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THE PRESIDENCY

No. 1049 5 August 2002

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 16 of 2002: National Railway Safety Regulator Act, 2002.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

*(English text signed by the President.)
(Assented to 24 July 2002.)*

ACT

To provide for the establishment of a Railway Safety Regulator; to provide for its objects and functions and for the manner in which it is to be managed; to provide for its staff matters; to provide for safety standards and regulatory practices for the protection of persons, property and the environment; and to provide for matters connected therewith.

PREAMBLE

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

RECOGNISING that safe railway operations promote the use of railways as a mode of efficient transportation;

RECOGNISING that safe railway operations must be effectively overseen, managed and co-ordinated to ensure their safety;

ACKNOWLEDGING that railway safety has a relationship with occupational health and safety and with security;

ACKNOWLEDGING that safety and security matters are interconnected and that the regulator has a primary role to play in safe railway operations and a supporting role in occupational health and safety, and security;

ACKNOWLEDGING that all organs of state that have a role to play in railway operations must co-operate with one another so as to give effect to the principles of co-operative government and intergovernmental relations contemplated in Chapter 3 of the Constitution;

AND IN ORDER TO—

- * provide for and promote safe railway operations;
- * encourage the collaboration and participation of interested and affected parties in improving railway safety;
- * recognise the prime responsibility and accountability of railway operators in ensuring the safety of railway operations;
- * facilitate a modern, flexible and efficient regulatory regime that ensures the continuing enhancement of safe railway operations; and
- * promote the harmonisation of the railway safety regime of the Republic of South Africa with the objectives and requirements for safe railway operations of the Southern African Development Community;

Act No. 16, 2002 NATIONAL RAILWAY SAFETY REGULATOR ACT, 2002

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

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CHAPTER 1**DEFINITIONS AND INTERPRETATION****Definitions and interpretation**

1. (1) In this Act, unless the context indicates otherwise— 20
- (i) “association” means an association recognised by the Regulator and includes a railway industry association;
- (ii) “board” means the board of directors referred to in section 8;
- (iii) “dangerous goods” means the commodities, substances and goods listed in the standard specification of the South African Bureau of Standards SABS 25 0228 “The identification and classification of dangerous substances and goods”;
- (iv) “human factors” means factors which include the perceptual, physical and mental capabilities of people and the interaction of individuals with their job and working environments, the influence of equipment and system design on human performance, and the organisational characteristics that influence safety-related behaviour at work; 30
- (v) “industry” means the railway industry and includes operators, suppliers, carriers, contractors and consulting engineers;
- (vi) “Minister” means the Minister of Transport; 35
- (vii) “network” means a system of railway infrastructure elements comprising track, civil infrastructure, train control systems and electric traction infrastructure which constitutes running lines, railway yards, sidings and private sidings and any other matter that may be prescribed;
- (viii) “network operator” means the person in control of railway traffic on the network, including the management of the network; 40
- (ix) “operator” means a network operator, train operator or station operator or a combination of two or three of them;
- (x) “person” includes an unincorporated body, an organ of state and the Minister;
- (xi) “persons with disabilities” means people who have long-term or recurring physical or mental impairments which substantially limit their prospects of using railway transport unaided; 45

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- (xii) "prescribe" means prescribe by regulation;
- (xiii) "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; 5
- (xiv) "railway industry association" means an association recognised by the Regulator in terms of section 7(2)(b);
- (xv) "railway occurrence" means a railway accident or railway incident prescribed as such, which could include criminal activity; 10
- (xvi) "railway operation" means the activities performed by a network operator, train operator or station operator, or a combination of two or three of them;
- (xvii) "Regulator" means the Railway Safety Regulator established in terms of section 4;
- (xviii) "rolling stock" means a vehicle that is able to operate on a railway, irrespective of its capability of independent motion; 15
- (xix) "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 railway and the safety of other persons, other property and the environment, are as low as is reasonably practicable in the given set of circumstances, and does not include security; 20
- (xx) "security" means freedom from intentional harm or damage to persons or property;
- (xxi) "safety" means the lack of railway occurrences, fatalities, injuries or damage within railway operations; 25
- (xxii) "safety management system" means a formal framework for integrating safety into day-to-day railway operations and includes safety goals and performance targets, risk assessment, responsibilities and authorities, rules and procedures, monitoring and evaluation processes and any other matter prescribed; 30
- (xxiii) "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 and may include any other matters prescribed;
- (xxiv) "safety permit" means a permit contemplated in Chapter 4; 35
- (xxv) "station" means a railway station or a railway passenger terminal and any other place that may be prescribed;
- (xxvi) "station operator" means a person in control of a station, and the management of a station; and
- (xxvii) "train operator" means a person in control of the movement and the management of rolling stock on a network. 40

(2) In this Act, where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have, unless the contrary intention appears from the relevant provisions, corresponding meanings.

(3) When interpreting a provision of this Act, any reasonable interpretation that is consistent with the purpose of this Act as stated in section 2, must be preferred over any alternative interpretation that is inconsistent with that purpose. 45

(4) Any directive or notice given in terms of this Act must be in writing, unless otherwise specified in this Act.

(5) Any regulation made under this Act prevails over any standard adopted by the board under section 29(2). 50

(6) In determining, for the purpose of this Act, whether railway operations are safe railway operations, or whether an act or thing constitutes a threat to safe railway operations or enhances the safety of railway operations, regard must be had not only to the safety of persons and property transported by railways but also to the safety of persons with disabilities and other persons and other property. 5

(7) For the purposes of this Act, a threat to safety is a hazard or condition that could reasonably be expected to develop into a situation in which illness or injury to, or death of, a person or in which damage could be caused to the environment or property, and a threat to safety is immediate if such a situation already exists.

