



THE ONRSR WAY

REGULATING RAIL SAFETY
ACROSS AUSTRALIA

onrsr Office of the
National Rail
Safety Regulator

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EXECUTIVE SUMMARY

ONRSR strives to be a visible player in the rail industry, respected for conducting value-adding interactions that are informed by a strategic combination of industry intelligence, knowledge of operations and use of rail safety data. ONRSR has the dual, but complementary, roles of administrator of the *Rail Safety National Law (RSNL)* accreditation regime and the regulator of a duty-based safety management regime. The nature of the RSNL means that ONRSR is not a technical regulator.

The regulatory framework is co-regulatory in that the Australian governments do not directly prescribe the standards or rules by which railways need to operate. Rather, they set a performance requirement on railways to operate safely and provide operational flexibility to establish and implement standards, rules and methods of operation necessary to meet the safety performance requirement of their operations. The co-regulatory framework of the RSNL enables ONRSR to tailor our approach to each operator and its circumstances, while at the same time aiming to present a consistent regulatory approach to the rail industry so as not to surprise. ONRSR does not consider consistency of approach to mean the same decision will be made for all operators. Every situation will be judged on its merits.

1. KEY FUNCTIONS

ONRSR has key functions and powers under the RSNL to:

A. Administer

ONRSR administers a national scheme of accreditation, which includes registration and exemption, that provides confidence to the industry and community that those organisations permitted to conduct railway activities are the appropriate parties responsible for the control and management of rail safety and have the competence and capacity to ensure the safety of their operations. Where required by the RSNL, they must also have systematically identified and assessed the risks to safety relating to their railway operations and have demonstrated an ability to manage or mitigate these risks prior to operating.

When assessing applications for accreditation or applications to vary an accreditation, ONRSR consider:

- the operator's competence and capacity to manage risks to safety associated with the railway operations for which accreditation is sought;
- the operator's competence and capacity to implement a safety management system;
- the level of consultation undertaken by the operator in relation to its safety management system; and
- the operator's financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities.

Registration requires:

- that the applicant is, or is to be, the rail infrastructure manager of a private siding; and
- that the railway operations to be carried out in the private siding are such that registration of the applicant (rather than accreditation of the applicant) is, in ONRSR's opinion, the appropriate action.

Exemption

- Exemption from the requirement for rail transport operator accreditation will be considered in the circumstance where a railway or railway operations are captured by the RSNL but in their nature are not railways of the type intended to be captured by the RSNL.

B. Educate

ONRSR balances the compliance function with an education function in selecting the most appropriate regulatory activities in the context of a risk-based approach to rail safety regulation, delivering education interactions at an individual operator, industry sector or whole-of-industry level. ONRSR's education function is primarily directed towards:

- education and awareness of the legal requirements and the expectations ONRSR has on operators for demonstrating compliance with these requirements;
- raising industry awareness and exposure to information regarding safety issues that exist or are emerging within the rail industry that operators should be aware of; and
- sharing examples of good practice and encouraging continual improvement of safety management systems.

C. Monitor

ONRSR implements a continuing examination of operators' safety management system implementation and safety performance under the test of whether safety is being managed so far as is reasonably practicable (SFAIRP) and whether the operator continues to demonstrate the competency and capacity to safely undertake its railway operations.

D. Enforce

ONRSR undertakes investigations into significant and serious rail safety occurrences and issues with the aim of determining the need to enforce compliance with the law through the application of sanctions or other regulatory interventions. ONRSR's enforcement decisions are made proportionate to the identified risk to safety, the seriousness of any perceived breach, and/or the level of non-compliance with legislative requirements.

2. WORK PROGRAM

The use of a work program is ONRSR's way of planning regulatory activities across the country and is designed so that regulatory activities are carried out in a coordinated manner. ONRSR takes a risk-based approach to the design of work programs which focus resources towards the most significant risks to rail safety and to those areas with scope for improvement.

ONRSR captures regulatory intelligence/data, considers the risks to rail safety and makes decisions in accordance with the requirements of its Risk-Based Regulation Framework. This enables ONRSR to prioritise regulatory activities towards duty holders that have the largest potential impact on the safety performance of the rail industry and conduct most of Australia's railway operations. This means ONRSR prioritises regulatory attention.

EXECUTIVE SUMMARY

3. RAIL SAFETY OFFICERS

ONRSR's rail safety officers work closely with rail operators and their rail safety workers to undertake ONRSR's function of assessing accreditation-related applications, monitoring safety performance, responding to issues and enforcing the law, as required, with the aim of maintaining and improving safety. To be effective under the co-regulatory framework, ONRSR's rail safety officers are expected to inform themselves of the nature and scope of an operator's railway operations, through research and familiarisation activities, to build context for their regulatory activities, interactions and decision making.

To carry out their duties ONRSR's rail safety officers have wide powers of entry, enquiry and investigation and directions under the RSNL, including being able to:

- search a place, rail infrastructure, rolling stock, motor vehicle or other thing on railway premises;
- take, retain and make copies of documents;
- use and operate equipment to access information or examine things;
- secure a site to protect evidence that might be relevant for compliance and investigative purposes or ensuring safety;
- seize things;
- issue directions to operators to provide information or documents; and
- obtain information, documents and evidence.

4. CONDUCT

At all times ONRSR is:

A. Independent and impartial

ONRSR was created (by legislation) to be and act independently from industry, political or other individual influences. ONRSR acts without bias in the best interests of rail safety when making decisions and applying powers and regulatory tools.

B. Transparent, fair and accountable

Transparency means that ONRSR helps rail transport operators and rail safety workers to understand what is expected of them and what they should expect from ONRSR.

ONRSR apply the discipline of rail safety officers fully documenting their decisions and taking responsibility to clearly communicate the reasons for decisions being taken when administering the RSNL.

ONRSR encourages operators to appropriately challenge decisions if they are not clear on what is expected or why the decision has been made.

ONRSR develops materials and conducts interaction sessions for rail safety workers to educate and communicate expectations as the need is identified.

C. Confidential

ONRSR is subject to confidentiality provisions within the RSNL and has processes in place to preserve this. Any publication of data collected is in a non-identified format and reports on industry level performance. ONRSR may provide factual information on incidents that are in the public domain but will not comment publicly on individual rail transport operators.



