

## COMMENTS ON THE DRAFT NSW RAIL SAFETY (DRUG AND ALCOHOL TESTING) REGULATION 2007

### Key to ITSRR Responses

- (1) Accepted and Regulation to be amended.
- (2) ITSRR to consider further consultation on this issue.
- (3) Noted. No amendment is required because it is a comment/observation or a request for clarification.
- (4) Rejected. Amendment is not appropriate, or the issue is better dealt with administratively.
- (5) Oversight. Error will be corrected.

#### **NOTE:**

The draft regulation retains the provisions of the existing regulation and brings the existing mandatory requirements from the *Guidelines relating to Drug & Alcohol Programs* into the new regulatory regime. This has been done in line with NSW drafting conventions on the advice of Parliamentary Counsel.

**COMMENTS ON THE  
DRAFT NSW RAIL SAFETY (DRUG AND ALCOHOL TESTING) REGULATION 2007**

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
Part 1 and throughout the regulation	<p><b>Pacific National</b></p> <ul style="list-style-type: none"> <li>The new version of AS/NZS4308 is due in the very near future. This will make the current version redundant. This regulation will have to wait for the release of the AS/NZS4308:2007. The standard has been revised considerably and this regulation will need to be reviewed to reflect the significant changes.</li> </ul>	1	The new AS/NZS4308:2008 was published on 19 March 2008. The regulation is being revised to reflect the changes to the standard.
3 - Definitions	<p><b>AMWU (Australian Manufacturing Workers' Union)</b></p> <ul style="list-style-type: none"> <li>Insert: AS 4760-2006 means Australian Standard AS 4760 – 2006, Procedures for specimen collection and detection and quantitation of drugs in oral fluid.</li> <li>Insert: Competent Person means a person who has undergone training compliant with Clause 11(2) and is in receipt of a statement as required under Clause 11(4).</li> </ul> <p><b>ARA (Australasian Railway Association)</b></p> <ul style="list-style-type: none"> <li>Clause 3(1) and elsewhere - Industry understands that standard AS/NZ4308 has been revised and will be reissued in the near future.</li> </ul>	<p>2</p> <p>4</p> <p>1</p>	<p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. However, ITSRR will consider further consultation on issues such as saliva testing for future amendment to the regulations.</p> <p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. However, ITSRR will consider this proposal for future amendment to the regulations.</p> <p>The new AS/NZS4308:2008 was published on 19 March 2008. The regulation is being</p>

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	<p>This draft regulation should be reviewed and reflect the revised standard.</p> <p><b>Unions NSW</b></p> <ul style="list-style-type: none"> <li>• Unions NSW does not support the inclusion of the Australian Standard 4308:2001, <i>Procedures for the collection, detection and quantitation of drugs of abuse in urine</i>, which is relied upon in the <i>Rail Safety (Drug &amp; Alcohol Testing) Regulation 2007</i>. The process as outlined in AS4308:2001 has long been disputed by Unions NSW and its affiliates, as it shows residual presence of substances. It does not test for, or show impairment.</li> <li>• Unions NSW and its affiliates submit that AS4760:2006, <i>Procedures for specimen collection and the detection and quantitation of drugs in oral fluid</i>, is the appropriate standard to be adopted by the Draft Regulation, as it is a better measure of impairment.</li> </ul>	<p>3</p> <p>2</p>	<p>revised to reflect the changes to the standard.</p> <p>Noted.</p> <p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. However, ITSRR will consider further consultation on issues such as saliva testing for future amendment to the regulations.</p>
<p><b>4 – Authorisation of testing officers</b></p>	<p><b>AMWU</b></p> <ul style="list-style-type: none"> <li>• Insert ‘competent’ in reference to ‘any person’.</li> </ul> <p>Delete clause 4(3)(b): Authorisation should accrue only to a trained and competent person. Authorisation should not be an ex officio entitlement.</p> <p>Delete clause 4(8): Authorisation should not be an ex officio entitlement.</p>	<p>2</p>	<p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i>, including existing requirements for testing officer training, into the new regulatory regime. However, ITSRR will consider further consultation on this proposal for future amendment to the regulations.</p>



