



# National Transport Commission (Model Rail Safety Regulations) Regulations 2007<sup>1</sup>

## Select Legislative Instrument 2007 No. 320

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Transport Commission Act 2003*.

Dated 26 September 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

MARK VAILE  
Minister for Transport and Regional Services

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**1 Name of Regulations**

These Regulations are the *National Transport Commission (Model Rail Safety Regulations) Regulations 2007*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Model legislation — *Model Rail Safety Regulations 2007***

For section 7 of the *National Transport Commission Act 2003* (the *NTC Act*), Schedule 1 sets out model legislation, in the form of Regulations, about Model Rail Safety.

# Schedule 1 *Model Rail Safety Regulations 2007*

(regulations 3)

The following provisions are intended to provide the basis for nationally consistent transport laws on the topics with which they deal. They do not, of themselves, have any legal effect.

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**Part 1 Preliminary Matters**

**1 Name of Regulations**

These Regulations are the *Model Rail Safety Regulations 2007*.

**2 Approval**

These Regulations were approved by the Australian Transport Council on 22 December 2006.

**3 Definition and reference provision**

- (1) In these Regulations, (the *Act*) means the *Rail Safety Act 2006* as approved by the Australian Transport Council as model legislation, as amended from time to time.
- (2) If the context permits, in these Regulations a reference to 'it' is to be read as including a reference to 'he or she' and to 'him or her', and a reference to 'its' is to be read as including a reference to 'his or her'.

*[local variations – this provision is only necessary if it is not covered by a jurisdiction's Interpretation Act]*

## **Part 2                      Accreditation**

### **4                      Application for accreditation**

For the purposes of section 33 (2) (e) of the Act, an application for accreditation must contain —

- (a) the following identification details of the applicant —
  - (i) the applicant's name; and
  - (ii) the applicant's registered business name, and trading name if that is different to the registered business name; and
  - (iii) the applicant's ACN or ABN, if applicable; and
  - (iv) the applicant's residential address or, in the case of a body corporate, registered business address; and
- (b) the name and contact details of a person who has been appointed by the applicant to deal with any queries that the Rail Safety Regulator may have in relation to the application; and
- (c) if the applicant is accredited under a corresponding law, a copy of the notice of accreditation; and
- (d) in addition to the requirements of section 33 (2) (d) 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 that accreditation was made; and
- (e) in the case of a rail infrastructure manager who does not own the rail infrastructure, documentary evidence that the manager has, or will have, management and control of the rail infrastructure; and
- (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, signalling systems and rolling stock for service and maintenance activities; and

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- (g) a description of the safe working systems that the applicant intends to use in the operations for which the application is made; and
- (h) 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 the rolling stock on rail infrastructure for a particular railway; and
- (i) if electrified railway tracks will be used, details of the electrification; and
- (j) 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; and
- (k) if the applicant is not an individual, evidence that the application has been submitted to and endorsed —
  - (i) if the applicant is a body corporate —
    - (A) that is a company within the meaning of the *Corporations Act 2001*, by its Board of Directors in accordance with section 127 of that Act; or
    - (B) in any other case, by its governing body;
  - (ii) if the applicant is a partnership, by each partner;
  - (iii) if the applicant is an unincorporated association or body, by its governing body; and
- (l) 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; and
- (m) [the application fee set out in item 1 of Schedule 2] [*local variations*].

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**5 What the applicant must demonstrate**

*[Drafting Note: Section 34(e) of the Act provides the power to prescribe additional requirements in respect of what the applicant must demonstrate. This power is reserved until there is national agreement as to how it should be used.]*

**6 Prescribed details of accredited person**

For the purposes of section 37 (2) (a) of the Act, a notice of accreditation must specify the accredited person's —

- (a) name; and
- (b) registered business name, and trading name if that is different to the registered business name; and
- (c) ACN or ABN, if applicable; and
- (d) residential address or, in the case of a body corporate, registered business address.

