



Government Gazette

OF THE STATE OF
NEW SOUTH WALES

Number 134

Friday, 29 August 2003

Published under authority by the Government Printing Service

SPECIAL SUPPLEMENT



New South Wales

Proclamation

under the

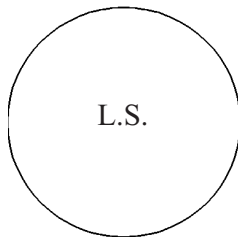
Police Act 1990

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 34 of the *Police Act 1990*, do, by this my Proclamation, amend Schedule 2 (NSW Police senior executive positions) to that Act by inserting "Transitional Manager, Infringement Processing Bureau" at the end of that Schedule.

Signed and sealed at Sydney, this 29th day of August 2003.

By Her Excellency's Command,



L.S.

JOHN WATKINS, M.P.,
Minister for Police

GOD SAVE THE QUEEN!

F92/836

FISHERIES MANAGEMENT ACT 1994
Notification under Section 8 - Fishing Closure
Wapengo Lake

I, Steve Dunn, prohibit the taking of fish by the methods of fishing described in Column 1 of the Schedule to this notification, from the waters described in Column 2 of the Schedule.

This prohibition is effective for a period of up to five years from the date of publication, unless sooner varied or revoked by notification of Director-General of NSW Fisheries.

Steve Dunn
Director-General, NSW Fisheries

Schedule
Wapengo Lake netting closure

Column 1 Methods	Column 2 Waters
By means of nets of every description, except the dip or scoop net (when used for the capture of prawns only) and the landing net, as prescribed by the <i>Fisheries Management (General) Regulation 2002</i> .	The whole of the waters of that part of Wapengo Lake, its creeks, tributaries and inlets, from a line drawn across the entrance to the Lake at its confluence with the South Pacific Ocean, upstream to a line drawn from the north-eastern (foreshore) corner of Oyster Farm No. 57-112, to the south-eastern (foreshore) corner of Oyster Farm No. 69-332.

GUIDELINES FOR CERTIFICATION OF COMPETENCY

1.0 INTRODUCTION

Overview

1.1 The safety of rail operations depends on their being carried out by competent and healthy individuals who are accountable for the way they perform their tasks. Operators are accordingly required under their accreditation to ensure that no person may engage in railway safety work unless he or she holds a current Certificate of Competency. A Certificate of Competency issued under the Rail Safety Act 2002 ('the Act') attests that the holder:

- ☞ Has the good health and fitness required to perform railway safety work,
- ☞ Is in all other respects a fit and proper person to perform railway safety work,
- ☞ Has sufficient knowledge, skills, responsibility and aptitude to perform the railway safety work covered by the certification.

The Guidelines have been drafted to inform operators, railway employees and others how they might discharge their obligations under the Act. Under the Guidelines, operators are required to implement a competency-based approach that will complement that already required under the Occupational Health and Safety legislation.

1.2 The Guidelines have been drafted to promote:

- ☞ A rigorous approach to competency management,
- ☞ An approach to competency that takes into account a person's health and fitness as well as their capability to effectively exercise competency,
- ☞ Continuous monitoring of current competency, including that of persons who hold nationally endorsed qualifications and transfer their employment from one operator to another.

Persons requiring certification of competency

1.3 Persons requiring Certificates of Competency shall include all railway employees within the meaning of section 4 of the Act, including operators, paid employees, contractors and volunteers engaged in:

- (a) work involving the operation or movement of a train or trains,
- (b) work on or about railway infrastructure relating to the repair, maintenance, cleaning or upgrading of railway tracks or any rolling stock or associated works or equipment,
- (c) work involving the certification as to safety of any item of infrastructure or rolling stock,
- (d) work involving the development, management or monitoring of safeworking systems for railways, within the State of New South Wales.

1.4 Two levels of identification of competency are required under Guideline 5.5. The two levels of identification are determined according to the safety critical nature of the railway safety work being performed.

Penalties

1.5 Operators permitting uncertified persons to undertake railway safety work risk being penalised under their accreditation. Individuals can also incur fines up to \$2,750 for each offence. Persons who by false statement or misrepresentation obtain or attempt to obtain certification of competency are liable to penalties up to \$82,500 and two years' imprisonment, or both. The same penalty applies for persons who fraudulently alter, forge, or improperly allow others to use their certification. Much higher penalties apply to corporations.

2.0 STATEMENTS OF PRINCIPLE

- 2.1 Passengers using the rail system, members of the public, railway employees and accredited rail operators need to have confidence in the competency of the individuals on whom their common safety depends.
- 2.2 Certification of competency is a means whereby the public and all persons sharing the rail infrastructure can have confidence in the competency of persons performing railway safety work.
- 2.3 To promote consistent safety outcomes across all rail operations in New South Wales especially on the shared rail infrastructure, operators need to adopt a systematic approach to certifying competency.
- 2.4 The systems used to certify competency shall take account of the principles contained in:
- ⌘ AS/NZS4804: 2001, Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques, as amended from time to time,
 - ⌘ AS/NZS4801: 2001, Occupational health and safety management systems – Specification with guidance for use, as amended from time to time,
 - ⌘ AS/NZS4360: 1999, the Australian Risk Management Standard, as amended from time to time,
 - ⌘ Another equivalent Standard, as amended from time to time.
- 2.5 So far as reasonably possible, the Director General and operators shall aim for competency outcomes consistent with the needs of the national transportation industry.
- 2.6 Systems for certifying competency should be cost effective, flexible and be sensitive to the needs of Certificate of Competency holders.

3.0 SCOPE

- 3.1 The Guidelines have force subject to Parts 2 and 5 of the Act.
- 3.2 Penalties under sections 36, 37, 39 and 91 of the Act apply to breaches of its provisions relating to the certification of competency.

