

REPUBLIC OF SOUTH AFRICA

RAILWAY SAFETY BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill
and prior notice of its introduction published in Government Gazette No. 43079 of
6 March 2020)
(The English text is the official text of the Bill)*

(MINISTER OF TRANSPORT)

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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 Railway Safety 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 railway operators in ensuring the safety of railway operations; and

NOTING that 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:—

TABLE OF CONTENTS

CHAPTER 1

INTERPRETATION, APPLICATION AND OBJECTS 5

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

CHAPTER 2

RAILWAY SAFETY REGULATOR 10

5. Railway Safety Regulator
6. Objects of Regulator
7. Functions and powers of Regulator

8.	International co-operation	
9.	Board of Regulator	
10.	Composition of board	
11.	Appointment of board members	
12.	Chairperson and deputy chairperson of board	5
13.	Term of office and conditions of service of board members	
14.	Functions of board	
15.	Disqualification from appointment as board member	
16.	Termination of board membership	
17.	Meetings of board	10
18.	Committees of board	
19.	Conflict of interest of board member or board committee member	
20.	Delegation by board	
21.	Dissolution of board	
22.	Chief executive officer	15
23.	Functions of CEO	
24.	Staff of Regulator	
25.	Limitation of liability	
26.	Documents	
27.	Funds of Regulator	20
28.	Financial year of Regulator	
29.	Reporting to Minister and Parliament	

CHAPTER 3

RAILWAY SAFETY PERMITS

30.	Safety permits	25
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.	Evaluation and registration of training institutions	
36.	Railway safety standards	
37.	Safety management system	35
38.	Consultative forum	

CHAPTER 5

RAILWAY SAFETY INFORMATION AND MONITORING SYSTEM

39.	National railway safety information and monitoring system	
40.	Protection of information	40

CHAPTER 6

ENFORCEMENT

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

CHAPTER 7

RAILWAY OCCURRENCE REPORTING AND INVESTIGATIONS

48. Railway occurrence	
49. Reporting of railway occurrence	
50. Categories of railway occurrence investigations	5
51. Major investigation	
52. Standard investigation	
53. Commissions of inquiry	

CHAPTER 8

APPEALS 10

54. Appeal to CEO	
55. Appeal to board appeals committee	
56. Appeal to Transport Appeal Tribunal	

CHAPTER 9

GENERAL AND MISCELLANEOUS 15

Part A

Offences and penalties

57. Offences and penalties	
58. Offences in relation to employer or principal	
59. Liability of director, trustee or member of juristic person	20
60. Enquiry in respect of compensation and award of damages	

Part B

Regulations and notices

61. Regulations and notices	
62. Regulations regarding design, construction, alteration and new operations	25
63. Regulations regarding infrastructure or activity affecting safe railway operations	
64. Regulations regarding assessment and information	
65. Regulations regarding railway occurrence and railway occurrence investigations	
66. Notice regarding fees	
67. Regulations and procedure regarding compliance notices and penalties	30
68. Regulations regarding safety critical grades and training institutions	

Part C

Transitional, repeal and commencement provisions

69. Transitional provisions and savings	
70. Repeal of law	35
71. Short title and commencement	

CHAPTER 1

INTERPRETATION, APPLICATION AND OBJECTS

Definitions

1. In this Act, unless the context indicates otherwise—	40
“aerial cable-operated transportation system” means a cable transport system with one or two vehicles moving back and forth on a fixed track;	
“board” means the board of the Regulator contemplated in section 9;	
“board appeals committee” means a committee that may be appointed by the board in terms of section 55(6);	45

“**CEO**” means the chief executive officer of the Regulator, appointed in terms of section 22;

“**dangerous goods**” means dangerous goods for transport by road and rail modes as identified and classified in South African National Standard (“SANS”) 10228, issued by the South African Bureau of Standards;

“**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;

“**Mine Health and Safety Act**” means the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

“**Mineral and Petroleum Resources Development Act**” means the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

“**Minister**” means the Minister of Transport;

“**network**” means a system of railway infrastructure elements, including track, civil infrastructure, train control and signalling systems and electric traction infrastructure, which constitutes running lines and any part of a railway yard, marshalling yard, siding, freight terminal, depot or station on which those elements are situated;

“**network operator**” means a person who is ultimately responsible and accountable for the operation, construction 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; or
- (c) an extension to an existing operation that has the potential to substantively increase the risk profile of the operator;

“**operator**” means a network operator, train operator or station operator or any combination thereof, but in the case of a person who is a concessionaire or who operates, constructs, maintains or manages a railway on behalf of another person who owns the relevant assets, that concessionaire or that person who so operates, constructs, maintains or manages that railway is, for purposes of this definition, regarded as being the network operator;

“**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;

“**Promotion of Access to Information Act**” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

“**Protection of Personal Information Act**” means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

“**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 in terms of section 48(1);

“**railway operation**” means the activities performed by a network operator, train operator, station operator, construction train operator, train testing and commissioning operator or any other type of railway operation designated by the Minister by notice in the *Gazette* or any part or combination of them;

“**railway safety inspector**” means a person appointed as a railway safety inspector in terms of section 41(1);

“**railway safety standards**” means standards prescribed under section 36(1);

“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;

“SADC” means the Southern African Development Community established by the Treaty of the Southern African Development Community of 1992;

“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;

“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 68;

“safety management system” means a formal framework contemplated in section 37, 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, and 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 as contemplated in section 37;

“safety permit” means a permit contemplated in section 30;

“station” means a facility for passengers to enter or exit a train, including a railway passenger terminal and a passenger halt, and may include—

(a) passenger modal transfer and commercial activities forming part of the facility; and

(b) any other place that may be prescribed as a station or forming part of a station in terms of section 61(1)(a),

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, but in the case of a person who is a concessionaire or who operates, constructs, maintains or manages a railway on behalf of another person who owns the relevant assets, that concessionaire or that person who so operates, constructs, maintains or manages that railway is, for purposes of this definition, regarded as being the network operator;

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

“this Act” includes any regulation or notice made or issued in terms 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;

“training institution” means the training institution contemplated in section 35;

“Transport Appeal Tribunal” means the Transport Appeal Tribunal established by 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 or the Mine Health and Safety Act 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 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): Provided that such a crane, track or other infrastructure may not be linked to a system or a track that is used by rolling stock, in which case this Act applies; or 5
- (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— 10
- (a) enable 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; 15
 - (d) promote the harmonisation of the railway safety regime of the Republic with the objectives and requirements for safe railway operations of the SADC;
 - (e) prevent the proliferation of laws, policies and approaches to the execution of such laws and policies from materially prejudicing the beneficiaries of railway safety; and 20
 - (f) assist in securing the well-being of the people of the Republic by providing effective, transparent, accountable and coherent governance in respect of railway safety for the Republic as a whole.

Exemption from Act

4. (1) A person may be exempted, upon application in terms of this section, from compliance with any provision of this Act other than this section. 25
- (2) A person may, in the prescribed manner and form, apply to the Minister for an exemption contemplated in subsection (1), which application must be accompanied by—
- (a) a motivation for the application; 30
 - (b) supporting documents as may be prescribed; and
 - (c) such other relevant documents as directed by the Minister.
- (3) The applicant must, in a manner and form as may be requested by the Minister, appoint an independent service provider for that applicant's account, to determine the impact of the proposed exemption. 35
- (4) The Minister must provide the Regulator with a copy of the application contemplated in subsection (2) in order for the Regulator to, within a reasonable time, 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— 40
- (a) publish the application for public comment 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, comments received from the public and other stakeholders and any other documents submitted to him or her, within a reasonable time, make a decision on the application, by taking into account whether— 45
- (a) the granting of the exemption is likely to impact negatively on the safety of the general public; 50
 - (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 purposes 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— 55
- (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;
 - (d) conditions that apply to the exemption, if any;
 - (e) the reasons for granting the exemption;
 - (f) 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
 - (g) 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 terms of this section, in writing, inform the person to whom the 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, upon which 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 terms of 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 that 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 subsection (7) or (10) to be tabled in Parliament—
- (a) within 14 days after publication thereof, if Parliament is then in ordinary session; or
 - (b) within 14 days after the commencement of its next ordinary session, if Parliament is not then in 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 70 of this Act.
- (2) The Public Finance Management Act applies to the Regulator.
- (3) The Regulator must operate and perform its functions in accordance with this Act.
- (4) 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, regulate and report on 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, operators, consumers of railway services and other stakeholders to achieve the best implementation of a safe railway and railway operations regulatory framework;

