

# Rail Safety (General) Regulation 2008

[2008-610]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Proposed repeal**

The Regulation is to be repealed on the commencement of sec 14 of the [Rail Safety \(Adoption of National Law\) Act 2012 No 82](#) (not commenced).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Rail Safety (General) Regulation 2008



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Rail Safety (General) Regulation 2008*.

### 2 Commencement

This Regulation commences on 1 January 2009.

### 3 Definitions

(1) In this Regulation:

**emergency service**—see clause 6.

**heritage operator** means a rail transport operator that operates a heritage railway.

**heritage railway** means a railway operation principally involving the restoration, preservation or operation of vintage trains.

**light rail stop** means any place designated for the picking up or setting down of passengers on a route declared, under section 104N (2) of the *Transport Administration Act 1988*, to be the route of a light rail system.

**NSW rail network** means the railway lines vested in or owned by or managed or controlled by a rail infrastructure owner (including passing loops and turnouts from those lines and loops and associated rail infrastructure facilities that are so vested or owned or managed or controlled).

**RailCorp** means Rail Corporation New South Wales.

**rail infrastructure owner** means a rail infrastructure owner within the meaning of the *Transport Administration Act 1988* (other than the Transport Infrastructure Development Corporation).

**station** means:

(a) a monorail station (whether or not on railway premises), and

(b) any other station on railway premises,

and includes any place (other than a light rail stop) designated for the picking up and setting down of passengers on a railway.

**the Act** means the *Rail Safety Act 2008*.

(2) Notes included in this Regulation do not form part of this Regulation.

## **Part 2 Safety management**

### **Division 1 Safety management systems generally**

#### **4 General requirements for safety management systems**

(1) A safety management system of a rail transport operator must:

- (a) include or provide for all of the matters listed in Schedule 1 that are relevant to the railway operations for which the operator is accredited, or seeking to be accredited, and
- (b) provide a level of detail with respect to each of these matters that is appropriate, having regard to the scope and nature of those operations and any risks to safety identified as arising or that may arise from the carrying out of the railway operations, and
- (c) provide for the risk management principles set out in subclauses (2) and (3).

(2) If the elimination of a risk to safety is not reasonably practicable, a safety management system must provide for the following measures to be taken:

- (a) firstly, substituting the hazard giving rise to the risk with a hazard that gives rise to a lesser risk,
- (b) secondly, isolating the hazard from the person put at risk,
- (c) thirdly, minimising the risk by engineering means,
- (d) fourthly, minimising the risk by administrative means (for example, by adopting safe working practices or providing appropriate training, instruction or information),
- (e) fifthly, using personal protection.

(3) A safety management system must provide that a combination of the above measures is required to be taken to minimise the risk to the lowest level reasonably practicable if no single measure is sufficient for that purpose.

## Division 2 Security management plan

### 5 Security management plan

For the purposes of section 16 (1) (b) of the Act, a security management plan must contain the following:

- (a) a list of the risks arising from the matters specified in section 16 (1) (a) of the Act,
- (b) a description of the protective and response measures to be used to manage the matters specified in section 16 (1) (a) of the Act, including a description of the policies, procedures, equipment and other physical resources that are proposed to be used for those measures and of any training to be provided relating to those measures,
- (c) if the rail transport operator shares a location such as a modal interchange or a port with one or more other transport operators, a description of arrangements made with those other transport operators in relation to protective and response measures to be used to manage any security incident,
- (d) procedures for the recording, reporting and analysis of security incidents,
- (e) provision for the allocation of security roles and responsibilities to appropriate people,
- (f) provision for liaison with emergency services, and other transport operators who may be affected by the implementation of the plan, to share information and carry out joint operations,
- (g) provision for the evaluation, testing and, if necessary, the revision of measures and procedures.

## Division 3 Emergency management plans

### 6 Emergency services

For the purposes of section 17 (4) of the Act, the following bodies are prescribed as **emergency services**:

- (a) NSW Police Force,
- (b) New South Wales Fire Brigades.

### 7 Consultation about emergency management plan

(1) When preparing the emergency management plan for its railway operations, a rail transport operator must consult with the emergency services and the following persons:

- (a) any other transport operators who may be affected by the implementation of an

emergency management plan for its railway operations,

- (b) any government agencies with emergency management functions with respect to the area to which the plan relates,
  - (c) any of the following, if they may be required to assist in implementing the plan:
    - (i) an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunications or other like services under the authority of an Act of this State or the Commonwealth,
    - (ii) any person who, under the authority of an Act of this State, is permitted to own or use a pipeline, or is licensed to construct or operate a pipeline.
- (2) The ITSRR may exempt a rail transport operator from the obligation to consult with any particular person or body under this clause.

**Note—**

Rail transport operators also have obligations to consult about safety management systems under section 12 (3) of the Act.

**8 Matters to be included in emergency management plans**

An emergency management plan prepared under section 17 of the Act must include the following:

- (a) the types and classes of emergencies that are foreseeable in relation to the rail transport operator's railway operations,
- (b) the consequences of each type or class of emergency, including an estimate of the likely magnitude and severity of the effects of each type or class,
- (c) the risks to safety arising from those emergencies,
- (d) measures to mitigate the effects of those emergencies,
- (e) initial response procedures for dealing with those emergencies and the provision of rescue services,
- (f) recovery procedures for the restoration of railway operations if an emergency occurs and for the assistance of people affected by the occurrence of an emergency,
- (g) the allocation of emergency management roles and responsibilities within the rail transport operator's organisation, and between the operator and other organisations,
- (h) call-out procedures,
- (i) the allocation of personnel for the on-site management of an emergency,



- (j) procedures for liaison with emergency services, including when emergency services should be immediately contacted,
- (k) procedures to ensure that emergency services are provided with all information that is reasonably required to enable them to respond effectively to an emergency,
- (l) procedures for effective communications and co-operation throughout an emergency response,
- (m) procedures for ensuring site security and the preservation of evidence.

## **9 Keeping, maintaining and testing emergency management plans**

- (1) A rail transport operator must ensure, so far as is reasonably practicable, that all employees of the operator, and all contractors engaged by the operator, who may be required to implement any emergency response procedures in the operator's emergency management plan:
  - (a) are provided with information about any applicable parts of the plan, and
  - (b) are able to do anything that may be required of them under the plan.
- (2) A rail transport operator must test the operator's emergency management plan, or parts of the plan, to ensure the plan remains effective:
  - (a) at intervals set out in the plan, and
  - (b) after any significant changes are made to the plan.
- (3) The intervals for testing a plan are to be determined by the rail transport operator in conjunction with the emergency services, if it is reasonably practicable to do so.
- (4) A rail transport operator must, so far as is reasonably practicable, arrange for the participation by relevant emergency services in the testing of an emergency management plan or parts of an emergency management plan.
- (5) A rail transport operator must ensure that in-house exercises to test the operator's emergency management plan are undertaken as often as is necessary, in the opinion of the operator, to ensure that the plan will be properly implemented should an emergency arise.
- (6) A rail transport operator must ensure that the operator's emergency management plan is readily accessible at all times, in a comprehensible form, to the following:
  - (a) all employees of the operator, and all contractors of the operator, who may be required to implement any emergency response procedures in the plan,
  - (b) all other rail transport operators who may be affected by the implementation of an emergency management plan for its railway operations,

- (c) any of the following, if they may be required to assist in implementing the plan:
  - (i) an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunications or other like services under the authority of an Act of this State or the Commonwealth,
  - (ii) any person who, under the authority of an Act of this State, is permitted to own or use a pipeline, or is licensed to construct or operate a pipeline,
- (d) the emergency services.

