

**Workers contracted under labour hire arrangements who undertake rail safety work have duties under the *Rail Safety National Law* (RSNL). This includes those working on major rail construction projects.**

**Labour hire companies also have duties to these workers under Work Health and Safety (WHS) laws.**

#### General safety duties under the RSNL

Duty holders under the RSNL are required to eliminate risks to safety so far as is reasonably practicable (SFAIRP) and if it is not reasonably practicable to eliminate risks to safety, to minimise those risks SFAIRP. Safety duties apply to:

- > rail transport operators (RTOs), who must ensure, SFAIRP, the safety of the RTO's railway operations
- > rail safety workers (RSWs), who must take reasonable care for their own safety, that of others and comply with any reasonable instruction
- > 'upstream' duty holders e.g. people who design, commission, manufacture, supply, install or erect any 'thing' used with rail infrastructure or rolling stock. These persons must ensure the 'thing' is safe and fit for purpose.

#### Safety management systems (SMS)

It is a legislative requirement of accreditation for RTOs to implement and comply with their SMS.

The matters that must be addressed in an SMS are set out in Schedule 1 of the RSNL National Regulations. The requirements cover a suite of elements crucial for all persons undertaking rail safety work such as health and fitness, fatigue and drug and alcohol management requirements.

#### What duties do labour hire companies have?

Under the RSNL, RTOs have the primary safety duty with respect to any contractors engaged in rail safety work under their accreditation. RSWs are also responsible for their own actions. This includes RSWs engaged as labour hire workers. Contractors must ensure they meet the RTO's Drug and Alcohol Management Program requirements, including that RSWs are not impaired by drugs, alcohol or fatigue while on duty.

In addition, under the RSNL (Victoria), labour hire companies must, SFAIRP, ensure that RSWs they employ or engage are competent to carry out railway operations.

Nationally, labour hire companies are required to comply with duties under WHS legislation. Both the labour hire company and the RTO must fulfil their WHS obligations towards workers SFAIRP.

#### What duties do labour hire workers have?

Labour hire workers for the purposes of the RSNL are treated as RSWs when performing rail safety work as defined in section 8 of the RSNL. An RSW is any individual (whether employee or contractor) who has carried out, is carrying out, or is about to carry out, rail safety work (see section 4 of the RSNL).

Rail safety is a shared responsibility and section 56 prescribes the particular duties to be fulfilled by RSWs relative to the capacity they may have to control, eliminate, or mitigate risks.

Duties of RSWs include that they must take reasonable care, comply with reasonable instructions and not engage in intentional, wilful or reckless behaviour. These duties cannot be transferred.

RSWs must also comply with the RTO's SMS and the RSNL in relation to not undertaking rail safety work with any alcohol or prescribed drugs in their system, under the influence of a drug, not being fatigued, and being compliant with a RTO's health and fitness management program.

#### **Can a rail transport operator contract out their general safety duty?**

No. Section 262 of the RSNL prohibits the contracting out of legal obligations under the RSNL. This means that a RTO cannot transfer any duty under the RSNL to a labour hire company through any contractual agreements or otherwise.

Conversely, a labour hire company also may not contract out any duties under WHS legislation to a RTO.

#### **Further information**

Further information is available from ONRSR's website.