CHAPTER 2 10

PURPOSE AND APPLICATION

Purpose of Act

2. The purpose of this Act is to—
- (a) provide for and promote safe railway operations; 15
 - (b) encourage the collaboration and participation of interested and affected parties in improving railway safety;
 - (c) recognise the prime responsibility and accountability of operators in ensuring the safety of railway operations;
 - (d) facilitate a modern, flexible and efficient regulatory regime that ensures the continuing enhancement of safe railway operations; 20
 - (e) promote the harmonisation of the railway safety regime of the Republic with the objectives and requirements of the Southern African Development Community for the operation of railways; and
 - (f) further the achievement of such purpose by establishing a suitable regulatory institution. 25

Application of Act

3. (1) This Act applies to—
- (a) the operation of any railway within, or partly within, the Republic with a track gauge equal to or wider than 600 mm; and
 - (b) any other system designed to transport passengers or freight or both, declared by the Minister by notice in the *Gazette* to be a railway or railway operation, or both, for the purposes of this Act. 30
- (2) This Act does not apply to—
- (a) a railway in a mine which is underground and to which the provisions of the Minerals Act, 1991 (Act No. 50 of 1991), and the Mine Health and Safety Act, 1996 (Act No. 29 of 1996), apply; 35
 - (b) a railway operated at an amusement park;
 - (c) an aerial, cable-operated transportation system; or
 - (d) any railway exempted by the Minister by notice in the *Gazette* from compliance with this Act. 40

CHAPTER 3

ESTABLISHMENT AND GOVERNANCE OF RAILWAY SAFETY REGULATOR

Establishment of Railway Safety Regulator

4. A juristic person to be known as the Railway Safety Regulator, comprising of a board, a chief executive officer and staff, is established by this section. 45

Objects of Regulator

5. The objects of the Regulator are to—
- (a) oversee safety in the railway transport industry;
 - (b) promote the use of rail as a mode of transportation through improved safety performance in the railway transport industry; 5
 - (c) develop any regulations that are required in terms of this Act;
 - (d) monitor and ensure compliance with this Act; and
 - (e) give effect to the objects of this Act.

Co-operative governance

6. (1) In order to give effect to the principles of co-operative government and inter-governmental relations contemplated in Chapter 3 of the Constitution, all organs of state, defined in section 239 of the Constitution, in particular the National Department of Labour and the National Department of Safety and Security, on which functions in respect of any aspect of railway safety are conferred by this Act or other legislation, must co-operate with one another in order to— 10 15

- (a) ensure the effective management of safe railway operations;
- (b) ensure the effective overseeing of safe railway operations;
- (c) co-ordinate the exercise of such functions;
- (d) minimise the duplication of such functions and of procedures regarding the exercise of such functions; and 20
- (e) promote consistency in the exercise of such functions.

(2) The Regulator must conclude a co-operative agreement with every relevant organ of state to give effect to the co-operation contemplated in subsection (1).

(3) The Minister may, after consultation with the board and in consultation with the Ministers responsible for the relevant organs of state, make regulations regarding— 25

- (a) the period of time and procedures, including procedures for public participation and mechanisms for dispute resolution, in respect of the conclusion of co-operative agreements referred to in subsection (2); and
- (b) matters that must be provided for in co-operative agreements, including provision for— 30
 - (i) the period of time for the implementation of co-operative agreements;
 - (ii) the co-ordination of the functions referred to in subsection (1) in a manner that avoids unnecessary duplication and omissions regarding safety requirements and the issuing of conflicting instructions;
 - (iii) measures to be taken in the event of non-compliance with a co-operative agreement; and 35
 - (iv) dispute resolution in respect of the interpretation or application of co-operative agreements referred to in subsection (2).

(4) The Minister must publish a notice in the *Gazette* setting out every co-operative agreement concluded in terms of subsection (2). 40

Functions of Regulator

7. (1) The Regulator must, for the purpose of achieving its objects in terms of section 5—

- (a) advise the Minister on matters associated with any action or condition which— 45
 - (i) is capable of causing any actual or potential threat of harm or damage to persons or property;
 - (ii) the Minister refers to the Regulator; and
 - (iii) the Regulator considers necessary in the furtherance of its objects; and

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- (b) for purposes of this Act, act as the national competent authority in connection with the transportation of dangerous goods by rail.
- (2) The Regulator may, for the purpose of achieving its objects in terms of section 5 of this Act—
- (a) grant, amend, suspend or revoke safety permits; 5
 - (b) formally recognise an association representing operators, including other railway industry enterprises, to act on its behalf in respect of the development of standards;
 - (c) collect and disseminate information relating to safe railway operations;
 - (d) hire, purchase or otherwise acquire any movable and immovable property and proprietary right, and lease or dispose of property so acquired, but may not acquire or dispose of immovable property without the prior approval of the Minister, granted with the agreement of the Minister of Finance; 10
 - (e) collaborate with any other body or institution or establish and control facilities for the collection and dissemination of scientific and technical information, in connection with any matter regarding railway safety falling within the objects of the Regulator; 15
 - (f) collaborate with any educational, scientific or other body, government or institution in connection with the provision of instruction for, or the training of, persons required by the Regulator; 20
 - (g) provide, on such conditions as the Regulator deems fit, financial or other assistance in connection with the training of persons in so far as is necessary to ensure that a sufficient number of trained persons is available to enable the Regulator to perform its functions;
 - (h) insure itself against any loss, damage, risk or liability which it may suffer or incur; 25
 - (i) conclude contracts, enter into agreements or perform any act, whether in the Republic or elsewhere, whereby its objects are furthered or which is calculated, directly or indirectly, to enhance the value of the services which the Regulator renders towards the achievement of its objects or perform any other act which may be prescribed; 30
 - (j) adopt standards submitted by an operator or industry association following compliance with a procedure prescribed by the Minister under section 29;
 - (k) require an operator or a railway industry association to consult with organised labour during the development of standards and provide them with an opportunity to comment on those standards prior to submission to the Regulator for approval; 35
 - (l) engage any person or organisation having expertise in matters relating to safe railway operations to furnish advice to the Regulator in relation to the development of, or any dispute over, standards; 40
 - (m) provide education and conduct any other public-awareness activities relating to safe railway operations in accordance with the purpose of this Act;
 - (n) collect and disseminate information relating to safe railway operations;
 - (o) conduct investigations into railway occurrences in accordance with chapter 7; and 45
 - (p) conduct any other activity relating to safe railway operations.
- (3) The functions of the Regulator must be performed by the chief executive officer, as directed by the board, except where otherwise specified in this Act.