## **Division 4 Health and fitness management program**

### **10 Health and fitness management program**

- (1) The health and fitness management program of a rail transport operator must comply with Volumes 1 and 2 of the *National Standard for Health Assessment of Rail Safety Workers*, published by the National Transport Commission, as in force from time to time.
- (2) Any action taken by a rail transport operator in accordance with the standard referred to in subclause (1) before the commencement of this clause is taken to have been carried out for the purposes of this clause.

## **Division 5 Fatigue management**

### **11 Matters to be considered in preparing fatigue management program**

When preparing the fatigue management program for its railway operations, or changes to the fatigue management program, a rail transport operator must take into account, and assess, any fatigue-related risks to safety arising from the following:

- (a) the impact on rail safety workers of the scheduling of shift and rest periods,
- (b) without limiting paragraph (a), the impact of work scheduling and relief practices generally on social and psychological factors that may impact on performance and safety,
- (c) the kinds of rail safety work being carried out,
- (d) physiological factors arising out of work practices affecting rail safety workers, such as the effect on worker alertness and recovery of the time when work is undertaken and the length and frequency of breaks,
- (e) the need for education and training of rail safety workers to identify and manage fatigue,
- (f) the kind of rest environments that are to be provided by the operator for rail safety

workers,

- (g) the physical environment in which rail safety work is to be carried out,
- (h) any special circumstances in which rail safety work may be required to be carried out, including in emergencies or under degraded and abnormal conditions,
- (i) the variations in shifts and rest periods that may be required by different rail safety work requirements, including different routes,
- (j) relevant developments in research related to fatigue and any technology that may be applied to manage work-related fatigue.

## **12 Fatigue management program**

- (1) The fatigue management program for rail safety workers of a rail transport operator must:
  - (a) provide for safe hours of work, and
  - (b) provide for safe periods of time between shifts, and
  - (c) specify work scheduling practices that provide for sufficient rail safety workers to be available to meet reasonably foreseeable demands for relief arrangements, and
  - (d) reflect the scope of the rail transport operations of the operator and address the operating conditions in which all of the railway operations of the operator occur, and
  - (e) require the operator to keep under review relevant developments in research related to fatigue and any technology that may be applied to manage work-related fatigue, and
  - (f) require the operator to keep under review the appropriate balance between the commercial and operational needs of the operator and the duties of the operator under the Act.
- (2) A fatigue management program must not contain provisions that are inconsistent with Schedule 2 to the Act, except to the extent that the rail transport operator is exempt from the provisions concerned.
- (3) For the purposes of this clause, hours of work or periods of time between shifts are taken to be safe if the effect of implementing those hours or periods is sufficient to eliminate, manage or control risks to safety arising from fatigue.

### **Note—**

Rail transport operators also have obligations to consult about safety management systems under section 12 (3) of the Act.

### **13 Fatigue management program to include monitoring of hours of work**

A rail transport operator must also include in its fatigue management program:

- (a) procedures for monitoring how actual hours of work of rail safety workers compare with the conditions of work for rail safety workers, and
- (b) procedures for monitoring the impact of changes to planned rosters due to shift swapping, overtime and on-call working, and
- (c) quantitative measures for assessing the effectiveness of the operator's fatigue management program.

### **14 Alternative provisions for fatigue management**

- (1) The ITSRR may, on application by a rail transport operator, exempt the operator from the requirements of section 20 (2) of the Act.
- (2) An exemption under this clause is subject to the following conditions:
  - (a) that the rail transport operator carries out the following risk assessment and control measures to the satisfaction of the ITSRR:
    - (i) the operator identifies and assesses the major fatigue-related safety risks associated with the operations for which the exemption is sought, including any risks associated with any proposed operating standards,
    - (ii) the operator identifies and implements adequate controls to manage the risks, including operating standards to replace the requirements contained in Schedule 2 to the Act,
    - (iii) the operator specifies the evidence used to develop the operating standards,
    - (iv) the operator consults with those of its rail safety workers who are affected by the exemption in relation to the proposed operating standards,
  - (b) that the operator implements a system to monitor and report on the operation of the controls to manage the risks, being a system that is capable of monitoring actual hours worked against the operating standards, and the operator audits the operation of that system,
  - (c) that the operator reviews the operating standards when required by any incident or change in the nature of work (including patterns of work and duties of rail safety workers) covered by the exemption, or when there is reasonable evidence that the operating standards are no longer valid, and obtains the approval of the ITSRR to any changes to the operating standards,
  - (d) that the rail safety work is carried out in a way that complies with this Regulation,

- (e) that the rail safety work is carried out in accordance with any applicable industrial or other agreement or award relating to the employment of the rail safety workers who carry out the work,
  - (f) that the operator complies with any requirements made by the ITSRR to provide information as to compliance with the conditions specified in this subclause,
  - (g) that the operator complies with any requirements made by the ITSRR with respect to operations covered by the exemption,
  - (h) any limitation on the period of the exemption imposed by the ITSRR in respect of a particular rail transport operator or class of rail transport operators.
- (3) An application for an exemption under this clause is to be made in writing in the form approved by the ITSRR.
- (4) The ITSRR may cancel an exemption under this clause in respect of a rail transport operator or a class of rail transport operators or an exemption referred to in subclause (5).
- (5) An exemption that was in force under clause 52 of the *Rail Safety (General) Regulation 2003* immediately before the repeal of that clause continues in force.
- (6) A rail transport operator whose exemption under clause 52 of the *Rail Safety (General) Regulation 2003* was, immediately before the repeal of that clause, subject to a limitation of a kind specified under clause 52 (1) (h) of that Regulation is taken to be subject to the same limitation under subclause (2) (h).

## **Division 6 Competence and training of rail safety workers**

### **15 Records of competence**

For the purposes of section 21 (5) of the Act, the records of competence of rail safety workers that must be maintained by a rail transport operator must include the following particulars:

- (a) the rail safety training undertaken by each rail safety worker, including when, and for how long, the training was undertaken,
- (b) the qualifications of each rail safety worker, including (if applicable):
  - (i) the units of competence undertaken to achieve the qualification, and
  - (ii) the level of qualification attained, and
  - (iii) if, and when, a re-assessment of competence is to be conducted, and
  - (iv) if, and when, any re-training is due and was undertaken,

- (c) the name of any organisation conducting training or re-training,
- (d) the name and qualifications of any person who assessed the competence of the worker.

## **Division 7 Review of safety management systems**

### **16 Review of safety management system**

- (1) A rail transport operator must comply with this clause in conducting a review of the operator's safety management system.
- (2) In consulting on a review, a rail transport operator must ensure that the persons consulted are asked for their opinion on whether, and if so, how, the safety management system can be improved.
- (3) In conducting a review, a rail transport operator must ensure the following:
  - (a) that the effectiveness of the safety management system is assessed (including an examination of the operator's records in relation to notifiable occurrences and breaches of the system),
  - (b) that the effectiveness of any revisions that were made as a result of the last review are assessed,
  - (c) that any recommendations or issues arising out of any audits or safety investigations that have occurred since the last review are taken into account,
  - (d) that any issues arising from any prohibition or improvement notices that have been issued in relation to the railway operations of the operator since the last review are taken into account,
  - (e) that any deficiencies in the system are identified,
  - (f) that methods of remedying any deficiencies are designed and assessed,
  - (g) that opinions offered as a result of consultation on the review are assessed,
  - (h) that any other suggestions for improving the system that arise during the course of the review are assessed,
  - (i) if any deficiencies or practicable improvements are identified, that a plan is created to remedy those deficiencies, or to effect those improvements (as the case may be).
- (4) The outcomes of the review must be summarised and reported in the safety performance report required by section 15 of the Act.