4.0 APPLICATION

- 4.1 The Guidelines shall apply to all operators accredited under the Act, all authorised third parties issuing Certificates of Competency, the registers under their control and the owners of private sidings.
- 4.2 References in these Guidelines to registers relate to registers containing particulars of Certificates of Competency as required under section 39 of the Act.
- 4.3 References in these Guidelines to authorised third parties relate to persons or organisations that the Director General authorises under section 36 of the Act to issue Certificates of Competency.
- 4.4 For an application for accreditation to satisfy the requirements of sections 10 and 39 of the Act it must, among other things, meet the criteria contained in Guideline 5.2.
- 4.5 In order to satisfy the requirements of sections 36 and 39 of the Act, an application from a person other than an operator for authorisation to issue Certificates of Competency must, among other things, meet the criteria contained in Guideline 5.2.

- 4.6 With reference to section 11(4)(d) of the Act, an operator must, in its annual safety report to the Director General, detail its compliance with the terms, conditions and performance milestones agreed with the Director General relating to the competency of its railway employees.
- 4.7 The terms used in the Guidelines have the same meaning as they have in the Act and any regulation made thereunder.

5.0 ISSUE OF CERTIFICATES OF COMPETENCY

Who may issue Certificates of Competency?

5.1 Section 36 of the Act allows Certificates of Competency to be issued or renewed by:

- (a) Accredited operators; or
- (b) Third parties authorised by the Director General.

Criteria for becoming an issuer of Certificates of Competency

5.2 An organisation seeking to be an operator or an authorised third party issuing Certificates of Competency must meet the following criteria to the satisfaction of the Director General:

- (a) Be an organisation that:
 - (i) Is a Registered Training Organisation meeting the requirements of the New South Wales Vocational Education Training Accreditation Board or an equivalent registering body in another State or Territory and registered to deliver the Units of Competency appropriate to the tasks performed by railway employees performing railway safety work,

Or

 - (ii) Has contracted with a Registered Training Organisation capable of exercising, and registered to exercise, this function on its behalf,

Or

 - (iii) Has implemented a training system prescribed by a manufacturer of rolling stock, plant or equipment where the certification being sought relates to the operation of the same and the system is founded on risk management principles,

Or

 - (iv) Has implemented a training system accepted by the Director General where no Registered Training Organisation provides, or is likely to provide, training in the area of competency being sought. Authorisation under this subclause shall only be available to non-commercial operators,
- (b) For the purposes of the practical assessment of the competencies of railway employees, employs or engages persons who each:
 - (i) Possess current qualifications in the competency or competencies being assessed, and
 - (ii) Possess a minimum of two years' practical experience in each competency being assessed, and

- (iii) As a minimum, be a Category Two Workplace Assessor endorsed by the New South Wales Vocational Education Training Accreditation Board or an equivalent registering body in another State or Territory. Where the person is responsible for devising an assessment curriculum, he or she shall be a Category Four Workplace Assessor,

Characteristics of certification

- 5.3 The only form of competency certification acceptable under the Act for railway safety work is a Certificate of Competency issued in accordance with the Guidelines.
- 5.4 Issuers of Certificates of Competency must comply with the following requirements:
- (a) A Certificate may be issued for any period up to, but not exceeding, five years,
 - (b) The issuer may only issue a Certificate to an applicant if the issuer has satisfied itself that the applicant:
 - (i) Has supplied current and accurate information relating to his or her competency to perform railway safety work,
 - (ii) Has undertaken in writing to comply with any term or condition required by the issuer in respect of the Certificate.
 - (c) A Certificate of Competency must be issued only to a person who fully complies with the medical standards required under any health and fitness Guidelines issued by the Director General,
 - (d) A Certificate of Competency is issued only to a railway employee who is, in all respects, a fit and proper person. For the purposes of these Guidelines, what constitutes fit and proper is to include (but is not limited to):
 - (i) Compliance with the requirements of an operator's policies and programs in respect of fatigue, drug and alcohol, including any rehabilitation action required of the person in respect of drug or alcohol,
 - (ii) Criteria specified in Guideline 6.1(h),
 - (e) A Certificate of Competency remains valid for the lesser of the following periods, either:
 - (i) The full period it is issued for,Or
 - (ii) The period in which the holder possesses the competency required by the issuer,
 - (f) As a condition of issue, the issuer of a Certificate of Competency must require the recipient to produce it upon the request of an authorised officer, supervisor or responsible manager, whenever the Certificate holder is on duty for the purpose of carrying out railway safety work.
- 5.5 Two levels of identification of certification shall apply under the Guidelines.
- A higher level of competency identification is required of railway employees performing railway safety work in respect of:
- (a) Work involving the operation or movement of a train or trains, or
 - (b) Work on or about railway infrastructure relating to the repair, maintenance or upgrading of railway tracks or any rolling stock or associated works or equipment,

When permitted by a regulation issued under section 117(4) of the Act, a lower level of competency identification shall be required of railway employees performing railway safety work in respect of:

- (c) Work involving certification as to the safety of infrastructure or rolling stock (or any item of infrastructure or rolling stock), or
 - (d) Work involving the development, management or monitoring of safe working systems for railways, or
 - (e) Work on or about railway infrastructure relating to the cleaning of railway tracks or any rolling stock or associated works or equipment.
- 5.6 An exception exists in respect of railway safety work within paragraphs (c) or (d) of Guideline 5.5 where the railway safety work is on or about a running line. In such cases, and where it is permitted by a regulation issued under section 117(4) of the Act, the higher level of competency identification will be required. The level of identification required of persons performing work under these conditions is a matter for the operator to determine.
- 5.7 Granting of certification to a person performing railway safety work within paragraph (a) or (b) of Guideline 5.5 or the exception category of Guideline 5.6 is to be contingent on the person:
- (a) In respect of training:
 - (i) Satisfying the relevant competency standards contained in the existing Unit or Units of Competency of a national Training Package endorsed by the Australian National Training Authority (ANTA),
 - Or
 - (ii) Satisfying the minimum competency requirements set by an operator in a new competency standard for its own operations,
 - (b) In respect of practical assessment (on-the-job or otherwise), satisfying the practical assessment criteria set by the operator.
- 5.8 Where an operator intends to develop a new competency standard governing its operations where no applicable nationally endorsed Units of Competency exist and the new competency standard could have an industry wide application, the operator may:
- (a) Advise the Director General in writing of the desirability of developing such a standard in accordance with the Australian National Training Authority (ANTA) requirements in consultation with, and validated by, appropriate Industry and or professional groups and endorsed by ANTA for inclusion in the relevant national Training Package, and
 - (b) Consult with operators and other interested parties on the desirability of developing such a standard.

