



National Transport Commission (Model Rail Safety (Amendment No. 1) Bill) Regulations 2008¹

Select Legislative Instrument 2008 No. 34

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 20 March 2008

P. M. JEFFERY
Governor-General

By His Excellency's Command

ANTHONY ALBANESE
Minister for Infrastructure, Transport, Regional Development
and Local Government

1 Name of Regulations

These Regulations are the *National Transport Commission (Model Rail Safety (Amendment No. 1) Bill) Regulations 2008*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Model legislation — *Model Rail Safety (Amendment No. 1) Bill 2008*

Under section 7 of the *National Transport Commission Act 2003*, Schedule 1 sets out amendments, in the form of a Bill, to model legislation about rail safety.

Schedule 1 ***Model Rail Safety***
(Amendment No. 1) Bill 2008
(regulation 3)

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Schedule 1 **Model Rail Safety (Amendment No. 1) Bill 2008¹**

(regulation 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.

1. Purpose

The purpose of this Bill is to amend the Rail Safety Bill.

2. Principal Bill

In this Bill, the Rail Safety Bill, being the Model Provisions dated 10 April 2006 and approved by the Australian Transport Council on 2 June 2006, is called the Principal Bill.

3. Amendment of section 4

In section 4 of the Principal Bill, after the definition of “relevant concentration of alcohol”, **insert** the following note:

“Note: See note to s. 28(2)(c).”

4. Amendment of section 8

For section 8(2) of the Principal Bill **substitute** –

“(2) Work, or any class of work, prescribed by the regulations not to be rail safety work is not rail safety work for the purposes of this Act.”.

Draft Note: Local variations if interpretation legislation does not require a reference to ‘class of work’ to be included.

¹ This Bill was approved by the Transport Agency Chief Executives (“TACE”) on 24 November 2006, in accordance with the guidelines developed under clause 11.2 of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*. On the approval of the Bill by TACE the amendments made by the Bill became part of the Rail Safety Bill referred to in section 2.

5. Amendment of note to Part 2

In the note under the heading to Part 2 of the Principal Bill, for “Division” **substitute** “Part”.

6. Amendment of section 28

(1) After section 28(2)(c) of the Principal Bill, **insert** the following Draft Note –

‘Draft Note: Local variations – include “more than” if the relevant concentration is zero. Note also that the defined term may be ‘prescribed concentration’ rather than ‘relevant concentration’ if the concentration is a positive amount (similar adjustments may be necessary if zero drug tolerance applies).’.

(2) In section 28(3)(a) of the Principal Bill, for “use, installation, modification, design, construction, commissioning, maintenance” **substitute** “design, construction, commissioning, use, installation, modification, maintenance, repair”.

(3) In section 28(4)(b) of the Principal Bill, for “ maintenance, commissioning, modification, construction, repair or cleaning of rolling stock is” **substitute** “design, construction, commissioning, use, modification, maintenance, repair, cleaning or decommissioning of rolling stock is done or”.

(4) In section 28 of the Principal Bill -

(a) **omit** sub-section (5); and

(b) for “(6)” **substitute** “(5)”.

(5) At the end of section 28 of the Principal Bill **insert** the following Draft Note:

“Draft Note: Note that former section 28(5) is now section 28A”.

7. New section 28A inserted

After section 28 of the Principal Bill **insert** –

“28A. Duties of rail transport operators extend to contractors

- (1) The duties of a rail transport operator under section 28 extend to a person who, not being an employee employed to carry out railway operations, undertakes railway operations on or in relation to rail infrastructure or rolling stock of the operator, and any employees of the person, in relation to matters over which the operator has control or would have control if not for any agreement purporting to limit or remove that control.
- (2) A person to whom the duties under section 28 extend by reason of sub-section (1) must comply with those duties in respect of railway operations referred to in that sub-section undertaken by the person.

