

**DEPARTMENT OF TRANSPORT
NOTICE 123 OF 2018**



INVITATION FOR COMMENTS ON THE DRAFT RAILWAY SAFETY BILL

The Department of Transport call all stakeholders and interested parties to submit their comments on the Draft Railway Safety Bill on or before the 15th April 2018. The Railway Safety Bill is aligned to the Draft White Paper on National Rail Policy and Government objective to move passengers and freight from road-to-rail. Once promulgated and implemented, the Act will ensure improvement in general safety within the railway environment thereby making rail an attractive mode of transport and that will contribute economy of the country.

The Draft Railway Safety Bill can be downloaded from the Department of Transport website: www.transport.gov.za under rail documents.

Written comments and inputs can be submitted to:

Acting Director General: Department of Transport

Private Bag X193

Pretoria

0001

Email: shivambr@dot.gov.za

For further enquiries: Mr Rhulani Shivambu (012) 309 3872

REPUBLIC OF SOUTH AFRICA

RAILWAY SAFETY BILL, 2017

*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of
Bill published in Government Gazette No. of2017.)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

[B —2017]

2

120817nim

BILL

To provide for the regulation of railway safety in the Republic; to provide for the continued existence of the Railway Safety Regulator; to provide for the board and governance structures of the Regulator; to provide for railway safety permits; to provide for railway safety critical grades and safety management systems; to provide for a national railway safety information and monitoring system; to provide for a legal framework to enforce compliance with the Act and to deal with railway occurrences; to provide for an appeal mechanism; to provide for transitional arrangements and the repeal of the National Railway Safety Regulator Act, 2002; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that safe railway operations are fundamental to the safety of all persons and the environment;

CONSIDERING that safe railway operations promote the use of rail as an efficient mode of transportation;

ACKNOWLEDGING that railway operations must be effectively regulated;

FURTHER ACKNOWLEDGING the prime responsibility and accountability of

3

railway operators in ensuring the safety of railway operations; and

NOTING the effective provision of railway safety is a matter that, to be dealt with effectively, requires uniformity across the nation in respect of policy and norms and standards,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

DRAFT

4

TABLE OF CONTENTS**CHAPTER 1****INTERPRETATION, OBJECTS AND APPLICATION**

1. Definitions
2. Application of Act
3. Objects of Act
4. Exemption from Act

CHAPTER 2**RAILWAY SAFETY REGULATOR**

5. Railway Safety Regulator
6. Objects of Regulator
7. Functions and powers of Regulator
8. International co-operation
9. Board of Regulator
10. Functions of board
11. Composition of board
12. Appointment of board members
13. Chairperson and deputy chairperson of board
14. Term of office and conditions of service of board members
15. Disqualification from appointment as board member
16. Termination of board membership

17. Meetings of board
 18. Committees of board
 19. Conflict of interest of board or board committee member
 20. Delegation by board
 21. Dissolution of board
 22. Chief executive officer
 23. Functions of chief executive officer
 24. Staff of Regulator
 25. Limited liability
 26. Documents
 27. Funds of Regulator
 28. Financial year of Regulator
 29. Reporting to Minister and Parliament
- DRAFT

6

CHAPTER 3**RAILWAY SAFETY PERMITS**

30. Safety permit
31. Conditions of safety permit
32. Amendment of conditions of safety permit
33. Surrender, suspension and revocation of safety permit

CHAPTER 4**RAILWAY SAFETY CRITICAL GRADES, STANDARDS AND SAFETY
MANAGEMENT SYSTEM**

34. Safety critical grade framework
35. Railway safety standards
36. Safety management system
37. Consultative Forum

CHAPTER 5**RAILWAY SAFETY INFORMATION AND MONITORING SYSTEM**

38. National railway safety information and monitoring system
39. Protection of information

7

**CHAPTER 6
ENFORCEMENT**

40. Railway safety inspector
41. Powers and duties of railway safety inspector
42. Routine compliance inspection
43. Enforcement inspection
44. Formalities of inspections
45. Duty to assist railway safety inspector
46. Powers of railway safety inspector to deal with unsafe conditions

CHAPTER 7**RAILWAY OCCURRENCE REPORTING AND INVESTIGATIONS**

47. Railway occurrence
48. Reporting of railway occurrence
49. Categories of railway occurrence investigations
50. Major investigation
51. Standard investigation
52. Commissions of Inquiry

8

CHAPTER 8**APPEALS**

- 53. Appeal to CEO
- 54. Appeal to board appeals committee
- 55. Appeal to Transport Appeal Tribunal

CHAPTER 9**GENERAL AND MISCELLANEOUS*****Part A******Offences and penalties***

- 56. Offences and penalties
- 57. Offences in relation to employer and principal
- 58. Liability of director, trustee or member of juristic person
- 59. Compensation and award of damages

Part B***Regulations***

- 60. Regulations and notices
- 61. Regulations regarding design, construction, alteration and new operations
- 62. Regulations regarding infrastructure or activity affecting safe railway operations

9

- 63. Regulations regarding assessment and information
- 64. Regulations regarding railway occurrence
- 65. Regulations regarding fees
- 66. Regulations regarding compliance notices and penalties
- 67. Regulations regarding safety critical grades

Part C***Transitional, repeal and commencement provisions***

- 68. Transitional provisions and savings
- 69. Repeal and amendment of law
- 70. Short title and commencement

10

SCHEDULE

CHAPTER 1

INTERPRETATION, OBJECTS AND APPLICATION

Definitions

1. (1) In this Act, unless the context indicates otherwise—

"board" means the board of the Regulator contemplated in section 9;

"CEO" means the chief executive officer of the Regulator appointed in terms of section 22;

"construction train safety permit" means a permit issued to a person who is not in possession of a safety permit, but who is accountable and responsible for the operation of construction trains, which include material and ballast trains, for the construction of new railway infrastructure;

"dangerous goods" means goods that are capable of posing a significant risk to health and safety or to property or the environment during transport;

"Department" means the National Department of Transport;

"human factors" means factors that influence safety-related behaviour at work, which include the psychological and physical capabilities of persons and the individual interaction of persons with their job and working environments, the influence of equipment and system design on human performance, and organisational characteristics;

"Minister" means the National Minister of Transport;

"network" means a system of railway infrastructure elements, including track, civil infrastructure, train control and signalling systems, electric traction infrastructure

which constitutes running lines, branch lines or any part of a railway yard, a marshalling yard, a siding, a freight terminal, a depot, a station or any similar place on which any of those elements are situated;

"network operator" means a person who is ultimately responsible and accountable for the construction, operation or maintenance of a railway, including—

- (a) the safety of a network or part thereof, including the proper design, construction, operation, maintenance and integrity of a network;
- (b) ensuring compliance of rolling stock with the applicable standards of a network; or
- (c) authorising and directing the safe and secure movement of rolling stock on a network;

"new works" means—

- (a) a new railway operation, including new train, network or station operations;
- (b) the introduction of new technology including rolling stock, train authorisation systems, traction power supplies, or components thereof;
- (c) an extension to an existing operation that has the potential to substantively increase the risk profile of the operator; or
- (d) the testing and commissioning of any matter contemplated in paragraphs (a), (b) or (c);

"operator" means a network operator, train operator or station operator or any combination thereof;

"person" includes an unincorporated body, an organ of state and the Minister;

"persons with disabilities" means people who have long-term or recurring physical or mental impairments which substantially limit their ability to use railway transport unaided;

"prescribed" means prescribed by regulation;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"railway" means a guided system designed for the movement of rolling stock that has the capability of transporting passengers, freight or both on a track and includes the land, network, rolling stock, plant, machinery, goods and other immovable or movable property of every description or kind used or set aside for use in connection with or for the purpose of a railway operation;

"railway occurrence" means a railway accident or incident prescribed by the Minister as a railway occurrence;

"railway operation" means the activities performed by a network operator, train operator or station operator, or any combination of them;

"railway safety inspector" means a person appointed as a railway safety inspector in terms of section 40;

"railway safety standards" means standards made in terms of section 35;

"regulation" means any regulation made in terms of or under this Act;

"Regulator" means the Railway Safety Regulator contemplated in section 5;

"rolling stock" means a vehicle that is able to operate on a railway track, irrespective of its capability of independent motion;

"safety critical grade" means a work position responsible for the authorisation and control of the movement of rolling stock prescribed by the Minister in terms of section 67;

"safety management system" means a formal framework contemplated in Chapter 4 which integrates safety into day-to-day railway operations and includes consultation, safety goals and performance targets, risk assessment,

responsibilities and authorities, rules and procedures, monitoring and evaluation processes;

"safety management system report" means a written submission made by an applicant, in support of a safety permit application that describes the applicant's safety management system contemplated in section 36;

"safety permit" means a permit contemplated in section 30(1);

"safe railway operation" means a railway operation in which the risks associated with the railway operation which may impact on the safety of persons and property transported by rail and the safety of other persons, other property and the environment, are as low as may be reasonable in a given set of circumstances, but does not include security;

"station" means a facility for passengers to enter or leave a train, including a railway passenger terminal and a passenger halt and may include facilities for passenger modal transfer and commercial activities forming part of the station and also includes any other place that may be prescribed as a station or forming part of a station, but excludes that part of the network running through the station;

"station operator" means a person in control of a station, and the management of a station;

"technologies" means created capabilities and capacities relating to systems, processes, equipment and procedures applicable to rolling stock, railway infrastructure elements and stations;

"test safety permit" means a permit issued in respect of the operation of trains in order to test new or upgraded rolling stock or railway infrastructure elements, or to determine the impact of new or upgraded rolling stock and new or upgraded railway infrastructure elements on existing rolling stock and infrastructure elements;

"**this Act**" includes any regulation or notice made or issued in terms of thereof;

"**train operator**" means a person who is accountable for the—

- (a) safe movement of rolling stock on a network;
- (b) safety and integrity of rolling stock; and
- (c) safety of freight or persons being conveyed;

"**Transport Appeal Tribunal**" means the Transport Appeal Tribunal established in accordance with section 3 of the Transport Appeal Tribunal Act; and

"**Transport Appeal Tribunal Act**" means the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998).

Application of Act

2. (1) This Act applies to—

- (a) railway or railway operations with a track gauge equal to or wider than 600 millimetres, subject to paragraph (b); and
- (b) any railway or railway operation designed to transport passengers or freight by rail, declared by the Minister by notice in the *Gazette* to be a railway or railway operation for the purposes of this Act.

(2) This Act does not apply to—

- (a) a railway or railway operation in a mine which is underground and to which the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), or the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), applies;
- (b) a railway or railway operation at an amusement park;
- (c) an aerial cable-operated transportation system;
- (d) a ship to shore crane or a rail-mounted gantry crane, or the track or other

15

infrastructure utilised by such a crane, the installation or operation of which has been approved by the authority contemplated in sections 3 and 4 of the National Ports Act, 2005 (Act No. 12 of 2005), but such a crane, track or other infrastructure may not be linked to a system or a track that is used by rolling stock; or

- (e) any railway or railway operation exempted in accordance with section 4, to the extent of that exemption.

Objects of Act

3. The objects of this Act are to—

- (a) enable railway operators to undertake safe railway operations;
- (b) facilitate a modern, flexible and efficient regulatory regime that ensures the continuing enhancement of safe railway operations;
- (c) encourage the collaboration and participation of interested and affected parties in improving railway safety;
- (d) promote the harmonisation of the railway safety regime of the Republic with the objectives and requirements for safe railway operations of the Southern African Development Community;
- (e) prevent the proliferation of laws, policies and approaches to the execution thereof from materially prejudicing the beneficiaries of railway safety; and
- (f) assist in securing the well-being of the people of the Republic and to provide effective, transparent, accountable and coherent government in respect of railway safety for the Republic as a whole.