D. Aware of regulatory capture and conflicts of interest

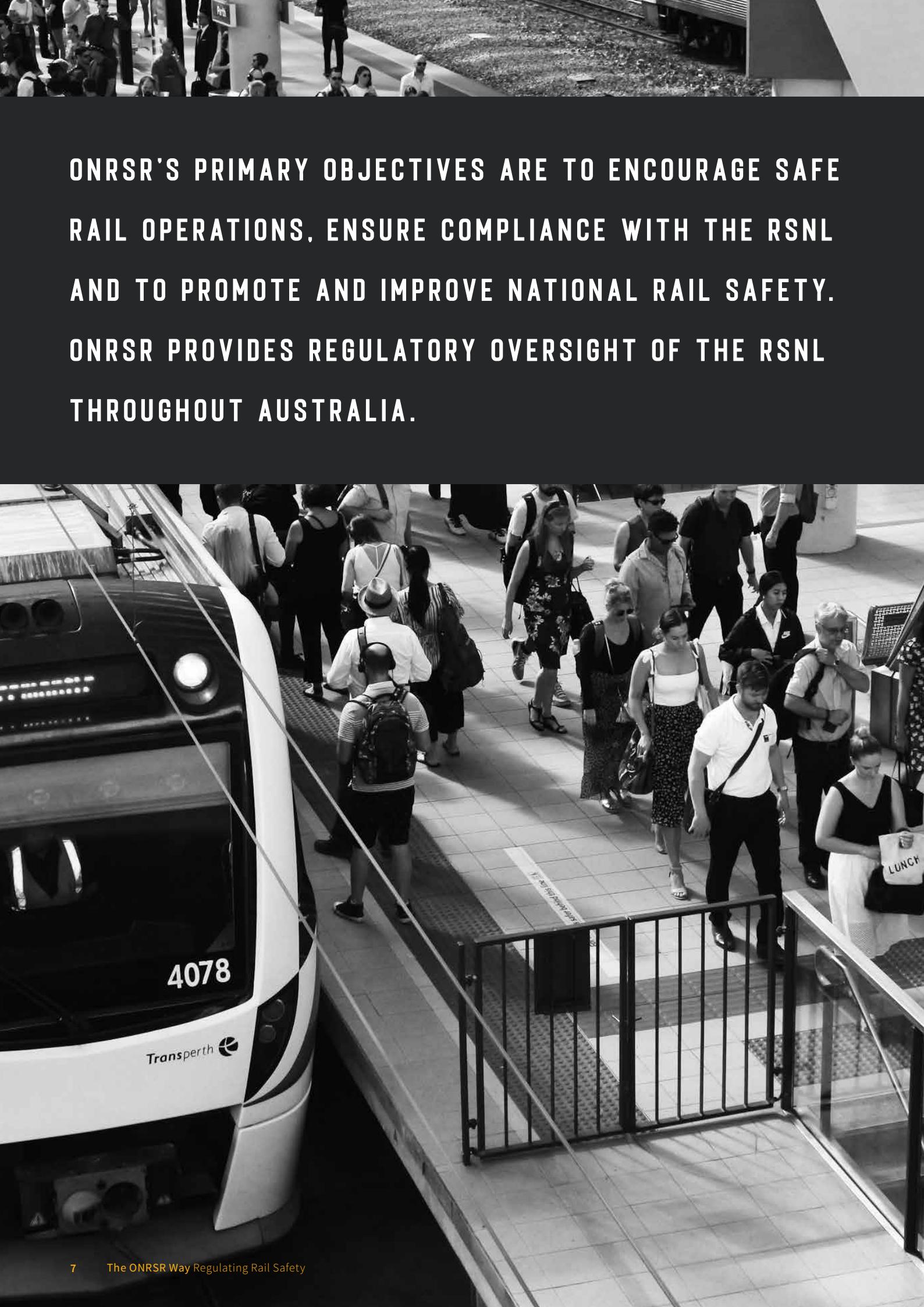
The decisions made by rail safety officers are impartial with any potential conflict of interest that might influence a decision being disclosed prior to the decision being made. Where practical, ONRSR do not assign tasks to rail safety officers or involve them in any decision making where a known conflict of interest exists.

ONRSR is mindful of the risk of regulatory capture (rail safety officers becoming too close to the operators that they interact with and being influenced through familiarity) and has active strategies in place to mitigate this risk. A noticeable control is that of avoiding allocating a specific rail safety officer to work with an operator for an extended period. This is why operators will see a change in lead rail safety officer roles for regulatory activities at different times.

5. CONTINUOUS IMPROVEMENT

It is ONRSR's role to advocate more broadly for continuous improvement across the rail industry. This approach is incorporated through:

- identifying and focusing activities towards national priorities;
- taking an active role in the identification of industry wide safety issues and facilitating safety improvement in these areas through education, guidance and other regulatory activities;
- publication of and providing access to relevant rail safety data to enable duty holders and other stakeholders to make informed decisions;
- engaging in industry led safety improvement projects and initiatives;
- participating in national rail safety regulatory reform; and
- networking with other related safety regulators.



**ONRSR'S PRIMARY OBJECTIVES ARE TO ENCOURAGE SAFE
RAIL OPERATIONS, ENSURE COMPLIANCE WITH THE RSNL
AND TO PROMOTE AND IMPROVE NATIONAL RAIL SAFETY.
ONRSR PROVIDES REGULATORY OVERSIGHT OF THE RSNL
THROUGHOUT AUSTRALIA.**

INTRODUCTION

ONRSR comprises the National Rail Safety Regulator (NRSR) and two non-executive members. The RSNL provides for the independence of ONRSR, ensuring it is not subject to Ministerial direction in the exercise of its functions or powers. However, ONRSR does report to the responsible Ministers on a range of governance, operational policy and administrative matters. This is done primarily through the Transport and Infrastructure Senior Officials' Committee (TISOC) and the Transport and Infrastructure Council. Additionally, individual Ministers may request that ONRSR undertake specific functions from time to time. Through memorandums of understanding ONRSR also works with other agencies, including the Australian Transport Safety Bureau, National Transport Commission and Workplace Safety Authorities to improve national rail safety performance.

The RSNL sets out ONRSR's functions as being:

- to administer, audit and review the accreditation regime under the RSNL;
- to work with rail transport operators, rail safety workers, and others involved in railway operations, to improve rail safety nationally;
- to conduct research and collect and publish information relating to rail safety;
- to provide, or facilitate the provision of, advice, education and training in relation to rail safety;
- to monitor, investigate and enforce compliance with the RSNL;
- to engage in, promote and coordinate the sharing of information to achieve the objectives of the RSNL, including the sharing of information with prescribed authorities (such as the Australian Transport Safety Bureau and the Rail Industry Safety Standards Board).

In exercising these functions, ONRSR is required to:

- facilitate the safe operations of rail transport in Australia;
- exhibit independence, rigour and excellence in carrying out regulatory functions; and

- promote safety and safety improvement as a fundamental objective in the delivery of rail transport in Australia.

The RSNL sets the following guiding principles for the administration of the RSNL:

- to assist rail transport operators to achieve productivity by the provision of a national scheme for rail safety;
- to operate the national scheme in a timely, transparent, accountable, efficient, effective, consistent and fair way; and
- that fees required to be paid for the provision of the national scheme are to be reasonable, having regard to the efficient and effective operation of the scheme. (Fees are set each year by unanimous agreement of the Transport and Infrastructure Council (Ministerial Council) and are included in RSNL Regulations.)

OBJECTS OF THE RSNL

- provide a scheme for national accreditation of rail transport operators in respect of railway operations
- provide for the effective management of safety risks associated with railway operation
- provide for the safe carrying out of railway operations
- provide for continuous improvement of the safe carrying out of railway operations
- promote public confidence in the safety of transport of persons or freight by rail
- promote the provision of advice, information, education and training for safe railway operations
- promote the effective involvement of relevant stakeholders, through consultation and cooperation, in the provision of safe railway operations

1

WHAT TYPE OF REGULATOR ARE WE?

ONRSR provides leadership, advice and acts on behalf of the community when necessary as part of ensuring compliance with the RSNL.

ONRSR has the dual, but complementary, roles of administrator of the RSNL accreditation regime and the regulator of a duty-based safety management regime (an educator, monitor, and enforcer). The nature of the RSNL means ONRSR is not an approver of equipment, services or processes.

In conducting these roles, ONRSR seeks to engage with operators in a way that directly influences those with the ultimate responsibility for delivery of safe railway operations and environments. ONRSR takes a predominantly facilitative approach to regulating safety, with rail safety officers collectively acting as a safety conscience and compliance coach to regulated parties, targeting education where necessary and giving opportunity for operators to address identified safety issues. However, where this is not effective with individual operators, or more immediate publicly accountable action is required, ONRSR employs the range of enforcement options available to secure safe outcomes and compliance with the law.

ONRSR is always open for conversations around new ideas and is willing to support operator innovation in managing safety. Advances in technology, new ways of thinking or lessons from other industries should always be explored to see what benefits can be transferred to the rail industry.

ONRSR actively engages with industry beyond the one-on-one regulatory relationships established by the RSNL, engaging in strategic initiatives and projects aimed at addressing safety issues across broad industry sectors.



1.1

WHAT IS MEANT BY CO-REGULATORY?

Co-regulation is the term used to describe the Australian rail safety regulatory framework established by jurisdictional governments and given effect through the RSNL.