Board of Regulator

- 8.** (1) The Regulator is governed and controlled by a board of directors. 50
- (2) The board must—
- (a) ensure that the Regulator strives for the achievement of the objects referred to in section 5; and
 - (b) exercise general control over the performance of the functions of the Regulator. 55
- (3) The board represents the Regulator and all acts performed by the board, or on its authority, are acts of the Regulator.
- (4) The members of the board are appointed by the Minister.

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- (5) (a) The board is answerable to the Minister and it consists of a minimum of seven and a maximum of 13 members who have wide experience of and demonstrate acumen in one or more of the following:
- (i) Management of railways;
 - (ii) safety in transportation; 5
 - (iii) corporate management;
 - (iv) commerce, finance, legal and economic matters;
 - (v) transportation of dangerous goods; and
 - (vi) special knowledge that could be of value to the Regulator in the performance of its functions. 10
- (b) The board must consist of the chief executive officer, as an *ex officio* member, and other suitably qualified persons who are representative of one or more of the following stakeholders:
- (i) Organised labour;
 - (ii) the railway industry; 15
 - (iii) communities which may be affected by railway operations;
 - (iv) the Department of Transport;
 - (v) the Department of Labour; and
 - (vi) the Department of Safety and Security.
- (6) The Minister must appoint a chairperson and a deputy chairperson from among the 20 members of the board, excluding the chief executive officer.
- (7) For the purposes of appointing the members of the board—
- (a) the Minister must, through the media and by notice in the *Gazette*, invite nominations of persons as candidates for the relevant positions on the board;
 - (b) a panel, appointed by the Minister, which may include representatives of the 25 relevant committees of Parliament, must compile a shortlist from which the Minister may appoint persons to the relevant positions on the board; and
 - (c) during the temporary absence of a director, the Minister may appoint a suitably qualified alternate director other than the chief executive officer, to act as such a director. 30
- (8) A person is disqualified from being appointed or remaining a member of the board if he or she—
- (a) is not a South African citizen;
 - (b) is declared insolvent;
 - (c) is convicted of an offence and sentenced to imprisonment without the option 35 of a fine; or
 - (d) becomes a member of—
 - (i) Parliament;
 - (ii) a provincial legislature;
 - (iii) a Municipal Council; 40
 - (iv) the Cabinet; or
 - (v) the Executive Council of a province.
- (9) A member of the board may not be present during, or take part in, the discussion of, or the taking of a decision on, any matter before the board in which that member or his or her spouse, life partner, child, business partner or associate or employer, other than 45 the State, has a direct or indirect financial interest.
- (10) Upon appointment of a person as a member of the board, that person must submit to the Minister and the board a written statement in which he or she declares whether or not he or she has any interest contemplated in subsection (9).
- (11) (a) If any director acquires or contemplates acquiring an interest which could 50 possibly be an interest contemplated in subsection (9), he or she must immediately in writing declare that fact to the Minister and the board.
- (b) If an organisation or enterprise in which a director has an interest contemplated in section (9) is requested to offer its services, the director must immediately, in writing, declare his or her interest to the Minister and the board. 55
- (12) (a) The chairperson of the board holds office for a period specified in the letter of appointment but that appointment may not exceed three years.

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(b) The chairperson is eligible for reappointment upon expiry of the term of his or her office.

(13) (a) A member of the board holds office for a period specified in the letter of appointment, but that appointment may not exceed three years.

(b) Such member of the board may be reappointed upon expiry of the term of his or her office. 5

(14) (a) If a director dies or vacates office, the Minister may, subject to subsection (7), appoint another person as a director.

(b) The person so appointed serves for the unexpired portion of the predecessor's term of office. 10

Chief executive officer of Regulator

9. (1) The Minister must, after consultation with the board, appoint a person with suitable qualifications as chief executive officer of the Regulator.

(2) A person is disqualified from being appointed or remaining as chief executive officer if he or she is disqualified in terms of section 8(8). 15

(3) (a) A chief executive officer holds office for the period specified in the letter of appointment and that period may not exceed five years.

(b) Such chief executive officer may be reappointed upon expiry of the term of his or her office.

(c) The terms and conditions of service of the chief executive officer are determined by the board and approved by the Minister in consultation with the Minister of Finance. 20

(4) The Minister may, at any time, discharge the chief executive officer from office—

(a) if the chief executive officer repeatedly fails to perform the duties of office efficiently;

(b) if, due to any physical or mental illness or disability, the chief executive officer becomes incapable of performing the functions of that office or performs them inefficiently; or 25

(c) for misconduct.