- (c) co-operate and collaborate with international counterparts, particularly within the SADC; 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

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7. (1) The Regulator must, for purposes of achieving its objects as contemplated in section 6—

- (a) perform its functions in a fair, equitable, transparent, efficient and cost-effective manner;
 - (b) timeously report to the Minister and Parliament, in terms of section 29, on its activities in terms of this Act and, if necessary, provide them with information and advice to ensure the most appropriate and 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) granting safety critical grade licences as contemplated in section 34(2);
 - (iv) evaluating and registering appropriate training institutions, as contemplated in section 35, 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 39;
 - (vi) conducting inspections and investigations as contemplated in Chapters 6 and 7, respectively; and
 - (vii) rendering prescribed services in respect of new works, operations and technologies, as contemplated in section 62(1)(h) and (j);
 - (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; or
 - (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;
 - (h) co-operate with its counterparts in the SADC to promote the harmonisation of the safe railway or railway operations regulatory framework of the Republic with the objectives and requirements of the SADC; and
 - (i) perform any other function that this Act requires it to perform.
- (2) In addition to subsection (1), for purposes of achieving its objects as contemplated in section 6, the Regulator may—
- (a) collaborate with any railway industry association in respect of any function that the Regulator is authorised to perform;
 - (b) conclude a co-operation agreement or arrangement with a relevant organ of state to give effect to the principles of co-operative government and inter-governmental relations contemplated in Chapter 3 of the Constitution of the Republic of South Africa, 1996;
 - (c) 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;
 - (d) 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 36(1) or the application of such railway safety standards;

- (e) propose railway safety standards for purposes of section 36(2); and
- (f) collaborate with relevant institutions on the evaluation and licensing of the relevant safety critical grade positions as contemplated in section 34(1)(b).

International co-operation

8. (1) The Regulator must, upon a request, in writing, by the Minister and subject to the applicable legal prescripts and any conditions that the Minister may impose, administer and implement an international agreement entered into by the Republic. 5
- (2) The Minister must, after submitting the request contemplated in subsection (1), immediately publish a copy thereof in the *Gazette*. 10
- (3) Unless the international agreement provides otherwise, the Regulator must report, within five months after the end of its financial year as contemplated in section 28, to the Minister on the performance of any of its functions under subsection (1). 10
- (4) The report referred to in subsection (3) must contain sufficient information to allow the Minister to assess the performance of the Regulator in respect of its administration and implementation of an international agreement in terms of subsection (1) and whether such performance conforms to the objectives set out in the relevant international agreement. 15
- (5) The Regulator must, in its annual report contemplated in section 29(1), provide details of the administration and implementation of the international agreement contemplated in subsection (1). 20

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. 25
- (3) The board is accountable to the Minister and Parliament for its own actions and performance, as well as those of the Regulator.
- (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— 30
- (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 35
 - (iii) use their position, privileges or confidential information obtained as a board member, for personal gain or to improperly benefit another person;
 - (b) must, subject to this Act and other applicable law— 40
 - (i) act independently and with unfettered discretion;
 - (ii) exercise independent judgment; and
 - (iii) take decisions in the best interests of the public.

Composition of board

10. (1) The board consists of not less than seven and not more than 13 members who collectively have extensive experience of, and demonstrate knowledge and acumen in, one or more of the following: 45
- (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; 50
 - (e) commerce, finance, legal, labour 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— 55
- (a) the CEO, by virtue of holding that office;
 - (b) not more than nine persons representing civil society, with experience and knowledge contemplated in subsection (1);

- (c) one person from the Department, 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 Employment and Labour; and
 - (e) one person designated by the Minister of Police.
- (3) The board must be broadly representative with regard to race, gender and disability. 5
- (4) The majority of persons serving on the board must serve as non-executive board members.

Appointment of board members

11. (1) The Minister must, prior to the appointment of the board members contemplated in section 10(1), 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, or demonstrate knowledge and acumen in, the matters and areas contemplated in section 10(1), and who are not disqualified in terms of section 15. 10
- (2) The Minister must select board members from the persons nominated in terms of subsection (1), based on merit, determined by an assessment of— 15
- (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 10(1); and 20
 - (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 assessment contemplated in subsection (2), the Minister must appoint persons as members of the board, subject to the provisions of this section and section 15. 25
- (4) The Department must, within 30 days from the date of appointment of the board members, publish a notice on its website, containing the names of all the persons who have been nominated and appointed as such.
- (5) The Minister must, within 30 days from the date of appointment of a board member, notify Parliament of such appointment. 30

Chairperson and deputy chairperson of board

12. (1) The Minister must designate a chairperson and a deputy chairperson from amongst the board members contemplated in section 10(1), who serve as non-executive members.
- (2) The chairperson presides at meetings of the board. 35
- (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 position of 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— 40
- (a) the chairperson or deputy chairperson is able to act in those positions; or
 - (b) a new chairperson or deputy chairperson has been designated by the Minister.
- (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 45

13. (1) The term of office of the board members is subject to the following:
- (a) Non-executive members serve for a period of three years, which is renewable for a total of two consecutive terms;
 - (b) non-executive members that have completed two consecutive terms may be considered for appointment after a break of service of a period of three years; 50
 - (c) subject to board evaluation, at least one-third of non-executive members may 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— 55

- (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 at least include— 5
- (a) 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. 10

Functions of board

14. The functions of the board are to—
- (a) provide a governance framework for the Regulator;
 - (b) ensure that the Regulator performs its duties efficiently and effectively; 15
 - (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; 20
 - (f) determine and approve a safety management system in terms of section 37(1);
 - (g) consider appeals as provided for in sections 54(6) and 55;
 - (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; 25
 - (j) review and approve strategy, the budget, action plans and the 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.

Disqualification from appointment as board member 30

15. A person is disqualified from being appointed or remaining as 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; 35
 - (d) in respect of a board member, other than the persons contemplated in section 10(2)(c) to (e), he or she is—
 - (i) employed in accordance with section 8 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
 - (ii) an employee of any other organ of state, other than a person 40 contemplated in section 10(2)(c) 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; 45
 - (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; 50
 - (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 55 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;

- (i) 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;
- (j) 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; 5 10
- (k) he or she has been discharged from a position of trust;
- (l) 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;
- (m) he or she serves on more than three boards of directors, whether private or public; 15
- (n) he or she serves on the board of a state-owned company or public entity that is regulated by the Regulator; or
- (o) he or she is in the employ of, is remunerated by, or receives any other benefit from, a safety permit holder. 20

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 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— 25

- (a) failed to declare a conflict of interest as contemplated in section 19;
- (b) 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; 30
- (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; or
- (e) been disqualified in terms of section 15. 35

(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. 35

(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— 40

- (a) must immediately, in writing, inform the Minister and the chairperson of the board of that disqualification, after which the Minister must, 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. 45

(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. 50

(6) The Minister must inform Parliament of the termination of the membership of a board member and the reasons for such termination—

- (a) within 30 days from the date of terminating membership of the board, if Parliament is then in ordinary session; or
- (b) within 14 days after the commencement of Parliament's next ordinary session, if Parliament is not then in ordinary session. 55

Meetings of 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 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 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 board member 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 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, 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 the chairperson 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 the Minister and 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 himself or herself from participating and voting in any part of a meeting or proceedings where the matter that has caused such a conflict or perceived conflict is considered. 5

(6) The chairperson of the board or the chairperson of a board committee may, of his or her own accord, or upon a request, in writing, by at least three members of the board or the relevant board committee, investigate compliance with this section by any member of the board or of a relevant board committee. 10

Delegation by board

20. (1) The board may, by resolution and in writing—

(a) delegate any function, duty or power, subject to such conditions as it considers necessary, to a member of the board, a board committee, CEO or another senior employee of the Regulator; or 15

(b) amend or revoke a delegation contemplated in paragraph (a).