The regulatory framework is co-regulatory in that the Australian governments do not directly prescribe the standards or rules by which railways need to operate. Rather, they set a performance requirement on railways to operate safely and provide operational flexibility to establish and implement standards, rules and methods of operation necessary when undertaking their operations.

The co-regulatory framework is strongly founded on the distribution of responsibility for the management of risks to safety, which is expressed in the RSNL through the:

- principle of shared responsibility for rail safety risks;
- establishment of specific safety duties for rail transport operators, designers, manufacturers and suppliers to the rail industry, loaders and unloaders of freight and rail safety workers; and
- establishment of the role and function of the Regulator.

The level and nature of responsibility that a person has for rail safety is dependent on the nature of the risk that the person creates from the carrying out of or making a decision regarding railway operations and the capacity that person has to control, eliminate or mitigate those risks. Managing risks associated with the carrying out of railway operations is the responsibility of the person best able to control those risks.

Key roles under the Australian rail safety co-regulatory framework are:

Governments	Establish through public policy the preferred regulatory framework and set the law to implement this policy, inclusive of: ➢ setting obligations on specific duty holders; and ➢ establishing the role and function of the Regulator
Regulator	Established with functions and powers to: ➢ administer the accreditation regime; ➢ monitor rail safety management performance of operators and duty holders; and ➢ ensure operators and duty holders comply with the requirements and safety management standard set by the law through utilising powers to monitor, facilitate or enforce compliance with the RSNL.
Rail Transport Operators	Accountable for ensuring, SFAIRP, the safety of their specific railway operations, including impacts on interfacing railway and road operations. Accountable for the establishment and implementation of the standards, rules and procedures for the safe operation of their railway, in the form of a documented and implemented safety management system.
Contractors, Suppliers and Manufacturers	Captured as duty holders under the RSNL and accountable for ensuring, SFAIRP, the safety of their activities as they may impact on safe railway operations. Accountable for the delivery of railway operations for rail transport operators in accordance with rail transport operators' safety management systems.
Rail Industry Standards Groups	Supporting rail transport operators and other duty holders through the development of good practice guidance or standards for the effective management of safe railways.

This framework is well suited to the Australian rail environment given the diversity of operators and types of operations. The absence of a one rule for all approach enables individual rail transport operators to tailor and innovate risk management controls to their specific railway operations and risk profiles. This is commonly referred to as the RSNL enabling scalability across operators and industry sectors. It also enables ONRSR to tailor the regulatory approach to individual operators or to specific safety issues.

The success of the co-regulatory framework to manage risks to safety across the range of railway operations that occur in Australia depends on:

- the regulated parties having an interest in controlling the safety of their railway operations;
- all parties being prepared to engage in an open and frank exchange in the disclosure of information regarding the management of safety and safety performance; and
- the parties identified above effectively delivering against their role and accountabilities in cooperation and in consultation with other affected parties.

Co-regulation is not a partnership between ONRSR and the rail industry when it comes to the obligation to ensure, SFAIRP, the safety of railway operations. This responsibility clearly rests with those parties that are directly in a position of control and management of railway operations, which is principally the accredited or registered rail transport operators and their various suppliers and contractors.

The overall success of this regulatory framework to address and mitigate risks to safety is predicated on individual operators and the broader industry fulfilling their respective roles in engaging the appropriate expertise and competence towards collaboratively identifying and assessing risks and developing, applying and maintaining standards and processes to manage safe railway operations. ONRSR has a responsibility to the public and the wider rail industry environment to work cooperatively with industry parties to achieve the highest levels of safety practicable across a diverse Australian railway industry, but where industry parties do not fulfil their role, ONRSR has suitable powers to prevent, prohibit or apply sanctions to unsafe operations.

1.1.1 ONRSR'S NATIONALLY CONSISTENT APPROACH

The co-regulatory framework of the RSNL enables ONRSR to tailor an approach to each operator and their circumstances, while at the same time presenting a consistent regulatory approach to the rail industry. Consistency of approach does not mean the same decision will be made for all operators. Every situation is judged on its merits.

When ONRSR says it delivers a consistent regulatory approach, this means:

- > when undertaking a regulatory activity, the administrative process is followed and the outcomes are delivered as expected (e.g. there will always be a report provided following an audit);
- > transparency in what is trying to be achieved through the various regulatory activities that may be undertaken and an explanation as to why they have been chosen;
- > providing a single, common interpretation to the RSNL and the expectations on operators arising from this interpretation (made public through published guidance material); and
- > managing ourselves internally to present a single organisational approach to rail transport operator activities, by operating to a single work program.

The use of a work program is ONRSR's way of planning regulatory activities across the country and is designed so that regulatory activities are carried out in a coordinated manner with rail safety officers having full visibility of activities being conducted regardless of their location.

The work program ensures there is coordination between activities that have a national focus and other more localised activities that may only be relevant to a particular geographical location.

The work program is not shared with external parties. While ONRSR openly communicates national and other safety issue priorities, details are not provided to rail transport operators regarding the scope of specific future activities as documented within the work program. ONRSR does, however, meet with operators to discuss planned interactions for the year recognising that the program is necessarily dynamic.

1.2

HOW ONRSR OPERATES

The fundamental delivery of ONRSR's functions is guided by the following assurances, which aim to support regulatory effectiveness and efficiency by supporting a transparent and collaborative relationship with the rail transport industry and continual improvement in rail safety.

1.2.1 INDEPENDENT AND IMPARTIAL

ONRSR was created (by legislation) to be and act independently from industry, political or other individual influences. ONRSR acts without bias in the best interest of rail safety when making decisions and applying powers and regulatory tools.

1.2.2 TRANSPARENT, FAIR AND ACCOUNTABLE

Transparency means ONRSR helps rail transport operators to understand what is expected of them and what they should expect from ONRSR.

ONRSR applies the discipline of rail safety officers fully documenting decisions and taking responsibility to clearly communicate the reasons for decisions being taken when administering the RSNL.

ONRSR encourages operators to appropriately challenge us if we are not clear on what we expect or why we have made our decisions.

1.2.3 CONFIDENTIALITY

ONRSR is subject to confidentiality provisions within the RSNL and we have processes in place to preserve this. Any publication of data we collect is in a non-identified format and reports on industry level performance. We may provide factual information on incidents that are in the public domain but do not comment publicly on individual rail transport operators.

1.2.4 REGULATORY CAPTURE AND CONFLICTS OF INTEREST

The decisions made by our rail safety officers are impartial with any potential conflict of interest that might influence a decision being disclosed prior to the decision being made. Where practical, we do not assign tasks to our rail safety officers or involve them in any decision making where a known conflict of interest exists.

ONRSR is mindful of the risk of our rail safety officers becoming too close to the operators they interact with and being influenced through familiarity and as such we have active strategies in place to mitigate this risk. A noticeable control is that of avoiding allocating a specific officer to work with an operator for an extended period, which is why operators will see a change in lead rail safety officer roles for our regulatory activities at different times.

1.3

STRUCTURED TO DELIVER

ONRSR is structured and geographically located to provide efficient regulatory coverage of operations across Australia. Delivery of operational regulatory functions is undertaken by staff in a variety of locations.

- > The national office in Adelaide is where the Chief Executive and supporting corporate functions are located;
- > The Chief Executive of ONRSR is also the Regulator; and
- > ONRSR also has offices in Sydney, Brisbane, Melbourne, Perth, Hobart and Darwin.

While the National Operations division is responsible for the delivery of regulatory functions, this can only be achieved by working in a collaborative manner with other divisions of ONRSR as depicted below.



FIGURE 1: Model of regulatory functions delivery to industry

1.3.1 ROLE OF THE RAIL SAFETY OFFICER

ONRSR rail safety officers work closely with rail operators and their rail safety workers to undertake functions of assessing accreditation-related applications, monitoring safety performance, responding to issues and enforcing the law, as required, with the aim of maintaining and improving safety. ONRSR's rail safety officers have responsibility for providing the regulatory oversight necessary to ensure rail operations in Australia are being managed safely, and the many ways this is done is outlined further in section 3 and 4 of this document.