(5) The chief executive officer must—

(a) ensure that the functions of the Regulator in terms of this Act are performed; 30

(b) report to the board on the proper functioning of the Regulator;

(c) issue safety permits in accordance with this Act;

(d) complete a report on the activities of the Regulator for each financial year in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and submit the report to the board for approval; and 35

(e) each financial year, after consultation with the board and with the approval of the Minister, publish and distribute a plan of action for the activities of the Regulator.

(6) The board must forward the report referred to in subsection (5)(d), approved by it, to the Minister within three months after the end of the financial year concerned. 40

(7) The chief executive officer is the accounting officer of the Regulator charged with the responsibility of accounting for all money received and payments made by, and the assets of, the Regulator.

(8) The chief executive officer must exercise all the powers and perform all the duties conferred or imposed upon the accounting officer by— 45

(a) this Act;

(b) the Public Finance Management Act, 1999; or

(c) the board.

(9) If the chief executive officer is for any reason unable to perform any of his or her functions, the chairperson of the board must appoint an employee of the Regulator to act as chief executive officer until the chief executive officer is able to resume those functions. 50

(10) An acting chief executive officer may exercise all the powers and must perform all the duties of the chief executive officer.

Staff of Regulator

10. (1) Subject to the written instructions of the board, the chief executive officer may appoint such staff members for the Regulator as are necessary to perform the work arising from or connected with the Regulator's functions.

(2) The terms and conditions of service of staff of the Regulator are determined by the board and approved by the Minister, in consultation with the Minister of Finance. 5

(3) (a) 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.

(b) Such a scheme or fund for the benefit of the staff of the Regulator may be managed or administered by any other body or person. 10

Delegation and assignment by board

11. (1) Subject to subsections (2), (3), (4) and (5), the board may, by resolution, delegate any power and assign any duty conferred or imposed on it in terms of this Act to— 15

(a) its chairperson;

(b) the chief executive officer;

(c) a committee of the board;

(d) a member of staff of the Regulator;

(e) a person appointed as a railway safety inspector under section 32; 20

(f) an investigator appointed in terms of section 38(2); or

(g) any other person appointed by it.

(2) The board is not divested of any power it delegates or relieved of any duty it assigns.

(3) Such delegation or assignment— 25

(a) may be made subject to conditions determined by the board; and

(b) must be communicated to the delegatee or assignee in writing.

(4) The written communication in terms of subsection (3)(b) must contain full particulars of the matters being delegated or assigned and must specify the conditions, if any, referred to in subsection (3)(a). 30

(5) The board may, by resolution—

(a) amend or revoke a delegation or assignment made in terms of subsection (1); or

(b) withdraw any decision, other than a decision which confers a right or entitlement on any third party, made by the delegatee or assignee with regard to a delegated or assigned matter, and decide the matter itself. 35

Vacation of office of board members

12. (1) The Minister may, at any time, discharge a member of the board from office—

(a) if the member repeatedly fails to perform his or her functions efficiently;

(b) if, due to any physical or mental illness or disability, the member becomes incapable of performing his or her functions or performs them inefficiently; or 40

(c) for misconduct.

(2) A director vacates office when—

(a) he or she becomes disqualified in terms of section 8(8);

(b) he or she is discharged in terms of subsection (1); 45

(c) he or she is absent from three consecutive meetings of the board without the permission of the chairperson, unless the board condones the absence on good reasons shown; or

(d) his or her resignation as director takes effect.

Meetings of board

13. (1) The first meeting of the board is held at the time and place determined by the Minister, and thereafter such meetings are held at such times and places as the board determines.

(2) The chairperson or, in his or her absence, the deputy chairperson 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. 5

(3) All directors must be notified in writing of every meeting of the board.

(4) A majority of the directors forms a quorum at any meeting of the board.

(5) Subject to subsection (4), a decision of the majority of the directors present at a meeting of the board constitutes a decision of the board and, in the event of an equality of votes on any matter, the person chairing the relevant meeting has a casting vote in addition to a deliberative vote. 10

(6) A decision taken by the board or an act performed under its authority, is not invalid merely by reason of— 15

(a) a vacancy on the board; or

(b) the fact that a person who is not entitled to sit as a director sat as a director 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 directors present at the meeting who were entitled to sit as directors. 20

(7) If the chairperson is for any reason unable to act, or the office of chairperson is vacant, the deputy chairperson must act as chairperson.

(8) If both the chairperson and deputy chairperson are for any reason unable to act, or both the offices of chairperson and deputy chairperson are vacant, the board must designate any other director to act as chairperson. 25

(9) The Minister is entitled to attend any meeting of the board, as long as such attendance is in an observer capacity only.

Minutes of board meetings

14. (1) The board must keep minutes of its meetings and submit copies of the minutes to its members and the Minister within one month of approval of the minutes. 30

(2) Such minutes, when signed at a next meeting by a person who chairs that meeting, are, in the absence of proof of error therein, regarded as a true and correct record of the proceedings and are on the face of it evidence of those proceedings before a court of law, any tribunal or a commission of inquiry.

