Contractor Management – National Priority

ONRSR

October/November 2022

Agenda

> Overview – Contractor Management

> Rail Transport Operator (RTO) and Contractor

   Feedback – what we found

> Compliance Discussion

> Next Steps – Phase 4 (regulatory activities)

> Questions / Discussion

ONRSR National Priorities

> What is a National Priority?
A rail safety area of regulatory focus that applies to multiple jurisdictions and operators and warrants a sustained period of regulatory activity.

> Where do National Priorities fit? How do ONRSR regulate?

> The ONRSR Way

> ONRSR's continuous improvement agenda

> What are they?

> Rail Safety Worker Competence

> Altered Working Arrangements

> Safety Critical Communications

> Level Crossing Safety – Regional

> Contractor Management (Renewed)

> ONRSR website link - ONRSR National Priorities

Contractor Management – How we got here

> Why Contractor Management is a national priority

> > Identified through increased trending and occurrences

> Process

> > A structured approach to determine a national priority

> > Significant analysis and input from senior managers and subject matter experts

> > Evidence based

Contractor Management – How we got here cont.…

> Incidents involving failures to manage contractors

> **Example 1**
A passenger train travelled through a busy level crossing – the crossing failed to activate as the train travelled through the crossing. The works had been contracted out to a third party (accredited, however not working under their accreditation), who sub-contracted the works to a fourth party (again, accredited however not working under their accreditation). Issue of "effective management and control".

> **Example 2**
A contractor's hi-rail excavator was parked on-track where track work was being undertaken. The hi-rail excavator began to rollaway unassisted. A Protection Officer witnessed the hi-rail excavator rolling away and immediately evacuated a nearby workgroup. An investigation into the incident identified the hi-rail excavator's braking system was not maintained to the required standard – this was not identified by the RIM as an approval sticker had been left on the hi-rail from another project.

Contractor Management – The story so far

> **Phase 1 (*Contractor Information*):**

During 2020, ONRSR approached RTOs for information regarding the contractors they engage with. In total, 1,832 unique contractors were identified.

> **Phase 2 (*Contractor Engagement*):**

During 2021, ONRSR engaged with 81 contractors identified as having the most reach in industry. The discussions were positive, with a desire to discuss safety issues/themes in industry. Responses were analysed for common safety concerns.
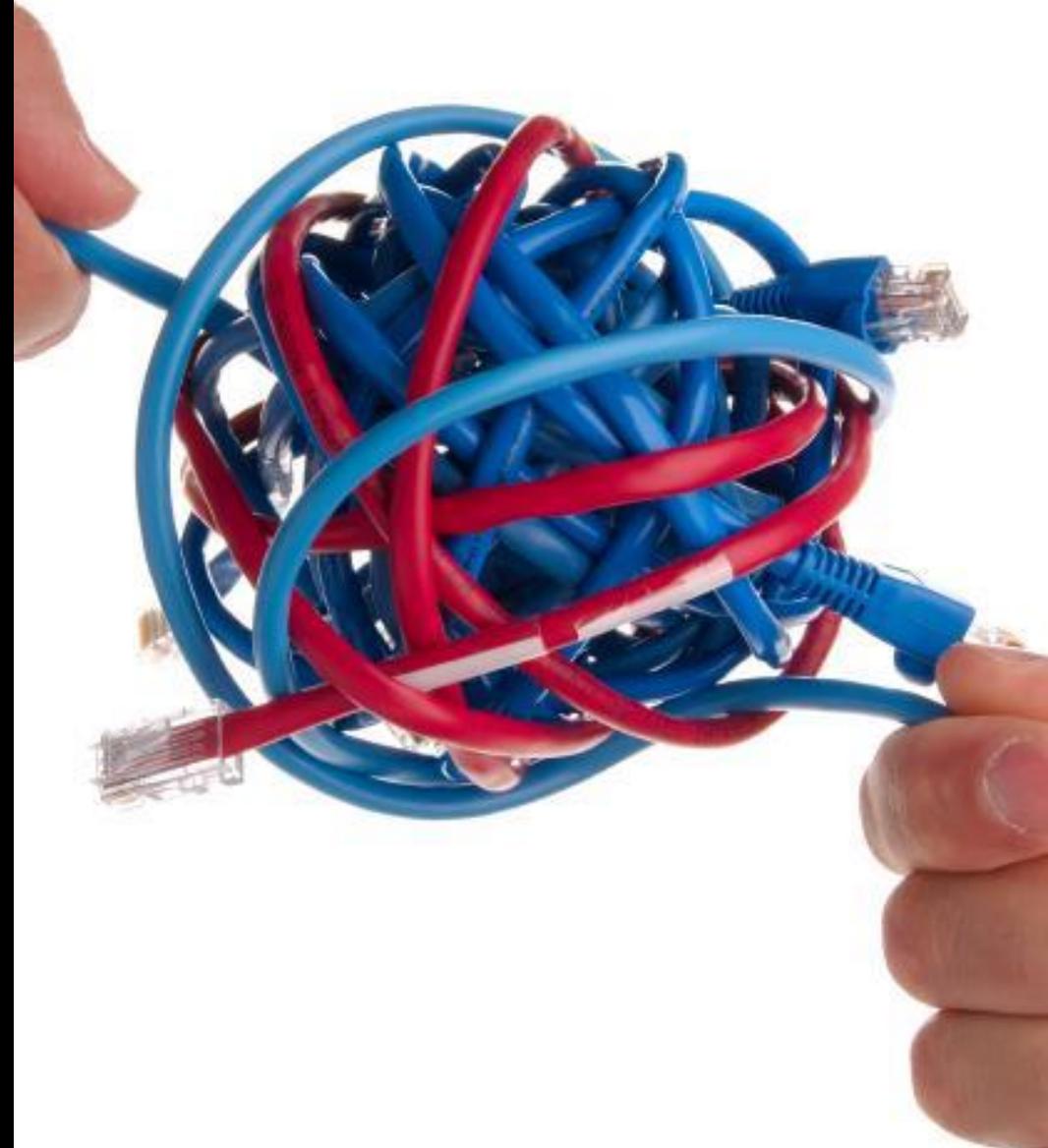
> **Phase 3 (*Education*):**

