

COMMENTS ON THE DRAFT NSW RAIL SAFETY (GENERAL) REGULATION 2007

Key to ITSRR Responses

- (1) Accepted and Regulation to be amended -
 - (a) This is a core provision and the Regulation will be consistent with the National Model Legislation (NML) – *Model Rail Safety Regulations 2006*.
 - (b) There is no equivalent provision in the NML.
- (2) This is to be raised with Parliamentary Counsel or referred to the National Transport Commission (NTC).
- (3) Noted. No amendment is required because it is a comment/observation or a request for clarification.
- (4) Rejected. Amendment is not appropriate, it is not an issue requiring national review or the issue is better dealt with administratively.
- (5) Oversight. Error will be corrected.

NOTE:

The draft regulation brings the existing mandatory requirements from the following guidelines into the new regulatory regime.

This has been done in line with NSW drafting conventions on the advice of Parliamentary Counsel:

Guidelines relating to Management of Fatigue, Guidelines relating to Fatigue Management: Applications for Exemption from Schedule 2 of the Rail Safety Act 2002, Guidelines Relating to Drug and Alcohol Programs (where appropriate) and Guidelines Relating to Network Rules.

**COMMENTS ON THE
DRAFT NSW RAIL SAFETY (GENERAL) REGULATION 2007**

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
<p>Explanatory note</p>	<p>RTBU (Rail, Tram & Bus Union NSW) Are the objects to be included? The RTBU notes that subclause (2) on page 7 states:</p> <p><i>"Notes included in this regulation do not form part of this Regulation".</i></p> <p>There are a number of objectives which should be recast including the general statement concerning consultation in addition to the specific subjects such as emergency management plans and fatigue and formulation of (g) concerning exemptions and the responsibilities of operators and (x) exemption of heritage operators from accreditation from the Act.</p>	<p style="text-align: center;">3</p>	<p>The Explanatory Note (and other notes included in this regulation) do not form part of this Regulation, that is, they are not mandatory requirements, but are included as an explanation. The drafting of the Explanatory Note is a matter for Parliamentary Counsel and the objects are consistent with the content of the Bill and the Regulation.</p>
<p>3 – Definitions - Definition of 'NSW rail network'</p>	<p>ATHRA (Association of Tourist & Heritage Rail Australia)</p> <ul style="list-style-type: none"> • Does this definition include all isolated railways, including those that may be operating on former NSW government owned railways, but now disconnected from the main line system as a whole, street tramways and two gauge railways? It would appear that it is inclusive. Surely the intent is to cover interoperability of the network, not isolated railways that may not even be compatible with the network. If it is to be inclusive, it will increase the complexity of consultation etc in the consideration of Network Rules under Part 6 of the draft Regulations. <p>COTMA</p>	<p style="text-align: center;">2</p>	<p>This definition applies to railways which operate on railway lines vested in, owned, managed or controlled by a rail infrastructure owner as defined by the <i>Transport Administration Act 1988</i> (other than the Transport Infrastructure Development Corporation) being RailCorp, Australian Rail Track Corporation or the Rail Infrastructure Corporation. It is not intended that this definition should include railways on isolated or disused lines. Accordingly, this issue will be raised with Parliamentary Counsel to ensure the definition has the intended meaning.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<ul style="list-style-type: none"> The RTBU is not clear as to whether different manning levels, risk assessments and controls apply in these circumstances? Does consultation as defined in the Act apply to one set of operations and not another? <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	3	Noted.
5 – Security management plan	<p>Laing O’Rourke</p> <ul style="list-style-type: none"> For contractors this will need to be developed in consultation with the rail infrastructure manager by whom they are engaged. The accredited rail transport operator may require the contractor to establish a security management plan as part of the contractor evaluation process. <p>RailCorp</p> <ul style="list-style-type: none"> It is presumed that this section (clause 5(c)) does not apply to areas of the RailCorp Network such as yards where other rail transport operators may be granted access. 	3 3	<p>Noted. How this clause is addressed in relation to contractors needs to be determined by rail transport operators through their contractual arrangements.</p> <p>Clause 5(c) applies to areas of the RailCorp network such as yards. RailCorp should have a security management plan in place at each of its yards that includes arrangements made with other transport operators that have been granted access to those yards.</p>
6 – Emergency services	<p>RailCorp</p> <ul style="list-style-type: none"> This clause prescribes only the NSW Police Force and the NSW Fire Brigade as emergency services although the draft Bill included references to a number of other emergency services. Is it correct to assume that for the purposes of consultation under this clause a rail transport operator is only required to consult with the two prescribed emergency services? 	3	Yes, for the purposes of consultation under this clause, a rail transport operator is only required to consult with the two prescribed emergency services.
7 – Consultation about emergency	<p>El Zorro Transport Pty Ltd</p> <ul style="list-style-type: none"> Consultation with all involved should remain with the network 	4	This clause is unchanged from the Model

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
management plan	<p>operator – who coordinates the movements of trains. All reports are made directly to Network Owner/Manager to coordinate. One point of call is a safer operation.</p> <p>RailCorp</p> <ul style="list-style-type: none"> The requirement for consultation with other persons appears to be significantly wider than in the Model Regulation and potentially imposes a significant burden on rail transport operators in preparing its emergency management plan. Clause 7(2) - What criteria will be applied to a submission for exemption from the obligation to consult with particular persons or bodies? 	<p>4</p> <p>3</p>	<p>Rail Safety Regulations (clause 16)), except that the Model Rail Safety Regulations stipulate that the rail transport operator must consult with “any provider of public transport”. On the basis of advice from Parliamentary Counsel, the draft regulations do not expressly stipulate this, as those providers are covered elsewhere within the draft clause. Guidance is being developed on how the draft regulations should be applied and your comments will be considered as part of the drafting of this material so that consultation requirements are clear.</p> <p>This clause is unchanged from the Model Rail Safety Regulations (clause 16)), except that the Model Rail Safety Regulations stipulate that the rail transport operator must consult with “any provider of public transport”. On the basis of advice from Parliamentary Counsel, the draft regulations do not expressly stipulate this, as those providers are covered elsewhere within the draft clause. Therefore, the consultation requirements are not significantly wider than in the Model Rail Safety Regulations.</p> <p>This exemption policy will be determined as part of the implementation of the legislation.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>ATHRA</p> <ul style="list-style-type: none"> We note the wording 'must comply', rather than 'so far as reasonably practicable' has been used. The vast majority of T&H rail operators throughout Australia have found that the cost implications and processes flowing from a 'so far as reasonably practicable' regime to be excessive for the nature of their operation and their risks. ATHRA is of the view that the proposal for NSW adds to what many already consider to be a harsh regime and is likely to contribute to the closure of small entities. <p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>Pacific National</p> <ul style="list-style-type: none"> The So Far as is Reasonably Practicable (SFAIRP) principle has been removed. This is inconsistent with the draft regulations. The So Far as is Reasonably Practicable should be reinstated. <p>RailCorp</p> <ul style="list-style-type: none"> The Model Regulation includes a requirement that the health and management program of a rail transport operator complies with the 	<p>4</p> <p>3</p> <p>4</p> <p>4</p>	<p>the Standard allows for a risk-based approach in its implementation.</p> <p>The reference to "so far as is reasonably practicable" has been omitted from clause 10 to ensure consistency with ITSRR's current practice of mandating the National Standard for Health Assessment of Rail Safety Workers since July 2004, consistent with the recommendations of the Waterfall Special Commission of Inquiry. However, the Standard allows for a risk-based approach in its implementation.</p> <p>Noted.</p> <p>The reference to "so far as is reasonably practicable" has been omitted from clause 10 to ensure consistency with ITSRR's current practice of mandating the National Standard for Health Assessment of Rail Safety Workers since July 2004, consistent with the recommendations of the Waterfall Special Commission of Inquiry. However, the Standard allows for a risk-based approach in its implementation.</p> <p>The reference to "so far as is reasonably practicable" has been omitted from clause 10 to ensure consistency with ITSRR's</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>RailCorp</p> <ul style="list-style-type: none"> As a general matter, in relation to the issue of fatigue management, RailCorp does not support the extension of requirements in the prescriptive way articulated in the draft regulation. RailCorp believes the requirement is not risk based and has the potential to divert resources from more significant risk controls and through that increase the risk to the travelling public. RailCorp supports the incorporation of fatigue requirements into guidelines, preferably at a national level, and believes that this is the appropriate mechanism. Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway) The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	<p>3</p> <p>4</p> <p>3</p>	<p>this, exemptions from Schedule 2 are based on a risk assessment process that will automatically differ in scope and complexity according to the fatigue-related risks of the operations.</p> <p>Noted.</p> <p>The NSW Minister for Transport advised the Australian Transport Council in June 2006 that NSW would be retaining existing requirements in legislation. Inclusion of requirements in guidelines is inconsistent with the approach taken in the National Model Legislation and by the National Transport Commission. Under this approach, requirements are to be included in regulations or acts, not guidelines.</p> <p>Noted.</p>