**7 Prescribed conditions of, or restrictions on, accreditation**

- (1) For the purposes of section 38 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 —
    - (i) it must advise the Rail Safety Regulator in writing immediately if its accreditation in the other State or Territory expires, or is suspended, surrendered or revoked;
    - (ii) if it receives a prohibition notice or an improvement notice from a corresponding Rail Safety Regulator in relation to the accreditation under the corresponding law, it must immediately give the Rail Safety Regulator a copy of the notice;
  - (b) the operator must pay the annual accreditation fee by the date determined by the Rail Safety Regulator that is set out in the notice of accreditation;

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- (c) the operator must notify the Rail Safety Regulator in writing of any of the proposed decisions, proposed events or changes listed in column 2 of the table in accordance with the requirement specified in column 3 of the table with respect to that item.

**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 is 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 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.

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<b>Item</b>	<b>Decision, event or change</b>	<b>When notification must be given</b>
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 or procedures for the inspection or maintenance of railway 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 with another person.	As soon as is reasonably practicable after it is known that the replacement will occur.

- (d) the operator must ensure that there is at all times available one of its directors or managers as a contact person should the Rail Safety Regulator wish to communicate with it, and that the Regulator is provided with sufficient details so that for any particular time the Regulator knows who the contact person is, and how to contact that person;

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- (e) if it is not possible to comply with any other requirement specified in this subregulation 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 the change occurs, as the case may be.
- (2) Nothing in subregulation (1) is intended to require an accredited person to notify the Rail Safety Regulator of any matter that is the subject of an application for the variation of the accreditation.

## **8 Surrender of accreditation**

An accredited person may surrender its accreditation under section 43 of the Act by notifying the Rail Safety Regulator in writing not less than 28 days before the proposed date of surrender of its intention to surrender the accreditation, and of the arrangements that are proposed in relation to the cessation of its railway operations.

## **9 Application for a variation of an accreditation**

For the purposes of sections 47 (2) (b) and 52 of the Act, an application for a variation of an accreditation, or an application for a variation of a condition or restriction imposed by the Rail Safety Regulator, must contain —

- (a) the details required by regulations 4 (a) (identification) and 4 (b) (contact person); and
- (b) details of the scope and nature of the proposed variation; and
- (c) details of the changes that will be made to the applicant's safety management system if the proposed variation occurs; and
- (d) details of any consultation that has occurred with the 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; and

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- (e) evidence to demonstrate that the applicant has the competence and capacity to manage the risks to safety associated with the proposed variation.

*[Drafting Note: Section 49 of the Act provides the power to prescribe any other information that is to be included in the notice of variation of accreditation.]*

*This power is reserved until there is national agreement as to how it should be used.]*

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**Part 3 Safety Management**

**Division 1 Safety Management Systems**

**10 Prescribed requirements for a safety management system**

A safety management system must provide for all of the matters listed in Schedule 1 that are relevant to the railway operations for which the rail transport operator is accredited, or seeking to be accredited, and must provide a level of detail with respect to each of those matters that is appropriate having regard to the scope, nature and risks to safety of those operations, and to the operator's duties under section 28 of the Act.

*[Drafting Note: Section 57 of the Act also provides the power to prescribe risk management principles, methods and procedures. This power is reserved until there is national agreement as to how it should be used.]*

**Division 2 Private Sidings**

**11 Maintenance and operational conditions**

The following conditions are imposed for the purposes of section 56 (2) (b) of the Act —

- (a) the rail infrastructure manager must have systems and procedures to ensure that it complies with the safety duties imposed on it by section 28 of the Act in relation to the private siding; and
- (b) the rail infrastructure manager must have 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 28 of the Act —
  - (i) a listing of the risks to safety arising from the maintenance and operation of the private siding; and

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- (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 who is responsible for implementing the measures; and
- (c) the rail infrastructure manager must have systems and procedures to ensure that the details in the register are current, so far as is reasonably practicable; and
- (d) the rail infrastructure manager must have a document that provides details about how rail infrastructure within the private siding is to be maintained by it.

### **Division 3                      Interface Co-ordination Plans**

#### **12                      Meaning of *interface agreement***

In this Division *interface agreement* means an agreement in relation to risks in relation to railway operations that makes provision for —

- (a) implementing and maintaining control measures that are to be used to manage those risks, and providing for the evaluation, testing and, if necessary, revision, of those control measures;
- (b) the respective roles and responsibilities of each party to the agreement in relation to each control measure;
- (c) the procedures by which each party will monitor and determine whether the other party complies with its obligations under the agreement;
- (d) the exchange of information between the parties in relation to their obligations under the agreement;
- (e) the triggers for, and the frequency of, reviews of the agreement, and if necessary, the revision of the agreement.

