



INDEPENDENT  
TRANSPORT  
SAFETY AND  
RELIABILITY  
REGULATOR

## RAIL SAFETY ACT 2002 (NSW) COMPARISON WITH RAIL SAFETY ACT 2008 (NSW)

This table provides a comparison of the *Rail Safety Act 2002 (NSW)* (**the 2002 Act**) with the *Rail Safety Act 2008 (NSW)* (**the 2008 Act**). Column 1 sets out the provisions of the 2002 Act. Column 2 sets out any comparable provisions that are now contained in the 2008 Act. Column 3 provides comments on the comparison of the provisions, identifying any significant changes to legal requirements.

| <u>Rail Safety Act 2002 (NSW)</u> | <u>Rail Safety Act 2008 (NSW)</u> | <u>Comments</u>  |
|-----------------------------------|-----------------------------------|--|
| <b>Part 1: Preliminary</b>        | <b>Part 1: Preliminary</b>        |  |
| 1 Name of Act                     | 1 Name of Act                     | Mechanical provision, as appropriate for each Act      |
| 2 Commencement                    | 2 Commencement                    | Mechanical provision, as appropriate for each Act      |
| 3 Object of Act                   | 3 Objects                         | Objects expanded to reflect national model legislation |
| 4 Interpretation                  | 4 Interpretation                  |  |
| “accreditation”                   | “accreditation”                   | Amended to reflect structure of 2008 Act               |
| “accredited person”               | “accredited person”               | Definition reflects national model legislation         |
| “approved”                        | “approved”                        | No material change                                     |

| <b><u>Rail Safety Act 2002 (NSW)</u></b> | <b><u>Rail Safety Act 2008 (NSW)</u></b> | <b><u>Comments</u></b>   |
|--|--|--|
| “assessor”                               | “assessor”                               | Definition preserved with changes to reflect numbering of 2008 Act<br><br>(c.f comments for section 67D of the <i>RS Act 2002</i> )  |
| “authorised officer”                     | “rail safety officer”                    | Authorised officers now called “rail safety officers”  |
| “Board of Inquiry”                       | “Board of Inquiry”                       | Definition preserved with changes to reflect numbering of 2008 Act<br><br>(c.f comments for section 67B of the <i>RS Act 2002</i> )  |
| “certification”                          |  | Term “certification” was only relevant to Certificates of Competency. Now that Certificates of Competency are not going to be issued under the 2008 Act, the term is redundant and has accordingly been omitted from the new Act |
| “Chief Investigator”                     | “Chief Investigator”                     | Definition preserved   |
| “Director General”                       |  | Definition removed as reference is no longer required  |
| “exercise”                               | “exercise”                               | Definition preserved   |
| “function”                               | “function”                               | Definition preserved   |
| “improvement notice”                     | “improvement notice”                     | Definition preserved with changes to reflect numbering of 2008 Act<br><br>(c.f comments for section 112 of 2008 Act)   |
| “infrastructure of a railway”            |  | Term replaced by “rail infrastructure” in 2008 Act however content of definition remains largely similar   |
| “ITSRR”                                  | “ITSRR”                                  | Definition preserved   |
| “notifiable occurrence”                  | “notifiable occurrence”                  | Definition replaced with new definition in 2008 Act to reflect NML   |

| <b><u>Rail Safety Act 2002 (NSW)</u></b> | <b><u>Rail Safety Act 2008 (NSW)</u></b> | <b><u>Comments</u></b>  |
|--|--|---|
| “operator”                               |  | Definition no longer required and replaced by term “rail transport operator”  |
| “previous offender”                      | “previous offender”                      | Definition preserved  |
| “private siding”                         | “private siding”                         | Definition has changed to reflect NML which legislatively excludes certain sidings from the definition of “private siding”      |
| “prohibition notice”                     | “prohibition notice”                     | Definition preserved with changes to reflect numbering of 2008 Act<br>(c.f comments for section 54 of the <i>RS Act 2002</i> )  |
| “rail safety inquiry”                    | “rail safety inquiry”                    | Definition preserved with changes to reflect numbering of 2008 Act<br>(c.f comments for section 67B of the <i>RS Act 2002</i> ) |
| “railway”                                | “railway”                                | Definition amended to reflect NML, but content remains broadly the same   |
| “rail safety work”                       | “rail safety work”                       | Definition in 2002 Act now dealt with in section 7 of the 2008 Act. Definition modified to reflect NML                          |
| “rolling stock”                          | “rolling stock”                          | Definition amended to reflect NML, but content broadly similar to existing definition   |
| “running line”                           | “running line”                           | Definition preserved  |
| “safety interface agreement”             |  | Term no longer required; see provisions in Division 3 of Part 2 of the 2008 Act relating to “interface agreements”              |
| “safety management system”               | “safety management system”               | Definition preserved with changes to reflect numbering of 2008 Act<br>(c.f comments for section 48B of the <i>RS Act 2002</i> ) |
| “safeworking systems”                    |  | Term not defined in 2008 Act  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>  | <b><u>Rail Safety Act 2008 (NSW)</u></b>                     | <b><u>Comments</u></b>   |
|---|--|--|
| “siding”  | “siding”   | Definition preserved, except for omission in 2008 Act of reference to “stabling”. Stabling of trains is no longer a feature of a siding  |
| “train”   | “train”  | Definition amended to reflect NML  |