Exemption from Act

4. (1) Subject to the provisions of this section, a person may be exempted from compliance with a provision of this Act other than this section 4.

(2) A person may apply for an exemption to the Minister in the prescribed manner and form, and such application must be accompanied by—

- (a) a motivation for the application;
- (b) supporting documents as may be prescribed; and
- (c) such other relevant documents directed by the Minister.

(3) The Minister may if he or she deems it necessary, request the applicant to appoint an independent service provider to determine the impact of the proposed exemption, in accordance with directions issued by the Minister.

(4) The Minister must provide the Regulator with a copy of the application contemplated in subsection (2) in order for the Regulator to make a recommendation to the Minister.

(5) The Minister may, before considering the application contemplated in subsection (2), and after making a determination that the rights, duties or interests of the general public or persons are likely to be adversely affected by the exemption—

- (a) publish the application by notice in the *Gazette* or by such other means as the Minister may determine; and
- (b) require the applicant to respond to the comments received.

(6) The Minister must, after consideration of the Regulator's recommendation on the application and any other documents submitted to him or her, make a decision on the application, by taking into account whether —

17

- (a) the granting of the exemption is likely to impact negatively on the safety of the general public;
- (b) the granting of the exemption is likely to benefit one section of or participant in the railway industry to the detriment of others; and
- (c) granting the application for exemption would not defeat the purpose of the Act.

(7) A decision by the Minister to approve the application for exemption must be in writing and published by notice in the *Gazette*, which notice must include—

- (a) reference to the provision of the Act, regulation, notice or standard from which exemption is granted;
- (b) details of the person to whom the exemption applies;
- (c) the date from which and the date up to when the exemption applies and conditions that apply to the exemption, if any;
- (d) the reasons for granting the exemption;
- (e) a declaration that the granting of an exemption does not create any special rights or legitimate interests which may apply to the category of persons so exempted; and
- (f) a declaration that any exemption granted may be amended or withdrawn subject to the provisions of this section.

(8) The exemption granted in terms of this section may not—

- (a) exceed three years,
- (b) be applied retrospectively; or
- (c) be extended upon expiry or withdrawal.

(9) The Minister must if he or she intends to amend, suspend or withdraw an exemption granted in accordance with this section, in writing inform the

18

person to whom that exemption has been granted of that intention, together with all relevant information pertaining to this matter, and afford that person a reasonable opportunity to make submissions to the Minister, and the Minister may after consideration of those submissions on good grounds amend, suspend or withdraw that exemption.

(10) If the Minister amends, suspends or withdraws an exemption in accordance with subsection (9), his or her decision must be published by notice in the *Gazette*, which notice must include—

- (a) if the exemption is amended or suspended, details of the notice contemplated in subsection (7);
- (b) if the exemption is amended, the nature and extent of the amendment;
- (c) if the exemption is suspended, the period of such suspension which may be conditional;
- (d) if the exemption is withdrawn, a repeal of the notice contemplated in subsection (7);
- (e) the date from which the exemption is amended, suspended or withdrawn, as the case may be, which may not be within a period less than two months of the date of publication of this notice; and
- (f) the reasons for amending, suspending or withdrawing the exemption.

(11) The Minister must cause any notice published in the *Gazette* in terms of subsections (7) or (10) to be tabled in Parliament—

- (a) if Parliament is then in ordinary session, within 14 days after publication thereof; or
- (b) if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

CHAPTER 2**RAILWAY SAFETY REGULATOR****Railway Safety Regulator**

5. (1) The Railway Safety Regulator established by section 4 of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002), continues to exist as a juristic person under this Act, and continues to be known as such despite the repeal of that Act by section 69 of this Act.

(2) The Regulator must operate and perform its functions in accordance with this Act.

(3) The Public Finance Management Act applies to the Regulator.

(4) The Regulator is governed by its board.

(5) Despite the provisions of any other law, the Regulator may not be placed under judicial management or in liquidation, unless authorised by an Act of Parliament.

Objects of Regulator

6. The objects of the Regulator are to—

- (a) promote and regulate safe railway and railway operations through the appropriate and timely application of support, monitoring and enforcement instruments provided for in this Act;
- (b) co-operate, collaborate and consult with relevant organs of state, railway operators, consumers of railway services and other stakeholders to achieve

20

- the best implementation of a safe railway and railway operations regulatory framework;
- (c) co-operate and collaborate with international counterparts, particularly within the Southern African Development Community; and
 - (d) monitor the impact of developments in railway and railway operations in the Republic on the safety of railway and railway operations.

Functions and powers of Regulator

7. (1) The Regulator must, for purposes of achieving its objects in terms of section 6—
- (a) perform its functions in a fair, equitable, transparent, efficient and cost-effective manner;
 - (b) report to the Minister and Parliament on its activities in terms of this Act, and if necessary to provide them with information and advice, to ensure the most appropriate safe railway and railway operations regulatory framework in the Republic;
 - (c) support, promote and comply with national rail policies and the provisions of this Act;
 - (d) monitor, promote and enforce compliance with this Act in order to ensure safety in railway and railway operations, including the safe transportation of dangerous goods by rail, by—
 - (i) developing guidelines for safe railway and railway operations;
 - (ii) granting, amending, suspending or revoking safety permits as contemplated in Chapter 3;

- (iii) inspections and investigations as contemplated in Chapters 6 and 7 respectively;
 - (iv) registering appropriate training institutions, as contemplated in section 34 in order to monitor the licensing of persons employed in safety critical grades;
 - (v) providing and maintaining a national railway safety information and monitoring system as contemplated in section 38; and
 - (vi) rendering prescribed services in respect of new works, operations and technologies, as contemplated in section 61;
- (e) advise the Minister on actions or conditions within the railway environment which—
- (i) pose or potentially pose a threat of harm or damage to persons, property or the environment;
 - (ii) the Minister refers to the Regulator;
 - (iii) the Regulator considers necessary in the furtherance of its objects;
- (f) conduct research and report on future developments which may affect railway safety;
- (g) provide education and training and conduct public awareness activities relating to safe railway and railway operations; and
- (h) co-operate with its counterparts in the Southern African Development Community to promote the harmonisation of the safe railway and railway operations regulatory framework of the Republic with the objectives and requirements of the Southern African Development Community.

(2) In addition, for purposes of achieving its objects in terms of section 6, the Regulator may—

22

- (a) establish a consultative forum for railway safety to serve as a platform for consultation, co-operation, collaboration and the exchange of information between the Regulator and safety permit holders, associations recognised in terms of paragraph (b), other interested parties, and relevant organs of state;
- (b) collaborate with any railway industry association in respect of any function that the Regulator is authorised to perform;
- (c) conclude a co-operative agreement or arrangement with a relevant organ of state to give effect to the principles of cooperative government and inter-governmental relations contemplated in Chapter 3 of the Constitution of the Republic of South Africa, 1996;
- (d) collaborate with relevant bodies or institutions, or establish and control facilities, for the collection and dissemination of scientific and technical information, in connection with safe railway or railway operations;
- (e) engage persons or organisations having expertise in matters relating to safe railway or railway operations to advise the Regulator on the railway safety standards contemplated in section 35(1) or the application of such railway safety standards; and
- (f) develop railway safety standards for purposes of section 35(2).

International co-operation

8. (1) The Regulator must, on request of the Minister after his or her notice in the *Gazette* and subject to the applicable legal prescripts, administer and implement an international agreement entered into by the Republic.

(2) Unless the international agreement provides otherwise, the

23

Regulator must report to the Minister on the performance of any of its functions under subsection (1) within three months after the end of its financial year.

(3) The report referred to in subsection (2) must contain sufficient information to allow the Minister to assess the performance of the Regulator in respect of all its functions in terms of subsection (1) and whether such performance conforms to the objectives set out in the relevant international agreement.

Board of Regulator

9. (1) The Regulator is governed and controlled by a board.

(2) The board must oversee and exercise general control over the performance of the Regulator to ensure that the Regulator, as far as possible, achieves the objects referred to in section 6.

(3) The board is accountable, for its own actions and performance as well as those of the Regulator, to the Minister and Parliament.

(4) The board and individual board members must conduct themselves in accordance with the highest applicable standards of ethics and governance.

(5) Individual board members—

(a) may not—

- (i) represent or promote specific interests or stakeholders within the railway environment;
- (ii) act in a way that is inconsistent with the responsibilities assigned to the board; or
- (iii) use their position, privileges or confidential information obtained as

24

board member, for personal gain or to improperly benefit another person;

- (b) must, subject to this Act and other applicable law—
 - (i) at all times act independently and with unfettered discretion;
 - (ii) exercise independent judgement; and
 - (iii) take decisions in the best interests of the public.

Functions of board

10. The functions of the board, in addition to functions generally associated with the work of a board of a public entity are to—

- (a) provide corporate governance for the Regulator;
- (b) ensure that the Regulator performs its duties efficiently and effectively;
- (c) ensure that the Regulator complies with this Act and any other applicable law;
- (d) ensure that the Regulator exercises its powers in accordance with the principles of transparency and accountability;
- (e) determine and enforce the broad policy framework within which the Regulator must pursue its objects and perform its functions;
- (f) determine and approve a safety management system in terms of section 36(1);
- (g) consider appeals as provided for in section 53;
- (h) subject to this Act and any other applicable law, implement any instruction issued by the Minister in respect of railway safety;
- (i) advise the Minister and Parliament on the efficacy of this Act;
- (j) review and approve strategy, budget, action plans and organogram of the

Regulator; and

- (k) perform any other power or duty conferred on the board by this Act or any other law which confers powers or duties on the board.

Composition of board

11. (1) The board consists of not less than seven and not more than 13 members who collectively have wide experience of, and demonstrate acumen in—

- (a) the management of railways and railway operations;
- (b) safety in railway transportation, including the impact of human factors;
- (c) engineering within the rail environment;
- (d) corporate management;
- (e) commerce, finance, legal and economic matters;
- (f) information and communication technology; and
- (g) the transportation of dangerous goods by rail.

(2) The persons contemplated in subsection (1) include—

- (a) not more than nine persons representing civil society, with experience in and knowledge of the rail and railway industries;
- (b) the CEO, by virtue of holding that office;
- (c) one person from the Department, for the time being holding that office, who in the opinion of the Minister, is able to assist the board in achieving its objectives;
- (d) one person designated by the Minister of Labour; and
- (e) one person designated by the Minister of Police.

26

(3) The board must be broadly representative with regards to race, gender and disability.

(4) The majority of persons serving on the board must serve as non-executive members of the board.

Appointment of board members

12. (1) The Minister must, prior to the appointment of members of the board contemplated in section 11(2)(a), issue an invitation, by notice in the *Gazette* and at least two newspapers circulating nationally in the Republic, for the nomination of persons who have experience of, and demonstrate acumen in, the matters and areas contemplated in section 11(1)(a) to (e), and who are not disqualified in terms of section 15.

(2) The Minister must select board members from the persons nominated in subsection (1) based on merit, determined by an assessment of—

- (a) the objects, functions and the operations of the Regulator;
- (b) the competencies collectively required for serving on the board, including the relevant skills, expertise and experience relating to governing an organ of state, having regard to section 11(1); and
- (c) the qualifications, skills, expertise and experience of each individual prospective candidate.