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	<p><b>ARA</b></p> <ul style="list-style-type: none"> <li>• Clause 9(1) and (2) - Matters relating to safety workers - Subclauses (e) and (f) that relate to disciplinary sanctions etc are not matters that should be covered in regulations and should be deleted - they should be covered in workplace arrangements.</li> </ul> <p><b>Pacific National</b></p> <ul style="list-style-type: none"> <li>• Clause 9(2)(e) - Appeals against disciplinary sanctions should not be in the regulations. This should be an organization management issue. This should be taken out.</li> <li>• Clause 9(2)(g) - Remove the word 'agreed'. This is an issue between the organization and the trade union for the regulator to prescribe that the union needs to agree with it.</li> </ul> <p><b>RailCorp</b></p> <ul style="list-style-type: none"> <li>• Clause 9(2)(g) requires the rail transport operator to include in its drug and alcohol management program protocols agreed with rail safety</li> </ul>	<p>4</p> <p>4</p> <p>4</p> <p>4</p>	<p>existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. However, there is nothing in the draft regulation that precludes a worker from accessing and consulting their representatives at any stage of the program.</p> <p>These are existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i>.</p> <p>This is an existing mandatory requirement from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i>.</p> <p>This is an existing mandatory requirement from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i>. ITSRR will discuss with Parliamentary Counsel how this fits with the new legislated obligations to consult with rail safety workers and their representatives (section 12(3)) to ensure consistency with the new consultation regime introduced by the National Model Legislation.</p> <p>This is an existing mandatory requirement from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i>. ITSRR will discuss with</p>

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	<p>workers and their representatives. RailCorp agrees that a rail transport operator should consult with rail safety workers and their representatives but does not support a regulatory obligation to obtain agreement. The requirement to have a program is a regulatory obligation placed on the rail transport operator. Requiring the rail transport operator to obtain the agreement of other parties conflicts with that obligation. It may not be possible to achieve agreement consequently putting the rail transport operator in breach of the regulation.</p> <p>We understand that the ITSRR has previously advised that a similar obligation in the current guidelines does not imply that agreement must be obtained before procedures can be implemented. However, RailCorp submits that it would be more appropriate to clarify this requirement by an amendment to the current draft Regulation.</p>		<p>Parliamentary Counsel how this fits with the new legislated obligations to consult with rail safety workers and their representatives (section 12(3)) to ensure consistency with the new consultation regime introduced by the National Model Legislation.</p> <p>From 2005, compliance with the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> became a condition of accreditation. Previous advice was provided prior to 2005.</p>
<p><b>10 – Testing procedures</b></p>	<p><b>AMWU</b></p> <ul style="list-style-type: none"> <li>Clause 10 (1) delete: “...using risk management principles to select rail safety workers...” <u>Random</u> Testing cannot be applied to ‘selected’ rail safety workers. This clause should be redrafted to reflect the intention of the legislation, which is genuine ‘random’ testing.</li> </ul> <p><b>RailCorp</b></p> <ul style="list-style-type: none"> <li>Clause 10(1) requires testing of not less than 25% of the operator’s rail safety workers in each year. Does the ITSRR anticipate that the 25% figure will include contractors undertaking rail safety work or is the requirement related to employees of the operator? Clearly if the 25% figure is intended to include non-employees through the supply chain it may be problematic for large organisations such as RailCorp to be in a position to confirm that it has reached that target as the number of contractors can be fluid and difficult to quantify. Principal contractors are required to undertake a task to specified outputs, such</li> </ul>	<p>4</p> <p>3</p>	<p>The use of the word “select” in this clause is based on the wording used in clause 8(2) of the existing regulation (and new clause 15(2)), which states that “the selection of a railway employee for testing may be conducted on a random or targeted basis”.</p> <p>The 25% figure includes all rail safety workers who carry out, or are about to carry out, rail safety work in connection with the rail transport operator’s operations. (Refer to the draft <i>Rail Safety Bill 2007 – Drug and alcohol management program</i>). How this is addressed in relation to contractors needs to be determined by rail transport operators through their</p>