(2) A delegation 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. 20

(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. 25

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; 30

(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 35

(d) there are good grounds for the dissolution of the board as prescribed.

(2) The Minister must, before considering whether 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— 40

(a) immediately, in writing, inform the board members of the board's dissolution, and the reasons therefor; and

(b) publish a notice in the *Gazette*, stating the reasons for his or her decision to dissolve the board. 45

(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 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 50

(b) commence the process contemplated in section 11.

(4) An administrator contemplated in subsection (3)(a) may be appointed only for a period that may not exceed 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 lawfully taken or an act performed under its authority. 55

Chief executive officer

- 22.** (1) (a) 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 to be appointed as CEO to the Minister.
- (b) The Minister must after consideration of the recommendation of the board, 5
appoint a CEO.
- (2) The Minister must, after consultation with the Minister of Finance, determine the terms and conditions of service of the CEO.
- (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. 10
- (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 his or her duties;
 - (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 15
inefficiently; or
 - (c) for misconduct.
- (5) The CEO holds office for a period specified in the letter of appointment and that period may not exceed five years.

Functions of CEO 20

- 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 25
 - (d) execute any lawful 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. 30
- (5) If the CEO is for any reason unable to perform any of his or her functions, or if the CEO is discharged in terms of section 22(4), 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 35
appointment of a new CEO; and
 - (b) immediately commence the process contemplated in section 22(1).
- (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 40
imposed by the board, to any competent 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 45
terms of or under the delegation.
- (8) The CEO must ensure that all strategic documents or policies are prepared and submitted for approval to the board.

Staff of Regulator

- 24.** (1) The CEO may, subject to subsection (2) and general directions of the board, if 50
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 staff members of the Regulator; and 55
 - (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

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25. The State, the board or any staff member of the Regulator is not liable for any damage or loss caused by the exercise or failure to exercise any power or the performance of any function, in good faith, 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. 10

(2) The Regulator may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the provisions of sections 32 and 33, rectify or withdraw any document issued incorrectly or without authority, but only if such rectification or withdrawal does not or is not likely to— 15

(a) unduly prejudice any person; or

(b) jeopardise the effective discharge of any of the Regulator's functions.

(3) 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 the law applying to such service or submission. 20

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 section 66; 25

(c) subject to section 67(3), levies, penalties for the non-payment of levies and interest on the late payment of levies, 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. 30

(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 35

(b) deposit therein any money received in terms of subsection (1).

(4) The board may, with the approval of the Minister, invest any money received in terms of subsection (1), which is not required for immediate use with such other institutions 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. 40

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. 45

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 50

(c) any other matter that may be required by another law.

(2) The Minister must table the annual report submitted 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.

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CHAPTER 3

RAILWAY SAFETY PERMITS

Safety permits

30. (1) Any person who wants to undertake any railway or railway operation must apply to the Regulator, in the prescribed manner, for a safety permit, but in the case of a person who—

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- (a) is a concessionaire;
 - (b) operates, constructs, maintains or manages a railway; or
 - (c) conducts or undertakes railway operations on behalf of another person who owns, finances or controls the relevant assets,
- that concessionaire or that person who so operates, constructs, maintains or manages that railway or who so conducts or undertakes such railway operations is, for purposes of this Chapter, regarded as being the applicant or safety permit holder, as the case may be.

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(2) The safety permit holder must annually pay the safety permit fee applicable to the safety permit, in respect of every type of railway or railway operation authorised in that safety permit, as determined by the Minister in accordance with section 66(1), irrespective of the period of validity of that safety permit.

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

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(4) The Regulator may, upon receipt of any application contemplated in subsection (1), prior to taking a decision, require the applicant—

- (a) to submit additional information relating to railway safety as specified by the Regulator;
- (b) subject to section 40(2), cause an independent review to be conducted of the information or evaluation of the samples or objects supplied by a person approved as prescribed by the Regulator;
- (c) 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; or
- (d) to take such steps as the Regulator may direct to bring the application to the attention of relevant organs of state and interested persons.

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(5) The Regulator must, after considering an application contemplated in subsection (1) or an application for renewal contemplated in subsection (8), notify the applicant, in writing, of the outcome of the application, and if the application—

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- (a) is approved, the Regulator must, in that notice, specify—
 - (i) the period of validity of a safety permit contemplated in subsection (1), which period may not be less than three years or more than five years and must be determined by the Regulator, taking into account the requirements and interests of railway safety;
 - (ii) the types of railway operations authorised by or under that safety permit;
 - (iii) the conditions subject to which the safety permit is granted; and
 - (iv) if applicable, the date by when the fee contemplated in subsection (2) or a levy contemplated in any legislation providing for the imposition of levies, must be paid by the applicant in respect of that specific safety permit; or
- (b) is not approved, the Regulator must provide reasons for not approving the application and draw the applicant's attention to Chapter 8, but if the Regulator has not, within 30 days of a receipt of an application or an application for renewal contemplated in subsection (8), which was submitted timeously, informed the applicant of the outcome of the application, subsection (10) does not apply.

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

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- (a) the safety permit fee contemplated in subsection (2) for the first year of its validity; and
 - (b) any applicable levy contemplated in any legislation providing for the imposition of levies relating to safety permits.
- (7) The Regulator must include all relevant information in every safety permit issued, including— 5
- (a) the period of validity of the safety permit;
 - (b) the types of railway or railway operations in respect of which the safety permit is issued; and
 - (c) the conditions contemplated in section 31(1). 10
- (8) A permit holder must, in the prescribed manner, apply to the Regulator for the renewal of a safety permit, at least three months prior to the expiry of the 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. 15

Conditions of safety permit

- 31.** (1) The Minister may, after consultation with the board, prescribe standard conditions applicable to a safety permit contemplated in section 30(1).
- (2) The Regulator may, subject to subsection (3) and in justifiable circumstances, impose special conditions in addition to and not inconsistent with the safety permit conditions contemplated in subsection (1) relating to any relevant matter, including— 20
- (a) the types of railway or railway operations authorised by the safety permit to be conducted or undertaken by the applicant;
 - (b) the form, manner, timing and submission of any review of a safety management system report; 25
 - (c) considerations in respect of the topography of the terrain where the railway or railway operations will be conducted or undertaken;
 - (d) the transport of passengers, general freight or dangerous goods;
 - (e) speed; 30
 - (f) traction;
 - (g) risk assessments;
 - (h) notice to be given to the Regulator, in writing, of any change in control of the holder of the safety permit; or
 - (i) any other technical or other matter necessary to— 35
 - (i) ensure the safety and protection of persons living with disabilities, other persons, property and the environment; or
 - (ii) ensure compliance with the safety management system.
- (3) When considering whether to impose additional conditions as contemplated in subsection (2), the Regulator must ensure that any such additional condition— 40
- (a) is reasonable;
 - (b) is unique to the person who submitted the application, depending on the content of the permit application and the types of railway or railway operations conducted or undertaken by the applicant; and
 - (c) relates only to weaknesses identified in the safety permit application. 45

Amendment of conditions of safety permit

- 32.** (1) The board or 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; 50
 - (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— 55
- (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 lodge an appeal in accordance with Chapter 8.

(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, including an amendment to provide for an extension or reduction in the types of railway or railway operations authorised by that safety permit. 5

Surrender, suspension and revocation of safety permit

33. (1) A safety permit holder may surrender the safety permit.

(2) Subject to subsections (3) and (4), the Regulator may revoke or suspend a safety permit if the permit holder fails to comply with the conditions set in terms of this Act, after—

- (a) the Regulator has issued a notice to the safety permit holder to comply with a condition of the relevant safety permit, within a reasonable period stipulated by the Regulator in the notice; and 15
- (b) the safety permit holder fails to comply with such notice within the stipulated period.