Education material regarding the issues identified has been developed, which includes compliance strategies for discussion with selected RTOs.
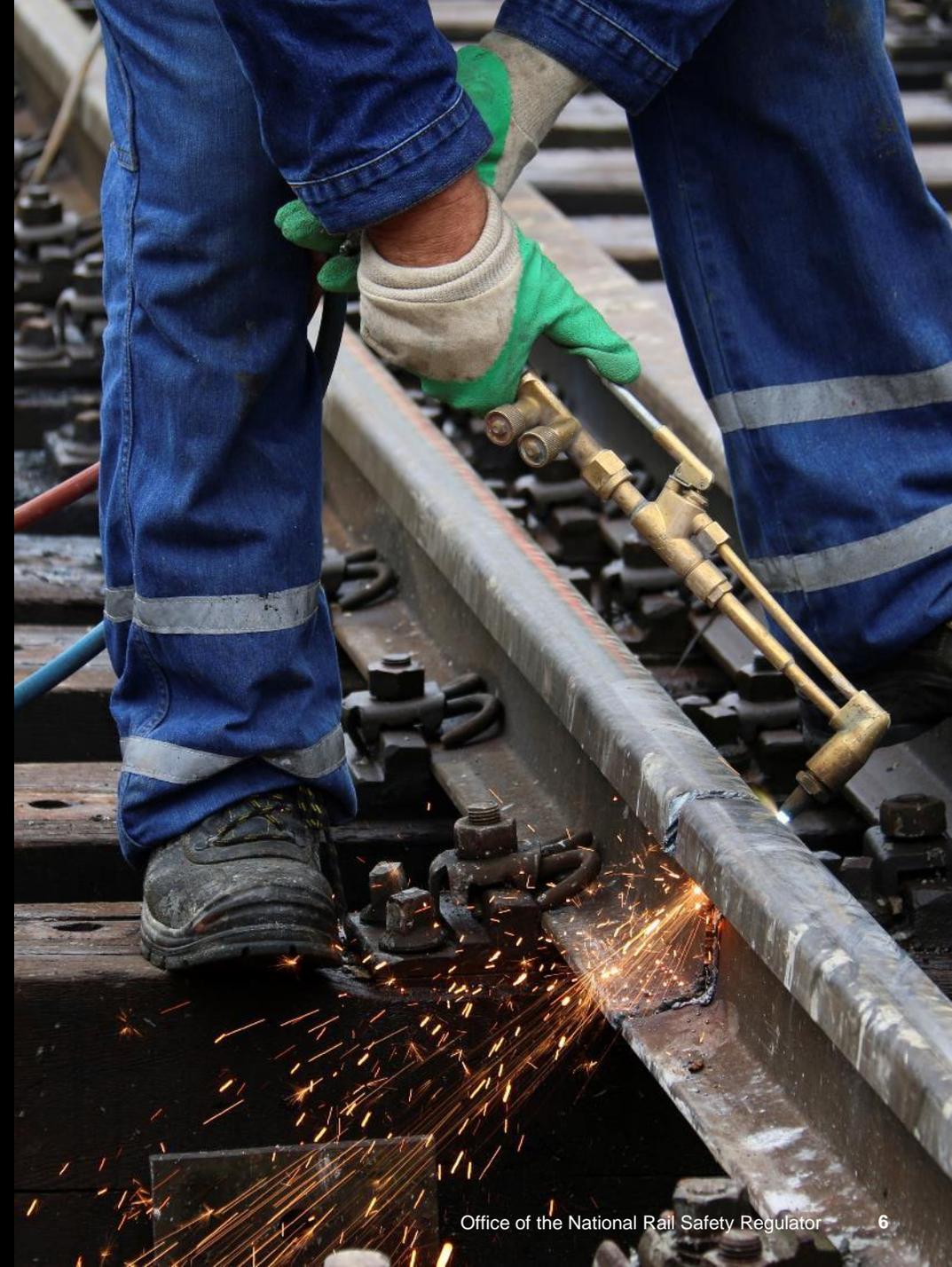
Phase 2: Safety Issues Identified

**Rail Transport Operator Rail Safety Knowledge**

> RTOs are using <u>accredited</u> contractors - not fully understanding and documenting which accredited party has effective management and control

> People managing risk that are not familiar with the requirements of the RSNL

> Project Managers do not understand rail operations (and subsequently rail safety)

> RIMs use a Project Manager … lose oversight of the task

Safety Issues Identified (cont.)

Agreements/contracts/scope of works

> Changes to scope of works / additional requirements added to job – safety risks not assessed

> Scope of works and responsibilities not clearly defined

> Timeframe for tenders not enough to ensure safety is appropriately considered

> Risk control (including accountabilities and responsibilities) not defined

Safety Issues Identified (cont.)

Flow of information through to subcontractor levels

> Use of sub (or sub-sub….) contractors and diminished flow of information through each level

> Poor communication mechanisms

> Requirements in the RTO's SMS can be poorly understood by contractors

> Lack of access to SMS documentation
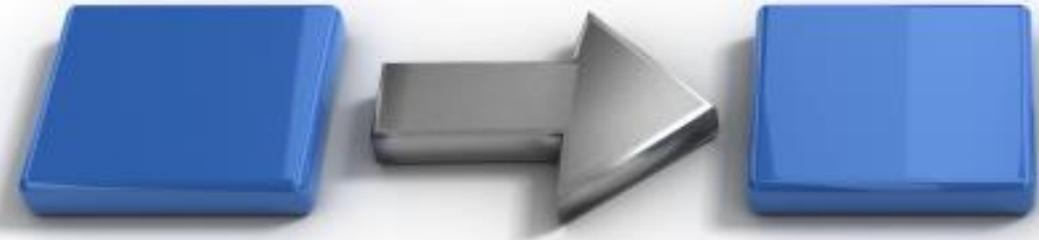
Safety Issues Identified (cont.)

Contractor assurance activities

> Lack of access to findings for contractors

> Contractors sometimes feel that assurance has been outsourced to them to complete, rather than remaining as the RTO's responsibility

> Different standards for contractors vs direct employees (e.g. D&A)

Safety Issues Identified (cont.)

Responses to rail safety breaches and incidents

> Contractors unaware breaches have occurred

> Contractors can't access incident/investigations outcomes/findings

> Lack of feedback from lessons learnt

> Majority of investigations blame the individual/employee, with corrective actions to retrain the recurring outcome (rather than a systems focus)

> Blame put on contractors, not on RTO employees

Safety Issues Identified (cont.)