Penalty: In the case of a natural person:
 In the case of a body corporate:

Note: Local variations for consistency with OHS legislation.”.

8. Amendment of section 31

- (1) In section 31 of the Principal Bill –
 - (a) for “A person” **substitute** “(1) A person”;
 - (b) **omit** “(other than rail safety work)”.
- (2) At the end of section 31 of the Principal Bill **insert** –

“(2) Sub-section (1) does not apply to a rail safety worker, not being a rail transport operator, carrying out rail safety work for or on behalf of a rail transport operator who –

 - (a) is accredited under this Part; or
 - (b) is exempt under this Act from compliance with this section –

in relation to that rail safety work.”.

9. Amendment of section 33

In section 33(2) of the Principal Bill –

- (a) **omit** paragraph (c); and
- (b) for “(d)” **substitute** “(c)”;
- (c) for “(e)” **substitute** “(d)”.
- (d) for “(f)” **substitute** “(e)”.

10. Amendment of sections 34, 37 and 38

- (1) In section 34(a) of the Principal Bill, after “the applicant is” **insert** “or is to be”.
- (2) In section 37 of the Principal Bill –
 - (a) in sub-section (1)(a), **omit** “in the prescribed form”;
 - (b) in sub-section (2), **omit** “must be in the prescribed form and”.
- (3) In section 38 of the Principal Bill, for “an applicant” **substitute** “a person”.

11. Amendment of sections 44 and 45

- (1) In section 44 of the Principal Bill –
 - (a) in sub-section (1)(a)(i), after “conditions” **insert** “, or to comply with the restrictions,”;
 - (b) in sub-section (2)(b), after “wholly” **insert** “or in part”;
 - (c) in sub-section (4), after “wholly” **insert** “or in part”.
- (2) After section 44(2) of the Principal Bill **insert** –

“(3) The Rail Safety Regulator may withdraw a suspension of the accreditation of a person by written notice given to the person.”.
- (3) In section 44 of the Principal Bill –
 - (a) for “(3) Before” **substitute** “(4) Before”;
 - (b) in renumbered sub-section (4)(a)(ii), for “make representations” **substitute** “make written representations”;

(c) for “(4)” **substitute** “(5)”;

(d) for “(5)” **substitute** “(6)”.

(4) In section 45 of the Principal Bill –

(a) in sub-section (1)(a), after “wholly” **insert** “or in part”;

(b) in sub-section (2), after “wholly or in part” **insert** “or in respect of specified railway operations”;

(c) in sub-section(4)(a)(ii), for “make representations” **substitute** “written representations”.

12. **Amendment of section 46**

(1) For sections 46(1)(a) and 46(1)(b) of the Principal Bill **substitute** –

“(a) if the operator is an accredited person or has an exemption under this Part, the current notice of accreditation or exemption under this Part; and

(b) if the operator is a rail infrastructure manager of a private siding registered with the Rail Safety Regulator, the notice of registration; and

(c) any other document prescribed by the regulations for the purposes of this section – “.

(2) In section 46 of the Principal Bill –

(a) for “(b)” **substitute** “(d)”;

(b) for “(c)” **substitute** “(e)”;

(c) for “(d)” **substitute** “(f)”.

13. **Amendment of section 49**

In section 49(1)(a) of the Principal Bill, **omit** “in the prescribed form”.

14. **Amendment of sections 52 and 53**

(1) In section 52(2) of the Principal Bill, for “accreditation and section 33” **substitute** “variation of accreditation and section 47”.

(2) For section 52(3) of the Principal Bill **substitute** –

“(3) The Rail Safety Regulator must consider the application and, if satisfied as to the matters referred to in sections 34 and 35 so far as they are applicable to the proposed variation, may, by notice in writing given to the accredited person and in accordance with the provisions of this Part so far as they are applicable, grant, or refuse to grant, the variation.”.

(3) After section 53(2)(b) of the Principal Bill **insert** –

“; and

(c) consider any representations made under paragraph (b) and not withdrawn.”.

