

COPY



INDEPENDENT  
TRANSPORT  
SAFETY AND  
RELIABILITY  
REGULATOR

**Independent Transport Safety and Rail Regulator**

***Rail Safety Act 2002 (NSW)***

**Prohibition Notice**

To:

Of:

Pursuant to section 54 of the *Rail Safety Act 2002 (NSW)*, this Notice is issued as a result of an investigation into a fatality of a rail safety worker performing shunting operations involving the manual coupling of units of rolling stock using a Transition Type Coupling.

Defined terms

1. For the purposes of this Prohibition Notice, the following terms have the following meanings:

**Activity** means the manual coupling of units of rolling stock by the use of a Transition or Screw Type Coupling by a person standing in the four foot of a railway line between the units of rolling stock while one or both units of rolling stock are moving.

**Transition Type Coupling** means a shackle coupling consisting of a D link secured to an automatic coupling unit by means of a cotter pin with two chain links attached.

**Screw Type Coupling** means a coupling device consisting of two links with an adjustable screw fitted between them.

**Running Rails** means the rails on which the wheels of a railway rolling stock run.

**Rail Safety Regulator** means the Independent Transport Safety and Reliability Regulator.

Details and Conclusions

2. I am a Senior Transport Safety Officer with approximately 40 years experience in various types and grades of rail operations, including over 10 years experience in shunting operations. The shunting operations in which I have been involved have involved both passenger and freight rolling stock equipped with Hook Couplings that required the use of Transition and/or Screw Type Couplings.
3. I am of the opinion that the Activity is occurring, or is about to occur, and the Activity presents an immediate risk to the safety of any persons carrying out the Activity.
4. The reasons for the opinion are as follows:
  - (a) On 15 April 2006 in company with representatives of the New South Wales State Police and an officer from Office of Transport Safety Investigation (OTSI), I viewed a video recording of a shunting operation involving a steam locomotive number 3237 at Ariah Park.
  - (b) Shortly prior to watching the video, I was advised by a representative of the New South Wales State Police that the video recording had been taken by a member of the public and captured the events leading to the fatality of a rail safety worker that occurred in the morning on 15 April 2006.
  - (c) In company with representatives of the New South Wales State Police and OTSI, I observed the following events as captured on the video tape:
    - i. The passenger vehicle on the train (FS 2133) was not fitted with buffers, which are metal objects attached to each end of some units of heritage rolling stock to prevent excessive movement between passenger vehicles while the rolling stock is being operated.
    - ii. The locomotive 3237 involved in the incident was observed on the running lines some distance from the train moving back towards the stationary train.
    - iii. I observed on the video that a person wearing a safety vest was riding on the first step of the tender ladder of the locomotive and moving one of his arms.
    - iv. From my experience, I understood the hand signal used by the person to be part of a shunting operation that was intended to result in the coupling of the locomotive and the stationary train.
    - v. The person then held his arm still in the air which, from my experience I understood to indicate to the driver that that locomotive should be stopped, and the locomotive stopped.
    - vi. The person then alighted from the locomotive and walked towards the stationary train. As he did so, he used his hands to indicate to the driver of the locomotive to move the locomotive back towards the train.
    - vii. Whilst the locomotive was moving towards the train, the person stepped into the area between the two running rails of the rail line between the moving locomotive and the stationary train.

- viii. The person then stood in the four foot with his back to the camera in a semi-crouched position. I observed that his right shoulder against the diaphragm of the train whilst he was standing in that position.
- ix. The locomotive continued to move towards the stationary carriage and the person, who had remained standing as the locomotive moved towards the train, was crushed between the buffer beam of the locomotive and the diaphragm of the stationary carriage.
- x. The video ended as the locomotive appeared to strike the person.
- (d) After viewing the video, I returned to the accident site in company of an OTSI officer and conducted a preliminary investigation of the incident recorded on the video.
- (e) Around 1800 hours whilst I was travelling to the scene of the fatality I was informed by an officer of OTSI that the New South Wales Police had declared the area a crime scene.
- (f) I also observed that the rolling stock that I had seen in the video remained on the running lines at the crime scene.
- (g) As the passenger vehicle on the train (FS 2133) was not fitted with buffers, I had the locomotive positioned in such a position that if the train had been fitted with buffers, the buffers on the locomotive and the train would have been touching.
- (h) Whilst no rolling stock was moving, I stood in the four foot between the locomotive and the train holding the transition coupling link involved in the incident in both hands so as to emulate the stance and position of the deceased prior to the collision, as I had observed on the video referred to above.
- (i) I observed that whilst I was in this position my left shoulder was touching the locomotive and my right shoulder was touching the train.
- (j) Based on the size of the coupling and the position of the locomotive and the train, I am of the opinion that the locomotive would be required to move towards the train at least another 200mm to allow the coupling to occur.
- (k) I also observed that a person standing in this position between the locomotive and the train would have no place to go to avoid injury should the locomotive impact with the train in the course of moving backwards in order to allow the manual coupling to occur.
- (l) Therefore, based on my experience in both the rail industry (especially my experience in shunting), my observations of the video of the fatality on 15 April 2006 and the preliminary investigations undertaken by myself of the crime scene in company with the OTSI Officer on 15 April 2006 (including the rolling stock involved in the fatality), I am of the opinion that this Activity is occurring or is about to occur and the Activity presents an immediate risk of serious injury to any persons carrying out this Activity.
- (m) Based upon my observations made on 15 April 2006 and my experience in shunting operations (which included the use of Screw Type Coupling), I am also of the opinion that any person who uses a Screw Type Coupling or a Transition Type Coupling in undertaking or attempting to undertake the Activity would be exposed to an immediate risk of serious injury.