## **Division 8 Safety performance reports**

### **17 Additional matters to be included in safety performance reports**

For the purposes of section 15 (1) (c) (iv) of the Act, the following information must be included by a rail transport operator in a safety performance report:

- (a) details of the operation of the operator's drug and alcohol management program,
- (b) information about compliance with the requirements of the Act and this Regulation relating to the operator's fatigue management measures and the operator's fatigue management program,
- (c) if the operator is exempt from the requirements of Schedule 2 to the Act, details of monitoring procedures, and the results of monitoring, relating to the operator's fatigue management measures and details of any review of those measures,
- (d) if the operator is exempt from the requirements of Schedule 2 to the Act, details of fatigue management performance reported in relation to any conditions and milestones agreed with the ITSRR.

## **Division 9 Private sidings**

### **18 Maintenance and operational conditions for private sidings**

(1) For the purposes of section 60 (2) (b) of the Act, the following conditions with respect to the maintenance and operation of a private siding are imposed:

- (a) the rail infrastructure manager must have systems and procedures for compliance with section 8 of the Act,
- (b) the rail infrastructure manager must keep and maintain a risk register that includes the following things, at a level of detail that is appropriate having regard to the scope, nature and risks to safety of the operation of the private siding and to the operator's duties under section 8 of the Act:
  - (i) a list of the risks to safety arising from the maintenance and operation of the private siding,
  - (ii) details of the assessment of those risks (including their likelihood, likely consequences and ranking),
  - (iii) a description of any elimination or risk control measures that are to be used to manage, so far as is reasonably practicable, those risks, including, where appropriate, the identification of the person responsible for implementing the measures,
- (c) the rail infrastructure manager must ensure that it has systems and procedures to

ensure that the details in the risk register are current, so far as is reasonably practicable,

- (d) the rail infrastructure manager must have a document that sets out how rail infrastructure within the private siding is to be maintained by the rail infrastructure owner,
- (e) the rail infrastructure manager must provide to the ITSRR, on or before 31 March in each year, an activity statement containing the following matters:
  - (i) a declaration that the manager is not required to be accredited under the Act,
  - (ii) particulars of any notifiable occurrences that have occurred in the preceding 12 months in relation to the siding,
  - (iii) particulars of maintenance carried out on the siding in the preceding 12 months,
  - (iv) particulars of activities involving the operation of rolling stock carried out on the siding in the preceding 12 months,
  - (v) particulars of any significant changes in the railway operations carried out on the siding in the preceding 12 months.

- (2) For the purposes of section 60 (4) of the Act, the prescribed fee for registration of a private siding is an annual fee of \$150, which must be paid on or before 31 March in each year the siding is registered.

## **Part 3 Accreditation**

### **19 Application for accreditation**

For the purposes of section 38 (2) (d) of the Act, an application for accreditation must contain the following information:

- (a) the following identification details of the applicant:
  - (i) the applicant's name,
  - (ii) the applicant's registered business name, and trading name if that is different to the registered business name,
  - (iii) the applicant's ACN or ABN, if applicable,
  - (iv) the applicant's residential address or, in the case of a corporation, the address of the registered office or the principal place of business of the corporation,
- (b) the name and contact details of a person who has been appointed by the applicant to deal with any queries that the ITSRR may have in relation to the application,



- (c) if the applicant is accredited under a corresponding law, a copy of the notice of accreditation,
- (d) in the case of a rail infrastructure manager who does not own the rail infrastructure, documentary evidence that the applicant has, or will have, a statutory or contractual right to use the rail infrastructure or to control, or provide, access to it,
- (e) in the case of a rolling stock operator, documentary evidence that the applicant has, or will have, effective management and control of the operation or movement of rolling stock on rail infrastructure for a particular railway,
- (f) a description of the operational assets, or classes of operational assets, that the applicant intends to use or manage in the operations for which the application is made, including any stations, signal and train control centres, rolling stock for service and maintenance activities and signalling systems,
- (g) a description of the safe working systems that the applicant intends to use in the operations for which the application is made,
- (h) in addition to the requirements of section 38 (2) (c) of the Act, if the applicant is also seeking accreditation under a corresponding law, details of where, and in respect of what, the application for accreditation was made,
- (i) if electrified railway tracks will be used, details of the electrification,
- (j) a description of the applicant's fatigue management program,
- (k) a description of the applicant's drug and alcohol management program,
- (l) details of the consultation undertaken by the applicant in relation to the applicant's safety management system, including:
  - (i) who was consulted, and
  - (ii) when and how the consultation occurred, and
  - (iii) the results of the consultation,
- (m) if the applicant is a corporation, evidence that the application has been submitted to and endorsed by its board of directors (in the case of a company within the meaning of the [Corporations Act 2001](#) of the Commonwealth) or its governing body (in any other case).
- (n) if the applicant is an unincorporated body, evidence that the application has been submitted to and endorsed by its governing body,
- (o) if any of the activities that it is intended to carry out under the accreditation sought are to be carried out by any other person on behalf of the applicant:

- (i) the name and contact details of each such person, and
- (ii) details of the activities that it is intended that the person will carry out on behalf of the applicant.

## **20 Application fees**

The application fees for an application for accreditation are as follows:

- (a) \$1,000 for a heritage operator,
- (b) \$10,000 in any other case.

## **21 Notice of accreditation**

For the purposes of sections 42 (2) (a) and 56 (2) (a) of the Act, a notice of accreditation must specify the following details of the accredited person:

- (a) the person's name,
- (b) the person's registered business name, and trading name if that is different to the registered business name,
- (c) the person's ACN or ABN, if applicable,
- (d) the person's residential address or, in the case of a corporation, the address of the registered office or a principal place of business of the corporation.

## **22 Conditions of, or restrictions on, accreditation**

- (1) For the purposes of section 43 of the Act, any accreditation granted to a rail transport operator is subject to the following conditions and restrictions:
  - (a) if the operator is accredited under a corresponding law, the operator must advise the ITSRR in writing immediately if the operator's accreditation in the other State or Territory expires or is suspended, surrendered or revoked,
  - (b) if the operator is accredited under a corresponding law and it receives a prohibition notice or an improvement notice under the corresponding law, it must immediately give the ITSRR a copy of the notice,
  - (c) the operator must ensure that there is at all times available one of its directors or managers as a contact person should the ITSRR wish to communicate with it, and that the ITSRR is provided with sufficient details so that for any particular time the ITSRR knows who the contact person is, and how to contact that person,
  - (d) if it is not possible to comply with any requirement of subclause (2) because of an emergency, the operator must provide the required information as soon as is reasonably practicable after the decision is made or the event or change occurs, as the case requires.

- (2) For the purposes of section 43 of the Act, any accreditation granted to a rail transport operator is subject to the condition that the operator notify the ITSRR in writing of any decisions, events or proposed changes listed in column 2 of the Table to this clause, and details of consultation about such decisions, events or changes, within the period specified in column 3 of the Table.

**Table**

<b>Item</b>	<b>Decision, event or change</b>	<b>When notification must be given</b>
1	A decision to design or construct, or to commission the design or construction of, rolling stock or new railway tracks.	As soon as reasonably practicable after the decision is made.
2	The introduction into service of rolling stock of a type not previously operated by the operator, or the re-introduction into service of rolling stock not currently operated by the operator.	At least 28 days before the date the operator intends to introduce or re-introduce the rolling stock into service.
3	A change to a safety critical element of any existing rolling stock.	At least 28 days before the date the operator intends to bring the change into operation.
4	A change to one or more of the classes of rail infrastructure used in the operator's accredited operations.	At least 28 days before the date the operator intends to introduce the new class of rail infrastructure into service.
5	A change to a safety standard for the design of rail infrastructure or rolling stock.	At least 28 days before the date the operator intends to adopt the change.
6	The decision to adopt a new safety standard for the design of rail infrastructure or rolling stock.	At least 28 days before the date the operator intends to adopt the new standard.
7	A change to the frequency of or procedures for the inspection or maintenance of rail infrastructure or rolling stock.	At least 28 days before the date the operator intends to bring the change into effect.
8	A change to any safeworking system rule or procedure relating to the conduct of the operator's railway operations.	At least 28 days before the date the operator intends to bring the change into effect.