(3) After considering the nominations received pursuant to subsection (1), and after following the selection process contemplated in subsection (2), the Minister must appoint persons as members of the board subject to the provisions of sections 11 and 15.

(4) The Department must, within 30 days from the date of appointment of the members of the board, publish a notice on its website, containing the names of all the persons who have been nominated and appointed respectively, as board members.

(5) The Minister must cause a copy of the notice contemplated in subsection (4) to be tabled in Parliament—

- (a) if Parliament is then in ordinary session, within 14 days after publication thereof; or
- (b) if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

Chairperson and deputy chairperson of board

13. (1) The Minister must designate a chairperson and a deputy chairperson from among the members of the board contemplated in section 11(2)(d) and (e), who serve as non-executive members.

(2) The chairperson presides at all the meetings of the board.

(3) If, for any reason the chairperson is not able to perform his or her duties, the deputy chairperson must perform the duties and exercise the powers of the chairperson.

(4) In the event that the office of the chairperson or deputy chairperson becomes vacant for any reason other than expiry of the term of office, the board must elect, from amongst themselves, a member to act as chairperson until—

- (a) the chairperson or deputy chairperson is able to act in those positions; or

(b) a new chairperson or deputy chairperson has been appointed.

(5) The chairperson or deputy chairperson of the board may vacate his or her office without terminating his or her membership of the board.

Term of office and conditions of service of board members

14. (1) The term of office of members of the board is subject to the following:

- (a) Non-executive members serve for a period of three years, which is renewable for a total of three consecutive terms;
- (b) non-executive members that have completed three consecutive terms may be considered for appointment after a break of service of a period of three years;
- (c) subject to board evaluation, at least one-third of non-executive members must retire annually; and
- (d) executive members serve in accordance with the term specified by their respective employers.

(2) A board member, other than the CEO or a person who is in the full-time employment of an organ of state, is—

- (a) remunerated in accordance with a framework annually approved by the Minister in consultation with the Minister of Finance; and
- (b) appointed on the terms and conditions of service determined by the Minister.

(3) The Minister and the board must annually conclude a performance agreement that must include the following:

- (a) Board evaluation;

- (b) board performance targets;
- (c) the submission of board minutes by the chairperson or the deputy chairperson within seven days of the approval of such minutes; and
- (d) the submission by the board of progress reports on any matter required by the Minister.

Disqualification from appointment as board member

15. A person is disqualified from being appointed or remaining a member of the board if—

- (a) he or she is not a South African citizen;
- (b) he or she is an unrehabilitated insolvent;
- (c) he or she is of unsound mind;
- (d) in respect of a board member other than the persons contemplated in section 11(2) (c) to (e), he or she is—
 - (i) employed in accordance with section 8 of the Public Service Act, 1994;
 - (ii) an employee of any other organ of state, other than a person contemplated section 11(2)(b) to (e); or
 - (iii) a special adviser to a Minister or member of an executive council;
- (e) he or she is a member of—
 - (i) Parliament;
 - (ii) a provincial legislature;
 - (iii) a municipal council;
 - (iv) Cabinet;

- (v) the Executive Council of a province; or
 - (vi) the National House of Traditional Leaders or a Provincial House of Traditional Leaders;
- (f) he or she failed to declare that his or her spouse, life partner, immediate family member, business partner or associate holds an office in or is employed by or has any other interest whatsoever, whether direct or indirect, in any company or other entity which supplies goods or renders services to the Regulator;
- (g) he or she is disqualified to act as a director of a company incorporated in terms of the Companies Act, 2008 (Act No. 71 of 2008);
- (h) he or she has been found in any civil or criminal proceedings by a court of law, whether in the Republic or elsewhere, to have acted fraudulently, dishonestly, unprofessionally, dishonourably or in breach of a fiduciary duty, or if he or she has been found guilty of any offence for which he or she was sentenced to direct imprisonment without the option of a fine, other than an offence committed prior to 27 April 1994 demonstrably associated with political objectives;
- (i) his or her name is listed by the National Treasury on its Register for Tender Defaulters established by section 29 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or if he or she is, at the time of appointment as board member or during the period of such appointment, a director, member, trustee, partner, shareholder, holder of membership or other beneficial interest of a juristic person listed on that Register;
- (j) he or she has been discharged from a position of trust;
- (k) his or her membership of a board or other accounting authority of a public

entity defined in section 1 of the Public Finance Management Act, has been prematurely terminated due to dishonesty;

- (l) he or she serves on more than three boards of directors, whether private or public;
- (m) he or she serves on the board of a state-owned company or public entity that is regulated by the Regulator; or
- (n) he or she is in the employ of, is remunerated by, or receives any other benefit from, the holder of a safety permit.

Termination of board membership

16. (1) A board member may resign by giving one month's notice in writing to the Minister.

(2) The Minister may, after following due process and having afforded a board member a reasonable opportunity to make submissions in writing, terminate that member's membership of the board if that member has—

- (a) failed to declare a conflict of interest as contemplated in section 19;
- (b) knowingly disregarded or contravened any applicable code of ethics relating to governance, or any other relevant law;
- (c) repeatedly failed to perform his or her functions efficiently; or
- (d) failed to attend three consecutive meetings of the board or a board committee, without the permission of the chairperson of the board or the chairperson of the relevant board committee.

(3) The Minister must when terminating the membership of a board member in terms of subsection (2) in writing, inform both the board and that

member, of the reasons for that termination.

(4) If a board member, at any time during his or her term of office, becomes disqualified to be a board member on any one of the grounds contemplated in section 15, that member—

- (a) must immediately, in writing, inform the Minister and the chairperson of the board of that disqualification, and once the Minister has been so informed, he or she must forthwith, in writing, remove that member from the board; and
- (b) may not attend a board meeting or a board committee meeting from the time he or she has so become disqualified until he or she is removed by the Minister.

(5) The termination of membership of the board or resignation from the board does not in any way prevent or influence the institution or continuance of proceedings against the person whose membership of the board was terminated or who resigned from the board, as the case may be.

(6) The Minister must, within 30 days from the date of terminating membership of the board, if Parliament is then in ordinary session, inform Parliament of the termination and the reasons for such termination, but if Parliament is not then in ordinary session, then within 14 days after the commencement of its next ordinary session.

Meetings of the board

17. (1) The Board holds meetings at such times and places as the chairperson determines.

(2) The chairperson or any three board members may, at any time,

call a special meeting of the board to be held at the time and place determined by either the chairperson or the deputy chairperson.

(3) All board members must be timeously notified of every meeting of the board.

(4) A majority of the board members appointed at any time, forms a quorum of the board, but if, for any meeting, there is no quorum, the meeting is adjourned to a date not more than 14 days later, at which meeting the majority of the members present constitute a quorum.

(5) Subject to subsection (4), a decision of the majority of the board members present at a meeting of the board constitutes a decision of the board, but in the event of an equality of votes on any matter, the chairperson of the relevant meeting has a casting vote in addition to his or her deliberative vote.

(6) A decision taken by the board or an act performed under its authority, is not invalid merely by reason of—

- (a) a vacancy on the board; or
- (b) a person who was not entitled to sit as a board member at the time that the decision was taken,

as long as the decision was taken or the act was authorised by the required majority of board members present at the meeting who were entitled to sit as board members .

(7) No person other than a board member or a person rendering secretarial services to the board may be present during a board meeting unless he or she was invited by the board to attend a specific part of the meeting and for a specific purpose.

(8) The board must develop and maintain a board profile to ensure

34

that there is a thorough understanding of the environment in which the Regulator operates and the competencies required by the board as a whole, and to identify any gaps in those competencies.

(9) The board, subject to applicable law, determines its own procedures and rules.

Committees of board

18. (1) The board may—

- (a) establish such committees as it considers necessary to assist it in the performance of its functions; and
- (b) appoint as members of any such committee appropriate persons, subject to a governance framework determined by the board and approved by the Minister.

(2) A member of a board committee, other than a person who is in the full-time employment of the Regulator or any other organ of state, is appointed on the terms and conditions of service determined by the Minister in consultation with the Minister of Finance.

Conflict of interest of board member or board committee member

19. (1) A prospective member of the board must prior to his or her appointment submit a declaration to the Minister, made under oath or by affirmation, to the effect that he or she is not disqualified from appointment as contemplated in section 15, and a member of the board must do so as often as the Minister may, in

writing, require.

(2) A board member or a board committee member may not be present during or take part in the discussion of or the taking of a decision on any matter serving before the board or board committee, as the case may be, in which that member or his or her spouse, life partner, child, business partner or associate or employer other than the State, has a direct or indirect financial interest, and such a person may not have access to any record documenting the discussions in respect of that matter other than information he or she is entitled to by law.

(3) A board member or a board committee member, as the case may be, must immediately when he or she becomes aware of any conflict or a perceived conflict of interest, whether it affects that member personally or another member, in writing inform the chairperson of the board or the chairperson of a board committee, as the case may be, of such conflict.

(4) The relevant chairperson to whom a conflict or a perceived conflict of interest has been reported to, must immediately consider the relevant information and if appropriate, excuse the member in respect of whom the conflict or perceived conflict of interest is raised against from participating and voting in any part of a meeting or proceedings where the matter that has caused such a conflict is considered.

(5) The chairperson of the board or of a board committee must immediately when he or she becomes aware of any conflict or perceived conflict of interest which affects him or her personally, in writing, inform all the members of the board or the relevant board committee of such conflict, and unless the board or that board committee decides otherwise, the relevant chairperson must recuse him or herself from participating and voting in any part of a meeting or proceedings where

36

the matter that has caused such a conflict or perceived conflict is considered.

(6) The chairperson of the board or of a board committee may of his or her own accord investigate compliance with this section by any member of the board or of a relevant board committee, as the case may be, or upon a request in writing by at least three members of the board or the relevant board committee.

Delegation by board

20. (1) The board may, by resolution and in writing, delegate any function, duty or power, subject to such conditions as it deems necessary, to a member of the board, a committee of the board, CEO or another senior employee of the Regulator, or amend or revoke such delegation.

(2) A delegation or assignment by the board under subsection (1) must be in writing and specify the period for which such function or duty is delegated, the purpose of the delegation and any conditions and restrictions that the board may impose.

(3) A delegation contemplated in subsection (1) does not—

- (a) prevent the board from exercising the function or power or performing the duty in question itself;
- (b) absolve the board from responsibility or accountability for anything done in terms of or under the delegation.

Dissolution of board

21. (1) The Minister may dissolve the board if—

- (a) the board refuses or fails to perform its functions in accordance with this Act, any other applicable law or any performance agreement entered into by the Regulator and the Minister;
- (b) the Auditor-General has for two successive years in respect of the accounts, financial statements and financial management of the Regulator, qualified his or her audit report, noted matters of emphasis or has declined to express an opinion;
- (c) the board refuses or fails to provide the Minister with any information relating to its stewardship of the Regulator or to the Regulator itself; or
- (d) there are good grounds for a dissolution of board.

(2) The Minister must, before considering to dissolve the board, give the board a reasonable opportunity to submit representations to him or her on any matters which may lead to dissolution, and may after consideration of such representations, if any, as contemplated in subsection (1) upon good cause shown, dissolve the board, and he or she must after so dissolving the board—

- (a) immediately, in writing, inform the board members of the board's dissolution, and the reasons therefor; and
- (b) forthwith publish a notice in the *Gazette*, stating the reasons for his or her decision to dissolve the board.