<p>11 – Consultation about fatigue management program</p>	<p>RailCorp</p> <ul style="list-style-type: none"> RailCorp objects to the width of the consultation requirement as it is onerous and offers no significant safety benefit. <p>RTBU</p> <ul style="list-style-type: none"> The RTBU suggests the clause be altered to reflect the consultation requirements of the Act clause 12(3) and that the provisions of the <i>MRSR</i> 2006 be added, that is, Clause 8. <i>Application For A Variation</i> 	<p>3</p> <p>2</p>	<p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Management of Fatigue</i> into the new regulatory regime.</p> <p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Management of</i></p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p><i>Of Accreditation</i> (d) details of any consultation that has occurred with the parties who might be affected by the variation including:</p> <ul style="list-style-type: none"> (i) who was consulted; (ii) when and how consultation occurred; and (iii) the results of the consultation. 		<p><i>Fatigue</i> into the new regulatory regime. The proposal to include the consultation provisions for an application for a variation of accreditation in this clause would significantly alter the existing requirements and is outside the scope of this consultation. 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>12 – Matters to be considered in preparing fatigue management program</p>	<p>Pacific National</p> <ul style="list-style-type: none"> • Clause 12(b) - This is impossible for industry to comply. Every single rail safety worker's family and life balance is different. No industry can operate to accommodate the varying life styles of each individual person. In addition, the SFAIRP principle has been removed from this section. All of clause 12 should be deleted as it is not consistent with the model regulations, further, clause 13 must be reviewed to be consistent with the regulations as it will suffice and serve the practicalities of industry. The SFAIRP principle must also apply. 	<p>2</p>	<p>Advice will be sought from Parliamentary Counsel to clarify the wording "family or life balance". This wording was drafted on the basis that the wording in Section 2.1 of the current <i>Guidelines Related to the Management of Fatigue</i> is too imprecise and intangible for the standard required for regulations. The current guidelines state that:</p> <p>"Operators and railway employees must have a flexible approach in developing and managing programs that will:</p> <ul style="list-style-type: none"> (b) consider the needs of railway employees, (c) consider the needs of operators," <p>Advice will be sought from Parliamentary Counsel to clarify the wording "family or life balance". The National Model Bill (clause 67) does not refer to SFAIRP.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>RTBU</p> <ul style="list-style-type: none"> In Clause 12 (a) add to the words “...and time of day effects...” <p>These words are recognised as a key issue in fatigue which recognise the state where an individual is working and sleeping against their natural body rhythms that program them to sleep at night and be awake and working during the day.</p> <ul style="list-style-type: none"> In Clause 12 (b) in the second line delete the “...family or life balance...” and insert the words “...family and /or work life balance...”. <p>There are two specific concepts involved, family and work life, which are not alternatives or interchangeable. The suggested rewording reflects the current usage and understanding of these terms.</p> <ul style="list-style-type: none"> In Clause 12 (d) delete the word “or” and replace with “and” in the third line as the examples referred to do not need to be seen as either or. In Clause 12 delete (e) and replace with “(e) the need for education and training of rail safety workers in unit/s of competency to identify and manage fatigue”. 	<p>3</p> <p>2</p> <p>1(b)</p> <p>2</p>	<p>This is covered by clause 12(d).</p> <p>Advice will be sought from Parliamentary Counsel to clarify the wording “family or life balance”. This wording was drafted on the basis that the wording in Section 2.1 of the current <i>Guidelines Related to the Management of Fatigue</i> is too imprecise and intangible for the standard required for regulations. The current guidelines state that: “Operators and railway employees must have a flexible approach in developing and managing programs that will: (b) consider the needs of railway employees, (c) consider the needs of operators,”</p> <p>Agreed.</p> <p>Advice will be sought from Parliamentary Counsel on whether the words “education and training” can be inserted into the clause to replace “training”.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>The current Guidelines relating to Management of Fatigue in 5.3(d) refer to education and training. Given the nature of fatigue, the concepts lying behind it and its effect on performance together with mitigating strategies the RTBU believes the response requires both education and training. Training should reflect the new assessment of competence provisions of the <i>Rail Safety Act</i> and be competency based.</p> <ul style="list-style-type: none"> In Clause 12 (j) delete the word “any” and replace with “relevant”. <p>The RTBU has experience of inappropriate technology attempting to be applied to manage work related fatigue. The application of relevant technologies should be a matter on which consultation would occur as such technologies will result in changes to an operators fatigue management program.</p>	<p>4</p> <p>3</p>	<p>Relevant technology is implied in the meaning of the current wording.</p> <p>Noted.</p>
<p>13 – Fatigue management program</p>	<p>Pacific National</p> <ul style="list-style-type: none"> No consideration has been given to the SFAIRP principle. In addition, the draft regulation goes beyond the model regulations with no additional benefit. The SFAIRP principle must be reinstated. <p>RailCorp</p> <ul style="list-style-type: none"> This clause requires the fatigue management program to specify <i>safe hours</i> of work and <i>safe periods</i> of time between shifts. RailCorp interprets safe hours/periods as being hours/periods that pose no risk to safety i.e. are risk free. Will the ITSRR provide criteria as to what is considered safe from the perspective of fatigue management? It is submitted that clause 13(3) does not assist in this regard as it 	<p>4</p> <p>1(b)</p>	<p>The National Model Bill (clause 67) does not refer to the “so far as is reasonably practicable” principle. This clause incorporates the requirements for a compliant fatigue management program from the <i>Guidelines relating to Management of Fatigue</i>. The NSW Minister for Transport advised the Australian Transport Council in June 2006 that NSW would be retaining existing requirements in legislation.</p> <p>The word “specify” will, subject to Parliamentary Counsel agreement, be changed to “provide for” in clauses 13(1)(a), (b) and (c)..</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>provides a very general statement as to what is safe. RailCorp contend that there is no such thing as <i>safe hours</i> that are applicable to all individuals in all circumstances and contend that the ITSRR is attempting to apply a scientific rigor to obligations that does not exist.</p> <p>RTBU</p> <ul style="list-style-type: none"> The RTBU suggests the inclusion of the following subsections within clause 13: <p>“Specifying there are adequate opportunities for sleep (quantity and quality) particularly addressing the “time of day” effect”.</p> <p>“Ensuring that the numbers of consecutive shifts (in particular night shifts) shift lengths and rest periods between shifts are considered in roster compilation so that time of day considerations re taken into account”.</p> <p>“Requiring the operator to establish consultative arrangements which include employee representatives to develop implement and review the operators fatigue management program. The consultation process will apply to the design, implementation and evaluation of rosters and work schedules”.</p> <p>“Requiring the operator to manage their contractors to ensure they meet their responsibilities for the management of fatigue”.</p>	<p>4</p> <p>4</p> <p>4</p> <p>4</p>	<p>ITSRR considers that these factors are addressed by the existing clauses.</p> <p>The “time of day effect” is covered by clause 12(d), which refers to “physiological factors arising out of work practices affecting rail safety workers, such as the effect on worker alertness and recovery of the time when work is undertaken or the length or frequency of breaks”. This provision encompasses all aspects of scheduling such as consecutive shifts, night work, and breaks within and between shifts.</p> <p>This is addressed by the obligations of rail transport operators to consult about safety management systems under clause 12(3) of the Bill.</p> <p>Contractor management is addressed by the obligations placed on rail transport operators in the Bill.</p>
<p>14 – Fatigue management program to include monitoring of</p>	<p>Laing O’Rourke</p> <ul style="list-style-type: none"> Whilst the contractor would need to have a fatigue management process it is that organisation who would need to monitor the effectiveness of the program and advise the rail transport 	<p>3</p>	<p>Noted.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<ul style="list-style-type: none"> • The RTBU suggests the following matters need to be included in (b), <i>alterations to blank line working arrangements and lift up and lay back provisions</i>. • Further, the RTBU suggests the word “or” is deleted in the second line and is replaced with a comma. 	<p style="text-align: center;">4</p> <p style="text-align: center;">1(b)</p>	<p>The draft regulations bring the existing mandatory requirements from the <i>Guidelines relating to Management of Fatigue</i> into the new regulatory regime. This proposed wording would introduce new requirements which are outside the scope of this consultation.</p> <p>In clause 14(b), change “or” to “and”.</p>
15 – Management of fatigue	RTBU <ul style="list-style-type: none"> • The RTBU suggests the title of the clause be changed from “<i>Management of Fatigue</i>” to “<i>Management of Fatigue – Conditions Of Work</i>”. This more accurately reflects the nature of the clause. 	<p style="text-align: center;">4</p>	<p>This change is not considered to be necessary to clarify the intent of the clause.</p>