Committees of board 35

15. 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 such persons, including members of the board, staff of the Regulator, an industry association or any member of the association, organised labour, the holders of safety permits and employees of such holders, as the board considers appropriate. 40

Remuneration of directors and committee members

16. A director or member of a committee of the board, other than the chief executive officer or 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. 45

Funds of Regulator

17. (1) The funds of the Regulator consist of—
- (a) money appropriated by Parliament;
 - (b) fees paid to the Regulator in terms of section 23(2); and
 - (c) donations or contributions received by the Regulator, with the approval of the Minister, from any source. 5
- (2) The Regulator must utilise its funds to defray expenses incurred by it in the performance of its functions.
- (3) The chief executive officer 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 10
 - (b) deposit therein all money received in terms of subsection (1).
- (4) The chief executive officer may, on behalf of the Regulator, invest any money received in terms of subsection (1) which is not required for immediate use—
- (a) with the Public Investment Commissioners referred to in section 2 of the Public Investment Commissioners Act, 1984 (Act No. 45 of 1984), with the approval of the Minister; or 15
 - (b) with such other institution determined by the board and the Minister, with the approval of the Minister of Finance.
- (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. 20
- (6) The Regulator may, when it considers it necessary, with the approval of the Minister and with the approval of the Minister of Finance—
- (a) authorise the establishment of such reserve funds; and
 - (b) deposit such funds therein. 25
- (7) The Regulator must in each financial year, on or before a date determined by the Minister, submit a statement of its income and estimated expenditure for the following financial year to the Minister for approval.

Financial year of Regulator

18. The Regulator's financial year is from 1 April in any year to 31 March of the following year, and the first financial year is from the specified date to 31 March. 30

Disagreements between Minister and board

19. (1) If the Minister rejects a recommendation of the board made in terms of this Act, the Minister and the board must endeavour to resolve their disagreement.
- (2) If the Minister and the board fail to resolve their disagreement, the Minister makes the final decision. 35

Reporting to Minister and Parliament

20. (1) The Regulator must produce and submit to the Minister an annual report on the safety of workers, the public and the environment associated with railway operations that the Regulator is required to regulate under this Act including any other matters that may be prescribed. 40
- (2) The Minister must table the annual report submitted to him or her in terms of subsection (1) in Parliament within 14 days—
- (a) of receipt thereof if Parliament is in session; or
 - (b) after the commencement of its ensuing session, if Parliament is not in session. 45

Judicial management and liquidation of Regulator

21. Despite the provisions of any other law, the Regulator may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted especially for that purpose.

CHAPTER 4

5

SAFETY PERMITS**Railway undertakings requiring safety permit**

22. (1) A person may not undertake any railway operation or a component of a railway operation without being in possession of a safety permit.

(2) The following categories of persons may apply for a safety permit: 10

- (a) A network operator;
- (b) a train operator;
- (c) a station operator; and
- (d) any other category of persons designated as being eligible for a safety permit by the Minister by notice in the *Gazette*. 15

Application for safety permit

23. (1) Application for a safety permit must be made to the chief executive officer of the Regulator.

(2) The Regulator may determine and charge a fee for processing a safety permit application. 20

(3) An application for a safety permit must—

- (a) be made in the format determined by the Regulator;
- (b) contain the additional information determined by the Regulator; and
- (c) be accompanied by the processing fee and a safety management system report. 25

(4) The chief executive officer—

- (a) may require the applicant, at the applicant's expense, to provide him or her by a given date with—
 - (i) any information, in addition to the information contained in the application; and 30
 - (ii) an independent review of that information by a person acceptable to the board;
- (b) may direct that an investigation be conducted on the effect of the proposed safety permit on safe railway operations;
- (c) may invite written comments from any organ of state which has an interest in the matter; and 35
- (d) must afford the applicant an opportunity to make representations on any aspect of the safety permit application.

(5) The chief executive officer may, at any stage of the application process, require the applicant to— 40

- (a) publish a notice of his or her application in local newspapers and other media—
 - (i) describing the safety permit applied for;
 - (ii) stating that written objections on the grounds of the safe railway operations may be lodged against his or her application before a specified date, which may not be less than 60 days after the last publication of the notice; 45
 - (iii) giving an address where written objections must be lodged; and
 - (iv) containing such other particulars as the board may require;

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- (b) take such other steps as the chief executive officer may direct to bring the application to the attention of relevant organs of state, interested persons and the general public; and
- (c) satisfy the chief executive officer that the interests of any other person are not adversely affected.

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Conditions of safety permit

24. (1) The board may make standard conditions applicable to one or more categories of safety permit.

(2) The chief executive officer may, impose any condition in a safety permit, including a condition relating to —

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- (a) the term of validity of a safety permit;
- (b) the form, manner, timing and submission of any review of a safety management system report;
- (c) geographical considerations;
- (d) the transport of any commodity other than dangerous goods;
- (e) the transport of dangerous goods;
- (f) the transport of passengers;
- (g) the transport of general freight;
- (h) speed;
- (i) traction;
- (j) consent to routine safety inspections;
- (k) notice to be given to the chief executive officer, in writing, of any change in control of the holder; and
- (l) any other technical or other matters necessary to ensure the safety or protection of persons with disabilities, other persons, property and the environment or to provide for the rehabilitation of any site.

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(3) The chief executive officer may amend any condition in a safety permit.

Reasons for decision

25. After the chief executive officer has reached a decision on a safety permit application, he or she must promptly—

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- (a) notify the applicant and any person who has objected to the application; and
- (b) at the request of any person contemplated in paragraph (a), give written reasons for the decision.

Suspension, revocation and surrender of safety permit

26. (1) The chief executive officer may, with the approval of the board, revoke or suspend a safety permit if the holder fails to comply with—

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- (a) any condition of the permit; or
- (b) this Act.

(2) The chief executive officer must, at the request of any person affected by a decision taken in terms of subsection (1), furnish written reasons for the decision to revoke or suspend a safety permit.

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(3) The holder of a safety permit may surrender that safety permit.