(3) Upon dissolution of the board in terms of subsection (2), the Minister must—

- (a) immediately appoint an administrator to take over the functions of the board

38

and to do anything which the board might otherwise be empowered or required to do by or under this Act or any other applicable law, subject to such conditions as the Minister may determine; and

(b) forthwith commence the process contemplated in section 12.

(4) An appointment contemplated in subsection (3)(a) may not exceed a period of six months.

(5) Any decision taken by the board prior to its dissolution in terms of subsection (1) does not invalidate or in any other way affect any such decision validly taken or an act performed under its authority.

Chief executive officer

22. (1) The board must, after having followed an open and transparent application process and consideration of all applications received, submit the names of the two most suitable candidates as CEO to the Minister.

(2) The Minister must, subject to section 15 and such terms and conditions as determined by the Minister in consultation with the Minister of Finance, appoint a chief executive officer for a period not exceeding five years.

(3) A person is disqualified from being appointed or remaining as CEO if he or she is disqualified in terms of section 15, or if he or she has served two terms of office as CEO.

(4) The Minister may, at any time, after consultation with the board and following the due process of the law, discharge the CEO from office—

(a) if the CEO repeatedly fails to efficiently perform the duties of office;

(b) if, due to any physical or mental illness or disability, the CEO becomes

- incapable of performing the functions of that office or performs them inefficiently; or
- (c) for misconduct.

Functions of chief executive officer

- 23.** (1) The CEO accounts to the board.
- (2) The CEO must, in addition to any other function provided for in this Act—
- (a) ensure that the functions of the Regulator in terms of this Act are performed;
- (b) report to the board on the proper functioning of the Regulator;
- (c) report on the activities of the Regulator to the board; and
- (d) execute any instruction issued to him or her by the board.
- (3) The board must submit the report referred to in subsection (2)(c) to the Minister within five months after the end of the financial year concerned.
- (4) The CEO must exercise all the powers and perform all the functions delegated or assigned to the CEO by the board.
- (5) If the CEO is for any reason unable to perform any of his or her functions, or if the CEO is discharged or resigns from office, the chairperson of the board must—
- (a) Immediately, as an interim measure, designate an employee of the Regulator to act as CEO until the CEO is able to resume those functions, or until the appointment of a new CEO, as the case may be; and
- (b) forthwith commence the process contemplated in section 22(1).

40

(6) An acting CEO may exercise all the powers and must perform all the duties of the CEO, subject to any limitation the board or the Minister may in writing determine.

(7) The CEO may delegate any of his or her functions subject to any conditions imposed by the board, to any staff member of the Regulator, but such delegation does not—

- (a) prevent the CEO from exercising the function or power or performing the duty in question himself or herself; or
- (b) absolve the CEO from responsibility or accountability for anything done in terms of or under the delegation.

Staff of Regulator

24. (1) The CEO may, subject to subsection (2) and general directions of the board, if any, appoint such staff of the Regulator as are necessary to perform the work arising from, or connected with, the Regulator's functions.

(2) The board must—

- (a) determine the terms and conditions of appointment of such staff members of the Regulator; and
- (b) approve an organogram of the Regulator.

(3) The Minister must, with the concurrence of the Minister of Finance, approve any annual increases in the remuneration of staff members contemplated in subsection (1).

(4) The board may, with the approval of the Minister in consultation with the Minister of Finance, establish, manage and administer any pension or

provident fund or medical scheme for the benefit of the staff of the Regulator, and such a fund or scheme may be managed or administered by a person approved by the board.

Limitation of liability

25. The State, the board or employees of the Regulator, is not liable for any damage or loss caused in good faith by the exercise or failure to exercise any power or the performance of any duty in terms of this Act.

Documents

26. (1) Any document issued in good faith by the Regulator is valid unless evidence to the contrary proves otherwise.

(2) Any document issued incorrectly or without authority may be subsequently ratified if such ratification does not unduly prejudice any person.

(3) For the avoidance of doubt, any notice, directive, report, application, other document or other record to be served or submitted in terms of or under this Act, must be served or submitted in accordance with applicable law.

Funds of Regulator

- 27.** (1) The funds of the Regulator consist of—
- (a) money appropriated by Parliament;
 - (b) fees paid to the Regulator as determined by the Minister in terms of or under

section 65;

- (c) levies, penalties and interest paid to the Regulator in accordance with any legislation providing for the imposition of levies; and
- (d) any other fees or sources of income provided for in this Act or in other legislation.

(2) The Regulator must utilise the funds contemplated in subsection (1) to defray expenses incurred by it in the performance of its functions.

(3) The CEO must—

- (a) open an account in the name of the Regulator with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all money received in terms of subsection (1).

(4) The CEO may, with the approval of the Minister and the board, invest any money received in terms of subsection (1) which is not required for immediate use—

- (a) with the Public Investment Corporation Limited established by section 2 of the Public Investment Corporation Act, 2004 (Act No. 23 of 2004); or
- (b) with such other institution approved for that purpose by the National Treasury.

(5) The Regulator may use interest derived from the investment referred to in subsection (4) to defray expenses in connection with the performance of its functions.

Financial year of Regulator

28. The Regulator's financial year is from 1 April in any year to 31 March of the following year, and the first financial year commences on 1 April following the

date of commencement of this Act.

Reporting to Minister and Parliament

29. (1) The Regulator must annually by 31 August submit to the Minister a report on—

- (a) its performance during the financial period under review;
- (b) the impact of railway operations on the safety of employees, the public and the environment associated with railway operations; and
- (c) any other matters that may be required by any other law.

(2) The Minister must table the annual report submitted to him or her in terms of subsection (1) in Parliament within 14 days—

- (a) of receipt thereof, if Parliament is then in ordinary session; or
- (b) after the commencement of its next ordinary session, if Parliament is not then in session.

CHAPTER 3

RAILWAY SAFETY PERMITS

Safety permit

30. (1) Any person who wants to undertake a railway or railway operation may apply to the Regulator in the prescribed manner for a safety permit in one or more of the following categories:

- (a) Network operator safety permit;
- (b) train operator safety permit;
- (c) station operator safety permit;
- (d) construction train safety permit;
- (e) rolling stock test safety permit;
- (f) railway infrastructure test safety permit; or
- (g) a safety permit designated by the Minister by notice in the *Gazette* in respect of any other type of railway operation.

(2) A safety permit fee determined by the Minister in accordance with section 65(1) is annually payable in respect of every safety permit.

(3) The Regulator may not unreasonably withhold its approval of any application contemplated in subsection (1).

(4) The Regulator must, upon receipt of any application contemplated in subsection (1), publish a notice of that application for public comment on its website, and may then prior to taking a final decision—

- (a) require the applicant—
 - (i) to submit additional information relating to railway safety as specified

by the Regulator;

- (ii) subject to section 38(2), cause an independent review of the information or evaluation of the samples or objects supplied by a person acceptable to the Regulator;
- (iii) to make representations in support of the application, including on whether the interests of any other person will be adversely affected should the application be approved;
- (iv) to take such steps as the Regulator may direct to bring the application to the attention of relevant organs of state and interested persons.

(5) The Regulator must, after considering an application contemplated in subsection (1), notify the applicant in writing of the outcome of his or her application, and if the application—

- (a) is approved, the Regulator must in that notice specify—
 - (i) the period of validity of the permit, which in the case of a permit contemplated in subsection (1)(a), (b) and (c) may not be less than three years or longer than five years;
 - (ii) the conditions subject to which the safety permit is granted; and
 - (iii) if applicable, the date by when the fee determined in accordance with subsection (2) or a levy contemplated in any legislation providing for the imposition of levies, is to be paid by the applicant in respect of that specific safety permit; or
- (b) is not approved, the Regulator must provide full reasons for not approving the application and draw the applicant's attention to sections 53 and 54, but if the Regulator has not, within 30 days of a receipt of an application or re-application which was submitted timeously, informed the applicant of the outcome

thereof, the provisions of subsection (10) do not apply.

(6) The Regulator may only issue a safety permit to the applicant, if the applicant—

- (a) has paid the safety permit fee determined in accordance with subsection (2) for the first year of its validity; and
- (b) if applicable, has paid any applicable levy provided for in any legislation providing for the imposition of levies.

(7) The following information must be included in every safety permit issued by the Regulator:

- (a) The period of validity of the safety permit; and
- (b) the conditions contemplated in section 31(2).

(8) A permit holder may, in the prescribed manner, apply for the renewal of a safety permit to the Regulator at least three months prior to the expiry of his or her existing safety permit.

(9) A safety permit issued under this Act is not transferable.

(10) Any person who undertakes a railway or railway operation without a valid safety permit is guilty of an offence.

Conditions of safety permit

31. (1) The Minister may, after consultation with the board, prescribe standard conditions applicable to any category of safety permits contemplated in section 30 (1).

(2) The Regulator may, in justifiable circumstances, impose additional conditions to the safety permit conditions relating to—

47

- (a) the form, manner, timing and submission of any review of a safety management system report;
- (b) considerations in respect of the topography of the terrain where the railway operations will be conducted;
- (c) the transport of passengers, general freight or dangerous goods;
- (d) speed;
- (e) traction;
- (f) notice to be given to the Regulator, in writing, of any change in control of the holder of the safety permit; or
- (g) any other technical or other matter necessary to—
 - (i) ensure the safety or protection of persons with disabilities, other persons, property and the environment; or
 - (ii) ensure compliance with the safety management system.

Amendment of conditions of safety permit

32. (1) The Regulator may in justifiable circumstances amend any condition imposed on a specific safety permit in terms of section 31(2).

(2) The Regulator must prior to amending the conditions of a safety permit—

- (a) in writing, inform the safety permit holder of its intention to do so and of the reasons for considering an amendment to the conditions;
 - (b) in writing, invite the safety permit holder and any relevant stakeholder to make submissions on the proposed amendment within a reasonable time;
- and

(c) consider such submissions as may have been received.

(3) The Regulator must, in writing, inform a safety permit holder of an amendment by the Regulator of a condition to his or her safety permit, specifying—

(a) the extent of the amendment; and

(b) the date upon which the amendment comes into operation, which must be at least 30 days after the safety permit holder has received this notification.

(4) If a safety permit holder is aggrieved by the amendment made in terms of subsection (3), that safety permit holder may, in the prescribed form, lodge an appeal to the CEO.

(5) This section must not be interpreted so as to prevent a safety permit holder from applying for an amendment to the conditions of the relevant safety permit.

Surrender, suspension and revocation of safety permit

33. (1) The holder of a safety permit may surrender his or her safety permit.

(2) The Regulator may revoke or suspend a safety permit if the holder thereof repeatedly fails to substantially comply with any condition of the safety permit.

(3) The Regulator must prior to revoking or suspending a safety permit—

(a) in writing, inform the holder thereof of its intention to do so and of the reasons for considering a suspension or revocation;

- (b) in writing, invite the safety permit holder and any relevant stakeholder to make submissions on the proposed revocation or suspension within a reasonable time; and
- (c) consider such submissions as may have been received.

(4) The Regulator must, when suspending or revoking a safety permit, inform the safety permit holder thereof, specifying—

- (a) the reasons for the suspension or revocation, as the case may be;
- (b) the date upon which the suspension or revocation comes into operation, which must be at least 30 days after the safety permit holder has received this notification; and
- (c) in the case of a suspension, the conditions of the suspension and the date by when it will be withdrawn.

