



New South Wales

Work Health and Safety Amendment (Traffic Control Work Training) Regulation 2019

under the

Work Health and Safety Act 2011

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Work Health and Safety Act 2011*.

KEVIN ANDERSON, MP
Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to provide that persons who carry out traffic control work must have completed training.

This Regulation is made under the *Work Health and Safety Act 2011*, including sections 44, 243 and 276 (the general regulation-making power).

Work Health and Safety Amendment (Traffic Control Work Training) Regulation 2019

under the

Work Health and Safety Act 2011

1 Name of Regulation

This Regulation is the *Work Health and Safety Amendment (Traffic Control Work Training) Regulation 2019*.

2 Commencement

This Regulation commences on 1 July 2020 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Work Health and Safety Regulation 2017

[1] Part 4.9

Insert after Part 4.8—

Part 4.9 Traffic control work training

Division 1 Preliminary

184A Definitions

In this Part—

direct traffic means direct traffic on a public road to allow work to be carried out safely on or adjacent to the road.

public road has the same meaning as in the *Roads Act 1993*.

successfully complete traffic control work training means successfully complete traffic control work training and a workplace assessment following that training.

temporary card means a traffic control work training certificate that demonstrates that a worker has successfully completed the traffic control work training, but only if—

- (a) the worker has successfully completed traffic control work training, and
- (b) the worker has applied for a traffic control work training card, and
- (c) the regulator has not determined the application.

traffic includes plant, powered mobile plant, vehicles, cyclists and pedestrians.

traffic control work means the following work—

- (a) direct traffic using a stop/slow bat or boom gate,
- (b) implement a work zone traffic management plan in the immediate vicinity of a workplace,
- (c) design (including amend) or inspect a work zone traffic management plan.

traffic control work training for traffic control work means a course of training—

- (a) approved under Division 5 for that type of traffic control work, and
- (b) delivered by an RTO authorised under that Division to deliver the course.

traffic control work training card means a card issued under Division 3.

work zone traffic management plan means a plan showing how traffic will be controlled on a public road to allow work to be carried out safely on or adjacent to the road (or another public road).

Division 2 General training requirements

184B Duty to provide traffic control work training

A person conducting a business or undertaking must ensure that appropriate traffic control work training is provided to a worker engaged by the person who is to carry out traffic control work, if the worker—

- (a) has not successfully completed traffic control work training for that type of traffic control work, or
- (b) successfully completed traffic control work training for that type of traffic control work more than 2 years previously and has not carried out that type of traffic control work in the preceding 2 years.

Maximum penalty—

- (a) in the case of an individual—\$3,600, or
- (b) in the case of a body corporate—\$18,000.

184C Duty to ensure worker has been trained

- (1) A person conducting a business or undertaking must not direct or allow a worker to carry out traffic control work unless—
 - (a) the worker has successfully completed traffic control work training for that type of traffic control work, and
 - (b) if the worker completed the training more than 2 years previously—the worker has carried out that type of traffic control work in the preceding 2 years.

Maximum penalty—

- (a) in the case of an individual—\$3,600, or
- (b) in the case of a body corporate—\$18,000.

- (2) The person conducting the business or undertaking must ensure that the worker holds a traffic control work training card or temporary card for that type of traffic control work.
- (3) Despite subclauses (1) and (2), a person conducting a business or undertaking may direct or allow a worker to carry out traffic control work if—
 - (a) the worker has completed traffic control work training for that type of traffic control work but has yet to complete the workplace assessment for that training, and
 - (b) the worker holds a statement of completion issued, within the previous 90 days, by the RTO that is delivering the training, and
 - (c) the traffic control work is carried out under supervision to provide the worker with experience to be able to complete the workplace assessment.