(3) The Regulator must, prior to revoking or suspending a safety permit as contemplated in subsection (2)—

- (a) in writing, inform the safety permit holder of its intention to do so and of the reasons for considering a suspension or revocation; 20
- (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 stipulated in that invitation; and
- (c) consider such submissions as may have been timeously received. 25

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

- (a) the reasons for the suspension or revocation;
- (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 30
- (c) in the case of a suspension, the conditions of the suspension and the date by when it will be withdrawn.

(5) A safety permit holder who is aggrieved by the suspension or revocation of a safety permit may, in the prescribed form, lodge an appeal in accordance with Chapter 8. 35

(6) Except on good cause shown, a safety permit is suspended by operation of law 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)(iv), but upon receipt of payment thereof, such suspension is withdrawn. 40

(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. 45

(8) The holder of a safety permit which has been suspended, either by the Regulator or by operation of the law, may not conduct or undertake any railway or railway operation or a component of a railway or railway operation or any action in relation to a railway or railway operation permitted under that safety permit until the suspension has been withdrawn. 50

CHAPTER 4

RAILWAY 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— 55

- (a) evaluating and registering training institutions as contemplated in section 35;

- (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 prescribed framework for safety critical grade positions, including— 5
 - (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 10
 - (iii) the frequency of refresher courses or additional training to be undergone by holders of a safety critical grade licence.
- (2) No person may—
 - (a) perform work in a safety critical grade position, unless such person is in possession of a relevant safety critical grade licence granted by the Regulator; 15
 - or
 - (b) 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 granted by the Regulator.
- (3) Any person, including a safety permit holder, who wilfully contravenes subsection (2), is guilty of an offence. 20

Evaluation and registration of training institutions

- 35.** (1) The Regulator must evaluate prospective training institutions who have, in the prescribed form, applied for registration, and must, subject to any conditions the Regulator considers necessary, including meeting applicable prescripts envisaged under the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and the Skills Development Act, 1998 (Act No. 97 of 1998), register an appropriate number of training institutions for a period not exceeding five years to— 25
- (a) provide training and refresher courses for safety critical grade positions; and
 - (b) assess and evaluate persons applying for a safety critical grade licence. 30
- (2) The board must, subject to the National Qualifications Framework Act, 2008, and the Skills Development Act, 1998, 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; 35
 - (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; 40
 - (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; 45
 - (i) reporting requirements by a registered service provider;
 - (j) the 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. 50
- (3) The Regulator must publish the policy for the registration of training institutions on its website.
- (4) An applicant for registration must, when submitting its application, pay the application fee that may be determined by the Minister by notice in the *Gazette*.
- (5) The Regulator must, when considering an application by a potential training institution for registration, take all relevant factors into account, including— 55
- (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; 60

- (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.
- (6) 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. 5

Railway safety standards

36. (1) Despite any other law, the Minister may, by notice in the *Gazette*, prescribe railway safety standards applicable to any railway or railway operation, specifying— 10
- (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 holders or persons may apply for deviation or exemption from the railway safety standards; 15
 - (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— 20
- (a) such railway safety standards are applicable to the railway environment;
 - (b) such railway safety standards are not in conflict, or incompatible, with any standards prescribed by the Minister in terms of subsection (1) or with any other legislation; and 25
 - (c) the procedure in subsection (3) has been complied with.
- (3) Prior to proposing any railway safety standards contemplated in subsection (2), the Regulator 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; 30
 - (b) consult with the Department, the Minister responsible for trade and industry, any relevant organ of state and other key stakeholders directly affected by the proposed railway safety standards; and
 - (c) consider any submissions received. 35
- (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 prescribed 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 any standard or specification prescribed in terms of the Standards Act, 2008 (Act No. 8 of 2008), or any other Act, the regulation or notice made in terms of this Act prevails to the extent of that conflict. 40

Safety management system

37. (1) The board must determine— 45
- (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 a safety permit holder to revise or amend a safety management system or safety management system report. 50
- (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. 55

Consultative forum

- 38.** (1) The Regulator must establish a consultative forum or regional consultative forum.
- (2) Subject to subsection (3), a consultative forum determines its own agenda, rules and procedures, and elects its own functionaries. 5
- (3) In accordance with the objects of this Act, a consultative forum must deal with any matter placed on the agenda by the Regulator or any other party who is a member of the consultative forum.
- (4) Membership of, and participation in, a consultative forum is voluntary.
- (5) The CEO must designate an employee of the Regulator to serve as permanent secretary of a consultative forum. 10
- (6) A consultative forum may, with the concurrence of the Regulator, establish forums at local level.
- (7) The Regulator provides the facilities and administrative support for a consultative forum. 15
- (8) The permanent secretary referred to in subsection (5) must annually submit a report on the activities of a consultative forum to the board.

CHAPTER 5

RAILWAY SAFETY INFORMATION AND MONITORING SYSTEM

National railway safety information and monitoring system 20

- 39.** (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; 25
 - (c) information on actions, arrangements, processes and procedures implemented by every safety permit holder to ensure safety within its area of operations;
 - (d) information regarding the management of penalties;
 - (e) information regarding the management of audits and inspections;
 - (f) detailed information regarding compliance and enforcement; 30
 - (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 provide the Regulator, within a specified time or on a regular basis, with relevant data, information, documents, samples or materials in respect of the matters contemplated in subsection (2), as may be reasonably 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 this Act and safety standards. 35 40
- (4) The Regulator may, in addition to the function of information capturing, develop a system to provide for additional functions and uses contemplated in this Act, or for furthering the efficient performance of its functions.

Protection of information 45

- 40.** (1) The Regulator must protect all information submitted to it by an applicant for a safety permit, including information submitted to it in terms of section 39(3), and keep such information confidential, unless—
- (a) such information is already in the public domain;
 - (b) such information is requested for purposes of an investigation contemplated in section 50(1); 50
 - (c) a court of law has ordered that such information may be disclosed;
 - (d) authorised or mandated by this Act or any other legislation to disclose such information; or
 - (e) the disclosure of that information complies with the Promotion of Access to Information Act and the Protection of Personal Information Act. 55

(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

5

Railway safety inspector

41. (1) The CEO may appoint a person who meets the requirements determined by the board in respect of suitability, qualifications and training, as a railway safety inspector to exercise the powers and perform the duties contemplated in section 42.

(2) The Regulator must, prior to a railway safety inspector exercising any powers and performing any duties in terms of this Act, provide the railway safety inspector with a certificate of appointment signed by the CEO. 10

(3) A 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— 15

- (i) is likely to be affected by the railway safety inspector's actions; or
- (ii) requests to see that certificate; and

(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 wilfully hinders the railway safety inspector in the exercise of his or her powers or in the performance of his or her duties in terms of this Act, is guilty of an offence. 20

Powers and duties of railway safety inspector

42. (1) A railway safety inspector may, subject to sections 43, 44 and 45, conduct an inspection at any place or premises in order to determine whether the provisions of this Act have been complied with through— 25

- (a) a routine compliance inspection in accordance with section 43; or
- (b) an enforcement inspection in accordance with section 44.

(2) The Regulator may agree, in a protocol to be concluded with any operator—

- (a) for a railway safety inspector to conduct inspections in accordance with section 43; and 30
- (b) to facilitate the expeditious and orderly execution of an inspection.

Routine compliance inspection

43. (1) For the purposes of section 42(1)(a), a 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 procedure contemplated in section 42(2), if any. 35

(2) Upon entering any premises in terms of subsection (1), the railway safety inspector may, after having identified himself or herself to the person in control of such premises— 40

(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 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; 45
- (iii) furnish such information in respect of that safety permit at such premises and in such a manner as the railway safety inspector may determine; 50

(b) hand over a written notice to that person wherein the railway safety inspector prohibits the removal or destruction of any object, system, digital data, book, record or other document relevant to the inspection in the possession, 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; and
 - (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, 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 railway safety inspector concerned.
- (3) Any person who wilfully removes or destroys any object, system, digital data, book, record or other document in respect of which a railway safety 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 a railway safety inspector without a warrant.

