



Information Alert



NEW RAIL SAFETY ACT EXPECTED TO COMMENCE IN NSW ON 1 JANUARY 2009

The *Rail Safety Act 2008* is expected to commence on **1 January 2009**, subject to the Governor's proclamation and finalisation of the Regulations. It replaces the *Rail Safety Act 2002* and implements the National Model Rail Safety legislation in NSW.

The [Rail Safety Bill 2008](#) was passed by the Legislative Council on 25 November 2008.

Supporting regulations, currently being finalised, will replace the *Rail Safety (General) Regulation 2003* and *Rail Safety (Drug and Alcohol Testing) Regulation 2003*.

The new regulations adopt the National Model Rail Safety Regulations and also incorporate existing mandatory NSW requirements related to guidelines for network rules, fatigue management, and drug and alcohol programs, and train radio communications provisions implementing Waterfall Special Commission of Inquiry recommendations.

While the Act and Regulations are expected to commence on 1 January 2009, transitional arrangements apply for some requirements (see over page).

Duties of safety for all rail organisations and persons carrying out railway operations

The *Rail Safety Act 2008* introduces duties on rail transport operators and others carrying out railway operations to ensure, so far as is reasonably practicable, the safety of their railway operations.

General duties of safety also apply to contractors, designers, suppliers and manufacturers of equipment, and rail safety workers. They are based on the National Model Rail Safety Legislation and are similar to those in the *Occupational Health and Safety Act 2000* (which continues to apply to NSW rail operators, including in relation to their duties around workplace safety).

Under the *Rail Safety Act 2008* it will be for the defendant to prove, on the civil standard, that they did everything reasonably practicable to eliminate or minimise risks to the safety of their railway operations. For more details, see the fact sheet [New Rail Safety Laws in NSW – What's Changing?](#)

Accreditation under the new Act

Some organisations previously accredited by the Independent Transport Safety and Reliability Regulator (ITSRR) under the *Rail Safety Act 2002* will not require accreditation under the *Rail Safety Act 2008*.

The Rail Safety Act 2008 requires all railway operations to be conducted by, or on behalf of, a rail transport operator, who is either accredited in relation to those operations, or has obtained an exemption from the requirement to be accredited in relation to those operations from the ITSRR.

Rail transport operators are those organisations with *effective management and control* of rail infrastructure and/or rolling stock operations.

Arrangements for current accredited operators

Operators who require accreditation under the *Rail Safety Act 2008* **do not need to reapply** for accreditation but will be issued with a new notice of accreditation in the months after the *Act* has commenced.

Existing notices of accreditation will continue to apply until new notices have been issued. Any current conditions and/or restrictions of accreditation and outstanding statutory notices will be carried over to the new notice of accreditation.

ITSRR is reviewing all current accreditation notices to assess which operators need to be accredited under the *Rail Safety Act 2008*. After commencement of the new *Act*, operators will be contacted progressively over the next few months and provided with their draft notice of accreditation for review.

As part of the consultation process, operators will be given the opportunity to meet with senior ITSRR staff to discuss their obligations under the new *Act* and to ensure the permissions granted in the draft notice of accreditation are consistent with the scope and nature of their railway operations. The same consultation process will be offered to currently accredited operators who no longer require accreditation under the new *Act*.

Transitional arrangements for the *Rail Safety Act 2008*

- Continuing accredited operators will have 12 months to comply with the new **safety management system** (SMS) requirements. The *Rail Safety (Safety Management Systems) Guideline 2006 - No 1* will apply during the transition.
- Rail infrastructure managers of **private sidings** will have 2 years to register private sidings.
- Requirements in relation to **rail or road crossings interface coordination agreements** between rail infrastructure managers and roads authorities will come into effect in 3 years.
- New **competency** requirements will come into effect in 2 years. The *Guidelines for Certification of Competency* will apply during the transition.

More information

The attached fact sheet – [New Rail Safety Laws in NSW – What's Changing?](#) – provides an overview of the key changes introduced by the *Rail Safety Act 2008*. Additional fact sheets are being developed on specific topics and more information will be provided over the coming weeks.

In the meantime, if you have questions, email ITSRR at contact@transportregulator.nsw.gov.au or call Carolyn Boden on 02 8263 7122 (regarding the review of accreditation notices) or Celia Murphy on 02 8263 7123 (for other enquiries about the new Act).



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