Accountability of contractors Fatigue Risk Management (FRM)

> Inconsistency in FRM requirements/standards across RTOs for the same task

> RTO's have little to no oversight when people work between sites or between contractor companies (labour hire)

> Contracting out FRM requirements (of the RTOs SMS) to contracted companies
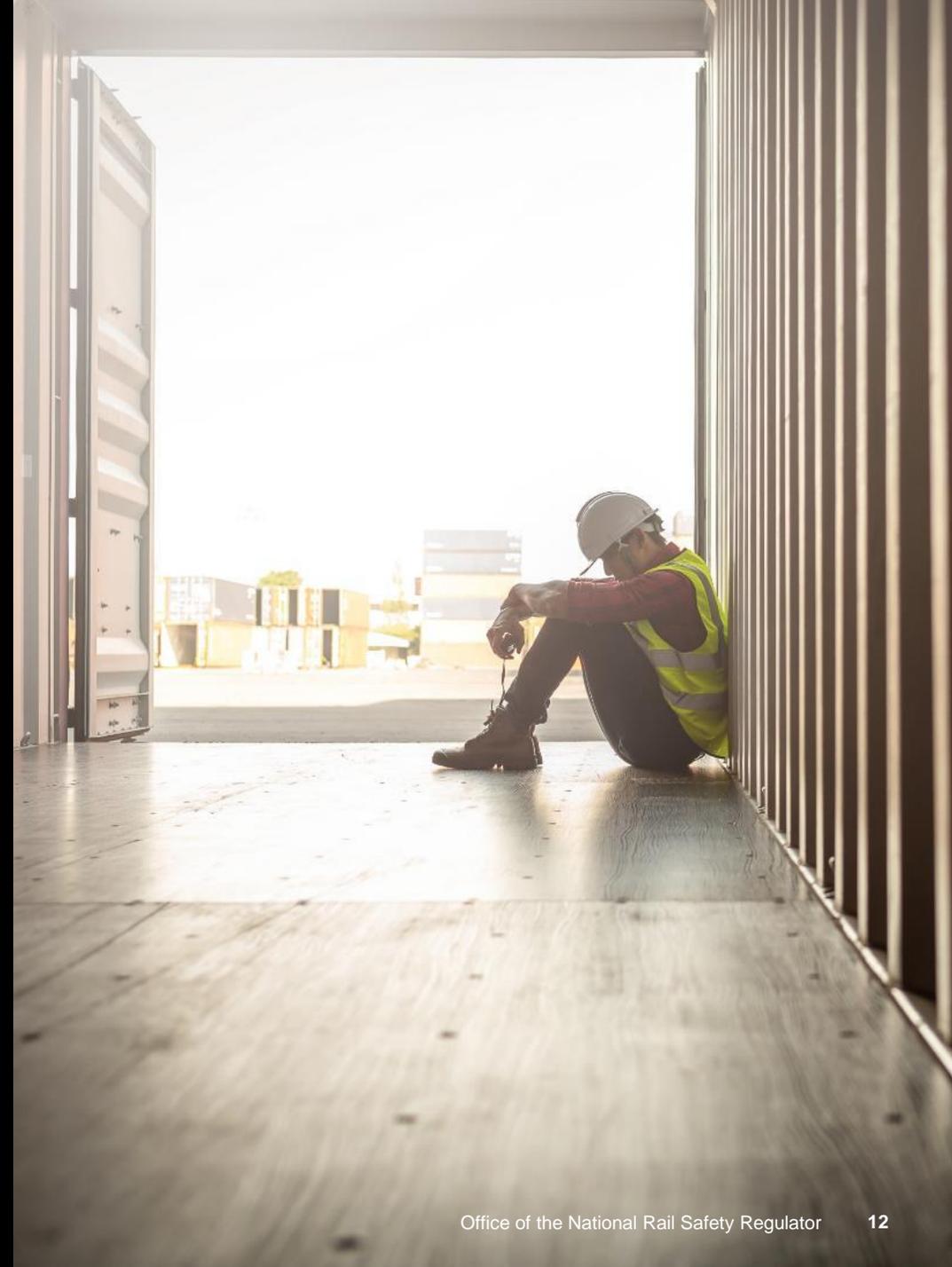
Safety Issues Identified (cont.)

Accountability for contractors' competence

> RTOs not checking contractor Rail Safety Worker (RSW) competence – instead leaving the responsibility with an external party/provider

> Training qualifications/regime (AQF) not relevant to skill set

> Poor quality training

> Lack of available training providers

> Digital training becomes a "tick and flick"

> Contracting out competency management to contracted companies
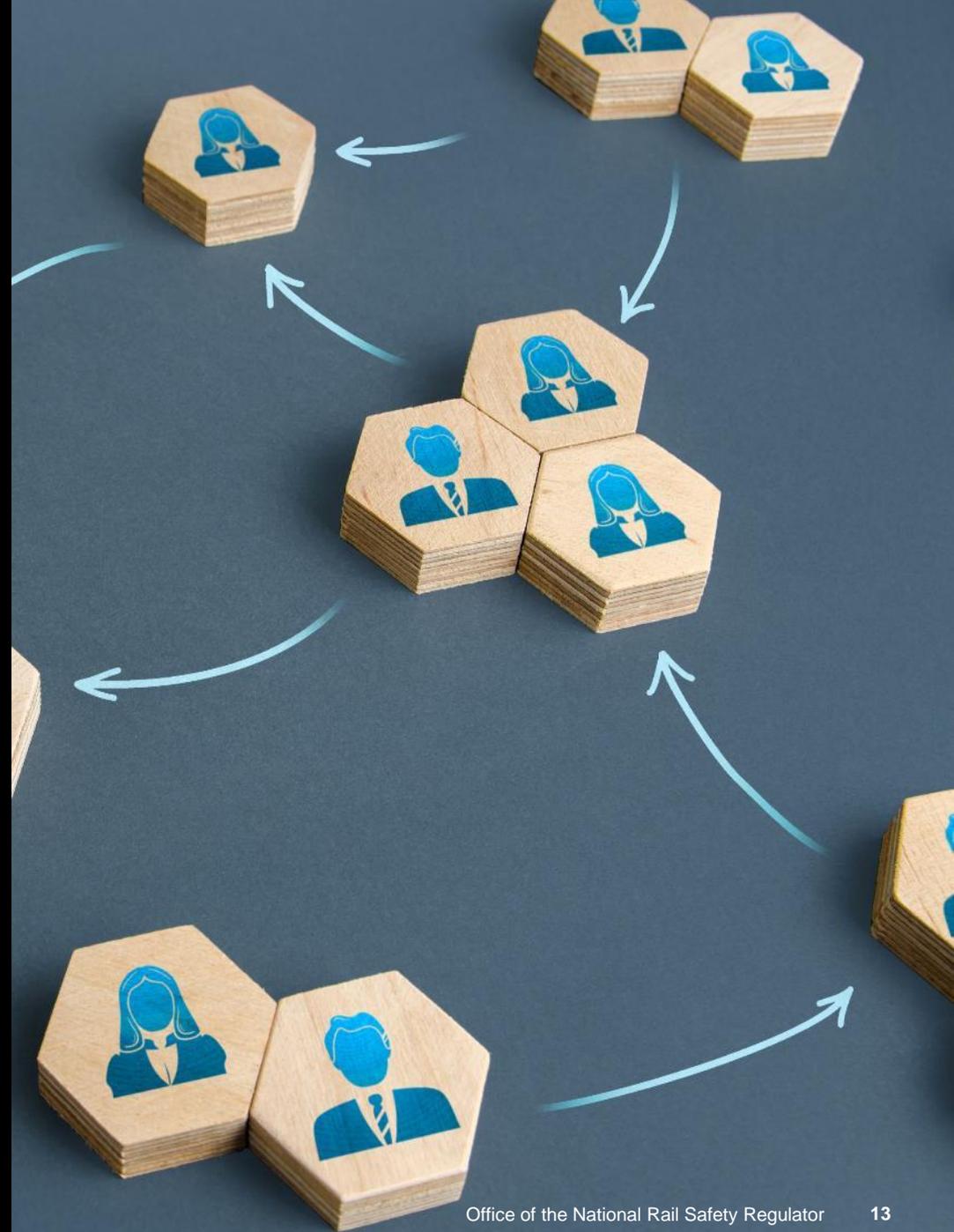
Compliance and good practice – Why is it important?