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	<p>specification does not generally define the number of staff that must be employed; thus it is open to the contractor and its sub-contractors to employ as many rail safety workers as it feels is sufficient.</p> <ul style="list-style-type: none"> <li>• Clause 10(2) - The current guidelines issued by the ITSRR at 7.3(d) provide that rehabilitation testing is not subject to the requirements of the Regulation. RailCorp believes that the current exclusion should be specifically included in the draft Regulation and that there should be no requirement to notify the ITSRR of the results of such testing nor should the results be included in the statistical reports that must be provided pursuant to clause 36(2).</li> <li>• Clause 10(3)(a) appears to conflict with the requirements of clause 15. 10(3)(a) provides that the drug and alcohol management program must require the testing of a rail safety worker if the operator has reasonable cause to believe that the worker is under the influence of a drug. Clause 15 does not contemplate any reasonable cause before a test is carried out. Is it intended that the testing under clause 10 is in addition to the random and targeted testing contemplated by clause 15? RailCorp presumes that the ITSRR does not intend that testing under clause 15 should require that the operator must have reasonable cause before undertaking testing for drugs.</li> </ul>	<p>4</p> <p>3</p>	<p>contractual arrangements.</p> <p>It is not necessary to specifically exclude rehabilitation testing from the draft regulation, because clause 10(2) requires testing in accordance with Part 4 and clause 28, which refer to random, targeted, post-incident and prescribed incident testing only. There is no requirement for a rail transport operator to notify ITSRR of the results of rehabilitation testing or to include the results in statistical reports.</p> <p>Reasonable cause testing was introduced in the revised <i>Guidelines relating to Drug &amp; Alcohol Programs</i> and has now been incorporated into clause 10(3)(a) of the draft regulation. It is a form of targeted testing that is in addition to the testing required by clause 15.</p>
<p><b>11 - Testing officers</b></p>	<p><b>Pacific National</b></p> <ul style="list-style-type: none"> <li>• Clause 11(4) - This is a training issue not a D&amp;A issue. Training is prescribed in the legislation; the issuing of the training statement is up to the RTO. Remove this paragraph.</li> </ul>	<p>4</p>	<p>This is an existing mandatory requirement from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i>. It relates to testing officer training, rather than rail safety worker training.</p>
<p><b>12 - Offence - carrying out rail</b></p>	<p><b>AMWU</b></p> <ul style="list-style-type: none"> <li>• Delete: "Maximum penalty: 10 penalty units or imprisonment for 6</li> </ul>	<p>4</p>	<p>This penalty is retained from the existing</p>

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safety work with prescribed concentration of alcohol in blood	months, or both.” Insert: “Maximum penalty: 10 penalty units.”		regulation.
13 – Offence – carrying out rail safety work while under influence of alcohol or other drug	<p><b>AMWU</b></p> <ul style="list-style-type: none"> <li>Delete: “Maximum penalty: 10 penalty units or imprisonment for 6 months, or both.” Insert: “Maximum penalty: 10 penalty units.”</li> </ul> <p><b>RailCorp</b></p> <ul style="list-style-type: none"> <li>The explanatory note at (h) indicates that one of the objects of the Regulation is to enable evidence of the concentration of alcohol in blood or of the presence or concentration of drugs, and of compliance with procedures for taking and dealing with samples to be given in proceedings for offences under the proposed regulation by certificates. However, the only offence in relation to drugs is in clause 13. Clause 13 makes it an offence only to be under the influence of “any other drug”. Clause 12 provides that it is an offence to carry out rail safety work while the prescribed concentration of alcohol is present. RailCorp submits that it is appropriate and consistent with the explanatory note to amend the Regulation to include an offence of carrying out rail safety work with the presence or concentration of drugs above the cut off limit.</li> <li>Clause 13(2)(a) - For clarity please include words to the effect of “the proceedings are” in front of “not liable to be dismissed” as this is presumably the intent of the section but the wording may not be entirely clear.</li> </ul>	<p>4</p> <p>2</p> <p>4</p>	<p>This penalty is retained from the existing regulation.</p> <p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. However, ITSRR will consider further consultation on issues such as a proposed offence for the presence of drugs for future amendment to the Regulations.</p> <p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. The wording in this clause is retained from the existing regulation and its meaning is considered to be clear.</p>