6.0 OBLIGATIONS

Obligations of an operator certifying the competency of its own railway employees

- 6.1 Each operator issuing Certificates of Competency to its own railway employees shall satisfy itself that:
- (a) It has adequate systems in place to certify that a railway employee carrying out railway safety work:
 - (i) Possesses the good health and fitness required to perform railway safety work,

- (ii) Is in all other respects a fit and proper person to perform railway safety work,
 - (iii) Has sufficient knowledge, skills, responsibility and aptitude to perform the railway safety work to which the certification relates,
- (b) It is able to comply with information sharing arrangements made by the Director General in respect of other operators and authorised third parties involved in the issuing or monitoring of Certificates of Competency, where permitted by section 39 of the Act. [It is proposed that legislation amending the section be submitted to the Parliament in the Spring Session],
- (c) Effective internal procedures exist for identifying and rectifying identified deficiencies in any individual's competency or systems relating to competency,
- (d) The quality of training and assessment provided by internal and external training and assessment providers is appropriate for the competency being certified,
- (e) In issuing a Certificate of Competency, an operator shall consider relevant communication skills such as competency in spoken and written English language where appropriate to the competencies sought,
- (f) In issuing a Certificate of Competency, an operator shall consider relevant numeracy skills where appropriate to the competencies sought,
- (g) A Certificate of Competency reported as lost, inaccurate or fraudulently obtained is no longer able to certify the competency of the person in whose name it was issued. Upon receiving such a report, the operator should take immediate steps to amend the relevant register record to reflect this,
- (h) Where the issuer has formed a reasonable belief that a person to whom it has issued a Certificate of Competency no longer possesses the competency it requires, it must give written notification of this to the holder of the Certificate and the register where the holder's record is located. In forming a reasonable belief about a person, the operator shall consider any:
- (i) Failure by the person to maintain current competency,
 - (ii) Breach by the person of current work procedures set by the operator,
 - (iii) Failure by the person to comply with the operator's instructions after a breach,
 - (iv) Breach by the person of the operator's drug and alcohol policy and program,
 - (v) Change in the person's health and fitness status,
 - (vi) Relevant details from the person's work history with the operator on whose behalf he or she is undertaking railway safety work,
- (i) Where the issuer is not satisfied that the competencies a Certificate of Competency attests to are current or relevant in respect of railway safety work, it may:
- (i) Identify the new relevant competencies,
 - (ii) Review the training content and delivery, as well as the relevant assessment strategies and tasks,
 - (iii) Develop new training and assessment strategies that meet the needs of its operations, or engage an authorised third party to undertake this.

Obligations of authorised third parties

6.2 An authorised third party issuing any Certificate of Competency shall satisfy itself that:

- (a) It has adequate systems in place to certify that a railway employee:
 - (i) Possesses the good health and fitness required to perform railway safety work,

- (ii) Is in all other respects a fit and proper person to perform railway safety work,
 - (iii) Has sufficient knowledge, skills, responsibility and aptitude to perform the railway safety work to which the certification relates,
- (b) A Certificate of Competency is only issued when the person seeking certification has:
- (i) Provided a current and accurate record of work experience, and
 - (ii) Successfully completed the training relevant to the competency being certified, and
 - (iii) Been assessed as competent to the required standard, and
 - (iv) Provided any other information required under these Guidelines,
- (c) The competencies the Certificate of Competency attests to are current in respect of railway safety work,
- (d) Throughout the period that a Certificate of Competency is issued, adequate arrangements are made with the operator in receipt of the person's services to notify the issuer of any change in the holder's competency or other information required under these Guidelines,
- (e) Documentation and data relevant to all persons the issuer certifies as competent are maintained and readily accessible and include, without being limited to, documentation and data on their identity, experience, training, aptitude, medical fitness and competency in assigned duties,
- (f) The authorised third party complies with information sharing arrangements made by the Director General in respect of other operators and other authorised third parties involved in the certification of competency, where permitted by section 39 of the Act [Amendment of the Act along these lines is proposed],
- (g) An authorised third party that issues Certificates of Competency attesting to the quality of the training and assessment it provides to railway employees must undertake effectual monitoring of any internal or external training providers of this training and assessment,
- (h) In issuing a Certificate of Competency, an issuer shall consider relevant communication skills such as competency in spoken and written English language where appropriate to the competencies sought,
- (i) In issuing a Certificate of Competency, an issuer shall consider relevant numeracy skills where appropriate to the competencies sought,
- (j) A Certificate of Competency reported as lost, inaccurate or fraudulently obtained is no longer able to certify the competency of the person in whose name it was issued. Upon receiving such a report, the issuer should take immediate steps to amend the relevant register record to reflect this,
- (k) Where the issuer has formed a reasonable belief that a person to whom it has issued a Certificate of Competency no longer possesses the competency it requires, it must give written notification of this to the holder of the Certificate and the register where the holder's record is located. In forming a reasonable belief about a person, the issuer shall consider any:
- (i) Failure by the person to maintain current competency,
 - (ii) Breach by the person of current work procedures set by the operator,
 - (iii) Failure by the person to comply with the operator's instructions after a breach,
 - (iv) Breach by the person of the operator's drug and alcohol policy and program,
 - (v) Change in the person's health and fitness status,

- (vi) Relevant details from the person's work history with the operator on whose behalf he or she is undertaking railway safety work,

7.0 APPROVED FORM OF A REGISTER FOR THE PURPOSES OF SECTIONS 36(6), 39 AND 112(2) OF THE ACT

Preamble

- 7.1 Any instrument issued under sections 36(6) and 112 of the Act for the purpose of section 39 must comply, apart from any other term or condition the Director General may prescribe, with the requirements of this Part (Guidelines 7.1 to 7.13). The Guidelines set out the form approved by the Director General, for the keeping in a register by an approved person, of particulars of Certificates issued by an operator or other person.
- 7.2 Further terms or conditions on the keeping of a register may be included in an accreditation issued to an operator under section 18 or 19 of the Act or a specific approval for the purposes of section 39 of the Act.