> Compliance with the law – good corporate practice

> Improved safety outcomes – control of risk

> Decrease occurrences/incidents

> Improved operational efficiency – control of uncertain events

> Employee engagement and retention

> Improved railway safety for rail safety workers, employees, passengers and other members of the public

Compliance – The Law

Rail Safety National Law (RSNL)

> **Definitions:**

>> **Rail Infrastructure Manager**

*– in relation to rail infrastructure of a railway, means the person who has **effective control and management** of the rail infrastructure…*

>> **Rolling Stock Operator**

*– a person who has **effective control and management** of the operation or movement of rolling stock on rail infrastructure for a railway…*

Compliance – the Law (cont)

Rail Safety National Law (RSNL)

> **Section 50**
>
> Principles of shared responsibility, accountability, integrated risk management, etc
>> *(1) Rail safety is a shared responsibility of –*
>>> *a) rail transport operators; and*
>>> *b) rail safety workers; and*
>>> *c) other persons who*
>>>> *i) who design, construct, manufacture, supply, install, erect, maintain, repair, modify or decommission rail infrastructure or rolling stock; or*
>>>> *ii) supply rail infrastructure operations or rolling stock operations to rail operators; or*
>>>> *iii) in relation to the transport of freight by railway – load or unload freight on or from rolling stock; and*
>>> *d) the Regulator; and*
>>> *e) ONRSR; and*
>>> *f) the public*

Compliance – the Law (cont.)

Rail Safety National Law (RSNL)

> **Section 50 (cont.)**
>
> > *(2) The level and nature of responsibility that a person referred to in subsection (1), or falling within a class of person referred to in that subsection, has for rail safety is dependent on the nature of the risk to rail safety that the person creates from the carrying out of an activity (or the making of a decision) and the capacity that person has to control, eliminate or mitigate those risks.*

Compliance – the Law (cont.)

Rail Safety National Law (RSNL)

> **Section 51**
> Principles applying to rail safety duties
>> *(1) – A duty under this law cannot be transferred to another person*
>> *(2) A person can have more that 1 duty under this law by virtue of being in more than 1 class of duty holder*
>> *(3) More than 1 person can concurrently have the same duty under this Law and each duty holder must comply with that duty to the standard required by this Law even if another duty holder has the same duty.*
>> *(4) If more than 1 person has a duty for the same matter, each person-*
>>> *(a) retains responsibility for the person's duty in relation to the matter; and*
>>> *(b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter (or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity).*

Compliance – the Law (cont.)

Rail Safety National Law (RSNL)

> **Section 62**

Accreditation required for railway operations

> *(1) A person must not carry out any railway operations unless the person*

> > *(a) is accredited under this part in respect of those operations*

> > *(b) is carrying out those operations for or on behalf of a rail transport operator who is accredited under this Part in respect of those operations*
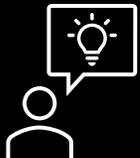
Note: Carrying out operations "for or on behalf" of an RTO does not mean the RTO surrenders effective control and management

Compliance – the Law (cont)

Rail Safety National Law (RSNL)

> Section 119 – Other persons to comply with safety management system

>> *A person, not being an employee employed to carry out railway operations, who undertakes railway operations on or in relation to rail infrastructure or rolling stock of a rail transport operator must comply with the safety management system of the rail transport operator…*

> Section 262 – contracting out prohibited

>> *A term of any contract or agreement that purports to exclude, limit or modify the operation of this Law or any duty under this Law or to transfer to another person any duty owed under this Law is void.*
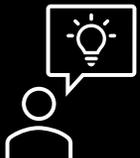
Note: Consequently, RTOs remain accountable for the safety of their railway operations – these responsibilities & risks inherent to the railway operations cannot be transferred to other parties by contractual terms

Compliance – let's look at this practically

Risk Management

- > Underlying the management of contractors in terms of safe operations is a risk management process – this is captured in legislation

- > Understand the nature of your operations

- > Understand the hazards and risk/s, in terms of the contractor being involved in your operations. Ask:

  - > What is the contractor doing? Are they introducing new hazards and/or risks into your operations? Are they impacting on the ones already there?

  - > Who/What is best placed to control the risk? Consult.

  - > How is this accepted by the accredited party?

  - > How is this monitored and reviewed?

  - > What are your assurance processes?

- > The complexity and depth of the risk assessment process should be driven by the risk itself.

Compliance

> In undertaking a risk assessment, the topic of accreditation must be addressed – under who's accreditation will the works be undertaken and, who's SMS will be utilised (or parts thereof)?