(5) If a safety permit holder is aggrieved with such suspension or revocation, that safety permit holder may in the prescribed form, lodge an appeal to the CEO.

(6) Except on good cause shown, a safety permit is by operation of law suspended if the safety permit holder fails to timeously pay any fee or levy in respect of that specific safety permit as contemplated in section 30(5)(a)(iii), but upon receipt of payment thereof, such suspension is withdrawn.

(7) If a safety permit holder has surrendered a safety permit in terms of subsection (1), the safety permit holder is not liable to pay a fee for the safety permit in respect of the subsequent years in respect of which the safety permit would have been valid, nor is the safety permit holder entitled to a refund in respect of any fee paid up to the date of surrender of that safety permit.

(8) The holder of a safety permit which has been suspended,

50

either by the Regulator or by operation of law, may not undertake any railway operation or a component of a railway operation or any action in relation to a railway operation permitted under that safety permit until the suspension has been withdrawn.

DRAFT

CHAPTER 4

**RAILWAY CRITICAL SAFETY CRITICAL GRADES, STANDARDS AND SAFETY
MANAGEMENT SYSTEM****Safety critical grade framework**

34. (1) The Regulator oversees the management and execution of the prescribed framework for safety critical grade positions, by—

- (a) registering training institutions as contemplated in subsection (2);
- (b) collaborating with relevant institutions on the development of appropriate curricula for the training, evaluation and licensing of the relevant safety critical grade positions; and
- (c) establishing, managing and maintaining a database on all matters relevant to the framework for safety critical grade positions, including—
 - (i) the names and identity numbers of persons who have been issued with a safety critical grade licence by a registered training institution;
 - (ii) the type and period of validity of the safety critical grade licence held by such persons; and
 - (iii) the frequency of refresher courses or additional training to be undergone by holders of a safety critical grade licence.

(2) The Regulator must evaluate prospective training institutions who in the prescribed form have applied for registration, and must subject to any conditions the Regulator deems necessary, register an appropriate number of training institutions for a period not exceeding five years to—

- (a) provide training and refresher courses for safety critical grade positions;

52

- (b) assess and evaluate persons applying for a safety critical grade licence; and
- (c) issue safety critical grade licences to persons meeting the required railway safety standards.

(3) The board must determine a policy for the registration of training institutions, taking into account all relevant factors, including—

- (a) the nature and level of training required for individual safety critical grades;
- (b) qualifications already recognised within the national qualification framework or similar systems applicable to individual safety critical grades;
- (c) the nature of assessment and evaluation;
- (d) the need for on-going training and re-training;
- (e) the availability of potential service providers in a specific geographical area to provide the required services;
- (f) the impact on the availability of human resources if requirements are excessive;
- (g) the financial implications for employees and employers;
- (h) the business processes required for a potential applicant to successfully and sustainably render all services required over the full period of registration;
- (i) reporting requirements by a registered service provider;
- (j) circumstances under which a registration may be suspended or revoked; and
- (k) the Regulator's capacity and requirements to continuously and effectively monitor and evaluate a registered service provider.

(4) The Regulator must publish the policy for the registration of training institutions on its website.

(5) An applicant for registration must, when submitting its application, pay the application fee determined by the Minister in accordance with

section 69(a).

(6) The Regulator must, when considering an application by a potential training institution for registration, take all relevant factors into account, including—

- (a) the applicant's experience in providing training and assessment;
- (b) the applicant's ability to render all services required over the full period of registration;
- (c) whether the training to be offered by the applicant is recognised under a national qualification framework or similar system;
- (d) the extent to which the applicant can separate its training and assessment services from its operational divisions; and
- (e) the applicant's ability to report and respond to queries of the Regulator for all training and assessment services.

(7) An operator who has been registered as a training institution may offer services to its own employees, but those employees may not receive any benefit, privilege or advantage that is not available to participants who are not employees of that training institution.

(8) No person may perform work in a safety critical grade position unless he or she is in possession of a relevant safety critical grade licence issued by a registered training institution.

(9) No person may be appointed or required to perform work in a safety critical grade position, unless such person is in possession of a relevant safety critical grade licence issued by a registered training institution.

(10) Any person, including a holder of a safety permit, who willfully contravenes subsection (8) or (9), is guilty of an offence.

Railway safety standards

35. (1) Despite any other law, the Minister may, by notice in the *Gazette*, prescribe railway safety standards applicable to any railway operation, specifying—

- (a) the contents of the railway safety standards;
- (b) the category of safety permit holders or category of persons to which the railway standards apply;
- (c) the circumstances under which such safety permit holder or persons may apply for deviation or exemption from the railway safety standards;
- (d) the sanctions in respect of non-compliance with such railway safety standards, including the suspension or revocation of any safety permit issued or the withdrawal of any exemption granted in terms of section 4.

(2) The Regulator or an operator may propose railway safety standards for safe railway operations to the Minister, but only if—

- (a) such railway safety standards have been developed, published, specified or determined by any other organ of state;
- (b) such railway safety standards are applicable to the railway environment;
- (c) such railway safety standards are not in conflict with or incompatible with any standards made by the Minister in terms of subsection (1);
- (d) the procedure in subsection (3) has been complied with; and
- (e) such railway safety standards meet the requirements of the legislation governing that other organ of state.

(3) Prior to proposing any railway safety standards contemplated in subsection (2), the Regulator or the operator must—

- (a) by notice in the *Gazette*, cause the draft railway safety standards to be published for public comment, together with an explanatory memorandum in respect thereof;
- (b) consult the Department, any relevant organ of state and other key stakeholder directly affected on the proposed railway safety standards; and
- (c) consider any submissions received.

(4) Notwithstanding any sanction provided for in this Act, any person, including a safety permit holder, who conducts railway operations without complying with the railway safety standards made in terms of this section, is guilty of an offence.

(5) In the event of a conflict between a railway safety standard or railway safety standard specification made or issued in terms of a regulation or notice under this Act, and a standard or specification made in terms, of or under, any other Act, the regulation or notice made in terms of this Act prevails to the extent of that conflict.

Safety management system

- 36.** (1) The board must determine—
- (a) the form and content of the safety management system that is required for the different categories of safety permits;
 - (b) the form, content and manner of submission of the safety management system report; and
 - (c) the circumstances under which the Regulator may require the holder of a safety permit to revise or amend a safety management system or safety

management system report.

(2) The board must from time to time evaluate the efficacy of the safety management systems and safety management systems reports.

(3) The Regulator must publish any determination made in terms of subsection (1) on its website.

Consultative Forum

37. (1) The Regulator may establish a consultative forum as contemplated in section 7(2)(a).

(2) The Consultative Forum subject to subsection (3) determines its own agenda, rules and procedures, and elects its own functionaries.

(3) The Consultative Forum must deal with any matter placed on the agenda by the Regulator or any party.

(4) Membership of, and participation in, the Consultative Forum is voluntary.

(5) The CEO must designate an employee of the Regulator to serve as permanent secretary of the Consultative Forum.

(6) The Consultative Forum may, with the concurrence of the Regulator, establish forums at local level.

(7) The Regulator provides the facilities and administrative support for the Consultative Forum.

(8) The permanent secretary referred to in subsection (5) must annually submit a report on the activities of the Consultative Forum to the board.

CHAPTER 5

RAILWAY SAFETY INFORMATION AND MONITORING SYSTEM

National railway safety information and monitoring system

38. (1) The Regulator must establish and maintain a national information and monitoring system regarding safe railway operations within the Republic.

(2) The system must include—

- (a)** a register of safety permit holders;
- (b)** a register of railway occurrences;
- (c)** information on actions, arrangements, processes and procedures implemented by every safety permit holders to ensure safety within its area of operations;
- (d)** penalty management information;
- (e)** audit and inspection management information;
- (f)** compliance and enforcement details;
- (g)** a register recording the Regulator's monitoring operations and the results thereof;
- (h)** a railway safety-related infrastructure asset register; and
- (i)** any other matter demonstrably necessary to promote safety.

(3) The Regulator may, in writing, require a safety permit holder to, within a specified time or on a regular basis, provide the Regulator with relevant data, information, documents, samples or materials in respect of the matters contemplated in subsection (2) specified by the Regulator, and the Regulator may

monitor the use, application, execution or operation of the data, information, documents, samples or materials so submitted for purposes of ensuring compliance with the Act and safety standards.

(4) The Regulator may, in addition to the function of information capturing, develop the system to provide for additional functions and uses contemplated in this Act, or for furthering the efficient performance of its functions.

Protection of information

39. (1) The Regulator must protect all information submitted to it by an applicant for a safety permit or contemplated in section 38(3), and keep such information confidential unless—

- (a) such information is already in the public domain;
- (b) it is ordered by a court of law or an investigator contemplated in section 50(1) to disclose such information;
- (c) authorised or mandated by this Act or any other legislation to disclose such information; or
- (d) the disclosure complies with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

(2) Subsection (1) applies with the necessary changes to a person conducting an independent review of the information supplied by an applicant to the Regulator for purposes of a safety permit under section 30.

CHAPTER 6

ENFORCEMENT

Railway safety inspector

40. (1) The CEO may appoint a person meeting the requirements in respect of suitability and training approved by the board, as a railway safety inspector to perform the functions contemplated in section 41.

(2) The Regulator must, prior to a railway safety inspector exercising any power or performing any function in terms of this Act, provide that inspector with a certificate of appointment signed by the CEO.

(3) The railway safety inspector, in conducting any inspection or investigation in terms of this Act—

(a) must show his or her certificate of appointment to any person who—

(i) is likely to be affected by the inspector's actions; or

(ii) requests to see that certificate;

(b) may exercise the powers conferred on a peace officer by the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(4) Any person who willfully hinders the railway safety inspector in the exercise of his or her powers or the performance of his or her duties in terms of this Act, is guilty of an offence.

Powers and duties of railway safety inspector

41. (1) The railway safety inspector may, subject to sections 42, 43 and 44, conduct an inspection at any place or premises in order to determine whether the provisions of this Act have been complied with through—

- (a) a routine compliance inspection in accordance with section 42; or
- (b) an enforcement inspection in accordance with section 43.

(2) The Regulator may agree on a protocol in order for an inspector to conduct inspections in accordance with section 42 with any operator, in order to facilitate the expeditious and orderly execution of an inspection.

Routine compliance inspection

42. (1) For the purposes of section 41(1)(a), the railway safety inspector may at any reasonable time and without prior notice, enter and inspect any premises of the railway safety permit holder other than a private residence, having regard to the protocol contemplated in section 41(2), if any.

(2) Upon entry to such premises in terms of subsection (1), an inspector may, after having identified himself or herself to the person in control of such premises—

- (a) require any person at the premises to—
 - (i) identify, point out or demonstrate any object or combination of objects, or system, related to the safety permit or standard applicable to such premises;
 - (ii) produce to him or her any book, record or other document relevant to

the inspection in the possession of, or under the control of, that safety permit holder, its employee or its agent;

- (iii) furnish him or her with such information in respect of that safety permit at such premises and in such a manner as the inspector may determine;
- (b) prohibit the removal or destruction of any object, system, digital data, book, record or other document relevant to the inspection in the possession of or under the control of that safety permit holder, employee or agent;
- (c) photograph or otherwise record the attributes of any object or system, or examine or make extracts from or copies of any such data, book, record or other document relevant to the inspection;
- (d) seize and retain any such data, book, record or other document in the premises to which any charge of non-compliance or contravention of this Act or a standard may relate, but the person from whose possession any object, system, data, book, record or other document was taken, must at his or her request and at his or her expense, forthwith be allowed to photograph or otherwise record the attributes of any object or system or to make copies thereof or extracts therefrom under the supervision of the inspector concerned.