| 4(2) Notes in the text of this Act do not form part of this Act                 | 4(2) Notes included in this Act do not form part of this Act | No material change   |
| 5 Railway operations  |  | Definition of “railway operations” now subsumed in section 4 of 2008 Act with other definitions  |
| 6(2) Railways to which Act applies  | 5 Railways to which this Act does not apply                  | In addition to a railway in an underground mine and an aerial cable operated system, section 5 of the 2008 Act also excludes from the operation of that Act slipways, railways used only to guide cranes and those prescribed by the regulations<br><br>Section 5 of the 2008 Act does not provide that the Act does not apply to a railway operated at an amusement park the operator of which holds a certificate of exemption as did section 6(2)(b) of the 2008 Act. Such a railway will only be automatically excluded if it operates on a gauge less than 600mm or is otherwise exempted from the Act by a regulation. |
| 7 Act binds Crown   | 152 Act to bind Crown  | No material change   |
| <b>Part 2 Accreditation of operators and certification of railway employees</b> |  |  |
| <i>Division 1 Accreditation of railway operators</i>                            |  |  |
| 8 Operators of railways to be accredited  | 35 Accreditation required for railway operations             | Existing section adapted to reflect NML. Significant changes, including the exclusion of contractors from requirement to be accredited. Accreditation is focused on “rail transport operators” – rail infrastructure managers and/or rolling stock operators   |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>   | <b><u>Rail Safety Act 2008 (NSW)</u></b>                | <b><u>Comments</u></b>   |
|--|---|--|
| 9 Purpose of accreditation   | 34 Purpose of accreditation                             | Changes to reflect NML requirements; 2008 Act section simplifies the 2002 Act  |
| 10 Applicant to give information   | 38 Application for accreditation                        | 2008 Act requires more specific information to accompany applications for accreditation  |
| 11 (Repealed)  |   |  |
| 12 Safety interface agreements   | Division 3 of Part 2 Interface Co-ordination            | <p>Significant changes in the 2008 Act to reflect adoption of NML Amendment Bill No 2. "Safety interface agreements" are called "interface agreements" in the 2008 Act</p> <p>There are ongoing obligations for managing interfaces imposed upon rail transport operators and roads authorities.</p> <p>Importantly, new obligations are imposed on rail infrastructure managers and roads authorities to jointly manage risks arising from rail or road crossings, such as level crossings, road over rail bridges and rail over road bridges</p> |
| 13 Passenger security  | 16 Security management plan                             | Section in 2008 Act includes changes to section 13 of the 2002 Act. Terminology in 2008 Act is different and the section contains a greater degree of particularity than the equivalent section in the 2002 Act. The new section also expressly requires the implementation of the plan if a security incident occurs  |
| 14 Safety management systems and capacity to safely carry out railway operations |   | Substance of requirements in 2002 Act provisions is unchanged in 2008 Act equivalents  |
| 14(1)  | 38(2)(b) Application for accreditation                  |  |
| 14(2)  | 39(c) What applicant for accreditation must demonstrate |  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>   | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>  |
|--|---|---|
| 14(3)  | 38(3) Application for accreditation   |   |
| 15 Applicant to describe, and identify ownership of, infrastructure                  | 38(2)(d) Application for accreditation<br>clause 21(of the Regulations) Application for accreditation | No material change, the requirement in the 2002 Act is captured by the requirements in the regulations prescribing further kinds of information be provided   |
| 16 Rolling stock to be identified  | 38(2)(d) Application for accreditation<br>clause 21(of the Regulations) Application for accreditation | No material change, the requirement in the 2002 Act is captured by the requirements in the regulations prescribing further kinds of information be provided   |
| 17 Designated directors and managers   |   | The concept of having persons who are fit and proper to undertake railway operations has not been included in the 2008 Act. Accordingly, all related provisions (such as section 17 of the 2002 Act) have been removed from it.<br><br>However, section 12(5) of the 2008 Act provides that the persons responsible for implementing a rail transport operator's safety management system must be identified (as individuals or as a class of persons) in that safety management system |
| 18 Grant of accreditation  | 56 Determination of application   | Section in 2008 Act contains significant changes to the existing 2002 Act provision. Chiefly, the 2008 Act imposes a time limit in which ITSRR must determine applications for accreditation. The time limit appointed is 6 months from the date upon which all necessary information is received by ITSRR  |
| 18A (Repealed)   |   |   |
| 19 Provisional accreditation   |   | No equivalent provision. There is NO power to grant provisional accreditations under the 2008 Act   |
| 20 Notice of provisional accreditation   |   | No equivalent provision. There is NO power to grant provisional accreditations under the 2008 Act   |
| 20A Application to Administrative Decisions Tribunal for review of decision of ITSRR | 157 Reviewable decisions  | Section 157 in the 2008 Act is the equivalent of section 20A in the 2002 Act.<br><br>Section 157 in the 2008 Act is the equivalent of section 20A   |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                        | <b><u>Rail Safety Act 2008 (NSW)</u></b>                        | <b><u>Comments</u></b>  |
|---|---|---|
|   |   | <p>in the 2002 Act.</p> <p>Note expanded range of decisions now able to be appealed.</p> <p>ITSRR anticipates that the 2008 Act will make it clear that operators must seek an internal review of certain accreditation decisions before they can appeal to the ADT</p>   |