Enforcement inspection

- 44.** (1) A railway safety inspector may, on the authority of a warrant, enter and inspect any premises if he or she suspects that an offence is being or has been committed in terms this Act.
- (2) A railway safety 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 the warrant; 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) A railway safety 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, be allowed to record or make copies thereof or extracts therefrom under the supervision of the railway safety 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 railway safety 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
- (c) the search is reasonably necessary for the purposes of enforcing the Act.
- (5) The warrant contemplated in subsection (1) must—
 - (a) identify the premises that may be entered and searched; and
 - (b) specify the parameters within which the railway safety inspector may perform an entry, search or seizure.
- (6) The warrant contemplated in subsection (1) 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 the warrant authorises that it may be executed at any other time that is reasonable in the circumstances.
- (7) The warrant contemplated in subsection (1) 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 for which it was issued, has elapsed; or
 - (d) the expiry of one month after the date when it was issued,
 whichever occurs first.
- (8) A railway safety inspector who conducts an inspection in terms of this section may be accompanied and assisted by one or more police officers.
- (9) A railway safety inspector and any police officer accompanying him or her must, when entering and searching any premises in terms of this section, conduct the 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 a railway safety inspector in terms of subsection (8) 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 railway safety inspector has been afforded a reasonable time to act under subsection (13), and 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 railway safety inspector conducting the search, that railway safety 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

- 45. (1) During any search, only a female railway safety inspector or female police officer may search a female person and only a male railway safety inspector or male police officer may search a male person.
- (2) A railway safety inspector who removes anything from premises being searched must—
 - (a) issue a written receipt for it to the owner, or person in control, of the premises, in sufficient detail to identify each specific item so removed; and
 - (b) return it in good order 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 railway safety inspector must, in writing, inform the person from whose control it was taken of that fact.
- (3) A person who submits any information to a railway safety inspector or makes any statement to him or her, may do so orally, and he or she may—

- (a) indicate to the railway safety inspector that he or she claims confidentiality in respect of any information or statement so provided; and
 - (b) provide the railway safety inspector with an explanation why the information or statement is confidential.
- (4) A railway safety inspector must— 5
- (a) consider any claim and explanation contemplated in subsection (3);
 - (b) notify the person who claims confidentiality whether or not that information or statement will be treated as being confidential; and
 - (c) if the railway safety inspector considers such information to be confidential, keep such information confidential, unless— 10
 - (i) such information is already in the public domain;
 - (ii) the railway safety inspector is ordered by a court of law to disclose such information; or
 - (iii) the disclosure complies with the Promotion of Access to Information Act or the Protection of Personal Information Act. 15

Duty to assist railway safety inspector

46. (1) When a railway safety inspector enters any property as contemplated in section 43 or 44, the operator, owner or manager and each employee working there must, subject to subsections (2), (3) and (4), assist the railway safety inspector by furnishing him or her with answers to questions and by providing him or her with any facility that the railway safety inspector may reasonably require for purposes of the inspection. 20

(2) A railway safety inspector or a police officer who is assisting a railway safety inspector in terms of section 44(8) for purposes of entering or searching premises under sections 43 and 44 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 25
- (b) allow that person a reasonable opportunity to exercise those rights.

(3) A person questioned by a railway safety 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. 30

(4) A railway safety 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 been advised of his or her rights in accordance with subsection (2)(a). 35

Powers of railway safety inspector to deal with unsafe conditions

47. (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 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. 40

(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— 45

- (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. 50

(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 directive, in writing, as contemplated in subsection (2). 55

(4) Subject to section 57(3), any person who fails or refuses to comply with a directive within the period specified in the directive, 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 54.

(6) An appeal lodged as contemplated in subsection (5) does not prevent a person from obtaining urgent relief from a competent court of law.

(7) A railway safety inspector may issue compliance notices and penalties contemplated in section 67. 5

CHAPTER 7

RAILWAY OCCURRENCE REPORTING AND INVESTIGATIONS

Railway occurrence

48. (1) The Minister may prescribe a railway accident or incident as a railway occurrence. 10

(2) 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— 15

(i) such rolling stock or infrastructure must 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 20

(c) record the names and contact details of all persons who may provide evidence or information that has a direct or indirect bearing on the railway occurrence.

(3) A person who moves or removes rolling stock or infrastructure at the scene of a railway occurrence in contravention of subsection (2)(b), is guilty of an offence. 25

(4) 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 sections 51, 52 and 53; 30

(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 35

49. (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 a railway occurrence as contemplated in subsection (1), is guilty of an offence.

Categories of railway occurrence investigations 40

50. (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 in accordance with section 51; and

(b) a standard investigation, to be conducted by the relevant operator in accordance with section 52. 45

(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; 50

(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; 55

- (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

51. (1) The Minister must, in the event of a railway occurrence requiring a major investigation contemplated in section 50(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) a reference to any provisions of the Commissions Act, 1947 (Act No. 8 of 1947), that may 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 consider 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, upon which the investigator’s duties and authority comes 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 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 that the Minister considers 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 and any supporting documents or other evidence accepted by the investigator in his, her or its investigation 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 and the investigator contemplated in subsection (1), at all times and in all respects, take 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 railway occurrence;
- (d) the person conducting an 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 railway occurrence;
- (e) the person conducting an 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 may, if he or she considers it necessary, 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. 5

(11) Any person who wilfully fails to comply with subsection (8)(b), (c), (d), (e) or (f), is guilty of an offence.

Standard investigation

10

52. (1) In the event of a railway occurrence requiring a standard investigation contemplated in section 50(1)(b) and subject to subsection (4), an operator must conduct an investigation in respect of that railway occurrence.

(2) The operator must furnish a railway occurrence investigation report to the Regulator in the prescribed time frame, manner and form. 15

(3) The Regulator may, after consideration of the railway 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 50(1)(b) and involving more than one operator, all operators involved must conduct an individual investigation in accordance with subsections (5) and (6). 20

(5) The operators contemplated in subsection (4) must, within 60 days from the date of the railway occurrence, separately conduct their respective investigations, and every operator must, upon completion of its individual investigations, furnish a railway occurrence investigation report to the Regulator in the prescribed time frame, manner and form. 25

(6) If, after consideration of the separate reports—

(a) the Regulator has reason to believe 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 sufficiently address the issues impacting on railway safety, the Regulator must request the Minister to exercise his or her powers contemplated in subsection (7); or 30

(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 must be taken, and if so, the Regulator may— 35

(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 operators concerned to submit replies to those comments; 40

(ii) request the Minister to exercise his or her powers contemplated in subsection (7); or

(iii) subject to this Act, take any steps provided for in law, if he or she considers it necessary. 45

(7) The Minister may, in his or her discretion—

(a) after receiving a request from the Regulator as contemplated in subsection (6)(a), reject an investigation report by an operator, if the Minister regards that investigation to have been inadequate; or 50

(b) instruct an operator not to conduct any further investigations, if the Minister considers it appropriate to order an investigation contemplated in section 51 or 53.

Commission of inquiry

53. 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 section 84(2)(f) of the Constitution of the Republic of South Africa, 1996, and, in the event that an investigator has already commenced any other investigation in terms of this Part, the investigator must immediately, upon publication of a proclamation 55

in the *Gazette* by the President, establishing a commission of inquiry, terminate that investigation and submit all evidence or other relevant information in its, his or her possession to that commission of inquiry.

CHAPTER 8

APPEALS

5

Appeal to CEO

54. (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), lodge an appeal against that decision with the CEO. 10

(2) An appeal lodged in terms of this section must—

(a) be lodged within 30 days from the date on which the 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 15

(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 period—

(a) confirm, set aside or vary the decision; or 20

(b) substitute the decision of the railway safety inspector or employee 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— 25

(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 an appeal is lodged with the Tribunal, as contemplated in section 56. 30

(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 35

(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 55.