9	A decision to introduce a new safeworking system rule or procedure relating to the conduct of the operator's railway operations.	As soon as is reasonably practicable after the decision is made.
10	The replacement of the person nominated in the safety management system as the contact person for dealing with queries in relation to the safety management system of the operator.	As soon as is reasonably practicable after it is known that the replacement will occur.

- (3) For the purposes of subclause (2), details of consultation are to include details of the persons consulted and when and how those persons were consulted and the results of consultation.
- (4) Nothing in subclause (1) or (2):
- (a) is intended to require an accredited person to notify the ITSRR of any matter that is the subject of an application for the variation of the accreditation or that has been notified under the *Rail Safety (General) Regulation 2003*, or
  - (b) permits an accredited person to make a variation for which approval is required under the Act.

### **23 Annual accreditation fees**

- (1) The annual accreditation fee payable by an accredited person is to be determined in accordance with Schedule 2.
- (2) If an annual accreditation fee, or part of a fee, is not paid when due, the ITSRR may impose a late payment fee of an amount equal to 15% of the outstanding amount of the annual accreditation fee.
- (3) The annual accreditation fees must be paid on or before 30 September in each year, unless the ITSRR otherwise approves in writing.

### **24 Surrender of accreditation**

An accredited person may surrender the person's accreditation by notifying the ITSRR in writing, not less than 28 days before the proposed surrender, of the person's intention to do so and of the arrangements that are proposed in relation to the cessation of the person's railway operations.

### **25 Variation of accreditation**

For the purposes of sections 55 (2) (b) and 57 of the Act, an application for variation of an accreditation, or variation of a condition or restriction to which an accreditation is subject,

must contain the following information:

- (a) the following identification details of the applicant:
  - (i) the applicant's name,
  - (ii) the applicant's registered business name, and trading name if that is different to the registered business name,
  - (iii) the applicant's ACN or ABN, if applicable,
  - (iv) the applicant's residential address or, in the case of a corporation, the address of the registered office or the principal place of business of the corporation,
- (b) the name and contact details of a person who has been appointed by the applicant to deal with any queries that the ITSRR may have in relation to the application,
- (c) details of the scope and nature of the proposed variation,
- (d) details of the changes that will be made to the applicant's safety management system if the proposed variation occurs,
- (e) details of any consultation that has occurred with parties who might be affected by the proposed variation, including:
  - (i) who was consulted, and
  - (ii) when and how the consultation occurred, and
  - (iii) the results of the consultation,
- (f) evidence to demonstrate that the applicant has the competence and capacity to manage the risks to safety associated with the proposed variation.

## **Part 4 Safety reports and investigations**

### **26 Periodic information to be supplied**

- (1) For the purposes of section 61 (3) of the Act, a rail infrastructure manager must provide to the ITSRR a monthly return that sets out for the month the length, in kilometres, of track in this State over which it has effective management and control.
- (2) For the purposes of section 61 (3) of the Act, a rolling stock operator must provide to the ITSRR a monthly return that sets out for the month the following particulars:
  - (a) the number of kilometres travelled in this State by passenger trains over which it has effective management and control,
  - (b) the number of kilometres travelled in this State by freight trains over which it has effective management and control,

- (c) the number of journeys (either estimated or actual) made by passengers in urban areas of this State on passenger trains over which it has effective management and control,
  - (d) the number of journeys (either estimated or actual) made by passengers in non-urban areas of this State on passenger trains over which it has effective management and control.
- (3) For the purposes of section 61 (3) of the Act, a rail infrastructure manager must provide an annual return that sets out for each year commencing on 1 July (commencing with 1 July 2009):
- (a) the length, in kilometres, of track over which it estimates it will have effective management and control, and
  - (b) the number of employees that the manager estimates are likely to be engaged in rail safety work in connection with the manager's railway operations for the year.
- (4) For the purposes of section 61 (3) of the Act, a rolling stock operator must provide an annual return that sets out for each year commencing on 1 July:
- (a) an estimate of the matters listed in subclause (2) (a)-(d) in relation to the year, and
  - (b) the number of employees that the operator estimates are likely to be engaged in rail safety work in connection with the operator's railway operations for the year.
- (5) A rail transport operator must provide:
- (a) a monthly return required to be provided under this clause to the ITSRR as soon as is practicable after the end of each month, and not later than the 21st day of the following month, and
  - (b) an annual return required to be provided under this clause before 29 July in the year for which the return is to be provided, or before any other date or period that is specified by the ITSRR.

## **27 Notifiable occurrences and classes of notifiable occurrences**

- (1) The following are notifiable occurrences of Category A:
- (a) an accident or incident that has caused death, serious injury or significant property damage,
  - (b) a running line derailment,
  - (c) a running line collision between rolling stock,
  - (d) a collision at a road or pedestrian level crossing between rolling stock and either a

motor vehicle or a person,

- (e) a fire or explosion on or in rail infrastructure or rolling stock that affects the safety of railway operations or that endangers one or more people,
- (f) a suspected terrorist attack,
- (g) any accident or incident involving a significant failure of a safety management system that could have caused death, serious injury or significant property damage,
- (h) the theft of or from rolling stock or railway premises of a rail transport operator of security sensitive dangerous goods (within the meaning of the *Australian Dangerous Goods Code* prepared by the National Transport Commission as in force on the commencement of this Regulation) or the tampering with any such goods on rolling stock or railway premises of a rail transport operator,
- (i) any other accident or incident that is likely to generate intense public interest or concern.

(2) The following are notifiable occurrences of Category B:

- (a) a derailment, other than a running line derailment,
- (b) a collision involving rolling stock,
- (c) any accident or incident at a road or pedestrian level crossing arising from a failure of rail infrastructure or that caused a risk to safety or damage to a person or property,
- (d) the passing of a stop signal, or a signal with no indication, by rolling stock without authority,
- (e) any accident or incident where rolling stock exceeds the limits of authorised movement given in a proceed authority,
- (f) any failure of a signalling or communications system that endangers, or that has the potential to endanger, the safe operation of trains or the safety of people, or that causes or could cause damage to adjoining property,
- (g) any slip, trip or fall by a person on, to or from a train, railway track, railway bridge, station, platform, escalator, lift or stairs, or any person being caught in the door of any rolling stock,
- (h) any situation where a load affects, or could affect, the safe passage of trains or the safety of people, or causes or could cause damage to adjoining property,
- (i) any accident or incident involving dangerous goods that affects, or could affect,

the safety of railway operations or the safety of people, or that causes or could cause damage to adjoining property,

- (j) any breach of a safe working system or procedure, or the detection of any irregularity or deficiency in such a system or procedure,
  - (k) any irregularity in any rail infrastructure (including electrical infrastructure and any obstruction on a running line) that could affect the safety of railway operations or the safety of people,
  - (l) any irregularity in any rolling stock that could affect the safe operation of the train or the safety of people, or cause damage to the rolling stock,
  - (m) any fire or explosion that causes damage to rail infrastructure or rolling stock, or both, or that causes the disruption or closure of a railway (even if the closure is only a precautionary measure),
  - (n) any accident or incident on railway premises where a person inflicts, or is alleged to have inflicted, an injury on another person,
  - (o) a suspected attempt to suicide,
  - (p) if a rail safety worker employed by a rail transport operator has returned a result to a test designed to determine the concentration of alcohol or other drugs in a sample of blood or urine that suggests that the worker was in breach of a relevant safety requirement concerning the use of alcohol or other drugs at a relevant time,
  - (q) the infliction of any wilful or unlawful damage to, or the defacement of, any rail infrastructure or rolling stock that could affect the safety of railway operations or the safety of people,
  - (r) any accident or incident in a rail corridor that indicates that the security of the corridor is compromised and that affects, or may affect, the safety of railway operations.
- (3) If a Category A or B notifiable occurrence happens on, or in relation to, a rail transport operator's railway premises or railway operations, the operator must give the ITSRR or an authority specified by the ITSRR under section 63 of the Act a written report of the occurrence within 72 hours after becoming aware of the occurrence.
- (4) A report under this clause is to be given in the manner and form approved, and contain the information required, by the ITSRR.
- (5) The ITSRR may extend a time limit specified in this clause for giving a report by notice in writing to a rail transport operator and any such notice has effect accordingly.
- (6) The requirement to provide a report to the ITSRR under this clause is in addition to any other requirement imposed on a rail transport operator under this Regulation or



the Act to notify the ITSRR or the Chief Investigator.

