efforts or inquiries are made—what efforts or inquiries, including the period over which they are made, are reasonable.

‘(4) In this section—

“owner”, for a sample or a thing taken for analysis, means the person in charge of the thing or place from which the sample or thing was taken.

‘101J Forfeiture on conviction

‘(1) On conviction of a person for a railway offence, the court may order the forfeiture to the State of anything owned by the person and seized under division 5.

‘(2) The court may make any order to enforce the forfeiture it considers appropriate.

‘(3) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.

‘101K Dealing with forfeited sample or thing

‘(1) On forfeiture of a sample or thing to the State, the sample or thing becomes the State’s property and may be dealt with by the chief executive in a way the chief executive reasonably believes is appropriate.

‘(2) Without limiting subsection (1), the chief executive may destroy or dispose of the sample or thing.

‘Division 7—Other powers

‘101L Power to require name and address

‘(1) A rail safety officer may require a person to state the person’s name and residential or business address if the officer—

- (a) finds the person committing a railway offence; or
- (b) finds the person in circumstances that lead, or has information that leads, the officer to reasonably suspect the person has just committed a railway offence; or
- (c) finds the person at a railway workplace, reasonably believes the person is an employee of an accredited person and reasonably considers that it is necessary for the purposes of a railway provision to know the person’s name and residential or business address.

‘(2) When making the requirement, the officer must warn the person it is an offence to fail to state the person’s name or address unless the person has a reasonable excuse.

‘(3) The officer may also require the person to give evidence of the correctness of the stated name or required address if the officer reasonably suspects the stated name or address is false.

‘101M Failure to give name or address

‘(1) A person of whom a requirement is made under section 101L(1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(2) A person does not commit an offence against subsection (1) if—

- (a) the requirement was given because the rail safety officer reasonably suspected the person had committed a railway offence; and
- (b) the person is not proved to have committed the railway offence.

‘101N Power to require information about contravention

‘(1) This section applies if a rail safety officer reasonably believes—

- (a) a railway provision has been contravened; and
- (b) a person may be able to give information about the contravention.

‘(2) The officer may require the person to give information within the person’s knowledge about the contravention in a stated reasonable time and in a stated reasonable way.

‘(3) When making a requirement under subsection (2), the officer must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

‘101O Failure to give information about contravention

‘(1) A person of whom a requirement is made under section 101N must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘(2) If the person is an individual, it is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

‘101P Power to require production of documents

‘(1) A rail safety officer may require an accredited person to make available for inspection by the officer, or produce to the officer for inspection, at a stated reasonable time and place, a document—

- (a) that is required to be kept by the accredited person under the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the accredited person; or
- (b) that is prepared under the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the accredited person and that the officer reasonably believes is necessary for the officer to consider to understand or verify a document that is required to be kept under the system.

Example for paragraph (b)—

The approved safety management system may require testing of equipment as part of a scheduled maintenance program and a record of the results of the test to be kept. If an item of equipment is tested under the approved safety management system, the document that states the results of the test is a document prepared under the approved safety management system.

‘(2) When making a requirement under subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

‘(3) The officer may keep the document to copy it but must return the document to the accredited person after copying it.

‘101Q Failure to produce document

‘(1) A person required to make available, or produce, for inspection a document under section 101P must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

‘(2) It is not a reasonable excuse for a person that complying with the requirement might tend to incriminate the person.

‘Division 8—Offences relating to rail safety officers

‘101R False or misleading statements

‘(1) A person must not state anything to a rail safety officer, in relation to the officer’s exercise of a power under a railway provision, that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

‘(2) In a proceeding for an offence against subsection (1), it is enough to state that the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

‘101S False or misleading documents

‘(1) A person must not give a rail safety officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

‘(2) Subsection (1) does not apply to a person if the person when giving the document—

- (a) tells the officer to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

‘(3) In a proceeding for an offence against subsection (1), it is enough to state the document was ‘false or misleading’ to the person’s knowledge, without specifying which.

‘101T Obstruction of rail safety officer

‘(1) A person must not obstruct a rail safety officer, in relation to the officer’s exercise of a power under a railway provision, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

‘(2) If a person has obstructed a rail safety officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

- (a) it is an offence to obstruct the officer unless the person has a reasonable excuse; and
- (b) the officer reasonably believes the person’s conduct is an obstruction.

