Rail Safety National Law (Queensland) Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Rail Safety National Law (Queensland) Bill 2016 (the Bill).

Policy objectives and the reasons for them

The main purpose of the Bill is to adopt national rail safety regulation and investigation reforms by applying the Rail Safety National Law as a law of Queensland and establishing the Office of the National Rail Safety Regulator as the rail safety regulator in Queensland.

In 1995, the *Transport Infrastructure Act 1994* was amended by the *Transport Infrastructure Amendment (Rail) Act 1995* to provide (among other things):

- a framework to place railway industry regulatory functions, as far as is practicable, in the hands of the State, as an essential prerequisite to the corporatisation of Queensland Rail
- the introduction of a safety accreditation system, with the chief executive of Queensland Transport responsible for the accreditation of railway managers and operators.

In 1996, Australian governments signed the *Intergovernmental Agreement in Relation to National Rail Safety 1996,* which provided the framework for development of a uniform national rail safety standard as the basis for rail safety accreditation.

In 2006, the National Transport Commission developed the Rail Safety Model Law based on best practice rail safety law. The main purpose of the Model Law was to provide for rail safety legislation that formed part of a system of nationally consistent rail safety laws. However, each jurisdiction was able to modify the law to reflect different drafting preferences, local legal and enforcement regimes and local operational differences.

The rail safety regulatory framework in Queensland is currently contained within the *Transport (Rail Safety) Act 2010*, which was based on the Rail Safety Model Law, consistent with the intention of delivering a higher degree of regulatory harmonisation across Australian States and Territories.

In 2009, the Council of Australian Governments agreed for the Australian Transport Council to create a single national regulatory framework for rail safety with the establishment of a national rail safety regulator and commencement of a Rail Safety National Law by January 2013.

The national rail safety reforms were established to deliver a more consistent approach to policy and regulation across jurisdictions and to remove inconsistencies in the rail regulatory regimes between states and territories.

On 19 August 2011, the Council of Australian Governments signed the *Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform* (the Intergovernmental Agreement).

The implementation of the Bill will achieve the outcomes of the Intergovernmental Agreement by improving consistent national requirements and decreasing the regulatory burden on industry.

The Bill will:

- apply the Rail Safety National Law, as modified by the Bill, as a law of Queensland
- repeal the *Transport (Rail Safety) Act 2010*
- define a number of terms to aid in the interpretation of the Rail Safety National Law in the Queensland context
- provide for drug and alcohol testing of rail safety workers using procedures that are consistent with the procedures used by police under the *Transport Operations (Road Use Management) Act 1995*
- provide transitional provisions.

Achievement of policy objectives

Due to the inconsistent regulatory practices between states and territories and the impact they have on interjurisdictional rail transport operators, there has been significant work undertaken to harmonise regulatory requirements between the jurisdictions.

The Rail Safety National Law was prepared and passed by South Australia, as the host jurisdiction, with the intention that all other States and Territories pass legislation to apply the Rail Safety National Law as a law of their own jurisdiction.

The Rail Safety National Law, as applied, commenced in:

- South Australia, Tasmania, the Northern Territory and New South Wales in January 2013
- Victoria in May 2014
- Australian Capital Territory in November 2014
- Western Australia in November 2015.

As the remaining jurisdiction, applying the Rail Safety National Law in Queensland will ensure consistency across Australia.

Consistent with the *Transport (Rail Safety) Act 2010*, the Bill retains the co-regulatory approach to rail safety. The Bill will also achieve the objectives of the Rail Safety National Law, which are, as outlined in section 3 of the Rail Safety National Law:

- to establish the Office of the National Rail Safety Regulator (ONRSR)
- to make provision for the appointment, functions and powers of the National Rail Safety Regulator
- to make provision for a national system of rail safety, including by providing a scheme for national accreditation of rail transport operators in respect of railway operations
- to provide for the effective management of safety risks associated with railway operations
- to provide for the safe carrying out of railway operations

- to provide for continuous improvement of the safe carrying out of railway operations
- to make special provision for the control of particular risks arising from railway operations
- to promote public confidence in the safety of transport of persons or freight by rail
- to promote the provision of advice, information, education and training for safe railway operations
- to promote the effective involvement of relevant stakeholders, through consultation and cooperation, in the provision of safe railway operations.

As the Rail Safety National Law and the *Transport (Rail Safety) Act 2010* were both based on the Model Law, there are only a small number of policy changes for Queensland when moving from the *Transport (Rail Safety) Act 2010* to the Rail Safety National Law.

The differences between the Bill (as applying the Rail Safety National Law) and the *Transport (Rail Safety) Act 2010* are:

- Cost Benefit Analysis

  The Rail Safety National Law provides that the ONRSR must undertake a cost benefit analysis if a particular decision is likely to result in significant costs or expenses to the rail transport operator.

  The cost benefit analysis is undertaken as a comprehensive assessment of a decision's appropriateness, efficiency and effectiveness. The outcome of a cost benefit analysis does not prevent a decision being made, but does ensure the decision made is the best option available to achieve the desired outcome.

  The *Transport (Rail Safety) Act 2010* does not require a cost benefit analysis.

- Exclusions

  Under both the *Transport (Rail Safety) Act 2010* and the Rail Safety National Law a number of railways are excluded from the operation of the respective Law. For example, a mining railway that is currently excluded under the *Transport (Rail Safety) Act 2010* might not be excluded under the Rail Safety National Law due to its above ground operation.

  Transitional provisions will provide a period of 36 months to allow railways that are currently excluded from coverage of the *Transport (Rail Safety) Act 2010*, but included under the Rail Safety National Law, time to gain accreditation to enable them to operate in compliance with the Rail Safety National Law.

- Duties for Loaders and Unloaders

  The Rail Safety National Law recognises that there is a shared responsibility to ensure the safety of railway operations and that the lack of any safety duty on persons engaged in the loading or unloading of rolling stock has made rail transport operators disproportionately responsible for the safety of these activities.

Therefore, the Rail Safety National Law introduces a duty for persons who load or unload freight on rolling stock to ensure, so far as is reasonably practicable, that such operations are carried out safely. This change is expected to increase rail safety standards in Queensland.

- Drug and Alcohol Management

  Under the *Transport (Rail Safety) Act 2010*, a railway operator must ensure, so far as is reasonably practicable, that each rail safety worker who is on duty has a blood alcohol limit of less than 0.02 in their blood or breath, or is not impaired by a defined drug.

  Currently, drug and alcohol testing of rail safety workers extends only to train drivers who may be tested by police under the provisions of the *Transport Operations (Road Use Management) Act 1995*, section 80.

  The Rail Safety National Law provides that it will be an offence for a rail safety worker (which includes a train driver) to carry out, or attempt to carry out, rail safety work while there is present in their blood more than the prescribed concentration of alcohol (0.00); or while a prescribed drug is present in their oral fluid or blood; or while they are so much under the influence of alcohol or a drug as to be incapable of effectively discharging a function or duty of a rail safety worker. This policy will be supported by the ONRSR undertaking random, targeted and post incident testing of rail safety workers.

  Drug and alcohol testing of rail safety workers will be undertaken by authorised persons who are appointed by the ONRSR. Testing may be undertaken if a rail safety worker is about to carry out, is carrying out, or attempting to carry out rail safety work or is on railway premises.

  Officers of the Queensland Police Service will continue to conduct drug and alcohol testing of train drivers under the *Transport Operations (Road Use Management) Act 1995*, section 80.

  If a rail safety worker who is a train driver is involved in an incident, they may be tested by either an authorised person or a police officer. An authorised person may not exercise a power to test the rail safety worker in any circumstance in which a police officer is exercising a power under section 80 of the *Transport Operations (Road Use Management) Act 1995*, in relation to the rail safety worker. To this effect, the rail safety worker cannot be charged under both the Rail Safety National Law and the *Transport Operations (Road Use Management) Act 1995.*

  The provisions of the Bill are expected to increase safety standards in Queensland as it will now be an offence for any rail safety worker to carry out rail safety work while they have alcohol or a prescribed drug in their system or while they are impaired by a drug or alcohol.

- Penalties

  A large number of the proposed penalties in the Rail Safety National Law are significantly higher than the penalties currently contained within the *Transport (Rail*

Safety) Act 2010. However, the proposed penalty amounts in the Rail Safety National Law have been aligned to penalty amounts contained in Work Health and Safety legislation and also reflect the national harmonisation of rail safety law.

The increase in penalties may act as a greater incentive to comply with the Rail Safety National Law and reflect the potentially serious outcomes should a person not comply with the Law.

Due to jurisdictional variations in the value of a penalty unit, penalties in the Rail Safety National Law are not from the penalty unit system. The Rail Safety National Law provides a monetary penalty amount to ensure the penalty is the same in each jurisdiction.

- Compliance and enforcement

  The ONRSR will have the power under the Rail Safety National Law to issue an infringement notice in circumstances where a rail transport operator or an individual has breached the Rail Safety National Law, if that particular breach has an infringement penalty as contained in section 233 of the Rail Safety National Law.

The Bill also makes minor and consequential amendments to the:

- *Coal Mining Safety and Health Act 1999*
- *Mining and Quarrying Safety and Health Act 1999*
- *Queensland Rail Transit Authority Act 2013*
- *Work Health and Safety Act 2011*
- *Coroners Act 2003*
- *Queensland Competition Authority Act 1997*
- *Right to Information Act 2009*
- *Surat Basin Rail (Infrastructure Development and Management) Act 2012*
- *Transport Infrastructure Act 1994*
- *Transport Operations (Passenger Transport) Act 1994*
- *Transport Planning and Coordination Act 1994*.

Alternative ways of achieving policy objectives

Drafting of the Bill was considered the most effective way to achieve the objective of delivering seamless national rail safety regulation.

Consideration had been given to alternative options, including:

- mirroring the Rail Safety National Law as a law of Queensland while retaining the regulatory function with the chief executive
- retaining the *Transport (Rail Safety) Act 2010*, however, this would not have realised efficiencies for industry through the application of the Rail Safety National Law or the mirroring of regulatory requirements.

Applying the Rail Safety National Law in Queensland provides the greatest level of consistency for industry and also ensures the independence of the ONRSR.

Estimated cost for government implementation

In Queensland, the cost of rail safety regulation and investigations is fully funded by industry, largely through annual accreditation fees based on operators' track and train kilometres. Rail transport operators will continue to fund the cost of rail safety regulation by payment to the ONRSR of annual accreditation fees. Particular rolling stock operators will also fund the cost of rail safety investigations by payment to the Department of Transport and Main Roads through an adjusted fee, which will be for the sole purpose of rail safety investigations.

The Australian Transport Safety Bureau (ATSB) undertakes no-blame investigations in South Australia, Western Australia, Northern Territory and Tasmania under the Commonwealth's *Transport Safety Investigation Act 2003*. The ATSB will undertake no-blame rail safety investigations in Queensland when Queensland joins the national reforms.

Therefore, implementation of the Bill is not expected to result in any additional costs to the Queensland Government.

Consistency with fundamental legislative principles

A number of amendments in the Bill may raise fundamental legislative principle issues. These are considered justified as described below.

National legislation

The Bill potentially breaches the fundamental legislative principle that legislation should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (*Legislative Standards Act 1992*, section 4(4)(b)).

Section 4 of the Bill applies the Rail Safety National Law, as in force from time to time and as modified by Part 2 of the Bill, as a law of Queensland. Applying a law of another jurisdiction as a law of Queensland may raise concerns due to the application of predetermined legislative provisions.

Applying the Rail Safety National Law as a law of Queensland is considered justified as it will deliver efficiencies to government and industry, particularly operators working across different states and territories. Implementing the national rail safety reforms in Queensland will also introduce greater independence and a clear separation between government, the Regulator, and the Investigator.

To ensure changes to the Rail Safety National Law are not made without the support of the Queensland Government, the *Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform* as signed by the Council of Australian Governments, provides that amendments and additions to the Rail Safety National Law and regulations will be carried upon the unanimous agreement of Ministers of the relevant Standing Council, currently the Transport and Infrastructure Council.

This is confirmed, in relation to national regulations, by section 264 of the Rail Safety National Law, which provides that the Governor of the State of South Australia can only make a national regulation on the unanimous recommendation of the responsible Ministers.