| 21 Exemptions from accreditation and accreditation requirements |   | <p>No equivalent provision.</p> <p>Under the 2008 Act, exemptions can be only be granted by passing a Regulation: s 174(3) of the 2008 Act</p> <p>However, an exemption given under section 21 of the 2002 Act, and in force immediately before the repeal of that section, continues in force for the period specified in the exemption: section 7 Schedule 3, of 2008 Act</p>   |
| 22 Exemption of interstate railway operators                    | 41 Co-ordination between ITSRR and other Rail Safety Regulators | <p>Section 41(5) of the 2008 Act replicates section 22(2) of the existing 2002 Act.</p> <p>The 2008 Act provision requires ITSRR to co-ordinate with other jurisdictions in respect of applications for accreditation by entities that are already accredited, or are seeking accreditation, in other states.</p>   |
| 23 Exemption of operators of private sidings                    | 60 Exemption from accreditation                                 | <p>The exemption in section 60 of the 2008 Act differs from the equivalent provision in the 2002 Act. Relevantly, the class of persons who may be exempted under the 2008 Act are the "rail infrastructure managers" of private sidings, rather than their owners.</p> <p>Importantly, section 60 makes it clear that exemption from accreditation does apply to railway operators involving the operation or movement of rolling stock</p> |
| 24 Sale or transfer of railway by accredited person             | 45 Sale or transfer of railway operations by accredited person  | <p>2002 Act requirements are incorporated in the 2008 Act equivalents.</p> <p>However, section 45 of the 2008 Act includes a new definition of "railway operations" for the purpose of the section to make it clear that the provision applies to a sale or transfer of a part of the railway operations for which the</p>  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                                       | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>  |
|--|---|---|
|  |   | person is accredited  |
| <i>Division 2 Variation, suspension or cancellation of accreditation</i>       |   |   |
| 25 Variation of accreditations   | 55 Application for variation of accreditation<br>56 Determination of application for variation<br>58 ITSRR may make changes to conditions or restrictions | No material change<br><br>Note, however, that the scope of accreditations will be broader to reflect the focus on regulating by the enforcement of general duties. That is, the revised accreditation notice will provide for broader approvals (where appropriate) to reflect the regulatory movement away from governance based on terms of specific operators' accreditations and towards ensuring compliance with general statutory duties. The intended consequence is that fewer variations will need to be made and the variation provisions in the 2008 Act will not need to be invoked as frequently as the variation provisions contained in the 2002 Act |
| 26 Declarations as to variation of accreditation                               | 15 Safety performance reports<br>129 Notice to be given of certain matters  | No equivalent provisions exist in 2008 Act. Disclosures by railway operators of information affecting the scope of railway operations authorised under accreditation are dealt with in safety performance reports. The safety performance report can be submitted either 6 months after the end of the reporting period or such other period as may be agreed between ITSRR and the rail transport operator<br><br>Section 129 also requires certain information to be provided.  |
| 27 Requests by accredited persons for variation or surrender of accreditations | 55 Application for variation<br>57 Variation of conditions or restrictions  | In substance, the provisions of the 2008 Act are no different from the 2002 Act.<br><br>However, the revised accreditation notice will provide for broader approvals (where appropriate) to reflect the regulatory movement away from governance based on terms of specific operators' accreditations and towards ensuring compliance with general statutory duties. The intended consequence is that fewer variations will need to be made and the variation provisions in the 2008 Act will not need to be invoked as frequently as the variation   |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>  | <b><u>Rail Safety Act 2008 (NSW)</u></b>   | <b><u>Comments</u></b>               |
|---|--|--------------------------------------|
|   |  | provisions contained in the 2002 Act |
| 28 Suspension or cancellation of accreditation                                      | 53 Suspension or revocation or of accreditation  | No material change                   |
| 29 Suspension of accreditation in emergency   | 54 Immediate suspension of accreditation   | No material change                   |
| 30 Requirements for variation, suspension or cancellation                           | 53(2)(d) Suspension or revocation or of accreditation<br>58 ITSRR may make changes to conditions or restrictions         | No material change                   |
| 31 Safety management system to be considered before action taken                    |  | No equivalent provision in 2008 Act. |
| 31A (Repealed)  |  |                                      |
| 32 Notice of proposed action  | 53(3) and (4) Suspension or revocation or of accreditation<br>58(2) ITSRR may make changes to conditions or restrictions | No material change                   |
| 33 Representations to ITSRR   | 53(4) Suspension or revocation or of accreditation<br>58(2) and (3) ITSRR may make changes to conditions or restrictions | No material change                   |
| 34 Determination by ITSRR   | 53(2) Suspension or revocation or of accreditation<br>58(1) ITSRR may make changes to conditions or restrictions         | No material change                   |
| 35 Application to Administrative Decisions Tribunal for review of decision of ITSRR | 157 Reviewable decisions<br>158(10) Review by ITSRR and ADT  | No material change                   |
| <i>Division 3 Certification of and requirements relating to railway employees</i>   |  |                                      |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>   | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>   |