‘(3) In this section—

“**obstruct**” includes assault, hinder, resist and attempt or threaten to obstruct.

‘101U Impersonating a rail safety officer

‘A person must not pretend to be a rail safety officer.

Maximum penalty—100 penalty units.

‘Division 9—Notice of damage and compensation

‘101V Notice of damage

‘(1) This section applies if—

- (a) a rail safety officer damages something when exercising, or purporting to exercise, a power under a railway provision; or
- (b) a person acting under the direction or authority of the officer damages something.

‘(2) The officer must give a signed notice to the person who appears to the officer to be the owner or person in possession of the thing.

‘(3) If for any reason it is not practicable to comply with subsection (2), the officer must leave the notice in a conspicuous position and in a reasonably secure way at the place where the damage happened.

‘(4) The notice must state—

- (a) the particulars of the damage; and
- (b) that the person who suffered the damage may claim compensation under section 101W.

‘(5) If the officer reasonably believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the officer or person acting under the direction or authority of the officer, the officer may state the belief in the notice.

‘(6) However, a rail safety officer need not comply with this section if the officer reasonably believes the damage is trivial.

‘101W Compensation

‘(1) This section applies if a person incurs loss or damage because of the exercise, or purported exercise, of a power under a railway provision, other than because of a forfeiture under section 101I or 101J⁶

‘(2) The person is entitled to be paid the reasonable compensation because of the loss or damage that is agreed between the chief executive and the person, or failing agreement, decided by a court.

16 Section 101I (Forfeiture by rail safety officer) or 101J (Forfeiture on conviction)

‘(3) Compensation may be claimed and ordered to be paid in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for a railway offence brought against the person claiming compensation.

‘(4) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.’.

21 Insertion of new s 101X

Chapter 6, part 6, division 1—

insert—

‘101X Reporting serious incidents

‘(1) If an accredited person for a railway becomes aware that a serious incident has happened on or involving the railway, the person must report the incident to the chief executive under guidelines made under subsection (2).

Maximum penalty—200 penalty units.

‘(2) The chief executive may make, and give to all accredited persons, written guidelines—

- (a) to which they are to have regard in deciding whether an incident is one to which subsection (1) applies; or
- (b) about the information that must be included in reports under the subsection; or
- (c) about the times within which reports must be made to the chief executive; or
- (d) about the form in which reports must be made.

Example for subsection (2)—

A guideline may include a form and require that, within 2 hours of an accredited person for a railway becoming aware of a serious incident on or involving the railway, the person must fax the form to a number stated on the form, or telephone a telephone number stated on the form and tell the person answering the phone the information stated on the form.

‘(3) In making a guideline, the chief executive must consult with all accredited persons.

‘(4) A guideline has no effect unless the Minister notifies the making of the guideline.

‘(5) The notice must state the places where copies of the guideline, and the provisions of any document applied, adopted or incorporated by the guideline, are available for inspection, without charge, during normal business hours.

‘(6) The notice is subordinate legislation.’.

22 Amendment of s 102 (Request for report or incident details)

(1) Section 102(1), from ‘that’—

omit, insert—

‘that—

- (a) a serious incident on or involving a railway may have happened even if the incident has not been reported; or
- (b) an incident, other than a serious incident, on or involving a railway may have happened.’.

(2) Section 102(3), penalty—

omit, insert—

‘Maximum penalty for subsection (3)—200 penalty units.’.

23 Amendment of s 103 (Investigations by authorised person)

(1) Section 103, heading, ‘**authorised person**’—

omit, insert—

‘**rail safety officer**’.

(2) Section 103(1)(b), after ‘incident’—

insert—

‘, or an incident other than a serious incident.’.

(3) Section 103(2), ‘an authorised person for the railway’—

omit, insert—

‘a rail safety officer’.

(4) Section 103(3) and (4), ‘authorised person’—

omit, insert—

‘officer’.

(5) Section 103(4), after ‘chief executive’—

insert—

‘, including whether or not the officer reasonably considers the incident a serious incident and the reasons for considering the incident a serious incident’.

24 Amendment of s 104 (Power of authorised person to investigate incident)

(1) Section 104, heading, ‘authorised person’—

omit, insert—

‘rail safety officer’.