Matters to be prescribed in a regulation

Prescribing matters in a regulation may be seen to breach section 4(2)(b) of the *Legislative Standards Act 1992*, which requires legislation to have sufficient regard to the institution of Parliament.

The Bill provides for the making of three types of regulations:

- local regulations made under clause 63 of the Bill
- national regulations made under section 264 of the Rail Safety National Law
- transitional regulations made under clause 132 of the Bill.

A local regulation can modify the application of a national regulation in Queensland.

The national regulations can make provisions in relation to a number of matters, which are specified in schedule 1 of the Rail Safety National Law, and can impose a maximum penalty of $10,000 for a contravention of a provision of the national regulation.

A transitional regulation may make provision of a saving or transitional nature which is necessary to facilitate the change from the operation of the repealed Act to the operation of the national law, if the Bill does not make sufficient provision. The transitional regulations may only be made within two years after the commencement and a transitional regulation expires three years after the commencement of the Bill. A three year period for a transitional regulation is considered necessary as a number of the transitional provisions within the Bill have a three year transitional period.

It should be noted that under section 7 of the Rail Safety National Law, the national regulations can prescribe a railway or a class of railway to which the law does not apply. The national regulations can also prescribe a railway which is operated in an amusement park (and which the Rail Safety National Law would normally not apply) as a railway in relation to which the Rail Safety National Law applies.

This may also be considered a breach of the fundamental legislative principles as allowing the amendment of an Act by a regulation (*Legislative Standards Act 1992*, section 4(4)(c)).

This breach is considered justified as it allows for jurisdictions to vary from the Rail Safety National Law in relation to the capture in that jurisdiction. For example, section 7(1)(b) of the *Rail Safety National Law Regulations 2012* provides that in Queensland the Rail Safety National Law does not apply to a cane railway that is used for the transportation of sugar cane, sugar or sugar cane by-products.

All regulations made under the Bill will be tabled and subject to Queensland parliamentary scrutiny. This is a legislated requirement. For example, section 13 of the Bill provides that a national regulation must be tabled in accordance with the *Statutory Instruments Act 1992* with the ability for the national regulation to be disallowed in Queensland.

Reversal of onus

The Bill may be considered to breach a fundamental legislative principle that a Bill should not reverse the onus of proof in criminal proceedings (*Legislative Standards Act 1992*, section 4(3)(d)).

The Rail Safety National Law includes a number of provisions where the evidential burden is placed on the accused to show a reasonable excuse, including:

- section 20, comply with a requirement to give information
- section 101, comply with the safety management system
- section 104, comply with a direction to amend a safety management system
- section 145, give reasonable help to a rail safety officer
- section 154, produce documents and answer questions
- section 159 and 160, comply with direction about seized thing
- section 168 and 168A, provide name and address and produce documents
- section 184, comply with non-disturbance notice
- section 198, comply with direction to respond to certain reports
- section 199, comply with a direction to stop work
- section 227, must not interfere with train or tram
- section 228, must not apply brake or emergency device
- section 229, must not stop train or tram.

The Rail Safety National Law also includes a provision (section 225, dismissal or other victimisation of employee) where the defendant bears the onus of proving a reason for their conduct, if the facts constituting the offence are otherwise proved.

The Rail Safety National Law also includes a provision (section 226, indicating the extent to which a document was false or misleading) where the evidential burden is placed on the accused to show that they acted in a particular way.

The reversal of the onus of proof is justified because the matter that is the subject of proof by the defendant is particularly within the defendant's knowledge and would be extremely difficult for the State to prove.

Reasonable excuse provisions

The use of a reasonable excuse for some offences, and not others, may be considered a breach of section 4(3)(k) of the *Legislative Standards Act 1992* which requires legislation to be unambiguous and drafted in a sufficiently clear and precise way.

There are some offences in the Bill which allow the defendant to raise a reasonable excuse. However, there are other offences which do not provide for this.

A reasonable excuse is provided for in situations where there might be a reasonable defence for an act that constitutes an offence. For example, under section 99 of the Rail Safety National Law, there is no reasonable defence as to why a rail transport operator would not have a safety management system, however, under section 101 there may be a situation in which the rail transport operator has a reasonable defence as to why they have not complied with their safety management system.

Generally speaking, the Rail Safety National Law places the evidential burden on the accused to show a reasonable excuse (except in relation to section 58 of the Rail Safety National Law, failure to comply with safety duty – reckless conduct – category 1).

Introduction of new offences

Legislating to restrict ordinary activities, without sufficient justification, may be a breach of section 4(2)(a) of the *Legislative Standards Act 1992*, which requires legislation to have sufficient regard to the rights and liberties of the individual.

The Bill, in applying the Rail Safety National Law, introduces a number of new penalties that are not currently contained in the *Transport (Rail Safety) Act 2010*. The following table shows the new offences:

Section RSNL	**Offence**	**Maximum penalty amount**
Section 125 – Identity cards	If a person to whom an identity card has been issued ceases to be an authorised person, the person must return the identity card to the Regulator as soon as practicable.	Maximum penalty - $5,000
Section 126 – Authorised person may require preliminary breath test or breath analysis	A rail safety worker must immediately comply with a direction given by an authorised person for the purpose of requiring the worker to submit to a preliminary breath test or breath analysis.	Maximum penalty - $10,000
Section 127 – Authorised person may require drug screening test, oral fluid analysis and blood test	A rail safety worker must immediately comply with a direction given by an authorised person for the purpose of requiring the worker to submit to a drug screening test, oral fluid analysis or blood test.	Maximum penalty - $10,000
Section 128 – Offence relating to prescribed concentration of alcohol or prescribed drug	A rail safety worker must not carry out, or attempt to carry out, rail safety work— (a) while there is present in his or her blood the prescribed concentration of alcohol; or (b) while a prescribed drug is present in his or her oral fluid or blood; or (c) while so much under the influence of alcohol or a drug as to be incapable of effectively discharging a function or duty of a rail safety worker.	Maximum penalty - $10,000
Section 198 – Response to certain reports	A rail transport operator must not, without reasonable excuse, fail to comply with a direction under this section.	Individual - $150,000 Body Corporate - $1,500,000
Section 199(1) – Power to require works to stop	A person (other than a rail transport operator) must, in stated circumstances notify the relevant rail infrastructure manager of the intention to carry out those works.	Individual - $20,000 Body Corporate - $100,000
Section 199(4) – Power to require works to stop	A person who is given a particular notice must comply with the direction set out in the notice unless the person has a reasonable excuse.	Individual - $20,000

		Body Corporate - $100,000
Section 199(6) – Power to require works to stop	A person who is given a notice under subsection (5) must comply with the requirement unless the person has a reasonable excuse.	Individual - $10,000 Body Corporate - $50,000
Section 254 – Compliance with rail safety undertaking	A person must not contravene a rail safety undertaking made by that person that is in effect.	Individual - $10,000 Body Corporate - $50,000
Section 255 – Contravention of rail safety undertaking	A person must not fail to comply with an order under section 251 (contravention of a rail safety undertaking).	Individual - $5,000 Body Corporate - $25,000

The offence under section 184 of the Rail Safety National Law (Compliance with non-disturbance notice) may appear to be a new offence; however, the non-disturbance notice replaces the embargo notice (see section 172 of the *Transport (Rail Safety) Act 2010*, which contains three offences).

Under section 198 of the Rail Safety National Law (Response to certain reports), the Regulator may direct a rail transport operator, within a stated period, to install safety or protective systems, devices, equipment or appliances. It is an offence if the rail transport operator does not comply with the direction. However, if the direction is likely to result in significant costs or expenses to the rail transport operator, the Regulator must conduct a cost benefit analysis of the effect of taking the action.

The offences under section 199 (Power to require works to stop) are not currently included under the *Transport (Rail Safety) Act 2010*, however, similar offences exist under section 168 of the *Transport Infrastructure Act 1994*, that could be imposed on Queensland rail transport operators currently.

The *Transport (Rail Safety) Act 2010* currently does not contain an offence for failing to comply with a rail safety undertaking. Under section 279 of the *Transport (Rail Safety) Act 2010*, the chief executive may apply to a Magistrates Court for an order under this section for the enforcement of the undertaking.

It is considered that to achieve the policy and ensure compliance, the offences are required and justified.

The Bill also includes a maximum penalty of 200 penalty units (see section 60 of the Bill) if an accredited person fails to provide particular information to the chief executive on the chief executive's request. The information is for the purpose of calculating, administering and collecting a rail safety investigation fee.

The chief executive is expected to receive the required information directly from the ONRSR under a communications protocol, however, should information not be provided, the chief executive will need to seek the information directly from the accredited person.

A penalty is required to ensure that the accredited person complies with the request.

Penalties

The use of varying penalties in the Bill may be considered a breach of section 4(2)(a) of the *Legislative Standards Act 1992*, which requires legislation to have sufficient regard to the rights and liberties of the individual.

Increased penalty amounts

The penalties contained in the Rail Safety National Law, as applied by the Bill are generally higher than the penalties currently contained within the *Transport (Rail Safety) Act 2010*.

The penalties in the Bill are a maximum only and the courts will retain their discretion to impose lesser penalties depending on the circumstances of the breach and mitigating factors.

In addition, the penalties that can be prescribed by national regulation (up to a maximum of $10,000) for a failure to comply with the regulation is substantially higher than the 20 penalty unit amount recommended in the Queensland Legislation Handbook. Infringement penalty amounts in the Rail Safety National Law are also set at a higher ratio than is normal practice in Queensland.

The penalty amounts included in the Rail Safety National Law, and allowed under the national regulations, are considered appropriate in terms of the national harmonisation of rail safety law and were developed in consideration of the penalty amounts in all jurisdictions. The proposed penalty amounts in the Bill have also been aligned to penalty amounts contained in *Work Health and Safety Act 2011*.

Commercial benefits order

Section 230 of the Rail Safety National Law, as applied by the Bill, allows a court to make a commercial benefits order if the court finds a person guilty of an offence and the prosecutor or the regulator seeks the making of a commercial benefits order. The commercial benefits order may require the person to pay, as a fine, an amount not exceeding three times the amount (as estimated by the court) that was received or receivable by the person. The court is required to disregard any costs, expenses or liabilities included by the person.

The commercial benefits order is set to redress the commercial benefit that a person may gain from dangerous and unlawful behaviour and to provide a significant deterrent to engaging in that behaviour.

Commencement of prosecutions

Under section 267 of the *Transport (Rail Safety) Act 2010*, proceedings taken summarily must start within one year of the commission of the offence or within six months of the offence coming to the complainant's knowledge, but within two years of its commission.

Under section 218 of the Rail Safety National Law, as applied by the Bill, proceedings can be commenced within two years from the alleged commission date, within one year of the publication of a prescribed authority's report bringing an alleged offence to light, or in relation to a rail safety undertaking, within six months from when the undertaking has been contravened.

The difference between when a proceeding can commence is justified on the basis that it ensures rail transport operators, in all jurisdictions, are prosecuted within the same timeframes and therefore operators in Queensland have the same prosecution commencement timeframes as operators in other jurisdictions.

Corporate multiplier

Within the Rail Safety National Law, for particular offences, the corporate multiplier is 10 times the individual penalty, at other times the corporate multiplier is five times the individual penalty.

While the states and territories have differing approaches to a corporate multiplier, it was agreed nationally that the Rail Safety National Law would include a five times corporate multiplier, except for particular offences (generally described as breaches of a safety duty or safety management system requirements).

The use of the 10 times corporate multiplier, in relation to failing to comply with a safety duty, is used to ensure consistency with the offences of a similar nature contained in the *Work Health and Safety Act 2011*.

A 10 times corporate multiplier is also used in relation to the requirement for a person to be accredited to undertake railway operations, have and comply with a safety management system and other management plans and programs, failure to comply with a direction to amend the safety management system, in relation to interface coordination, breach of a condition or restriction of accreditation or registration, assessment of rail safety worker competence and compliance with improvement and prohibition notices.

To ensure there is no confusion as to which corporate multiplier applies to the offence, the maximum penalty for the body corporate is stated for each applicable offence.

Drug and alcohol penalties

There are some differences in the penalties for drug and alcohol offences that may apply to train drivers following police testing under the *Transport Operations (Road Use Management) Act 1995* and the penalties that may apply to rail safety workers (including train drivers in situations where police do not test) under the Bill. Specifically, the *Transport Operations (Road Use Management) Act 1995* includes potential imprisonment as a penalty if a train driver drives or attempts to drive a train or tram under the influence of liquor or a drug.