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#### **13 Obligations on rail transport operators**

- (1) A rail transport operator must take the following steps to develop and implement an interface co-ordination plan for the purposes of section 61 (1) of the Act —
  - (a) the railway operations to which the plan is to apply must be identified;
  - (b) the risks to safety identified under section 61 (1) (a) that may be caused by those operations must be assessed in conjunction with the other operator;
  - (c) a process must be established to seek an interface agreement with the other operator;
  - (d) the process must be undertaken and pursued until there is a written interface agreement between the rail transport operator and the other operator.
- (2) The process described in subregulation (1) must be repeated by the rail transport operator with respect to every other rail transport operator referred to in section 61 (1) (a) of the Act.
- (3) A rail transport operator who has entered into an interface agreement under subregulation (1) must do everything that the operator has agreed to do under the agreement in relation to implementing, maintaining or monitoring any control measure.

#### **14 Obligations on rail infrastructure managers**

*[Drafting Note: This regulation is reserved pending ATC consideration of Amendment Bill 2 to the National Rail Safety Bill.]*

#### **15 Obligations on road authorities**

*[Drafting Note: This regulation is reserved pending ATC consideration of Amendment Bill 2 to the National Rail Safety Bill.]*

## **Division 4 Security Management Plans**

### **16 Security management plan**

For the purposes of section 62 of the Act, a security management plan must include —

- (a) a list of the risks arising from the matters specified in section 62 (a) (i) of the Act; and
- (b) a description of the preventative and response measures to be used to manage those risks, including a description of the policies, procedures and equipment and other physical resources that it is proposed to use for those measures, and of the training that it is proposed to provide; and
- (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 the arrangements made with those other transport operators in relation to that location to prevent or respond to security incidents; and
- (d) procedures for the recording, reporting and analysis of security incidents; and
- (e) the allocation of security roles and responsibilities to appropriate people; and
- (f) provision for liaison, the sharing of information and for joint operations, with emergency services [*local variations*], and with other transport operators who may be affected by the implementation of the plan; and
- (g) provision for the evaluation, testing and, if necessary, the revision, of security measures and procedures.

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**Division 5 Emergency Management Plans**

**17 Preparation of an emergency management plan**

- (1) For the purposes of section 63 (2) (b) (ii), when preparing an emergency management plan, a rail transport operator must consult with, in addition to the people specified in section 57 (2) of the Act, the following —
  - (a) any government agencies with emergency management functions with respect to the area to which the plan relates [*local variations*]; and
  - (b) any other transport operators who may be affected by the implementation of the plan; and
  - (c) any of the following that may be required to assist in the implementation of the plan —
    - (i) an entity (whether publicly or privately owned) that provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like services under the authority of an Act of this jurisdiction or the Commonwealth;
    - (ii) any person who, under the authority of an Act of this jurisdiction, is permitted to own or use a pipeline, or is licensed to construct or operate a pipeline;
    - (iii) any provider of public transport.  
[*local variations*]
- (2) The Rail Safety Regulator may exempt a rail transport operator from the requirement to consult with any particular person or body under subregulation (1).

**18 Matters to be included in an emergency management plan**

An emergency management plan prepared under section 63 of the Act must address

- (a) the types or classes of foreseeable emergencies; and

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- (b) the consequences of each type or class of those emergencies, including estimates of the likely magnitude and severity of the effects of each type or class; and
- (c) the risks to safety arising from those emergencies; and
- (d) methods to mitigate the effects of those emergencies; and
- (e) initial response procedures for dealing with those emergencies and the provision of rescue services; and
- (f) recovery procedures for the restoration of railway operations and for the assistance of people affected by the occurrence of those emergencies; and
- (g) the allocation of emergency management roles and responsibilities within the rail transport operator's organisation, and between the operator and other organisations; and
- (h) call-out procedures; and
- (i) the allocation of personnel for the on-site management of those emergencies; and
- (j) procedures for liaison with relevant emergency services [*local variations*], including information about the circumstances in which the emergency services [*local variations*] are to be immediately contacted; and
- (k) procedures to ensure that emergency services [*local variations*] are provided with all the information that is reasonably required to enable them to respond effectively to an emergency; and
- (l) procedures for effective communications and co-operation throughout the emergency response; and
- (m) procedures for ensuring site security and the preservation of evidence.