(2) Section 104(1)(b), ‘an authorised person for the railway’—

omit, insert—

‘a rail safety officer’.

(3) Section 104(2) to (5) and (6A), ‘authorised person’—

omit, insert—

‘officer’.

(4) Section 104(3) and (4), ‘who’—

omit, insert—

‘whom’.

(5) Section 104(5), ‘the person’—

omit, insert—

‘the officer’.

(6) Section 104(8), penalty—

omit, insert—

‘Maximum penalty—200 penalty units.’.

(7) Section 104(9), ‘an authorised person’—

omit, insert—

‘a rail safety officer’.

25 Amendment of s 109 (Compensation)

(1) Section 109(1), ‘an authorised person for a railway’—

omit, insert—

‘a rail safety officer’.

(2) Section 109(6), definition “employing authority”, ‘an authorised person’—

omit, insert—

‘a rail safety officer’.

(3) Section 109(6), definition “employing authority”, paragraph (a)—

omit, insert—

‘(a) if the officer is an employee of an accredited person—the accredited person; or’.

26 Amendment of s 113 (Chief executive to arrange for services of staff and financial matters for board of inquiry)

Section 113(a), ‘authorised persons for a railway’—

omit, insert—

‘rail safety officers’.

27 Amendment of s 114 (Authorised person may exercise powers for board’s inquiry)

(1) Section 114, heading, ‘Authorised person’—

omit, insert—

‘**Rail safety officer**’.

(2) Section 114(1), ‘an authorised person for a railway’—

omit, insert—

‘a rail safety officer’.

(3) Section 114(2), from ‘The person’ to ‘division 2’—

omit, insert—

‘The rail safety officer may exercise powers under a railway provision’.

28 Amendment of s 144 (Interfering with railway)

Section 144(1)(b)—

omit, insert—

‘(b) the interference is permitted or authorised under section 142 or a railway provision.’.

29 Amendment of s 151 (Non-accredited railways)

Section 151(7) and (9), ‘this Act’—

omit, insert—

‘a railway provision’.

30 Insertion of new ss 152A–152D

Chapter 6, part 8, after section 152—

insert—

‘152A Limitation of liability for chief executive and rail safety officers

‘(1) The chief executive and each rail safety officer is not civilly liable for an act or omission done honestly and without negligence under a railway provision.

‘(2) If subsection (1) prevents a civil liability attaching to a person, the liability instead attaches to—

- (a) for a rail safety officer who is an employee of an accredited person for a railway, to the extent the officer’s act or omission arose because of the exercise or purported exercise of a power under

part 6¹⁷ involving an incident on or involving the railway—the accredited person; or

(b) in any other case—the State.

‘152B Helping in accidents or emergencies

‘(1) This section applies if a person—

- (a) helps, or attempts to help, in a situation in which an accident or emergency involving a railway happens or is likely to happen; and
- (b) the help, or attempt to help, is given—
 - (i) honestly and without negligence; and
 - (ii) without any fee, charge or other reward.

‘(2) The person does not incur civil liability for helping or attempting to help.

‘(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

‘(4) This section does not apply to—

- (a) a person whose act or omission wholly or partly caused the accident, emergency or likely accident or emergency; or
- (b) a rail safety officer.

‘152C Delayed passenger services

‘(1) A railway manager must endeavour to bring a passenger service that is delayed back to its scheduled running time.

‘(2) In complying with subsection (1), a railway manager must not distinguish between different types of regularly scheduled passenger services.

‘(3) Subsection (2) does not limit the matters that the railway manager may consider as relevant when complying with subsection (1).

Examples of relevant matter—

1. A train transporting livestock.
2. Train service entitlements for services other than passenger services.

‘152D Priority for regularly scheduled passenger services in allocating train paths

‘(1) The chief executive may establish a process that regularly allows the chief executive to identify passenger service requirements.

‘(2) For the process established under subsection (1), the chief executive may, by written notice to a railway manager, require the railway manager to give to the chief executive information about—

- (a) the total number of train paths that is possible for a specific section of railway track having regard to the railway manager’s maintenance requirements; and
- (b) the existing train paths that are the subject of agreements with railway operators for access to that specific section of railway track; and
- (c) the usage of the existing train paths on that specific section of railway track.