General requirements

- 7.3 The person approved by the Director General to operate the register shall comply with any Guideline, or protocol agreed with the Director General, on the sharing of information with accredited operators and other authorised third parties where this is permitted by section 39 of the Act. [It is proposed that the Act be amended to authorise this.]
- 7.4 The person approved by the Director General to operate the register shall make information from personal records (or a specified class of records) contained in the register available to the Director General upon request or within a period nominated by the Director General.
- 7.5 The person approved by the Director General to operate the register shall satisfy him or herself of the adequacy of the register's processes for handling complaints relating to the particulars of the Certificates of Competency that it holds.
- 7.6 The person approved by the Director General to operate the register shall satisfy itself of its ability to promptly amend the active record of any Certificate of Competency holder when it receives advice that the person's competency is no longer current for any reason. Each issuing organisation should ordinarily have only one register and each person within that organisation only one active record.
- 7.7 In respect of persons undertaking railway safety work within paragraph (a) or (b) of Guideline 5.5, or the exception category contained in Guideline 5.6, each register record shall contain, as a minimum, the following information:
 - (a) Unique alphanumeric identifier for the specific Certificate of Competency, allocated according to parameters set by the Director General,
 - (b) Unique alphanumeric identifiers for the operators whose operations it is valid for, according to parameters set by the Director General,
 - (c) Photograph of the Certificate holder's face unobscured by sunglasses or headwear. A new photograph is to be scanned into the register record whenever the Certificate is renewed,
 - (d) Sample of the person's usual signature,
 - (e) Name of the person who is the holder of the Certificate of Competency or Certificates of Competency issued in his or her name,
 - (f) Present residential and postal address,

- (g) An immediate contact telephone number or e-mail address, including an after hours telephone number if applicable,
- (h) Dates of issue and expiry of any Certificate or Certificates issued to the person,
- (i) Current competencies of the holder of the Certificate of Competency. Wherever possible, competencies must be referenced using the unique identifier codes allocated by the Australian National Training Authority (ANTA) to Units of Competency from nationally endorsed Training Packages,
- (j) Original certifying documentation (or copies certified by a Justice of the Peace) of the person's qualifications and competencies in respect of which the Certificate is issued, including details of the certifying institutions,
- (k) A current and accurate record of the person's work experience. The issuer of the Certificate of Competency may need to give consideration to higher requirements including references from previous supervisors,
- (l) A record indicating that a current medical certificate is on file that includes any medical condition relevant to the work being carried out under the Certificate of Competency,
- (m) Date of birth of the Certificate holder,
- (n) Fit and Proper data of the holder of the Certificate, including:
 - (i) Details of any occurrence notifiable under the Act which the Certificate holder was involved in. A record must include occurrences notifiable under the rail safety statutes of the other States and Territories,
 - (ii) Any breach of an operator's policies and programs in respect of drugs and alcohol and fatigue, including information on any rehabilitation or disciplinary action taken by operators in respect of drugs and alcohol,
 - (iii) Relevant details from the person's work history, including any commendable conduct.

Conditions applying to the particulars of Certificates of Competency contained in a register record

- 7.8 The person approved by the Director General to operate the register shall make available information to operators and authorised third parties that request information on a Certificate holder's competency, where permitted by section 39. Information shall be supplied to operators and authorised third parties subject to:
- (a) Any condition or restriction specified by the Director General in respect of an operator's accreditation under sections 18 and 19 of the Act, or
 - (b) The terms of an approval given by the Director General in an instrument issued under sections 36(6) and 112 of the Act for the purpose of section 39 of the same.

Nature of identification required of persons undertaking railway safety work within paragraphs (a) or (b) of Guideline 5.5 or the exception category of Guideline 5.6

- 7.9 The Certificate of Competency shall be easy to carry and durable (equivalent, say, to a plastic driver's licence or a plastic credit card).
- 7.10 The information contained in the Certificate shall be consistent in every respect with the information contained in the person's active register record.

- 7.11 The information contained in the Certificate shall include the following:
- (a) Unique alphanumeric identifier for the Certificate, allocated according to parameters set by the Director General,
 - (b) Unique alphanumeric identifiers for the operators whose operations it is valid for, allocated according to parameters set by the Director General,
 - (c) Photograph of the Certificate holder identical to that contained in the person's active register record,
 - (d) Sample of the person's usual signature,
 - (e) Dates of issue and expiry of the card,
 - (f) Text to the effect that the Certificate is issued under the NSW Rail Safety Act and regulations,
 - (g) The person's highest level of current competency qualifications, be they nationally recognised or specific to operators or both. Alphanumeric coding or words may be used. Units of Competency from nationally endorsed Training Packages should be identified using the unique identifier codes allocated by the Australian National Training Authority (ANTA). Operator specific competencies should be identified using the coding or words specified by the operator,
 - (h) Name of the person holding the identification.
- 7.12 The Certificate of Competency always remains the property of the issuer. The issuer must:
- (a) Require the holder of a superseded Certificate to render it unusable once a new Certificate is issued,
 - (b) Require the holder to render his or her Certificate unusable or to return it to the issuer when it is aware that the holder no longer possesses the competency to which his or her Certificate attests and is not issuing a new Certificate,.
- 7.13 The issuer shall issue Certificates of Competency to persons undertaking railway safety work within paragraph (a) or (b) of Guideline 5.5 or the exception category of Guideline 5.6 to someone who already holds a Certificate of Competency subject to:
- (a) All the Certificates held by the person undertaking railway safety work being linked to a single active register record in the individual's name,
 - (b) The Certificate holder formally undertaking to comply with any request made by the issuer in respect of the linking of the data.