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### 19 Keeping, maintaining and testing an emergency management plan

- (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 emergency management plan —
  - (a) are provided with information about the relevant elements of the plan; and
  - (b) are able to do anything that may be required of them under the plan.
- (2) The operator must test the emergency management plan, or elements of the plan, to ensure that the plan remains effective —
  - (a) at the intervals set out in the plan; and
  - (b) after any significant changes are made to the plan.
- (3) In preparing an emergency management plan, the operator must, if it is reasonably practicable to do so, determine intervals for the purposes of subregulation (2) (a) in conjunction with the emergency services [*local variations*].
- (4) When testing the emergency management plan, or elements of the plan, the operator must, so far as is reasonably practicable, arrange for participation in the testing by the relevant emergency services [*local variations*].
- (5) The operator must ensure that in-house exercises to test the 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 emergency management plan is comprehensible, and is readily accessible at all times, to —
  - (a) all employees of the operator, and all contractors engaged by the operator, who may be required to implement any emergency response procedures in the plan; and
  - (b) all other rail transport operators who may be affected by the plan; and

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- (c) any person or body referred to in regulation 17 (1) (c); and
- (d) emergency services [*local variations*].

## **Division 6                      Review**

### **20                      Review of safety management system**

- (1) A rail transport operator must comply with this regulation in conducting a review of the operator's safety management system.
- (2) In conducting the consultation required by section 57 (2) of the Act before carrying out the review, the operator must ensure that those consulted are asked for their opinion on whether, and if so, how, the safety management system can be improved.
- (3) In conducting the review the operator must ensure —
  - (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); and
  - (b) that the effectiveness of any revisions that were made as a result of the last review are assessed; and
  - (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; and
  - (d) that any issues arising from any prohibition or improvement notices that have been issued since the last review are taken into account; and
  - (e) that any deficiencies in the system are identified; and
  - (f) that methods of remedying any deficiencies are designed and assessed; and
  - (g) that any opinions provided under subregulation (2) are assessed; and
  - (h) that any other suggestions for improving the system that arise during the course of the review are assessed; and

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- (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 60 of the Act.

*[Drafting Note: Section 60 of the Act provides the power to prescribe requirements applicable to safety performance reports, including performance indicators. This power is reserved until there is national agreement as to how it should be used.]*

## Part 4 Rail Safety Workers

### 21 Rail safety work

*[Drafting Note: Section 8(1) provides both the power to:*

*Prescribe work that is rail safety work; and*

*Prescribe work that is not rail safety work*

*This power is reserved until there is national agreement as to how it should be used.]*

### 22 Health and fitness management programs

For the purposes of section 64 of the Act, a rail transport operator must have, and must implement, a health and fitness program for rail safety workers that complies, so far as is reasonably practicable, with Volumes 1 and 2 of the *National Standard for Health Assessment of Rail Safety Workers*, published by the National Transport Commission, as amended from time to time.

### 23 Alcohol and drug management program

*[local variations until there is national agreement as what requirements should be applicable]*

### 24 Testing for presence of alcohol and drugs

*[local variations until there is national agreement as what requirements should be applicable]*

### 25 Fatigue management program

*[local variations until there is national agreement as what requirements should be applicable]*

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### 26 Records of competence

For the purposes of section 68 (5) of the Act, a rail transport operator must maintain records of competence that include details of —

- (a) the rail safety training undertaken by each rail safety worker, including when, and for how long, the training was undertaken; and
- (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 re-training is due; and
  - (v) the date any re-training was undertaken; and
- (c) the name of the organisation conducting the training or re-training; and
- (d) the name and qualifications of the person who assessed the competence of the rail safety worker.