(3) Any person who willfully removes or destroys any object, system, digital data, book, record or other document in respect of which an inspector has issued a prohibition contemplated in subsection (2) (b), is guilty of an offence.

(4) An inspection contemplated in subsection (1) may be conducted by an inspector without a warrant.

Enforcement inspection

43. (1) An inspector may, on the authority of a warrant, enter and inspect any premises if he or she suspects that an offence is or has been committed in terms this Act.

(2) An inspector must before commencing with an inspection contemplated in subsection (1)—

- (a) if the owner, or person in control, of the premises to be searched is present—
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand an exact copy of the warrant and of this section to that person or to the person named in it; or
- (b) if no person is present, affix an exact copy of the warrant at the entrance to the premises in a prominent and visible place.

(3) An inspector may, for purposes of subsection (1) and subject to subsection (2)—

- (a) enter and search any premises;
- (b) search any person on those premises if there are reasonable grounds for believing that the person has personal possession of an object, a system, data, book, document or record that has a bearing on the inspection;
- (c) examine any object, system, data, book, document or record that is on or in those premises that has a bearing on the inspection;
- (d) request any person to unlock or otherwise provide unhindered access to any safe, storage facility or other receptacle, or to point out any other person on

the premises who can do so;

- (e) request information about any object, system, data, book, document or record;
- (f) photograph or otherwise record the attributes of any object or system, or take extracts from, or making copies of, any book, document or record, that is on or in the premises and that has a bearing on the inspection;
- (g) use any computer system on the premises that has a bearing on the inspection, or require assistance from any person on the premises to use that computer system, to—
 - (i) search any data contained in that system; or
 - (ii) reproduce any record from that data;
- (h) seize any output from that computer for examination and copying; and
- (i) attach and if necessary, remove from the premises for examination and safe-keeping anything that has a bearing on the inspection: Provided that the person from whose possession any object, system, data, book, record or other document was taken, must at his or her request and at his or her expense, forthwith be allowed to record or make copies thereof or extracts therefrom under the supervision of the inspector concerned.

(4) The warrant contemplated in subsection (1) may only be issued by a judge or a magistrate if it appears from the information given by the inspector under oath or affirmation that—

- (a) there are reasonable grounds for suspecting that a contravention of the Act has occurred or is occurring;
- (b) a search of the premises is likely to yield information pertaining to the alleged contravention; and

64

(c) the search is reasonably necessary for the purposes of enforcing the Act.

(5) The warrant must—

(a) identify the premises that may be entered and searched; and

(b) specify the parameters within which the inspector may perform an entry, search or seizure.

(6) The warrant may be executed only during the hours of 08h00 and 17h00 of a day other than a Saturday, Sunday or public holiday, unless the judge or the magistrate who issued it authorises that it may be executed at any other time that is reasonable in the circumstances.

(7) The warrant is valid only until—

(a) the warrant is executed;

(b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;

(c) the purpose of issuing it has elapsed; or

(d) the expiry of one month after the date it was issued, whichever occurs first.

(8) An inspector who conducts an inspection in terms of this section may be accompanied and assisted by one or more police officers.

(9) An inspector and any police officer accompanying him or her must, when entering and searching any premises in terms of this section, conduct that entry and search with strict regard to decency and every person's right to dignity, freedom, security and privacy.

(10) A police officer who is assisting an inspector in terms of subsection (4) may use necessary force to overcome resistance by any person to the entry, search or seizure, including—

(a) breaking a door or window of the premises; or

(b) breaking any lock or other barrier which prevents the search of any safe, storage facility or other receptacle on the premises.

(11) Before using force in terms of subsection (10), a police officer must audibly demand admission or access and must announce the purpose of entry, unless it is reasonable to believe that doing so may induce someone to destroy, dispose of or conceal an article, document or record that forms part of the search or is otherwise relevant to the search.

(12) A person may refuse to permit the removal of an article, document or record on the grounds that it contains privileged or protected information, but that person may not cause such article, document or record to be amended, altered or destroyed until the inspector has been afforded a reasonable time to act under subsection (13), but any person who wilfully does so, is guilty of an offence.

(13) If the owner or person in control of an object, system, document or record refuses to give that object, system, document or record to the inspector conducting the search, that inspector may request the registrar or sheriff of the High Court that has jurisdiction, to attach and remove that object, system, document or record for safe custody until a court determines whether or not the information contained in it is privileged or protected.

Formalities of inspections

44. (1) During any search, only a female inspector or female police officer may search a female person and only a male inspector or male police officer may search a male person.

66

(2) An inspector who removes anything from premises being searched must—

- (a) issue a written receipt for it to the owner of, or person in control of, the premises in sufficient detail to identify each specific item so removed; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed to the person from whose control it was taken, unless it is to be used as evidence in any subsequent proceedings, in which case the inspector must forthwith, in writing, inform the person from whose control it was taken of that fact.

(3) A person who submits any information to an inspector or makes any statement to him or her, may do so orally, and he or she may—

- (a) indicate to the inspector that he or she claims confidentiality in respect of any information or statement so provided; and
- (b) provide the inspector with an explanation why the information or statement is confidential.

(4) An inspector must consider any claim contemplated in subsection 3(a) and notify the claimant whether or not that information or statement will be treated as being confidential, and if such information is confidential, keep such information confidential unless—

- (a) such information is already in the public domain;
- (b) the inspector is ordered by a court of law to disclose such information; or
- (c) the disclosure complies with the Promotion of Access to Information Act, 2000, or the Protection of Personal Information Act, 2013.

Duty to assist railway safety inspector

45. (1) When an inspector enters any property contemplated in sections 42 and 43, the operator, owner or manager and each employee working there must, subject to subsections (2), (3) and (4) assist the inspector by furnishing him or her with answers to questions and also by providing him or her with any facility that the inspector may reasonably require.

(2) A person who enters and searches premises under sections 42 and 43, must before questioning anyone—

- (a) advise the person to be questioned of the right to be assisted at the time by a legal practitioner as well as of his or her rights contemplated in subsection (3); and
- (b) allow that person a reasonable opportunity to exercise those rights.

(3) A person questioned by an inspector must answer each question to the best of his or her ability but such person is not required to answer any question if the answer may be self-incriminating.

(4) An inspector must prior to questioning a person in terms of subsection (1), in the presence of that person, in writing, record the date, time and place, and the name of that person, who has so been advised in accordance with subsection (2)(a).

Powers of railway safety inspector to deal with unsafe conditions

46. (1) Subject to subsection (3), if the railway safety inspector has good reason to believe that a condition or activity is a threat or might be a threat to safe railway operations, the railway safety inspector may submit a written report to the affected operator stating the railway safety inspector's reasons for believing that

the condition or activity is a threat or might be a threat to safe railway operations, and allow the operator a reasonable opportunity to respond to the report.

(2) If the railway safety inspector is not satisfied with the response from the operator or if the operator fails to respond to the report, the railway safety inspector may, in writing, issue a directive—

- (a) restricting or suspending that condition or activity, or the railway operation itself;
- (b) placing a condition on the continuation of that activity; or
- (c) specifying what action must be taken within a specified time by that person to remove the threat.

(3) If there is a threat to safe railway operations that poses an immediate or imminent risk of serious danger to persons, property or the environment, the railway safety inspector may despite subsections (1) and (2), after engaging orally with the operator or a person who ostensibly is in charge of the relevant premises or rolling stock, issue a written directive contemplated in subsection (2).

(4) Subject to section 56(3), any person who fails or refuses to comply with a directive within the specified period, is guilty of an offence, unless an appeal has been lodged in terms of subsection (5) which has not yet been finalised.

(5) Any person who is aggrieved by a directive issued in terms of subsection (3), may lodge an appeal contemplated in section 53.

(6) The right contemplated in subsection (5) does not prevent a person from obtaining urgent relief from a competent court of law.

(7) The railway safety inspector may issue compliance notices and penalties contemplated in section 66.

CHAPTER 7

RAILWAY OCCURRENCE REPORTING AND INVESTIGATIONS

Railway occurrence

47. (1) An operator must as soon as practicable after a railway occurrence—
- (a) secure the scene of the railway occurrence;
 - (b) prevent the movement or removal of rolling stock or infrastructure which has a direct or indirect bearing on the railway occurrence, unless—
 - (i) such rolling stock or infrastructure needs to be moved in order to provide medical help to any injured person; or
 - (ii) a full and accurate record of all salient facts relating directly or indirectly to the railway occurrence has been made and any evidence or other relevant material has been secured for later inspection, analysis or investigation; and
 - (c) record the names and contact details of all persons who may provide evidence or information having a direct or indirect bearing on the railway occurrence.
- (2) A person who moves or removes rolling stock or infrastructure at the scene of a railway occurrence in contravention of subsection (1)(b), is guilty of an offence.
- (3) A person in control of the scene of a railway occurrence which is the subject of an investigation must—
- (a) allow the person conducting an investigation in terms of this Act to remove

any articles or objects pointed out by an investigator contemplated in section 50, 51 and 52;

- (b) allow the inspection of the documents requested by that investigator, including the making of copies thereof; and
- (c) furnish that investigator with any information which is under that person's control.

Reporting of railway occurrence

48. (1) An operator must report a railway occurrence to the Regulator in the time, manner and form prescribed by the Minister.

(2) An operator who fails to report an occurrence contemplated in subsection (1), is guilty of an offence.

Categories of railway occurrence investigations

49. (1) For purposes of this Chapter, the Minister must prescribe the following categories of investigations—

- (a) a major investigation, to be conducted by an independent investigator; and
- (b) a standard investigation, to be conducted by the relevant operator.

(2) For purposes of categorisation, the Minister must take into account all relevant matters, including—

- (a) loss of life or potentially life-threatening injuries to persons;
- (b) minor injuries to persons;
- (c) the extent of the disruption of the normal flow of railway transport;
- (d) the frequency of railway occurrences reported by the same operator;

- (e) the frequency of railway occurrences involving the same rolling stock, infrastructure or station;
- (f) the extent of ancillary damage caused to property belonging to persons other than the operator, as a result of the railway occurrence;
- (g) the extent of damage to rolling stock, infrastructure or a station owned by the operator; and
- (h) any other matter relevant to the investigation of railway occurrences.

Major investigation

50. (1) The Minister must, in the event of a railway occurrence requiring a major investigation contemplated in section 49(1)(a), by notice in the *Gazette*, appoint an independent institution or panel of persons (in this section referred to as "the investigator") who have no direct or indirect connection with, or interest in, any person or operator involved in the railway occurrence, to conduct an investigation on that particular railway occurrence.

(2) The notice contemplated in subsection (1) must contain—

- (a) the name of the institution or the names of the persons serving on the panel referred to in that subsection;
- (b) the terms of reference of the investigation;
- (c) the date by when the investigator's findings on the causes and circumstances of the railway occurrence and recommendations relating thereto must be submitted to the Minister;
- (d) which, if any, of the provisions of the Commissions Act, 1947 (Act No. 8 of 1947) apply to the investigator with the necessary changes, subject to such

modifications and exemptions as may be specified in the notice;

- (e) measures for the protection of personal information of any person directly or indirectly involved with the railway occurrence; and
- (f) any other matter which the Minister may deem necessary for the expeditious and effective finalisation of the investigation.