Division 3 Traffic control work training cards

184D Issue of card

- (1) A person who has successfully completed traffic control work training may apply to the regulator for a traffic control work training card.
- (2) The application must be made in the manner and form required by the regulator.
- (3) The application must—
 - (a) include the applicant's name and any other evidence of the applicant's identity required by the regulator, and
 - (b) include either—
 - (i) a traffic control work training certificate issued to the applicant, or

- (ii) a written declaration by the person who provided the traffic control work training on behalf of the relevant RTO that the applicant has successfully completed traffic control work training.
- (4) The application must be accompanied by the relevant fee.
- (5) The application must be made—
 - (a) within 60 days after completion of the traffic control work training, or
 - (b) if the application includes a traffic control work training certificate issued to the applicant—within 60 days after the issue of the certificate.
- (6) The regulator must issue a traffic control work training card to the applicant for a type of traffic control work if—
 - (a) the application has been made in accordance with this clause, and
 - (b) the regulator is satisfied that the applicant has successfully completed traffic control work training for that type of traffic control work.
- (7) A traffic control work training card may be issued to a person for more than one type of traffic control work if the person has successfully completed traffic control work training for each of those types of traffic control work.
- (8) The regulator must make a decision on the application as soon as practicable.
- (9) If the regulator has not decided on the application within 60 days, the applicant is taken to hold a traffic control work training card until a decision is made.

184E Content of card

- (1) A traffic control work training card must—
 - (a) state the following—
 - (i) the traffic control work training completed by the card holder,
 - (ii) the name of the card holder,
 - (iii) the date on which the card was issued,
 - (iv) a unique identifying number, and
 - (b) contain the card holder's signature.
- (2) The regulator may include other information (including a photograph of the card holder) on a traffic control work training card.

184F Replacement card

- (1) The holder of a traffic control work training card may apply to the regulator for a replacement card if—
 - (a) the card is lost, stolen or destroyed, or
 - (b) the card is a Photo Card that is taken to be a traffic control work training card because of clause 184N.
- (2) The application must—
 - (a) be made in the manner and form required by the regulator, and
 - (b) be accompanied by the relevant fee, and
 - (c) for an application under subclause (1)(a), include a declaration about the circumstances in which the card was lost, stolen or destroyed.

Note. See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or this Regulation.

- (3) The regulator may issue a replacement card if satisfied that the requirements of this clause have been satisfied.

184G Refusal to issue or replace card

The regulator may refuse to issue a traffic control work training card or a replacement traffic control work training card if satisfied that the applicant—

- (a) gave information that was false or misleading in a material particular, or
- (b) failed to give information that should have been given, or
- (c) produced a traffic control work training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

Note. A decision to refuse to issue or replace a traffic control work training card is a reviewable decision (see clause 676).

184H Cancellation of card—grounds

The regulator may cancel a traffic control work training card issued by the regulator if satisfied that the card holder, when applying for the card—

- (a) gave information that was false or misleading in a material particular, or
- (b) failed to give information that should have been given, or
- (c) produced a traffic control work training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

Note. A decision to cancel a traffic control work training card is a reviewable decision (see clause 676).

184I Cancellation of card—process

- (1) The regulator must, before cancelling a traffic control work training card—
 - (a) give the card holder written notice of the proposed cancellation that outlines all relevant allegations, facts and circumstances known to the regulator, and
 - (b) specify a reasonable period of no less than 28 days for the card holder to make submissions to the regulator in relation to the proposed cancellation.
- (2) On cancelling a traffic control work training card, the regulator must give the card holder a written notice of its decision, stating—
 - (a) when the cancellation takes effect, and
 - (b) the reasons for the cancellation, and
 - (c) when the card must be returned to the regulator.

Division 4 Duties of workers

184J Duties of workers

- (1) A worker carrying out traffic control work must keep available for inspection under the Act—
 - (a) the worker's traffic control work training card or temporary card for the traffic control work, or
 - (b) if the worker has completed traffic control work training for the traffic control work, but has not completed a workplace assessment, a current

statement of completion issued by the RTO that is delivering the training.