## Part 5 Miscellaneous

### 27 Periodic information to be supplied

- (1) The following returns of information are required under section 72 (3) of the Act —
  - (a) a monthly [*local variations*] return that sets out in respect of the [month] —
    - (i) in the case of a rail infrastructure manager, the length, in kilometres, of track in this jurisdiction over which it has effective management and control; and
    - (ii) in the case of a rolling stock operator —
      - (A) the number of kilometres travelled in this jurisdiction by passenger trains over which it has effective management and control;
      - (B) the number of kilometres travelled in this jurisdiction 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 jurisdiction 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 jurisdiction on passenger trains over which it has effective management and control; and
  - (b) an annual return that sets out, in respect of the current financial year —
    - (i) in the case of a rail infrastructure manager, the length, in kilometres, of track in this jurisdiction over which it estimates that it will have effective management and control; and

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- (ii) in the case of a rolling stock operator —
  - (A) the number of kilometres that it estimates will be travelled in this jurisdiction by passenger trains over which it has effective management and control;
  - (B) the number of kilometres that it estimates will be travelled in this jurisdiction by freight trains over which it has effective management and control;
  - (C) the number of journeys that it estimates will be made by passengers in urban areas of this jurisdiction on passenger trains over which it has effective management and control;
  - (D) the number of journeys that it estimates will be made by passengers in non-urban areas of this jurisdiction on passenger trains over which it has effective management and control;
- (iii) the number of employees that the rail transport operator estimates will be engaged in railway safety work on, or in relation to, a railway within, or partly within, this jurisdiction.

*[local variations – a jurisdiction may choose not to require the information set out in paragraph (b)]*

- (2) The rail transport operator must provide the [monthly] return required by subregulation (1) (a) to the Rail Safety Regulator as soon as is practicable after [the end of each month, and not later than the 21st day of the following month].
- (3) The rail transport operator must provide the annual return required by subregulation (1) (b) to the Rail Safety Regulator before 29 July in the financial year to which it relates, or before any other date or period that is specified by the Regulator.
- (4) In this regulation, *financial year* means the period of 12 months ending at midnight on 30 June.

*[local variations - sub-regulations (3) and (4) are only required if sub-regulation (1)(b) is included.]*

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*[Drafting Note: Section 72 of the Act provides the power to prescribe information that a rail transport operator must provide to the rail safety regulator at the times, and in the manner, specified by the regulator. This power is reserved until there is national agreement as to how it should be used.]*

**28 Reporting of notifiable occurrences**

- (1) For the purposes of this regulation —
- (a) a Category A notifiable occurrence is any of the following notifiable occurrences —
    - (i) an accident or incident that has caused death, serious injury or significant property damage;
    - (ii) a running line derailment;
    - (iii) a running line collision between rolling stock;
    - (iv) a collision at a road or pedestrian level crossing between rolling stock and either a road vehicle or a person;
    - (v) a fire or explosion on or in rail infrastructure or rolling stock that affects the safety of railway operations or that endangered one or more people;
    - (vi) a suspected terrorist attack;
    - (vii) any accident or incident involving a significant failure of a safety management system that could have caused death, serious injury or significant property damage;
    - (viii) any other accident or incident that is likely to generate intense public interest or concern;
  - (b) a Category B notifiable occurrence is any of the following notifiable occurrences, unless that occurrence is also a Category A notifiable occurrence —
    - (i) a derailment other than a running line derailment;
    - (ii) any collision involving rolling stock, other than a collision described in paragraph (a) (iii) or (iv);
    - (iii) any incident at a road or pedestrian level crossing, other than a collision described in paragraph (a) (iv);
    - (iv) the passing of a stop signal, or a signal with no indication, by rolling stock without authority;

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- (v) any accident or incident where rolling stock exceeds the limits of authorised movement given in a proceed authority;
- (vi) 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 to cause damage to adjoining property;
- (vii) any slip, trip or fall by a person on railway property, or any person being caught in the door of any rolling stock;
- (viii) any situation where a load affects, or could affect, the safe passage of trains or the safety of people, or cause damage to adjoining property;
- (ix) any accident or incident involving dangerous goods that affects, or could affect, the safety of railway operations or the safety of people, or cause damage to property;
- (x) any breach of a safe working system or procedure, or the detection of any irregularity or deficiency in such a system or procedure;
- (xi) the detection of any irregularity in any rail infrastructure (including electrical infrastructure) that could affect the safety of railway operations or the safety of people;
- (xii) the detection of any irregularity in any rolling stock that could affect train integrity or the safety of people, or cause damage to the rolling stock;
- (xiii) 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);
- (xiv) any incident on railway property where a person inflicts, or is alleged to have inflicted, an injury on another person;
- (xv) a suspected attempt to suicide;
- (xvi) the notification that a rail safety worker employed by a rail transport operator has returned a result to a test designed to determine the concentration of

