



New South Wales

Rail Safety (General) Further Amendment (Miscellaneous) Regulation 2006

under the

Rail Safety Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Rail Safety Act 2002*.

JOHN WATKINS, M.P.,
Minister for Transport

Explanatory note

The object of this Regulation is to amend the *Rail Safety (General) Regulation 2003*:

- (a) to exempt certain railway operators from the requirement to be accredited under the *Rail Safety Act 2002 (the Act)*, and
- (b) to exempt certain changes to an accredited person's railway operations or safety management system from the requirement to apply to the Independent Transport Safety and Reliability Regulator (the *ITSRR*) for a variation of the person's accreditation and to require applications for a variation of a person's accreditation to be accompanied by certain information, and
- (c) to require certain changes to an accredited person's railway operations to be notified to the ITSRR, and
- (d) to provide for the notification to the Chief Investigator and the ITSRR of certain occurrences involving railway operations, and
- (e) to make provision for safety interface agreements in relation to private sidings where the owner of the private siding has entered an agreement with a third person, and
- (f) to prescribe certain offences as offences that may be dealt with by way of a penalty notice (that is by an on-the-spot fine), and
- (g) to permit the ITSRR to exempt the operator of a heritage railway from some or all of the provisions of Part 2 and section 48A of the Act, and
- (h) to make other minor amendments.

This Regulation is made under the *Rail Safety Act 2002*, including sections 12 (3), 18 (3), 23 (3), 27 (3A), 64 (2) (a), 105 (2) and 117 (the general regulation-making power).

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Clause 1 Rail Safety (General) Further Amendment (Miscellaneous) Regulation 2006

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under the

Rail Safety Act 2002

1 Name of Regulation

This Regulation is the *Rail Safety (General) Further Amendment (Miscellaneous) Regulation 2006*.

2 Commencement

This Regulation commences on 1 July 2006.

3 Amendment of Rail Safety (General) Regulation 2003

The *Rail Safety (General) Regulation 2003* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] **Parts 5A and 6**

Omit the headings to the Parts.

[2] **Part 6**

Insert after clause 49:

Part 6 Accreditation

49AA Exemptions from requirement to be accredited

- (1) An operator of a railway is exempt from section 8 of the Act if the operator is responsible only for one or more of the following kinds of railway operation:
 - (a) the construction or maintenance of infrastructure of a railway,
 - (b) the construction or maintenance of rolling stock.

Note. Section 8 of the Act makes it an offence for a person to operate a railway unless the person is accredited.
- (2) Subclause (1) applies, in the case of an accredited person, from the date notified in writing to the accredited person by the ITSRR.
- (3) This clause does not apply to a rail infrastructure owner within the meaning of the *Transport Administration Act 1988*, other than the Rail Infrastructure Corporation.

49AB Exemptions from applications for variations of accreditation

For the purposes of section 27 (3A) of the Act, the following variations may be made to an accredited person's railway operations or safety management system without the need for the person to apply to the ITSRR for a variation or an approval of the variation:

- (a) the carrying out, by the accredited person, of railway operations for which the person is accredited in a manner that is not covered by the person's accreditation,
- (b) a variation to the accredited person's safety management system.

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49AC Variations to accreditation

It is a condition of accreditation that an application for a variation to a person's accreditation is to be accompanied by the following information:

- (a) a description of the proposed change to the person's railway operations,
- (b) a detailed plan indicating the key stages of the design, development and implementation of the proposed change and an estimate of when each key stage will be completed,
- (c) a description of the processes that will be used to identify, manage and control the risks of carrying out railway operations during the development and implementation of the proposed change,
- (d) a list of other railway operators and other interested stakeholders who will be affected by the proposed change and a description of the proposed procedures for notifying and consulting those persons about the proposed change.