16 – Alternative provisions for fatigue management	RTBU <ul style="list-style-type: none"> • The RTBU suggests that the heading be altered from “<i>Alternative provisions for fatigue management</i>” to “<i>Fatigue Management-Exemption from Accreditation Requirements Concerning Conditions Of Work</i>”. The history of this matter as set out in Regulation 52 relates to the operator being exempted from that aspect of accreditation which required the person providing specified conditions of work. The RTBU suggests the current heading does not adequately reflect this situation. • In <i>Clause 16(1)(iv)</i> the RTBU suggests the consultation provision reflect the requirements of the <i>Act</i> contained in 12(3). 	<p style="text-align: center;">4</p> <p style="text-align: center;">2</p>	<p>This change is not necessary to clarify the intent of the clause. Titles do not affect the operative provisions of the regulations.</p> <p>The draft regulations bring the existing mandatory requirements from the <i>Guidelines relating to Management of Fatigue</i> into the new regulatory regime. 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>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<ul style="list-style-type: none"> • The RTBU notes that in “<i>Guidelines Relating to Fatigue Management: Applications for Exemption from Schedule 2 of the Rail Safety Act 2002, 4.0 Approval and Implementation</i>” it states: <i>"An exemption from Schedule 2 does not release a rail operator from the requirement to implement a program for the management of fatigue, safe hours of work and periods between work for its railway employees etc"</i>. <p>For reasons of clarity and to remove any doubt, the RTBU suggests a subclause to this effect be included in <i>Clause 16</i>.</p> <ul style="list-style-type: none"> • The RTBU believes a new subclause should be inserted and the existing (b) and succeeding subclauses be renumbered. The new (b) would cover dispute resolution and include the following concepts: <ul style="list-style-type: none"> a. a dispute between a rail operator and parties with whom it consulted as to whether an exemption should be granted. b. A party to the dispute having the ability to apply in writing to ITSRR to have a dispute dealt with under this sub clause. c. ITSRR within 28 days after receiving the application convening a meeting of representatives of the parties to the dispute to resolve the matters in dispute. d. ITSRR may direct the parties provide such documentation and information before the meeting as ITSRR thinks fit. e. If the matters in dispute are not resolved at the meeting ITSRR must determine the matters in dispute, not less than 14 days after the meeting. f. A determination by ITSRR will be final and binding. • In subclause 2 include Figure (1) after the word subclause appearing in the first line. 	<p>4</p> <p>4</p> <p>5</p>	<p>This provision will be inserted into the Notice of Exemption for operators that are granted exemptions by ITSRR.</p> <p>The draft regulations bring the existing mandatory requirements from the <i>Guidelines relating to Management of Fatigue</i> into the new regulatory regime. This proposed wording would introduce new requirements that would be outside the scope of this consultation.</p> <p>Agreed. This oversight will be corrected.</p>
17 – Records of competence	<p>Laing O'Rourke</p> <ul style="list-style-type: none"> • Contractors would retain the records for the employees they engage 	3	Agreed. How this clause is addressed In

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>as rail safety workers. When they were to provide such resources to an accredited rail transport operator they would need to submit such documentation as relevant for the operations those people are to be engaged in during the period of engagement. The units of competence would be determined by the employer and not necessarily by the rail transport operator. Contractor management by the rail infrastructure operator would need to be applied in order to satisfy themselves the people being supplied had the competence for the tasks to be undertaken.</p>		<p>relation to contractors needs to be determined by rail transport operators through their contractual arrangements. Guidance on contractor obligations is being developed.</p>
<p>18 – Review of safety management system</p>	<p>RailCorp</p> <ul style="list-style-type: none"> It is noted that the requirements of this clause are wider than the requirements set out in the Model Regulation in relation to sub-clauses (c) and (d) and add cost to operators without providing a safety benefit. <p>RTBU</p> <ul style="list-style-type: none"> In Clause 18(2), the RTBU recommends the reference to consultation contained in the Act be included as is the case in the <i>MRSR 2006</i> clause 19(2). 	<p>3</p> <p>2</p>	<p>The wording in sub-clauses 19(c) and (d) in the draft regulations is unchanged from the Model Rail Safety Regulations (clause 19(3)(c) and (d)).</p> <p>Parliamentary Counsel advises that it is not necessary to specify that the consultation provisions of clause 12(3) of the Bill apply to this clause. However, 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>19 – Additional matters to be included in safety performance reports</p>	<p>ARA</p> <ul style="list-style-type: none"> The model Regulations reserve the power to prescribe requirements applicable to safety performance reports until there is national agreement. Industry is concerned that in specifying that information - about the operators drug and alcohol program, and fatigue management - that must be included in safety reports, NSW has moved ahead of the processes to develop and agree a national approach. 	<p>3</p>	<p>NSW is retaining the existing requirements of the <i>Guidelines relating to Drug & Alcohol Programs</i> and <i>Guidelines relating to Management of Fatigue</i>, which include the requirement for operators to detail their drug & alcohol and fatigue programs in their annual report to the ITSRR.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>ATHRA</p> <ul style="list-style-type: none"> It is not understood why performance of Drug and Alcohol and Fatigue Management programmes require special mention in safety performance reports. These are part of the rail organisation's Safety Management System and they can be adequately reviewed by the regulator as part of that system. <p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>RailCorp</p> <ul style="list-style-type: none"> The Model Regulation does not make provision for additional matters to be included in safety performance reports. RailCorp notes that the additional requirements in the draft Regulation are broad in application and scope and are of a very general nature. Is it the ITSRR's intention to clarify the information sought or to provide guidelines or criteria as to what needs to be included? RailCorp believes that this issue would be better covered by guidelines than Regulation. <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	<p>3</p> <p>3</p> <p>3</p> <p>3</p>	<p>NSW is retaining the existing requirements of the <i>Guidelines relating to Drug & Alcohol Programs</i> and <i>Guidelines relating to Management of Fatigue</i>, which include the requirement for operators to detail their drug & alcohol and fatigue programs in their annual report to the ITSRR.</p> <p>Noted.</p> <p>NSW is retaining the existing requirements of the <i>Guidelines relating to Drug & Alcohol Programs</i> and <i>Guidelines relating to Management of Fatigue</i>, which include the requirement for operators to detail their drug & alcohol and fatigue programs in their annual report to the ITSRR. In addition, guidance on information that should be provided in safety performance reports is being developed nationally.</p> <p>Noted.</p>
<p>20 – Maintenance and operational conditions for private sidings</p>	<p>Laing O'Rourke</p> <ul style="list-style-type: none"> When the determination of what constitutes a Private Siding or operational railway not part of the mainline network the owners of such railways need to be advised of the actions they are required to take in regard to their railway. Somebody will need to be assigned 	<p>3</p>	<p>Noted. ITSRR will ensure that private siding owners are advised of their obligations as part of the implementation of the legislation.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>responsibility as the rail infrastructure manager and then they need to be advised what safety management systems they need to develop/implement or have others implement for rail operations carried out on their railway. The risk matrix is a document contained within the interface coordination plan that is compiled in consultation with the haulage operator and the infrastructure maintainer. The rail infrastructure manager may be the owner who then contracts out roles to other organisations so it is vital that the roles and responsibilities are clearly identified in relevant documents. There will be times when Interface coordination plans need to be developed between additional agencies other than the accredited railway to which it connects as many connect to another non accredited railway. When there are occasions that rolling stock operators operate track machines on other than mainline railways for constructing or maintaining the railway the operator of that rolling stock will not be able to operate under the accreditation of the network owner as they have been exempted from accreditation process. The means by which these rail operations are managed will need to be determined in the safety management systems of the RIM and of the condition applied through the registration of that railway.</p>		
<p>21 – Application for accreditation</p>	<p>ATHRA</p> <ul style="list-style-type: none"> It is noted clauses 21(j) and (k) are in addition to the model rules. This seems to be duplicating what has to be addressed under the rail organisation's Safety Management System. 	<p>3</p>	<p>NSW is retaining the existing requirements of the <i>Guidelines relating to Drug & Alcohol Programs</i> and <i>Guidelines relating to Management of Fatigue</i>. The requirements in the draft regulation to provide a description of the applicant's fatigue management program and drug & alcohol program in clauses (j) and (k) respectively arise as a result of the incorporation of the <i>Guidelines relating to Management of Fatigue</i> and <i>Guidelines relating to Drug & Alcohol Programs</i>.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>RailCorp</p> <ul style="list-style-type: none"> It is noted that the requirements set out in this clause are wider than the requirements set out in the Model Regulation. 	<p>3</p> <p>3</p> <p>2</p>	<p>Noted.</p> <p>The draft regulations provide that the applicant, in the case of a “corporation”, must give details of the “registered office or a principal office of the corporation”. The Model Rail Safety Regulations provide that the applicant, in the case of a “body corporate”, must provide the “registered business address”. In ITSRR’s view, these are consistent.</p> <p>NSW is retaining the existing requirements of the <i>Guidelines relating to Drug & Alcohol Programs</i> and <i>Guidelines relating to Management of Fatigue</i>. The requirements in the draft regulations to provide a description of the applicant’s fatigue management program and drug & alcohol program in clauses (j) and (k) respectively arise as a result of the incorporation of the <i>Guidelines relating to Management of Fatigue</i> and <i>Guidelines relating to Drug & Alcohol Programs</i>.</p> <p>The draft regulations require documentary evidence that the applicant “has, or will have, a statutory or contractual right to use the rail infrastructure or to control, or provide access to it”, where the Model Rail Safety Regulations require documentary</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	3	<p>evidence “that the manager has, or will have, management and control of the rail infrastructure”. This new wording has been included on the advice of Parliamentary Counsel to facilitate a clearer understanding of the meaning of “management and control”. ITSRR will refer these clarifications to the National Transport Commission for consideration in the National Model Rail Safety Regulations.</p> <p>Noted.</p>