The difference is considered justified because:

- the purpose of applying the rail safety national law is to create a consistent framework for the rail industry. By keeping national consistency in the application of penalties for

rail safety workers, except in relation to the police testing of train drivers, maintains consistency as much as possible
- the testing of rail safety workers by industry, under each rail transport operator's drug and alcohol management program, is already significant and therefore testing resulting in a positive result by the regulator or police is extremely rare
- the purpose of Regulator testing is designed to:
  - act as a deterrent
  - monitor compliance with the law
  - monitor the effectiveness of a rail transport operator's drug and alcohol management program
- multiple offences of driving under the influence of alcohol or drugs, which may result in imprisonment for a drink driver, is extremely unlikely to happen in the rail industry as train drivers will also face workplace policies and sanctions
- if rail safety workers engage in reckless conduct resulting in serious injury or death, the worker can also face a penalty of imprisonment under section 58 of the Rail Safety National Law.

Drug and alcohol testing by Regulator

The inclusion of Regulator testing of rail safety workers may be considered a breach of section 4(2)(a) of the *Legislative Standards Act 1992*, which requires legislation to have sufficient regard to the rights and liberties of the individual.

The drug and alcohol testing program consists of post-incident, targeted and random testing of rail safety workers for the primary purposes of improving safety by reducing risks associated with rail safety workers undertaking work while under the influence of drugs and/or alcohol. Testing will act both as a deterrent and also to monitor compliance with the law.

Drug and alcohol testing of rail safety workers by the Regulator is in addition to the testing undertaken by rail transport operators under their drug and alcohol management program.

The drug and alcohol testing of rail safety workers by the Regulator is considered justified as having testing occur at evidentiary levels, with potential for prosecution, is considered an additional deterrent to any workers who may have previously planned to undertake rail safety work while under the influence of alcohol or a prescribed drug, especially considering the potential outcomes of those actions.

Certificates used as evidence

Provisions authorising evidence to be admitted by a certificate, which avoids the normal common law requirements of direct evidence from a witness, should be limited to technical and non-contentious matters.

The Bill includes the following evidentiary certificates in relation to drug and alcohol testing:
- Breath analysis certificate (see section 39 and 40)
- Certificate about requirement to submit to breath analysis, saliva analysis or blood test (see section 41)
- Certificate about failure to provide specimen of breath or saliva for analysis (see section 42)

- Certificate about failure to allow health care professional to take specimen of blood (see section 43)
- Analyst's certificate (see section 46)
- Certificate by health care professional about taking of specimen (see section 51).

While certificates are considered evidence of stated matters, a rail safety worker is able to negative evidence and the rail safety worker is also provided with a copy of the certificate.

The Bill (see section 55) also provides that the defendant may lead evidence that the result of a laboratory test of saliva or blood was not correct, and with leave of the court, require a person who was involved in the taking, receipt, storage or testing of the specimen of saliva or blood to attend the hearing of the proceeding to give evidence.

Powers of entry and other related powers

The Rail Safety National Law, as applied by the Bill, includes a number of powers, such as entry, seizure and questioning powers which may be considered a breach of section 4(3)(e) of the *Legislative Standards Act 1992*, which provides that legislation confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer, or a breach of section 4(3)(f) of the *Legislative Standards Act 1992*, which states that legislation should provide appropriate protection against self-incrimination.

Under section 143 of the Rail Safety National Law, a rail safety officer can enter railway premises at any time without consent or a reasonable suspicion, or prior notice, this also includes a place adjoining railway premises in urgent circumstances. However, this does not include a residence (see section 153 of the Rail Safety National Law).

On entry, the rail safety officer must, as soon as practicable, take all reasonable steps to notify the person with control or management of the place unless it would defeat the purpose for which the place was entered or if it would cause a delay (see section 144 of the Rail Safety National Law).

The term *railway premises* is defined (see section 4 of the Rail Safety National Law) and captures the land on which the rail infrastructure is situated, freight centres, depots, workshops, office buildings, rolling stock and other vehicles associated with railway operations.

When a rail safety officer enters a place, the officer may do a number of things (see section 145 of the Rail Safety National Law), including: inspect, examine and question, take measurements, seize any thing, take and remove a thing for analysis, and require a person at the place to give the officer reasonable help to exercise the officer's powers.

It is also permissible for a person, such as an interpreter, to accompany a rail safety officer entering a place to assist the rail safety officer if the rail safety officer considers the assistance is necessary. To provide protection for that person, section 146 of the Rail Safety National Law provides that anything done lawfully by the person assisting the rail safety officer is taken to have been done by the rail safety officer.

A rail safety officer or a police officer can, for the purpose of protecting evidence, secure the perimeter of any site (see section 149 of the Rail Safety National Law).

These enforcement powers are largely consistent with the *Transport (Rail Safety) Act 2010* and are considered to be an important element in ensuring rail safety which is in the public interest.

While the power to enter premises should generally be permitted only with the occupier's consent or under a warrant, strict adherence to the principle may not be required if the premises are business premises operating under a licence. In this instance, the railway premises are operating under an accreditation as provided for by the Rail Safety National Law.

Section 201 of the Rail Safety National Law provides that a rail safety officer (or a person who is assisting a rail safety officer) may use force that is reasonably necessary to effect the entry (or do the thing for which entry is effected). However, section 202 of the Rail Safety National Law restricts the use of force (in relation to a person who is not a police officer) so that it does not include the use of force against a person.

The Rail Safety National Law provides that a rail safety officer can require a person at the place that has been entered, to answer any questions put by the officer or to produce documents (section 154 of the Rail Safety National Law). A person is not excused from answering a question or providing information or a document on the ground that the answer to the question, or the information or document, might tend to incriminate the person or expose the person to a penalty (see section 155(1) of the Rail Safety National Law). In Alert Digest No. 13 of 1999, the former Scrutiny of Legislation Committee stated that the committee's general view is that denial of the protection again self-incrimination is potentially justifiable if all of the following are the case:

- the questions posed concern matters which are peculiarly within the knowledge of the persons to whom they are directed, and which it would be difficult or impossible to establish by any alternative evidentiary means
- the Bill prohibits use of the information obtained in prosecutions against the person
- in order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming the right).

The provision is considered justifiable because:

- section 155(2) of the Rail Safety National Law provides that the answer to the question or information or a document provided is not admissible as evidence against the individual in civil or criminal proceedings, except in relation to the giving of false or misleading answers, information or documents
- section 156 requires a rail safety officer, prior to requiring a person to answer a question or provide information or a document, to identify him or herself as a rail safety officer, to warn the person that failure to comply with the requirement or answer the question without reasonable excuse would constitute an offence, and to advise the person of the effect of section 245 (legal professional privilege applies to producing documents and disclosing information). It also provides that a warning must be given to the individual about the effect of section 155 (abrogation of privilege against self-incrimination) and states that it is not an offence for an individual to refuse to answer a question or provide information or a document on the ground of self-incrimination, unless the person was first given that particular warning
- the provisions which contain the power to require reasonable help from a person (section 145) and to require production of documents and answers to questions (section

154) allow an accused to show a reasonable excuse in answer to a charge of failing to comply with the requirement (with the evidential burden on the accused)
- applying the provision ensures national consistency and ensures evidence is not lost.

The Rail Safety National Law, as applied by the Bill, achieves the balance between the public interest and the individual's rights. Without these powers, evidence may be lost.

Consultation

On 19 and 20 April 2016, the Department of Transport and Main Roads, in conjunction with the ONRSR, conducted forums for rail transport operators, unions and rail representative bodies to discuss how the rail safety reforms will be applied in Queensland, the cost recovery methodology and how the transition to the National Rail Safety Regulator might impact their operations.

In April 2016, a discussion paper detailing key legislative changes in the Bill and impacts on commercial operations was distributed to all commercial operators. In May 2016, a discussion paper detailing key legislative changes in the Bill and impacts on tourist and heritage operations was distributed to all tourist and heritage operators.

Feedback was largely supportive of the reforms. A small number of concerns were raised by tourist and heritage operators relating to the implementation of a national regulator and the impact on their relationship with the Queensland rail safety regulator, and on the fee methodology and the impacts that the payment of fees would have on their tourist and heritage operations. As a result, the Queensland Government agreed to pay the annual accreditation fees of tourist and heritage operators to ensure minimal impact on tourism operations in the State.

Consistency with legislation of other jurisdictions

The purpose of the Bill is to apply the Rail Safety National Law, as modified by the Bill, as a law of Queensland, therefore ensuring consistency with other jurisdictions.

The Rail Safety National Law, as drafted in South Australia, has been applied as a law of New South Wales, Victoria, Tasmania, South Australia, the Australian Capital Territory and the Northern Territory. The Rail Safety National Law has been mirrored in Western Australia.

Therefore, Queensland is currently the only jurisdiction that has not mirrored or applied the Rail Safety National Law.

The Bill deviates from the Rail Safety National Law in the following two areas:
- including an adjusted fee for rail safety investigations. The adjusted fee will be charged for the sole purpose of funding rail safety investigations
- allowing for the disallowance of the national regulations in accordance with the *Statutory Instruments Act 1992*.

The Bill also replicates the drug and alcohol testing provisions contained in the *Transport Operations (Road Use Management) Act 1995*. However, it was agreed nationally that drug and alcohol testing procedures in each jurisdiction would replicate their road-side drug and alcohol testing regimes.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 provides that, when enacted, the short title of the Act is the *Rail Safety National Law (Queensland) Act 2016*.

2 Commencement

Clause 2 provides for the Bill to commence at the end of 30 June 2017. This provides certainty that all activities from 1 July 2017 occur under the Act.

3 Definitions

Clause 3 defines a number of terms used in the Act.

The term *local regulation* means a regulation, or a provision of a regulation, made under section 63 of the Act. These regulations are made by Governor in Council and only apply in Queensland.

The term *national law* means the Rail Safety National Law (Queensland) which is the Rail Safety National Law as applied and also modified by Part 2 of the Act.

The term *national regulation* means a regulation, or a provision of a regulation, made under section 264 of the Rail Safety National Law (Queensland). The national regulations are made following the unanimous recommendation of the Responsible Ministers for the purposes of the national law.

The term *Rail Safety National Law* means the schedule to South Australia's *Rail Safety National Law (South Australia) Act 2012*.

The term *Rail Safety National Law (Queensland)* has the same meaning as the term 'national law'.

Clause 3 also clarifies that terms used in the Act and the Rail Safety National Law have the same meaning.

Part 2 Application of Rail Safety National Law

4 Application as law of this jurisdiction

Clause 4 provides that the Rail Safety National Law, as modified by part 2 of the Act, is a law of Queensland and as so applying is referred to as the Rail Safety National Law (Queensland).

5 Meaning of generic terms in Rail Safety National Law for this jurisdiction

Clause 5 defines a number of terms used in the national law with Queensland specific meanings, including terms in relation to courts and tribunals and other Queensland consistent definitions around roads and other road-related infrastructure.

In particular, the term *State entity* means a public sector unit within the meaning of the *Acts Interpretation Act 1954*, schedule 1, or a public service employee within the meaning of the *Public Service Act 2008*, section 9(1).

6 Exclusion of legislation of this jurisdiction

Clause 6 excludes the operation of certain Queensland legislation in relation to the Rail Safety National Law (Queensland) or instruments made under that law, which ensures that the national law operates consistently in all participating jurisdictions.

For example, to ensure that the national law is interpreted in a consistent way nationally, the *Acts Interpretation Act 1954* does not apply in relation to the national law. Instead, the national law relies on schedule 2 (Miscellaneous provisions relating to interpretation) of the Rail Safety National Law to aid in the interpretation of the national law.

However, section 20C of the *Acts Interpretation Act 1954* does apply to the Rail Safety National Law (Queensland) and provides that an act or omission is only an offence if committed after the Act commences.

In addition, if a State entity is exercising functions under the Rail Safety National Law (Queensland), the *Auditor-General Act 2009, Financial Accountability Act 2009, Ombudsman Act 2001, Public Records Act 2002, Public Sector Ethics Act 1994, Public Service Act 2008, Right to Information Act 2009,* and *Statutory Bodies Financial Arrangements Act 1982* will apply.

The Queensland legislation that does not apply in relation to the Rail Safety National Law (Queensland) does apply to part 1 and part 3 to part 7 of the Act.