49AD Changes to railway operations to be notified to ITSRR

- (1) The following are conditions of accreditation:
 - (a) an accredited person who proposes to construct or commission the construction of rolling stock or railway track must, as soon as practicable after the design of that rolling stock or track is approved, notify the ITSRR in writing of the proposal and include:
 - (i) a description of the rolling stock or track, and
 - (ii) a proposed timetable for the construction and commissioning of the rolling stock or track,
 - (b) an accredited person who proposes to introduce into service rolling stock of a type not previously operated by the person must, at least 28 days before that introduction, notify the ITSRR in writing of the proposal and include:
 - (i) a description of the rolling stock, and
 - (ii) the date on which it is proposed to introduce the rolling stock into service,
 - (c) an accredited person who proposes to modify a safety critical item of existing rolling stock (being an item listed under the heading "C2 Primary List—Safety Critical Items" in Appendix C to AS 4292.3—1997, *Railway safety management—Rolling stock*) must, at least 28 days before the modified rolling stock is introduced into

service, notify the ITSRR in writing of the proposal and include:

- (i) a description of the rolling stock and the proposed modification, and
 - (ii) a proposed timetable for the commencement and completion of the modification,
- (d) an accredited person who proposes to modify existing railway infrastructure (other than routine repairs or maintenance in accordance with the safety management system) must, at least 28 days before commencing the modification, or, if the modification is carried out in an emergency, as soon as practicable after the modification, notify the ITSRR in writing of the proposal and include:
- (i) a description (including the location and technical specifications) of the proposed modification, and
 - (ii) a proposed timetable for the commencement and completion of the modification,
- (e) an accredited person who proposes to amend or replace a standard that is referred to in the person's safety management system and that relates to the design and construction of railway infrastructure or rolling stock must, as soon as practicable after the change is to take effect, notify the ITSRR in writing of the proposal and include:
- (i) a description of the proposed change, and
 - (ii) the date the proposed change takes effect,
- (f) an accredited person who proposes to change the frequency or procedures for the inspection or maintenance of the person's railway infrastructure or rolling stock must, at least 28 days before the change is to take effect, notify the ITSRR in writing of the proposal and include:
- (i) a description of the proposed change, and
 - (ii) the date the proposed change is to take effect,
- (g) an accredited person who proposes to implement a new safeworking system must, as soon as practicable after the design of the safeworking system is approved by the person, notify the ITSRR in writing of the proposal and include:
- (i) a description of the safeworking system and the sections of track on which it is to apply, and
 - (ii) the date the proposed system is to take effect,

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- (h) an accredited person who proposes to change a safeworking system must, at least 28 days before the change is to take effect, notify the ITSRR in writing of the proposal and include:
 - (i) a description of the proposed change to the safeworking system and the sections of track on which it is to apply, and
 - (ii) the date the proposed change is to take effect, and
 - (iii) evidence that each operator of any railway that will be affected by the proposed change has been notified of that change,
 - (i) an accredited person who proposes to introduce or change a rule relating to the conduct of a railway operation on the NSW rail network must, at least 28 days before, or if the change is made in an emergency, as soon as reasonably practicable after, the new or amended rule is to take effect, notify the ITSRR in writing of the proposal and include:
 - (i) a copy of the new or amended rule, and
 - (ii) the date the new or amended rule is to take effect, and
 - (iii) evidence that all relevant parties have been notified of the proposed rule change,
 - (j) an accredited person who proposes to change the person nominated in the safety management system as the person responsible for maintaining that system must, at least 7 days before the change is to take effect (or as soon as practicable after the change if the accredited person could not reasonably know of the change beforehand), notify the ITSRR in writing of the proposal and include:
 - (i) the name, qualifications and experience of the nominated person, and
 - (ii) details of the nominated person's role and responsibilities with respect to the safety management system.
- (2) Despite subclause (1), a person is not required to notify the ITSRR of a matter if the person has requested a variation to the person's accreditation under section 27 of the Act in respect of the matter and the ITSRR has granted the variation to the person.
- (3) Nothing in subclause (1) or (2) affects any requirement a person must meet under section 27 of the Act.

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- (4) If a matter is to take place after the commencement of this clause that would require a person to provide notification under this clause to the ITSRR before that commencement, the notification requirement is satisfied for the purposes of this clause if the notification is provided as soon as practicable after that commencement.
- (5) In this clause:
NSW rail network has the same meaning as in the *Transport Administration Act 1988*.

[3] Clause 49A Safety interface agreements

Omit clause 49A (8).

[4] Part 7

Insert after clause 52:

Part 7 Notifiable occurrences

52A Interpretation

In this Part, an occurrence involves an accredited person if it involves railway operations for which the person is accredited.

52B Notifiable occurrences

For the purposes of section 64 of the Act, the occurrences set out in Schedule 2 are notifiable occurrences.