Maximum penalty—

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

- (2) A card holder, on receiving a cancellation notice under clause 184I(2), must return the card in accordance with the notice.

Maximum penalty—

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

- (3) Subclause (1)(a) does not apply if the card is not in the possession of the card holder because—

- (a) it has been lost, stolen or destroyed, and
- (b) the card holder has applied for, but has not received, a replacement card under clause 184F.

184K Alteration of traffic control work training card

A person must not intentionally or recklessly alter a traffic control work training card.

Maximum penalty—

- (a) in the case of an individual—\$3,600, or
- (b) in the case of a body corporate—\$18,000.

Division 5 Miscellaneous

184L Approval of courses of training and authorisation of RTOs

- (1) The regulator may approve a course of training for traffic control work (an *approved course*).
- (2) Different courses of training may be approved for different types of traffic control work.
- (3) The regulator is to publish in the Gazette the list of approved courses.
- (4) The regulator may authorise an RTO to deliver an approved course.
- (5) An application by an RTO for authorisation must be made in the manner and form required by the regulator.
- (6) The regulator may refuse an application for authorisation or may grant the application unconditionally or subject to conditions.
- (7) The regulator may, by written notice to an RTO—
 - (a) suspend, cancel or vary (including by imposing a condition) an authorisation held by the RTO, or
 - (b) disqualify the RTO from applying for an authorisation under this clause.
- (8) In this clause—
deliver an approved course includes carrying out any assessment that may be required of a person undertaking the course.

184M Part does not apply to certain persons

This Part does not apply to a person who is directing traffic in the person's capacity as—

- (a) a school crossing supervisor, or
- (b) a heavy vehicle inspector.

184N Existing photo card taken to be training card

- (1) A person who, immediately before the commencement of this Part, held a Photo Card granted by Roads and Maritime Services acknowledging that the person had completed training specified in the table to this clause is taken, on that commencement—
 - (a) to hold a traffic control work training card for the type of traffic control work specified in the table for that training, and
 - (b) to have successfully completed traffic control work training for that type of traffic control work.

Training

Traffic controller

Implement traffic control plans

Prepare a work zone traffic management plan

Traffic control work

direct traffic using a stop/slow bat or boom gate

implement a work zone traffic management plan in the immediate vicinity of a workplace

design (including vary) or inspect a work zone traffic management plan

- (2) A Photo Card ceases to be taken to be a traffic control work training card on the date of expiry specified on the Photo Card, but may be replaced under clause 184F(1)(b) at any time even after that date.
- (3) This Regulation applies to a Photo Card to which subclause (1) applies in the same way as it applies to a traffic control work training card.

[2] Clause 676 Which decisions under this Regulation are reviewable

Insert after item 16 in the table to clause 676(1)—

16A	184D—Refusal to issue traffic control work training card	Applicant
16B	184G—Refusal to issue replacement traffic control work training card	Card holder
16C	184H—Cancellation of traffic control work training card	Card holder
16D	184L—Refusal to grant authorisation	Applicant
16E	184L—Suspension, cancellation or variation of authorisation	Authorisation holder
16F	184L—Disqualification of RTO applying for authorisation	The RTO

[3] Clause 702B Register of certain licences and training cards

Insert after clause 702B(1)(e)—

- (f) a traffic control work training card.

[4] Clause 702B(2)

Omit “general construction induction”.

[5] Schedule 2 Fees

Insert after item 6—

6A	Application for traffic control work training card (clause 184D(4))— for each type of traffic control work training	0.23
6B	Application for replacement traffic control work training card (clause 184F(2)(b))—	
	(a) if both lodged and paid for online in one transaction	0.28
	(b) otherwise	0.34

[6] Schedule 18A Penalty notice offences

Insert “184B,” after “182(4),” in Column 1.

[7] Schedule 18A

Insert “184J,” after “182(2), (3) and (5),” in Column 1.