|--|---|--|
| <p>36 Employees to be issued with certificates of competency</p> <p>36(1)</p> <p>36(2)</p> <p>36(3)</p> <p>36(4)</p> <p>36(5)</p> <p>36(6)</p> | <p>22 Identification for rail safety workers</p> <p>22(1)</p> <p>No equivalent provision</p> <p>No equivalent provision</p> <p>No equivalent provision</p> <p>No equivalent provision</p> <p>21 Competence of rail safety workers</p> | <p>Certificates of Competency will not be issued under the 2008 Act, although a transition period will apply.</p> <p>The duty in the 2008 Act for rail transport operators to ensure that their rail safety workers are competent is in section 21.</p> <p>The duty to issue identification cards from which a rail safety worker's competence can be elicited is in section 22.</p> <p>Section 227(1) of the 2008 Act requires all rail transport operators to ensure that each of their rail safety workers has an identification card that enables the type of competence and training of that worker to be checked by a rail safety officer.</p> <p>To reflect the movement away from issuing CoCs towards issuing identification cards, ITSRR will not be issuing any third party authorisations for issuing CoCs.</p> <p>There is no equivalent provision to sections 36(3) to 36(5) of the 2002 Act in the 2008 Act because ITSRR will no longer be issuing third-party CoC authorisations once that Act has commenced.</p> <p>Although there is no section in the 2008 Act that requires or permits ITSRR to issue any guidance materials as to assessing the competence of rail safety workers, section 21 (particularly 21(2)) contains the criteria against which competency must be assessed</p> |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                        | <b><u>Rail Safety Act 2008 (NSW)</u></b>             | <b><u>Comments</u></b>   |
|---|--|--|
| 36(7)   | 21(1) Competence of rail safety workers              | Whilst there is no exact equivalent in the 2008 Act to section 36(7) of the 2002 Act, section 21(1) of the 2008 Act makes it an offence for rail transport operators fail to ensure the competency of their rail safety workers  |
| 37 Employee must hold certificate of competency                 |  | No equivalent provision  |
| 37A Production of certificate of competency                     | 22(2) Identification for rail safety workers         | The 2008 Act refers to identification cards in keeping with the new regime of issuing those cards rather than CoCs: see section 22(2). The penalty for failure to produce an ID card is 5 x the current penalty for failing to produce a CoC.  |
| 38 Certificates of competency                                   | 21(2) Competence of rail safety workers              | Note that the 2008 Act does not retain the requirement for rail safety workers to be "fit and proper" persons, as was required under the 2002 Act  |
| 39 Register of certificates                                     | 21(5) Competence of rail safety workers              | Certificates of Competency will not be issued under the 2008 Act, although a transition period will apply.<br><br>However, rail transport operators must, under the 2008 Act, keep records of the competence of rail safety workers carrying out rail safety work in connection with railway operations for which the accredited person is accredited: see section 21(5)   |
| 40 Training of railway employees engaged in railway safety work | 8(2)(f)(i) Safety duties of rail transport operators | Under the 2008 Act, a failure by a rail transport operator to ensure that all rail safety workers carrying out rail safety work in relation to their railway operations are appropriately trained is a breach of the general duty to ensure the safety of those operations.<br><br>This reflects the movement away from regulation on the basis of accreditation and the trend towards regulation by general duties.<br><br>Note also that duties of a rail transport operator under section 8 of the 2008 Act extend to contractors and other persons carrying out railway operations |
| 41 Health and fitness of railway employees                      | 18 Health and fitness management program             | Under the 2008 Act, the general duties provisions specifically require rail transport operators to ensure that   |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>   | <b><u>Rail Safety Act 2008 (NSW)</u></b>   | <b><u>Comments</u></b>   |
|--|--|--|
|  | 8(2)(b) Safety duties of rail transport operators  | <p>each rail safety worker who is to perform rail safety work in relation to the operator's railway operations is of sufficient good health and fitness to carry out that work safely.</p> <p>Note also that duties of a rail transport operator under section 8 of the 2008 Act extend to contractors and other persons carrying out railway operations</p> <p>Once more, the key difference is in the regulatory emphasis, which has moved from regulation based on accreditation (as per the 2002 Act) to regulation based on general duties.</p> |
| <p>42 Railway employees – alcohol or other drugs</p> <p>42(1)(a) and balance of cl 42 – D &amp; A programs</p> <p>42(1)(b) Work free from D &amp; A impairment</p> | <p>19 Drug and alcohol management program</p> <p>8(2)(c) Safety duties of rail transport operators</p> | <p>No material change.</p> <p>Failure to ensure rail safety workers are free from D &amp; A impairment whilst carrying out rail safety work will be a breach of a rail transport operator's general duties under the 2008 Act, rather than a breach of accreditation conditions as in the current 2002 Act.</p> <p>Note also that duties of a rail transport operator under section 8 of the 2008 Act extend to contractors and other persons carrying out railway operations</p>  |
| 43 Fatigue management  | <p>20 Fatigue management</p> <p>7(2)(d) Safety duties of rail transport operators</p>                  | Schedule 2 to existing 2002 Act retained.  |
| <i>Division 4 Fees</i>   |  |  |
| 44 Annual accreditation fees   | 46 Annual accreditation fees   | <p>Obligation to pay annual fees is retained in 2008 Act, however under that Act the amount of fees to be paid will be prescribed in the Regulation rather than published in the Gazette.</p> <p>Fee regime to be further developed</p>  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                              | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>  |