To be effective under the co-regulatory framework rail safety officers are expected to inform themselves of the nature and scope of an operator's railway operations, through research and familiarisation activities, to build context for their regulatory activities, interactions and decision making.

It is through the activities, judgement and decision making of rail safety officers that ONRSR builds the overall understanding of an operator's safety culture. By analysing the range of data and information collected, ONRSR considers the safety and compliance performance of an operator to form an opinion of whether it is:

- > continuing to demonstrate competency and capacity to manage risks to safety from its operations and to implement its safety management system (i.e. is still demonstrating what is required to continue to hold accreditation); and
- > demonstrating a reasonable approach to the management of risks to safety from its operations through the effective implementation of its safety management system.

To carry out their duties rail safety officers have wide powers of entry, enquiry and investigation and directions under the RSNL, including being able to:

- > search a place, rail infrastructure, rolling stock, motor vehicle or other thing on railway premises;
- > take, retain and make copies of documents;
- > use and operate equipment to access information or examine things;
- > secure a site to protect evidence that might be relevant for compliance and investigative purposes or ensuring safety;
- > seize items;
- > issue directions to give information or documents; and
- > obtain information, documents and evidence.

As outlined above, rail safety officers have the power to enter a railway site without permission from the rail organisation. However, it is expected that rail safety officers immediately identify themselves upon arrival at a site and provide proof of identity in the form of an ONRSR identification card. Rail safety officers will also provide on-site staff with a clear understanding of why they have attended and what is required of them. Rail safety officers can be asked to complete an induction to a site, or submit to a drug/alcohol test, but have the discretion to refuse should the request present an immediate hinderance or obstruction to an officer's urgent need to exercise their powers. At all times rail safety officers are required to actively minimise the impact of their activities, and advice or direction may be given to assist rail safety officers with this obligation.

When a rail safety officer is on-site, it is the legal responsibility of operators and their staff to answer all relevant questions, provide assistance to the rail safety officer and not hinder a rail safety officer's work in any way. Where a rail safety worker is compelled under a power or function of the RSNL to answer a question or provide a document, that answer or document cannot be used as evidence against the rail safety worker in civil or criminal proceedings. It is an offence to provide false or misleading information (including verbal information) or documentation to a rail safety officer.

1.3.2 ONRSR POLICY DEVELOPMENT AND SUPPORTING DOCUMENTATION

A core element of delivering a consistent regulatory approach is that ONRSR develop operational policy that guides the implementation of the higher level policy decisions embodied in the RSNL. On request from Transport and Infrastructure Council, ONRSR will also make recommendations to Ministers in relation to strategic policy that informs changes to the RSNL, and provide input into strategic policy positions developed by the National Transport Commission for consideration by Transport and Infrastructure Council.

ONRSR has an important role of interpreting the RSNL, explaining this to regulated parties, and acting consistently with this interpretation. Operational policies provide headline information on how ONRSR administers the law in respect of particular subject areas and rail safety issues for broader topics such as level crossings, and are intended to influence decision makers. All external ONRSR policies are available on the ONRSR website (www.onrsr.com.au).

In addition to policies, ONRSR develops comprehensive guidelines which clearly articulate our expectations in relation to complying with the RSNL. These guidelines provide key information and clarification to both the rail industry and the public on legislative, regulatory and technical matters.

Additional information is available on a range of topics in the form of fact sheets, which are brief and cover a specific topic or issue.

All relevant policy and guideline development is undertaken in consultation with stakeholders.

2

RISK-BASED REGULATORY APPROACH

Risk-based regulation is an approach to regulation in which regulatory effort is commensurate with risk and scope for improvement. Administering the RSNL using a risk-based approach means that key decisions, such as the setting of national priorities and the development of the work program, are informed by an assessment of risks to rail safety. This involves:

- developing an understanding of the risks to the safety of railway operations in Australia;
- prioritising these risks and determining which risks can be influenced through regulatory activities; and
- designing, prioritising and delivering regulatory activities and outcomes in a way that best maintains and improves rail safety.

ONRSR's regulatory approach recognises the broad range of operators and other duty holders with responsibilities under the RSNL, and accounts for their varying safety risk profiles and the environments in which they operate when setting expectations and making regulatory decisions that impact them.

2.1

ONRSR'S MODEL FOR RISK-BASED REGULATION

Our four-stage model for risk-based regulation is illustrated in Figure 2 and is summarised over the following sub-sections:

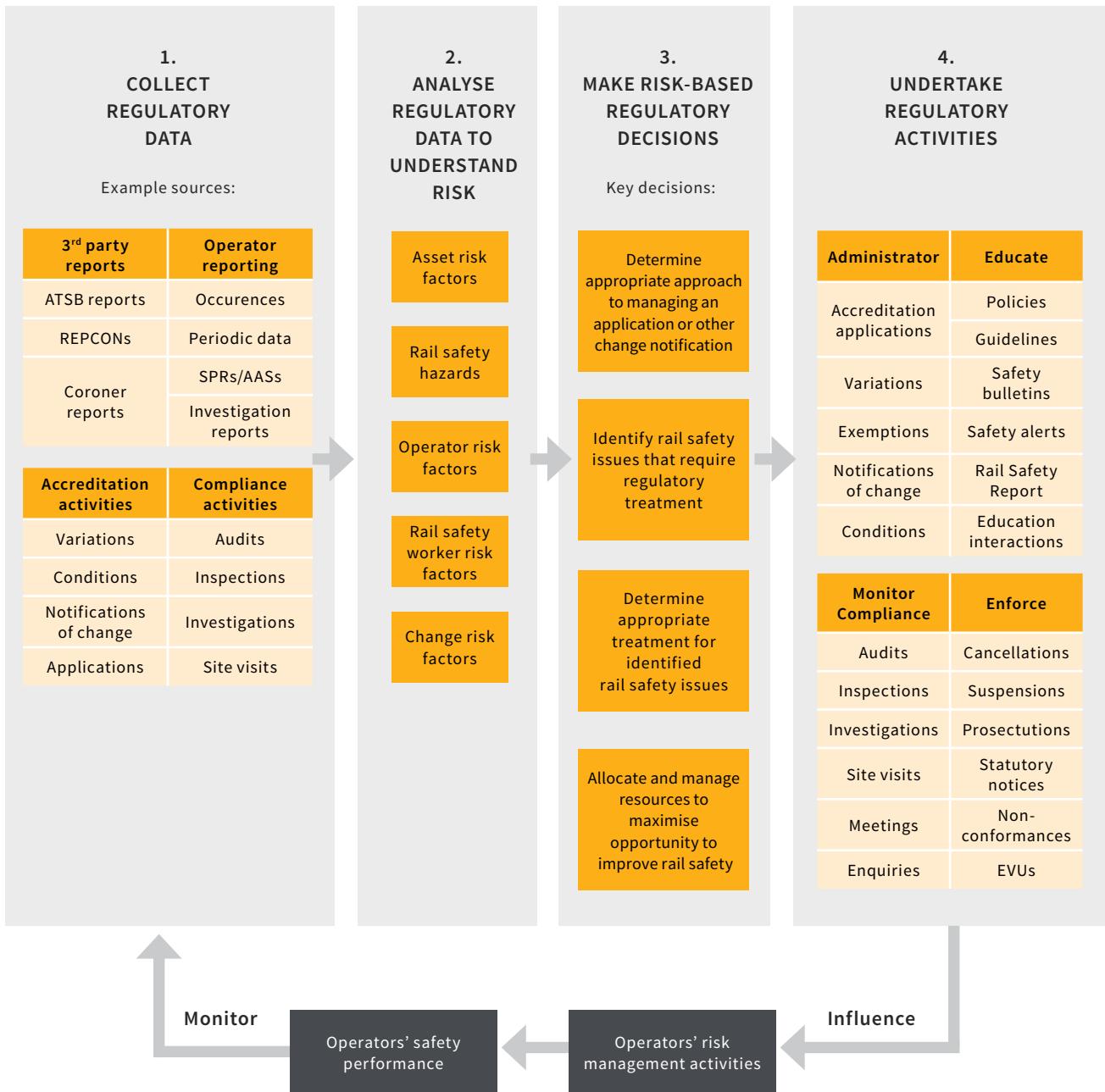


FIGURE 2: ONRSR's model for risk-based regulation

2.1.1 COLLECT REGULATORY DATA

Regulatory data is collected from a variety of sources, including operator reporting, third party reports and through interactions with industry. This enables the monitoring of industry-wide and operator-specific safety management and performance to support both ONRSR's legal requirements and those of industry.