> Multiple scenarios:

> > Accredited operator – Unaccredited contractor

> > Accredited operator – Accredited contractor

> > Accredited operator engaging a technical or specialist contractor

> > The above scenarios can result in mixed understanding as to how to undertake the work, and ultimately manage risk. So, let's discuss…
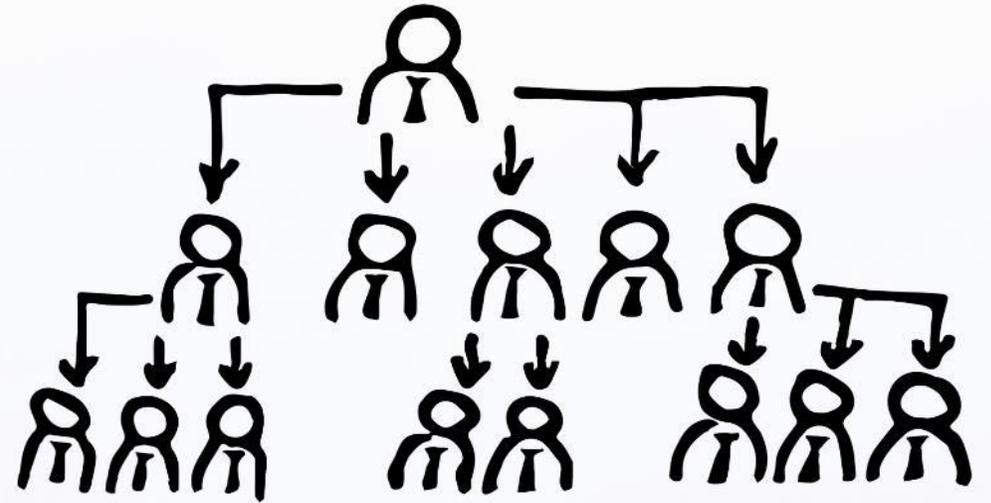
Compliance

Interface Agreements

> Interface risks are where the risk and control resides with different parties or are shared. It is essential for successful contract and safety management to establish interfaces between involved parties and the responsibilities are defined.

> This can be done in two ways: The first via the contract itself, or the second via an interface agreement.

> Interface Agreements focus on requirement to identify and assess risk.

> Although not legally required for many arrangements involving contractor management, the content and requirements of an Interface Agreement ensures a process is applied to identifying, assessing and controlling risk, and understanding roles and responsibilities.

> Are you as a Rail Transport Operator utilising Interface Agreements?

Compliance

Types of contracts

> If arrangements are not captured within an Interface Agreement, other means can be used:

>> Short Form Contracts

>> Long Form Contracts

>> Alliance Agreements / Joint Ventures

>> Public Private Partnerships

>> Project Deeds

> Regardless of the means of capturing arrangements, ONRSR will be interested in the process used to manage risk (identify, assess and control), evaluation and revision of control measures implemented, and ensuring roles and responsibilities are identified.

Compliance – Systems and Procedures

Ensure systems and procedures are in place for the review of tender documents and contracts to ensure the safety requirements under the SMS are adequately defined and documented.

> Ensure there is an explicit understanding of which party's SMS or accreditation will apply

> RTOs to ensure a process is identified for the review of tender documents and contracts to ensure SMS requirements are captured

> Consideration is given during the selection process as to how contractors will comply with the SMS requirements

> Document roles and responsibilities of each party in relation to SMS requirements

> Detail how parties will communicate about and monitor compliance with their obligations

Compliance – Systems and Procedures

Ensure the terms of any tender document or contract does not lead to unsafe work or an activity that may affect the safety of railway operations.

> Setting and approving the conditions under which the contractor must operate, to ensure compliance with the SMS, safe systems of work, and competency and performance standards

> Ensure the RTO has identified and assessed safety risks associated with the works (and documented the process)

> Ensure the RTO has documented the safety and operational outcomes to be delivered by the contractor

> Ensure the RTO has documented the relevant controls
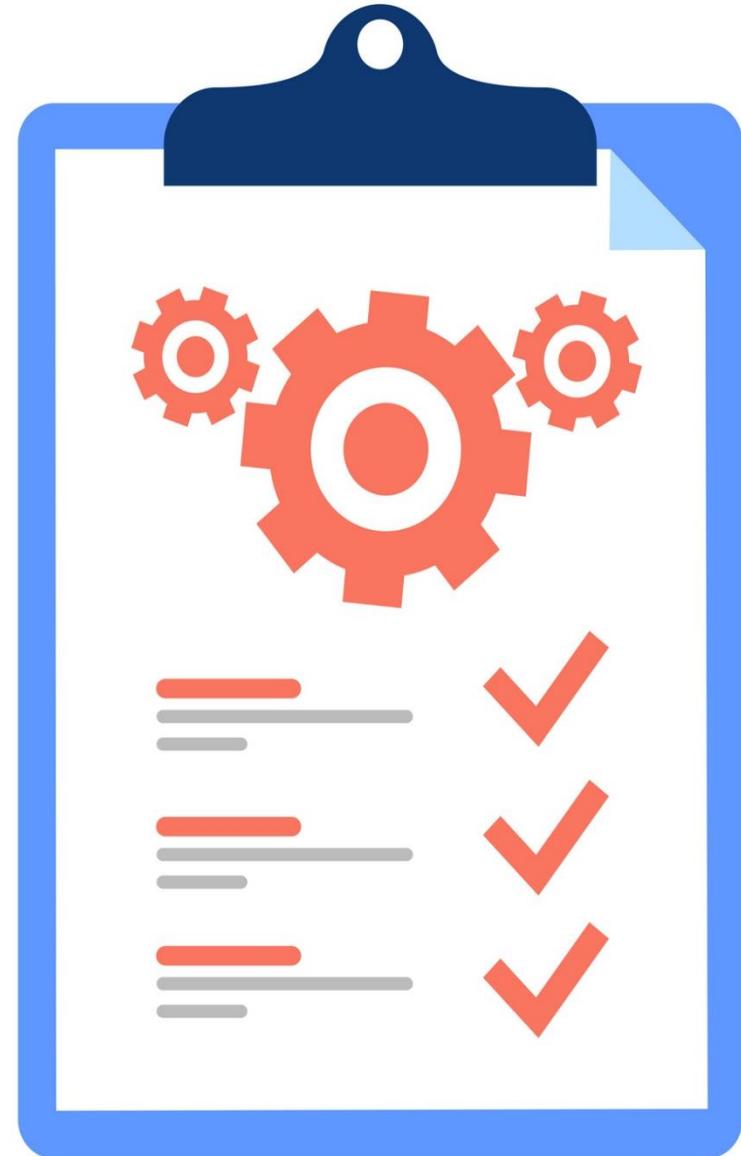
Compliance –
Systems and Procedures

> If a contractor's system (or part of) needs to be incorporated into the RTO's SMS, then the RTO to establish a process to do that:

>> The RTO sets the safety and operational outcomes

>> The RTO identifies the railway operations to be undertaken by the contractor and conducts a risk assessment

>> The RTO reviews the contractor's system/s against railway operations to identify inconsistencies (gaps)

>> The contractor amends systems (if required) to meet railway operations, safety and operational outcomes and address inconsistencies

>> The RTO amends the SMS to address any inconsistencies

>> The RTO references the contractor's systems in its SMS

>> The SMS arrangements are documented.