<p>22 – Application fees</p>	<p>ATHRA</p> <ul style="list-style-type: none"> While the amount of \$1,000 for a heritage operator may seem small, it can be a large sum to be found by a very small new operator running, for example, a two foot gauge railway. ATHRA asks that a clause be inserted that allows T&H applicants to apply for exemption. <p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>RailCorp</p> <ul style="list-style-type: none"> RailCorp does not support the imposition of an application fee for accreditation as it poses a barrier to entry and restricts open access to the industry. 	<p>4</p> <p>3</p> <p>4</p>	<p>The sum of \$1,000 was nominated in recognition of the fact that heritage operators do not have access to the same level of resources as commercial operators. Such a fee should not pose a barrier for financially viable operations.</p> <p>Noted.</p> <p>The application fee is based on an estimate of the cost involved in processing an application and should not pose a barrier for financially viable operations. The National Model Legislation makes provision for an</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	<p>3</p> <p>3</p>	<p>placed on the operator by ITSRR, if there has been a substantive deterioration in operations.</p> <p>Noted.</p> <p>Noted.</p>
<p>27 – Variation of accreditation</p>	<p>Pacific National</p> <ul style="list-style-type: none"> This section lists what is required when submitting an application for variation. One item that appears to be overlooked is the requirement for a risk assessment. One would think a regulator would want to see some form of a risk assessment prior to considering a variation to accreditation. The requirement for the provision of a risk assessment needs to be added. Clause 27(f) is not required as this information is already required when applying for accreditation, why then have to re-provide for every single variance application? This clause is unclear on the intent and has the potential to shut out competition in the industry. The clause does not provide guidance on what or how an applicant has the competence and capacity to manage the risks, or how does the regulator recognise competence and capacity? OHS legislation already require employers to provide a safe work place etc, this clause (draft regs) is another example of double regulation with no net benefit. In addition, with privatisation of rail, more and more operators are being owned by business entities who operate in accordance with OHS legislation (which does not require accreditation). If ownership of a rail operator changes, is the regulator then going to withdraw accreditation simply because the people managing the company do not hold necessary qualifications 	<p>4</p> <p>4</p>	<p>The requirement for a risk assessment would be addressed by clause 27(d).</p> <p>This clause is unchanged from the Model Rail Safety Regulations (clause 8(e)). It requires an operator to demonstrate that they have the competence and capacity to manage the risks associated with a proposed variation and so is not a duplication of information provided for an application for accreditation.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>(what are these qualifications)? In addition, Regulator's offices have non-rail staff, does the rail safety regulator have the competence and capacity? Sub-clause (f) should be deleted.</p> <p>RailCorp</p> <ul style="list-style-type: none"> This clause appears to include requirements that were not included in the Model Regulation albeit of a minor nature. 	3	<p>The requirements in this clause are identical to the Model Rail Safety Regulations (clause 8), except that the draft regulations note that a variation of accreditation, in the case of a corporation, must specify the "address of the registered office or a principal office of the corporation", whereas the Model Rail Safety Regulations only require the "registered business address". In ITSRR's view, these are the same.</p>
<p>28 – Periodic information to be supplied</p>	<p>ATHRA</p> <ul style="list-style-type: none"> Heritage railways mostly operate only at weekends, with some only operating once a month and virtually all are rather static as to the length of their track. Reporting passenger statistics and length of track monthly is rather onerous for small operators and ATHRA submits that a provision should be made for heritage rail operations to report annually not monthly. <p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>RailCorp</p> <ul style="list-style-type: none"> This requirement is not included in the Model Regulation. It potentially imposes a significant burden on a rail transport operator in terms of reporting information to the ITSRR without any clear indication or substantiation that this will promote rail safety or accreditation. Could you please clarify the purpose of the 	<p>4</p> <p>3</p> <p>4</p>	<p>All accredited operators are currently required to report monthly and this arrangement will continue under the new regulations, as monthly reporting provides important and timely safety intelligence.</p> <p>Noted.</p> <p>This clause contains minor modifications to the corresponding clause of the Model Rail Safety Regulations (clause 26) to simplify expression. Monthly reporting is an existing requirement for NSW railway operators</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>requirement and the consideration that has been given to the extent of information specified and the frequency of reporting and the assessment of the impact on operators?</p> <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	3	<p>under section 63 of the <i>Rail Safety Act 2002</i>. Operators are required to meet this requirement in every jurisdiction.</p> <p>Noted.</p>
<p>29 – Notifiable occurrences</p>	<p>Pacific National</p> <ul style="list-style-type: none"> In relation to clause 29(1)(a)(vi), how is “a suspected terrorist attack” defined? How does one identify a terrorist? How does an operator “suspect” a terrorist attack? Other sub-clauses of S29(1)(a) provide guidance on the intent of (vi), eg, derailment, explosion, or sub-clause (ix). A terrorist attack would only be known after the event. In addition, these types of incidents are also notifiable to other agencies under different Acts, eg, Security Acts & Emergency response legislation. These bodies would also have the MOUs with rail safety regulators. Clause 29(1)(a)(vi) should be deleted. Sub-clause 29(1)(b)(vii) details slips, trips and falls etc that are to be reported as a notifiable occurrence, however as it reads, all slips, trips and falls by any person on a railway track has to be notified. That means that all Pacific National employees when walking or working about the track reports a slip or trip (and there are at least one each day), it would be a notifiable occurrence. Is this the intent, or is to pick up when the general public (passengers) are involved in a slip, trip or fall? Sub-clause (vii) should be amended to reflect the intent, that is, passengers. If this is not the intent, then the words “railway track” should be deleted. <p>RailCorp</p>	<p>4</p> <p>4</p>	<p>This clause is unchanged from the Model Rail Safety Regulations (clause 27(1)(a)(vi)).</p> <p>This sub-clause includes more detailed notifiable occurrences than the Model Rail Safety Regulations (clause 27(1)(b)(vii)) in line with the current NSW regulations (clause 2(g) of Schedule 2), ie. “any slip, trip or fall by a person on or from a train, railway track, station, platform, escalator, lift or stairs” as required by the current regulations, instead of “any slip, trip or fall by a person on railway property” in the Model Rail Safety Regulations.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<ul style="list-style-type: none"> • <i>Category A</i> occurrences – it is noted that the list of occurrences that fall into this category is wider than that included in the Model Regulation. In particular, (ix) is widely drafted and on one view it could extend to almost any incident occurring on the Network. For example, reliability incidents would fall within this definition whether or not the incident had any safety implications. • <i>Category B</i> occurrences – these extend the current definition of notifiable occurrences such that there is a significant requirement on rail transport operators to report incidents of all kinds and whatever the severity to the ITSRR. 	<p>3</p> <p>3</p>	<p>This clause is unchanged from the Model Rail Safety Regulations (clause 27(1)(a)), except that the draft regulations include an additional sub-clause (clause 29(1)(a)(viii)) on dangerous goods.</p> <p>The draft regulations are generally consistent with the Model Rail Safety Regulations and the current regulations, but provide for more detailed notifiable occurrences than the Model Rail Safety Regulations in some cases, eg. clause 29(1)(b)(vi).</p>
33 – Disclosure of train safety records	<p>RailCorp</p> <ul style="list-style-type: none"> • Clause 33(3) appears to provide that a train safety recording may be published or communicated by or on behalf of a rail transport operator to the ITSRR for the purposes of a rail safety inquiry conducted by the Chief Investigator. Is the intent of this clause that the Chief Investigator may in the course of its inquiry provide a copy to the ITSRR and that a rail transport operator may provide a copy but only in the context of a rail safety inquiry being conducted. Clarification of this point would be of assistance. 	3	<p>There is nothing to preclude a rail transport operator from giving a train safety record to ITSRR or someone from giving a train safety record to ITSRR on behalf of the rail transport operator. This disclosure could be for any purpose specified by the regulations, not just for a rail safety inquiry.</p>