‘(3) After identifying passenger service requirements, the chief executive may give written notice to each accredited person about the passenger service requirements relevant to the railway manager’s railway.

‘(4) A railway manager given a notice under subsection (3) must, whenever a train path is available for the railway manager to allocate, provide for priority to be given to the passenger service requirements as stated in the notice.

‘(5) In complying with subsection (4), a railway manager must not distinguish between different types of regularly scheduled passenger services.

‘(6) In charging for access to regularly scheduled passenger services (an “**access charge**”), a railway manager must not—

- (a) differentiate between similar regularly scheduled passenger services operating or proposed to operate over the same route at different times of the day; or

- (b) set an access charge for a train path that is greater than the access charge set for similar train paths on the same route.

‘(7) In this section—

“**available**”, in relation to the allocation of a train path, includes—

- (a) a new train path available for allocation because of rearrangements of train operations or new or upgraded infrastructure; and
- (b) reallocating an existing train path.

“**infrastructure**” includes rail transport infrastructure and other rail infrastructure.

“**passenger service requirements**” means requirements for train paths for the following—

- (a) regularly scheduled passenger services on railway track in the State;
- (b) rolling stock that is to be used for a regularly scheduled passenger service and is being relocated for the purpose of providing the service.’.

31 Amendment of s 180ZZZN (Application of ch 6, pt 6 and other provisions)

Section 180ZZZN(2)(c), ‘an authorised person for a railway’—

omit, insert—

‘a rail safety officer’.

32 Amendment of s 192 (No need to prove appointments)

Section 192, from ‘an authorised’—

omit, insert—

‘any of the following—

- (a) an authorised person;
- (b) an authorised person for a light rail;
- (c) an authorised person for a railway;
- (d) a rail safety officer;

- (e) an authorised person, or officer, appointed under a regulation as an authorised person, or officer, relating to a matter as stated in the regulation.’.

33 Amendment of s 193 (Prosecutions for railway offences)

Section 193, heading, ‘**railway offences**’—

omit, insert—

‘**offences committed while travelling on a railway**’.

34 Replacement of s 200A (Numbering and renumbering of Act)

Section 200A—

omit, insert—

‘200A Renumbering of Act

‘(1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.

‘(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a “**relevant provision**”) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the “**uncommenced provision**”), with the following intent for the relevant provision—

- (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—
- (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
- (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);
- (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.

‘(3) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in another Act mentioned in schedule 2B to a

provision of this Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.

‘(4) This section and schedule 2B expire on the later of the following—

- (a) the day after the commencement of the last numbering or renumbering of a provision done under the section;
- (b) 31 December 2003.

‘(5) In this section—

“**amending Act**” means an Act that amends this Act.’.

35 Omission of ch 10, pt 1, pt 2 hdg and pt 2, div 2 hdg

Chapter 10, part 1, part 2 heading and part 2, division 2 heading—
omit.

36 Insertion of new ch 11, pt 3

After section 267—

insert—

‘PART 3—TRANSITIONAL PROVISIONS FOR THE TRANSPORT INFRASTRUCTURE AND ANOTHER ACT AMENDMENT ACT 2003

‘268 Application of part

‘This part applies in addition to the *Acts Interpretation Act 1954*, part 6.¹⁸

‘269 Definitions for pt 3

‘In this part—

“**commencement**” means commencement of this section.

“continuing accredited person” means a person who was an accredited person for chapter 6 immediately before the commencement.

“previous”, in relation to a numbered provision, means the provision of this Act with that number as in force immediately before the commencement.

‘270 Inclusion of s 80A

‘The inclusion of section 80A¹⁹ does not affect or limit the interpretation of this Act in relation to a matter arising before the commencement.

‘271 Approved safety management system for person who is accredited at commencement

‘(1) This section applies to the safety management system that the chief executive considered appropriate at the time of considering the application for accreditation of a continuing accredited person, as that system was in force immediately before the commencement.

‘(2) The safety management system is the approved safety management system for a railway managed, or for the operation of rolling stock on a railway, by the continuing accredited person.

‘(3) For section 88C,²⁰ the anniversary day for a continuing accredited person is the day the person was accredited under the Act as in force at any time before the commencement.