(3) The Department must provide all necessary financial, administrative, logistical and legal support to the investigator.

(4) The investigator may submit interim reports to the Minister.

(5) The mandate of the investigator ends upon submission of the final report to the Minister and the investigator's duties and authority have then come to an end.

(6) The investigator may not publish any report or disclose any information to the public, without the authorisation of the Minister, unless it is demonstrably in the interests of justice or of the public necessary to do so.

(7) The Minister must, after receipt and consideration of the investigator's final report, without undue delay—

- (a) publish the report in any manner the Minister deems fit;
- (b) as far as may be practicable, give effect to the recommendations by the investigator; and
- (c) if recommended by the investigator, refer the report to any regulatory or prosecutorial entity.

(8) Subject to subsection (9), this section does not prevent an operator or the Regulator from conducting its own internal investigation into a railway occurrence, but—

- (a) the investigation contemplated in subsection (1) and the investigator at all

- times and in all respects, takes precedence over an internal investigation, including in respect of access to eye witnesses and evidence;
- (b) such an internal investigation may in no way interfere, hinder or impact on the investigation contemplated in subsection (1);
 - (c) the investigator may instruct the operator to provide full and unfettered access to any records produced by, or other evidence in the possession of, the operator relating directly or indirectly to the occurrence;
 - (d) the person conducting the internal investigation may not conceal, alter or destroy any records produced by, or other evidence in the possession of, the operator relating directly or indirectly to the occurrence;
 - (e) the person conducting the internal investigation must confidentially inform the investigator of any information or records he or she comes into possession of or of which he or she becomes aware, if that person suspects or knows that the investigator is not aware of such information or record;
 - (f) the findings, conclusions, recommendations or results relating to the investigation may not be released into the public domain until the report by the investigator has been published as contemplated in subsection (7)(a).

(9) The Minister, if he or she deems it necessary, may, in writing, prohibit an operator or the regulator from conducting an internal investigation contemplated in subsection (8).

(10) Any person who wilfully interrupts the proceedings of an institution or panel appointed in terms of subsection (1) or who wilfully hinders or obstructs any such institution, panel or an investigator in the performance of its, his or her functions, is guilty of an offence.

(11) Any person who wilfully fails to comply with subsection (8) (b),

(c), (d), (e) or (f), is guilty of an offence.

Standard investigation

51. (1) In the event of a railway occurrence requiring a standard investigation contemplated in section 49(1)(b) and subject to subsection (4), an operator must conduct an investigation in respect of that railway occurrence.

(2) The operator must furnish an occurrence investigation report to the Regulator in the prescribed time frame, manner and form.

(3) The Regulator may, after consideration of the occurrence investigation report, require the operator to assess and report on the impact of the implementation of the recommendations made by the operator.

(4) In the event of a railway occurrence requiring a standard investigation as contemplated in section 49(1)(b) and involving more than one operator, all operators involved must conduct an individual investigation in accordance with subsection (5) and (6).

(5) The operators contemplated in subsection (4), must within a reasonable period of time, separately conduct their respective investigations, and every operator must, upon completion of its individual investigations, furnish an occurrence investigation report to the Regulator in the prescribed time frame, manner and form.

(6) If after consideration of the separate reports—

(a) it seems that the operators have colluded in conducting their respective investigations and in submitting their reports or have not submitted reports which accurately reflect the details of the railway occurrence or which

sufficiently address the issues impacting on railway safety, the Regulation must request the Minister to exercise his or her powers contemplated in subsection (7); or

- (b) the Regulator is satisfied that the reports accurately reflect the details of the railway occurrence and sufficiently address the issues impacting on railway safety, the Regulator must decide whether further action needs to be taken, and if so, the Regulator may—
- (i) release the reports received to all operators concerned in order for them to provide the Regulator with comments, but only if the Regulator allows the operator or operator's concerned to submit replies to those comments;
 - (ii) request the Minister to exercise his or her powers contemplated in subsection (7); or
 - (iii) take any steps provided for in law it deems necessary.

(7) The Minister may in his or her discretion instruct an operator not to conduct a standard investigation, if the Minister deems it appropriate to order an investigation contemplated in sections 50 or 52, or if the Minister regards a minor investigation to have been inadequate.

Commission of Inquiry

52. Despite anything to the contrary in this Chapter, the Minister may in his or her sole discretion request the President of the Republic to appoint a commission of inquiry in terms of the Commissions Act, 1947(Act No. 8 of 1947), and in the event that any other investigation has already begun in terms of this Part,

76

such other investigation must immediately upon publication of a proclamation in the *Gazette* by the President establishing a commission of inquiry, terminate its investigation and submit all evidence or other relevant information in its possession to that commission.

DRAFT

CHAPTER 8**APPEALS****Appeal to CEO**

53. (1) Any person, other than an employee of the Regulator or a supplier of goods or services to the Regulator, whose rights or legitimate expectations are adversely affected by a decision or directive of a railway safety inspector or any other employee of the Regulator, taken on behalf of the Regulator in the exercise of any power or performance of any duty in terms of this Act, may subject to subsection (7) appeal against that decision to the CEO.

(2) Such an appeal must—

- (a) be lodged within 30 days from the date on which that decision was made known or of the directive issued by the railway safety inspector or employee, as the case may be, or such later date as the CEO permits; and
- (b) set out the grounds of the appeal.

(3) After considering the grounds of appeal and the railway safety inspector's or the employee's reasons for the decision, the CEO must within the prescribed time—

- (a) confirm, set aside or vary the decision; or
- (b) substitute the decision of the railway safety inspector with the decision of the CEO.

(4) The CEO may not delegate his or her duties or powers in terms of this section to an employee of the Regulator below the rank of head of a division.

(5) The CEO must keep a record of an appeal lodged in terms of

this section, and must—

- (a) on request and at no charge, provide a party to the appeal with a copy of the record; and
- (b) submit the record to the Transport Appeal Tribunal if the matter is appealed to that Tribunal in terms of section 55.

(6) In instances where –

- (a) it is unclear whether a decision was taken by the CEO or an employee of the Regulator;
- (b) the CEO or any person to whom he or she has delegated this function has a conflict of interest or is for any other reason not able to hear an appeal in terms of this section; or
- (c) a hearing of the appeal is urgent,

an appeal may be lodged directly with the board appeals committee for purposes of a hearing contemplated in section 54.

(7) The right contemplated in subsection (1) does not prevent a person from obtaining urgent relief from a competent court of law.

Appeal to board appeals committee

54. (1) A person other than an employee of the Regulator or a supplier of goods or services to the Regulator, whose rights are adversely affected by a decision of the CEO, in the exercise of any power or performance of any duty in terms of this Act, or in respect of an appeal contemplated in section 53, may appeal against that decision to the board.

(2) Such person must lodge the appeal and set out the grounds of

appeal within 30 days from the date on which that decision was made known or such later date as the chairperson of the board permits.

(3) After considering the grounds of appeal and the reasons for the decision of the CEO, the board must within the prescribed time—

- (a) confirm, set aside or vary the decision; or
- (b) substitute the decision of the CEO with the decision of the board.

(4) The board may delegate its duties or powers in terms of this section only to a board committee, and if an employee of the Regulator serves on such a committee, he or she must recuse him or herself from the committee for any appeal hearing.

(5) The board must keep a record of an appeal lodged in terms of this section, and must—

- (a) on request and at no charge, provide a party to the appeal with a copy of the record; and

(6) submit the record to the Transport Appeal Tribunal if the matter is appealed to that Tribunal in terms of section 55. The board may for purposes of this section appoint a standing board appeals committee chaired by a member of the board, together with two persons who are not members of the board or employees of the Regulator, of whom at least one must be a legal practitioner, and the decision of board appeals committee is deemed to be the decision of the board.

(7) In instances where –

- (a) a member of the board appeals committee has a conflict of interest or is for any other reason not able to hear an appeal in terms of this section; or
- (b) a hearing of the appeal is urgent,

an appeal may be lodged directly with the Transport Appeal Tribunal for purposes

of a hearing contemplated in section 55.

(8) The right contemplated in subsection (1) does not prevent a person from obtaining urgent relief from a competent court of law.

Appeal to Transport Appeal Tribunal

55. (1) A person who is aggrieved by a decision regarding an appeal in terms of section 54 may lodge an appeal against that decision in terms of section 12 of the Transport Appeal Tribunal Act, 1998, to the Transport Appeal Tribunal established by section 3 of that Act.

(2) Any appeal lodged in terms of subsection (1) must comply with the Transport Appeal Tribunal Act, 1998, and any regulations promulgated thereunder.

CHAPTER 8**GENERAL AND MISCELLANEOUS*****Part A******Offences and penalties*****Offences and penalties**

56. (1) A person who commits an offence in terms of sections 30(10), 35(4), 42(3), 43(12), 46(4) or 47(2), is liable on conviction, to a fine or imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.

(2) A person who commits an offence in terms of sections 34(10), 40(4), 48(2), 50(10) or 50(11), is liable on conviction to a fine or imprisonment for a period not exceeding five years, or to both a fine and such imprisonment.

(3) No person may be prosecuted in respect of an offence contemplated in subsections (1) or (2) if the Regulator has given notice that it is going to issue a compliance notice or a penalty provided for in section 70 or has done so, and in the event that a prosecution is nevertheless instituted, such person may raise a plea that he or she was already convicted in respect of that charge.

Offences in relation to employer or principal

57. An employer or principal is liable to conviction for an offence in terms of this Act if an employee or agent of that employer or principal commits such an

offence with the express or implied permission of that employer or principal, irrespective of whether that employee or agent has been convicted in respect of that offence.

Liability of director, trustee or member of juristic person

58. A person who is or was a director, trustee or member of a juristic person at the time of the commission by that juristic person of an offence in terms of this Act, is guilty of the said offence, and is liable, on conviction, to the penalty specified if the offence in question resulted from the failure of the director, trustee or member to take all steps that were necessary under the circumstances to prevent the commission of the offence.

Enquiry in respect of compensation and award of damages

59. (1) Where a person is convicted of an offence in terms of this Act and—

- (a) another person has suffered harm or loss as a result of the act or omission constituting the offence; or
- (b) damage has been caused to property or to the environment, a Court may in the presence of the convicted person enquire, without pleadings, into the harm, loss or damage and determine the extent thereof, in the same proceedings—
 - (i) at the written request of the person who suffered the harm or loss; or
 - (ii) at the written request of the Minister or the Regulator in respect of the

damage caused to property or the environment.

- (2) After making a determination in terms of subsection (1), the Court may—
- (a) award damages for the loss or harm suffered by the person referred to in subsection (1)(a) against the convicted person;
 - (b) order the convicted person to pay for the cost of any remedial measures to be taken; or
 - (c) order that the convicted person implement remedial measures.

Part B

Regulations

Ministerial power to make regulations and issue notices

60. (1) The Minister may, subject to subsections (2) and (3) make regulations by notice in the *Gazette* as to any matter required or permitted to be prescribed in terms of this Act including—

- (a) matters provided for in sections 61 to 67; or
- (b) generally all matters that are necessary to prescribe for the effective administration of this Act.

(2) Any regulation or notice made in terms of this Part may provide that—

- (a) the contravention thereof, or failure to comply therewith, is an offence; and
- (b) a person convicted of that offence is punishable with a prescribed fine or a term of imprisonment not longer than the period so prescribed, but the prescribed

fine may not at the time of publication of that notice, exceed the amount prescribed in respect of one year of imprisonment determined in accordance with the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

(3) The Minister may request the Regulator to propose draft regulations for his or her consideration, and any stakeholder may submit representations to the Minister on such proposed regulations.