Compliance – Systems and Procedures

Ensure systems and procedures are in place for the selection and control of contractors and to ensure monitoring of the performance of contractors – including conducting audits of the contractor's safety performance (<u>assurance processes</u>).

> RTO to ensure proactive monitoring of safety performance

> RTO to ensure reactive monitoring following an incident or reported event

> RTO to establish a safety audit schedule to examine:

>> the contractor's performance in relation to their safety obligations contained in the contract

>> the contractor's compliance with processes and procedures specified in the RTO's SMS

> The RTO to establish processes to communicate changes to the RTO's SMS during the contracting period

Compliance – Systems and Procedures

Ensure systems and procedures are in place to ensure safety duties under the law are being met under contracts – procedures are in place for taking remedial action where necessary.

> RTO to implement procedures or processes to ensure remedial action is taken if safety requirements, work quality or standards aren't being met

> The RTO is to document any faults or defects in the work deliverables that may affect the safety of railway operations

> The RTO to document the corrective actions for the faults or defects identified

Compliance – Systems and Procedures

Ensure systems and procedures are in place to ensure that goods and services provided to the railway operations meets the standards and specifications required for the safety of the railway operations.

> RTO to ensure the contract includes details of the works standards and specifications that need to be completed/delivered throughout the project lifecycle

> RTO to have procedures and processes in place that verifies that services provided by contractors meet relevant standards and specifications

> RTO to establish a process to review and approve/accept the outputs of the work
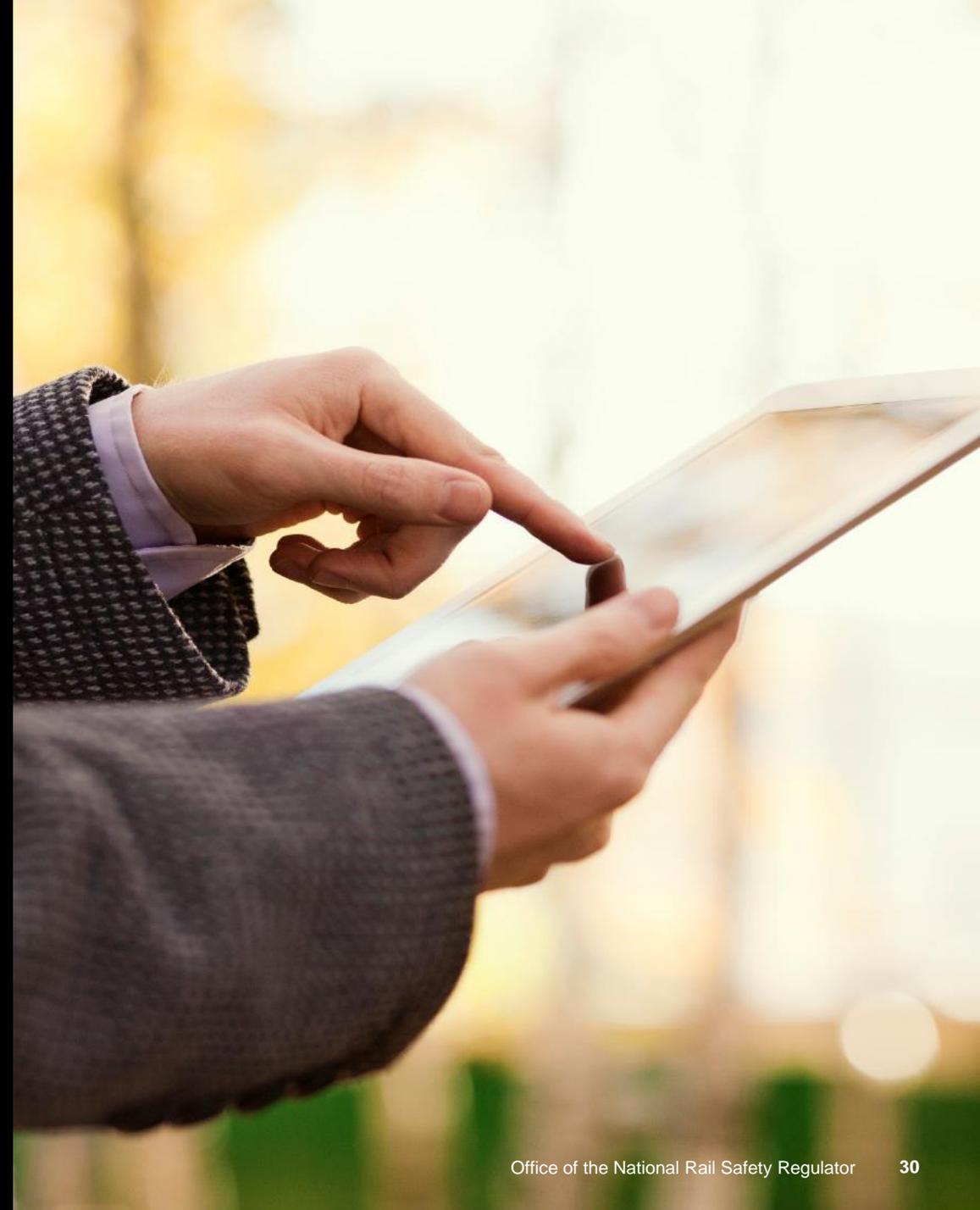
RISSB Guideline – Contracting in the Rail Industry

The purpose of this guideline is to assist Rail Transport Operations (RTOs) in understanding their responsibilities under the RSNL for engaging contractors to carry out Rail Operations.

This guideline is primarily aimed at the responsibilities and requirements under the Rails Safety National Law (RSNL) in relation to accreditation, SMS requirements and the interface aspects in contracting arrangements in the rail sector.