(7) An appeal lodged as contemplated in subsection (1) does not prevent a person from obtaining urgent relief from a competent court of law. 40

Appeal to board appeals committee

55. (1) Any 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 54, may lodge an appeal against that decision with the board appeals committee as prescribed. 45

(2) Such person must lodge the appeal and set out the grounds of the appeal within 30 days from the date on which the decision of the CEO was made known or such later date as the chairperson of the board permits. 50

(3) The board must consider and finalise the appeal within the prescribed period and, after considering the grounds of appeal, the reasons for the decision of the CEO and the CEO's reply to the grounds of appeal, the board may—

(a) confirm, set aside or vary the decision; or

(b) substitute the decision of the CEO with the decision of the board. 55

(4) The board may delegate its duties or powers in terms of this section only to a board appeals 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
 - (b) submit the record to the Transport Appeal Tribunal, if the matter is appealed to that Tribunal in terms of section 56. 5
- (6) 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 the board appeals committee is the final decision of the board. 10
- (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, 15
- an appeal may be lodged directly with the Transport Appeal Tribunal, as contemplated in section 56.
- (8) An appeal lodged as contemplated in subsection (1) does not prevent a person from obtaining urgent relief from a competent court of law.

Appeal to Transport Appeal Tribunal 20

- 56.** (1) A person who is aggrieved by a decision regarding an appeal in terms of section 55 may, in terms of section 12 of the Transport Appeal Tribunal Act, lodge an appeal with the Transport Appeal Tribunal against that decision.
- (2) Any appeal lodged in terms of subsection (1) must comply with the Transport Appeal Tribunal Act and any regulations promulgated thereunder. 25

CHAPTER 9

GENERAL AND MISCELLANEOUS

Part A

Offences and penalties

Offences and penalties 30

- 57.** (1) A person who commits an offence in terms of sections 30(10), 36(4), 43(3), 44(12), 47(4) or 48(3), 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(3), 41(4), 49(2), 51(10) or 51(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. 35
- (3) No person may be prosecuted in respect of an offence contemplated in subsection (1) or (2) if the Regulator has given notice that it is going to issue a compliance notice or a penalty as prescribed in terms of section 67 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. 40

Offences in relation to employer or principal

- 58.** 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. 45

Liability of director, trustee or member of juristic person

- 59.** 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 that offence, and is liable, on conviction, to the penalty specified in respect of that offence, if that offence resulted from the failure of the director, trustee or member to take 50

all steps that were reasonable under the circumstances to prevent the commission of the offence.

Enquiry in respect of compensation and award of damages

- 60.** (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 to 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 and notices

Regulations and notices

- 61.** (1) The Minister may, subject to subsections (2) and (3), make regulations by notice in the *Gazette* regarding any matter required or permitted to be prescribed in terms of this Act, including—
- (a) any other place as a station or forming part of a station as contemplated in paragraph (b) of the definition of “**station**” in section 1;
 - (b) any limitation on the board’s power contemplated in section 20(1) in respect of delegating any of the board’s functions, duties, powers or obligations;
 - (c) matters provided for in sections 61 to 67; or
 - (d) generally all matters that are necessary to be prescribed for the effective administration of this Act.
- (2) Any regulation or notice made in terms of this Act 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 advise on any 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 67—
- (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 balance between the need for safe railway operations and the economic viability of new measures to achieve safe railway operations; and
- (c) whether the measures must apply to both traditional railway operations and rapid rail operations.

Regulations regarding design, construction, alteration and new operations 5

62. (1) The Minister may make 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, including regulations regarding—

- (a) the types of new or proposed construction or operation which require the Regulator's approval; 10
- (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; 15
- (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; 20
- (h) new works and operations;
- (i) testing and commissioning; and
- (j) technologies.

(2) The Minister may determine that the National Regulator for Compulsory Specifications, established by section 3 of the National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008), or another independent safety assessor approved by the board, may for purposes of subsection (1)(d) to (j) assess or evaluate whether a permit holder has met the criteria or requirements contemplated in subsection (1)(b). 25

Regulations regarding infrastructure or activity affecting safe railway operations 30

63. (1) Subject to subsection (2), 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:

- (a) Mines and any other excavations, to the extent that the Mine Health and Safety Act and the Mineral and Petroleum Resources Development Act do not apply; 35
- (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; 40
- (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. 45

(2) The regulations contemplated in subsection (1) must—

- (a) affect safe railways and railway operations; and
- (b) relate to property owned by safety permit holders.

Regulations regarding assessment and information 50

64. (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. 55

Regulations regarding railway occurrence and railway occurrence investigations

65. The Minister may make regulations in respect of railway occurrences and railway occurrence investigations, in addition to those contemplated in sections 48(1), 50(1) and 52(2), including—

- (a) other activities which constitute railway occurrences, and the offences and penalties in respect thereof; 5
- (b) steps to be taken by an operator after a railway occurrence in addition to those contemplated in section 48(2); and
- (c) procedures, processes and other matters relating to major investigations.

Notice regarding fees 10

66. (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 service rendered by the Regulator as contemplated in section 62(1)(g) to (j). 15

Regulations and procedure regarding compliance notices and penalties

67. (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— 20

- (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. 25

(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 of the Republic of South Africa, 1996. 30

(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 a penalty contemplated in subsection (4) may appeal against that decision as provided for in Chapter 8. 35

Regulations regarding safety critical grades and training institutions

68. 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; 40
- (b) the posts or job descriptions of persons who must be licensed;
- (c) the registration of training institutions;
- (d) criteria to be taken into account by the Regulator when considering an application for the registration of a training institution; and
- (e) information to be supplied in respect of the database contemplated in section 34(1)(c). 45

Part C

Transitional, repeal and commencement provisions

Transitional provisions and savings

69. (1) For purposes of this section “previous Act” means the National Railway Safety Act, 2002 (Act No. 16 of 2002). 50

(2) The Minister must, within one year of commencement of this Act, review all regulations or notices contemplated in subsection (3) and unless the Minister within that one-year period confirms, by notice in the *Gazette*, that those 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.

(3) Subject to subsection (1), all regulations or notices properly made or issued in terms of or under the previous Act remain in force as if they had been made or issued in terms of or under this Act.

(4) Any co-operative agreement or arrangement concluded by the Regulator in terms of section 6(2) of the previous Act upon the commencement of this Act, continues to be valid as if it had been concluded in terms of section 7(2)(b).

(5) 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 previous Act 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 previous Act must continue to operate until the appointment of a new board in terms of this Act.

(6) Upon the commencement of this Act—

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

(b) the rights, duties, liabilities and obligations relating to the Regulator established in terms of the previous Act 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 Regulator remain binding on the Regulator; and

(e) all funds of the Regulator, immediately before the commencement of this Act, remain that of the Regulator.

(7) All permits issued in terms of, or under, the previous Act remain valid for the period indicated in the respective permits as if they had been issued in terms of this Act, but for the avoidance of doubt, this does not exempt the holder of a permit from paying any fees due in terms of or under this Act.

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

(9) 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.

(10) Despite section 34(2) and (3) any person appointed to or performing work 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.

(11) Section 38 of the previous Act remains in force, despite section 70, as if it had not been repealed, until the date of the commencement of Chapter 8 is fixed in terms of section 71(2).

Repeal of law

70. The National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002), is hereby repealed.

Short title and commencement

71. (1) This Act is called the Railway Safety Act, 2021, 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.

MEMORANDUM ON OBJECTS OF RAILWAY SAFETY BILL, 2021

1. BACKGROUND

- 1.1 The Railway Safety Bill, 2021 (“Bill”), seeks to improve the regulatory framework regulating railway safety in the Republic of South Africa in order to improve the safety of passengers and freight.
- 1.2 The Bill seeks to repeal the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) (“NRSR Act”). The NRSR Act established the Railway Safety Regulator (“RSR”) to oversee and promote safe railway operations through appropriate support, monitoring and enforcement guided by an enabling regulatory framework. The NRSR Act has been in operation since 20 September 2002.
- 1.3 The NRSR Act was last amended in 2009 and since then there have been major developments in the country such as a massive rolling stock investment programme and the introduction of the first standard gauge railway system in the country, all these developments were not anticipated during the amendment of the existing NRSR Act.
- 1.4 The Bill also seeks to promote the use of rail as a preferred mode of transport that would also be able to positively contribute to the country’s economy.
- 1.5 The Bill was first approved for public consultation in February 2018, and public consultation in all provinces were conducted in March 2018. Critical stakeholders, such as the National Economic, Development and Labour Council (“NEDLAC”) and Organised Labour were also consulted during this process.
- 1.6 Inputs received during public consultations have been considered during the preparation of the Bill.