7 Relationship with mining safety legislation

Clause 7 sets out that if the Rail Safety National Law (Queensland) applies to a mining railway, the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* do not apply to the mining railway to the extent that the Rail Safety National Law (Queensland) applies. This provides certainty as to which legislation applies to mining railways where there is potential overlap.

8 Modification of particular terms in Rail Safety National Law for this jurisdiction

Clause 8 modifies a number of terms used in the national law to work within the Queensland context.

Clause 8 amends the definition of *authorised person* in the national law to state that an authorised person means a person appointed under section 124. The effect of this is that a police officer is not an authorised person for the purpose of drug and alcohol testing under the Act, in Queensland.

Clause 8 amends the definition of *level crossing* in the national law to be consistent with the Queensland Road Rules. The amended definition of level crossing will provide that in relation to light rail, a level crossing is where the road and tram tracks meet at substantially the same level and that has a level crossing sign on the road at each entrance to the area. Whereas the Rail Safety National Law definition of *level crossing* means an area where a road and a railway meet at substantially the same level, whether or not there is a level crossing sign on the road at all or any of the entrances to the area.

Clause 8 amends the definition of *occupational health and safety legislation* in the national law to include the *Electrical Safety Act 2002* to reflect the separation of the *Work Health and Safety Act 2011* and the *Electrical Safety Act 2002* in Queensland.

Clause 8 also amends the definition of *rail or road crossing* in the national law so that a rail or road crossing includes a lane of a road on which rolling stock moves alongside road vehicles on the road. This ensures that a rail transport operator for light rail is still required to have interface agreements with road managers.

Clause 8 also removes references to a monorail in the definitions of *railway* and *rolling stock* in the national law to reflect that the national law does not apply to monorails in Queensland.

9 Rail Safety National Law (Queensland) does not apply to monorails

Clause 9 excludes monorails from the Rail Safety National Law (Queensland). This is consistent with the *Transport (Rail Safety) Act 2010,* which does not apply to monorails.

10 Industrial relations status of ONRSR

Clause 10 clarifies that the ONRSR is not a public sector employer, but is a national system employer.

11 Police officer can not be appointed as rail safety officer

Clause 11 provides that a Queensland police officer can not be appointed as a rail safety officer under section 135 of the national law.

12 Offences against Rail Safety National Law (Queensland)

Clause 12 provides that an offence against the Rail Safety National Law (Queensland) that has a penalty of more than 3 years imprisonment is a misdemeanour. The offence currently carrying a penalty of more than 3 years imprisonment is in section 58 of the rail safety national law (Failure to comply with safety duty—reckless conduct).

Further, it provides that an offence that is not an indictable offence is by way of summary proceedings under the *Justices Act 1886*. An indictable offence may be taken, at the

prosecution's election, by way of summary proceedings under the *Justices Act 1886* or on indictment. However, a magistrate must not hear an indictable offence summarily if the defendant asks that the charge be prosecuted on indictment, or if the magistrate is satisfied that, because of the nature or seriousness of the offence or any other relevant consideration, the defendant, if convicted, may not be adequately punished on summary conviction.

In that case, the magistrate must proceed by way of an examination of witnesses for an indictable offence, a plea of the person charged at the start of the proceeding must be disregarded, evidence brought before the magistrate decided to act is taken to be evidence in the proceeding for the committal of the person for trial or sentence, and before committing the person for trial or sentence, the magistrate must make a statement to the person as required under the *Justices Act 1886*, section 104(2)(b). That statement includes a statement to the effect that the person will have an opportunity to give evidence on oath and call witnesses.

The maximum term of imprisonment that may be imposed for an indictable offence is three years imprisonment. A proceeding must be before a magistrate if it is a proceeding for the summary conviction of a person on a charge for an indictable offence or for an examination of witnesses for a charge for an indictable offence. However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order.

13 No double jeopardy

Clause 13 provides that a person is not liable to be punished under the Act if the person has been punished for the offence under another Queensland law or under a law of another jurisdiction.

14 Parliamentary scrutiny of national regulations

Clause 14 applies sections 49 to 51 of the *Statutory Instruments Act 1992* to the national regulations, which allows the Queensland Parliament to disallow an amendment to the national regulations in Queensland.

Clause 14 also applies part 4 of the *Legislative Standards Act 1992* to the national regulations. This ensures that explanatory notes are tabled with the national regulations, and the explanatory notes must include the content as described in section 24 of the *Legislative Standards Act 1992.*

Clause 14 also ensures that the Legislative Assembly in Queensland may deal with a national regulation under the *Parliament of Queensland Act 2001* as if a reference in that Act to subordinate legislation is a reference to the national regulations.

The Act also ensures that any national regulations have sufficient regard to the fundamental legislative principles as contained in section 4 of the *Legislative Standards Act 1992.*

Part 3 Drug and alcohol testing procedures

Division 1 Interpretation

15 Definitions for part

Clause 15 defines a number of terms relevant to part 3 of the Act.

The term *analysis* means a breath analysis or saliva analysis.

The term *analyst* means a person who carries out an analysis or laboratory test in a laboratory prescribed by regulation.

The term *breath analysing instrument* means a breath analysing instrument as defined in the *Transport Operations (Road Use Management) Act 1995,* or an instrument approved by regulation.

The term *breath analysis* means an analysis of a specimen of breath by a breath analysing instrument.

The term *health care professional* means a doctor, nurse, or qualified assistant.

The term *instrument operator* means the authorised person or police officer who operates the breath analysing instrument under section 37 of the Act.

The term *nurse* means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse, other than as a student, and in the registered nurses division of that profession.

The term *preliminary breath test* means a test to obtain an indication of the concentration of alcohol in a person's breath using a device approved by regulation.

The term *preliminary saliva test* means a test to obtain an indication of the presence of a prescribed drug in a person's saliva using a device approved by regulation.

The term *preliminary test* means a preliminary breath test or a preliminary saliva test.

The term *prescribed medical certificate* means a certificate from a doctor stating that because of a stated illness or disability, a rail safety worker is incapable of providing a specimen of breath or saliva, or that providing a specimen of breath or saliva could adversely affect a rail safety worker's health.

The term *saliva analysis* means an analysis of a specimen of saliva by a laboratory test approved by regulation.

The term *specimen for analysis* means a sufficient specimen of breath or saliva, or both, for analysis.

The term *specimen for preliminary testing* means a sufficient specimen of breath or saliva, or both, for a preliminary test.

The term *sufficient specimen*, of breath or saliva for a preliminary test or for analysis, means a specimen of breath or saliva that is sufficient to enable the preliminary test or analysis to be carried out and is provided in a way that enables the objective of the preliminary test or analysis to be satisfactorily achieved.

The terms *authorised person, prescribed concentration of alcohol* and *prescribed drug* have the same meaning as in the national law.

The terms *analyst's certificate*, *breath analysis certificate*, and *qualified assistant* are linked to the section that defines the term.

16 Qualified assistants

Clause 16 sets out that a qualified assistant is a person whose duties include the taking of blood. A qualified assistant can only take a specimen of a rail safety worker's blood if directed to do so by a doctor or nurse. In a proceeding, unless the contrary is proven, a qualified assistant who takes a specimen of blood from a rail safety worker has been directed by a doctor or nurse to take the specimen.

17 How to read particular references in national law, pt 3, div 9

Clause 17 clarifies that:

- a drug screening test in the national law means a preliminary saliva test in the Act
- oral fluid in the national law means saliva in the Act
- oral fluid analysis in the national law means saliva analysis in the Act.

18 Using breath sample to find blood alcohol concentration

Clause 18 sets out that if the concentration of alcohol in a rail safety worker's breath is a particular number of grams of alcohol for each 210 litres of breath, the worker's blood alcohol concentration is to be regarded as being that number of grams of alcohol for each 100 ml of blood.

This ensures that the preliminary breath test or breath analysis result can be used to determine if there is present in the worker's blood the prescribed concentration of alcohol.

Division 2 Application of national law, part 3, division 9 and this part

19 Application of national law, ss 126 and 127

Clause 19 provides that sections 126 and section 127 of the national law apply subject to this part of the Act.

Section 126 of the national law provides that an authorised person may require a rail safety worker in particular circumstances to submit to testing by means of a preliminary breath test or breath analysis, or both.

Section 127 of the national law provides that an authorised person may require a rail safety worker in particular circumstances to submit to testing by means of a preliminary saliva test, saliva analysis or blood test (or any combination of those).

Under sections 126 and 127 of the national law, an authorised person may require the name and address of the worker, give any other reasonable direction and the worker must comply, with a maximum penalty of $10,000 if the worker does not comply.

20 Limitation on when authorised person may exercise powers in relation to train driver

Clause 20 clarifies that if a police officer is exercising a power under section 80 of the *Transport Operations (Road Use Management) Act 1995* in relation to a train driver, an authorised person may not exercise a power under part 3, division 3 or 4 of the Act in relation to that train driver.

The term *train driver* is defined for the purpose of the provision to mean a rail safety worker found by a police officer driving, attempting to put in motion, or in charge of, a train as mentioned in the *Transport Operations (Road Use Management) Act 1995*, section 80(2) or (2A), or who a police officer reasonably suspects was driving, attempting to put in motion, or in charge of, a train in the circumstances mentioned in section 80(2) or (2A) of that Act.

This ensures that enforcement action carried out by a police officer under the *Transport Operations (Road Use Management) Act 1995* is given priority, even if testing by an authorised person has already commenced.

Division 3 Provision of specimens of breath or saliva for preliminary test

21 Requirement to submit to preliminary test

Clause 21 provides that an authorised person may require a rail safety worker to submit to a preliminary breath test or preliminary saliva test in accordance with section 126 and section 127 of the national law.

Section 126 and section 127 of the national law allow an authorised person to require a rail safety worker to submit to testing if the worker:

- is about to carry out rail safety work
- is carrying out rail safety work
- is attempting to carry out rail safety work
- is still on railway premises after carrying out rail safety work
- is involved in a prescribed notifiable occurrence.

22 Direction to provide specimen of breath or saliva

Clause 22 allows the authorised person to direct the rail safety worker to provide 1 or more specimens for preliminary testing and direct the worker to comply with any reasonable requirement for the purpose of providing each of the specimens.

23 Direction to provide additional specimen of breath or saliva

Clause 23 allows the authorised person to direct the rail safety worker to provide additional specimens for preliminary testing in certain circumstances, including if the worker fails to provide a sufficient specimen, the device becomes defective, or it is not possible to continue or complete the preliminary test.

Clause 23 also allows the authorised person to direct a rail safety worker to comply with any reasonable requirement for the purpose of providing the additional specimen.

24 Time limit on giving direction to provide specimen for preliminary testing

Clause 24 provides that the preliminary test must be commenced as soon as practicable and, in any event, within three hours after the time when the authorised person found the rail safety worker doing the thing mentioned in the national law, section 126(1)(a) to (e) or 127(1)(a) to (e) or when the rail safety worker is reasonably suspected by the authorised person to have been doing the thing mentioned in those provisions.

Things mentioned in the national law, section 126(1)(a) to (e) or 127(1)(a) to (e) include:

- being about to carry out rail safety work
- carrying out rail safety work
- attempting to carry out rail safety work
- still being on railway premises after carrying out rail safety work
- being involved in a prescribed notifiable occurrence.

Clause 24 makes it clear that the preliminary test commences when the rail safety worker is first presented with the device used for the preliminary test for the purpose of providing the specimen, including for the purpose of providing an additional specimen of breath or saliva.

25 Limitation on direction to provide specimen for preliminary testing – prescribed medical certificate

Clause 25 provides that if an authorised person directs a rail safety worker to provide a specimen for preliminary testing and the worker gives the authorised person a prescribed medical certificate relating to providing that type of specimen, the authorised person must not require the rail safety worker to comply with the direction to provide that type of specimen. However, the authorised person may instead direct the rail safety worker to provide a specimen of the type to which the prescribed medical certificate does not relate.

Division 4 Provision of specimens of breath or saliva for analysis or blood for testing

26 Application of division

Clause 26 sets out that part 3, division 4 applies if a worker is directed under part 3, division 3 by an authorised person to provide a specimen for preliminary testing and it appears to the authorised person, because of the preliminary test, that the worker is over the prescribed concentration of alcohol or that a prescribed drug is present in the worker's saliva, or the worker failed to comply with the direction, or the worker declines to wait for a reasonable time to allow

the preliminary test to be carried out, or the worker gives the authorised person a prescribed medical certificate relating to providing that type of specimen.