(4) In section 53(4)(a) of the Principal Bill, for “(iii)” **substitute** “(ii)”.

15. Amendment of section 56

After section 56(2) of the Principal Bill **insert** –

“(3) The Rail Safety Regulator must issue a notice of registration to a rail infrastructure manager who registers a private siding with the Rail Safety Regulator.

(4) If the regulations so prescribe, the Rail Safety Regulator must make prescribed particulars of a registration under sub-section (2) available for public inspection at the Rail Safety Regulator’s office or a prescribed place, during ordinary business hours.”.

16. Amendment of section 57

In section 57 of the Principal Bill –

(a) in sub-section (1), after “management system for railway operations” **insert** “(other than railway operations in respect of which the operator is not required to be accredited)”;

(b) in sub-section (2), after “system in relation to railway operations” **insert** “in respect of which the operator is required to be accredited”.

17. Amendment of section 59

In section 59 of the Principal Bill, for all words and expressions after “regulations” **substitute** –

“at such times or within such periods as are prescribed or, if no times or periods are prescribed, at least once each year or at such other time as is agreed between the rail transport operator and the Rail Safety Regulator.

Penalty: In the case of a natural person:
In the case of a body corporate:”.

18. Amendment of section 60

In section 60(3) of the Principal Bill, for “longer” **substitute** “other”.

19. Amendment of sections 62 and 63

(1) In section 62(c) of the Principal Bill, for “a security incident occurs.” **substitute** “an incident of a kind referred to in paragraph (a) occurs.”.

(2) At the end of section 62 of the Principal Bill **insert** –

Penalty: In the case of a natural person:
In the case of a body corporate:”.

(3) In section 63 of the Principal Bill –

(a) for “emergency plan”, wherever occurring in the heading and in sub-sections (1) and (2), **substitute** “emergency management plan”;

(b) at the end of sub-section (1) **insert** –

Penalty: In the case of a natural person:
In the case of a body corporate:”;

(c) at the end of sub-section (3) **insert** –

“Penalty: In the case of a natural person:
In the case of a body corporate:”.

20. Amendment of section 68

For sections 68(1), 68(2) and 68(3) of the Principal Bill
substitute –

“(1) A rail transport operator must ensure that each rail safety worker who is to carry out rail safety work in relation to the rail transport operator’s rail infrastructure or rolling stock has the competence to carry out that work.

Penalty: In the case of a natural person:
In the case of a body corporate:

(2) For the purposes of sub-section (1), the competence of a rail safety worker to carry out particular rail safety work must be assessed –

(a) by reference to –

(i) any qualification and any units of competence recognised under the Australian Quality Training Framework within the meaning of the Skilling Australia’s Workforce Act 2005 of the Commonwealth applicable to that rail safety; or

(ii) if sub-paragraph (i) does not apply, the applicable prescribed provisions; and

(b) by reference to the knowledge and skills of the rail safety worker that would enable the worker to carry out the rail safety work safely.

(3) A certificate purporting to have been issued under the Australian Quality Training Framework to a rail safety worker certifying that the worker has certain qualifications or units of competence is evidence that

the worker has those qualifications or units of competence.”.

21. New section 72 substituted

For section 72 of the Principal Bill **substitute-**

“(1) The Rail Safety Regulator may, by notice in writing given to a rail transport operator, require the operator to provide to the Rail Safety Regulator on or before a specified date and in a manner and form approved by the Rail Safety Regulator, any or all of the following –

- (a) information concerning measures taken by the rail transport operator to promote rail safety; and
- (b) information concerning matters, including matters relating to the financial capacity or insurance arrangements of the rail transport operator, relating to rail safety or the accreditation of the rail transport operator that the Rail Safety Regulator reasonably requires; and
- (c) the information prescribed for the purposes of this sub-section.