All regulatory data is captured and managed through a regulatory information system that has been developed for this purpose. ONRSR's approach to data capture and management is driven by:

- the need to collect and analyse data at a level of detail necessary to guide decision making regarding which operators and/or issues require resources to be focused on; and
- the expectation of ONRSR to monitor and report on high level industry wide safety performance.

ONRSR also makes some of this regulatory data available to regulated parties and other stakeholders through a range of safety data publications, reports and data extracts, in accordance with the confidentiality provisions of the RSNL, to assist with decisions being made by these parties.

2.1.2 ANALYSE REGULATORY DATA TO UNDERSTAND RISKS TO RAIL SAFETY

By analysing and drawing upon the regulatory data collected, ONRSR can build a picture of risks to rail safety across the industry. This includes, for example, understanding safety risk profiles of operators and the risks associated with capital investment projects.

ONRSR needs to have a good understanding of the risks to safety being presented by railway operations to focus regulatory activities towards ensuring the responsible duty holders are managing those risks. References to risks to rail safety primarily means the risk of rail safety events such as derailments and collisions, which have the potential to cause harm to workers, passengers and members of the public across the rail network.

ONRSR's interest in operational rail safety risks must be considered separately to, and does not in any way impact on, the risk management responsibilities placed on safety duty holders under the RSNL. It is the duty holders' responsibility to manage risks to safety from railway operations, SFAIRP. ONRSR's interest, collation of data, risk analysis and safety performance monitoring in this space is conducted in line with the principles of co-regulation and shared responsibility for risk management set out in the RSNL. These are further explained with a focus of the risks we seek to manage in Figure 3.

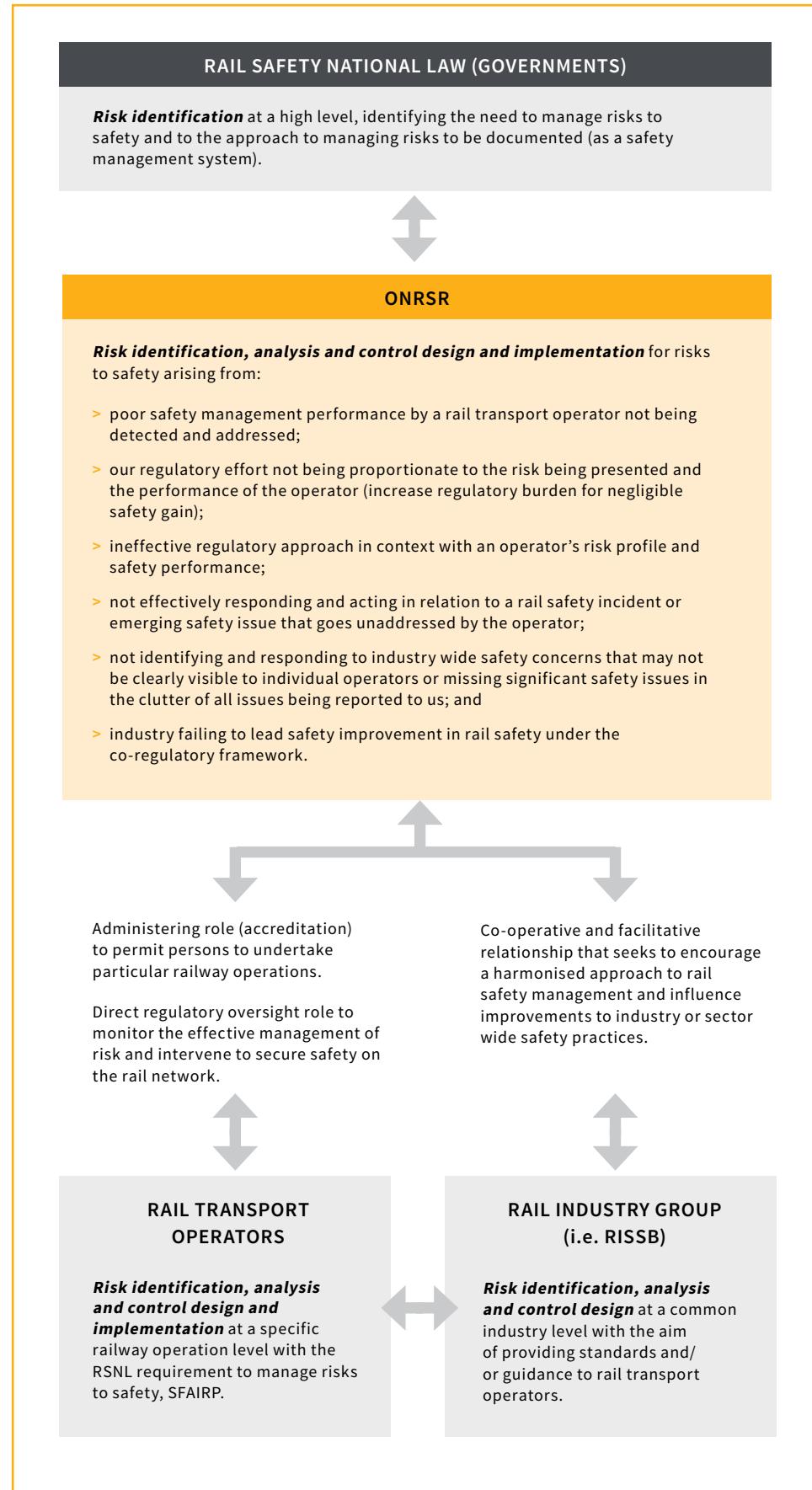


FIGURE 3: Accountability for risk management under the co-regulatory framework

2.1.3 MAKE RISK-BASED REGULATORY DECISIONS

Based on our understanding of risks to rail safety, ONRSR makes informed regulatory decisions to best drive and influence risk reduction across industry.

Risk-based decision making is fundamental to ONRSR's approach to regulation. However, not all decisions carry the same level of regulatory importance, have the same potential to impact rail safety, or require the same commitment of resources.

For example, a decision to select and focus regulatory effort on a new national priority area has a much greater potential to impact rail safety, requires a significant commitment of resources over an extended period, and is therefore of greater regulatory importance than a decision to select a new publishing provider for corporate reports.

A scalable approach to risk-based decision making is therefore required to ensure the level of rigour and effort expended on a decision is commensurate to the regulatory importance of that decision. To achieve this, ONRSR's framework for risk-based regulation focuses on the most important regulatory design and planning decisions, as listed in Figure 1.

Taking a risk-based approach to the most important regulatory decisions ensures focus on the most significant risks to rail safety and those areas with greatest scope for improvement. However, this is not to say that attention is not paid to less significant risks or to compliance with other aspects of the RSNL.

While the legislation clearly articulates ONRSR's powers to monitor and enforce operator and duty holder compliance with the requirements of the RSNL, there is little detail on the specifics of the broader function to work with rail transport operators, rail safety workers, and others involved in railway operations to improve rail safety nationally. To satisfy this function, ONRSR is an active participant in broader industry groups and committees, contributing to activities such as the development of standards, research into new technologies, and the sharing of safety data. This supports ONRSR's principal objective of facilitating the safe operation of rail services across Australia and a commitment to always strive to work with the broader industry on problem-centric issues to achieve this objective.