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- alcohol or 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 drugs at a relevant time [*local variations*];
- (xvii) 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;
  - (xviii) a corridor security incident that affects the safety of railway operations.
- (2) If a Category A notifiable occurrence happens on, or in relation to, a rail transport operator's railway premises or railway operations, the operator —
- (a) must report that fact to the Rail Safety Regulator immediately after becoming aware of the occurrence; and
  - (b) must give the Rail Safety Regulator a written report of the occurrence within 72 hours after becoming aware of the occurrence.
- (3) If a Category B notifiable occurrence happens on, or in relation to, a rail transport operator's railway premises or railway operations, the operator must give the Rail Safety Regulator a written report of the occurrence within 72 hours after becoming aware of the occurrence.
- (4) The operator must ensure that any report it makes under this regulation is in the form, contains all the information, and is made in the manner, required by the Rail Safety Regulator.
- (5) The Rail Safety Regulator may extend any time limit specified in this regulation by giving the operator a written notice to that effect.
- (6) An extension granted under subregulation (5) has effect as specified in the notice.

***[Drafting Note: Section 4 of the Act provides the power to prescribe an accident or incident, or class of accident or incident, not to be a notifiable occurrence. This power is reserved until there is national agreement as to how it should be used.]***

## Regulation 29

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

For the purposes of section 46 (c) of the Act, each annual safety performance report prepared under section 60 of the Act is prescribed.

### **30 Annual report of Rail Safety Regulator**

*[Drafting Note: Section 19 of the Act provides the power to prescribe a class of aggregated statistics that the rail safety regulator must publish in its annual report. This power is reserved until there is national agreement as to how it should be used.]*

### **31 Audits of railway operations**

*[Drafting Note: Section 75 of the Act provides the power to prescribe procedures relating to the conduct of audits and inspections, including procedures to ensure the confidentiality of records. This power is reserved until there is national agreement as to how it should be used.]*

### **32 Embargo notices**

For the purposes of section 90 of the Act, an embargo notice must contain the following details in addition to the matters required by section 90 (4) of the Act —

- (a) a description of the thing to which the notice applies; and
- (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 the thing; and
- (c) the name, signature and business telephone number of the rail safety officer who issued the notice; and
- (d) the date on which the notice was served or affixed.

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**33 Confidentiality**

*[Drafting Note: Section 149 of the Act provides the power to prescribe the exceptional circumstances in which a rail safety regulator may choose to disclose or communicate information. This power is reserved until there is national agreement as to how it should be used.]*

**34 Prescribed persons**

*[Drafting Note: Section 160 of the Act provides the power to prescribe persons that must give notice in the prescribed form and within a prescribed period if operations commence, are discontinued or cease. This power is reserved until there is national agreement as to how it should be used.]*

**35 Exemptions from the Act by regulation**

*[Drafting Note: Section 163(2) of the Act provides the power for the regulations to exempt any person, railway or part of a railway or operation from all or any of the provisions of the Act. This power is reserved in respect of the exemption of classes of operators, until there is national agreement as to how it should be used. However, the exemption of individual operators may occur as a local variation.]*

**Part 6 Fees**

**36 Annual fees for private sidings**

A rail infrastructure manager must pay the fees set out in item 4 of the Table in Schedule 2 [*local variations*] for any private siding that the rail infrastructure manager registers with the Rail Safety Regulator under section 56 (2) (a) of the Act.

**37 Application fees**

An accredited person must pay the relevant fee set out in item 1 of the Table in Schedule 2 [*local variations*].

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### **38 Annual accreditation fees**

An accredited person must pay the relevant annual accreditation fees set out in item 2 of the Table in Schedule 2 by the date determined by the Rail Safety Regulator that is set out in the notice of accreditation.

*[Drafting note: section 40(2) allows annual fees to be paid by instalments or by some other agreed method. This can be done administratively and does not need to be specified in the regulations.]*

### **39 Variation of accreditation fees**

For the purposes of section 47 (2) (c), the fee to accompany an application to vary an accreditation is the amount set out in item 5 of the Table in Schedule 2.