(2) The rail transport operator must comply with a notice given to the operator under sub-section (1).

Penalty: In the case of a natural person:
In the case of a body corporate:

(3) A rail transport operator must provide to the Rail Safety Regulator, in a manner and form approved by the Rail Safety Regulator and at the prescribed times and in respect of the prescribed periods, information prescribed by the regulations for the purposes of this sub-section relating to rail safety or accreditation.

Penalty: In the case of a natural person:
In the case of a body corporate:”.

22. Amendment of section 73

- (1) In the heading to section 73, for “**notifiable**” substitute “**certain**”.
- (2) In section 73(1) of the Principal Bill, **omit** “form and”.
- (3) After section 73(4) of the Principal Bill **insert**-
“(5) A rail transport operator to whom a requirement under sub-section (3) applies must comply with the requirement.
Penalty: In the case of a natural person:
In the case of a body corporate:”.

23. Amendment of Part 4, Division 7

- (1) In the heading to Division 7 of Part 4 of the Principal Bill, **omit** “**and Inspections**”.
- (2) In the heading to section 75 of the Principal Bill, for “**Inspection**” substitute “**Audit**”.
- (3) For section 75(1) of the Principal Bill **substitute**-
“(1) The Rail Safety Regulator –
 - (a) may audit the railway operations of a rail transport operator; and
 - (b) may prepare and implement a program (“**an audit program**”) for each year for inspecting the railway operations of rail transport operators; and
 - (c) may, for the purposes of an audit, inspect the railway operations of a rail transport operator whether or not under an audit program.”.
- (4) In section 75 of the Principal Bill –
 - (a) in sub-section (2), for “sub-section (1)(a)” **substitute** “sub-section (1)(b)”;
 - (b) in sub-section (4), **omit** “and inspections”.
- (5) After section 75(4) of the Principal Bill **insert** –

“(5) In this section “**rail transport operator**” includes a person, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator.”.

24. Amendment of Part 5

In Part 5 of the Principal Bill –

- (a) in section 84(1), for “premises of residential” **substitute** “premises or residential”;
- (b) in section 84(4), for “regulation under” **substitute** “regulations under”;
- (c) in section 86(5), for “sub-section (1) of (3)” **substitute** “sub-section (1) or (3)”;
- (d) in section 90(4)(a), for “be in the form, or contain the particulars,” **substitute** “contain the particulars”;
- (e) in section 98(2), for “subsection (1)” **substitute** “sub-section (1)”.

25. Amendment of Part 6

In Part 6 of the Principal Bill –

- (a) in item 1 of the Table set out in section 117, for “Section 36(3)” **substitute** “Section 36(4)”;
- (b) in item 10 of the Table set out in section 117, for “plan” **substitute** “system”;
- (c) in the heading to section 119, for “*or court*” **substitute** “*or appeal to court*”.

26. Amendment of section 146

In section 146 of the Principal Bill, for “Penalty:” **substitute-**

“Penalty: In the case of a natural person:
In the case of a body corporate:”.

27. Amendment of Part 8

In Part 8 of the Principal Bill –

- (a) in section 151(3)(a), for “section []” **substitute** “section [*to be specified*]”;
- (b) in the heading to section 156, **omit** “or guidelines”;
- (c) in section 156(1), **omit** “or guidelines”;
- (d) in section 160, for “Penalty:” **substitute** –
“Penalty: In the case of a natural person:
In the case of a body corporate:”.

28. Amendment of section 162

In section 162 of the Principal Bill –

- (a) in sub-section (1), after paragraph (b) **insert** –
“(c) forms for the purposes of this Act;”;
- (b) in sub-section (1)(c) –
 - (i) for “(c)” **substitute** “(d)”;
 - (ii) after “necessary” **insert** “[*or convenient – local variations*]”;
- (c) in sub-section (2)(g), for “not exceeding []” **substitute** “not exceeding [*to be specified*]”.

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.