

South Australia

# **Rail Safety National Law National Regulations Variation Regulations 2019**

under the *Rail Safety National Law (South Australia) Act 2012*

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## **Part 1—Preliminary**

### **1—Short title**

These regulations may be cited as the *Rail Safety National Law National Regulations Variation Regulations 2019*.

### **2—Commencement**

These regulations come into operation on the day on which the *Rail Safety National Law (South Australia) (Miscellaneous) Amendment Act 2019* comes into operation.

### **3—Variation provisions**

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

## **Part 2—Variation of *Rail Safety National Law National Regulations 2012***

### **4—Insertion of Part 1A**

After regulation 7 insert:

#### **Part 1A—Annual report provisions**

##### **7A—Application**

This Part applies for the purposes of section 43 (Annual report) of the Law.

##### **7B—Auditors**

- (1) The financial statements in respect of a particular financial year must be audited—
  - (a) by a public sector auditor; or
  - (b) with the approval of the responsible Ministers—by an appropriately qualified auditor.
- (2) A person (other than a public sector auditor) must not audit the financial statements in respect of a particular financial year unless the person has been approved to do so by the responsible Ministers.
- (3) An auditor who has been approved by the responsible Ministers to audit the financial statements in respect of a particular financial year must satisfy the Regulator that the auditor has indeed been so approved.
- (4) In this regulation—

*appropriately qualified auditor* means a registered company auditor who—

- (a) is a member of CPA Australia entitled to use the letters "CPA" or "FCPA" and who holds a current practice certificate issued by CPA Australia; or
- (b) is a member of the Institute of Chartered Accountants in Australia entitled to use the letters "CA" or "FCA" and who holds a current certificate of public practice issued by the Institute; or
- (c) is a member of the Institute of Public Accountants entitled to use the letters "MIPA" or "FIPA" and who holds a professional practice certificate issued by the Institute.

##### **7C—Financial statements**

The financial statement must—

- (a) be prepared in accordance with Australian Accounting Standards; and

- (b) be audited in accordance with the Australian Auditing Standards.

#### **7D—Auditor not subject to direction**

- (1) An auditor who conducts an audit of the financial statements for the purposes of the annual report is not subject to direction by any person about—
  - (a) the way in which the auditor's functions in relation to the audit or report on the financial statement are to be performed; or
  - (b) the priority to be given to the audit or report on the financial statement.
- (2) Despite subregulation (1)(b), the Regulator and the auditor may enter into an agreement to ensure an audit or report is provided in sufficient time for it to be included in the annual report to be delivered to the responsible Ministers under section 43(1) (Annual report) of the Law.
- (3) Subregulation (1) does not limit the functions of the Auditor-General of a participating jurisdiction under whose authority an audit is being conducted or a report is being prepared.

#### **5—Variation of regulation 28—Drug and alcohol management program**

- (1) Regulation 28(1)(d)—after "such testing" insert:

and systems and procedures in relation to the response of the rail transport operator to a prescribed incident
- (2) Regulation 28—after subregulation (1) insert:
  - (1a) For the purposes of subregulation (1)(d), the drug and alcohol testing regime of a rail transport operator required to be accredited in respect of railway operations carried out outside New South Wales must include the following:
    - (a) if a rail safety worker is involved, or is reasonably suspected of having been involved, in a prescribed incident while carrying out rail safety work outside New South Wales in respect of the operator's railway operations, the operator must require the worker to undergo drug and alcohol testing, in accordance with the requirements of the operator's drug and alcohol management program, unless—
      - (i) the drug and alcohol testing has been conducted by a police officer or the Regulator; or
      - (ii) the operator is notified by the Regulator that the drug or alcohol testing is not required; or
      - (iii) there is a reasonable excuse for not doing so;

- (b) (unless notice has been given in accordance with the requirements of regulation 57(2)(a)) the rail transport operator must, immediately after becoming aware of a prescribed incident, notify the Regulator, in a manner approved by the Regulator, of the occurrence of the incident.
- (3) Regulation 28(4)—delete "Subregulation (2)(a)(ii) places" and substitute:
- Subregulations (1a)(a) and (2)(a)(ii) place
- (4) Regulation 28(7), definition of ***prescribed incident***—delete the definition and substitute:

