

Limited compulsory access under the RSNL to recordings following a 'notifiable occurrence' for:

- > ONRSR for an investigation
- > ATSB for an investigation
- > Police and/or Coroner as part of an investigation
- > Operators when directed by ONRSR in accordance with s122 of the RSNL, to undertake an investigation. The period of time for which footage is able to be reviewed by the operator will be stipulated by the Regulator as part of the direction.
- > These four compulsory access types are not access to live feeds.
- > Where footage is to be accessed by the rail transport operator following a 'notifiable occurrence' the employee(s) included in the footage must be notified in writing as soon as practicable and prior to access.

Consultation requirements

- > The operator must consult, no less than two months prior to the in-cab audio and video recording devices becoming operational, with the persons likely to be exposed to the in-cab cameras, health and safety representatives and unions representing any of the persons likely to be exposed to the in-cab cameras.

Legislative protections limiting the use of train safety recordings

- > Recording means a process for storing the train safety recording using electronic equipment so that they can be heard or seen later. This is not currently defined under the RSNL however it is intended to do so under the legislative changes if this policy is approved.
- > Audio and video recordings are train safety recordings and are subject to restrictions currently in s131 of the RSNL and regulation 26. These protections include:
 - A person must not publish or communicate to any person a train safety recording or any part of a train safety recording; or any information obtained from a train safety recording or any part of a train safety recording – s131 RSNL except in criminal or inquest proceedings or following an order from the court.
- > A train safety recording CANNOT be disclosed in accordance with an Enterprise Agreement or any other kind of agreement with staff, as the Fair Work Act does not have coverage to permit such things.
- > An amendment to regulation 26 is proposed whereby the recordings are only able to be disclosed for rail safety purposes and therefore can only be disclosed to persons who are responsible for rail safety which tightens and clarifies the current provision.
- > An operator is permitted to disclose a train safety recording (regulation 26) ONLY for the following purposes:
 - the analysis or monitoring of railway operations for rail safety matters.
 - the auditing of compliance by rail safety workers with any systems, procedures, instructions, orders, notices or undertakings relating to safely carrying out of railway operations.

- > If recordings are used for the purposes of an ATSB investigation they will be classified as an on-board recording (OBR) and managed in accordance with the Transport Safety Investigation Act 2003 (TSI Act), which means they cannot be used:
 - for proceedings against the individual – even for criminal proceedings
 - as a ground for any disciplinary action
 - for civil proceedings unless a court order is made.

Handling

- > Rail transport operators will be required to have systems in place to:
 - Notify employees that cameras are in operation including signage on the cab's door
 - Advise employees of the purpose for which the surveillance is conducted
 - Restrict access to and misuse of the recordings
 - Keep full records of who accesses the recordings and for what purpose
- > Recordings must be deleted after 21 days if access has not been required unless other arrangements are agreed in writing with the worker(s) involved.

FOI

- > If an operator is required to provide a recording to ONRSR under the RSNL as part of a s120 notice following an incident, such recordings are protected under FOI legislation and are not able to be disclosed.

Access constraints for testing

- > When an operator tests the in-cab recording system to ensure its functionality, this must occur:
 - By accessing a recording from a period during scheduled maintenance when the train is not in operation, or
 - If an issue is identified with functionality, and testing is required more urgently than at scheduled maintenance, then that testing may occur, provided:
 - all employees that will be included in the recording are to be notified of the testing prior to the recording occurring, and
 - the recording is from a time when the train is not in operation.
 - An operator may not use the recordings obtained during testing for other purposes than to test the system functionality (including workplace disciplinary purposes.)

Penalties: There will be penalties for tampering and for failing to comply with these provisions.

Accessing live feeds from the cameras

- > Live feeds through the mandated cameras in the drivers cab when a rail safety worker is in the cab is not permitted unless the rail safety worker has been notified prior to the access or in an emergency situation when there are concerns about the safety and wellbeing of the rail safety worker.
- > Workplace surveillance legislation applies in these circumstances.