## **28 Category A occurrences also to be notified by telephone**

- (1) If a Category A notifiable occurrence happens on, or in relation to, a rail transport operator's railway premises or railway operations, the operator must notify the ITSRR or an authority specified by the ITSRR under section 63 of the Act by telephone as soon as practicable after becoming aware of the occurrence.
- (2) A rail transport operator is to provide the following information when notifying a Category A notifiable occurrence:
  - (a) the name of each rail transport operator 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 rail transport operators in response to the occurrence,
  - (c) the name and telephone number of an individual who can be immediately contacted to provide further details of the occurrence and who, if practicable, is at the scene.

### **Note—**

The ITSRR has specified the Chief Investigator as the authority for this purpose, under section 63 of the Act.

## **29 Authority and ITSRR to share information**

- (1) An authority is to provide the ITSRR with access to any details of a notification given under clause 28 that 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 any details of a notification given to the ITSRR under this Part that the Chief Investigator may require.
- (3) This clause does not apply to a train safety recording (within the meaning of Division 3 of Part 4 of the Act), any part of a train safety recording or any information obtained from a train safety recording.

## **30 Disclosure of train safety records**

- (1) For the purposes of section 78 (e) of the Act, a train safety recording may be published or communicated by and to the persons set out in subclause (2), but only if the publication or communication is made for any of the following purposes:
  - (a) the analysis or monitoring of railway operations or rail safety or related matters,
  - (b) without limiting paragraph (a), the auditing of compliance by rail safety workers with any systems, procedures, instructions or orders relating to the carrying out of

railway operations.

- (2) A train safety recording may be published or communicated:
- (a) by a rail transport operator or an employee or contractor of the operator to another rail transport operator or an employee or contractor of another operator, or
  - (b) by an employee or contractor of a rail transport operator to the operator or another employee or contractor of the operator, or
  - (c) by a rail transport operator to an employee or contractor of the operator.
- (3) For the purposes of section 78 (e) of the Act, a train safety recording may be published or communicated by or on behalf of a rail transport operator to the ITSRR.

## Part 5 Network rules

### 31 Object of Part

The object of this Part is to improve the safe development of network rules of rail infrastructure owners by:

- (a) promoting the consistent development and implementation of network rules by rail infrastructure owners, and
- (b) facilitating co-operation between rail infrastructure owners to ensure that changes to network rules are effectively managed and implemented, and
- (c) ensuring (so far as is reasonably practicable) that the same network rules apply to the whole of the NSW Rail Network.

### 32 Definitions

In this Part:

**amend** the network rules includes insert a network rule or replace all network rules.

**local change** to the network rules by a rail infrastructure owner means an amendment to the rules that does not have any impact on the safety of the rail network of another rail infrastructure owner.

**network rules** means the rules and procedures relating to rail network operations for those parts of the NSW rail network managed by a rail infrastructure owner, as adopted and made by that owner, and contained in documents published by that owner, as in force from time to time.

**network-wide change** to the network rules by a rail infrastructure owner means an amendment to the rules that is not a local change to the network rules.

**rail infrastructure owner** includes a person who is authorised or required to exercise the functions of a rail infrastructure owner under this Part pursuant to a contract or other arrangement with the rail infrastructure owner.

**stakeholder** of a rail infrastructure owner means:

- (a) a person that conducts rolling stock operations on any part of the NSW rail network of the rail infrastructure owner,
- (b) a representative of a trade union or other employee organisation, representing rail safety workers of any such operator or rail safety workers of a person referred to in paragraph (a).

### **33 Changes to network rules**

A rail infrastructure owner that amends the network rules or proposes an amendment to the network rules must not fail to comply with this Part.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—50 penalty units.

### **34 Consultation requirements**

- (1) A rail infrastructure owner must, before amending the network rules, consult with the other rail infrastructure owners of the NSW rail network to determine whether the other owners:
  - (a) agree as to the classification of the amendment, and
  - (b) if the amendment is a network-wide change, agree to the proposed amendment.
- (2) The consultation is to be carried out as soon as reasonably practicable after the amendment is proposed, having regard to the need to properly evaluate the consequences of the proposed amendment.

### **35 Stakeholder consultation**

- (1) A rail infrastructure owner must undertake stakeholder consultation in accordance with this clause if:
  - (a) in the case of a network-wide change, all the rail infrastructure owners of the NSW rail network agree to amend the network rules, or
  - (b) in the case of a local change, the amendment is to the network rules of the owner.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or

- (b) in the case of an individual—50 penalty units.
- (2) Each rail infrastructure owner must give notice in writing to its stakeholders and the ITSRR of a proposed amendment to the network rules.
- (3) The notice must:
  - (a) contain details of the proposed amendment, and
  - (b) if the amendment is a local change, specify the area of its operation and the reason for the local change, and
  - (c) specify the date (being not earlier than 28 days after the notice is given) by which submissions may be made to the rail infrastructure owner about the proposed amendment, and
  - (d) specify the date on which it is proposed to commence the proposed amendment.

### **36 Network-wide changes to network rules**

- (1) This clause applies to a proposed network-wide change to the network rules by a rail infrastructure owner.
- (2) The rail infrastructure owners of the NSW rail network must consider all submissions received, within the period specified in the notice given under clause 35, from stakeholders or the ITSRR and must determine whether to agree to proceed with the proposed network-wide change.
- (3) On determining to proceed with the network-wide change, the rail infrastructure owners must give the ITSRR a notice in writing containing the following:
  - (a) the proposed amendment,
  - (b) details of all risk assessments conducted,
  - (c) details of submissions made by stakeholders,
  - (d) the response of the rail infrastructure owners to the submissions and details of their agreement to the proposed amendment.
- (4) Before the network-wide change is made, the rail infrastructure owners must take into account any comments of the ITSRR about the proposed amendment that are received no later than 14 days after notice is given under subclause (3).
- (5) A rail infrastructure owner must give not less than 28 days notice in writing of the commencement of a proposed network-wide change to a network rule to the stakeholders of the owner.
- (6) A network-wide change to a network rule must be commenced by the rail

infrastructure owners of the NSW rail network on the same day, unless the ITSRR has given written consent to different commencement dates.

### **37 Local changes to network rules**

- (1) This clause applies to a proposed local change to the network rules by a rail infrastructure owner.
- (2) The rail infrastructure owner that is to implement the local change must consider all submissions that are received within the period specified in the notice given under clause 35 from stakeholders or the ITSRR and must determine whether to proceed with the proposed local change.
- (3) On determining to proceed with the amendment, the rail infrastructure owner must give the ITSRR a notice in writing containing the following:
  - (a) the proposed amendment,
  - (b) details of the network or networks to which the local change is to apply and the reasons for the application of the rule,
  - (c) details of all risk assessments conducted,
  - (d) details of submissions made by stakeholders,
  - (e) the response of the rail infrastructure owner to the submissions,
  - (f) details of the agreement of the rail infrastructure owners to the classification of the proposed amendment.
- (4) Before making the proposed local change, the rail infrastructure owner must take into account any comments of the ITSRR about the proposed local change that are received no later than 14 days after notice is given under subclause (3).
- (5) A rail infrastructure owner must give not less than 28 days notice in writing of the commencement of a proposed local change to a network rule to the stakeholders of the owner.