27 Requirement to submit to breath analysis, saliva analysis or blood test

Clause 27 sets out that if the preliminary test indicates a non-negative result, or the rail safety worker fails to comply with the direction, or the worker declines to wait for a reasonable time to allow the preliminary test to be carried out, the authorised person can require the worker to submit to a breath analysis, saliva analysis or blood test.

Clause 27 also sets out that if the rail safety worker gives the authorised person a prescribed medical certificate relating to providing a specimen, the authorised person can require the worker to submit to a blood test.

28 Direction to provide specimen of breath, saliva or blood

Clause 28 provides that an authorised person may direct the rail safety worker to provide a specimen of breath, saliva or blood at a place and time stated by the authorised person.

The authorised person can also direct the rail safety worker to comply with any reasonable requirement for the purpose of providing the specimen.

29 Direction to provide additional specimens of breath, saliva or blood

Clause 29 allows the authorised person to direct the rail safety worker to provide additional specimens for breath or saliva analysis if the worker fails to provide a sufficient specimen, the device becomes defective or it is not possible to continue or complete the analysis.

If the worker is directed to provide a specimen of blood for a laboratory test and the worker fails to provide the specimen required for the test, the authorised person may direct the worker to provide additional specimens of blood to enable the laboratory test to be carried out.

Clause 29 also allows the authorised person to direct a rail safety worker to comply with any reasonable requirement for the purpose of providing the additional specimen.

30 Direction to provide specimen of breath at police station

Clause 30 provides that an authorised person can direct a rail safety worker to provide a specimen of breath for analysis at a police station.

The police officer who carries out the breath analysis is taken to be an instrument officer for the purposes of part 3. (Clause 39 provides for what an instrument operator is required to do in relation to a breath analysis certificate.)

31 Time limit on commencing breath or saliva analysis or blood test

Clause 31 provides that the breath analysis, saliva analysis or blood test must be commenced as soon as is practicable and, in any event, within three hours after the time when the authorised person found the rail safety worker doing the thing mentioned in the national law, section

126(1)(a) to (e) or 127(1)(a) to (e) or when the rail safety worker is reasonably suspected by the authorised person to have been doing the thing mentioned in those provisions.

Things mentioned in the national law, section 126(1)(a) to (e) or 127(1)(a) to (e) include:

- being about to carry out rail safety work
- carrying out rail safety work
- attempting to carry out rail safety work
- still being on railway premises after carrying out rail safety work
- being involved in a prescribed notifiable occurrence.

Clause 31 makes it clear that the breath analysis commences when the rail safety worker is first presented with the breath analysing instrument.

Clause 31 also clarifies that the saliva analysis or blood test commences when the rail safety worker is first directed to provide a specimen of saliva or blood.

32 Limitation on direction to provide specimen of breath or saliva for analysis – prescribed medical certificate

Clause 32 provides that an authorised person must not direct a rail safety worker to provide a specimen of breath or saliva for analysis if the worker gives the authorised person a prescribed medical certificate relating to that type of specimen or if the worker gave a prescribed medical certificate relating to that type of specimen when directed to provide the specimen for preliminary testing.

For example, the authorised person can not direct a rail safety worker to provide a specimen of breath for analysis if the rail safety worker provides a prescribed medical certificate about the giving of a breath specimen, or gave a prescribed medical certificate when directed to give a specimen of breath for a preliminary breath test.

33 Rail safety worker may request duplicate specimen of saliva or blood

Clause 33 allows a rail safety worker to request a duplicate specimen of saliva or blood if they have been directed to provide a specimen of saliva for a saliva analysis or a specimen of blood for a laboratory test.

The authorised person or the health care professional must comply with the rail safety worker's request and provide the duplicate specimen. See section 57, which provides that an omission under section 33(3) of the Act is not an offence.

34 Requirements for providing specimen of breath or saliva for analysis

Clause 34 sets out that a regulation may prescribe requirements about how a specimen of breath or saliva for analysis must be provided and also provides that a rail safety worker must comply with the prescribed requirements.

35 Compliance with direction to provide specimen of blood for laboratory test

Clause 35 sets out that if a rail safety worker is directed by an authorised person to provide a specimen of blood for a laboratory test, the worker must allow a health care professional to take the specimen when and in the manner directed by the health care professional.

36 Health care professional may take specimen of blood without consent

Clause 36 clarifies that it is lawful for a health care professional to take a specimen of the rail safety worker's blood under this part, even if the rail safety worker has not consented to the taking.

Division 5 Conduct of analysis and testing of specimens

37 Who may operate breath analysing instrument

Clause 37 provides that a breath analysing instrument must be operated by an authorised person or by a police officer under section 30. However, a police officer may only operate a breath analysing instrument if they are authorised by the commissioner under section 80(8G) of the *Transport Operations (Road Use Management) Act 1995*.

Clause 37 also provides that the certificate signed by the Commissioner that the police officer named in the certificate is authorised by the Commissioner to use the instrument, is conclusive evidence, unless the contrary is proved, that the police officer is authorised to operate the instrument.

38 Delivery of specimen to laboratory

Clause 38 sets out that as soon as practicable after a specimen of saliva for analysis or blood for a laboratory test has been provided, the specimen must be delivered to the laboratory of an analyst in the way prescribed by regulation.

Clause 38 also sets out that in a proceeding, evidence given by an authorised person, or a person who delivered the specimen, of the delivery of the specimen to the laboratory, or the production of an analyst's certificate stating that the specimen was delivered, is sufficient evidence of complying with this section.

Division 6 Evidentiary matters

Subdivision 1 Evidence of breath analysis

39 Breath analysis certificate

Clause 39 provides that after a specimen of breath has been analysed, the instrument officer must sign two copies of a breath analysis certificate stating the concentration of alcohol indicated to be present in the blood or breath and the date and time the analysis was made and give a copy to the rail safety worker (or another person on the worker's behalf) and to the

authorised person who gave the direction. If the instrument officer is the authorised person who gave the direction, the authorised person retains a copy of the notice.

The breath analysis certificate is evidence of particular stated matters, such as that the instrument used to analyse the specimen of breath was in proper working order.

40 Evidence from breath analysing instrument

Clause 40 provides that evidence given by the instrument operator or the breath analysis certificate is conclusive evidence of the concentration of alcohol present in the blood or breath of the rail safety worker at the time when the worker provided the specimen and any time during the 3-hour period ending at the time the worker provided the specimen.

The rail safety worker can negative the evidence by proving the breath analysing instrument was not in proper working order or was not properly operated.

Subdivision 2 Evidence about submission to breath analysis, saliva analysis or blood test

41 Certificate about requirement to submit to breath analysis, saliva analysis or blood test

Clause 41 provides that if a rail safety worker is required to submit to a breath analysis, saliva analysis or blood test, the authorised person who made the requirement must sign two copies of a certificate about the requirement to submit to breath or saliva analysis or the blood test stating particular matters. Those matters include the date on which and the place and time at which the requirement was made.

42 Certificate about failure to provide specimen of breath or saliva for analysis

Clause 42 provides that if a rail safety worker is directed to provide a specimen of breath or saliva for analysis and fails to provide a specimen for analysis and the instrument operator either gave the direction or witnessed the giving of the direction, the instrument operator must sign two copies of a certificate about the failure to provide the specimen of breath or saliva for analysis. The certificate must state particular matters, including details of the worker's failure to provide the specimen.

43 Certificate about failure to allow health care professional to take specimen of blood

Clause 43 provides that if a rail safety worker is directed to provide a specimen of blood for a laboratory test and fails to allow the health care professional to take the specimen of blood and the health care professional witnessed the giving of the direction, the health care professional must sign two copies of a certificate about the failure to allow the health care professional to take the specimen of blood. The certificate must state particular matters, including details of the worker's failure to allow the health care professional to take the specimen.

44 Requirement to give certificate to rail safety worker and authorised person

Clause 44 applies to the following certificates:

- a certificate about a requirement to submit to breath analysis, saliva analysis or a blood test
- a certificate about a failure to provide a specimen of breath or saliva for analysis
- a certificate about a failure to allow a health care professional to take a specimen of blood.

Clause 44 provides that, as soon as practicable after the person has signed the certificate, the person must give one copy to the rail safety worker (or another person on the worker's behalf) and one copy to the authorised person who gave the direction (or retain a copy of the certificate if the person is the authorised person who gave the direction).

45 Certificate evidence

Clause 45 applies to the following certificates:

- a certificate about a requirement to submit to a breath analysis, saliva analysis or a blood test
- a certificate about a failure to provide a specimen of breath or saliva for analysis
- a certificate about a failure to allow a health care professional to take a specimen of blood

The certificates are conclusive evidence of particular stated matters.

Subdivision 3 Evidence about laboratory testing

46 Analyst's certificate

Clause 46 applies if an analyst carries out a laboratory test on a specimen of blood or saliva under part 3 of the Act. After carrying out the test, the analyst must sign an analyst's certificate stating particular matters, such as the name of the rail safety worker, the date on which the test was carried out, the concentration of alcohol in the worker's blood indicated by the test and whether any drug or metabolite of any drug was indicated by the test to be present in the worker's blood and, if so, the name of the drug.

47 Requirement to give analyst's certificate to authorised person and rail safety worker

Clause 47 requires an analyst to give two signed copies of the analyst's certificate to the authorised person who gave the direction for the taking of the specimen.

As soon as practicable after being given the two copies of the analyst's certificate, the authorised person must give one copy of the analyst's certificate to the rail safety worker, either personally or by registered post.

48 Evidence from laboratory test

Clause 48 provides that the analyst's certificate is conclusive evidence of particular stated matters. However, the rail safety worker can negative evidence by proving the result of the laboratory test was not correct.

49 Production of analyst's certificate

Clause 49 applies if a laboratory test has been conducted on a rail safety worker's saliva or blood under part 3 of the Act.

If a court is dealing with a charge against a rail safety worker, for an offence against part 3 of the national law, the court must adjourn the hearing to enable the production in evidence of the analyst's certificate and give the rail safety worker a copy of the certificate at least three days before the certificate is produced as evidence.

However, clause 49 does not prevent the court using its discretion if the rail safety worker applies to have the charge heard, the worker pleads guilty to the offence, and the court is satisfied that the facts available will be unchallenged and sufficient to properly deal with the matter.

50 Evidentiary provision for laboratory equipment

Clause 50 provides that in a proceeding for an offence against part 3 of the national law, equipment used in a laboratory test of a specimen of saliva or blood is taken to have given accurate results, unless the contrary is proved.

Subdivision 4 Other evidentiary matters

51 Certificate by health care professional about taking of specimen

Clause 51 applies if a health care professional takes a specimen of saliva or blood under part 3 of the Act. The health care professional must sign a certificate about taking the specimen which states particular matters, such as the name of the worker and the date the specimen was taken.

52 Certificate by particular person is evidence of matters relating to that person

Clause 52 provides that the following certificates are, unless the contrary is proved, conclusive evidence of particular matters:

- breath analysis certificate signed by the instrument operator
- a certificate about a failure to provide a specimen of breath or saliva for analysis signed by the instrument operator
- certificate by a health care professional about the taking of a specimen signed by the health care professional
- a certificate about a failure to allow a health care professional to take a specimen of blood signed by the health care professional
- a certificate by a health care professional about the taking of a specimen
- an analyst's certificate signed by an analyst.

Division 7 Provisions about particular types of evidence obtained under this part

53 Admissibility of evidence of alcohol or drug in proceedings for particular offences

Clause 53 applies to evidence obtained under part 3 of the Act in relation to the concentration of alcohol in a rail safety worker's breath or blood, the presence of a prescribed drug or a metabolite of a prescribed drug in the worker's saliva or blood, or the presence of another drug or a metabolite of another drug in the worker's blood.

Clause 53 sets out the admissibility of the evidence in a proceeding.

54 Defendant to give notice of intention to lead evidence of particular matters

Clause 54 sets out particular requirements if the defendant proposes to lead evidence in a proceeding in relation to particular stated matters.

55 Particular persons may be required to attend hearing with leave of court

Clause 55 applies if a defendant gives a notice to lead evidence in a proceeding under section 54 of the Act.

