

General Safety Duties under the RSNL – ‘Upstream’ Duty Holders

August 2024

General safety duties

The *Rail Safety National Law* (RSNL) is embedded with principles of shared responsibility across a number of different entities, including rail transport operators, rail safety workers, other persons such as designers, manufacturers and suppliers, the Office of the National Rail Safety Regulator (ONRSR), the Regulator and the general public.

You do not have to be accredited under the RSNL to have general safety duties. The level and nature of the responsibility depends on the nature of the risk, and the capacity to control, eliminate or mitigate those risks.

Types of safety duties under the RSNL

There are two types of safety duties under the RSNL:

- (a) those imposed on rail transport operators who are accredited or registered under the RSNL, and rail safety workers who work for or on behalf of those operators. These are set out in sections 52 and 56 of the RSNL respectively; and
- (b) those imposed on ‘upstream’ duty holders such as people who design, commission, manufacture, supply, install or erect any ‘thing’ that is used as or in connection with rail infrastructure or rolling stock, and people who load and unload freight on or from rolling stock. These are set out in sections 53 and 54 of the RSNL respectively.

‘Upstream’ duty holders

‘Upstream’ duty holders generally do not require accreditation for the activities they undertake. However, they still have a duty to ensure they undertake their activities safely and in a way that does not affect the safety of railway operations, themselves or others.

These duty holders are phrased as ‘upstream’ because there is greater scope to remove foreseeable hazards at the start of the project life cycle, and ensure that the thing is safe and does not create risks to safety that are more difficult to remove or reduce later on by the ‘downstream’ duty holders.

While the RSNL does not have any reach outside of Australia, any person who imports equipment to be used in connection with rail infrastructure or rolling stock is responsible for ensuring the safety of that equipment. This would involve ensuring that the equipment is designed and manufactured to meet relevant safety standards.

These ‘upstream’ duties reflect obligations in the *Model Work Health and Safety Act*.

Oversight of these activities is a focus for ONRSR, especially in relation to major rail projects.

ONRSR’s role in general safety duties

ONRSR’s oversight in relation to general safety duties with organisations not accredited under the RSNL does not extend to inspections or powers of entry to obtain information or documents from these duty holders, but the law does provide the Regulator with the ability to compel information or documents where required.

What happens if I don’t comply with a duty?

Failure to discharge any safety duty under the RSNL can result in a category 1, 2 or 3 safety duty breach. These carry penalties from \$50,000 for an individual and \$500,000 for a body corporate for a category 3, to a maximum of \$300,000 or imprisonment for five years or both for an individual, or \$3,000,000 for a body corporate for a category 1.

Further information

Further information is available from the ONRSR website: www.onrsr.com.au