Part 5 – Standards for rolling stock operations – driver only operations	<p>ARA</p> <ul style="list-style-type: none"> • Industry opposes this prescription in the regulations which specifically prohibits one aspect of rail operations. It does not align with the model regulations. 	1(b)	<p>NSW will retain the existing policy of regulating driver only operations through conditions of accreditation, rather than by regulation. Operators wishing to undertake driver only operations for which they are not already accredited will need to apply to ITSRR for a variation to accreditation. There is a fact sheet on driver only operations on the ITSRR website which provides further details.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>specifically prohibit one aspect of rail operations, that is, driver only operation, with what would appear no foundation and further, without recognising existing practices.</p> <p>To prohibit one aspect of rail operations is contrary to spirit of legislation and the heading of s35 is misleading. The purpose of rail safety accreditation of an operator <i>"..is to attest that the rail transport operator has demonstrated to the ITSRR the competence and capacity to manage risks to safety associated with those railway operations."</i></p> <p>Driver only operation (DOO) is only one aspect of those operations, providing "a rail transport operator" can demonstrate they have the <i>"competence and capacity to manage risks to safety associated with those railway operations"</i> the introduction of new DOO should be a variance to existing accreditation. Further this section provides for no savings provision recognizing existing DOO in NSW.</p> <p>The regulator has not taken into account that Driver Only has been <i>operating in NSW and other Australian jurisdictions</i> without incident directly attributed to Driver only operations. Why specifically prohibit one aspect of rail operations and on what basis? Industry demands on what basis the ITSRR can specifically prohibit one aspect of rail operations. In addition, this prohibition is not in the Model Regulations.</p> <p>All of Part 5, clauses 34 & 35 must be deleted. If this is not deleted then at the very least Part 5 MUST have savings provisions for existing Driver only operation in NSW, similar to clause 16(4) & (5) Fatigue Management. That is, current practices are recognized.</p> <p>Perisher Blue Pty Limited (PBPL) PBPL has significant concerns regarding the effect on its business of the operation of Part 5 "Standards for rolling stock operations – driver only operations" of the Regulation, specifically in reference to Clause 35 –</p>	<p>1(b)</p>	<p>conditions of accreditation, rather than by regulation. Operators wishing to undertake driver only operations for which they are not already accredited will need to apply to ITSRR for a variation to accreditation. There is a fact sheet on driver only operations on the ITSRR website which provides further details.</p> <p>NSW will retain the existing policy of regulating driver only operations through conditions of accreditation, rather than by</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>“Driver only operation of trains prohibited”, which prohibits PBPL from using single driver operation unless an exemption is granted.</p> <p>The relevant issues for PBPL are:</p> <ul style="list-style-type: none"> - PBPL has operated Skitube trains using a single driver configuration since the railway commenced operation in 1987. - PBPL notes that Part (e) of the Notice states that PBPL will operate its railway in accordance with the systems and procedures contained within various PBPL operations and maintenance manuals, which, amongst other things, refers to single driver operation. - PBPL’s rolling stock is specifically designed for single driver operation, please refer to the photos below. - The requirement to add an additional driver on each service would create significant difficulties in recruiting and training sufficient seasonal drivers to fill the relevant roster requirements. - The requirement to add an additional driver on each service would significantly increase PBPL’s labour costs, which in turn would seriously affect the viability of the railway. <p>PBPL asserts that Clause 35(2)(a) and (b) has no relevance to PBPL’s operations and PBPL asserts this based on the following reasons. PBPL is accredited to operate trains using driver only operation. PBPL has only ever operated trains using driver only operation. Therefore, it follows that PBPL would not be seeking to implement a “proposed driver only operation”, (emphasis added) but would simply be carrying out already accredited driver only operations. Similarly, PBPL could not reasonably assess whether there was an “<i>increased risk to safety</i>” as there would be no change to accredited operations.</p> <p>PBPL notes that driver only operation does not appear on its risk register, as it is the accredited mode of operation. PBPL refers to previous ITSRR</p>		<p>regulation. Operators wishing to undertake driver only operations for which they are not already accredited will need to apply to ITSRR for a variation to accreditation. There is a fact sheet on driver only operations on the ITSRR website which provides further details.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>safety audit reports and inspections and notes that the matter of “driver only operation” has not been identified or raised by officers of ITSRR or other persons during any safety audit conducted by ITSRR or PBPL or an expert consultant respectively, as an unidentified risk requiring consideration, attention and treatment.</p> <p>In respect of clause 35(3), PBPL has concerns that there is no obligation placed on ITSRR to act reasonably regarding the imposing of conditions upon an exemption or to act reasonably when revoking or amending an exemption. In respect of clause 35(4)(a) and (b), PBPL notes that the lack of definitions regarding the railway infrastructure, which will constitute a “yard “ or “terminal”, is confusing and unhelpful.</p> <p><u>Conclusions and Recommendations</u></p> <ul style="list-style-type: none"> • ITSRR’s letter to PBPL dated 18 December 2006 confirmed that PBPL is not part of the “NSW rail network” and therefore Clause 60A of the Rail Safety (General) Regulation 2003 does not apply to PBPL. For abundant caution, PBPL would appreciate ITSRR confirming PBPL’s understanding that it remains outside of the “NSW rail network” and hence is not required to comply with relevant parts of the Regulation where this definition applies. • PBPL reiterates its concerns regarding the significant effect of the operation of Clause 35 on its business. PBPL also notes the lack of relevance to its operation of certain parts of Clause 35. <p>PBPL respectfully recommends the following actions are implemented:</p> <ol style="list-style-type: none"> 1. The Regulation recognise that where an operator is currently accredited to use driver only operation, the operator be required to submit a request for exemption in writing; and 2. In any such case, the ITSRR may grant the exemption without the requirement for the operator to formally complete the processes listed at Clause 35(2)(a) and (b), or alternatively; 3. The Regulation specifically refers to certain operators at clause 35(4), 	3	All decisions made by ITSRR concerning conditions of accreditation or exemption are subject to review by the Administrative Decisions Tribunal under clause 150 of the Rail Safety Bill.

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p><i>(3) Dispute Resolution Procedure.</i> This sub-clause would apply to disputes between rail transport operators and a person with whom consultation has occurred regarding whether change involving <i>driver only</i> operations should be proceeded with or whether changes to the proposed operations should be altered or modified.</p> <ul style="list-style-type: none"> • The RTBU suggests the following: <ul style="list-style-type: none"> (a) A party to a dispute may apply in writing to ITSRR to have a dispute dealt with under this sub-clause. (b) ITSRR must, within 28 days, after receiving an application under this sub-clause, convene a meeting of representatives of the parties to the dispute (as determined by ITSRR) to resolve the matters in dispute. (c) ITSRR may direct the parties to provide such documentation and information as ITSRR thinks fit. (d) If the matters in dispute are not resolved at the meeting, ITSRR must determine the matters in dispute not later than 14 days after the meeting. (e) A determination by ITSRR is, for the purposes of this part (other than for an offence under this Part) final and binding on the parties. <p>3. Inclusion of yards and terminals in the clause i.e. delete clause (4)(b).</p> <ul style="list-style-type: none"> • See the RTBU submission concerning Clause 3 Definitions. 	3	<p>ITSRR recognises that the current drafting of clause 35(4)(b) is unclear. NSW will retain the existing policy of regulating driver only operations through conditions of accreditation, rather than by regulation. Operators wishing to undertake driver only operations for which they are not already accredited will need to apply to ITSRR for a variation to accreditation. There is a fact sheet on driver only operations on the ITSRR website which provides further details.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>'NSW rail network', needs to be revised so that it inclusive of only the main line part of the NSW rail system, not those that are the disconnected or are used exclusively by T&H operators.</p> <p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>El Zorro Transport Pty Ltd</p> <ul style="list-style-type: none"> We would like to congratulate ITSRR on Part 6 Network Rules. The idea for consultation with stakeholders is what is lacking in Victoria. 38 to 42 Well done!! <p>Pacific National</p> <ul style="list-style-type: none"> All of a sudden what was "rail infrastructure managers" in the Act and elsewhere in the draft regulations has now become "rail infrastructure owners". This is inconsistent. In addition, there are not many "rail infrastructure owners" who are involved in writing and managing Network Rules, for example the ARTC are not rail infrastructure owners, however they are responsible for maintaining Network Rules. <p>All references to rail infrastructure owners be changed to "<i>rail infrastructure managers</i>" to be consistent with the Act and the rest of the regulations.</p> <p>RTBU</p>	<p></p> <p>3</p> <p>3</p> <p>4</p>	<p>the Rail Infrastructure Corporation).</p> <p>It is not intended that the definition of NSW rail network should include railways on isolated or disused lines. Accordingly, this issue will be raised with Parliamentary Counsel to ensure the definition has the intended meaning.</p> <p>Noted.</p> <p>Noted.</p> <p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. While the term "rail infrastructure manager" is used more broadly throughout the legislation, Part 6 refers to the term "rail infrastructure owner" which is used in the current regulations and Guidelines and is defined in the <i>Transport Administration Act 1988</i>. It only applies to RailCorp, Australian Rail Track Corporation and Rail Infrastructure Corporation.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<ul style="list-style-type: none"> The RTBU has a preliminary question as to the interaction between this Part and Clause 24 concerning conditions of, or restrictions on, accreditation. In particular items 8 and 9 which involve a change to any safeworking system rule and a decision to introduce a new safe working system rule. The RTBU asks which section of the Act would apply to these two items, Clause 24 or Part 6? <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	<p>3</p> <p>3</p>	<p>A change to a network rule is not a change to a safeworking system, so clause 24 would not apply.</p> <p>Noted.</p>
<p>36 – Object of Part (Part 6 – Network rules)</p>	<p>RTBU</p> <ul style="list-style-type: none"> In the second line of (b) the RTBU believes the words “and stakeholders” should be added after the word “<i>owners</i>” as it is in the interests of all stakeholders to ensure changes to network rules are effectively managed and implemented. 	<p>4</p>	<p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. This would extend the requirements of the Network Guidelines and is outside the scope of this consultation.</p>