8.0 REPORTING

Overview

- 8.1 Any instrument issued under sections 36(6) and 112 of the Act for the purpose of section 39 must comply, apart from any other term or condition the Director General may prescribe, with the requirements of this Part in respect of annual reporting requirements (Guidelines 8.1 to 8.6).
- 8.2 A person approved by the Director General for the purposes of section 39 of the Act must report annually to the Director General on the operation of its systems for the issuing of Certificates of Competency.

- 8.3 An operator that issues Certificates of Competency must, under section 11 of the Act, include in its annual safety report information on the operation of its systems for the issuing of Certificates of Competency.

Obligations of issuers

- 8.4 In respect of Guidelines 8.2 and 8.3, the Director General may require independent verification of this information by a member of the Joint Accreditation System of Australia & New Zealand or by a person registered with the Quality Council.
- 8.5 An operator responsible for work undertaken by a railway employee must notify the issuer of the Certificate of Competency, no later than twenty-four hours after it comes to its notice, of when a Certificate ceases to be current in respect of a person's competency.
- 8.6 An operator should give timely notice to the Director General of any difficulty or delay it has in concluding and implementing arrangements required by the Guidelines with other operators, contractors or parties.

9.0 TRANSITIONAL ARRANGEMENTS

- 9.1 Where full and immediate compliance with the duty imposed by these Guidelines by 29 August 2003 is impossible because of real resource constraints, an operator may nominate performance milestones it must achieve over time and request the Director General's endorsement of such an arrangement. The operator is taken to have complied with the duty imposed by these Guidelines if it complies with the endorsed performance milestones.

GUIDELINES RELATING TO DRUG & ALCOHOL PROGRAMS

1.0 INTRODUCTION

Individual employees are under an obligation to take reasonable care for the health, safety and welfare of others and to cooperate with employers in their efforts to comply with the requirements of the Rail Safety Act 2002 and the relevant occupational health and safety requirements.

Accredited operators are responsible for ensuring that risks to health and safety in the workplace are identified and assessed, then eliminated or controlled. These risks include those posed by the use of alcohol or other drugs.

The Guidelines promote a consistent approach across the rail sector to managing the risks posed by drug and alcohol use.

The Guidelines set out the principles governing operator policies and the approaches needed to manage this lifestyle-related problem. The Guidelines state the context in which drug & alcohol testing will take place but do not prescribe the basis of that testing or how it is to be administered.

The systems an operator needs to implement the Guidelines should correlate to its size and resources.

2.0 SCOPE

2.1 The Guidelines shall have force subject to Divisions 1 and 3 of Part 2 of the Rail Safety Act 2002 ('the Act').

3.0 APPLICATION

3.1 The Guidelines shall apply to all operators accredited under the Act in respect of railway employees engaged in railway safety work.

3.2 For an application for accreditation to satisfy the requirement of section 10 of the Act it must, among other things, include information on the applicant's proposed drug and alcohol program.

3.3 With reference to section 11(4)(d) of the Act, an operator must, in its annual safety report to the Director General, detail the operation of the drug and alcohol program submitted to the Director General under its accreditation.

3.4 The terms used in the Guidelines have the same meaning as they have in the Act and any regulation made thereunder.

4.0 ELEMENTS OF A DRUG AND ALCOHOL PROGRAM

4.1 Operators, members of the public and railway employees need to have confidence that the safety hazards posed by alcohol and other drugs are being monitored and controlled in an ongoing and rigorous fashion.

4.2 The systems used to implement an operator's drug and alcohol program must embody risk management principles and may take account of the principles contained in:

⌘ AS/NZS4804: 2001, Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques, as amended from time to time,

⌘ AS/NZS4801: 2001, Occupational health and safety management systems – Specification with guidance for use, as amended from time to time,

- # AS/NZS4360: 1999, the Australian Risk Management Standard, as amended from time to time,
- # Another equivalent Standard, as amended from time to time.

4.3 Programs developed by operators to manage alcohol and other drugs are to be based on the following principles:

- (a) Alcohol and other drug problems are to be dealt with as health and lifestyle problems, with an emphasis on education and rehabilitation in so far as it is consistent with the requirements of safety,
- (b) Railway employees and their representatives are to be consulted at all stages of program development and implementation,
- (c) Operators must inform all railway employees of their responsibilities in relation to the consumption or use of alcohol or other drugs which may adversely affect work performance or conduct,
- (d) Operators must provide practical guidelines and training to managers and supervisors for dealing with railway employees whose work performance or conduct is adversely affected by alcohol or other drugs, including the application of disciplinary sanctions,
- (e) Railway employees and their representatives must comply with all employer directives applicable to alcohol and other drugs in the workplace and cooperate fully with employers to prevent incidents arising from the consumption or use of alcohol or other drugs,
- (f) Railway employees who attend treatment or rehabilitation may have access to accrued annual leave, sick leave or leave without pay,
- (g) Personal information received from railway employees during counselling treatment or rehabilitation is to be treated in strict confidence,
- (h) Policies and programs developed by operators should be tailored to address their operational circumstances. The level of detail in a policy and program will reflect the size of the employer's operations, the extent of the risk and any applicable statutory requirement.

5.0 OPERATOR PROGRAMS

5.1 Operators must take the following matters into account when preparing and implementing an alcohol and other drug program:

- (a) Taking measures to achieve a workplace culture that supports fitness for work,
- (b) Reducing the effects in the workplace of the consumption or use of alcohol and other drugs including risks to safety and absenteeism,
- (c) Informing railway employees of the potential work related problems that may arise from the consumption or use of alcohol and other drugs and of their responsibilities in relation to safety, conduct and performance,
- (d) Establishing a system to maintain the confidentiality of all information communicated to them concerning alcohol and drug related problems,
- (e) Providing information to railway employees about referral to counselling, treatment and rehabilitation services where this is appropriate.