Contracting in the Rail Industry
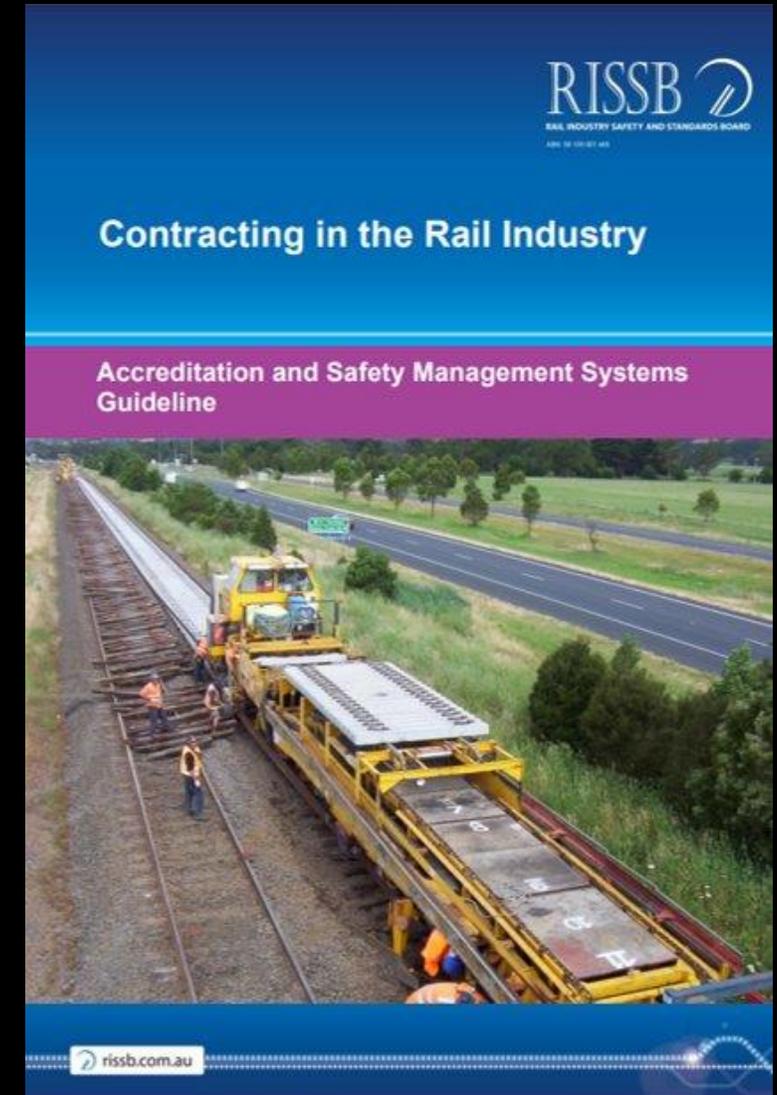
RISSB Guideline: Contracting in the Rail Industry
Appendix A

RISSB — **RAIL INDUSTRY SAFETY AND STANDARDS BOARD**

Contracting in the Rail Industry

PART 3 – SAFETY MANAGEMENT SYSTEM (SMS) ARRANGEMENTS

Use this section to document the SMS arrangements relevant to the work. NOTE – this is with respect to the contract works, so the assessment process must consider that viewpoint. For example, in many cases the Safety Policy will be [RTO Name] however for the contract it may be the contractors Safety Policy that is used and so on for each element.

Below are the Rail Safety SMS elements from the RSNR Sch 1 that are relevant to standard rail contract works. If the element/requirement is not applicable to the work being carried out, mark as N/A. If, however the work is of a more complex nature, it may be necessary to consider and include other elements.

If the work is being carried out only under the contractor's accreditation, with no interface to [RTO Name] systems, there is no need to complete this section. The contractors Management Plan(s) will define the procedures.

If [RTO Name] SMS doesn't specifically contain the documents relevant to the work being carried out by a contractor under [RTO Name] accreditation, the contractor's procedures will form part of [RTO Name] SMS for the duration of the contract. Any contractor procedures used must be identified in the Contract Rail Safety Management Plan (SMP)

SMS arrangements i.e. documents/other procedures, that need to be applied, may be specified in other documents. If so, indicate below which documents includes these arrangements (no need to duplicate). Also, clearly identify if training is required in the specific selected elements to either party for the contract works.

SMS Element	Description of requirement	[RTO Name] Documents	Contractor Documents	Procedure Title/Ref.	Training Required
[As per RSNR Schedule 1]	[Summary of RSNR Schedule 1]	✓ or N/A	✓ or N/A	[List [RTO Name] documents that apply	(indicate if formal or induction training required)
Safety Policy	A policy that commits to ensuring safety and the development and maintenance of a positive safety culture and the continuous improvement of all aspects of the SMS.				
Safety Culture	Methods to promote and maintain a positive safety culture.				
Governance and internal control arrangements	Systems and procedures to which outlines the governance structure that allows the company to achieve its business objectives and meet regulatory requirements.				
Management, responsibilities, accountabilities and authorities	Policies that show how safety responsibilities, accountabilities, authorities and interrelationships have been determined, and documents that describe them for personnel who manage the SMS				
Regulatory compliance	Procedures for the identification of, and compliance with, safety requirements under rail safety legislation and other safety legislation.				
Document control	Systems and procedures for the control and management of all documents and information				

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Appendix A (cont.)

arrangements and information management	relevant to the management of safety risks, which should also include the identification, creation, maintenance, management, storage and retention or records and documents, keeping documents required for operation current, and communicating any changes to anyone who relies on the document control systems and procedures to carry out their work.				
Review of the safety management system	Systems and procedures for the review of the safety management system *(Note this may be limited to the duration of the contract works).*				
Safety performance measures	Systems and procedures to ensure that the safety management system is effective by using key performance indicators to measure safety performance and to determine its effectiveness, and to ensure the collection, analysis, assessment and dissemination of safety information.				
Safety audit arrangements	A risk based audit program that covers the scheduling and frequency of audits, including audits of the SMS, Procedures to ensure auditors have the appropriate skills and knowledge and are independent, that information is collected to show that the SMS is being complied with and the effectiveness of the SMS, results are communicated, corrective action is undertaken where required.				
Corrective actions	Procedures to ensure corrective actions are taken in response to any safety deficiencies identified during inspections, testing, audits, investigations or notifiable occurrences. This should include registration, review and implementation of corrective actions, assigning of responsibilities and giving priority, when undertaking corrective action, to those matters representing the greatest safety risk.				
Management of change	Procedures for ensuring changes, that may affect the safety of railway operations, are introduced safely. This includes understanding and clearly describing the scope and nature of the change and its affects, consulting with affected parties, identifying and				

Appendix A (cont.)

RISSB — RAIL INDUSTRY SAFETY AND STANDARDS BOARD

Contracting in the Rail Industry

Procurement and contract management	Processes to ensure SMS safety requirements are agreed and documented, terms in tender documents or contract do not lead to unsafe work, appropriate selection and control of contractors and monitoring of their performance, safety duties are being met, goods and services provided are appropriate to ensure the safety of the railway operations.				
General engineering and operational systems safety requirements	A documented set of engineering standards and procedures, and operational systems, safety standards and procedures covering rail infrastructure, rolling stock and operational systems, and the interface between any two or more of them, if relevant. Details of the implementation and updating of these documents. Design control and verification procedures. For rail infrastructure and rolling stock, systems, procedures and standards for engineering design, construction and installation, implementation and commissioning, monitoring and maintenance, system operation, modification, decommissioning or disposal. Safe work procedures. List all the engineering standards, including infrastructure, plant, rolling stock, and safeworking rules that are applicable to the work being carried out. List any network notices that may be relevant.				
Process control	Procedures for monitoring compliance with standards and procedures specified under the 'General engineering and operational systems safety requirements' element, including procedures for the inspection and testing of safety related engineering and operational systems. Procedures for control, calibration and maintenance of all equipment used to inspect or test rail infrastructure or rolling stock, and for management of inspection and test records to provide evidence of their condition.				
Asset management	An asset management policy and processes that detail how assets will be managed through all phases of the asset lifecycle, configuration management requirements, who has responsibility and accountability managing asset safety.				