***prescribed incident*** means—

- (a) in the case of a rail transport operator required to be accredited in relation to railway operations carried out outside New South Wales—any of the following that occurs on railway premises (being premises used in connection with the carrying out of railway operations by the operator outside New South Wales):
- (i) a running line collision between rolling stock;
  - (ii) a collision at a level crossing between rolling stock and either a road vehicle or a person;
  - (iii) the derailment of rolling stock (other than a road-rail vehicle) on a running line;
  - (iv) a fatality other than a fatality as a result, or reasonably suspected of being as a result, of suicide;
  - (v) a serious injury to a person other than as a result of a slip, trip or fall;
  - (vi) an incident resulting in, or in relation to which there was a reasonable possibility of, an impact between—
    - (A) rolling stock and persons conducting track work; or
    - (B) rolling stock and equipment associated with, or being used for, track work; or
    - (C) moveable plant, machinery or equipment and persons within an area in which track work is being conducted;
  - (vii) an incident where a train or any part of a train exceeds the limits of an authorised movement and there was sufficient time for a rail safety worker driving the train to comply with the authorisation;
  - (viii) an incident where a train exceeds the limits of an authorised movement due to a proceed authority being incorrectly given to the rail safety worker driving the train;
  - (ix) a rolling stock run-away that exceeds the limits of an authorised movement for the rolling stock;

- (b) in the case of a rail transport operator required to be accredited in respect of railway operations carried out within New South Wales—any of the following that occurs on railway premises (being premises used in connection with the carrying out of railway operations by the operator in New South Wales):
  - (i) a collision between rolling stock;
  - (ii) a collision between rolling stock and a person;
  - (iii) a collision between rolling stock and a road vehicle or plant equipment;
  - (iv) the derailment of rolling stock;
  - (v) a breach of the rail infrastructure manager's network rules;
  - (vi) any other incident that the Regulator may, by notice in writing to a rail transport operator, declare to be a type of prescribed incident in respect of the operator's railway operations;

*road-rail vehicle* means a vehicle designed to operate both on and off a railway.

#### **6—Variation of regulation 37—Modifications of FOI Act for purposes of national rail safety scheme**

- (1) Regulation 37—after paragraph (e) insert:

- (ea) section 4(1)—as if the following definitions were inserted after the definition of *principal officer*:

*Rail Safety National Law* means the *Rail Safety National Law* set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012*;

*Regulator* means the Regulator appointed under the *Rail Safety National Law*;

- (2) Regulation 37—after paragraph (k) insert:

- (ka) Schedule 1, clause 4(2)(a)(iii)—as if "revenue law" were deleted and "rail safety law" were substituted;
- (kb) Schedule 1, clause 4(2)(a)(iv)—as if "or managing rail safety" were inserted after "public safety";
- (kc) Schedule 1, clause 7(1)(c)(ii)(A)—as if "the Government or to an agency" were deleted and "ONRSR or the Regulator" were substituted;
- (kd) Schedule 1, clause 9(1)(a)(ii)—as if "including by, or with, a committee of ONRSR" were inserted after "taken place";
- (ke) Schedule 1, clause 9(1)(a)—as if "an agency" were deleted and "ONRSR or the Regulator" were substituted;

- (kf) Schedule 1, clause 13(1)(b)(i)—as if "the Government or to an agency" were deleted and "ONRSR or the Regulator in a co-regulatory environment" were substituted;
- (3) Regulation 37—after paragraph (1) insert:
  - (1a) Schedule 1—as if the following clauses were inserted after clause 19:

**20—Exempt documents communicated between ONRSR or Regulator and Transport and Infrastructure Council and responsible Ministers etc**

The following documents are exempt documents:

- (a) a document that contains information from a communication between ONRSR or the Regulator and either of the following:
  - (i) a member of the Transport and Infrastructure Council (or such other body that may, from time to time, be a body in substitution of the Council);
  - (ii) a government agency of a participating jurisdiction, where the information relates to the business or proceedings of the Transport and Infrastructure Council (or substituted body);
- (b) a document that contains information from a communication between ONRSR or the Regulator and a responsible Minister (within the meaning of the *Rail Safety National Law*).

**21—Information or documents provided under the *Rail Safety National Law* in abrogation of privilege against self-incrimination**

A document is an exempt document if it contains information obtained from a person answering a question or providing information or a document under the *Rail Safety National Law* that the person would otherwise have been excused from providing on grounds that the answer, information or document may tend to incriminate the person.

**7—Variation of regulation 56—Periodic information to be supplied**

Regulation 56(1)(a)(i)(C) and (D)—delete subsubparagraphs (C) and (D)

**8—Variation of regulation 57—Reporting of notifiable occurrences**

- (1) Regulation 57(1)(a)(iv)—delete "road or pedestrian"
- (2) Regulation 57(1)(b)(iii)—delete "road or pedestrian"

**Made by the Governor**

on the unanimous recommendation of the responsible Ministers and with the advice and consent of the Executive Council

on 6 June 2019

No 61 of 2019

MTI19/038CS