Prohibition of transfer of safety permit

27. A safety permit issued under this Act is not transferable.

CHAPTER 5**SAFETY MANAGEMENT****Part 1****Safety management systems and standards****Regulations regarding safety management systems and safety management system reports 5**

- 28.** The Minister must make regulations on—
- (a) the form and content of a safety management system;
 - (b) the form, content and manner of submission of a safety management system report; and 10
 - (c) the circumstances under which the board may require the holder of a safety permit to revise or amend a safety management system or safety management system report.

Standards

- 29.** (1) The Minister must make regulations on the procedure to be followed by the board and any other person in the development of standards for safe railway operations. 15
- (2) Standards adopted by the board in compliance with the prescribed procedure become binding on all persons authorised under this Act to conduct railway operations.
- (3) The board may, subject to the principles and objects of this Act, grant exemption from compliance with any standard to any person authorised under this Act to conduct railway operations. 20
- (4) Should a conflict arise between the standards and the regulations, the regulations concerned prevail.

Part 2**Rolling stock, infrastructure and stations 25****Regulations regarding design, construction, operation and alteration**

- 30.** The Minister may make regulations on the following matters insofar as they may have an impact on safe railway operations:
- (a) A new or proposed construction which may impact on safe railway operations and which requires the approval of the Regulator, and the procedure for such approval, including the noting of objections; 30
 - (b) any matter relating to the design, construction, manufacture, alteration, commissioning, maintenance and operation of rolling stock, infrastructure and stations;
 - (c) human factors and requisite skills; 35
 - (d) the safety of persons, including persons with disabilities, on board stationary or moving rolling stock, infrastructure or at a station;
 - (e) the conveyance of dangerous goods by rail; and
 - (f) any other safety-related matter that the Minister considers necessary.

Part 3 40**Non-railway operations affecting safety****Regulations regarding infrastructure or activity affecting safe railway operations**

- 31.** The Minister, after consultation with the members of the Executive Council responsible for transport in the various provinces, may make regulations on the following matters to the extent that they affect safe railway operations, namely— 45
- (a) Fencing;

- (b) mines and any other excavations;
- (c) drainage;
- (d) land use insofar as it impacts on any drainage affecting a railway;
- (e) any construction activities above, below or adjacent to a railway;
- (f) storage of materials adjacent to a railway; 5
- (g) road level-crossings;
- (h) security matters;
- (i) the circumstances under which an operator is permitted to enter land adjacent to a railway and the circumstances under which compensation may be payable to such adjacent landowners; 10
- (j) the size of, and location of, access to stations from property adjoining a station;
- (k) the development of property adjoining a station;
- (l) any other matter relating to non-railway operations affecting railway safety that the Minister considers necessary and desirable to prescribe for safe railway operations; and 15
- (m) unlawful occupation which renders railway operations unsafe or has the potential to render them unsafe, subject to the provisions of any other legislation governing unlawful occupation. 20

CHAPTER 6 20

ENTRY AND INSPECTION

Appointment of railway safety inspector

- 32.** (1) The Minister may, in writing, appoint any suitably qualified person as a railway safety inspector to perform the functions contemplated in section 33.
- (2) A railway safety inspector must be provided with a certificate of appointment signed by the Minister, or by the chief executive officer on behalf of the Minister, setting out the functions of the inspector. 25

Powers and duties of railway safety inspector

- 33.** (1) A railway safety inspector may, at any time, enter or cross property under control of an operator in order to carry out— 30
- (a) an inspection;
 - (b) an audit of the operator's safety management system,
- in respect of railway operations provided for under a safety permit.
- (2) A railway safety inspector may, at any time and without prior notice, enter a property under the control of an operator, and investigate whether— 35
- (a) this Act, or any condition attached to any safety permit, or any standard adopted in accordance with this Act, or any notice or directive issued under this Act is being contravened; or
 - (b) any information supplied in connection with a safety permit is inaccurate.
- (3) A railway safety inspector entering a property in terms of this section must, at the request of any person on that property, identify himself or herself and must show that person a certificate of appointment contemplated in section 32(2). 40

Duty to assist railway safety inspector

- 34.** (1) When a railway safety inspector enters any property referred to in section 33(1) or (2), the operator, owner or manager and each employee working there must assist the railway safety inspector by furnishing him or her with answers to questions and also by providing him or her with any facility that the inspector may require. 45
- (2) 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. 50

Duty to produce documents

35. A person who holds a safety permit or any other document requested by the railway safety inspector must produce it and must—

- (a) allow the railway safety inspector to remove any articles or objects pointed out by him or her which relate to the object of the inspection; 5
- (b) allow the inspection of documents required by the railway safety inspector including the making of copies thereof; and
- (c) furnish the railway safety inspector with any information under that person's control.

Powers of railway safety inspector to deal with unsafe conditions 10

36. (1) If a railway safety inspector believes that a condition or activity is a threat or might be a threat to safe railway operations, the railway safety inspector may issue a directive to any person responsible for that condition or activity to the effect that—

- (a) the activity be restricted or suspended and the inspector may place conditions on that activity; or 15
- (b) action be taken within a specified time by the person concerned to remove the threat.

(2) Any person issued with a directive must, within the specified period, comply with it.

CHAPTER 7 20**RAILWAY OCCURRENCE REPORTING AND INVESTIGATIONS****Railway occurrence reporting**

37. An operator must report to the chief executive officer the category and type of all railway occurrences in the manner and form prescribed by the Minister.

Railway occurrence investigations 25

38. (1) The board may, and upon receipt of a directive from the Minister must, investigate any railway occurrence for the purpose of preventing similar occurrences in the future.

(2) The board must appoint a suitably qualified person to carry out any investigation referred to in subsection (1). 30

(3) (a) An investigator appointed in terms of subsection (2) must furnish a written report to the board upon completion of the investigation.