6.0 RESPONSIBILITIES TO BE REQUIRED OF RAILWAY EMPLOYEES BY OPERATORS

- 6.1 The training and assessment component of an operator's program shall involve the operator making railway employees aware of their responsibility for:
- (a) Ensuring that they do not, by the consumption of alcohol and other drugs, endanger their own safety or the safety of any other person in the workplace or a member of the public,
 - (b) Attending and resuming work not under the influence of alcohol or other drugs,
 - (c) Notifying their manager or supervisor if they are aware that their work performance or conduct could be adversely affected or if there is a risk to the safety of themselves or other persons as a result of a prescribed or non-prescribed drug,
 - (d) Consulting with their manager, supervisor, union or occupational health and safety representative if they are concerned about other railway employees because of a perceived safety risk,
 - (e) Following the operator's directives and rules applicable to alcohol and drugs in the workplace and also in respect of rehabilitation programs endorsed by the operator.

7.0 ELEMENTS OF AN ALCOHOL AND OTHER DRUG PROGRAM

As a minimum, the program shall consist of the following elements:

An alcohol and other drug policy

- 7.1 A policy that outlines the operator's aims in relation to alcohol and other drug use with the objectives linked to the reduction of hazards and risks associated with alcohol and other drug use. The policy may also detail the 'supporting measures' including strategies and action plans to meet the objectives.

'Supporting measures'

- 7.2 The 'supporting measures' for an alcohol and other drugs program shall include information and procedures on the:
- (a) Measures to reduce alcohol and other drug related problems in the workplace through proper personnel management, good employment practices, improved working conditions and the proper arrangement of work,
 - (b) Measures to prohibit or restrict the availability of alcohol and other drugs in the workplace,
 - (c) Prevention of alcohol and other drug related problems in the workplace through information, education, training and other means. Guideline 6.1 contains some matters that the program should include,
 - (d) Identification, assessment and referral of those who have alcohol or other drug related problems,
 - (e) Measures relating to intervention and the treatment and rehabilitation of individuals with alcohol or other drug related problems,
 - (f) Rules governing conduct in the workplace relating to alcohol and other drugs, the violation of which could result in the invoking of disciplinary and or criminal proceedings.

Alcohol and other drug testing

- 7.3 An operator shall satisfy itself that it has adequate arrangements in place for the testing of the railway employees under its control.
- 7.4 The pro-active management of risk may involve the targeted or random testing of railway employees. Whenever targeted or random testing is implemented, the operator's program shall require that:
- (a) Targeted testing be conducted in a manner that maximises its effectiveness as a control for the risks posed by the consumption of alcohol or drugs,
 - (b) Random testing be conducted in a manner that maximises its effectiveness as a control for the risks posed by the consumption of alcohol or drugs. Measures to achieve this end may include,
 - (i) The conduct of random tests on a pre and post sign-on basis for all persons engaged in railway safety work without the giving of prior notification for such testing,
 - (ii) The conduct of random tests according to the provisions of the Rail Safety (Drug and Alcohol Testing) Regulation 2003 or the provisions of a registered industrial agreement,
 - (iii) Administering of random urine tests according to AS/NZS4308:2001: Procedures for the collection, detection and quantitation of drugs of abuse in urine. The Australian Standard sets out the procedures for the sample collection and detection and quantitation of drugs of abuse in human urine. The method may be used for workplace detection of any or all of the following classes of drugs: opiates, sympathomimetic amines, cannabis metabolites, cocaine metabolites or benzodiazepines,
 - (c) Periodic assessments by an operator of the effectiveness of its drug and alcohol testing according to accepted risk management principles.

Disciplinary action, fair procedures, education and assistance

- 7.5 An alcohol and other drug program must clearly set out the:
- (a) Sanctions applicable in the event of breaches of its requirements. This would include sanctions consequent upon a first breach of the program or where a railway employee refuses or fails to fully comply with the terms of a rehabilitation program agreed with the operator,
 - (b) Rules governing the application of the sanctions, including grievance resolution and appeal mechanisms,
 - (c) Protocols for fair procedures agreed with railway employees and their representatives,
 - (d) Education and assistance available to a railway employee who self identifies as someone whose consumption of alcohol or other drugs could impair his or her ability to safely undertake railway safety work,
 - (e) Protocols for fair procedures, education and assistance available to a railway employee who tests positive for the presence of a drug where:
 - (i) The drug has been prescribed by a medical practitioner for the person or purchased by the person in respect of an identified medical condition, and

- (ii) The person has taken the medication according to the instructions of the medical practitioner or the instructions given on the label of the medication, and
- (iii) The person taking the medication gave full and timely warning to his or her supervisor of this, and
- (iv) The person was rostered for duty when testing took place.

8.0 TRANSITIONAL ARRANGEMENTS

- 8.1 Where full and immediate compliance with the duty imposed by these Guidelines by 29 August 2003 is impossible because of real resource constraints, an operator may nominate performance milestones it must achieve over time and request the Director General's endorsement of such an arrangement. The operator is taken to have complied with the duty imposed by these Guidelines if it complies with the endorsed performance milestones.

9.0 SOURCES OF INFORMATION ON DRUG AND ALCOHOL MANAGEMENT

- 9.1 There are a number of sources (and Internet sites) from which information on fatigue management practice and research can be obtained. These include:

United Nations

- ☞ The International Labour Organisation offers extensive resources designed to assist governments, employers and employees in the management of workplace fatigue. Reference should be made to the 1995 Code of Practice entitled, 'Management of Alcohol and Drug Related Issues in the Workplace':

www.ilo.org

National Governments

The following publish a wide range of investigation, policy and research papers in the area of fatigue management:

- ☞ Australian Transport Safety Bureau:
www.atsb.gov.au
- ☞ National Transport Commission (formerly the National Road Transport Commission):
www.ntc.gov.au
- ☞ National Transportation Safety Board of the United States:
www.nts.gov
- ☞ National Aeronautics and Space Administration of the United States:
www.nasa.gov
- ☞ Transport Canada:
www.tc.gc.ca

State Governments

- ☞ New South Wales Safety & Reliability Regulator:
www.transportregulator.nsw.gov.au