Under clause 55 a defendant may, with leave of the court, require a person who was involved in particular stated activities to attend the hearing and give evidence. Leave may be granted if there is a reasonable possibility that an irregularity or defect exists in relation to the taking, receipt, storage or testing of the specimen of saliva or blood about which the person is able to give evidence or it is otherwise in the interests of justice.

Division 8 Miscellaneous

56 Defence to prosecution for offence against national law, s126(3) or 127(3)

Clause 56 provides that it is a defence to the prosecution of a rail safety worker for an offence against section 126(3) or 127(3) of the national law in relation to a particular direction if the direction was not lawfully given, or if immediately after the direction was given, the worker gave the authorised person a prescribed medical certificate relating to the type of specimen, or the worker has another reasonable excuse. However, it is not a reasonable excuse that complying with the direction might tend to incriminate the worker.

57 Omission is not an offence

Clause 57 clarifies that a person does not commit an offence because the person omits to do an act required under particular stated sections.

Part 4 Funding for Australian Transport Safety Bureau under Transport Safety Investigation Act 2003 (Cwlth)

58 Definition for part

Clause 58 defines the term *rail safety investigation fee*, by reference to section 59(1) of the Act.

59 Rail safety investigation fees

Clause 59 sets out that a prescribed accredited person must pay a prescribed rail safety investigation fee, for the period prescribed by a regulation, to the chief executive by the date prescribed in a regulation.

The rail safety investigation fee is to provide funding for the Australian Transport Safety Bureau to carry out its functions under the *Transport Safety Investigation Act 2003* (Cwlth) in relation to transport safety matters relating to rail vehicles in the State.

The chief executive may, under an agreement with the accredited person, accept payment of the rail safety investigation fee by instalments or otherwise. The chief executive may also waive all or part of the fee, or refund all or part of the fee.

60 Requirement to give chief executive information

Clause 60 allows the chief executive to request particular prescribed information from an accredited person for the purpose of calculating, administering and collecting a rail safety investigation fee.

In the first instance, information for the purpose of calculating, administering and collecting the rail safety investigation fee will be obtained on agreement with the ONRSR. However, should information not be provided, the chief executive will write to accredited rail transport operators.

61 Recovery of rail safety investigation fees

Clause 61 sets out how an unpaid rail safety investigation fee may be recovered.

Part 5 Miscellaneous

62 Provision of information or assistance by chief executive or ONRSR

Clause 62 allows the chief executive to provide the ONRSR with information required for administering the Act or the national law or any other assistance reasonably required by the ONRSR to perform a function, or exercise a power, under the Act or the national law, despite any other Act or law. The chief executive can also authorise the ONRSR to disclose information, despite any other Act or law.

Clause 62 also allows the ONRSR to provide the chief executive with information required for administering the Act or any other assistance reasonably required by the chief executive to perform a function, or exercise a power, under the Act, despite any other Act or law. The ONRSR can also authorise the chief executive to disclose information, despite any other Act or law.

Nothing done by the chief executive or the ONRSR under this section constitutes:

- a breach under an Act or other law
- a breach of or default under a contract, agreement, understanding or undertaking
- a breach of a duty of confidence
- a civil or criminal wrong
- a termination of an agreement or obligation or
- a release of a surety or any other obligation.

63 Regulation-making power

Clause 63 sets out that the Governor in Council may make regulations under the Act, including to modify the application of a national regulation in this jurisdiction.

The Act also sets out a transitional regulation making power in section 132.

The national law also includes a power to make a national regulation in schedule 1 of the national law.

Part 6 Repeal and transitional provisions

Division 1 Repeal of Transport (Rail Safety) Act 2010

64 Repeal

Clause 64 repeals the *Transport (Rail Safety) Act 2010*.

Division 2 Transitional provisions

Subdivision 1 Preliminary

65 Definition for division

Clause 65 defines *repealed Act* for the purposes of part 6, division 2 of the Act.

The term *repealed Act* means the *Transport (Rail Safety) Act 2010*.

Subdivision 2 Applicable railway operations

66 Railway operations to which repealed Act did not apply

Clause 66 applies to railway operations that the repealed Act did not apply to, but the Act will apply to.

Clause 66 provides that the railway operator cannot be prosecuted for an offence of not being accredited for their railway operations until the earlier of the following:

- they are accredited for their railway operations
- have an exemption for their railway operations, or
- three years after the commencement.

Therefore a railway operator who was not required to be accredited under the *Transport (Rail Safety) Act 2010*, but who is required to be accredited under the Act, has three years from commencement of the Act, to either gain accreditation for their railway operations, or be granted an exemption from the requirement to be accredited.

Subdivision 3 Exemptions

67 Exemption for related bodies corporate

Clause 67 provides a transitional period for a related bodies corporate that was exempt under section 40 of the repealed Act. Exempted related bodies corporate cannot be prosecuted for an offence of not being accredited for their railway operations until the earlier of the following:

- they are accredited for their railway operations
- have an exemption for their railway operations, or
- two years after the commencement.

68 Exemption for particular railway operations

Clause 68 provides that a person who is exempted from the requirement to be accredited under part 4, division 2, subdivision 4 of the *Transport (Rail Safety) Act 2010*, is taken to be exempt from the requirement to be accredited under the Act until the earlier of the following:

- they are accredited for their railway operations
- have an exemption for their railway operations, or
- three years after the commencement.

Therefore, operators who are currently exempt from the requirement to be accredited, will be provided with a period of up to three years to be granted an exemption or accreditation under the Act to achieve the necessary level of compliance.

69 Compliance with registration conditions

Clause 69 provides that for a period of three years, a person who is exempted from the requirement to be accredited under part 4, division 2, subdivision 4 of the *Transport (Rail Safety) Act 2010* cannot be prosecuted for an offence against section 214 of the national law if the action was not considered an offence under the repealed Act.

70 Application for exemption

Clause 70 provides that if a person had applied to the chief executive for an exemption under section 43 of the repealed Act, and the application has not been decided on commencement of the Act, the application is taken to be an application made under section 205 of the national law.

71 Consideration of and decision on application

Clause 71 provides that if the chief executive and the applicant for an exemption (under section 45 of the repealed Act) agree to a period in which the application would be decided, and the chief executive has not yet decided the application within the relevant period, the period agreed is considered to be the relevant period under section 207(4) of the national law.

72 Variation, suspension or revocation of exemption

Clause 72 applies if a person's exemption from the requirement to be accredited was subject to a decision of the chief executive to vary, suspend or revoke the exemption under the repealed Act and the decision would have taken effect on or from a particular date after the commencement of the Act. The decision is taken to be a decision of the Regulator and takes effect at the same time.

73 Procedure for varying, suspending or revoking exemption

Clause 73 applies if the chief executive had given a person a notice under section 50(1) of the repealed Act and the chief executive had not made a decision in relation to the notice when the Act commences. The notice is taken to be a notice under section 213(3) of the national law.

Clause 73 also provides that if a person made written representation in response to the notice, as to why the chief executive should not make the decision, and the chief executive had not made a decision in relation to the notice (and subsequent representations), the representations are considered to be written representations made by the person to the Regulator under the national law.

Subdivision 4 Private sidings

74 Connection between private siding and accredited railway

Clause 74 applies if an accredited person for a railway and a rail infrastructure manager of a private siding had entered into an agreement under section 54(1) of the repealed Act.

If the accredited person had given the rail infrastructure manager a notice about the proposed action to disconnect or close the siding from the railway (under section 54(3)(a) of the repealed Act) and had agreement from the rail infrastructure manager of the private siding but the proposed action had not yet happened, section 54 of the repealed Act continues to apply to the proposed action.

75 Registration

Clause 75 provides that if a rail infrastructure manager has lodged a request for the registration of their private siding under section 55 of the repealed Act but the chief executive has not decided the request, the request is taken to be an application made under section 84 of the national law for the registration of a manager of a private siding.

Clause 75 also provides that if a private siding is registered under section 55 of the repealed Act, on commencement of the Act, the rail infrastructure manager of the private siding is taken to be registered under section 86(1) of the national law.

If a private siding's registration was subject to conditions under the repealed Act, the rail infrastructure manager's registration is taken to be subject to the same conditions.

76 Compliance with registration conditions

Clause 76 provides that for a period of two years, a rail infrastructure manager cannot be prosecuted for an offence against section 98(1) of the national law if the action was not considered an offence under the repealed Act.

77 Annual registration fee

Clause 77 provides that if the annual registration fee for a private siding has been paid under the repealed Act, for the financial year in which the Act commences, the annual registration fee is considered to be paid for that period under section 95 of the national law.

78 Interface coordination for registered private siding

Clause 78 provides that on commencement, an interface agreement under the repealed Act is taken to be an interface agreement under section 83(2) of the national law.

Clause 78 also provides that on commencement, if the chief executive had issued a preliminary notice, notice or direction in relation to interface coordination of the registered private siding under the repealed Act and the manager or accredited person had not yet complied with the preliminary notice, notice or direction, the preliminary notice, notice or direction is taken to have been given by the Regulator under the national law.

Subdivision 5 Safety management systems and safety performance reports

79 Compliant safety management system

Clause 79 provides that for a period of two years from commencement of the Act, a safety management system that complied with the repealed Act is taken to be a safety management system under the national law.

80 Agreement about timing of review of safety management system

Clause 80 provides that on commencement, if the chief executive and a rail transport operator had agreed to the time and periods for review of the safety management system under section 65 of the repealed Act, the Regulator and the operator are taken to have agreed to the same time and period under section 102 of the national law.

81 Requirement to give safety performance report

Clause 81 provides that on commencement, if the chief executive and a rail transport operator had agreed to a reporting period for giving the safety performance report under section 70 of

the repealed Act, the Regulator and the operator are taken to have agreed the same period under section 103 of the national law.

Subdivision 6 Interface coordination

82 Definitions for subdivision

Clause 82 defines the terms *relevant provision of the national law* and *relevant provision of the repealed Act* for the purposes of part 6, division 2, subdivision 6 of the Act.

83 Interface agreements

Clause 83 provides that on commencement, an interface agreement under part 4, division 3, subdivision 4 of the repealed Act is taken to be an interface agreement under part 3, division 6, subdivision 2 of the national law.

84 Rail infrastructure manager's obligation relating to rail or road crossing for private road

Clause 84 provides that, if a rail infrastructure manager had given a road manager for a private road a notice under section 74(1)(d) of the repealed Act and the road manager had not complied with the notice, the notice is taken to have been given under section 108(1)(c)(i) of the national law on commencement of the Act.

85 Chief executive's notice about failure to enter into interface agreement

Clause 85 provides that on commencement, if the chief executive had given a rail transport operator, rail infrastructure manager or road manager a preliminary notice under section 77(2) of the repealed Act, and an interface agreement had not been entered into, but a direction had not been issued by the chief executive to implement arrangements that are to apply, the preliminary notice is taken to have been given by the Regulator under section 110(2) of the national law.

86 Chief executive's direction about arrangement that is to apply

Clause 86 provides that on commencement, if the chief executive had given a person a direction to implement arrangements that are to apply under section 78(2)(b) of the repealed Act and the person had not complied with the direction, the direction is taken to have been given by the Regulator under section 110(4)(b) of the national law.

87 Register of interface arrangements

Clause 87 provides that on commencement, a register of interface agreements and interface directions under section 79(1) of the repealed Act is taken to be a register of interface agreements and arrangements under section 111(1) of the national law.

Subdivision 7 Management plans and programs

88 Compliant security management plan

Clause 88 provides that if a rail transport operator's security management plan complied with the repealed Act, the security management plan is considered to comply with the Act for a two year period from commencement of the Act. After this period, the security management plan must meet all the requirements of a security management plan under the Act.

89 Compliant emergency management plan

Clause 89 provides that if a rail transport operator's emergency management plan complied with the repealed Act, the emergency management plan is considered to comply with the Act for a two year period from commencement of the Act. After this period, the emergency management plan must meet all the requirements of an emergency management plan under the Act.

90 Compliant health and fitness management program

Clause 90 provides that if a rail transport operator's health and fitness management program complied with the repealed Act, the health and fitness management program is considered to comply with the Act for a two year period from commencement of the Act. After this period, the health and fitness management program must meet all the requirements of a health and fitness program under the Act.