### **38 Emergency amendments to network rules**

- (1) This clause applies if a rail infrastructure owner of the NSW rail network identifies an immediate risk to safety resulting from exceptional circumstances or an emergency that requires an amendment to the network rules.
- (2) The rail infrastructure owner may amend the network rules if the owner complies with this clause.
- (3) Before making the amendment, the rail infrastructure owner must:

- (a) take all reasonable steps to notify the other rail infrastructure owners and stakeholders of the proposed amendment and the reasons for that change, and
  - (b) take appropriate steps to mitigate any reasonably foreseeable adverse consequences arising from implementation of the amendment without stakeholders and other owners being informed of the amendment, and
  - (c) notify the ITSRR of the proposed emergency amendment in the manner approved by the ITSRR for the purposes of this clause.
- (4) An amendment referred to in this clause ceases to have effect 180 days after it is implemented, unless the rail infrastructure owner complies with clauses 35 and 36 or 37 (as applicable).
- (5) The rail infrastructure owner that implements an amendment under this clause to deal with temporary circumstances must withdraw the amendment if the circumstances change so that it is no longer necessary, or cease to exist.
- (6) This clause has effect despite any other provision of this Part.

### **39 Register of amendments to network rules**

A rail infrastructure owner of the NSW rail network must keep and maintain a register of proposed amendments and amendments to the network rules of the owner containing the following matters:

- (a) a copy of any proposed amendment or amendment made,
- (b) the reasons for any amendment made,
- (c) particulars of the assessment of the risk of any proposed amendment,
- (d) copies of stakeholder submissions,
- (e) unique identification numbers for the proposed amendments and amendments.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—50 penalty units.

### **40 Dispute resolution**

- (1) This clause applies to the following disputes arising under this Part:
- (a) a dispute between rail infrastructure owners about a proposed amendment to network rules, including a dispute as to whether an amendment should be proceeded with or as to the classification of an amendment,

- (b) a dispute between rail infrastructure owners, or between a rail infrastructure owner and a stakeholder, about whether or not a provision of this Part has been complied with.
- (2) A party to a dispute may apply in writing to the ITSRR to have a dispute dealt with under this clause.
- (3) The ITSRR must, within 28 days after receiving an application under this clause, convene a meeting of representatives of the parties to the dispute (as determined by the ITSRR) to resolve the matters in dispute.
- (4) The ITSRR may direct the parties to provide such documentation and information before the meeting as the ITSRR thinks fit.
- (5) If the matters in dispute are not resolved at the meeting, the ITSRR must determine the matters in dispute no later than 14 days after the meeting.
- (6) A determination by the ITSRR is, for the purposes of this Part (other than any proceedings for an offence under this Part), final and binding on the parties.

**Note—**

The ITSRR may delegate its functions (see section 42Q of the [Transport Administration Act 1988](#)).

## **Part 6 Miscellaneous**

### **41 Documents to be made available for public inspection**

For the purposes of section 51 (c) of the Act, each safety performance report prepared under section 15 of the Act is prescribed.

### **42 Embargo notices**

For the purposes of section 98 (4) (a) of the Act, an embargo notice must contain the following particulars:

- (a) a description of the thing to which the notice applies,
- (b) either the name of the person on whom the notice is to be served or a statement that the notice is to be affixed to a thing,
- (c) the name, signature and business telephone number of the rail safety officer who issued the notice,
- (d) the date on which the notice was issued.

### **43 Persons who may be appointed as rail safety officers**

For the purposes of section 148 (1) of the Act, the following classes of persons may be appointed as rail safety officers:

- (a) employees of RailCorp who hold, or are acting in, the position of transit officer (of any rank),
- (b) police officers.

#### **44 Exchange of information between agencies**

The following are prescribed as relevant agencies for the purposes of the definition of **relevant agency** in section 156 of the Act:

- (a) a corresponding Rail Safety Regulator,
- (b) Comcare,
- (c) the NSW Police Force.

#### **44A Disclosure of certain information to National Rail Safety Regulator Project Office or Office of the National Rail Safety Regulator**

(1) For the purposes of sections 77, 78 and 162 (2) (f) of the Act, an authorised person is authorised to disclose or communicate information (including information given in confidence) in the possession or control of the Independent Transport Safety Regulator, and obtained in connection with the administration of the [Rail Safety Act 2008](#), to:

- (a) the National Rail Safety Regulator Project Office, or
- (b) the Office of the National Rail Safety Regulator, or
- (c) any person authorised on behalf of the National Rail Safety Regulator Project Office or the Office of the National Rail Safety Regulator to receive such information.

(2) Such an authorised person may disclose or communicate that information:

- (a) at the initiative of the Independent Transport Safety Regulator, or
- (b) at the request of the National Rail Safety Regulator Project Office, or
- (c) at the request of the Office of the National Rail Safety Regulator.

(3) In this clause:

**authorised person** means any of the following:

- (a) the Independent Transport Safety Regulator,
- (b) a person authorised by the Independent Transport Safety Regulator to disclose or communicate information in accordance with this clause,
- (c) a person who is a delegate of the Independent Transport Safety Regulator,



- (d) a person who is employed by, or engaged to provide services to or on behalf of, the Independent Transport Safety Regulator,
- (e) a person who is employed by, or engaged to provide services to, a person or body engaged to provide services to the Independent Transport Safety Regulator.

**Independent Transport Safety Regulator** means the Independent Transport Safety Regulator constituted under the *Transport Administration Act 1988*.

**National Rail Safety Regulator Project Office** means the National Rail Safety Regulator Project Office:

- (a) formed to oversee and facilitate the development and establishment of the Office of the National Rail Safety Regulator and the National Rail Safety Investigator under the Rail Safety National Law, and
- (b) that is responsible to the Rail Safety Regulation Reform Project Board, which is a subgroup of the Transport and Infrastructure Senior Officials' Committee, and
- (c) that is hosted by the South Australian Department for Planning, Transport and Infrastructure.

**Office of the National Rail Safety Regulator** means the Office of the National Rail Safety Regulator established under the Rail Safety National Law.

**Rail Safety National Law** means the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* of South Australia.

#### 45 Exemptions for heritage operators

- (1) The ITSRR may, by notice in writing, exempt a heritage operator from some or all of the provisions of section 12 and Part 3 of the Act, or any regulations made under those provisions, in respect of that heritage railway.
- (2) A notice under subclause (1) takes effect from the day specified in the notice, or if no day is specified, on the day it is given to the operator.
- (3) A notice under this clause has effect according to its tenor.
- (4) The ITSRR may, by notice in writing to the exempted operator, cancel an exemption under this clause.

#### 46 Exemptions from accreditation

- (1) The ITSRR may, by notice in writing, exempt the following persons from some or all of the provisions of Part 3, or any regulations made under those provisions:
  - (a) persons who carry out railway operations, or cause railway operations to be carried out, but who are not rail transport operators,

- (b) related bodies corporate of accredited persons.
- (2) A notice under this clause takes effect from the day specified in the notice, or if no day is specified, on the day it is given to the operator.
- (3) A notice under this clause has effect according to its tenor.
- (4) The ITSRR may, by notice in writing to the exempted person, cancel an exemption under this clause.