2.1.4 UNDERTAKE REGULATORY ACTIVITIES

Risk-based decisions and plans are implemented by interacting with industry and government stakeholders using a variety of regulatory activities, tools and measures, ranging from publication of guidelines to taking enforcement actions.

ONRSR's regulatory activities are designed to achieve an appropriate balance between focusing on program-centric work and problem-centric work. At its simplest level program-centric work leads to a scheduled program of regulatory interactions ensuring that monitoring time (and activity) is allocated to all accredited operators.

Problem-centric activities build on the identification of safety issues (problems) that need regulatory attention at a national, industry sector and specific operator level, leading to tailored regulatory activities being incorporated into the work program at an operator level and broader engagement with industry in safety initiatives and education programs, targeting an individual rail transport operator or industry sector issues.

2.2

MAKING A PROPORTIONATE RESPONSE

In keeping with the co-regulatory framework, ONRSR has a strong preference for giving regulated parties the opportunity to correct identified contraventions of the RSNL through the corrective action and change management processes of their safety management systems. This approach is reliant on a demonstrable willingness and capability by the operator to address the safety issue and to comply with the RSNL. However, ONRSR assesses the circumstances of each identified breach to determine the required relevant and proportionate level of enforcement.

The response to contraventions of the RSNL is not progressively escalated through the range of enforcement options available to ONRSR, rather the option selected is considered the best to achieve a safe and compliant outcome given the specific circumstances. This approach reflects the likelihood of selecting one of the various compliance tools (see section 3.4) or sanctions available depending on the following factors:

- > the severity of any realised consequences from failing to manage the risk to safety of rail safety workers or the public;
- > the seriousness of an immediate and/or ongoing risk to the safety of rail safety workers or the public and the speed required for resolution;
- > the historical safety performance of the operator in context of the breach;
- > the capacity of the regulated party to address the breach;
- > the safety management performance of the operator, taking into consideration past history of breaches, regulator interventions, serious occurrence rates;
- > actions taken, or not taken, to any advice or direction given by ONRSR to the party in relation to the circumstances of the breach; and
- > the party's level of cooperation and willingness to address the identified breach.

Operators should be aware that all enforcement options are always available to be utilised against all duty holders at any time.

3

REGULATORY ACTIVITIES

The Regulator has key functions and powers under the RSNL to administer, educate, monitor and enforce. ONRSR delivers a range of activities, mostly via rail safety officers, to ensure those functions are met. The figure below identifies the core activities against the key functions. The expectations and regulatory outcomes from these activities are expanded on throughout this document and summarised in Appendix 1.

ADMINISTER	MONITOR COMPLIANCE	ENFORCE	
		Facilitated	Sanctioned
Accreditation & Registrations	Notifications of Change	Education interactions	Investigations
Variations of accreditation & registrations	Safety Performance Reporting reviews	Advice	Prohibition Notices
Exemptions	Site visits & meetings	Non-conformance reports (NCRI)	ONRSR imposed conditions of restrictions
	Audit	Improvement Notices	Prosecution
	Inspections		Suspension / Cancellation
	Notifiable occurrence response & monitoring		
	Enquiries		
INFORM & EDUCATE			
Policies	Guidelines	Safety Bulletins	Safety Alerts
Rail Safety Report	Newsletters	Industry education sessions/ interactions	Publication of research

FIGURE 4: Regulatory activities



In addition to the above activities, rail safety officers may also request information from operators to confirm facts, clarify uncertainties with existing information held or improve ONRSR's understanding of a safety issue or element of railway operations. Depending on the circumstances, the request may range from a phone call seeking clarification of a simple and/or minor matter through to formal written communication using relevant sections of the RSNL.

The range of activities listed above are used principally to administer and monitor compliance with and, if necessary, initiate actions to enforce or sanction breaches of the RSNL. Rail safety officers select the activity which best fits their intended purpose for interacting with an operator. However, at all times rail safety officers are expected to remain vigilant of safety issues and are empowered to act to secure compliance with the RSNL or to address a safety issue regardless of the activity in which they are engaged.

As an example, rail safety officers conducting a site visit may identify a safety concern that warrants additional examination. In this case, they could immediately cease the site visit and advise the operator that they were now making enquiries into the identified safety issue.

In all cases, if rail safety officers are going to change the nature of the regulatory activity being undertaken a representative of the operator is advised.

3.1

ADMINISTER

ONRSR administers a national scheme of accreditation, which includes registration and exemption, that provides confidence to the industry and community that those organisations permitted to conduct railway activities are the appropriate parties responsible for the control and management of rail safety and have the competence and capacity to ensure the safety of their operations. Where required by the RSNL, they must also have systematically identified and assessed the risks to safety relating to their railway operations and have demonstrated an ability to manage or mitigate these risks prior to operating.

3.1.1 ACCREDITATION

In administering the national accreditation regime under the RSNL it is ONRSR's task to exercise powers under the RSNL which includes making the decision to grant, with or without conditions, accreditation to a person or organisation that has the competence and capacity to undertake the intended railway operations. Accreditation is refused for those applicants who cannot sufficiently demonstrate the requirements set out in the RSNL.

Any person or organisation captured by the RSNL that seeks to undertake railway operations within Australia is required to be:

- accredited for those railway operations;
- registered in relation to a private siding to be able to undertake rail infrastructure related railway operations;
- working for an organisation that is either accredited for or registered in regard to those operations; or
- exempted from the requirement for accreditation or registration.

ONRSR can only accredit, register or exempt a person or organisation that is a rail transport operator, having the role of one or both of a rail infrastructure manager or rolling stock operator, as defined by the RSNL.

There are fees attached to the accreditation scheme and these are described in the ONRSR Fees Policy.

ONRSR is required to decide to grant or refuse an application for accreditation within six months of receiving a complete application. This is known as the relevant period under the RSNL, the timing of which is formally re-set if further information is required to process the application.

The actual time taken to process an application for accreditation depends on the scope and complexity of the applicant's railway operations and the completeness and quality of the documentation provided with the application. ONRSR uses its best endeavours to work with applicants' operational timeframes, but will not enter an agreement that shortens the relevant period for decision (i.e. that is less than six months from receipt of a complete application).

Granting of accreditation for railway operations is a declaration that ONRSR is satisfied the rail transport operator has demonstrated it has the competency and capacity to manage the risk to safety associated with its specific railway operations. It does not mean that

ONRSR has approved or endorsed an organisation's safety management system, specific technology or methods of operation. These are subject to ongoing oversight through regulatory activities.

Accreditation is granted through the issue of a notice of accreditation, which sets out the scope of operations for which the operator is being permitted.

As accreditation is granted for specific railway operations it is not unusual that an operator's business activities or methods of operating will change beyond their current scope of accredited railway operations. Where this occurs, the operator is required to apply for a variation to accreditation which is assessed in the same way as an accreditation.

Potential applicants for accreditation, registration or exemption are encouraged to discuss with ONRSR their intended railway operations (or change to operations) prior to making an application.

Major Projects

In cases where the intended railway operations may be considered a major project, which typically involve an application for accreditation or variation to accreditation, ONRSR has developed further guidance setting out the expectations on operators for planning, management and safety assurance of such projects in the ONRSR *Major Project Guideline*, which is available on the ONRSR website.

While ONRSR does not have a strict definition of a major project, they will typically involve a significant technical or operational change, particularly involving novel or innovative approaches, the introduction of new rolling stock or railway infrastructure or will be associated with high level of complexity due to intricate, multi-party organisational or contractual structures. If the intended railway operations fall into these definitions then early engagement with ONRSR, well ahead of any formal application considerations, is encouraged.

