

# ONRSR Guideline

Loaders and Unloaders of Freight



Document control	
Objective ID:	A335917
Version number:	1.2
Approved by:	Chief Executive
Date approved:	15 November 2018

Policy changes to 1.2

> Copyright information update

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## 1 Purpose

The purpose of this document is to provide guidance on the requirements of the RSNL with regard to loaders and unloaders of freight on or from rolling stock.

## 2 Background

The Office of the National Rail Safety Regulator (ONRSR) has been established under the Rail Safety National Law (RSNL) to administer a national system of rail safety regulation.

While loaders and unloaders of freight on or from rolling stock are not required to hold accreditation (unless they are otherwise a rail transport operator), the RSNL imposes obligations in the form of general duties on these persons. Loading and unloading operations (including poorly loaded freight) can pose significant safety risks – including the risk of death or serious injury. These risks may be to the persons who carry out the task of loading or unloading or to other users of the railway or rolling stock.

There are significant penalties that may include both fines and imprisonment for persons who fail to comply with a general duty.

This guideline should be read in conjunction with the ONRSR Guideline: Meaning of duty to ensure safety so far as is reasonably practicable.

## 3 Definitions

Definitions provided by the Rail Safety National Law (RSNL) and the National Regulations apply within this guideline

- > **RSNL** – means the Rail Safety National Law which has been enacted as a Schedule to the Rail Safety National Law (South Australia) Act 2012 (SA) as it applies in each state and territory. In Western Australia, RSNL means the law which has been enacted as mirror legislation in the Rail Safety National Law (WA) Act 2015.
- > **National Regulations** – means the Rail Safety National Law National Regulations 2012; or the Rail Safety National Law (WA) Regulations 2015 in Western Australia.

Where terms are not defined within the legislation, the Macquarie Dictionary definition applies.

Use of the word 'should' indicates a recommendation of ONRSR, however, persons are free to follow a different course of action provided that it complies with the legislation. Use of the word 'must' indicates a legal requirement where compliance is necessary.

## 4 Duties of persons loading or unloading freight

Section 54 of the RSNL states:

'A person who loads or unloads freight on or from rolling stock in relation to the transport of the freight by railway must ensure, so far as is reasonably practicable, that the loading or unloading is carried out safely and so as to ensure the safe operation of the rolling stock.'

The duty applies to any person who loads or unloads freight, including the actual people who load or unload the freight.

There are two principal issues that should be considered in relation to this requirement.

**The first issue is that the loading or unloading operations are conducted safely** – that no person is put at risk throughout the loading or unloading operation. This could include (as an example only) ensuring that the loading area is secure AND that no unauthorised person is able to enter the loading area, thereby putting themselves at risk.

**The second issue is the safe operation of the rolling stock** - this includes such factors as ensuring that maximum axle weight limits are not exceeded, or that the load does not protrude outside the rolling stock outline in such a manner that it causes a risk of hitting trackside obstacles, or ensuring the load is even (see example below).

### **Example: Operation of less than safely loaded wagons**

In recent times there have been an increase in reported cases where loads have either moved during transit or have been dislodged and fallen from its original secured position.

Operators report that loads have moved due to the load not being secured correctly before its left the depot. In most cases the operator has been found to have sufficient procedures to securing loads, but have not been complied with at the point of securing the load. This has resulted in loads shifting by the time it has reached its final destination.

In extreme cases, loads have actually fallen from its wagons which has resulted in increased risks to safety and damage to both rolling stock and infrastructure.

Incidents relating to “less than safely loaded vehicles entering service undetected post loading” within the train consist can seriously threaten safety.

Where the empty or lightly loaded wagon had been sandwiched between two fully loaded wagons resulting in in-train longitudinal forces either lifting the wagon off its bogie(s), lifting the wagon and bogie(s) off the rail or, the precursor, the forces create a diminished wheel loading on wheelsets of the affected wagon, heightening the risk of derailment.

Two of the incidents resulted in derailments. In one incident, one bogie dislodged from the centre casting then rotated under the vehicle with a combined resultant displacement to foul the adjacent track. With the second incident, the bogie was ejected from under the vehicle and came to rest in the six foot. Fortunately, the bogie ejected within the unloading facility (i.e. at the intended destination) and not on the mainline, although it still posed a serious threat.

If the actual load in each wagon had been ascertained at the loading points prior to the consist entering the network, these incidents may have been avoided.

In this example, the coal loading operators have a duty to load coal into the wagons of a coal train to a safe level, as part of a duty to ensure, so far as is reasonably practicable, the safety of the railway operations.

## **5 Duty of officers to exercise due diligence**

The second duty imposed under the RSNL (refer to s55) of relevance to loaders and unloaders is the duty of officers to exercise due diligence to ensure that the organisation, person or company complies with their duties under the RSNL.

The RSNL defines an officer as:

### **Officer -**

- (a) in relation to a body corporate, has the same meaning as officer has in relation to a corporation under s9 of the Corporations Act 2001 of the Commonwealth;
- (b) in relation to any other person, means an individual who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the person;

The RSNL defines due diligence (in relation to this section) as:

**Due diligence** includes taking reasonable steps -

- (a) to acquire and keep up-to-date knowledge of rail safety matters; and
- (b) to gain an understanding of the nature of the railway operations of the person and, generally, of the risks associated with those operations; and
- (c) to ensure that the person has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to safety from the railway operations of the person; and
- (d) to ensure that the person has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information; and
- (e) to ensure that the person has, and implements, processes for complying with any duty or obligation of the person under this Law; and
- (f) to verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

The duty of officers to exercise due diligence is also a concept used in work health and safety laws and additional guidance on the meaning of the term is available from Safe Work Australia.

## 6 Further duties may apply

A person or company undertaking loading or unloading operations may also have to comply with other duties under the RSNL, if that person also fits into another class or classes of duty holder; for example by also being a rolling stock operator (also refer to section 50 of the RSNL on the principles of shared responsibilities).

## 7 Penalties for breaching duties

There are three categories of offences for breaching duties under the RSNL and fines may apply to individuals and bodies corporate. Imprisonment may apply in serious cases that include reckless conduct.

The maximum penalties are:

- > Category 1 (reckless conduct, with risk of death or serious injury)
  - Individual - \$300,000 or 5 years imprisonment
  - Body corporate - \$3,000,000
- > Category 2 (risk of death or serious injury)
  - Individual - \$150,000
  - Body corporate - \$1,500,000
- > Category 3 (failure to comply with duty)
  - Individual - \$50,000
  - Body Corporate - \$500,000

## 8 Acknowledgements

The National Rail Safety Regulator acknowledges the assistance of the National Transport Commission, industry and members of the Safety Management Systems Advisory Committee in the preparation of this document.