52C Category A occurrences to be notified to Chief Investigator

- (1) An accredited person must notify the Chief Investigator by telephone in accordance with this clause of any Category A occurrence set out in clause 1 of Schedule 2 involving the accredited person as soon as practicable after the occurrence.
- (2) An accredited person is to provide the Chief Investigator with the following information when notifying the Chief Investigator of a Category A occurrence under subclause (1):
- (a) the name of each accredited person involved in the occurrence,
 - (b) brief details of the occurrence, including the number of people injured or killed (if any), the emergency services that attended (if any) and any actions taken by the emergency services or the accredited person in response to the occurrence,

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- (c) the name and telephone number of an individual who can be immediately contacted by the Chief Investigator to provide further details of the occurrence and who, if practicable, is at the scene.

52D All notifiable occurrences to be notified to ITSRR

- (1) An accredited person must, within 72 hours of any notifiable occurrence involving the accredited person, notify the ITSRR of the occurrence in the approved form.
- (2) The requirement to provide notice to the ITSRR under this clause is in addition to any other requirement imposed on the accredited person to notify the Chief Investigator.

52E Notification may be given jointly

A notification under this Part may be given jointly by 2 or more accredited persons.

52F Chief Investigator and ITSRR to share information

- (1) The Chief Investigator is to provide the ITSRR with access to such details of a notification given to the Chief Investigator under this Part as the ITSRR may require, including access to any telephone recording that may have been made.
- (2) The ITSRR is to provide the Chief Investigator with access to such details of a notification given to the ITSRR under this Part as the Chief Investigator may require.
- (3) This clause does not apply to a train safety recording (within the meaning of Division 3 of Part 3 of the Act), any part of a train safety recording or any information obtained from a train safety recording.

Part 8 Miscellaneous offences

[5] Part 9

Insert after section 60:

Part 9 Miscellaneous

[6] Clause 60B

Renumber clause 50 as clause 60B, and insert after clause 60A.

[7] Clauses 60C and 60D

Insert after clause 60B (as renumbered by item [6]):

60C Safety interface agreements on private sidings

- (1) For the purposes of section 23 (3) of the Act, an agreement referred to in section 23 (2) (a) is to comply with clause 49A as if the agreement were a safety interface agreement under section 12 of the Act.
- (2) The owner of a private siding is exempt from section 23 (2) of the Act if:
 - (a) the owner enters an agreement with a person under which the person agrees to be responsible for rail operations on the private siding and to carry out the owner's responsibilities under section 23 (2) of the Act, and
 - (b) the person carries out the owner's responsibilities under section 23 (2) of the Act as if the person were the owner of the private siding.
- (3) If more than one person has entered an agreement referred to in subclause (2) in respect of a private siding, the persons may jointly enter any agreement or give any notice required by section 23 (2) of the Act.
- (4) If the person referred to in subclause (2) is the accredited person in respect of the railway or siding of a railway to which the private siding is connected with or has access to, the accredited person is not required to enter an agreement with itself under section 23 (2) or to notify itself under that subsection.
- (5) It is a condition of accreditation that an accredited person must enter an agreement with any person who is required to enter an agreement with the accredited person because of this clause or section 23 of the Act.

60D Operators of heritage railways exempt from Part 2 and section 48A of Act

- (1) In this clause:
heritage railway means a railway operated for the purpose of the restoration, preservation or operation of vintage trains.
- (2) The ITSRR may, by notice in writing, exempt the operator of a heritage railway from some or all of the provisions of Part 2 (other than Division 1) and section 48A of the Act in respect of that heritage railway.

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Note. Section 21 of the Act provides the ITSRR with a power to exempt a person from any one or more of the requirements of Division 1 of Part 2 of the Act.

- (3) A notice under subclause (2) takes effect from the time specified in the notice, or if no time is specified, when it is given to the operator.
- (4) A notice under subclause (2) may be revoked or amended by a further written notice given to the operator.
- (5) A notice under this clause has effect according to its tenor.