Peak union organisations

- ☞ The New South Wales Labor Council publishes detailed fact sheets and policies to assist employers and employees in the workplace. These have been developed with the assistance of various NSW Government agencies:

For fact sheets: www.unionsafe.labor.net.au/safety_reps/

For policies: www.unionsafe.labor.net.au/officials/index

Peak industry associations

- ☞ New South Wales Minerals Council:
www.nswmin.com.au
- ☞ Bus & Coach Association:
www.bcansw.com.au
- ☞ Charter Vessels Association:
www.chartervessels.com.au Telephone (02) 9 968 1184

Research bodies

- ☞ Centre for Sleep Research, University of South Australia:
www.unisa.edu.au/sleep/
- ☞ Injury Risk Management Research Centre, University of New South Wales:
www.irmrc.unsw.edu.au
- ☞ Minerals Industry Safety & Health Centre, University of Queensland:
www.mishc.uq.edu.au
- ☞ Sleep Health & Respiratory Support Clinic, Royal Prince Alfred Hospital:
www.rpasleep.org.au or www.sleepsydney.org
- ☞ Karolinska Institutet in Sweden:
www.info.ki.se
- ☞ Institut National de Recherche et de Securite (INRS) in France:
www.inrs.fr
- ☞ Division of Sleep Medicine, University of Pennsylvania:
www.uphs.upenn.edu/sleepctr/divisionofsleep
- ☞ American Academy of Sleep Medicine:
www.aasmnet.org/
- ☞ Human Psychopharmacology Research Unit, University of Surrey, UK:
www.surrey.ac.uk/departments/

GUIDELINES RELATING TO THE MANAGEMENT OF FATIGUE

1.0 INTRODUCTION

Overview

Fatigue has been recognised as a hazard in the transportation industry for many years.

Much research has gone into examining how operators can manage fatigue. A number of factors have been identified as contributors to the condition. But the management of fatigue is not an exact science and the impact of fatigue factors will vary from person to person. The Guidelines have been drafted with this in mind.

Operators fully complying with the OH&S legislation would already be taking steps to manage workplace fatigue, but the Rail Safety Act 2002 ('the Act') imposes additional requirements because of the potential impacts fatigue could have on passengers and members of the public.

Penalties

Section 43 and Schedule 2 of the Act accordingly impose a substantial duty on operators to manage workplace fatigue. Substantial penalties apply for those not complying with the provisions of the Act or the Guidelines, up to \$28,000 for a corporation and \$5,500 for individuals, as well as penalties under an operator's accreditation.

2.0 STATEMENTS OF PRINCIPLE

- 2.1 Operators and railway employees must have a flexible approach in developing and managing programs that will:
- (a) Take ongoing advantage of new developments in research and technology,
 - (b) Consider the needs of railway employees,
 - (c) Consider the needs of operators,
 - (d) Be implemented over a wide range of operating conditions.
- 2.2 Operators have a responsibility to establish and maintain working conditions that allow:
- (a) Railway employees sufficient opportunity to obtain adequate rest between shifts, and
 - (b) Alertness to be sustained throughout their period of duty.
- 2.3 Operators must place a duty on railway employees to report for work rested and fit for duty.

3.0 SCOPE

- 3.1 The Guidelines have force subject to Sections 10, 11 and 43 of the Act and Clause 52 of the Rail Safety (General) Regulation 2003 ('the Regulation').

4.0 APPLICATION

- 4.1 The Guidelines shall apply to all operators accredited under the Act.
- 4.2 For an application for accreditation to satisfy the requirement of section 10 of the Act it must, among other things, include information on the applicant's proposed fatigue management program.
- 4.3 With reference to section 11(4)(d) of the Act, an operator must, in its annual safety report to the Director General, detail its compliance with the requirements of the Act and the Regulation relating to fatigue and the fatigue management program detailed in its accreditation.

- 4.4 The terms used in the Guidelines shall have the same meaning as they have in the Act and any regulation made thereunder.

5.0 FATIGUE MANAGEMENT PROGRAMS

- 5.1 Fatigue management programs should aim to achieve the following:
- (a) Reduce fatigue and improve the on-duty alertness of railway employees, and
 - (b) Reflect the nature of the operations conducted by the operator including operating conditions.
- 5.2 Operators shall ensure that railway employees and their designated representatives are consulted in the development and implementation of fatigue management programs, including the making of changes to such programs.
- 5.3 Fatigue management programs shall consider, but not be limited to, the following:
- (a) The risks associated with the particular form of railway safety work,
 - (b) Railway employee work scheduling practices, including relief arrangements to cover absences,
 - (c) Physiological factors of railway employees,
 - (d) Education and training,
 - (e) On-the-job alertness strategies,
 - (f) Rest environments provided by the employer (eg. sleeping facilities located aboard a locomotive or in a depot),
 - (g) Work environments,
 - (h) Working under unusual, unpredictable or emergency operating conditions,
 - (i) Variations in shift and rest scheduling required by different routes,
 - (j) Scheduling of shift and rest periods.
- 5.4 The systems used to implement an operator's fatigue management program may take account of the principles contained in:
- ## AS/NZS4804: 2001, Occupational health and safety management systems – General guidelines on principles, systems and supporting techniques, as amended from time to time,
 - ## AS/NZS4801: 2001, Occupational health and safety management systems – Specification with guidance for use, as amended from time to time,
 - ## AS/NZS4360: 1999, the Australian Risk Management Standard, as amended from time to time,
 - ## Another equivalent Standard, as amended from time to time.

6.0 REPORTING REQUIREMENTS

- 6.1 An operator shall satisfy itself that employee hours of work are monitored for fatigue on an ongoing basis.
- 6.2 In its internal auditing, an operator shall monitor the implementation of its fatigue management plan using quantitative measures.

7.0 TRANSITIONAL ARRANGEMENTS

- 7.1 Where full and immediate compliance with the duty imposed by these Guidelines by 29 August 2003 is impossible because of real resource constraints, an operator may nominate performance milestones it must achieve over time and request the Director General's endorsement of such an arrangement. The operator is taken to have complied with the duty imposed by these Guidelines if it complies with the endorsed performance milestones.

