

Introduction

The National Rail Safety Regulator (the Regulator) or rail safety officers will sometimes require a person, including rail safety workers, to provide documents, information or evidence regarding rail safety as part of administering or enforcing the *Rail Safety National Law* (RSNL),

The RSNL provides the Regulator, or a delegated rail safety officer exercising the Regulator's powers, with the ability to obtain information from persons in respect of rail safety by serving a written **Notice to Give Information** under s20 of the RSNL on a person (also known as a **s20 Notice**).

A rail safety officer that is on a railway premises may also require a person to provide a document or answer questions under s154 of the RSNL.

Power of the Regulator to obtain information by s20 Notice

A s20 Notice issued to a person, who can be a rail safety worker or a body corporate (railway organisation), will explain what information is needed and when, where and how the information must be provided.

The person then has a responsibility to provide the information as set out in the s20 Notice, unless the person has a reasonable excuse for not being able to comply.

Why can a s20 Notice be issued?

The Regulator, or a delegated rail safety officer, can issue a s20 Notice to obtain information if there are reasonable grounds to believe that a person is capable of:

- > giving information; or
- > providing documents; or
- > giving evidence;

in relation to a possible contravention of the RSNL or that will assist to monitor or enforce compliance with the RSNL.

What the Regulator may require

A s20 Notice served on a person can require the person to do one or more of the following on a day and at a time and place that is either specified in the notice or is reasonable in the circumstances:

- > give the Regulator information of which the person has knowledge, in writing and signed by the person;
- > produce to the Regulator documents, in accordance with the notice;
- > appear before a person appointed by the Regulator and give evidence, either orally or in writing and / or produce documents.

Note: Where a s20 Notice is issued to a body corporate, the information provided that must be signed is to be signed by a competent officer of the body corporate.

What the s20 Notice must state/contain

In addition to setting out the information and/or documents needed and the manner that this should be provided, a s20 Notice must also explain that:

- > the requirements of the notice are made under s20 of the RSNL;
- > not complying with the notice is an offence; and
- > if a person is required to provide information or documents or answer questions, that s155 of the RSNL, *Abrogation of privilege against self-incrimination*, and s245, *Law does not affect legal professional privilege*, apply and that the person may attend with a legal practitioner.

Penalties for breaching a s20 Notice

A person must not, without reasonable excuse, fail to comply with a s20 Notice. Maximum penalty for non-compliance is:

- > for an individual \$10,000;
- > for a body corporate \$50,000.

The evidential burden to show a reasonable excuse is on the person that is the subject of the notice.

Abrogation of privilege against self-incrimination (s155)

Section 155 of the RSNL states that a person that is the subject of a s20 Notice is not excused from answering a question or providing information or a document on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

However, the answer to a question or information or a document that is provided by the person (as an individual) is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

It is an offence under s226 of the RSNL to give false or misleading information when required to give information to comply with the RSNL.

Legal professional privilege (s245)

Legal professional privilege protects confidentiality of communications between lawyers and their clients in the course of legal proceedings or anticipated legal proceedings.

Nothing in the RSNL requires a person to produce a document that would disclose information, or otherwise provide information, that is the subject of legal professional privilege.

If a person is concerned that information may be protected by legal professional privilege, it would be advisable to check with their legal representative in the first instance.

Rail safety officer requiring information

A rail safety officer that is on railway premises may issue a s20 Notice or use powers under s154 of the RSNL to require a person to answer a question or provide a document.

Under s154, a person may be required to:

- > tell an officer who has access to a document;
- > produce a document to the officer while on premises or within a specified period; or
- > answer the officer's questions.

Where the rail safety officer gives a direction under s154 of the RSNL, the officer is required to do the following **before** requiring a person to answer a question or provide information or a document:

- > identify themselves as a rail safety officer by producing the officer's identify card or in some other way;
- > warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence; and
- > warn the person about the effect of s155 and s245 of the RSNL.

A person must not, without reasonable excuse, fail to comply with a s154 requirement

It is not an offence for an individual to refuse to answer a question put by a rail safety officer, provide information, or provide a document(s) to a rail safety officer on the ground that the question, information or document might tend to incriminate the person unless the individual was first given the warning.

Nothing in the RSNL prevents a rail safety officer from obtaining and using evidence given to the officer voluntarily by any person.

Further information

Contact ONRSR via contact@onrsr.com.au or phone (08) 8406 1500.