<p>37 – Definitions (Part 6 – Network rules)</p>	<p>RailCorp</p> <ul style="list-style-type: none"> The definition of stakeholder requires a rail infrastructure owner to consult pursuant to clause 40 with persons conducting rolling stock operations and <i>representatives of rail safety workers of any such operator</i>, that is the operator of the rolling stock operations. This is both a significant burden on the rail infrastructure owner and an impractical requirement. There is unlikely to be a connection between the rail infrastructure owner and the representatives and it may be impossible for the rail infrastructure owner to identify the appropriate representatives. RailCorp submits that the definition should be amended to make the rolling stock operator responsible for any consultation with the representatives of its rail safety workers. The formal requirement for consultation will increase the administrative load on the rail infrastructure owner without any safety 	<p>2</p>	<p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. Advice will be sought from Parliamentary Counsel to clarify the application of the definition of “stakeholder”.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>benefit.</p> <p>RTBU</p> <ul style="list-style-type: none"> The RTBU believes the definition of stakeholder should be the same as that provided in the consultation provisions of 12 (3) of the <i>Rail Safety Act</i> (employees, representatives and unions). Further, in (b) the reference to "<i>operator</i>" be changed to "rail transport operator" to maintain consistency with the wording contained in the definitions in the Act. This will allow for the coverage of employees of both an infrastructure owner and rail transport operator. 	<p>4</p> <p>4</p>	<p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. This would extend the requirements of the Network Guidelines and is outside the scope of this consultation. In addition, the consultation provisions of clause 12(3) of the Rail Safety Bill relate to changes to safeworking systems, not network rules.</p> <p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. This would extend the requirements of the Network Guidelines and is outside the scope of this consultation.</p>
<p>39 – Consultation requirements</p>	<p>ARA</p> <ul style="list-style-type: none"> Would this provision require that, for example, a street tramway operator be included in consultations as a stakeholder for changes to network rules? <p>Pacific National</p> <ul style="list-style-type: none"> Consultation must also involve rail operators, not just the rail infrastructure managers. This requirement is not fully captured in c39, whilst it may be in c40, however, if that is the case, why the need for c39? Consultation must be undertaken before a change with all stakeholders, not just managers. All stakeholders must be consulted 	<p>3</p> <p>3</p>	<p>No. The term "rail infrastructure owner" is defined in the <i>Transport Administration Act 1988</i>. It only applies to RailCorp, Australian Rail Track Corporation and Rail Infrastructure Corporation.</p> <p>The consultation requirements are part of a two-step process, requiring the agreement of rail infrastructure owners to a proposed change, followed by consultation with stakeholders including rolling stock</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>in clause 39.</p> <p>RailCorp</p> <ul style="list-style-type: none"> This clause requires a rail infrastructure owner to consult with other rail infrastructure owners before changing a network rule to determine whether the other owners agree to the change. Whilst clause 40 sets out time periods prior to which a notice must be served advising of the change, there is no time period within which the rail infrastructure owners must consult and determine agreement. It may be useful to consider the inclusion of a time period. 	4	<p>operators.</p> <p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. This would be a change from the Network Guidelines and is outside the scope of this consultation.</p>
40 – Stakeholder consultation	<p>RailCorp</p> <ul style="list-style-type: none"> Clause 40(5) requires the rail infrastructure owners to provide written evidence to the ITSRR of agreement to changes in rules. This appears to raise an issue that the agreements are being regulated. <p>RTBU</p> <ul style="list-style-type: none"> The RTBU suggests that the following be added to (3)(a): <ul style="list-style-type: none"> – the reasons for the application of the rule; and – details of all risk assessments conducted. <p>This information will allow a stakeholder to make a more informed and considered submission to the rail infrastructure owner.</p>	3 4	<p>Written evidence of agreement will provide evidence that the rail infrastructure owner has been through the required consultation process, not that the agreements are being regulated.</p> <p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. This would extend the requirements of the Network Guidelines and is outside the scope of this consultation.</p>
41 – Network-wide changes to network rules	<p>Pacific National</p> <ul style="list-style-type: none"> This sub-clause only refers to when a rail infrastructure manager (owner) propose a network-wide rule change. There is no provision when a rail operator may want to propose a network-wide rule change. <p>This section must have a provision for all stakeholders to propose rule changes, in addition a mechanism for appropriate appeals for when eg a rail infrastructure manager does not consider submission from an operator. In addition, a robust process must be established</p>	4	<p>This clause does not preclude a rolling stock operator from proposing a change, but is aimed at ensuring rail infrastructure owners make consistent changes to the network rules.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>for dealing with submission of suggested changes, through to either implementation or appeal.</p> <p>RailCorp</p> <ul style="list-style-type: none"> • Clause 41(4) requires rail infrastructure owners to take into account any comments by the ITSRR about the proposed amendment. RailCorp submits that it would be more appropriate to use “consider” rather than “take into account”. • Clause 41(6) requires the rail infrastructure owners to provide written evidence to the ITSRR of agreement to changes in rules. This appears to raise an issue that the agreements are being regulated. 	<p>4</p> <p>4</p>	<p>ITSRR believes the proposed change to the wording would not change the meaning of the provision.</p> <p>This is not a requirement of clause 41(6). Clause 41(6) requires a network-wide change to a network rule to be implemented by the rail infrastructure owners on the same day, unless the ITSRR has given written consent to different implementation dates.</p>
42 – Local changes to network rules	<p>RailCorp</p> <ul style="list-style-type: none"> • Clause 42(4) requires rail infrastructure owners to take into account any comments by the ITSRR about the proposed amendment. RailCorp submits that it would be more appropriate to use “consider” rather than “take into account”. 	<p>4</p>	<p>ITSRR believes the proposed change to the wording would not change the meaning of the provision.</p>
45 – Dispute resolution	<p>RailCorp</p> <ul style="list-style-type: none"> • Clause 45(5) - Clarity is sought on what ongoing accountability the ITSRR take for the determination on the dispute. For example, for how long does the determination have effect? What must an accredited operator do in relation to their SMS when an ITSRR determination made through this process is in conflict with an SMS requirement? For example if an operator’s SMS requires the total separation of workers and trains but the ITSRR determination produces a rule for working while trains are moving. This is likely to be an issue where ITSRR make any determination that is not the lowest risk option. However, If an ITSRR determination always results in the lowest risk option being adopted then infrastructure 	<p>3</p>	<p>A determination would have effect according to its terms. If there is a conflict between an ITSRR determination and an SMS requirement, the rail transport operator would have to amend its SMS. The ITSRR determination would be made by direction, which is a reviewable decision. However, ITSRR would only make such a determination as a last resort, if the parties are unable to resolve the dispute themselves.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>managers will lose any ability to manage to their own risk exposure levels.</p> <ul style="list-style-type: none"> RailCorp contend that the process of ITSRR determination transfers risk from Infrastructure Managers to the ITSRR. ITSRR would need to be able to demonstrate via risk assessment etc. that the determination provides for a safe operation in all situations. <p>RTBU</p> <ul style="list-style-type: none"> In order to allow stakeholders to be given the right to dispute implementation of a proposed change, including a dispute regarding whether a proposed change should be preceded with, the RTBU believes the words “...and stakeholders” should be included after the word “<i>owners</i>” in the first line. Not to include the suggested change means employees, their representatives and unions would only have rights in relation to the process being followed which is contained in (b). 	<p>3</p> <p>4</p>	<p>Noted. ITSRR would only make such a determination as a last resort, if the parties are unable to resolve the dispute themselves.</p> <p>The draft regulation brings the existing mandatory requirements from the <i>Guidelines relating to Network Rules</i> into the new regulatory regime. This would extend the requirements of the Network Guidelines and is outside the scope of this consultation.</p>
<p>49 – Exchange of information between agencies</p>	<p>RailCorp</p> <ul style="list-style-type: none"> Could you clarify whether the three agencies referenced in this section are the only relevant agencies or are they in addition to those referenced in the draft Bill? <p>RTBU</p> <ul style="list-style-type: none"> The RTBU believes WorkCover NSW should be included as a key agency as they are the OHS regulator in NSW and there is substantial overlap between OHS and rail safety matters. 	<p>3</p> <p>3</p>	<p>Noted. These agencies are in addition to those referenced in the Bill.</p> <p>Noted. WorkCover is included in clause 148 of the Bill.</p>
<p>50 – Exemptions for operators of heritage railways</p>	<p>ATHRA</p> <ul style="list-style-type: none"> ATHRA notes the clause and strongly supports it. It provides a mechanism that can address the issues that have been raised in the matters above; eg Parts 5 and 6. <p>COTMA</p>	<p>3</p>	<p>Noted. This clause only provides exemption from accreditation and the safety management system requirements of the Bill. As the exemption is not automatic, operators would need to apply for and be granted an exemption.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	3	Noted.