|---|---|---|
| 45 Fixing of annual accreditation fees<br><br>45(2)                   | 47 Differential accreditation fees  | Under the 2008 Act the annual fee will be prescribed by the Regulation.<br><br>Power in 2002 Act to fix different differential accreditation fees retained in 2008 Act  |
| 46 Payment of annual fees<br><br>46(3)                                | 48 Payment of annual fees<br><br>50 Waiver of fees  | No material change<br><br>Current power to waive fees retained  |
| 47 Additional time for payment  |   | No equivalent provision   |
| 48 Minimum and late payment fees                                      | 49 Late payment fees<br>50 Waiver of fees   | Amount imposed by 2008 Act for late payment of fees will be prescribed in the Regulation  |
| <b>Part 3 Safety Measures</b>   |   |   |
| <i>Division 1 Safety management systems and annual safety reports</i> |   | In the 2008 Act the provisions relating to safety management systems have been inserted towards the front of the Act in order to emphasise that they are ongoing requirements: see Part 2, Division 2.  |
| 48A Safety management systems<br><br>48A(3)                           | 12 Safety management systems<br><br>24 ITSRR may direct amendment of a safety management system | Broad changes that mandate with a greater degree of particularity what the SMS must do and contain. Also, under the 2008 Act rail transport operators will be required to consult with certain persons before establishing an SMS: see section 12(3).<br><br>Existing power to direct amendment of SMS retained in 2008 Act, although a statement of reasons explaining the necessity of the amendment must now accompany any such direction. ITSRR must now allow not less than 28 days for the making of any amendments instigated at its direction |
| 48B Annual safety report  | 15 Safety performance reports   | Content of reports required by 2008 Act is broadly similar to existing requirements, although the 2008 Act also requires that any deficiencies or irregularities in a rail transport  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                                     | <b><u>Rail Safety Act 2008 (NSW)</u></b>                      | <b><u>Comments</u></b>   |
|--|---|--|
|  |   | <p>operator's railway operations that may be relevant to the safety of the railway must be commented on.</p> <p>Reporting period under 2008 Act will be a calendar year or such other period as ITSRR agrees with the rail transport operator</p> <p>The safety performance report can be submitted either 6 months after the end of the reporting period or such other period as may be agreed between ITSRR and the rail transport operator</p>  |
| <i>Division 1A Inspections</i>   |   |  |
| 49 Safety inspections  | 84 Audit of railway operations of rail transport operators    | <p>The 2008 Act requires that ITSRR "may" audit rail transport operators (including contractors). The term "audit" replaces the concept of inspection.</p> <p>Under the 2008 Act, ITSRR will have increased flexibility as to what is targeted by any audit program devised to audit railway operations.</p> <p>The timeframes in section 49 of the 2002 Act have not been retained.</p> <p>ITSRR must provide not less than 24 hours notice before auditing the railway operator's railway operations</p> |
| 50 Regulations   | 84(4) Audit of railway operations of rail transport operators | Current regulation-making power in respect of how audits will be carried out has been retained, whilst current regulation-making powers relating to inspection reports have been omitted   |
| <i>Division 2 Improvement and prohibition notices and other requirements</i> |   |  |
| 51 Improvement notices   | 112 Improvement notices                                       | <p>Existing power to require that any remedial actions be undertaken in fewer than 7 days has been omitted from 2008 Act.</p> <p>Grounds for issuing improvement notices are largely unchanged, however the power to issue a notice for failure to carry out railway operations in compliance with an</p>  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>          | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>   |
|---|---|--|
|   |   | <p>applicable safety interface agreement has been omitted (this is covered by other provisions).</p> <p>The 2008 Act also specifies more particularly what an improvement notice must state</p> <p>Note that improvement notices can be issued on a roads authority to facilitate the implementation of the new Division 3 of Part 2 (road/rail interfaces) and to protect safety at level crossings</p>   |
| 52 Closure of level-crossings or other structures | 109 Temporary closure of railway crossings  | <p>Broad changes, including that under the 2008 Act, only authorised persons can close a railway crossing.</p> <p>A “railway crossing” means a level crossing, bridge or another structure used to cross over or under a railway.</p> <p>“Authorised persons” are people who hold specific authorisations issued by ITSRR.</p> <p>The power to close a crossing, bridge, etc ... under the 2008 Act is not predicated on the issue of an improvement notice and the power can only be exercised if the authorised person is satisfied that closure is necessary because of an immediate threat to safety</p> |
| 53 Failure to comply with improvement notice      | 113 Contravention of improvement notice   | No material change to offence provision  |
| 54 Prohibition notices<br>54(3)                   | 117 Prohibition notices<br>118 Contravention of prohibition notice  | No material change   |
| 55 Notices may include directions                 | <p><i>Improvement notices:</i><br/>112(6) and 112(7)</p> <p><i>Prohibition notices:</i><br/>117(5) and 117(6)</p> | <p>No material change</p> <p>No material change; note reference to compliance codes rather than standards/codes of practice</p>  |
| 56 Review of notices by ITSRR                     | 122 Review of notices by ITSRR  | Broadly similar, although notice recipients will have 28 days to apply for an internal review under the 2008 Act, as opposed to the 7 day deadline that is currently in place  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>   | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>   |