(b) The board may adopt the report as its decision or deal with it as it deems necessary.

(4) The board may disseminate any information that it considers to be in the public interest. 35

(5) A person conducting the investigation into any railway occurrence may enter and inspect any place, except for a dwelling, any infrastructure, network or rolling stock that is the object of an investigation.

(6) A person in control of the scene of a railway occurrence which is the subject of an investigation must— 40

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- (a) allow the investigator to remove any articles or objects pointed out by the investigator;
- (b) allow the inspection of documents requested by the investigator, including the making of copies thereof; and
- (c) furnish the investigator with any information which is under that person's control. 5

(7) A person questioned by an investigator 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.

CHAPTER 8 10

MONITORING, ASSESSMENT AND INFORMATION

Establishment of national railway safety information and monitoring system

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

(2) The information to be captured on the system may include, among others— 15

- (a) a register of safety permit holders;
- (b) railway occurrences;
- (c) security matters;
- (d) occupational health and safety matters; and
- (e) any other matter the board deems necessary. 20

Provision of information

40. The Regulator may require, in writing, that a person must, within a specified time or on a regular basis, provide the Regulator with data, information, documents, samples or materials required for the purposes of information or monitoring systems.

Access to information 25

41. Information contained in any information or monitoring system established in terms of this Chapter must be made available by the Regulator, subject to any limitations imposed by the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and must be accompanied by the payment of a processing fee determined by the Regulator by notice in the *Gazette*. 30

Regulations regarding monitoring, assessment and information

42. The Minister may make regulations prescribing—
- (a) guidelines, procedures, standards and methods for monitoring; and
 - (b) the class, type, time period and format of data to be submitted for assessment of the performance of the operator. 35

CHAPTER 9

APPEAL AND DISPUTE RESOLUTION

Appeal to chief executive officer against decision of railway safety inspector

43. (1) A person whose rights are adversely affected by a decision of a railway safety inspector in the exercise of any power or performance of any duty in terms of this Act, 40 may appeal against that decision to the chief executive officer.

(2) Such appeal must—

- (a) be lodged within 60 days from the date on which that decision was made known by the railway safety inspector or such later date as the chief executive officer permits; and 45

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- (b) set out the grounds of the appeal.
- (3) After considering the grounds of appeal and the railway safety inspector's reasons for the decision, the chief executive officer must within the prescribed specified time—
- (a) confirm, set aside or vary the decision; or
- (b) substitute the decision of the railway safety inspector with the decision of the chief executive officer. 5

Appeal to board against decision of chief executive officer

- 44.** (1) A person whose rights are adversely affected by a decision of the chief executive officer in the exercise of any power or performance of any duty in terms of this Act, may appeal against that decision to the board. 10
- (2) Such appeal must—
- (a) be lodged within 60 days from the date on which the decision was made known by the chief executive officer or such later date as the board permits; and
- (b) set out the grounds of the appeal. 15
- (3) After considering the grounds of appeal and the reasons for the decision of the chief executive officer, the board must within the prescribed time—
- (a) confirm, set aside or vary the decision; or
- (b) substitute the decision of the chief executive officer with the decision of the board. 20

CHAPTER 10**OFFENCES AND REMEDIES****Offences**

- 45.** (1) Any person who contravenes or fails to comply with section 22, 24 or 36 or hinders a railway safety inspector in the exercise of his or her powers or the performance of his or her duties in terms of this Act is guilty of an offence. 25
- (2) A person convicted of an offence in terms of subsection (1) is liable on conviction to a fine or imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.
- (3) Any person who contravenes or fails to comply with any other section of this Act is guilty of an offence. 30
- (4) A person convicted of an offence in terms of subsection (3) is liable on conviction to a fine or imprisonment for a period not exceeding 5 years, or to both a fine and such imprisonment.

Enquiry in respect of compensation for harm, loss or damage suffered 35

- 46.** 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,
- the Court may, in the same proceedings— 40
- (i) at the written request of the person who suffered the harm or loss; or
- (ii) at the written request of the Minister or the Regulator in respect of the damage caused to property or the environment; and
- (iii) in the presence of the convicted person,
- enquire without pleadings into the harm, loss or damage and determine the extent thereof. 45

Award of damages

47. After making a determination in terms of section 46, the Court may—
- (a) award damages for the loss or harm suffered by the person referred to in section 46 against the convicted person;
 - (b) order the convicted person to pay for the cost of any remedial measures to be taken; or 5
 - (c) order that the convicted person implement remedial measures .

Offences in relation to employer and employee relationships

48. Whenever an act or omission by an employee or agent constitutes an offence in terms of this Act, and the act or omission takes place with the express or implied permission of the employer or principal, that employer or principal, as the case may be, is, in addition to the employee or agent, liable to conviction for that offence. 10

Liability of juristic person

49. 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 himself or herself guilty of the said offence, and is liable, on conviction, to the penalty specified if the offence in question resulted from the failure of the director, trustee or member to take all steps that were necessary under the circumstances to prevent the commission of the offence, as long as the proof of the said offence by the juristic person constitutes evidence on the face of it, that the director is guilty in terms of this section. 15 20

CHAPTER 11**GENERAL PROVISIONS REGARDING REGULATIONS****Making of regulations**

50. (1) The Minister may, after consultation with the board, and by notice in the *Gazette*, make regulations as to any matter— 25
- (a) required to be prescribed in terms of this Act;
 - (b) which is necessary to prescribe for the effective administration of this Act.
- (2) Any regulation made in terms of subsection (1) 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. 30
- (3) The Minister must, before making any regulations in terms of this Act—
- (a) publish a notice in the *Gazette*—
 - (i) setting out the draft regulations; and
 - (ii) inviting written comments to be submitted on the proposed regulations, specifying an address to which, and a date before which, the comments may be submitted, which date may not be earlier than 60 days after publication of the notice; 35
 - (b) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons; 40
 - (c) consider all comments received on or before the date specified in paragraph (a)(ii); and

- (d) on request by the National Assembly or the National Council of Provinces or a committee of the National Assembly or the National Council of Provinces, report on the extent to which a specific comment has been taken into account, or if a comment was not taken into account, provide the reason why it was not taken into account. 5

Consideration of regulations

51. The Minister must, within 30 days after making any regulations in terms of this Act, table the regulations in the National Assembly and the National Council of Provinces.