<p>51 – Train communications systems</p>	<p>ARA</p> <ul style="list-style-type: none"> Industry questions the need for this prescription in the Regulations - it is not in the model regulations and is more appropriate for guidelines. <p>ATHRA</p> <ul style="list-style-type: none"> This is an additional regulation to that of the Model Rules and so far, NSW is the only jurisdiction to propose this. Although ITSRR may grant exemptions from this clause, the definition of 'NSW rail network' again may be wider than that originally intended. The imposition of this regulation may cause undue hardship for many isolated operators who have currently an alternative working system. 	4	<p>The NSW Minister for Transport advised the Australian Transport Council in December 2006 that NSW would be retaining the existing train communication systems requirements in regulations.</p>
		2	<p>The NSW Minister for Transport advised the Australian Transport Council in December 2006 that NSW would be retaining the existing train communication systems requirements in regulations.</p> <p>This clause applies to railways which operate on the NSW rail network, being railway lines vested in, owned, managed or controlled by a rail infrastructure owner as defined by the <i>Transport Administration Act 1988</i> (other than the Transport Infrastructure Development Corporation). These are RailCorp, Australian Rail Track Corporation or the Rail Infrastructure Corporation. It is not intended that this clause should include railways on isolated lines. Accordingly, this issue will be raised</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>RailCorp</p> <ul style="list-style-type: none"> Apart from a few minor amendments which appear to have no real effect this clause mirrors clause 60A in the current Rail Safety (General) Regulation. RailCorp understands that the intent of clause 60A and this clause is to ensure that there is a back up communication system on a train that is operating on the Network. However, as previously advised, the drafting of the clause is internally inconsistent and, moreover, can put an operator immediately into breach if the primary means of communication fails. <p>The clause requires the system to “be working at all times when the train is being operated” (51(2) (b)). Compliance with this absolute requirement would preclude the necessity for a back up system. Further, the drafting means that if a failure occurs the operator should stop the train, irrespective of location or the operation of the back up system. This is impractical in normal operations and means that in the event of a complete failure of the communications network the rail operator would not be able to operate trains.</p> <p>It is submitted that this clause needs to be redrafted to remove the internal inconsistency and to clarify the intent of the clause which, we assume, is not to prevent a train from operating if the primary system of communication fails provided that a back up system is available and in operation.</p>	<p>3</p> <p>2</p>	<p>with Parliamentary Counsel to ensure the intended coverage is reflected in this clause.</p> <p>Noted.</p> <p>The issue of whether a radio communications system includes a backup means of communication will be raised with Parliamentary Counsel. This advice will clarify whether or not a rail transport operator is complying with this clause, if they have a radio communications system and a backup means of communication to address situations where the primary system fails in operation.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>RailCorp has developed operating procedures and protocols approved and endorsed by the ITSRR to address failures of the communications system.</p> <p>As a breach of this clause carries a significant financial penalty RailCorp believes that it is imperative that the drafting should be addressed or an exemption provided in circumstances where the primary system fails in operation. RailCorp does not support the clause in its present form.</p> <p>RTBU</p> <ul style="list-style-type: none"> The RTBU notes both the Glenbrook and Waterfall reports listed communications as a major issue. Recommendation 46 of the SCOI stated “<i>there should be interoperability of communications equipment between all trains on the NSW network.</i>” <p>The Government’s response to the SCOI recommendation states support and implementation of the recommendation. Interoperability was defined in terms of the driver having one hand-set with interfaces in order to allow communication with appropriate personnel. It did not imply a single all users radio system.</p> <p>ITSRR’s fifth quarterly report noted amendments to the regulations were made to mandate requirements for the interoperability of train radio communications between all trains operating on the NSW rail network in an emergency situation. Thus it indicated it had effectively addressed Recommendation 46. The 2006 Regulation has been reproduced as <i>Clause 51 Train Communications Systems</i>.</p> <p>The RTBU believes the clause should be amended in 2(a) to enable the driver of a train to verbally communicate with another train driver in addition to the network officer responsible. The RTBU believes this was the intention of Recommendation 46 and should be reflected in</p>	3	<p>The NSW Minister for Transport advised the Australian Transport Council in December 2006 that NSW would be retaining the existing train communication systems requirements in regulations. The proposed change would extend the requirements and is therefore outside the scope of this consultation.</p> <p>The intent of Special Commission of Inquiry (SCOI) Waterfall Recommendation 46 has been achieved by the implementation of the <i>Rail Safety (General) Regulation 2003 (Train Communications Systems)</i>. Accordingly, this recommendation was closed on the basis of the implementation of the Regulation which requires that passenger and freight trains operating on the NSW rail network must have a radio communications system that is compatible and interoperable in an emergency situation, as well as a back up system.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>the subclause.</p> <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	3	<p>The proposal to implement train to train communications is being addressed by the implementation of SCOI Waterfall Recommendation 38. SCOI Recommendation 38 is a longer term initiative (not scheduled for closure until 31 December 2010) which involves the development of a national standard for communications which is currently being developed by the Australasian Railways Association. It is understood that RailCorp has conducted a trial of the train to train functionality and that the results of this trial will be considered as part of RailCorp's overall Digital Train Radio System (due 2010/2011).</p> <p>Noted.</p>
<p>Schedule 1 – Safety management system content</p>	<p>Pacific National</p> <ul style="list-style-type: none"> Clause 3 – Management, responsibilities, accountabilities and authorities - What is meant by “...how...have been determined.”? As stated earlier the purpose of rail safety accreditation of an operator “..is to attest that the rail transport operator has demonstrated to the ITSRR the competence and capacity to manage risks to safety associated with those railway operations. On what basis does the ITSRR require a SMS to show “how safety responsibilities, accountabilities, authorities and interrelationships have been determined? 	4	<p>This wording in this clause is identical to the Model Rail Safety Regulations (Schedule 1 - C). Please refer to the National Rail Safety Guideline for the Preparation of Safety Management Systems for further explanation of this requirement.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>An SMS must demonstrate safety responsibilities, accountabilities, authorities etc of the staff in relation to rail safety, but to demonstrate how these have been determined does not add value or increase safety. Sub-clause (1) should be deleted.</p> <p>RailCorp We note that there are a number of requirements in this schedule that are not requirements in the Model Regulation. These include:</p> <ul style="list-style-type: none"> • Clause 1(2) requires the development and maintenance of a positive safety culture; • Clause 3(1) requires the SMS to include policies that indicate how safety responsibilities, accountabilities, authorities and interrelationships have been determined; • Clause 5(1)(a) includes the requirement to store and retain records and documents and 5(1)(b) introduces a requirement to ensure the currency of documents required for operations; • Clause 7(2) expands the group of persons to whom safety information is to be disseminated; • Clause 12 (c) and (d) introduce additional requirements for the internal reporting of accident and incidents including those involving contractors and sub-contractors and to support communication and the dissemination of information and between all levels of persons involved in the operator's railway operations. This latter requirement appears to encompass contractors and sub-contractors which will place a significant additional administrative burden on operators; • Clause 14 introduces a human factors element to the content of the SMS; • In clause 15(c) the requirement has been expanded to incorporate systems and procedures for the selection and control of contractors; • Clause 15(e) is also an additional requirement over the provision of the Model Regulation and requires systems and procedures to 	4	<p>These clauses are unchanged from the Model Rail Safety Regulations (Schedule 1) with some minor variations in clauses 7(2) and 15(e).</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>ensure that goods and services provided to the operator or a contractor of the operator meet the standards and specifications required for the safety of the railway operations;</p> <ul style="list-style-type: none"> • Clause 16(1) uses the term “operational systems” in relation to the requirement to have a documented set of engineering standards and procedures. It is not clear what is meant by operational systems. It is also noted that the Model Regulation required these documents “if available” but that this has been omitted from the draft Regulation. It does not recognise that such documents may not be available for older or existing systems; • Clause 16(4) was not included in the Model Regulation and requires systems, standards and procedures for a wide range of activities; • Clause 27 requires systems and procedures for resource availability and was not included in the Model Regulation. This clause requires an operator to estimate required resources and prepare plans to ensure that it has adequate access to the resources. <p>We understand that most of these additional requirements are sourced from NAP. The NAP and AS4292 requirements were the subject of extensive debate during the drafting of the Model Regulation with the final NMR being agreed as the most appropriate content for a regulation. ITSRR ran a strong argument in the national reform process for adding prescription from the NAP to NMR. RailCorp believes that schedule 1 should mirror the Model Regulation.</p> <p>RTBU</p> <ul style="list-style-type: none"> • Clause 1 – Safety policy - The RTBU suggests the third line in subclause (1) the word “or” be replaced by “and”. This will ensure uniformity with the <i>MRSR</i> 2006. A policy position was adopted that the CEO and Board should endorse the safety policy reflecting the intention for the highest decision making body governing the 	4	This change is not necessary, as there can only be one office that governs an organisation, being either a person or body, but not both. The existing wording ensures that the safety policy is endorsed by the person or body controlling the rail transport