2. OBJECTIVES OF BILL

- 2.1 The Bill retains a number of elements of the NRSR Act, endeavouring to provide greater clarity on several issues, and introduces new concepts designed to enhance railway safety. In this regard, the Bill seeks to place the emphasis and focus on railway safety, and to recognise operators’ role in managing and implementing safety measures, with the RSR promoting safety and ensuring compliance with such measures.
- 2.2 The Bill furthermore seeks to provide guidance on the governance of the RSR, and to address concerns raised over time by operators in respect of the system of railway safety in South Africa. The Bill seeks to remove perceived conflicts of interest, and to provide a flexible framework for managing railway safety. In addition, it proposes that the RSR must oversee a framework of safety critical grades.

3. CLAUSE-BY-CLAUSE DISCUSSION

3.1 Clause 1

Clause 1 contains definitions in respect of the provisions of the Bill.

3.2 Clause 2

Clause 2 regulates the application of the Bill and any conflicts between the Bill and other legislation which may also apply to the persons to whom the Bill applies.

3.3 Clause 3

Clause 3 lists the objects of the Bill, including the primary object of enabling railway operators to undertake safe railway operations.

3.4 Clause 4

Clause 4 makes provision that the Minister of Transport (“Minister”) may approve exemptions in respect of the application of the Act. Since Parliament’s power to legislate is delegated to the Minister for this specific purpose of granting an exemption (i.e. deciding to whom the Bill will not apply, despite their falling into an applicable category), extensive provision is made to ensure that the process of considering or granting an application for an exemption, or the amendment, suspension or withdrawal of an exemption which has been granted, as the case may be, is transparent and equitable.

3.5 Clause 5

Clause 5 provides for the uninterrupted continuation of operations by the RSR, and for the RSR to be governed by a board.

3.6 Clause 6

Clause 6 states the objects of the RSR.

3.7 Clause 7

Clause 7 describes the functions and powers of the RSR, divided into mandatory functions and discretionary powers.

3.8 Clause 8

Clause 8 provides that the RSR may, on request by the Minister, administer and implement any international agreement the Republic may enter into in respect of railway safety.

3.9 Clause 9

Clause 9 provides that the RSR is governed by a board, which oversees and exercises general control over the performance of the RSR. Individual board members do not represent or promote specific interests or stakeholders within the railway environment and must, at all times, act independently and with unfettered discretion.

3.10 Clause 10

Clause 10 makes provision for the composition of the board. The board consists of a minimum of seven and a maximum of 13 members who collectively have experience in areas relevant to the governance and management of the RSR. In addition to persons representing civil society, the Chief Executive Officer of the RSR (“CEO”) and representatives designated by the Ministers of Transport, of Employment and Labour and of Police serve on the board.

3.11 Clause 11

Clause 11 regulates the appointment of board members. After a nomination and selection process, the Minister appoints board members and informs Parliament of the appointments.

3.12 Clause 12

Clause 12 makes provision for the appointment of a chairperson and a deputy chairperson of the board.

3.13 Clause 13

Clause 13 determines the term of office and conditions of service of board members. Non-executive members serve for a maximum period of three years, which is renewable for a total of two consecutive terms. The terms of board members should be staggered in order to promote continuity and retention of institutional memory, and at least one-third of non-executive members must retire annually. The Minister and the board must annually conclude a performance agreement, which, amongst others, must include provisions for a board evaluation and board performance targets.

3.14 Clause 14

Clause 14 describes the functions of the board, which include providing governance for the RSR, ensuring that the RSR exercises its powers in accordance with the principles of transparency and accountability, and determining and enforcing the broad policy framework within which the RSR must pursue its objects and perform its functions.

3.15 Clause 15

Clause 15 regulates the criteria which will disqualify a person from serving as a member of the board.

3.16 Clause 16

Clause 16 makes provision for a board member's resignation, requiring one month's notice in writing to the Minister. In addition, the Minister may, after having afforded a board member a reasonable opportunity to make submissions in writing, terminate that member's membership of the board under certain circumstances, and the Minister must provide written reasons for his or her decision. This clause also provides a mechanism to deal with the situation of board member becoming disqualified to be a board member.

3.17 Clause 17

Clause 17 provides for meetings of the board. Amongst other matters, this clause determines that a majority of the board members appointed at any time form 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 members present constitute a quorum. To ensure confidentiality, it is prescribed that during board meetings, no person other than a board member or a person rendering secretarial services to the board may be present, unless he or she was invited by the board to attend a specific part of the meeting and for a specific purpose.

3.18 Clause 18

Clause 18 provides that the board may, in addition to such committees as may be required by law, establish such committees as it considers necessary to assist it in the performance of its functions and that it may appoint as members of any such committee such persons as may be appropriate.

3.19 Clause 19

Clause 19 regulates conflicts of interest of board members or board committee members and provides a procedure to deal with such a situation.

3.20 Clause 20

In clause 20, provision is made that the board may delegate any function, duty or power, subject to such conditions as it considers necessary, to a committee of the board, CEO or another senior employee of the RSR.

3.21 Clause 21

In order to dissolve the board, clause 21 empowers the Minister to dissolve the board in certain circumstances. The Minister must 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, upon good cause shown dissolve the board, and report the dissolution to Parliament. Upon dissolution of the board, the Minister must immediately appoint an administrator to take over the functions of the board, subject to such conditions as the Minister may determine, for a maximum period of six months.

3.22 Clause 22

This clause regulates the appointment, term of office and discharge of the CEO.

3.23 Clause 23

Clause 23 provides for the functions of the CEO, and for the delegation of functions and powers to staff members of the RSR.

3.24 Clause 24

Clause 24 makes provision for the appointment of staff. The Minister with the concurrence of the Minister of Finance annually approves any increases in remuneration of staff members.

3.25 Clause 25

Clause 25 places a limitation of liability on actions performed in good faith.

3.26 Clause 26

Clause 26 provides for the validity of any document issued in good faith by the RSR.

3.27 Clause 27

Clause 27 provides for the funds of the RSR. In addition to funds voted by Parliament and fees payable in respect of railway safety permits, the RSR's funds could also consist of levies, should legislation providing accordingly be adopted in future.

3.28 Clause 28

Clause 28 determines the RSR's financial year.

3.29 Clause 29

Clause 29 provides for the RSR to report to the Minister and to Parliament.

3.30 Clause 30

Clause 30 makes provision for the processing of applications for safety permits and the steps to be followed by the RSR when approving or refusing to approve an application, as well as the contents of a railway safety permit if

the application is approved. In addition, any re-application for a railway safety permit must be submitted to the RSR at least three months prior to the expiry of the existing railway safety permit. Furthermore, a railway safety permit fee as prescribed is annually payable in respect of every railway safety permit despite the period of its validity.

3.31 Clause 31

Clause 31 makes provision for conditions subject to which a railway safety permit may be issued.

3.32 Clause 32

Clause 32 permits the RSR, in justifiable circumstances, to amend any condition imposed on a specific railway safety permit, and determines the process required to do so.

3.33 Clause 33

Clause 33 determines the processes for the surrender, suspension or revocation of a railway safety permit. The RSR may suspend or revoke a railway safety permit if the holder thereof repeatedly fails to comply substantially with any condition of the railway safety permit. A railway safety permit is, by operation of law, suspended if the railway safety permit holder fails to timeously pay any fee owing to the RSR.

3.34 Clause 34

- (a) Clause 34 regulates the newly proposed safety critical grade framework. The regular occurrence of human failure as the primary cause of railway accidents necessitates standardised training and evaluation of persons performing work in safety critical positions.
- (b) The RSR will oversee the management and execution of the prescribed framework by—
 - evaluating and registering training institutions to provide training and licensing safety critical grade employees;
 - collaborating with relevant institutions on the development of appropriate curricula for the training, evaluation and licensing of the relevant safety critical grade positions; and
 - establishing and maintaining a database on matters relevant to the framework for safety critical grade positions.

3.35 Clause 35

Clause 35 provides for the evaluation of training institutions. The RSR must evaluate prospective training institutions which have applied, in the prescribed form, for registration and must, subject to any conditions the RSR considers necessary, register an appropriate number of training institutions for a period not exceeding five years.