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<b>15 – Random and targeted testing of rail safety workers</b>	<p><b>AMWU</b></p> <ul style="list-style-type: none"> <li>In January 2007, Australian Standards introduced a new standard (AS4760-2006) Procedures for Specimen Collection and Detection and Quantitation of Drugs in Oral Fluid which applies to this issue of saliva and urine testing.</li> </ul> <p>As per the recommendations of AS 4760 – 2006, it is the Union’s submission that urine testing should only be conducted where saliva testing indicates a positive result.</p> <p>Further, the Union submits that should saliva testing be mandated, the devices used for these saliva tests should be identical to those used by the NSW Police as prescribed for use under the Road Transport (Safety and Traffic Management) Act 1999; which establishes swabs as the standard testing device. The AMWU submits that Saliva Testing as outlined, is more cost and time efficient and less intrusive than other means of testing.</p>	2	<p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. However, ITSRR will consider further consultation on issues such as saliva testing for future amendment to the regulations.</p>
<b>23 – Action to be taken with respect to blood samples</b>	<p><b>Pacific National</b></p> <ul style="list-style-type: none"> <li>This needs to be reviewed in relation with AS4308. I think this has been taken out of the standard. Review this paragraph in consultation with the AS4308 and the Police departments of each state.</li> </ul>	4	<p>AS4308 refers to urine samples only, not blood samples.</p>
<b>24 – Action to be taken with respect to urine samples</b>	<p><b>Pacific National</b></p> <ul style="list-style-type: none"> <li>Citing the section of the AS/NZS 4308, the standard has been revised significantly. Wait until the Standard has been published and revise the regulation.</li> </ul> <p>Clause 24(6) - The standard has changed the amount of time Bottle B is stored. It is no longer 12 months. Wait until the Standard has been published and revise the regulation.</p>	1	<p>The new AS/NZS4308:2008 was published on 19 March 2008. The regulation is being revised to reflect the changes to the standard.</p>
<b>27 – Refusal to be tested</b>	<p><b>AMWU</b></p> <ul style="list-style-type: none"> <li>The AMWU submits that saliva testing should occur prior to application of urine testing.</li> </ul>	2	<p>The draft regulation does not introduce new requirements. It retains the provisions</p>

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	<ul style="list-style-type: none"> <li>Clause 27(b) delete: "Maximum penalty: 25 penalty units or imprisonment for 9 months, or both." Insert: "Maximum penalty: 25 penalty units."</li> </ul>	4	<p>of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. However, ITSRR will consider further consultation on issues such as saliva testing for future amendment to the regulations.</p> <p>This penalty is retained from the existing regulation.</p>
<b>29 – Interfering with results of test</b>	<b>AMWU</b> <ul style="list-style-type: none"> <li>Clause 29 (1) and 29 (2) DELETE: "Maximum penalty: 25 penalty units or imprisonment for 9 months, or both." Insert: "Maximum penalty: 25 penalty units."</li> </ul>	4	<p>This penalty is retained from the existing regulation.</p>
<b>32 – Certificate evidence of concentration of alcohol in blood determined by breath analysis</b>	<b>AMWU</b> <ul style="list-style-type: none"> <li>Clause 32 (5) - delete this clause entirely. Should there be proceedings against a worker, there should be made available a Certificate of Calibration for the breath analysis instrument and evidence that the officer taking the sample has received training and is deemed competent to conduct testing on the breath analysis instrument.</li> </ul>	4	<p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime. This clause is retained from the existing regulation.</p>
<b>36 – Notification of drug and alcohol testing</b>	<b>RailCorp</b> <ul style="list-style-type: none"> <li>RailCorp believes that the definition of breath test and breath analysis in the context of reporting positive tests to the ITSRR needs to be reviewed as there appears to be a lack of clarity in relation to this issue. Clause 36 of the draft Regulation requires a rail transport operator to notify the ITSRR of, among others, any breath test <b>confirming</b> that the prescribed concentration of alcohol is present in the rail safety worker's blood. Breath test is defined as "a test for the</li> </ul>	1	<p>Clause 36(d) will be amended to refer to breath tests <i>indicating</i> the prescribed concentration of alcohol, in line with the definition of "breath test" in Part 1 of the draft regulation.</p>