|--|---|--|
|  |   | In addition ITSRR must deal with the application for review within 28 days of receipt  |
| 57 Application to Administrative Decisions Tribunal for stay of prohibition notice | 124 Application to Industrial Magistrate for stay of prohibition notice   | Applications for stays of prohibition notices must now be made to the Industrial Magistrate rather than the Administrative Decisions Tribunal  |
| 58 Appeal to Administrative Decisions Tribunal                                     | 123 Appeal to Industrial Magistrate following review  | Applications for review of notices following ITSRR's internal review must, under the 2008 Act, be made to the Industrial Magistrate rather than the Administrative Decisions Tribunal  |
| 59 Withdrawal of notices   | <p><i>Improvement notice:</i></p> <p>114 Withdrawal or amendment of improvement notice</p> <p>125 Revocation or withdrawal of notice does not prevent issue of another notice</p> <p><i>Prohibition notice:</i></p> <p>120 Withdrawal or amendment of prohibition notice</p> <p>125 Revocation or withdrawal of notice does not prevent issue of another notice</p> | <p>The 2008 Act clarifies that Notices can be amended</p> <p>Notices of amendment must include reasons as to why the notice is being amended, as well as review information and a statement of which provision is being invoked.</p> |
| 60 Proceedings for offences not affected by notices                                | <p><i>Improvement notice:</i></p> <p>115 Proceedings for offences not affected by improvement notice</p> <p><i>Prohibition notice:</i></p> <p>121 Proceedings for offences not affected by prohibition notice</p>   | <p>No material change</p> <p>No material change</p>  |
| <i>Division 3 Safety reports and investigations</i>                                |   |  |
| 61 Definitions   | 75 Definitions  | No material change   |
| 62 Industry safety reports   | 62 Industry safety reports  | Broadly similar, although requirements as to what report must contain have been particularised in subsection (2) of  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                                    | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>   |
|---|---|--|
|   |   | the 2008 Act   |
| 63 Provision of information relating to safety to ITSRR                     | 61 Rail transport operators to provide information<br><br>106 Power to obtain information, documents and evidence | Broadly similar, although the provision in the 2008 Act specifically permits ITSRR to require the production of financial information: see section 61(1)(b)<br><br>Under the 2008 Act a rail safety officer may obtain information, documents or evidence in relation to a possible contravention of a rail safety law or for the purposes of an audit, investigation, rail safety inquiry or other inquiry, where they have reasonable grounds for believing a person is capable of doing so. |
| 64 Accredited persons must report notifiable occurrences                    | 63 Notifiable Occurrences   | Broadly similar  |
| 65 Reports of other matters   |   | No equivalent provision required   |
| 65A Confidential reporting of safety information by railway employees       | 64 Confidential reporting of safety information by rail safety workers  | No materia change aside from the inclusion of a drafting note to reference s 210 of the Industrial Relations Act which makes it an offence to victimise an employee  |
| 66 Investigations into railway accidents and incidents by railway operators | 65 Investigation into railway accidents and incidents by rail transport operators                                 | No material change   |
| 66A Information may not be used in certain proceedings                      | 66 Information may not be used in certain proceedings   | No material change   |
| 67 Investigations by the Chief Investigator                                 | 67 Investigations by the Chief Investigator   | No material change   |
| 67A Chief Investigator and transport safety investigator's functions        | 68 Chief Investigator and transport safety investigator's functions   | No material change   |
| 67B Rail safety inquiries   | 69 Rail safety inquiries  | No material change   |
| 67C Chief Investigator may request rail safety inquiry                      | 70 Chief Investigator may request rail safety inquiry   | Section 70 of the 2008 Act contains additional sub-sections (3) and (4) to clarify the requirements in relation to a   |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>  | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>   |
|---|---|--|
|   |   | Minister seeking to table a notice and reasons   |
| 67D Assessors   | 71 Assessors  | No material change   |
| 67E Witnesses and evidence at rail safety inquiries   | 72 Witnesses and evidence at rail safety inquiries  | No material change   |
| 67F Report on rail safety inquiry   | 73 Report on rail safety inquiry  | No material change   |
| 68 Tabling of reports   | 74 Tabling of reports   | No material change   |
| 69, 70 (Repealed)   |   |  |
| 71 Disclosure of train safety record to Commonwealth or Commonwealth authority                  | 76 Disclosure of train safety record to Commonwealth or Commonwealth authority                  | No material change   |
| 72 Disclosure of train safety records (other than train safety recordings) to a court or person | 77 Disclosure of train safety records (other than train safety recordings) to a court or person | No material change   |
| 73 Disclosure of train safety recordings  | 78 Disclosure of train safety recordings  | No material change, aside from a clarification of when train safety recordings can be disclosed in the case of investigations relating to any criminal proceedings |
| 74 Evidence of train safety recordings in criminal proceedings                                  | 79 Disclosure of train safety recordings in criminal proceedings                                | No material change, reference to "railway employee" in 2002 Act changed to "rail safety worker" in 2008 Act  |