‘272 Certificate of accreditation given before commencement

‘(1) If a document about a continuing accredited person’s accreditation was issued to the person under this Act before the commencement and it purported to be a certificate of accreditation, the document is the person’s certificate of accreditation.

‘(2) If a document purporting to be a certificate of accreditation was not issued to a continuing accredited person before the commencement, the chief

19 Section 80A (Part does not create civil cause of action)

20 Section 88C (Accredited person to review approved safety management system each year and related matters)

executive must issue a certificate of accreditation to the accredited person before the end of 6 months after the commencement.

‘273 Annual levy before commencement

‘(1) This section applies to a notice under previous section 84A⁽³⁾ given to an accredited person before the commencement.

‘(2) After the commencement, the notice is a notice under section 84A(3) and is not invalid only because it does not comply with that subsection.

‘274 Accreditation conditions

‘(1) This section applies to an accreditation under previous section 85 as the accreditation exists immediately before the commencement.

‘(2) The accreditation continues to be subject to the conditions to which the accreditation was subject immediately before the commencement.

‘(3) Subsection (2) is subject to an express provision of this Act or a regulation condition.

Example of the application of subsection (2)—

If an accreditation before the commencement contained conditions about the accredited person’s financial capacity or public risk insurance arrangements, those conditions may not apply to the extent they are inconsistent with section 88E.²³

‘275 How to deal with application for amending accreditation conditions made before commencement

‘(1) This section applies to an application made under previous section 88 for which the chief executive has not granted, or refused to grant, the amendment before the commencement.

‘(2) The application is to be dealt with by the chief executive as—

21 The heading for section 84A (Annual levy) does not change.

22 The heading for section 85 (Accreditation conditions) does not change.

23 Section 88E (Financial capacity or insurance arrangements to meet potential accident liabilities)

- (a) to the extent the application relates to the accredited person's safety management system—an application under section 88A²⁴ and
- (b) to the extent the application relates to matters other than the accredited person's safety management system—an application under section 88.²⁵

‘276 Actions to amend accreditation conditions without application or to suspend or cancel accreditation

‘(1) This section applies to an accreditation if—

- (a) the chief executive had given the accredited person a notice under previous section 89²⁶ or 90²⁷ before the commencement; and
- (b) the proceeding started by the giving of the notice has not been completed before the commencement.

‘(2) The proceeding that the notice starts is to be continued and completed under chapter 6, part 4, division 7²⁸ as if the notice were a show cause notice under that division.

‘(3) If the notice under previous section 90(2) was given at the same time as a notice under previous section 91²⁹ the suspension under previous section 91 continues until the proceeding following the giving of the notice is completed under section 93E or 93F.³⁰

‘277 Appeals

‘(1) This section applies to a person if, before the commencement, the person may—

24 Section 88A (Amendment of approved safety management system)

25 Section 88 (Amendment of imposed conditions)

26 Previous section 89 (Amending accreditation conditions without application)

27 Previous section 90 (Suspending or cancelling accreditation)

28 Chapter 6 (Rail transport infrastructure and other matters), part 4 (Accreditation), division 7 (Disciplinary action against accredited persons)

29 Previous section 91 (Immediate suspension of accreditation)

30 Section 93E (Action by chief executive) or 93F (Decision by chief executive not to take action under s 93E)

(a) ask the chief executive to review a decision under section 196(1);
or

(b) appeal against a reviewed decision under section 196(4).

‘(2) The person’s rights as mentioned in subsection (1) continue after the commencement subject to any limitations applicable before the commencement.

‘(3) Subsection (2) applies whether or not the person has done either of the things mentioned in subsection (1) before the commencement.

‘(4) For an application for a review or an appeal by a person to whom this section applies, when either the chief executive or an appeal court is exercising powers under the *Transport Planning and Coordination Act 1994*, part 5,³² the chief executive or appeal court must exercise those powers as if the right to make the application or appeal arose after the commencement.’.

37 Amendment of sch 1 (Subject matter for regulations)

(1) Schedule 1—

insert—

‘**10A.** Regulation of safety issues relating to managing a railway or operating rolling stock on a railway.

‘**10B.** Conditions to which an accreditation is subject.’.