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>organisation would make such decisions and assume ultimate responsibility. The RTBU believes a similar word change is required in 2(1) and 2(2).</p> <ul style="list-style-type: none"> Clause 6 – Review of safety management system - The RTBU suggests in (1) the words “<i>this Regulation</i>” be replaced by the words “Regulation 18”. The RTBU notes that within this Schedule a general reference is made to this Regulation 18, see clauses 7 and 20(1), whereas in other clauses the reference is made a specific regulation. Clause 19 – Safety interface coordination - The RTBU suggests subsection 2 of (S) contained in the <i>MRSR</i> 2006 be included in this clause. 	<p>4</p> <p>5</p>	<p>operator.</p> <p>This clause has been drafted according to NSW drafting conventions on the advice of Parliamentary Counsel.</p> <p>Agreed – this oversight will be corrected.</p>
<p>Schedule 2 – Accreditation fees</p>	<p>ATHRA</p> <ul style="list-style-type: none"> While ATHRA notes that proposed fee for a heritage operator is fairly low, we would strongly support any move to exempt T&H operators from any fees at all. <p>COTMA</p> <ul style="list-style-type: none"> COTMA has expressed its strong support for the comments made by ATHRA. <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. 	<p>4</p> <p>3</p> <p>3</p>	<p>The proposed accreditation fees are consistent with current fees and were nominated in recognition of the fact that heritage operators do not have access to the same level of resources as commercial operators.</p> <p>Noted.</p> <p>Noted.</p>
<p>General Comments</p>	<p>AMWU (Australian Manufacturing Workers’ Union)</p> <ul style="list-style-type: none"> The AMWU represents approximately 140,000 members, in a broad range of sectors and occupations throughout Australia’s manufacturing industry and is the principal union in the rail maintenance, manufacturing and overhaul sectors. The Union’s membership coverage includes, but is not limited to; fitter machinists, 	<p>3</p>	<p>The National Model Bill and NSW Rail Safety Bill and regulations were developed in consultation with industry and unions and ITSRR has ensured that existing standards were not compromised.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>welders, drafts people, boilermakers, car and wagon builders, painters, trimmers, supervisors, trimmers and labourers.</p> <ul style="list-style-type: none"> The AMWU submits that this Regulation is flawed and will fail to deliver tangible improvements in safety standards for the rail sector. The Regulation fails to recognise the importance of the consultative process between the employer and their employees and the employee's elected representatives. The Regulation proposes that in order to comply, an Operator has only to provide information to those who are directly affected. This proposal will not only deliver substandard safety management systems, but will also provide for inadequate and inferior assessments of health and fitness and the treatment or mistreatment of workers. Australian standards already exist with regard to safety management systems 'Australian Standard 4804 <i>Occupational Health and Safety management Systems</i>'. This Regulation is entirely inadequate in its responsibility to guide Operators toward meeting the standards established by the Standard. In fact, many aspects of the Regulation misdirect Operators away from compliance. Since the introduction of the initial Regulation, NSW operators have demonstrated an inability to implement fair and equitable programs of consultation with their employees. The Regulator has demonstrated a similar lack of understanding of the concept of consultation and what would be generally accepted by the community as 'fair standards'. The outcome of this non compliance has been the necessity for Government legislation. <p>ARA</p> <ul style="list-style-type: none"> Incorrect cross reference to clauses in the draft Bill - many cross references do not accord with the provisions in the draft Bill that was released for public comment. These may align with further drafting of the Bill, but did not assist in comprehending and commenting on the draft regulations. 	<p>4</p> <p>4</p> <p>4</p> <p>3</p>	<p>There are consultation provisions in the National Model Bill and these have been adopted in clause 12(3) of the NSW Rail Safety Bill. They provide for consultation with employees and their representatives in developing and making subsequent changes to a rail transport operator's safety management system.</p> <p>There is a considerable amount of guidance material being developed to assist duty holders to meet their obligations.</p> <p>There are consultation provisions in the National Model Bill and these have been adopted in clause 12(3) of the NSW Rail Safety Bill. They provide for consultation with employees and their representatives in developing and making subsequent changes to a rail transport operator's safety management system.</p> <p>It is acknowledged that the cross-references in the draft regulation to the current version of the Bill may have been confusing. However, the draft Bill is a Cabinet-in-confidence document, preventing it from being released.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<ul style="list-style-type: none"> • The cost impact to the organisation in having their volunteer time diverted from other tasks such as physically carrying out conservation/maintenance work, preparing funding requests or operating trains to earn the necessary funds can be very large in the overall proportion of available volunteer hours. This can make small volunteer organisations no longer viable not only in dollar terms, but in labour availability. Suitable remuneration and labour compensation or through exemption will required to be addressed. <p>COTMA</p> <ul style="list-style-type: none"> • COTMA has expressed its strong support for the comments made by ATHRA. <p>Pacific National</p> <ul style="list-style-type: none"> • Many drafting errors in the regulations made it difficult to conduct a proper analysis. That is, there are many references to sections of the Act, which when compared to the Bill as provided, either did not exist, or were the wrong context. <p>RailCorp</p> <ul style="list-style-type: none"> • A number of the references in the draft Regulation to sections of the Act do not match the sections in the draft Bill that was released for consultation. For example, clause 5 refers to section 17 of the Act and the relevant section in the draft Bill is section 21. <p>RTBU</p> <ul style="list-style-type: none"> • The RTBU is opposed to the failure to include a regulation covering safety culture. The <i>MRSR 2006</i> includes Safety Culture with the comment (<i>Reserved until there is a national agreement.</i>). • Safety culture figured prominently in Justice McInerney's reports. It is an important aspect of safety management systems for many rail 	<p>3</p> <p>3</p> <p>3</p> <p>3</p>	<p>Noted.</p> <p>It is acknowledged that the cross-references in the draft regulation to the current version of the Bill may have been confusing. However, the draft Bill is a Cabinet-in-confidence document, preventing it from being released.</p> <p>It is acknowledged that the cross-references in the draft regulation to the current version of the Bill may have been confusing. However, the draft Bill is a Cabinet-in-confidence document, preventing it from being released.</p> <p>Safety culture is referred to in Schedule 1 – clause 1(2) - Safety policy. In addition, the content of the <i>Australian Standard: Railway Safety Management: Part 1-General Requirements (AS 4292.1 2006)</i> has been included in the National Rail Safety</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>organisations and operators overseas. It was also included in the <i>Australian Standard: Railway Safety Management: Part 1-General Requirements (AS 4292.1 2006)</i>.</p> <ul style="list-style-type: none"> The RTBU believes the failure to include a regulation relating to safety culture is a substantial deficiency and one which should be included. Further, if and when a national agreement is finalised, an amendment can be made to the NSW provisions to reflect any necessary changes. <p>Steam Tram & Railway Preservation (Co-op) Society (Valley Heights Steam Tramway)</p> <ul style="list-style-type: none"> The Society has expressed its strong support for the comments made by ATHRA and COTMA. <p>The regulations as proposed will necessitate significantly more time being allocated to keeping the proposals and the attendant documentations current. As this society operates on average two-three occasions per month, this extra responsibility and labour involved will be taken from other restoration and operational activities. It should be noted that as a steam operator, the society must comply with other regulatory bodies regarding boiler safety and operation, which in itself, involves administration duties. In addition, there are regulatory requirements regarding financial and administration t name a few.</p> <p>At this point in time, the society is progressing through the establishment of the Safety Management System and associated procedures. When in place, the scope of documentation may well equal that of a larger operator. The society suggests that ITSRR consider the new regulations with a view to reducing documentation for the smaller accredited operators such as ourselves. Some may even be better completed on an annual, rather than monthly, basis. At the present time, the society has expended hundreds of hours,</p>	3	<p>Guideline for the Preparation of Safety Management Systems, for guidance. ITSRR will continue to work with the National Transport Commission and other regulators to gain national agreement on requirements for safety culture.</p> <p>ITSRR has released a discussion paper on the regulation of heritage operations with a view to developing strategies to address these issues.</p>

CLAUSE	SUBMISSIONS	ITSRR RESPONSE	ITSRR COMMENTS
	<p>with more to come, both at the museum and privately to ensure the SMS is compliant.</p> <p>It must be pointed out that the society's operations are in isolation. That is to say, the tramway does not connect to or use any other commercial network. Rather, our operation consists of a 1 km round trip that commences and concludes at the one place. Therefore, the operational statistics for operations are miniscule when compared with our larger heritage colleagues and that of the nearby government railway instrumentality.</p>		