| 75 Evidence of train safety recordings in civil proceedings                                     | 80 Evidence of train safety recordings in civil proceedings                                     | No material change, reference to "railway employee" in 2002 Act changed to "rail safety worker" in 2008 Act  |
| 76 Examination by a court of train safety recording   | 81 Examination by a court of train safety recording   | No material change, reference to "railway employee" in 2002 Act changed to "rail safety worker" in 2008 Act  |
| 77 Compliance with subpoenas and other directions   | 82 Compliance with subpoenas and other directions   | No material change, reference to "authorised officer" in 2002 Act changed to "rail safety officer" in 2008 Act   |
| 78 Admissibility of other evidence and liability  | 83 Admissibility of other evidence and liability  | No material change, reference to "railway employee" in 2002 Act changed to "rail safety worker" in 2008 Act  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                              | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>   |
|---|---|--|
| <b>Part 4 Enforcement</b>   |   |  |
| <i>Division 1 Power of entry</i>                                      |   |  |
| 79 Power of entry   | 85 Power to enter places  | The provision in the 2008 Act expands the range of places that ITSRR's officers may enter.<br><br>Power now includes rail accident and incident sites  |
| 80 Inspections and investigations                                     | 88 General powers after entering a place  | The provision in the 2008 Act does not limit ITSRR's officers' powers to being exercised only on railway premises, but rather enables those powers to be exercised in any place which they are permitted to enter. Powers of officers expanded in 2008 Act to facilitate administration of Act |
| 81 Functions of authorised officers in relation to relevant documents | 89 Powers of rail safety officers in relation to relevant documents             | No material change   |
| 82 Notice of entry  | 87 Notice of entry  | No material change; operation of existing section 82 clarified in section 87 of the 2008 Act   |
| 83 Use of force   | 111 Use of force  | No material change; section in 2008 Act relates not only to ITSRR's officers but also to their assistants  |
| 84 Care to be taken   |   | No equivalent provision  |
| 85 Recovery of cost of entry and inspection                           | 170 Recovery of certain costs   | 2008 Act section clarifies that ITSRR may recover costs of some audits other than those specified in section 84 of the 2008 Act  |
| 86 Compensation   |   | No equivalent provision  |
| 87 Authority to enter railway premises                                | 151 Rail safety officer must not exercise functions without identification card | Whilst the 2002 Act refers to officers having and producing authorities, the 2008 Act refers to rail safety officers having and producing identification cards. Under the 2008 Act, no power or function can be exercised by an officer unless ITSRR has issued an identification card to them |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                             | <b><u>Rail Safety Act 2008 (NSW)</u></b>                             | <b><u>Comments</u></b>  |
|--|--|---|
| 88 Premises used for residential purposes                            | 86 Limitation on entry powers – places used for residential purposes | No material change  |
| 89 Protection from incrimination                                     | 159 Protection from incrimination                                    | Adopts OH & S provision. The 2008 Act specifies the appropriate time for warnings to be given to persons subject to certain requirements made under that Act. Further, the 2008 Act extends the operation of the incrimination protection over further information obtained as a result of information arising from a requirement made under that Act |
| 90 Search warrants   | 94 Search warrants   | No material change; note reference to “certification” in 2002 Act removed   |
| <i>Division 2 Offences and proceedings</i>                           |  |   |
| 91 Offences involving accreditation, certification and authorisation | 37 Accreditation offences<br>128 Offences involving accreditation    | No material change  |
| 92 Failure to maintain safety systems, devices or appliances         |  | Covered by general duties   |
| 93 Tampering with railway equipment                                  | 130 Tampering with railway equipment                                 | No material change; definition of “emergency or safety equipment” introduced to clarify operation of offence  |
| 94 Private sidings   |  | Provision no longer required  |
| 95 Railway offences  | 131 Railway offences   | Regulation-making powers in 2008 Act adapted to support existing 2002 Regulations plus further offences arising as a result of adopting the NML. A separate offences regulation will contain these offences   |
| 96 Offenders to state name and address                               | 105 Failure to give name or address                                  | No substantial change to equivalent provision, although the section in the 2008 Act which empowers officers to direct that a person provide a name and address has been particularised as to when such a direction can be made and what warnings must be given with such directions: see section 104  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>              | <b><u>Rail Safety Act 2008 (NSW)</u></b>  | <b><u>Comments</u></b>  |
|---|---|---|
| 97 Obstruction  | 123 Obstructing or hindering rail safety officers   | Broadly similar.<br><br>In the 2008 Act, the offence of failing to render assistance when directed to do so by a rail safety officer has been decoupled from the general obstruction offence. The failure to assist offence is located in section 103   |
| 98 (Repealed)   |   |   |
| 99 Offence of impersonating an authorised officer     | 127 Offence to impersonate rail safety officer  | No material change  |
| 100 Offences by directors or managers of corporations |   | No equivalent provision   |