(2) Schedule 1, item 14(b)—

omit, insert—

‘(b) on a railway against the directions of an accredited person for the railway.’.

(3) Schedule 1, item 16, after ‘by’—

insert—

‘a rail safety officer or’.

31 Section 196 (Review of and appeals against decisions)

32 *Transport Planning and Coordination Act 1994*, part 5 (Review of and appeals against decisions)

38 Amendment of sch 2 (Reviews and appeals)

Schedule 2, entries for decisions under sections 89(3), 89(7), 90(3) and 91(2)—

omit, insert—

‘88A(2)	Refusal to approve a proposed amendment to approved safety management system	District or Magistrates
88D(2)	Refusal to approve a proposed safety management system	District or Magistrates
89(2)	Decision about a matter relating to rail safety that can not be agreed on by parties	District or Magistrates
90D(1)	Decision to give a safety direction	District or Magistrates
91A(1)	A written direction to do or not to do an act	District or Magistrates
91B(1)	Telling a person to do or not to do an act	District or Magistrates
93D(2)	Immediate suspension of accreditation	District or Magistrates
93E(2)	Direction to apply for amendment of an approved safety management system, or suspension, variation or cancellation of accreditation	District or Magistrates’.

39 Insertion of new sch 2B

After schedule 2A—

insert—

‘SCHEDULE 2B

‘RENUMBERED CROSS REFERENCES

section 200A

BEACH PROTECTION ACT 1968

1. Section 42

CENTURY ZINC PROJECT ACT 1997

1. Section 11(1)

COASTAL PROTECTION AND MANAGEMENT ACT 1995

1. Schedule 2, definition “port authority”

FORESTRY ACT 1959

1. Section 88(2E)

FREEDOM OF INFORMATION ACT 1992

1. Schedule 2, item 1

INTEGRATED PLANNING ACT 1997

1. Section 6.1.54(8), definition “road condition” and “State-controlled road”
2. Schedule 8, sections 4A, 19, 20 and 21

JUDICIAL REVIEW ACT 1991

1. Schedule 1, part 1, item 8
2. Schedule 6, item 1

LAND TAX ACT 1915

1. Section 13(1)(n)(ii) and (5), definition “port authority”

LOCAL GOVERNMENT ACT 1993

1. Section 919(3)
2. Section 955A, definition “Kuranda rail operator”

MINERAL RESOURCES ACT 1989

1. Schedule, definition “owner” and “State-controlled road”

QUEENSLAND COMPETITION AUTHORITY ACT 1997

1. Schedule, definition “port infrastructure” and “rail transport infrastructure”

QUEENSLAND HERITAGE AND OTHER LEGISLATION AMENDMENT ACT 2003

1. Section 35

SUGAR INDUSTRY ACT 1999

1. Section 75(1)(a)(iii)

TRANSPORT (GLADSTONE EAST END TO HARBOUR CORRIDOR) ACT 1996

1. Section 6(4) and (5)

TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

1. Section 126D(1)(c)
2. Section 126H(1)(a)
3. Section 126I(1)
4. Section 126J(1)
5. Section 126K(1)(a)
6. Section 127(1)(a)
7. Section 129(2)
8. Section 137(7), definition “railway legislation”
9. Section 140(1)(a)
10. Section 153A(1)
11. Section 154K(1)(a)(ii)
12. Schedule 3, definition “dangerous goods” and “road works”

TRANSPORT PLANNING AND COORDINATION ACT 1994

1. Section 3, definition “busway transport infrastructure”, “light rail transport infrastructure” and “transport land”
2. Section 25(3)(d)’.

40 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “approved form”, “authorised person” and “rolling stock”—

omit.

(2) Schedule 3—

insert—

“accepted representations”, for chapter 6, part 4, see section 80B.

“accreditation” means—

- (a) for a railway—accreditation granted under section 84 as a railway manager or railway operator; or
- (b) for light rail—accreditation given under section 180ZZZB as a light rail manager or light rail operator.

“approved form” means a form approved by the chief executive under section 190A.

“approved safety management system”, for chapter 6, part 4, see section 80C.

“audit program”, for chapter 6, part 4, see section 80B.

“authorised officer”, for a person who is appointed under a regulation as an officer relating to a matter as stated in the regulation, means a person appointed under the regulation as an officer for the matter.