[8] Schedule 1 Penalty notice offences

Insert in order of section number in columns 1 and 2 of Part 1, respectively:

Section 17 (2)	\$1,000
Section 17 (3)	\$500
Section 23 (4)	\$500
Section 36 (7)	\$600
Section 37	\$600
Section 37A	\$200
Section 39	\$200
Section 53	\$1,500
Section 63 (3)	\$1,500
Section 64	\$600
Section 66 (7)	\$1,500
Section 67A (3)	\$500
Section 67E (4)	\$800
Section 91 (2)	\$5,500

[9] Schedule 1, Part 2

Insert in order of section number in columns 1 and 2, respectively:

Clause 52 (2) (in the case of a corporation)	\$5,500
Clause 52 (2) (in the case of an individual)	\$1,100

[10] **Schedule 2**

Insert after Schedule 1:

Schedule 2 Notifiable occurrences

(Clause 52B)

1 Category A notifiable occurrences

Each of the following is a category A notifiable occurrence if it occurs on railway premises and relates to a railway:

- (a) the death of a person,
- (b) serious injury to a person,
- (c) a derailment of a train or rolling stock from a running line,
- (d) an obstruction on a running line,
- (e) a collision between trains on a running line,
- (f) a collision between a train and a road vehicle or person at a level crossing or pedestrian crossing,
- (g) a fire or explosion affecting the infrastructure of a railway or rolling stock.

2 Category B notifiable occurrences

Each of the following is a category B notifiable occurrence if it occurs on railway premises and relates to a railway (but does not involve the death of, or serious injury to, a person):

- (a) a person falling from a railway platform, bridge or other structure or from a train that is moving (including a train that is starting or stopping),
- (b) a person falling between a train and a railway platform,
- (c) a person being struck by a train or rolling stock,
- (d) a person being struck by any matter thrown from, or at, a train,
- (e) a person being adversely affected by dangerous goods, gases or fumes,
- (f) a person receiving an electric shock,
- (g) a person slipping, tripping or falling on or from a train, railway track, station, platform, escalator, lift or stairs,
- (h) a person being caught in train doors,
- (i) a person being assaulted,

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- (j) a derailment of a train or rolling stock from a line other than a running line,
- (k) a collision involving a train (other than a collision referred to in clause 1 (e) or (f)) that results in injury to a person or damage to property,
- (l) a train improperly passing a stop signal,
- (m) a breach of a safeworking system,
- (n) a failure of any equipment or other component that forms part of a safeworking system,
- (o) any of the following (other than a collision referred to in clause 1 (f)):
 - (i) a road vehicle causing damage to a level crossing or equipment at a level crossing,
 - (ii) any rolling stock having a near miss with a person or vehicle at a level crossing,
 - (iii) any rolling stock running on to a level crossing when not authorised to do so,
 - (iv) failure of any equipment at or around a level crossing,
- (p) any defect or irregularity in any track or supporting infrastructure, or any tunnel or bridge that causes a danger to the safe passage of trains, vehicles or persons (but does not include any irregularities that are detected and fixed as part of a normal maintenance program),
- (q) any incident involving dangerous goods (that resulted, or may reasonably result, in an explosion, fire or pollution),
- (r) any rolling stock incident that may have caused a serious accident (whether or not any such accident did occur), including, but not limited to, any one or more of the following:
 - (i) any overheated axle bearings (hot box),
 - (ii) any rolling stock dragging equipment, including a chain, rope, tarpaulin or similar,
 - (iii) any object attached to rolling stock that projects out from the line of the rolling stock that caught, or may catch, on rail infrastructure (gauge fouling),
 - (iv) any improper loading of a wagon, or any load that has shifted on a wagon,
 - (v) the door in an item of rolling stock designed to carry persons being defective or accidentally opening,

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- (vi) items of rolling stock in a train becoming accidentally separated,
 - (vii) a defect in a pantograph that is reasonably likely to cause the pantograph to become separated from overhead wiring,
 - (viii) the failure of a wheel or axle on rolling stock,
 - (ix) the failure of a major braking system of a train or rolling stock,
 - (x) rolling stock running out of control,
 - (s) an incident involving animals or livestock that may potentially, or did, cause a serious accident,
 - (t) any defect in the infrastructure of a railway that may adversely affect the safe carrying out of railway operations, including defects in the electrical infrastructure or civil infrastructure such as tunnels, bridges, viaducts, culverts, stations or other structures,
 - (u) track defects (including broken or misaligned rails) that may adversely affect the safe carrying out of railway operations,
 - (v) any act of vandalism that adversely affected, or may adversely affect, the safe carrying out of railway operations,
 - (w) any result of a drug or alcohol test of a railway employee that shows that the employee was under the influence of alcohol or any other drug when about to carry out, or while on duty for the purposes of carrying out (whether or not carrying out), railway safety work.