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	<p>purposes of <i>indicating</i> the concentration of alcohol in a person's blood, carried out on the person's breath by means of a device, not being a breath analysing instrument of a type that complies with the requirements of AS 3547-1997" (italics added). In practice, if a breath test indicates that the prescribed concentration of alcohol is present, or the person tested refuses, or fails to undertake a breath test in accordance with the direction of an authorised testing officer, he or she may be subjected to a breath analysis. It is submitted that a breath analysis rather than a breath test will confirm whether the prescribed concentration is present.</p> <ul style="list-style-type: none"> <li>• It is RailCorp's submission that ITSRR should delete the requirement to notify breath tests indicating the concentration of alcohol. ITSRR would continue to be notified of breath analysis that confirms the prescribed concentration of alcohol. RailCorp believes that positive breath analyses rather than breath tests should be reported.</li> <li>• Clause 36(2) - The current guidelines issued by the ITSRR at 7.3(d) provide that rehabilitation testing is not subject to the requirements of the Regulation. RailCorp believes that the current exclusion should be specifically included in the draft Regulation and that there should be no requirement to notify the ITSRR of the results of such testing nor should the results be included in the statistical reports that must be provided pursuant to clause 36(2).</li> </ul>	<p>4</p> <p>4</p>	<p>This requirement to notify ITSRR of positive breath test results is retained from the existing regulation.</p> <p>It is not necessary to specifically exclude rehabilitation testing from the draft regulation, because clause 10(2) requires testing in accordance with Part 4 and clause 28, which refer to random, targeted, post-incident and prescribed incident testing only. There is no requirement for a rail transport operator to notify ITSRR of the results of rehabilitation testing or to include the results in statistical reports.</p>
<p><b>General Comments</b></p>	<p><b>AMWU</b></p> <ul style="list-style-type: none"> <li>• The AMWU notes that this submission is our first opportunity to contribute to development of this Regulation. There has been no previous consultation with the Union. In 2003, (then) Minister for Transport, Hon Michael Costa, introduced the Rail Safety (Drug &amp; Alcohol Testing) Regulation (2003) without any consultation. This</li> </ul>	<p>3</p>	<p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol</i></p>

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	<p>failure to consult has been directly responsible for ongoing disputation since that time. The manner of introduction and implementation has also impacted directly and negatively on the morale of workers and management in the industry. It is for this reason that the AMWU opposes testing of workers unless this testing is clearly linked with contemporaneous evidence of impairment, warranting assessment and testing.</p> <p>The experience of our members is that the current Regulation is being used as a de facto means of enforcing management prerogative rather than improving safety standards. The Union's experience is that while so-called 'random' testing identifies personal lifestyle issues, actual workplace impairment often remains unchallenged and is therefore not eliminated. This is a potential hazard to both rail workers and the travelling public.</p> <p>It is the view of the Union that a more effective and efficient use of expenditure would be investment in high quality health and safety education programmes supported by an accessible and professional referral and rehabilitation programme, which has been outlined in considerable detail in other submissions and is available again upon request.</p> <p>Insert: The Australian Standard 4804 (<i>Occupational Health and Safety management Systems</i>) should be established as a benchmark for the development of this Regulation. With respect to safety management systems and health and fitness assessments consultation with workers and their representatives must be mandated.</p>	4	<p><i>Programs</i> into the new regulatory regime.</p> <p>The Glenbrook and Waterfall Special Commissions of Inquiry made recommendations on drug and alcohol testing of railway employees regardless of evidence of impairment, including random alcohol testing and post incident drug and alcohol testing. These recommendations are reflected in NSW Government policy on drug and alcohol testing of railway employees.</p> <p>The draft regulation does not introduce new requirements. It retains the provisions of the existing regulation and brings the existing mandatory requirements from the <i>Guidelines relating to Drug &amp; Alcohol Programs</i> into the new regulatory regime.</p> <p>The <i>Rail Safety Bill 2007</i> provides for general consultation requirements regarding safety management systems</p>