| 101 Offences by corporations                          | 136 Offences by corporations – liability of directors and managers                                    | The 2008 Act adopts a provision equivalent to the comparable NML provision<br><br>The ‘deemed liability’ provisions are designed to ensure managers and directors are not shielded from responsibility for safety breaches by the corporate legal structure.<br><br>Under these provisions, contraventions of the legislation by a corporation would be deemed to have been committed by its directors and managers unless they were not in a position to influence the conduct of the corporation in relation to its contravention, or used all due diligence to prevent the contravention by the corporation. However, an officer of a corporation who is a volunteer is not liable to be prosecuted, pursuant to these provisions, for anything done or not done by him or her as a volunteer.<br><br>In addition, if an employee contravenes a provision of the Act or the regulations, whether by act or omission, their employer is taken to have contravened the same provision. |
| 102 Double jeopardy                                   | 175(4) No double jeopardy   | No material change  |
| 103 Proceedings for offences                          | 132 Proceedings for offences<br><br>133 Period within which proceedings for offences may be commenced | The provisions in the 2008 Act: <ul style="list-style-type: none"> <li>• allows for the Local Court to order imprisonment for up to 12 months;</li> <li>• ensures Industrial Relations Act appeals from</li> </ul>  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b> | <b><u>Rail Safety Act 2008 (NSW)</u></b>                     | <b><u>Comments</u></b>  |
|--|--|---|
|  |  | <p>Industrial Court provisions will apply;</p> <ul style="list-style-type: none"> <li>• provide that proceedings for offences against regulation must be commenced within one year (in accordance with regular criminal procedure);</li> <li>• allow proceedings to be commenced after the completion of a relevant inquiry such as an OTSI investigation or coronial inquest.</li> </ul> |
| 104 Authority to take proceedings        | 134 Authority to take proceedings                            | No material change, aside from reference to the Industrial Court  |
| 105 Penalty notices for certain offences | 139 Penalty notices  | No material change  |
| 106 Recovery of amounts due              | 171 Recovery of amounts due                                  | No material change  |
| 107 Records and evidence from records    | 160 Records and evidence from records                        | Broadly similar but now requires the keeping of Improvement and Prohibition Notices   |
| <b>Part 5 General</b>                    |  |   |
| <i>Division 1 Administration</i>         |  |   |
| 108 Functions of ITSRR                   | (Please see <i>Transport Administration Act 1988 (NSW)</i> ) |   |
| 108A (Repealed)                          |  |   |
| 109 Exchange of information              | 156 Exchange of information                                  | No material change  |
| 110 (Repealed)                           |  |   |
| 111 Appointment of authorised officers   | 148 Appointment of rail safety officers                      | No material change  |
| 112 Delegation by Minister               | 147 Delegation by Minister                                   | No material change  |
| 113 Exclusion of personal liability      | 164 Exclusion of personal liability                          | No material change  |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>                      | <b><u>Rail Safety Act 2008 (NSW)</u></b>                | <b><u>Comments</u></b>  |
|---|---|---|
| 114 Exclusion of liability of the State                       | 165 Exclusion of liability of the State                 | The provision in the 2008 Act clarifies that the protection extends to failures to act  |
| <i>Division 2 Miscellaneous</i>                               |   |   |
| 115 Savings of other Acts etc                                 |   | No equivalent provision   |
| 116 Service of documents                                      | 173 Service of documents                                | The provision in the 2008 Act allows for service on appointed places of business for corporations   |
| 116A Guidelines   | 167 Approval of compliance codes and guidelines         | Guidelines under the 2008 Act will not be mandatory. ITSRR can make an order approving Guidelines under the Act. However, the Minister still has power to order approval of Compliance Code given legal effect of compliance  |
| 117 Regulations   | 174 Regulations   | Regulation-making powers in 2008 Act adapted to support existing 2002 Regulations plus further offences arising as a result of adopting the National Model Legislation  |
| 118 Repeal  | 176 Repeal  | Adapted for repeal for repeal of the 2002 Act   |
| 119 Savings and transitional provisions                       | 177 Savings, transitional and other provisions          | Adapted as appropriate for 2008 Act   |
| 120 (Repealed)  |   |   |
| 121 Review of Act   | 179 Review of Act                                       | No material change  |
| <u>Schedule 1: Railway employees – alcohol or other drugs</u> | Schedule 1 Rail safety workers – alcohol or other drugs | No material change  |
| <u>Schedule 2: Fatigue management</u>                         | Schedule 2 – Fatigue management                         | Schedule 2 of 2008 Act consolidates requirements previously dealt with as conditions of accreditation. The legal effect of consolidated Schedule 2 remains unchanged from the 2002 Act, however, Schedule 2 now clarifies that the requirements are minimum standards |
| <u>Schedules 3, 4: (Repealed)</u>                             |   |   |

| <b><u>Rail Safety Act 2002 (NSW)</u></b>               | <b><u>Rail Safety Act 2008 (NSW)</u></b>                | <b><u>Comments</u></b>  |
|--|---|---|
| <u>Schedule 5: Savings and transitional provisions</u> | Schedule 3 – Savings, transitional and other provisions | As appropriate for 2008 Act, includes full requirements for all savings and transitional requirements dealing with existing and continuing accreditations, safety managements systems, sidings, competency of rail safety workers. Provisions include 3 year transition period for road authorities to comply with Division 3 of Part 2 |
| <u>Schedules 6, 7: (Repealed)</u>                      |   |   |