**46A Exemption from accreditation: Rail Infrastructure Corporation**

- (1) RIC is exempt from the provisions of Part 3 of the Act and any regulations made under those provisions.
- (2) The exemption under this clause is subject to the following conditions:
  - (a) that RIC must comply with any reasonable request made by the ITSRR for information or a report relating to any of the following:
    - (i) the operation and maintenance of the RIC rail network, other than the Interstate and Hunter Valley rail network (known as the country regional network),
    - (ii) the maintenance of public overbridges,
  - (b) that RIC ensures, to the satisfaction of the ITSRR, that ARTC:
    - (i) identifies and assesses, so far as is reasonably practicable, risks to safety that may arise from railway operations carried out by or on behalf of ARTC on the RIC rail network that may be caused wholly or partly by the maintenance of a public overbridge by a person or body engaged by RIC for that purpose, and
    - (ii) determines measures to manage, so far as is reasonably practicable, those risks, and
    - (iii) for the purpose of managing those risks, seeks to enter into a safety agreement with that other person or body,
  - (c) that RIC ensures, to the satisfaction of the ITSRR, that any person or body engaged by RIC to maintain a public overbridge:
    - (i) identifies and assesses, so far as is reasonably practicable, risks to safety that may arise from such maintenance that may be caused wholly or partly by railway operations carried out by or on behalf of ARTC or another rail transport operator, and
    - (ii) determines measures to manage, so far as is reasonably practicable, those risks, and

(iii) for the purpose of managing those risks, seeks to enter into a safety agreement with ARTC or the other rail transport operator (as the case may be).

(3) In this clause:

**ARTC** means the Australian Rail Track Corporation Ltd (ACN 081 455 754).

**public overbridge** means a bridge, owned by, or vested in, RIC, that enables the public to pass over any part of the RIC rail network.

**RIC** means the Rail Infrastructure Corporation constituted under the [Transport Administration Act 1988](#).

**RIC rail network** means the part of the NSW rail network vested in or owned by RIC.

**safety agreement** means an agreement in writing about managing risks to safety identified and assessed under this clause that includes provisions for:

- (a) implementing and maintaining measures to manage those risks, and
- (b) the evaluation, testing and, if appropriate, revision of those measures, and
- (c) the respective roles and responsibilities of each party to the agreement in relation to those measures, and
- (d) procedures by which each party to the agreement will monitor compliance with the obligations under the agreement, and
- (e) a process for reviewing and revising the agreement.

#### **47 Train communications systems**

- (1) A rolling stock operator must ensure that each train for which the person is responsible is, at all times when the train is on the NSW rail network, fitted with a radio communications system that complies with this clause and a back up means of communication to be used if the radio communications system fails.

Maximum penalty: 100 penalty units.

- (2) A rail infrastructure manager must ensure that a rolling stock operator of rolling stock operated on any part of the NSW rail network vested in or owned, managed or controlled by the rail infrastructure manager complies with subclause (1).

Maximum penalty: 100 penalty units.

- (3) A radio communications system for a train must:

- (a) enable the driver of the train to verbally communicate with any network control officer responsible for the area in which the train is operating, and

- (b) be working at all times when the train is being operated, and
  - (c) be capable of receiving and transmitting emergency calls, and
  - (d) be fitted with an emergency button that enables an emergency call from the train to be given priority over all other calls and that enables direct communication between the train and the network control officer responsible for the area in which the train is operating, and
  - (e) be capable of transmitting an emergency communication in a form that will allow any network control officer responsible for the area in which the train is operating to transmit the communication to other trains in that area.
- (4) A rail transport operator is taken to comply with subclause (2) if the radio communications system fails but the back up means of communication is operational.
  - (5) The ITSRR may, by notice in writing to one or more rail transport operators, exempt from the operation of this clause a particular train or class of trains.
  - (6) A notice under subclause (5) takes effect from the day specified in the notice, or if no day is specified, on the day it is given to the rail transport operator concerned.
  - (7) A notice under subclause (5) has effect according to its tenor.

## **Schedule 1 Safety management system content**

(Clause 4 (1) (a))

### **1 Safety policy**

- (1) A safety policy that aligns with other organisational policies of the rail transport operator and that is endorsed by the person or body controlling the operator.
- (2) A safety policy that includes an express commitment to safety, the development and maintenance of a positive safety culture and the continuous improvement of all aspects of the safety management system.

### **2 Governance and internal control arrangements**

- (1) Systems and procedures to ensure that the person or body controlling the rail transport operator, or any person managing the operator's railway operations, has sufficient knowledge:
  - (a) of the risk profile of the railway operations carried out by the operator to enable the operator to proactively manage the risks arising from those operations, and
  - (b) of the level of compliance by the organisation with its duties and obligations under the Act and this Regulation to determine whether the operator is complying with those duties and obligations, and

(c) to determine whether:

- (i) the safety management system is working effectively, and
- (ii) risks to safety are being identified, assessed and managed so far as is reasonably practicable, and
- (iii) controls used to monitor safety and to manage risks to safety are being regularly reviewed and revised.

(2) Systems and procedures to ensure that decisions and directions made by the person or body controlling the rail transport operator, or any person managing the operator's railway operations, that affect safety are being implemented effectively.

### **3 Management, responsibilities, accountabilities and authorities**

- (1) Policies that indicate how safety responsibilities, accountabilities, authorities and interrelationships have been determined.
- (2) Documents that describe the safety responsibilities, accountabilities, authorities and interrelationship between the persons who manage or carry out rail safety work for the rail transport operator, or who verify such work.
- (3) Procedures for the reporting of risks to safety by persons with safety responsibilities.
- (4) Documents that describe the authorities given to persons with safety responsibilities to enable them to meet those responsibilities.

### **4 Regulatory compliance**

- (1) Systems and procedures for the identification of safety requirements under the Act and other safety legislation.
- (2) Systems and procedures to ensure compliance with those requirements.

### **5 Document control arrangements and information management**

Systems and procedures to control and manage all documents and information relevant to the management of risks to safety associated with railway operations of the rail transport operator, including systems and procedures for the following:

- (a) the identification, creation, maintenance, management, storage and retention of records and documents,
- (b) to ensure the currency of documents required for operations,
- (c) the communication of any changes to the document control systems and procedures to rail safety workers and employees of the operator who rely on those systems and procedures to carry out their work.

## **6 Review of safety management system**

- (1) Systems and procedures for the review of the safety management system in accordance with the Act and this Regulation.
- (2) Documentation of the matters set out in clause 16 (3) of this Regulation.

## **7 Safety performance measures**

- (1) Systems and procedures to ensure the safety management system is effective by using key performance indicators to measure safety performance and to determine the effectiveness of the safety management system.
- (2) Systems and procedures to ensure the collection, analysis, assessment and dissemination of safety information held by the rail transport operator to persons within the operator's organisation and to other appropriate persons and organisations.

## **8 Safety audit arrangements**

- (1) An audit program for the audit of the safety management system that provides for the following:
  - (a) the scheduling and frequency of audits,
  - (b) the giving of priority to the auditing of those matters that represent the greatest safety risk.
- (2) Documented audit procedures to ensure there is a process for the collection of information to determine whether the railway operations of the rail transport operator comply with the safety management system and to determine the effectiveness of the safety management system.
- (3) Procedures to ensure that auditors:
  - (a) have the skills and knowledge to undertake audits, and
  - (b) are independent from the area being audited to the maximum extent that is practicable.
- (4) Procedures for the following:
  - (a) communicating the results of audits to those persons who are responsible for the oversight of the railway operations in the area audited for review and, where appropriate, for corrective action,
  - (b) where appropriate, the registration and effective implementation of recommendations for action identified by the audit,
  - (c) the review of the effectiveness of the audit program.

## **9 Corrective action**

- (1) Procedures to ensure, so far as is reasonably practicable, that corrective action is taken in response to any safety deficiencies identified following inspections, testing, audits, investigations or notifiable occurrences.
- (2) Procedures for the following:
  - (a) registering any corrective actions to be taken,
  - (b) the review of those corrective actions,
  - (c) the implementation of corrective action if it is determined that corrective action is required,
  - (d) the assigning of responsibilities for corrective action.
- (3) Procedures for giving priority, when undertaking corrective action, to those matters representing the greatest safety risk.