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	<p>Insert: The Union recommends that there should be provision of accessible, reliable and confidential drug and alcohol self-testing facilities would provide an opportunity for workers and management to ensure that they are 'fit for work'. Where self-testing indicates a non-compliant result, the affected person can remove themselves from the workplace. Self-testing facilities are a cost effective means of ensuring compliance which reinforces the genuine intent of the Legislation; which is safety, not harassment.</p> <p><b>RTBU (Rail, Tram &amp; Bus Union NSW)</b></p> <ul style="list-style-type: none"> <li>The transfer of the Guidelines to the D&amp;A Regulation is not a direct translation of the terms of those guidelines to the D&amp;A regulation. As we read it, it is not the intention of the <i>D&amp;A Regulation</i> to change the contents and application of the current guidelines. The explanatory material says that certain regulations "reflect the principles" of particular guidelines. This, in our view, leaves unnecessary room for argument later on about the nature and extent of an organisation's legal obligations under the D&amp;A Regulation. Accordingly, the RTBU submits that (unless otherwise required – see for example, point 2 below) the terms of the guidelines should be inserted in the D&amp;A Regulation in their current form.</li> <li>It is noted that the current guideline 4.3(b) has not been incorporated in the <i>D&amp;A Regulation</i>. Guideline 4.3(b) states:</li> </ul>	<p>4</p> <p>4</p> <p>4</p>	<p>(including a drug and alcohol management program). ITSRR will raise with Parliamentary Counsel whether a note can be included that refers to the consultation provisions of clause 12(3) of the Rail Safety Bill.</p> <p>In regard to the provision of drug and alcohol self-testing facilities, this is not something for the regulations to mandate. The Ministry of Transport will be leading the development of the Government's policy position and expectations in relation to self-testing facilities commencing in 2008.</p> <p>The <i>Guidelines relating to Drug &amp; Alcohol Programs</i> have been incorporated into the draft regulation. Where specific problems are identified, ITSRR will attempt to address these, subject to the agreement of Parliamentary Counsel. The intention is to retain existing requirements consistent with NSW drafting conventions and the new legislation framework of the new rail safety bill.</p> <p>Parliamentary Counsel's advice is that consultation requirements are set out in clause 12(3) of the Rail Safety Bill and apply to the regulations, so there is no</p>

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	<p><i>“Railway employees and their representatives are to be consulted at all stages of program development and implementation”.</i></p> <p>In the explanatory document, ITSRR states that this subclause has not been included because:</p> <p><i>“The Rail Safety Bill 2007 provides for general consultation requirements regarding safety management systems (including a drug and alcohol management program”.</i></p> <p>It is the RTBU’s submission this is an inadequate reason for the deletion of guideline 4.3(b) from the <i>D&amp;A Regulation</i>. It presumes that a person seeking to understand their responsibilities and duties under that Regulation will also look at other regulations for additional responsibilities and duties relating to the development and implementation of drug and alcohol programs. This is a brave presumption.</p> <p>There is no doubt in our submission that many people will read the <i>D&amp;A Regulation</i> as a comprehensive document on their responsibilities and duties in this area. Moreover, in our submission, this would be understandable. This, in turn would lead to persons behaving – inadvertently – in a manner that is inconsistent with the <i>D&amp;A Regulation</i>. In our submission, having as much relevant material in the one document enhances that position.</p> <p>In any event, it is desirable that any regulation be as exhaustive as is reasonably possible to enable people to efficiently and effectively determine the range of their responsibilities and duties according to law.</p> <p>It is noted that the <i>D&amp;A Regulation</i> does make some provision for agreement between the organization and its <i>“rail safety employees and their representatives”</i> – see Regulation 9(g). However, this only</p>		<p>need to repeat them in the draft regulation. ITSRR will request that Parliamentary Counsel consider including a note in the draft regulation referring to the consultation requirements of clause 12(3). ITSRR will also issue a fact sheet to ensure that the consultation requirements for drug and alcohol testing programs are made clear.</p>

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	<p>goes to the development of protocols for drug and alcohol testing procedures.</p> <p>For reasons of completeness, guideline 4.3(b), appropriately amended to reflect the consultation provisions in the <i>Rail Safety Bill 2007</i>, needs to be included in the <i>D&amp;A Regulation</i>. To that end, we refer to subclause 16(3) of the consultation draft of the <i>Railway Safety Bill 2007</i> and a subsequent amendment to that subclause as set out in the ITSRR document "<i>Comments on the NSW Rail Safety Bill 2007</i>", at page 18.</p> <p>An organisation's consultation responsibilities include persons likely to be affected, occupational health and safety representatives and other relevant persons under the <i>NSW Occupational Health and Safety Act 2000</i>, Unions representing persons likely to be affected and where appropriate, the public. The <i>D&amp;A Regulation</i> needs to be amended to provide for these enhanced consultation responsibilities under the <i>Rail Safety Bill 2007</i>.</p> <ul style="list-style-type: none"> <li>The RTBU participated in a review of the <i>Rail Safety (Drug and Alcohol Testing) Regulation 2003</i> in 2006. During that review, the RTBU made a submission outlining its concerns with the Regulation. Not all of those concerns were adopted by the NSW Government as a result of the review. Whilst this consultation period does not go to the concerns raised by the RTBU in the earlier review, the RTBU wishes to place it on the record that it maintains those concerns.</li> </ul>	3	Noted.