Appendix A (cont.)

RISSB RAIL INDUSTRY SAFETY AND STANDARDS BOARD

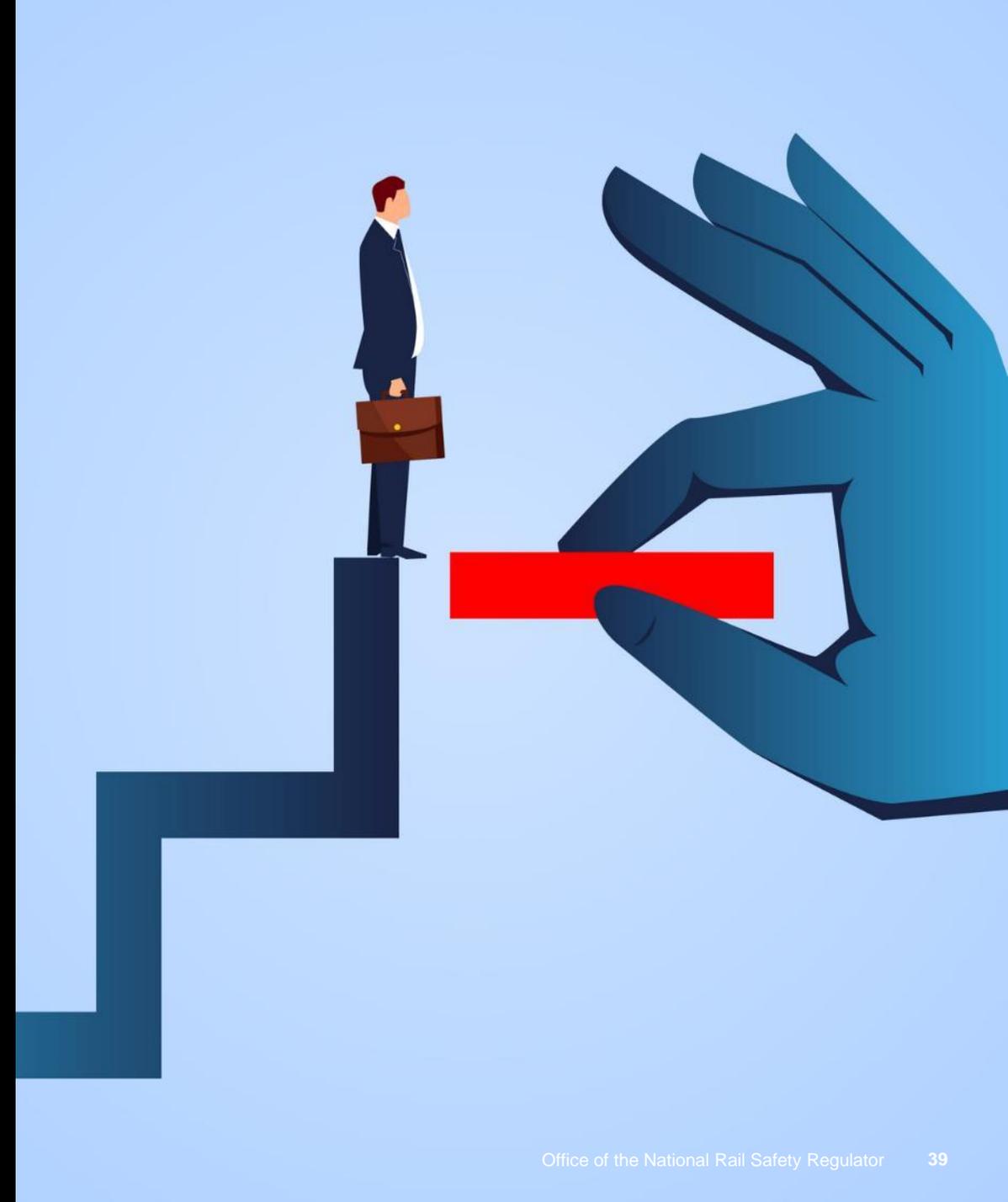|					
Safety interface coordination	To establish agreements to effectively manage risks to safety at interfaces. List any Safety Interface Agreement(s) (SIA) that is in place for any interfaces that exist in area of work.				
Management of notifiable occurrences	Systems and procedures for reporting notifiable occurences to the specified authority within set timeframes and including required information, managing the scene of a notifiable occurrence and preserving evidence, and managing all notifiable occurrences including determining which will be investigated.				
Rail safety worker competence	Procedures and standards to ensure rail safety workers who carry out rail safety work have the competence to do so.				
Security management	Plans, systems and procedures to protect, respond and recover from theft, assault, sabotage, terrorism and other criminal acts of other parties and from other harm and terrorist acts across the network.				
Emergency management	Plans, systems and procedures to respond to emergencies.				
Health and fitness	A program, that complies with prescribed requirements, for the management of health and fitness for rail safety workers who carry out rail safety work.				
Drugs and alcohol	A program, that complies with prescribed requirements, to ensure rail safety workers do not carry out rail safety work while impaired by alcohol or drugs.				
Fatigue risk management	A program, that complies with prescribed requirements, for the management of fatigue of rail safety workers who carry out rail safety work.				
Resource Availability	Systems and procedures for ensuring adequate resources for the contract, operations and safety systems.				

Examples to Discuss

> Contracting out rolling stock maintenance (where both parties are accredited)

> Role of the Principal Contractor (versus the accredited entity)

> Fatigue Risk Management – Who's Responsible?

> Major Projects (if relevant)

> Others – as an accredited RTO, what is a problem or concern in managing contractors?

Contractor Management – Next Steps

Phase 4 – Compliance

> ONRSR will undertake a series of regulatory activities

> > Site visits

> > Inspections

> > Audits

> > Safety meetings

> Desired outcomes

> > Compliance with SMS and RSNL

> > Continuous improvement

> > Documented evidence

> > Improvement in rail safety outcomes

QUESTIONS & DISCUSSION

onrsr Office of the
National Rail
Safety Regulator

SAFE RAILWAYS FOR AUSTRALIA