### **40 Late Fees**

If the annual accreditation fee is not paid when due, the Rail Safety Regulator may charge an amount up to [local variations] for each period of [local variations] after that date.

*[Drafting note: A reference to local variations in this Part is intended to encompass local variations by which fees are set by a mechanism other than regulations or additional advice on calculation of fees, for example in respect of pro rata levying for the first part year of operation.]*

## **Schedule 1      Content of the Safety Management System**

### **A.      Safety Policy**

1. A safety policy or policies that aligns or align with other organisational policies and that is, or that are, endorsed by the CEO and Board (or any other person or body controlling the rail transport operator).
2. A safety policy or policies that includes or include 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.

### **AA.     Safety Culture**

*[Reserved until there is national agreement]*

### **B.      Governance and Internal Control Arrangements**

1. Systems and procedures to ensure that the CEO and Board (or any other person or body controlling the rail transport operator), or the people managing the railway operations, have sufficient knowledge —
  - (a) of the risk profile of the railway operations carried out by the rail transport operator to enable the rail transport 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 these Regulations; 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 CEO and Board (or any other person or body controlling the rail transport operator), or of the people managing the railway operations, that affect safety are being implemented effectively.

**C. Management, Responsibilities, Accountabilities and Authorities**

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

**D. 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.

**E. 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, including systems and procedures for —

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

**F. Review of the safety management system**

1. Systems and procedures for the review of the safety management system in accordance with section 59 of the Act and regulation 20.
2. Documentation of the matters set out in regulation 20 (3).

**G. Safety Performance Measures**

1. Systems and procedures to ensure that 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.

**H. Safety Audit Arrangements**

1. An audit program that provides for —
  - (a) the scheduling and frequency of audits; and

- (b) safety management system audits as part of the audit program; and
  - (c) the giving of priority to 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 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 —
  - (a) communicating the results of audits to those people who are responsible for the oversight of the railway operations in the area audited for review and, where appropriate, for corrective action; and
  - (b) where appropriate, the registration and effective implementation of recommendations for action identified by the audit; and
  - (c) the review of the effectiveness of the audit program.

#### **I. 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 —
  - (a) registering any corrective actions taken; and
  - (b) the review of those corrective actions; and
  - (c) the implementation of corrective action if it is determined that corrective action is required; and
  - (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.

## **J. Management of Change**

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

- (a) that changes are fully identified and described in the context of the railway operations; and
- (b) that affected parties are identified and, if practicable, consulted; and
- (c) that the roles and responsibilities of rail safety workers and employees of the rail transport operator are clearly specified with respect to the change; and
- (d) that the rail safety workers and employees of the rail transport operator are fully informed and trained to understand and deal with the proposed change; and
- (e) that the requirements of sections 57 (1) (c) and 57 (1) (d) of the Act are observed in relation to any risks associated with the proposed change; and
- (f) that the change, once implemented, is reviewed and assessed by the rail transport operator to determine whether or not the change has been appropriately managed.

## **K. Consultation**

Systems and procedures to ensure that the consultation required by section 57 (2) of the Act occurs when the safety management system is reviewed or varied.

**L.          Internal Communication**

Systems and procedures —

- (a) for 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; and
- (b) for the communication of the rail transport operator's safety policy and safety objectives to all people who are to participate in the implementation of the safety management system; and
- (c) for the internal reporting of accidents and incidents involving the operator's railway operations, including accidents and incidents involving contractors and sub-contractors; and
- (d) to support communication and the dissemination of information throughout, and between all levels of, the operator's railway operations.

**M.          Risk Management**

- 1. Systems and procedures for compliance with the risk management obligations set out in sections 7, 57 (1) (c), 57 (1) (d) and 57 (1) (e) of the Act.
- 2. A risk register that includes —
  - (a) a listing of the risks to safety identified under section 57 (1) (c) of the Act; and
  - (b) details of the assessment of those risks (including their likelihood, likely consequences and ranking); and
  - (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 on the measures can be found.