CHAPTER 12

10

GENERAL AND TRANSITIONAL PROVISIONS

State bound

52. This Act binds all organs of State.

Limitation of liability

53. Neither the State nor any other person is liable for any damage or loss caused by— 15
- (a) the exercise of any power or the performance of any duty in terms of this Act; or
 - (b) the failure to exercise any power, or perform any duty in terms of this Act, unless the exercise of, or the failure to exercise, the power, or the performance of, or failure to perform, the duty was unlawful, negligent or in bad faith. 20

Financial assistance

54. (1) Where a proposed activity, construction or any other work, is likely to improve the safety of a railway or safe railway operations, application may be made by the board or any person to the Minister for financial assistance in respect of that proposed activity, construction or other work. 25

(2) Where an application is received by the Minister in terms of subsection (1), the Minister may, if satisfied that the application has been duly made and that safe railway operations are likely to be enhanced by the carrying out of the proposed activity, construction or other work, authorise financial assistance for the purpose of defraying the costs of the whole or part of the activity, construction or other work. 30

(3) The financial assistance referred to in subsection (2) must be from funds—

- (a) appropriated by Parliament for that purpose; or
- (b) which may in terms of this Act be used for the purposes in question.

(4) A person who wilfully fails to comply with any obligations imposed by this Act is not eligible for financial assistance in terms of this Act. 35

(5) The Minister may make regulations concerning—

- (a) eligibility for financial assistance;
- (b) the manner in which financial assistance must be applied for; and
- (c) the terms and conditions applicable to any financial assistance granted.

International co-operation

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55. (1) The Minister may, by notice in the *Gazette*, require the Regulator to implement any international agreement entered into by the Republic and a foreign government relating to safe railway operations.

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(2) Unless the international agreement provides otherwise, the Regulator must report to the Minister on the performance of any of its functions under subsection (1) within three months after the end of its financial year.

(3) The report referred to in subsection (2) must contain sufficient information to allow the Minister to assess the performance of the Regulator in respect of all its functions in terms of subsection (1) and whether such performance conforms with the objectives set out in the relevant international agreement. 5

Effect of delegation and assignment

56. Where a person is authorised to delegate the exercise of a power and to assign the performance of a duty, unless the contrary intention appears— 10

- (a) such a delegation or assignment does not prevent the exercise of that power or the performance of that duty by the person who made the delegation or the assignment, as the case may be;
- (b) such a delegation or assignment may be made subject to such conditions or limitations as the delegator or assignor may stipulate; and 15
- (c) a power or duty so delegated or assigned when exercised or performed by the delegatee or assignee, must be regarded as having been exercised or performed by the delegator or assignor, as the case may be.

Documents deemed to be properly authorised and issued

57. (1) A notice, directive or other document issued in good faith by the Regulator in terms of this Act, which purports to have been signed by the chairperson or chief executive officer of the Regulator must be regarded as having been properly authorised and issued in terms of a valid decision, until evidence to the contrary is proved. 20

(2) Any document issued without authority in terms of this Act may be ratified subsequently. 25

Documents and steps taken valid under certain circumstances

58. (1) A notice, directive or other document issued in good faith in terms of this Act, but which does not comply with this Act, is valid if the non-compliance is not material and does not prejudice any person.

(2) The failure to take any steps required in terms of this Act as a prerequisite for any decision or action does not invalidate the decision or action if the failure— 30

- (a) is not material;
- (b) has subsequently been rectified; or
- (c) does not prejudice any person.

(3) A failure in good faith to consult with, or send notices to, any relevant person or body as required by this Act does not invalidate any act or process where such consultation is a prerequisite, unless a person is prejudiced by such failure. 35

Service of documents

59. (1) Any notice, directive or other document in terms of this Act, must be served—

- (a) if it is to be served on a natural person— 40
 - (i) by hand delivery to that natural person;
 - (ii) by hand delivery to a responsible person at that natural person's business or residential address;
 - (iii) by registered mail to that natural person's business or residential address; 45
 - or
 - (iv) where that natural person's business and residential addresses are unknown, despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that natural person's last known residential or business address; or
- (b) if it is intended for a juristic person— 50

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- (i) by hand delivery to a responsible person at the registered address or principal place of business of that juristic person;
- (ii) by facsimile to the registered address or principal place of business of that juristic person;
- (iii) by registered mail to the registered address or principal place of business of that juristic person; 5
- (iv) by conspicuously attaching it to the main entrance of the registered address or the principal place of business of that juristic person; or
- (v) by hand delivery to any member of that juristic person's board of directors or governing body. 10

(2) Any notice, directive or other document served according to subsection (1) is considered to have been received by that natural or juristic person, unless the contrary is proved.

Repeal of laws

60. Items 1, 2, 3 and 4 of Schedule 1 to the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989), are repealed. 15

Short title and commencement

61. This Act is called the National Railway Safety Regulator Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.