3.36 Clause 36

Clause 36(1) provides that the Minister may, despite any other legislation or regulatory instruments, prescribe railway safety standards applicable to any railway operation. In order to provide a meaningful channel for industry participation in setting standards, subsection (2) makes provision for the RSR and operators to propose standards for safe railway operations.

3.37 Clause 37

Clause 37 makes provision for the board to determine the safety management system and the form, content and manner of submission of a safety management system report.

3.38 Clause 38

At the request of operators, clause 38 proposes that the RSR must establish a consultative forum, where the RSR and operators can on an on-going basis consult and discuss matters relevant to railway safety.

3.39 Clauses 39 and 40

Clause 39 regulates the maintenance of the national railway information and monitoring system, and clause 40 provides for the protection of information held by the RSR.

3.40 Clause 41

Safety inspections are the primary tools to enforce compliance with safety standards. Clause 41, therefore, provides for the appointment of suitably trained persons as railway safety inspectors, and for the use of certificates of appointment to identify such persons.

3.41 Clauses 42 to 46

Clause 42 deals with the powers and duties of railway safety inspectors. Railway safety inspectors may conduct a routine inspection (in terms of clause 43), or an enforcement inspection (in terms of clause 44), which may only be done on the authority of a warrant. Clause 45 provides for the formalities to be observed during inspections, and clause 46 places an obligation on persons to assist a railway safety inspector in certain circumstances.

3.42 Clause 47

Clause 47 describes the powers of a railway safety inspector to deal with unsafe conditions. Subsection (1) provides that a railway safety inspector may issue a report to an operator describing the threat identified by the railway safety inspector. Should the operator not respond adequately to the report, the railway safety inspector may issue a directive requiring the operator to take certain steps to remove the threat or danger. Both decisions by the railway safety inspector are appealable. Subsection (7) makes provision for a railway safety inspector to issue compliance notices and penalties.

3.43 Clause 48

Clause 48 describes the duties of an operator immediately after a railway occurrence, or railway accident or incident. It also provides access for investigators who will be appointed to investigate the occurrence.

3.44 Clause 49

Clause 49 places an obligation on an operator to report a railway occurrence to the RSR.

3.45 Clause 50

Clause 50 provides that the Minister may determine the attributes of a major investigation, to be conducted by an independent investigator, or a standard investigation, to be conducted by the relevant operator.

3.46 Clause 51

- (a) In terms of clause 51, the Minister must, in the event of a railway occurrence requiring a major investigation, appoint an independent institution or panel of persons to investigate the railway occurrence. To ensure the legitimacy and independence of investigation reports, the RSR will no longer be involved in conducting investigations. The Department will provide all necessary financial, administrative, logistical and legal support for this investigation. The investigation report is to be submitted to the Minister, who must, after receipt and consideration thereof, publish the report.
- (b) This clause does not, in principle, prevent an operator or the RSR from conducting its own internal investigation into a railway occurrence, but the official investigation takes precedence.

3.47 Clause 52

Clause 52 provides that an operator, or operators if circumstances so dictate, must conduct an investigation in the event of a railway occurrence requiring a standard investigation, and report to the RSR. Provision is made where more than one operator is involved.

3.48 Clauses 53

Clause 53 empowers the Minister to request the President of the Republic to appoint a commission of inquiry in terms of the Constitution of the Republic of South Africa, 1996 (“Constitution”), if he or she considers it necessary to do so.

3.49 Clauses 54 to 56

Clauses 54 to 56 provide for an appeal mechanism against any decision by an employee of the RSR or made in the name of the RSR. The first level of appeal is to the CEO (in terms of clause 54), then to the board or a board appeals committee (in terms of clause 55) and ultimately to the Transport Appeal Tribunal (in terms of clause 56), established by section 3 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998), which is to be amended by the Transport Appeal Tribunal Amendment Bill [B8–2020], which is currently being considered by Parliament.

3.50 Clauses 57 and 58

Clause 57 provides for offences and penalties, and clause 58 makes provision that an employer or principal is liable to conviction for an offence 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.

3.51 Clause 59

Clause 59 provides that 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 is himself or herself guilty of the said offence 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.

3.52 Clause 60

Clause 60 empowers a court to enquire into the harm, loss or damage caused by a railway incident or accident and determine the extent thereof to award damages to the injured person.

3.53 Clause 61

Clause 61 deals with the Minister's general power to make regulations, and provides for consultation and notification processes.

3.54 Clause 62

Clause 62 provides for the Minister to make regulations in respect of the design, construction, manufacture, alteration, commissioning, maintenance and operation of rolling stock, infrastructure and stations, and ancillary matters.

3.55 Clauses 63 to 65

Clause 63 empowers the Minister to make regulations regarding infrastructure or activity affecting safe railway operations, whilst clause 64 provides for regulations in respect of data to be submitted to the RSR and information to be published by the RSR. Clause 65 provides for the categorisation and other matters concerning the investigation of railway occurrences.

3.56 Clause 66

Clause 66 authorises the Minister to prescribe fees payable in respect of certain matters provided for in the Bill.

3.57 Clause 67

Clause 67 authorises the Minister to prescribe a scheme whereby railway safety inspectors may issue compliance notices in respect of minor infringements of railway safety standards. Provision is made that, if penalties are payable in respect of such infringements, the proceeds must be paid into the National Revenue Fund to remove any perception that compliance notices are issued to generate income for the RSR.

3.58 Clause 68

Clause 68 authorises the Minister to make regulations regarding safety critical grades and training institutions.

3.59 Clause 69

Clause 69 provides for transitional provisions. This includes, in subsection (1), reviewing all regulations or notices made or issued under the NRSR Act, to determine their continued validity. In addition, subsections (8) and (9) provide for a phasing-in of the requirements in respect of persons performing work in safety critical grade positions.

3.60 Clause 70

Clause 70 proposes the repeal of the NRSR Act.

3.61 Clause 71

Clause 71 provides for the short title and commencement of the Railway Safety Act.

4. DEPARTMENT/BODIES CONSULTED

During the public participation process a wide range of stakeholders were consulted, including the following:

- Department of Public Enterprises

- Transnet
- Gautrain Management Agency (“GMA”)
- Bombela Operating Company (“BOC”)
- Passenger Rail Agency of South Africa (“PRASA”)
- Railway Safety Regulator (“RSR”)
- Transport Appeal Tribunal
- National Treasury
- Transnet: School of Rail
- Transport Education and Training Authority (“TETA”)
- Mining railway operators
- Petro-chemical railway operators
- Agricultural railway operators
- Heritage and Tourism railway operators
- Organised Labour
- Department of Tourism
- National Economic Development and Labour Council (“NEDLAC”)

5. FINANCIAL IMPLICATIONS

Additional resources will be required to enable the restructured Transport Appeal Tribunal body to function properly.

6. IMPLICATIONS FOR PROVINCES

The Bill will provide for a unitary railway safety system in the Republic.

7. IMPLICATIONS FOR MUNICIPALITIES

The Bill will provide for a unitary railway safety system in the Republic.

8. PARLIAMENTARY PROCEDURE

- 8.1 The Constitution regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution. Furthermore, Schedules 4 and 5 to the Constitution list functional areas of concurrent national and provincial legislative competence and functional areas of exclusive provincial legislative competence, respectively.
- 8.2 The tagging of Bills is dealt with either in terms of section 75 or section 76 of the Constitution, and these sections set out the process that must be followed when a Bill is submitted for approval. The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. In *Tongane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The

Court held in paragraph 70 that the “*test for determining how a Bill is to be tagged must be broader than that for determining legislative competence. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence.*” The Court held that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.

- 8.3 The Bill seeks to provide for matters relating to the safety of railway transport, which concerns the functional area as listed in Schedule 4 to the Constitution, namely “public transport”.
- 8.4 The State Law Advisers and the Department of Transport are of the opinion that this Bill must follow the procedure contemplated in section 76 of the Constitution.
- 8.5 The State Law Advisers are of the opinion that there is no need to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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