8.0 ANNEX A - Rail Safety Act 2002 - Schedule 2 Fatigue management

(Section 43 (3) and Schedule 2)

1. Working hours for railway employees driving freight trains

The following conditions of work apply to railway employees who drive freight trains:

- (a) In the case of a two person operation, the maximum shift length to be worked is 12 hours,
- (b) In the case of a one person operation, the maximum shift length to be worked is 9 hours,
- (c) In the case of a one person operation, there is to be a minimum break of not less than 30 minutes taken at some time between the third and fifth hour of each shift,
- (d) There is to be a break of at least 11 continuous hours between each shift worked by a railway employee where the employee ends a shift at the home depot,
- (e) There is to be a break of at least 7 continuous hours between each shift worked by a railway employee where the employee ends a shift away from the home depot and the break is taken away from the home depot,
- (f) A maximum number of 12 shifts is to be worked in any 14-day period.

2. Working hours for railway employees driving single manning passenger trains

- (1) The following conditions of work apply to railway employees who drive passenger trains in a one person operation:
 - (a) The maximum shift length to be worked is 10 hours for the driver of an intercity or interurban train or 9 hours for the driver of a suburban train,
 - (b) There is to be a break of at least 11 continuous hours between each shift worked by a railway employee where the employee ends a shift at the home depot,
 - (c) There is to be a break of at least 7 continuous hours between each shift worked by a railway employee where the employee ends a shift away from the home depot and the break is taken away from the home depot,
 - (d) A maximum number of 12 shifts is to be worked in any 14-day period.
- (2) The conditions of work set out in clauses 1(a) and 1(d)– 1(f) apply to railway employees who drive passenger trains in a two person operation.

3. Emergencies and accidents

The requirements of this Schedule do not apply in the event of:

- (a) an accident or emergency, or
- (b) any urgent circumstances approved by the Director-General,

if the driver or drivers concerned indicate their fitness to work the extended hours.

4. Relationship with State industrial instruments

Except as provided by the regulations, this Schedule prevails over any inconsistent State industrial instrument (whether made before or after the commencement of this clause) to the extent that this Schedule provides for shorter hours of work or additional or longer breaks from work than are provided for by the State industrial instrument.

5. Regulations

The regulations may amend this Schedule (other than this clause) for or with respect to the following matters:

- (a) modifying conditions of work set out in this Schedule,
- (b) prescribing other conditions of work for railway employees for the purposes of fatigue management or regulating safe hours of work and periods between work.

Rail Safety (General) Regulation 2003

Clause 52 Fatigue management

- (1) The following accredited persons are exempt from the condition of accreditation that an accredited person must provide conditions of work in accordance with Schedule 2 to the Act:
 - (a) BHP (Port Kembla),
 - (b) Perisher Blue Pty Ltd,
 - (c) State Rail Authority, but only in relation to New Year's Eve and Special Events,
 - (d) CGEA Transportation Systems.
- (2) An accredited person must not permit or require a railway employee to work in a manner that does not comply with a guideline issued by the Director-General under section 43 of the Rail Safety Act.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—50 penalty units.

8.0 ANNEX B – Further assistance to operators

Hours of work and rest

- 8.1 For the purposes of determining train crew working hours required by Schedule 2 and the Rail Safety (General) Regulation 2003:
 - (a) All the time occupied between the sign-on and sign-off shall be deemed working time,
 - (b) A person resting from working duties may remain on board a train returning to its depot as a travelling home passenger. However, the time spent as a travelling home passenger shall not be counted as a 'break' within the meaning of clause 2 of Schedule 2 of the Act.

9.0 SOURCES OF INFORMATION ON FATIGUE MANAGEMENT

- 9.1 There are a number of sources (and Internet sites) from which information on fatigue management practice and research can be obtained. These include:

United Nations

¶# The International Labour Organisation offers extensive resources designed to assist governments, employers and employees in the management of workplace fatigue:

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The following publish a wide range of investigation, policy and research papers in the area of fatigue management:

☞ Australian Transport Safety Bureau:

www.atsb.gov.au

☞ National Transport Commission (formerly the National Road Transport Commission):

www.ntc.gov.au

☞ National Transportation Safety Board of the United States:

www.ntsb.gov

☞ National Aeronautics and Space Administration of the United States:

www.nasa.gov

☞ Transport Canada:

www.tc.gc.ca

State Governments

☞ New South Wales Safety & Reliability Regulator:

www.transportregulator.nsw.gov.au

Peak union organisations

☞ The New South Wales Labor Council publishes detailed fact sheets and policies to assist employers and employees in the workplace. These have been developed with the assistance of various NSW Government agencies:

For fact sheets: www.unionsafe.labor.net.au/safety_reps/

For policies: www.unionsafe.labor.net.au/officials/index

Peak industry associations

The mining industry has a sophisticated approach to fatigue management and some useful material is located in the following site:

☞ New South Wales Minerals Council:

www.nswmin.com.au

Research bodies

☞ Centre for Sleep Research, University of South Australia:

www.unisa.edu.au/sleep/

☞ Injury Risk Management Research Centre, University of New South Wales:

www.irmrc.unsw.edu.au

- ☞ Minerals Industry Safety & Health Centre, University of Queensland:
www.mishc.uq.edu.au
- ☞ Sleep Health & Respiratory Support Clinic, Royal Prince Alfred Hospital:
www.rpasleep.org.au
www.sleepsydney.org
- ☞ Karolinska Institutet in Sweden:
www.info.ki.se
- ☞ Institut National de Recherche et de Securite (INRS) in France:
www.inrs.fr
- ☞ Division of Sleep Medicine, University of Pennsylvania:
www.uphs.upenn.edu/sleepctr/divisionofsleep
- ☞ American Academy of Sleep Medicine:
www.aasmnet.org/

ISSN 0155-6320

Authorised to be printed
R. J. MILLIGAN, Government Printer.