## **10 Management of change**

Procedures for ensuring that changes that may affect the safety of railway operations of the rail transport operator are identified and managed, including, but not limited to, procedures for ensuring the following, so far as is reasonably practicable:

- (a) that changes are fully identified and described in the context of the railway operations,
- (b) that affected parties are identified and, if practicable, consulted,
- (c) that the roles and responsibilities of rail safety workers and employees of the operator are clearly specified with respect to the change,
- (d) that the rail safety workers and employees of the operator are fully informed and trained to understand and deal with the proposed change,
- (e) that the requirements of section 12 (2) (c) and (d) of the Act are observed in relation to any risks associated with the proposed change,
- (f) that the change, once implemented, is reviewed and assessed by the operator to determine whether or not the change has been appropriately managed.

## **11 Consultation**

Systems and procedures to ensure that the same consultation as is required by section 12 (3) of the Act occurs when the safety management system is reviewed or varied.

## **12 Internal communication**

Systems and procedures for the following:

- (a) the dissemination of information about the content of the safety management system to people who are to participate in the implementation of the system or who may be otherwise affected by the implementation,
- (b) the communication of the rail transport operator's safety policy and safety objectives to all persons who are to participate in the implementation of the safety management system,
- (c) the internal reporting of accidents and incidents involving the operator's railway operations, including accidents and incidents involving contractors and sub-contractors,
- (d) to support communication and the dissemination of information throughout, and between all levels of persons involved in the operator's railway operations.

## **13 Risk management**

- (1) Systems and procedures for compliance with the risk management obligations set out in section 12 (2) (c), (d) and (e) of the Act.
- (2) A risk register that includes the following:
  - (a) a list of the risks to safety identified under section 12 (2) (c) of the Act,
  - (b) details of the assessment of those risks (including their likelihood, likely consequences and ranking),
  - (c) a description of any elimination or risk control measures that are to be used to manage, so far as is reasonably practicable, those risks, including, where appropriate:
    - (i) the identification of who is responsible for implementing the measures, and
    - (ii) a reference to the general location or locations in the safety management system where more details of the measures can be found.
- (3) Systems and procedures to ensure that the details in the register are current, so far as practicable.

## **14 Human factors**

Procedures to ensure that human factor matters are taken into account during the development, operation and maintenance of the safety management system and for the integration of human factors principles and knowledge into all relevant aspects of operational and business systems.



## **15 Procurement and contract management**

Systems and procedures for the following:

- (a) the review of tender documents and contracts to ensure that safety requirements under the safety management system are adequately defined and documented in those tender documents and contracts,
- (b) to ensure that the terms of any tender document or contract do not lead to unsafe work or an activity that may affect the safety of railway operations,
- (c) the selection and control of contractors of the rail transport operator, and to ensure the monitoring of the performance of such contractors, including conducting or commissioning audits of a contractor's performance in relation to the safety aspects of the contract with the operator,
- (d) to ensure that safety duties under the Act are being met under contracts of the operator and that those contracts provide for the taking of remedial action where necessary,
- (e) to ensure that goods and services provided to the operator or a contractor of the operator in respect of the railway operations of the operator meet the standards and specifications required under the Act.

## **16 General engineering and operational systems safety requirements**

- (1) A documented set of engineering standards and procedures, and operational systems and safety standards and procedures, to cover the following and, if relevant, the interface between any 2 or more of them:
  - (a) rail infrastructure,
  - (b) rolling stock,
  - (c) operational systems.
- (2) Details of the implementation and procedures for updating the documents specified in subclause (1).
- (3) Procedures for the control and verification of the design of structures, rolling stock, equipment and systems, in accordance with the engineering standards and procedures, and operational systems and safety standards, specified in subclause (1).
- (4) Systems, standards and procedures for the following in relation to rail infrastructure and rolling stock:
  - (a) engineering design,
  - (b) construction and installation,

- (c) implementation and commissioning,
- (d) system operation,
- (e) monitoring and maintenance,
- (f) modification,
- (g) decommissioning or disposal.

#### **17 Process control**

- (1) Procedures for the rail transport operator to monitor its compliance with the standards and procedures specified in clause 16 of this Schedule, including procedures for the inspection and testing of safety related engineering and operational systems.
- (2) Procedures for the control, calibration and maintenance of all equipment used to inspect or test rail infrastructure or rolling stock.
- (3) Arrangements for the establishment and maintenance of inspection and test records to provide evidence of the condition of rail infrastructure or rolling stock.

#### **18 Asset management**

An asset management policy and procedures that address all phases of the asset lifecycle of the rail infrastructure or rolling stock operations.

#### **19 Safety interface co-ordination**

- (1) Procedures for the identification of risks to safety of railway operations and for the development of interface agreements.
- (2) Procedures for monitoring compliance with interface agreements.
- (3) Systems for the maintenance of registers required under section 33 of the Act.

#### **20 Management of notifiable occurrences**

- (1) Systems and procedures for the reporting of notifiable occurrences in accordance with this Regulation.
- (2) Procedures for the management of the scene of a notifiable occurrence and for the preservation of evidence where reasonably practicable.
- (3) Procedures for the management of all notifiable occurrences, including procedures to enable the determination of which notifiable occurrences are to be investigated, and how investigations are to be conducted.

## **21 Security management**

Systems and procedures to ensure compliance with section 16 of the Act and Division 2 of Part 2 of this Regulation.

## **22 Emergency management**

Systems and procedures to ensure compliance with section 17 of the Act and Division 3 of Part 2 of this Regulation.

## **23 Health and fitness**

Systems and procedures to ensure compliance with section 18 of the Act and clause 10 of this Regulation.

## **24 Drugs and alcohol**

Systems and procedures to ensure compliance with section 19 of the Act and the *Rail Safety (Drug and Alcohol Testing) Regulation 2008*.

## **25 Fatigue management**

Systems and procedures to ensure compliance with section 20 of the Act and Division 5 of Part 2 of this Regulation.

## **26 Rail safety worker competence**

Procedures, and where necessary standards, to ensure compliance with section 21 of the Act and clause 15 of this Regulation.

## **27 Resource availability**

Systems and procedures for the following:

- (a) estimating the resources, including people and equipment, that the rail transport operator will need to operate and maintain its railway operations,
- (b) implementing, managing and maintaining the safety management system of the operator,
- (c) preparing plans to ensure that the operator has adequate access to the resources referred to in paragraph (a).

## **Schedule 2 Accreditation fees**

(Clause 23 (1))

### **1 Definitions**

In this Schedule:

**actual freight kms** means the total number of kilometres travelled by trains (other than passenger trains) operated by an accredited rail transport operator in the course of the accredited railway operations of the operator, including the total number of kilometres travelled by track maintenance machines operated by the operator along the main line between worksites of the operator.

**actual passenger kms** means the total number of kilometres travelled by passenger trains operated by an accredited rail transport operator in the course of the accredited railway operations of the operator.

**actual track under the management** of a rail transport operator means the total number of kilometres of track that is owned, controlled or managed by the operator, including private sidings.

## 2 Annual accreditation fees for rail transport operators (other than heritage operators)

- (1) The annual accreditation fee for a rail transport operator (other than a heritage operator) is the fee calculated in accordance with the following formula or \$10,000, whichever is the greater amount:

$$A = (T \times tr) + (F \times fr) + (P \times pr)$$

where:

**A** means the amount of the annual accreditation fee.

**T** is the actual track under the management of the rail transport operator.

**tr** is equal to \$70.0585 (the track rate).

**F** is the actual freight kms for the rail transport operator.

**fr** is equal to \$0.0643 (the freight train rate).

**P** is the actual passenger kms for the rail transport operator.

**pr** is equal to \$0.0276 (the passenger train rate).

- (2) The annual accreditation fee for a heritage operator is:
- (a) if the actual track under the control of the operator, or the actual passenger kms for the operator, is less than 10,000 kilometres, \$100, or
  - (b) in any other case, \$500.