91 Compliant alcohol and drug management program

Clause 91 provides that if a rail transport operator's alcohol and drug management program complied with the repealed Act, the alcohol and drug management program is considered to comply with the Act (as a drug and alcohol management program) for a two year period from commencement of the Act. After this period, the alcohol and drug management program must meet all the requirements of a drug and alcohol management program under the Act.

92 Compliant fatigue management program

Clause 92 provides that the provisions of the repealed regulation made under section 85 of the repealed Act are taken to be prescribed requirements under section 116 of the national law until a national regulation prescribing work hours and rest periods for train drivers in Queensland is made. This ensures that the work hours and rest periods in the *Transport (Rail Safety) Regulation 2010* continue to apply to train drivers in Queensland until the national regulation provides for work hours and rest periods for train drivers in Queensland.

Clause 92 also provides that if a rail transport operator's fatigue management program complied with the repealed regulation in respect of the work hours and rest periods for train drivers, the fatigue management program is considered to comply with the Act (as a fatigue risk management program) for a two year period from commencement of the Act. After this period, the fatigue management program must either meet all the requirements of a fatigue risk management program under the Act or have been granted an exemption from those requirements.

Subdivision 8 Competence and identification of rail safety workers

93 Compliance with requirements of assessment of competence

Clause 93 provides that, for a two year period from commencement of the Act, a rail transport operator cannot be prosecuted for an offence against section 117(1) or 117(6) of the national law, if the act or omission constituting the offence would not have been an offence under the repealed Act.

94 Identification for rail safety workers

Clause 94 provides that identification given to a rail safety worker under section 88 of the repealed Act is taken to be identification given to the rail safety worker under the Act.

Subdivision 9 Investigating and reporting requirements

95 Notification of particular occurrence

Clause 95 provides that if a rail transport operator was required to report an occurrence under section 93(1) of the repealed Act, but had not yet reported the occurrence on commencement of the Act, the occurrence must be reported in accordance with section 121(1) of the national law.

Clause 95 also provides that if a rail transport operator was given a notice under section 93(3) of the repealed Act, and the rail transport operator had not yet complied with the notice on commencement of the Act, the notice is taken to be a notice given under section 121(3) of the national law.

96 Investigation of particular occurrence

Clause 96 provides that if a rail transport operator was given a notice under section 94(1) of the repealed Act, and the rail transport operator had not given the chief executive the report, the notice is taken to have been given by the Regulator under section 122(1) of the national law.

Subdivision 10 Accreditation

97 Accreditation for railway operations

Clause 97 provides that a person who was accredited under the repealed Act is taken to be accredited under the national law for the railway operations. If the person's accreditation under the repealed Act was subject to a condition, the person's accreditation under the national law is taken to be subject to the same condition.

98 Application for accreditation

Clause 98 provides that if a person had applied under the repealed Act for accreditation for railway operations or had given the chief executive an amended application for accreditation

but the chief executive had not decided the application, the application is taken to be an application to the Regulator under the national law. If the application fee had been paid under the repealed Act, the application fee is taken to have been paid under the national law. If the chief executive had given the applicant a notice requiring further information and the applicant had not complied with the notice, the notice is taken to have been given by the Regulator under the national law.

99 Coordination of application between rail transport operators

Clause 99 provides that if the chief executive had given a rail transport operator a direction under the repealed Act to coordinate the operator's application for accreditation with another operator's application and the operator had not complied with the direction, the direction is taken to be a coordination direction given by the Regulator under the national law.

100 Consideration of and decision on application

Clause 100 provides that if the chief executive and the applicant for accreditation had agreed under the repealed Act the period within which the application was required to be decided, but the chief executive had not decided the application, the Regulator and the applicant are taken to have agreed the same period. If the chief executive had given the applicant a notice nominating the period within which the application was required to be decided, the Regulator is taken to have specified the same period. A notice given by the chief executive under the repealed Act notifying of the chief executive's decision on the application is taken to be a notice by the Regulator under the national law.

101 Compliance with accreditation conditions

Clause 101 provides that a person to whom section 97 of the Act applies cannot be prosecuted for an offence against the national law if the act or omission occurs during the transitional period and had it occurred before the commencement would not have constituted an offence against the repealed Act. The transitional period starts on commencement and ends two years later.

102 Annual accreditation fee

Clause 102 provides that if the annual accreditation fee for the financial year in which commencement happens has been paid under the repealed Act, the annual fee under the national law is taken to have been paid, and the rail safety investigation fee is taken to have been paid, for that financial year.

103 Suspension for non-payment of fee

Clause 103 sets out that if an accreditation was suspended under the repealed Act for failure to pay an annual accreditation fee and the suspension was in force immediately before commencement, the suspension is taken to be a suspension of the person's accreditation by the Regulator under the national law.

Clause 103 also provides that if the chief executive had given a notice to an accredited person under the repealed Act stating that the chief executive was considering suspending the person's

accreditation, for failure to pay an annual accreditation fee, but had not made a decision in relation to the person's accreditation, the notice is taken to be a notice given by the Regulator.

Clause 103 also provides that if the person had given written representations showing cause why the chief executive should not suspend the person's accreditation, the representations are taken to be made by the person to the Regulator and must be considered by the Regulator before making a decision in relation to the person's accreditation.

104 Suspension or revocation of accreditation

Clause 104 provides that if an accreditation for railway operations was subject to a decision of the chief executive to suspend the accreditation and the suspension was for a period that would have ended on or after the commencement, the decision is taken to be decision of the Regulator under the national law.

If the accreditation was subject to a decision of the chief executive to revoke the accreditation and the revocation would have taken effect on or after the commencement, the decision is taken to be a decision of the Regulator.

105 Procedure for suspending or revoking accreditation

Clause 105 provides that if the chief executive had given a person notice under the repealed Act that the chief executive was considering making a decision under section 109 of that Act in relation to a person's accreditation but the chief executive had not made the decision, the notice is taken to be notice given by the Regulator.

If the person had made written representations under the repealed Act showing cause why the chief executive should not make the decision, the representations are taken to be made to the Regulator. A notice given by the chief executive under the repealed Act notifying a person of the chief executive's decision under the repealed Act, is taken to be a notice given by the Regulator.

106 Immediate suspension of accreditation

Clause 106 provides that if an accreditation was suspended under section 111(2) of the repealed Act, and the suspension was for a period that would have ended on or after the commencement, the suspension is taken to be a suspension of the accreditation by the Regulator under the national law for the same period.

Clause 106 also provides that if the chief executive had given a person a notice under section 111(5) of the repealed Act stating that the chief executive was considering making a decision to extend the period of suspension but had not yet made the decision, the notice is taken to have been given by the Regulator under section 74(4) of the national law.

If a person had made written representations showing cause why the chief executive should not make a decision to extend the period of suspension, and the chief executive had not made the decision on commencement of the Act, the representations are taken to have been made under section 74(4) of the national law.

107 Variation of conditions on Regulator's initiative

Clause 107 provides that if the chief executive had given an accredited person a notice under the repealed Act, section 112(2)(a) stating that the chief executive was proposing to take action of the type stated in the notice in relation to the person's accreditation but the chief executive had not made a decision, the notice is taken to be a notice given by the Regulator under the national law.

If the accredited person and the chief executive had agreed on a period for which a person can make representations, under section 112(2)(b) of the repealed Act, and the period had not expired, the accredited person and the Regulator are taken to have agreed to the same period under the national law.

If the accredited person had made written representations showing cause why the chief executive should not take the proposed action under section 112(1) of the repealed Act and the chief executive had not made a decision on commencement of the Act, the representations are taken to be made under the national law.

108 Application for variation of accreditation

Clause 108 provides that if an accredited person had applied under the repealed Act for a variation of the person's accreditation or had given the chief executive an amended application for a variation of the person's accreditation and the chief executive had not decided the application, the application is taken to be an application made to the Regulator under the national law.

If the chief executive had given the applicant a notice under the repealed Act to supply further information or verify information supplied, but the applicant had not complied with the notice, the notice is taken to be a notice given by the Regulator under the national law.

109 Consultation with affected rail transport operators

Clause 109 provides that if the chief executive had given the applicant for the variation of an accreditation a direction under the repealed Act to consult a rail transport operator but the applicant had not complied with the direction, the direction is taken to be given by the Regulator under the national law.

110 Consideration of and decision on application for variation of accreditation

Clause 110 provides that if, under the repealed Act, the chief executive and an applicant for the variation of an accreditation had agreed on the period within which the application was required to be decided but the chief executive had not decided the application, the Regulator and the applicant are taken to have agreed the same period under the national law.

If the chief executive had given the applicant a notice nominating another period to consider the application and the application had not been decided within this period, the period in the notice is taken to be the relevant period under the national law.

A notice given by the chief executive to an applicant under the repealed Act, for the variation of an accreditation notifying the applicant of the chief executive's decision on the application, is taken to be a notice given by the Regulator under the national law.

111 Application for variation of conditions

Clause 111 provides that if an accredited person had applied under the repealed Act for a variation of a condition of the person's accreditation or had given the chief executive an amended application under the repealed Act, but the chief executive had not decided the application, the application is taken to be made to the Regulator under the national law.

If the chief executive had given the applicant a notice under the repealed Act requiring the applicant to supply further information or verify information supplied, but the applicant had not complied with the notice, the notice is taken to be given by the Regulator under the national law.

112 Consultation with affected rail transport operators

Clause 112 provides that if the chief executive had given the applicant, for the variation of a condition of an accreditation, a direction under the repealed Act to consult with a rail transport operator, but the applicant had not complied with the direction, the direction is taken to be given by the Regulator under the national law.

113 Consideration of and decision on application for variation of condition

Clause 113 provides that if the chief executive and an applicant for the variation of a condition of an accreditation had agreed under the repealed Act the period within which the application was required to be decided, but the chief executive had not decided the application, the Regulator and the applicant are taken to have agreed the same period under the national law.

114 Surrender of accreditation

Clause 114 provides that if, under the repealed Act, an accredited person had given the chief executive a notice of surrender for the person's accreditation and the surrender would have taken effect on a day after the day of the commencement, the surrender takes effect on that day and the national law, section 75, does not apply.

Subdivision 11 Access disputes relating to rail safety

115 Request for chief executive to decide safety matter

Clause 115 provides that if the chief executive had been asked to make a decision under the repealed Act about a safety matter, but the chief executive had not made the decision, despite the repeal of the repealed Act, section 132 of that Act continues to apply in relation to the request.

116 Chief executive given notice about dispute matter

Clause 116 provides that if the chief executive had been given a notice under the repealed Act about a dispute matter, but the chief executive had not decided whether or not to give a safety matter direction under the repealed Act in relation to the dispute matter, despite the repeal of the repealed Act, sections 133 to 136 and part 11 of that Act continue to apply in relation to the dispute matter.

117 Compliance with safety matter direction

Clause 117 provides that if a person had been given a safety matter direction under the repealed Act, the person had not complied with the direction, and the day by which the person was to have complied would have been after the commencement of the Act, despite the repeal of the repealed Act, the safety matter direction continues in force and section 136 of the repealed Act continues to apply to the person.

Subdivision 12 Rail safety officers

118 Appointments

Clause 118 provides that a person who held an appointment as a rail safety officer under the repealed Act and who, on and from commencement, is appointed to be a rail safety officer under the national law, is taken to hold the appointment under the national law on the same conditions (including any condition about the term of the appointment) that applied to the person immediately before the commencement.

119 Identity cards

Clause 119 provides that if a rail safety officer to whom section 118 of the Act applies had been issued with an identity card under the repealed Act, the identity card is taken to be an identity card given by the Regulator to the rail safety officer under the national law but only until the Regulator gives the officer another identity card under the national law. The Regulator must give a rail safety officer an identity card under the national law as soon as practicable.

Subdivision 13 Enforcement

120 Continuation of repealed Act for compliance or investigative purposes

Clause 120 provides that the *Transport (Rail Safety) Act 2010* continues to apply, despite its repeal, for compliance or investigative purposes under that Act relating to any matter or thing arising before the commencement.

121 Completion of investigations required by chief executive to be investigated

Clause 121 provides that the repealed Act continues to apply, despite the repeal, in relation to the investigation if a rail safety officer was required under the repealed Act to investigate a notifiable occurrence or other occurrence and the rail safety officer had not given the chief executive the report for the investigation or the chief executive had received the report but had

not given a copy of it to the Minister or the Minister had received a copy of the report but had not tabled it.