A **rail transport operator** is a person or organisation that is one or both a:

- > **rail infrastructure manager** – having effective control and management of the rail infrastructure whether or not the person owns the infrastructure or has a statutory or contractual right to use the rail infrastructure or to control, or provide, access to it
- > **rolling stock operator** – having effective control and management of the operation or movement of rolling stock on rail infrastructure for a railway.

s4 RSNL

A. What determines effective control and management?

Ensuring that we are accrediting, registering or exempting the correct party is an important part of granting the accreditation. Detailed assessment of an application will not commence until confirmation is established that it is the correct party making the application.

The determination of effective control and management is a question of fact. It is a case-by-case determination that in most cases is straightforward, based on simple ownership and control, or statutory control. However, more complex commercial contracting or partnering arrangements exist that present more of a challenge to determine who the correct legal entity to hold the accreditation is.

It is not ONRSR's role to directly influence or dictate what commercial or organisational arrangements should be struck between parties in the conduct of railway operations. However, the form of arrangements in place, particularly when relating to responsibility and accountability for various activities, will directly influence the decisions as to who can be accredited for what railway operations. ONRSR works with parties to provide advice on the implications of their contracting or other similar decisions to ensure that there is a clear understanding of the effective control and management of the parties, and that the intentions of the parties in relation to responsibility for the railway operations are met.

To determine the correct effective control and management party, evidence is requested for consideration around:

- ownership, including leasing and contracting;
- the ability to influence or direct the approach taken to manage risks or how railway operations are to be managed; and
- the control over standards, specifications for performance, quality acceptance and risk controls.

B. ONRSR's view on granting accreditation to enable tendering for railway work

Accreditation can only be granted to an organisation that can demonstrate they are the effective control and management party for their proposed railway operations. ONRSR has no ability to grant an accreditation in a provisional or anticipatory manner for organisations that are looking to tender for railway operations and are not able to demonstrate they are the effective control and management party.

ONRSR is able to provide advice to contracting and contractor parties in regard to implications for accreditation of parties to contractual arrangements ahead of tenders being released or submitted.

ONRSR does not facilitate arrangements of convenience between multiple parties in terms of who holds accreditation. Evidence is sought, through access to commercial contracts or other forms of agreements of responsibilities as necessary, to ensure the party seeking accreditation can clearly demonstrate it has effective control and management for its proposed railway operations.

C. How is an application for accreditation assessed?

Once established that an applicant is the rail transport operator (i.e. the effective control and management party) for the railway operations, the RSNL requires ONRSR to assess

and grant (with or without conditions) or refuse an application. This is done by considering that the applicant has:

- > the competence and capacity to manage risks to safety associated with the railway operations for which accreditation is sought;
- > the competence and capacity to implement its safety management system;
- > undertaken consultation in relation to its safety management system;
- > the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities.

D. What is meant by competence and capacity?

Testing for competence and capacity is not checking that the safety management system is compliant with the law. It is necessary to determine whether the rail transport operator can demonstrate organisational level competency and capacity. This is not about checking that individuals have the required competency to perform their roles but whether the organisation as a whole (represented by its senior management) can present:

- > a clear description of the railway operation they are intending to undertake;
- > a good understanding of the risks to safety associated with the intended railway operation, supported by documented risk assessment process and risk assessments;
- > a clear plan for resourcing and building organisational capacity to undertake the operations, supported by organisational charts, key position descriptions and the demonstrated capability to implement this plan;
- > a structured approach to the management of risks to safety, demonstrated through a developed safety management system and the knowledge and understanding of the system functionality by those that will be responsible for overseeing its implementation;
- > an understanding of the need for, and evidence of, the approach taken, or to be taken, to manage a safety assurance process for the decisions made regarding the proposed operations and the form and content of the safety management system; and
- > in the case of a variation of accreditation, evidence that the safety management system has been implemented to the extent possible prior to the new operations, e.g. change management processes have been followed.

ONRSR samples a range of elements of the safety management system and may require the detailed documentation and access to the staff responsible for the documentation in order to examine its completeness, appropriateness and integration into the broader safety management system.

If an applicant for accreditation cannot satisfy their competence and capacity to manage risks to safety associated with its proposed railway operations, the application is refused and the applicant provided the reasons for refusal in writing.

E. What consultation needs to have been undertaken?

ONRSR's preference is for applications to have considered any submissions made regarding the consultation with affected stakeholders associated with the commencement or variation of their railway operations.

The following is considered during the assessment process:

- what consultation has occurred and how the applicant has considered and acted in response to any submissions provided during the consultation process; and
- whether the applicant has a comprehensive consultation plan established for implementation when rail safety workers, contractors and other stakeholders are engaged to perform the rail safety work.

If consultation with affected stakeholders is feasible, in that the stakeholders are identified, in place and capable of providing a response to the applicant (particularly in relation to interface agreement requirements), ONRSR would expect this consultation to have occurred at the time of application or during the early stages of our assessment period.

F. What insurance arrangements are required?

ONRSR does not prescribe any specific level of public liability insurance (or financial capability) that is required by an operator to be accredited. Insurance cover proposed by an applicant is compared with other insurances that are held by organisations for similar railway operations as an indicative measure. This is for internal assessment purposes only and ONRSR does not disclose insurance arrangements of an operator to an applicant.

Where ONRSR is not satisfied that an appropriate level of cover is, or will be, held by an applicant, evidence is sought that the applicant has properly presented the nature of - and risks associated with - their specific railway operations to their insurance company and relies on insurance industry specialists to determine an appropriate level of cover.

G. Why does ONRSR impose conditions and restrictions on accreditation?

The RSNL enables ONRSR to impose conditions and restrictions on an accreditation for the following reasons:

- to define in more detail the limitations to the scope of railway operations allowed under the accreditation to more clearly establish what is and what is not being permitted;
- to limit the application of railway operations that are permitted under the accreditation to a specific location, methodology, purpose or other factor;
- to secure a specific method of operation or use of technology that the operator has committed to in order to achieve accreditation (meaning that the operator will need to apply for a variation to accreditation to change this);
- to introduce notification of change or provision of information requirements that are in addition to those contained in the RSNL and Regulations; and
- to impose limitations to railway operations resulting from identified contraventions of the RSNL or safety issues that have not been addressed to ONRSR's satisfaction.

In addition to the operator being able to seek to remove or vary a condition or restriction through an application for variation to accreditation, ONRSR monitors the effectiveness and relevance of what was imposed. ONRSR will act to remove these, without initiation by the operator, should it be decided that the condition or restriction is no longer needed for ONRSR's purposes (e.g. a condition requiring notification of change beyond that required by the Regulations).

H. When is accreditation, registration or exemption needed prior to commencing construction works?

ONRSR acknowledges that when constructing railway infrastructure a range of work is undertaken in preparation for, and ancillary to, the construction of the railway, such as initial site clearance, establishment of construction camps or staging areas, relocation of utilities and services and roadworks. These works, along with planning and design activities, can be undertaken by organisations that do not hold accreditation for railway operations as ONRSR do not include these activities in the definition of construction of a railway, railway tracks and associated railway track structures – for which accreditation is required.

As each project or construction work is different operators or other interested parties are encouraged to come and speak to ONRSR so that a more detailed assessment of the activities can be done. It is never a ‘one size fits all’ approach.

I. What are the accreditation implications to other parties interfacing with railways?

While the RSNL requires rail transport operators to be accredited to undertake railway operations, sometimes the line between rail infrastructure operations (i.e. construction, repair and maintenance) and road or utility operations can blur.

ONRSR does not seek road managers or utility managers to be accredited for undertaking their tasks on or around railways where their operations are restricted to the core functions associated with being a road or utility manager.

The expectation is that the relevant rail infrastructure manager and road/utility manager will work jointly to manage shared interfacing risks (noting the requirement of the RSNL for rail infrastructure managers and road managers to seek to enter into interface agreements).

ONRSR works with infrastructure managers to provide clarification of requirements under the RSNL on representation from one or both of the managers. ONRSR intervenes where difficulties are identified between parties and/or where a proposed approach would not be consistent with our interpretation of how to apply the RSNL.