(4) The Minister must, before making any regulations in terms of this Act or issuing a notice in terms of section 66—

- (a) publish a notice in the *Gazette*—
 - (i) setting out the draft regulations or draft notice, as the case may be; and
 - (ii) inviting written comments to be submitted on the proposed regulations or notice, specifying an address to which, and a date before which, the comments may be submitted, which date may not be earlier than 30 days after publication of the notice;
- (b) implement further steps, if any, which may in his or her opinion be appropriate to bring the contents of the proposed regulations or notice to the attention of interested persons; and
- (c) consider all comments received on or before the date specified in paragraph (a)(ii).

(5) When making regulations or issuing a notice, the Minister must take into account—

- (a) the impact of such regulations or notice on railway safety and operations;
- (b) the financial burden created on operators and if applicable, persons in safety critical grade positions, in respect of compliance costs;
- (c) the balance between the need for safe railway operations and the economic

viability of new measures to achieve safe railway operations; and

- (d) whether the measures must apply both to traditional railway operations as well as rapid rail operations.

Regulations regarding design, construction, alteration and new operations

61. The Minister may make the following regulations relating to the design, construction, alteration and new operations of railway or railway operations that have an impact on safe railways or railway operations:

- (a) The types of new or proposed construction or operation which require the Regulator's approval;
- (b) the criteria or requirements to be met for obtaining the Regulator's approval;
- (c) the procedure for obtaining the Regulator's approval, including the noting of objections;
- (d) the design, construction, manufacture, alteration, commissioning, maintenance and operation of rolling stock, infrastructure and stations;
- (e) the safety of persons, including persons with disabilities, on board stationary or moving rolling stock, infrastructure or at a station;
- (f) the provision of closed circuit cameras or other monitoring devices on board a train;
- (g) the conveyance of dangerous goods by rail;
- (h) new works and operations;
- (i) testing and commissioning; and
- (j) technologies.

Regulations regarding infrastructure or activity affecting safe railway operations

62. The Minister may, after consultation with the members of the Executive Council responsible for transport in the various provinces, make regulations on the following matters to the extent that they affect safe railways and railway operations and relate to property owned by safety permit holders, and is not inconsistent with an Act of Parliament, namely—

- (a) mines and any other excavations, to the extent that the Mine Health and Safety Act, 1996, and the Mineral and Petroleum Resources Development Act, 2002, do not apply;
- (b) drainage under or alongside tracks;
- (c) any construction above, below or adjacent to a railway track within the area used by or reserved for railway activities;
- (d) storage of materials adjacent to a railway track;
- (e) road level-crossings, to the extent that road safety legislation does not apply; and
- (f) the unlawful occupation of property owned by safety permit holders which renders railway operations unsafe or has the potential to render them unsafe, subject to any other law governing unlawful occupation or eviction from property unlawfully occupied.

Regulations regarding assessment and information

63. (1) The Minister may make regulations in respect of the contents, class, type, time period and format of data to be submitted to the Regulator for assessment of the compliance of an operator with the provisions of this Act.

(2) The Minister may make regulations in respect of the information which the Regulator must publish for public information or public consultation.

Regulations regarding railway occurrence

64. The Minister may make regulations in respect of railway occurrences, in addition to those contemplated in section 48(1), 49(1) and 51(2), including—

- (a) other activities which constitute railway occurrences, and the offences and penalties in respect thereof;
- (b) steps to be taken by an operator after a railway occurrence in addition to those contemplated in section 47(1); and
- (c) procedures, processes and other matters relating to major investigations.

Notice regarding fees

65. (1) The Minister must annually, by notice in the *Gazette*, determine the fees payable in respect of the safety permits contemplated in section 30(1).

(2) The Minister may, in consultation with the Minister of Finance, by notice in the *Gazette*, determine fees in respect of any prescribed

88

service rendered by the Regulator in respect of—

- (a) new works and operations;
- (b) technologies;
- (c) testing.

DRAFT

Regulations regarding compliance notices and penalties

66. (1) The Minister may, by notice in the *Gazette*, make regulations to provide that the Regulator may, in respect of a person who fails to comply with any provision of this Act, including any railway safety standard or condition of a safety permit imposed in terms of section 31—

- (a) issue a compliance notice to the person so failing to comply; and
- (b) determine a penalty in respect of non-compliance with a notice under paragraph (a).

(2) Penalties imposed in terms of the regulations made under subsection (1) may differ between operators according to criteria prescribed by the Minister, and may include provisions providing for the reduction of penalties in certain circumstances.

(3) The proceeds of penalties paid in terms of or under this section do not form part of the funds of the Regulator, and the Regulator must pay such proceeds into the National Revenue Fund contemplated in section 213 of the Constitution, 1996.

(4) The Regulator may recover penalties imposed in terms of regulations made under subsection (1) by civil action for disposition as contemplated in subsection (3).

(5) Any person aggrieved by a decision of the Regulator to impose such a penalty may appeal against that decision as provided for in Chapter 8.

Regulations regarding safety critical grades

67. The Minister may, by notice in the *Gazette*, make regulations to provide for the licensing of persons employed in safety critical grade positions, including provisions on—

- (a) railway safety standards to be met for obtaining safety critical grade licences;
- (b) the posts or job descriptions of persons who need to be licensed;
- (c) the registration of training institutions;
- (d) criteria to be taken into account by the Regulator when considering an application for registration of training institution; and
- (e) information to be supplied in respect of the database contemplated in section 34(1)(c).

Part C

Transitional, repeal and commencement provisions

Transitional provisions and savings

68. (1) The Minister must, within one year of commencement of this Act, review all regulations or notices contemplated in subsection (2) and, unless the Minister within that one year period confirms, by notice in the *Gazette*, that the regulations or notices remain in force, such regulations or notices must cease to be of force or effect at the end of that one year period.

(2) Subject to subsection (1), all regulations or notices properly made or issued in terms of or under the National Railway Safety Regulator Act, 2002, remain in force as if they had been made in terms of or under this Act.

(3) Any co-operative agreement or arrangement concluded by the Regulator in terms of section 6(2) of the National Railway Safety Regulator Act, 2002, upon the commencement of this Act, continues to be valid as if it had been concluded in terms of section 7(2)(c).

(4) Upon the commencement of this Act—

- (a) every person permanently employed by the Regulator immediately prior to the commencement of this Act, is regarded as having been appointed in terms of section 24 of this Act, without interruption of service and on the terms and conditions applying to that person immediately prior to the commencement of this Act;
- (b) every person contemplated in paragraph (a) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the commencement of this Act;
- (c) any proceedings against a person which were pending in terms of, or under the National Railway Safety Regulator Act, 2002, immediately before the commencement of this Act, must be disposed of as if that Act had not been repealed; and
- (d) the board of directors referred to in section 8 of the National Railway Safety Regulator Act, 2002, must continue to operate until the appointment of a new board in terms of this Act.

(5) Upon the commencement of this Act—

- (a) all movable, immovable and intellectual property of the Railway Safety Regulator, including all financial, administrative and other records of the Railway Safety Regulator and all documents in the possession of the Railway Safety Regulator, remain that of the Regulator;

- (b) the rights, duties, liabilities and obligations relating to the Railway Safety Regulator remain that of the Regulator;
- (c) the Regulator remains as a litigant in all pending litigation or proceedings;
- (d) all valid and binding agreements entered into by the Railway Safety Regulator remain binding on the Regulator; and
- (e) all funds of the Railway Safety Regulator, immediately before the commencement of this Act, remain that of the Regulator.

(6) All permits issued in terms of, or under, the National Railway Safety Regulator Act, 2002, remain valid as if they had been issued in terms of this Act.

(7) All fees and penalties due or charged in terms of, or under, the National Railway Safety Regulator Act, 2002, are payable to the Regulator on the date when they become due, as if that Act had not been repealed.

(8) The Minister must, not later than the date of commencement of section 34, by notice in the *Gazette*, publish a timetable in respect of persons already appointed to, or performing work in, a safety critical grade position at the time of commencement of that section, specifying the date by which such persons must comply with that section, but such a timetable may not extend beyond two years of the commencement of that section.

(9) Despite section 34 (8) and (9) any person appointed to, or performing working in, a safety critical grade position immediately prior to the commencement of section 34 may, until the date specified in terms of subsection (8), perform work in a safety critical grade position, and be appointed as such, without holding a safety critical grade licence.

(10) Section 38 of the National Railway Safety Regulator Act, 2002,

remains in force despite section 69, as if it had not been repealed, until the date of the commencement of Chapter 8 is fixed in terms of section 70(2).

Repeal and amendment of law

69. The laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in column 3 of that Schedule.

Short title and commencement

70. (1) This Act is called the Railway Safety Act, 2017, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Despite subsection (1), the President may fix different dates in respect of different sections of the Act.

94

SCHEDULE**(Section 69)**

No. and year of law	Title	Extent of amendment
Act No. 16 of 2002	National Railway Safety Regulator Act, 2002	Whole
Act No. 39 of 1998	Transport Appeal Tribunal Act, 1998	<p>Section 1 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998) (herein referred to as the principal Act), is hereby amended by the insertion after the definition of "board" of the following definition:</p> <p><u>" 'chief executive officer' means the person appointed in terms of section 22(1) of the Railway Safety Act, 2017;"</u>.</p>
		<p>Section 11 of the principal Act is hereby amended by the substitution for the section of the following section:</p> <p>"Fees in respect of Appeals</p> <p>11. The Tribunal may not deal with any appeal noted under national land transport legislation, [or] under the Cross-Border Road Transport Act, 1998, <u>or the Railway Safety Act, 2017</u>, unless any such appeal is accompanied by the fees referred to in section 17(1)(a)."</p>
		<p>Section 12 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections:</p> <p>"(1) Subject to the provisions of this Act, the Tribunal must consider an appeal noted with the Tribunal in accordance with the provisions of national land transport legislation, [or] the Cross-Border Road Transport Act, 1998, <u>or the Railway Safety Act, 2017</u>, whereupon the Tribunal may—</p> <p>(a) reject the appeal and confirm the act, direction or decision appealed against; or</p> <p>(b) uphold the appeal, set aside the act, direction or decision appealed against, and—</p> <p>(i) substitute therefor any other act, direction or decision which the board, chief executive officer or the Regulatory Committee, as the case may be, could have performed or given; or</p> <p>(ii) refer the matter which gave rise to the appeal to the board or the Regulatory Committee, as the case may be, for reconsideration; or</p> <p>(c) uphold the appeal partially and vary the act, direction or decision appealed against.</p> <p>(2) No decision taken by the Tribunal under this section may be inconsistent with national land transport legislation, [or] the</p>

No. and year of law	Title	Extent of amendment
		<p>Cross-Border Road Transport Act, 1998, or the Railway Safety Act, 2017, as the case may be.</p> <p>(3) Any act, direction or decision of the Tribunal under subsection (1) (b) (i) or (c) will, except for the purposes of subsection (1), be deemed to be an act, direction or decision of the board, chief executive officer or Regulatory Committee against whose act, direction or decision the appeal was brought."</p>
		<p>Section 13 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>"(a) grant an application for condonation of the late filing of an appeal against the act, direction or decision of the board, the chief executive officer or the Regulatory Committee, as the case may be, provided the appeal is noted in the prescribed manner and within the prescribed period, or refuse such an application; or"</p>