3. Systems and procedures to ensure that the details in the register are current, so far as is reasonably practicable.

**N. 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.

**O. Procurement and Contract Management**

Systems and procedures —

- (a) for 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; and
- (b) to ensure that the terms of any tender documents or contracts do not lead to unsafe work or an activity that may affect the safety of railway operations; and
- (c) for the selection and control of contractors and to ensure the monitoring of the performance of contractors, including conducting or commissioning audits of the contractor's performance in relation to the safety aspects of the contract; and
- (d) to ensure that safety duties under the Act are being met under contracts, and procedures for the taking of remedial action where necessary; and
- (e) to ensure that goods and services provided to the railway operation meet the standards and specifications required for the safety of the railway operation.

**P.      General Engineering and Operational Systems Safety Requirements**

1. A documented set of engineering standards and procedures, and operational systems, 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 updating of the documents specified in clause 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 safety standards specified in clause 1.
4. Systems, procedures and standards for the following in relation to rail infrastructure and rolling stock —
  - (a) engineering design; and
  - (b) construction and installation; and
  - (c) implementation and commissioning; and
  - (d) monitoring and maintenance; and
  - (e) system operation; and
  - (f) modification; and
  - (g) decommissioning or disposal.

**Q.      Process Control**

1. Procedures for the rail transport operator to monitor its compliance with the standards and procedures specified in section P, 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.

**R. Asset Management**

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

**S. Safety Interface Coordination**

1. Procedures for the identification of interface risks to the safety of railway operations and for the development and implementation of interface co-ordination plans in accordance with section 61 of the Act and regulations 12 and 13.

*[Drafting Note: This item has been drafted to allow separate consideration by the Australian Transport Council of Amendment Bill 2 to the Rail Safety Bill and a related regulation. Minor consequential amendments may be required to reflect approval].*

2. Procedures for monitoring the implementation and effectiveness of interface co-ordination plans, and compliance with interface agreements.

**T. Management of Notifiable Occurrences**

1. Systems and procedures for the reporting of notifiable occurrences in accordance with regulation 28.
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.

**U. Rail Safety Worker Competence**

Procedures, and where necessary standards, to ensure compliance with section 68 of the Act and with regulation 26.

**V. Security Management**

1. The security management plan required by section 62 of the Act.
2. Systems and procedures to ensure compliance with section 62 and regulation 16.

**W. Emergency Management**

1. The emergency management plan required by section 63 of the Act.
2. Systems and procedures to ensure compliance with section 63 and Division 5 of Part 3.

**X. Fatigue**

Systems and procedures to ensure compliance with section 67 of the Act and regulation 25. [*local variations*]

**Y. Drugs and Alcohol**

Systems and procedures to ensure compliance with sections 65 and 66 of the Act and with regulations 23 and 24. [*local variations*]

**Z. Health and Fitness**

Systems and procedures to ensure compliance with section 64 of the Act and with regulation 22. [*local variations*]

**ZA. Resource Availability**

Systems and procedures for estimating the resources, including people and equipment, that the rail transport operator will need to operate and maintain its railway operations and to implement, manage and maintain its safety management system, and for the preparation of plans to ensure that it has adequate access to those resources.

## Schedule 2 Fees

Item	Description	Fee	Regulation
1	Prescribed application fee		As numbered
	For a rolling stock operator	<i>local variation</i>	
	<i>local variation</i>		
	For a rail infrastructure manager	<i>local variation</i>	
	<i>local variation</i>		
	For a rolling stock operator and rail infrastructure manager	<i>local variation</i>	
	<i>local variation</i>		
	Alternative minimum application fee	<i>local variation</i>	
	<i>local variation</i>		
2	Annual fees	<i>local variation</i>	As numbered
	For a rolling stock operator		
	<i>local variation</i>		
	For a rail infrastructure manager	<i>local variation</i>	
	<i>local variation</i>		
	For a rolling stock operator and rail infrastructure manager	<i>local variation</i>	
	<i>local variation</i>		
	Alternative minimum annual fee	<i>local variation</i>	
	<i>local variation</i>		
3	Application for variation fee	<i>local variation</i>	As numbered
	<i>local variation</i>		

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<b>Item</b>	<b>Description</b>	<b>Fee</b>	<b>Regulation</b>
4	(Annual) Registration Fee for private sidings	<i>local variation</i>	As numbered
5	Application for variation of accreditation	<i>local variation</i>	As numbered

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).