122 Completion of other investigations

Clause 122 provides that if a rail safety officer was investigating under the repealed Act a notifiable occurrence or other occurrence (other than an occurrence to which section 121 of the Act applies), but had not completed the investigation, the repealed Act continues to apply to the investigation despite its repeal.

123 Improvement notices

Clause 123 provides that if a rail safety officer had given a person an improvement notice or an amendment to an improvement notice under the repealed Act but the person had not complied with the notice or amended notice, the improvement notice or amended notice is taken to be an improvement notice issued by a rail safety officer to the person under the national law.

124 Prohibition notices

Clause 124 provides that a prohibition notice that, immediately before the commencement, was in force under the repealed Act is taken to be a prohibition notice under the national law.

Subdivision 14 Boards of inquiry

125 Completion of inquiries

Clause 125 provides that if a board of inquiry had been established or re-established under the repealed Act but the board had not given the Minister a report of the board's findings or the Minister had received from the board a copy of the report but had not tabled it, the repealed Act continues to apply to the board of inquiry.

Subdivision 15 Provisions about particular investigations or inquiries

126 Restricted information

Clause 126 provides that information that was restricted information under the repealed Act, remains restricted despite the repeal.

127 Certificates of relevant person's involvement in investigation

Clause 127 provides that section 241 of the repealed Act continues to apply to a person to whom a certificate relates.

Subdivision 16 Internal and external review

128 Internal review of decisions

Clause 128 provides for the transition of internal reviews that are underway at the time of the repeal of the *Transport (Rail Safety) Act 2010*.

Subclauses (1) and (2) provide that if an original decision had been made under the repealed Act and the period within which the person could have applied for a review had not expired, the person may apply under the national law for a review of the original decision as if the decision had been made by the Regulator under that law.

Subclauses (3) and (4) provides that if a person had applied for a review of an original decision but the chief executive had not decided the application, the application is taken to be an application under the national law for a review of the original decision as if the decision had been made by the Regulator under that law.

Subclauses (5) and (6) provide that if a person had applied for a stay of an original decision but QCAT had not decided the application, the *Transport Planning and Coordination Act 1994*, section 32 continues to apply in relation to the application for a stay.

Subclauses (7) and (8) provide that if a decision had been made in relation to an original decision but the decision had not been given or had not taken effect, the decision is taken to have been made under the national law as if the original decision had been made by the Regulator under that law and must be given or takes effect accordingly.

129 External review of decisions

Clause 129 provides for the transition of external reviews that are underway at the time of the repeal of the *Transport (Rail Safety) Act 2010*.

Subclauses (1) and (2) provide that if an internal review decision had been made and the period within which a person could have applied for a review of the decision under the repealed Act had not expired, the person may before that period expires, apply under the national law for a review of the decision as if it had been made by the Regulator.

Subclauses (3) and (4) provide that if a person had applied under the repealed Act for a review of an internal review decision but QCAT had not decided the application, the application is taken to be an application under the national law for a review of the internal review decision as if the decision had been made by the Regulator under that law.

Subclauses (5) and (6) provide that if a person applied under the QCAT Act for a stay of an internal review decision but QCAT had not decided the application, the application is taken to be an application made under the QCAT Act as if the decision had been made by the Regulator under the national law.

Subclauses (7) and (8) provide that if QCAT had made a decision under the QCAT Act in relation to an internal review decision but the decision had not been given or had not taken effect, the decision is taken to have been made under that Act as if the internal review decision

had been made by the Regulator under the national law and must be given, or takes effect, accordingly.

Subdivision 17 Matters under repealed Act, part 13

130 Rail safety undertakings

Clause 130 provides that if the chief executive had accepted a rail safety undertaking under the repealed Act and the undertaking had not been withdrawn, the rail safety undertaking is taken to be accepted by the Regulator under the national law.

Clause 130 also provides that if a person applied to the chief executive to withdraw or change the provisions of a rail safety undertaking under the repealed Act and the chief executive had not decided that application, the application is taken to be made to the Regulator under the national law.

131 Recovery of amounts payable under repealed Act

Clause 131 provides that despite the repeal of the *Transport (Rail Safety) Act 2010*, section 281 of that Act continues to apply to a fee, charge or other amount that, immediately before the commencement was payable under the repealed Act. Section 281 of the repealed Act provides that a fee, charge or other amount payable under the repealed Act is a debt due to the State and sets out how it may be recovered.

Subdivision 18 Miscellaneous

132 Transitional regulation-making power

Clause 132 provides that a regulation may make provision of a saving or transitional nature for which it is necessary to make provision to allow or facilitate the change from the operation of the provisions of the repealed Act to the operation of the provisions of the national law and for which the Act or the national law does not make provision or sufficient provision.

Clause 132 also provides that a transitional regulation may continue the operation of a provision of the repealed *Transport (Rail Safety) Act 2010*. A transitional regulation may have retrospective operation but not earlier than the commencement and, if a provision takes effect from a day earlier than the day of the regulation's notification in the gazette, the provision does not operate to the disadvantage of a person by decreasing the person's rights or imposing liabilities on the person.

Clause 132 also provides that a transitional regulation must declare it is a transitional regulation, may only be made within two years after commencement, and expires three years after the commencement.

133 Acts Interpretation Act 1954 not affected

Clause 133 provides that the *Acts Interpretation Act 1954* applies in relation to the repeal of the repealed Act except to the extent that part 6 of the Act, or a regulation made under section 132 of the Act, expressly provides differently.

Part 7 Amendment of Acts

Division 1 Amendment of this Act

134 Act amended

Clause 134 provides that division 1 of part 7 amends the *Rail Safety National Law (Queensland) Act 2016*.

135 Amendment of long title

Clause 135 provides that the long title of the *Rail Safety National Law (Queensland) Act 2016* will be amended on commencement to remove references to the repeal of the *Transport (Rail Safety) Act 2010* and consequential amendments.

Division 2 Amendment of Coal Mining Safety and Health Act 1999

136 Act amended

Clause 136 provides that division 2 of part 7 amends the *Coal Mining Safety and Health Act 1999*.

137 Insertion of new s 5A

Clause 137 is a new provision clarifying the relationship between the Rail Safety National Law (Queensland) and the *Coal Mining Safety and Health Act 1999*. The provision provides that if the *Coal Mining Safety and Health Act 1999* would apply to a mining railway and the Rail Safety National Law (Queensland) also applies to the mining railway, the *Coal Mining Safety and Health Act 1999* does not apply to the mining railway to the extent that the Rail Safety National Law (Queensland) applies. The term *mining railway* is defined to mean a railway that is in a mine other than a railway mentioned in the Rail Safety National Law (Queensland), section 7(1)(a) (railways to which that Law does not apply).

Division 3 Amendment of Mining and Quarrying Safety and Health Act 1999

138 Act amended

Clause 138 provides that division 3 of part 7 amends the *Mining and Quarrying Safety and Health Act 1999*.

139 Insertion of new s 5A

Clause 139 is a new provision clarifying the relationship between the Rail Safety National Law (Queensland) and the *Mining and Quarrying Safety and Health Act 1999*. The provision provides that if the *Mining and Quarrying Safety and Health Act 1999* would apply to a mining railway and the Rail Safety National Law (Queensland) also applies to the mining railway, the *Mining and Quarrying Safety and Health Act 1999* does not apply to the mining railway to the

extent that the Rail Safety National Law (Queensland) applies. The term *mining railway* is defined to mean a railway that is in a mine other than a railway mentioned in the Rail Safety National Law (Queensland), section 7(1)(a) (railways to which that Law does not apply).

Division 4 Amendment of Queensland Rail Transit Authority Act 2013

140 Act amended

Clause 140 provides that division 4 of part 7 amends the *Queensland Rail Transit Authority Act 2013*.

141 Replacement of s 100 (Application of Transport (Rail Safety) Act 2010 to Queensland Rail Limited and the Authority)

Clause 141 provides for the continuation of the current effect of section 100 of the *Queensland Rail Transit Authority Act 2013* under the Rail Safety National Law (Queensland). The provision provides that the giving under the *Queensland Rail Transit Authority Act 2013* of functions and powers to the Queensland Rail Transit Authority does not, of itself, deprive Queensland Rail Limited of the effective management and control under the Rail Safety National Law (Queensland) of its rail infrastructure and railway operations relating to rolling stock, including in relation to accreditation.

Division 5 Amendment of Work Health and Safety Act 2011

142 Act amended

Clause 142 provides that division 5 of part 7 amends the *Work Health and Safety Act 2011*.

143 Replacement of pt 16, div 4 (Transitional provision for Work Health and Safety and Other Legislation Amendment Act 2015)

Clause 143 is a transitional provision that continues the application of the *Work Health and Safety Act 2011* in relation to circumstances that existed before the commencement of the *Rail Safety National Law (Queensland) Act 2016*.

144 Replacement of sch 1, pt 2, div 3 (Transport rail safety)

Clause 144 clarifies the relationship between rail safety duties required by the national law and health and safety duties required by the *Work Health and Safety Act 2011*. The provision provides that if the *Work Health and Safety Act 2011* would apply in particular circumstances and the Rail Safety National Law (Queensland), part 3, division 3 also applies in the circumstances, the *Work Health and Safety Act 2011* does not apply in the circumstances to the extent that the Rail Safety National Law (Queensland), part 3, division 3 applies.

Division 6 Minor and consequential amendments of other Acts

145 Acts amended in sch 1

Clause 145 provides that Schedule 1 amends the Acts it mentions.

Schedule 1 Minor and consequential amendments of other Acts

Coroners Act 2003

Clause 1 amends the *Coroners Act 2003* to ensure that a coroner cannot give a person access to an investigation document to the extent that the document contains information that was given to the coroner under the *Transport (Rail Safety) Act 2010* before its repeal, or that is given to the coroner under the Rail Safety National Law (Queensland).

Queensland Competition Authority Act 1997

Clauses 1 and 2 remove redundant provisions of the *Queensland Competition Authority Act 1997* that relate to the chief executive's functions under access dispute provisions that are being removed by the Act.

Right to Information Act 2009

Clauses 1, 2 and 3 ensure that, if information was prohibited from being disclosed under the repealed *Transport (Rail Safety) Act 2010*, that information continues to be exempt information under the *Right to Information Act 2009*.

Surat Basin Rail (Infrastructure Development and Management) Act 2012

Clause 1 replaces an existing reference to the repealed *Transport (Rail Safety) Act 2010* with a reference to the Rail Safety National Law (Queensland) so that the Coordinator General can give information to the entity responsible for administering the Law.

Clause 2 replaces an existing reference to the repealed *Transport (Rail Safety) Act 2010* with a reference to the Rail Safety National Law (Queensland) so that a person cannot interfere with the Surat Basin railway unless the interference is permitted or authorised under the Law.

Clauses 3 and 4 update the definitions of *accredited rail infrastructure manager* and *railway operations* to refer to the Rail Safety National Law (Queensland) instead of the repealed *Transport (Rail Safety) Act 2010*.

Transport Infrastructure Act 1994

Clauses 1, 2, 3, 4, 5 and 6 update references from the *Transport (Rail Safety) Act 2010* to the Rail Safety National Law (Queensland).

Transport Operations (Passenger Transport) Act 1994

Clause 1 removes section 36G of the *Transport Operations (Passenger Transport) Act 1994*, which is now redundant as it relates to the chief executive's powers under removed access dispute provisions.

Clause 2 removes paragraphs (d) and (e) of the definition of *relevant transport legislation* which refer to the repealed *Transport (Rail Safety) Act 2010*. That definition relates to authorising particular persons, including police officers, to be authorised persons for relevant transport legislation. The Rail Safety National Law (Queensland) contains its own specific provisions for appointing authorised persons and therefore these paragraphs are redundant.

Clause 3 replaces the reference to the repealed *Transport (Rail Safety) Act 2010* with the equivalent reference in the Rail Safety National Law (Queensland) to ensure that if an authorised person finds a person interfering with equipment, rail infrastructure or rolling stock, the authorised person may direct the person to leave public transport infrastructure.

Clause 4 updates the reference to an accredited person under the *Transport (Rail Safety) Act 2010* to be an accredited person under the Rail Safety National Law (Queensland).

Transport Planning and Coordination Act 1994

Clause 1 updates the reference to a rail infrastructure manager as accredited under the Rail Safety National Law (Queensland).