“authorised person”, other than for a railway or light rail, means—

- (a) for a person who is appointed under a regulation as an authorised person relating to a matter as stated in the regulation—a person appointed under the regulation as an authorised person for the matter; or
- (b) otherwise—a person who is an authorised person under the *Transport Operations (Passenger Transport) Act 1994*, section 111.³³

“authorised person for a light rail” means a person who is an authorised person for a light rail under the *Transport Operations (Passenger Transport) Act 1994*, section 116(2A).³⁴

“authorised person for a railway” means a person who is an authorised person for a railway under the *Transport Operations (Passenger Transport) Act 1994*, section 116(1) or (2).

33 *Transport Operations (Passenger Transport) Act 1994*, section 111 (Appointment of authorised persons etc.)

34 *Transport Operations (Passenger Transport) Act 1994*, section 116 (Appointment of authorised persons for railways or light rail)

“**certificate of accreditation**”, for chapter 6, part 4 and section 272, see section 80B.

“**commencement**”, for chapter 11, part 3, see section 269.

“**continuing accredited person**”, for chapter 11, part 3, see section 269.

“**disciplinary action**”, for chapter 6, part 4, see section 80B.

“**dispute matter**”, for chapter 6, part 4, see section 80B.

“**employee**”, for section 24A and chapter 6, parts 4, 6 and 8, see section 80B.

“**enter**”, relating to rolling stock, for chapter 6, part 5A, see section 100A.

“**imposed condition**”, for chapter 6, part 4, see section 80B.

“**incident**” means an incident that has caused or could have caused—

- (a) property damage; or
- (b) injury to an individual, including death.

“**interim minor amendment**”, for chapter 6, part 4, see section 80B.

“**place**”, for chapter 6, part 5A, see section 100A.

“**previous**”, for chapter 11, part 3, see section 269.

“**proposed action**”, for chapter 6, part 4, see section 80B.

“**public place**”, for chapter 6, part 5A, see section 100A.

“**Queensland Competition Authority**” means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997*, section 5.

“**rail safety officer**” means a person who is appointed as a rail safety officer under section 100B.

“**railway offence**” means—

- (a) an offence against a provision of chapter 6, parts 4, 5A or 6; or
- (b) an attempt to commit an offence against a provision mentioned in paragraph (a).

“**railway provision**” means a provision of chapter 6, parts 4, 5A or 6.

“**railway workplace**”, for chapter 6, part 5A, see section 100A.

“**regulation condition**”, for chapter 6, part 4, see section 80B.

“representation period”, for chapter 6, part 4, see section 80B.

“rolling stock” means a vehicle, including, for example, a train and light rail vehicle, that operates on a railway or light rail and is used, or is proposed to be used, for either of the following purposes—

- (a) transporting passengers or freight on a railway or light rail track;
or
- (b) maintenance work, or other work associated with, a railway or light rail.

“safety direction”, for chapter 6, part 4, see section 80B.

“show cause notice”, for chapter 6, part 4, see section 80B.

“show cause period”, for chapter 6, part 4, see section 80B.

“signed notice” means a written notice signed by the person giving the notice.

“suspend”, for chapter 6, part 4, see section 80B.’.

(3) Schedule 3, definition, “railway”, ‘section 80’—

omit, insert—

‘section 80B’.

PART 3—AMENDMENT OF TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

41 Act amended in pt 3

This part amends the *Transport Operations (Passenger Transport) Act 1994*.

42 Amendment of s 115 (Protection from liability)

Section 115(2), after ‘Act’—

insert—

‘or under the *Transport Infrastructure Act 1994*’.

43 Amendment of s 116 (Appointment of authorised persons for railways or light rail)

Section 116(2)(a) to (c)—

omit, insert—

- (a) a public service employee;
- (b) an employee of, or a contractor for, the railway manager or railway operator relating to the railway;
- (c) an employee of a contractor mentioned in paragraph (b);
- (d) another person as prescribed under a regulation.’.

44 Amendment of s 117 (Identity cards)

(1) Section 117(2), ‘116(2)(a) or (b)’—

omit, insert—

‘116(2)(b) and (c)’.

(2) Section 117(2A)—

omit.