#### Directions

4. Pursuant to section 54 of the *Rail Safety Act 2002*, you are required to immediately cease the Activity and/or permitting employees, contractors or other persons in your control to perform the Activity or attempting to perform the Activity.

- 5. You are directed to take all necessary measures to ensure that rail safety workers and other persons are immediately prohibited from performing or attempting to perform the Activity.

Date of effect

- 6. This Notice takes immediate effect from the date and time of its execution. This Notice remains in force unless or until your organisation applies for and is granted by the Rail Safety Regulator a variation of accreditation under the Rail Safety Act 2002 (NSW) to include a comprehensive risk assessment and the methodology by which persons undertaking or attempting to undertake the Activity will be protected.

Review Rights

- 7. The Rail Safety Act 2002 (NSW) contains provisions for persons given notice under Division 2 of Part 3 to apply for a review. These provisions are summarised overleaf.
- 8. Enquiries in relation to this notice may be directed to the issuing officer on (02) 8263 7102.

Issued this ... 20<sup>th</sup> ... day of April 2006 at ... 15<sup>00</sup> ... hours

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**Robert McCallum**  
Authorised Officer,  
Independent Transport Safety and Reliability Regulator

**Note: This information forms part of the Prohibition Notice**

**What happens if you do not comply with a notice?**

Under section 54(3) of the *Rail Safety Act 2002* (NSW), a person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence. The maximum penalty for this offence is:

- (a) in the case of a corporation (being a previous offender), 1,500 penalty units;
- (b) in the case of a corporation (not being a previous offender), 1,000 penalty units;
- (c) in the case of an individual not acting in the capacity of an employee (being a previous offender), 750 penalty units;
- (d) in the case of an individual not acting in the capacity of an employee (not being a previous offender), 500 penalty units;
- (e) in the case of an individual acting in the capacity of an employee (being a previous offender), 45 penalty units;
- (f) in the case of an individual acting in the capacity of an employee (not being a previous offender), 30 penalty units.

**What to do if there is a mistake in the notice**

If the notice is addressed to the wrong person or contains incorrect information relating to the address or other details, you should contact the officer who issued you with the notice. His or her name and telephone number are on the notice.

**What to do if you cannot comply with the notice**

Prohibition notices are issued where there is occurring or about to occur any activity which involves or will involve an immediate risk to the health or safety of any person. The activity must cease until the matters giving rise to the risk are remedied.

**What to do if you do not understand the notice or want to discuss it**

If there is any matter which is unclear or which you do not understand about this notice, or if you want to discuss it, you should first contact the officer who issued you with the notice.

**Review Rights**

Section 56 of the *Rail Safety Act 2002* (NSW) provides that a person who is issued with a prohibition notice may apply to ITSRR for a formal review of the notice.

If you wish to apply to ITSRR for a review of the notice, you must make your application within 7 days after the notice was issued. An application for review may only be made once in respect of any particular notice. This application must:

- Be in writing
- Include a copy of the notice for which review is being sought
- Set out clearly the reasons why the review is sought
- Be sent to the A/Director, Rail Audit and Accreditation - Mr Kevin Kitchen (contact: (02) 8263 7152)
- Contain your name and address
- Contain your telephone number

If you have been issued with a prohibition notice you must cease the activity until the matters giving rise to the notice are remedied. If you apply for review of a prohibition notice you must continue to comply with the notice until it has been reviewed by ITSRR. If you want the prohibition notice to be stayed while the ITSRR review is taking place you will need to apply to the Administrative Decisions Tribunal for a stay of the notice under Section 57 of the *Rail Safety Act 2002* (NSW).

ITSRR may, as a result of the review, confirm the original notice, vary it or revoke it. The confirmation, variation or revocation has effect when notice of the result of the review is given to you. In some cases the result may be given verbally to you by ITSRR and then later notified in writing. In such cases if the notice is confirmed or varied you must comply with the notice or variation as soon as ITSRR verbally gives you that information.

If you are not satisfied with the result of your review you may appeal against the notice concerned to the Administrative Decisions Tribunal.