J. The notice of accreditation

While ONRSR does not publish operators’ notices of accreditation or exemption, the RSNL does require an accredited (or exempted) rail transport operator to make its current notice of accreditation or notice of exemption available for inspection by any person at the operator’s place of business. As such, ONRSR drafts notices so they can be read and understood by a person not directly involved with the operator.

The notice of accreditation is drafted in a way that:

- > broadly describes the nature and scope of a rail transport operator’s railway operations, avoiding, where possible, making the description too specific (e.g. identifying rolling stock class or infrastructure types). This provides some flexibility to the operator to make changes to operations without having to apply for a variation to accreditation every time; and
- > provides sufficient description to the extent of permission being given to the railway operations that were requested as part of the application. ONRSR does not provide accreditation for railway operations that were not directly sought by an applicant or are not ancillary to the core purpose for which accreditation was sought.

3.1.2 REGISTRATION

Registration enables the registered rail transport operator to undertake railway operations associated with the management, maintenance and operation of railway infrastructure of the private sidings listed on their registration. The registered rail infrastructure manager is still required to manage, SFAIRP, the risks to safety associated with the operations.

ONRSR needs to establish from an applicant for registration as a rail infrastructure manager for a private siding that:

- > the applicant is, or is to be, the rail infrastructure manager of the private siding; and
- > the railway operations to be carried out in the private siding are such that registration of the applicant (rather than accreditation of the applicant in respect of the railway operations) is, in ONRSR's opinion, the appropriate action.

A registered operator cannot undertake rolling stock operations unless they also hold accreditation for this purpose.

When is registration appropriate?

ONRSR's decision as to whether the railway operations to be undertaken within a private siding are appropriate for the granting of a registration is based on the potential risks to safety. This assessment is based on the type, scale and complexity of those activities and whether there is a need to require a competency and capacity test of the operator in regards to the controls that are being put in place by the rail infrastructure manager (i.e. require accreditation) prior to operations commencing.

A practical implication of the registration scheme is that, given ONRSR is not required to undertake a competency and capacity test on the private siding operator, rolling stock operators are not able to rely on any confidence they may receive from dealing with an accredited rail infrastructure manager. It is expected that rolling stock operators take a higher level of responsibility for ensuring that the siding is fit for their operations and that appropriate safe working rules are in place and implemented than they would when operating on an accredited operator's railway. It is where the scale and complexity of the siding operations reaches the point where this expectation would be unreasonable that ONRSR's decision of whether registration is appropriate is influenced.

Other key factors that influence decisions may include whether the facility constitutes a marshalling yard, crossing loop, passenger terminal, freight terminal or a siding of a class prescribed by regulation not to be a private siding (being elements of railways that are excluded from being private sidings by the RSNL).

The inclusion of freight terminals in the above may appear to exclude the predominant use of a private siding, which is the loading and unloading of freight. Sidings that are used solely to support bulk handling facilities (e.g. coal, grain or mineral facilities) within the definition of a freight terminal are included in an operator's private siding registration. Likewise, sidings solely facilitating the loading/unloading of specialised freight for a single operator may also be suitable for inclusion in a registration, subject to the other factors such as:

- > who controls the movement of trains on the railway/private siding and how these movements are controlled. The more direct involvement a rail infrastructure manager has in the safeworking control of trains and train related movements, the more likely that accreditation will be required;

- > the length of any track from the interface with an accredited rail infrastructure manager or another private siding owner. Where the train movements on a siding are more than predominantly a shunting type operation (i.e. involve a significant portion of travel distance that is undertaken at or near normal operations speeds), the operation is more likely to be considered a branch line type operation better suited to being accredited;
- > the operating speed. In operations where train speeds are likely to exceed normal shunting yard speed limits, the greater the potential for high consequence incidents and the more likely accreditation is considered appropriate; and
- > the number and size of the trains operating on the section of track for which there is an application for registration. As the complexity of movements increase and the rail infrastructure manager needs to take more direct control of the scheduling, safeworking of trains and infrastructure work, the more likely the need for accreditation is considered.

3.1.3 EXEMPTION

ONRSR can grant exemptions to operators from the requirement to be accredited or registered to undertake railway operations. However, given the co-regulatory nature of the RSNL that affords reasonable flexibility to rail transport operators to tailor their safety management systems and the existence of the registration scheme for lower risk profile siding operators, the use of exemptions is limited to exceptional circumstances.

Exemption from the requirement for rail transport operator accreditation is considered where a railway or railway operations are captured by the RSNL but in their nature, are not railways of the type intended to be captured by the RSNL. Examples for exemption may include rolling stock testing facilities, amusement type railways that are captured by other safety certification regimes, elements of railway type activity that are integrated into factory or plant operations and unique one off operational scenarios.

Exemption from accreditation is based on the nature and scope of the railway operations in question, and exemptions are not granted based on whether an operator can or cannot demonstrate an effective safety management system.

Exemption from registration requirements is unlikely to be granted as the registration process does not contain any requirement to demonstrate competency and capacity to manage risks to safety.

Where an exemption has been given, the operator is still required to comply with the general safety duties set out in the RSNL and remains subject to regulatory activities. This is so ONRSR can be assured that circumstances have not changed since the exemption was granted.

3.1.4 EXEMPTION FROM SPECIFIC PROGRAM REQUIREMENTS UNDER THE RSNL

The RSNL (Subdivision 3 of Division 6 of Part 3) enables the Regulator to grant an exemption from the requirements of the RSNL¹ in relation to:

- security management plans;
- emergency management plans;
- health and fitness management programs;
- drug and alcohol management programs; and
- fatigue risk management programs.

However, the nature of the RSNL, which provides flexibility to operators in how they meet these requirements, means exemptions are not typically needed as most rail transport operators should be able to find a means of compliance. Exemptions against the above will only be considered in exceptional circumstances where:

- a rail transport operator's operations present sufficiently low risk that complying with all the requirements of the RSNL for the above plans or programs imposes a disproportionate burden without a resultant safety benefit; or
- a rail transport operator can demonstrate an alternative means of complying with a duty under the law without complying with a resulting disproportionate requirement of the RSNL.

The purpose of granting an exemption for all or part of the above plans or programs is to reduce unnecessary or excessive compliance burdens for some railways commensurate to their level of risk. While an outright exemption is unlikely to be granted from the requirements for the above plans, it is more likely that any exemption is due to a unique environment or conditions.

Exemptions do not reduce the standard to which safety must be managed as the operator must continue to comply with the overarching duty to ensure safety SFAIRP, as well as other duties that may be applicable. To ensure that safety is not reduced conditions may be imposed on an exemption in order to secure the operator's alternative means of compliance or introduce additional notification requirements to monitor an operator's safety performance in context to the removal of a RSNL requirement.

Each application for exemption is treated and assessed on a case-by-case basis, taking into consideration the scope and nature of the rail transport operator's railway operations and the circumstances in question. ONRSR is required to decide to grant or refuse an application for exemption (including an application for variation of exemption) within six months of receiving a complete application (this is known as the relevant period under the RSNL, which is formally restarted if further information is required to process the application).

¹ Note these specific exemptions are differentiated from the more general exemptions that are referenced in section 207 of the RSNL and addressed in section 3.1.3 of this document.

Exemption is granted by the issue of:

- > a notice of exemption (in the case of a variation of exemption, this is a consolidated notice of exemption that incorporates the change to the particulars); and
- > a cover letter to the notice of exemption confirming the extent of railway operations that the exemption covers, providing the reasons for any conditions or restrictions imposed and addressing any other issues relevant to the commencement of railway operations under the exemption.

Where exemption is refused, which would typically be where ONRSR considers it is reasonable for the operator to comply with the plan and/or program requirements of the RSNL, notification is by a letter setting out the reasons for refusal.

Surrendering accreditation, registration or exemption

It is at an operator's own discretion as to when they may cease operations and no longer require their accreditation, registration or exemption. The RSNL enables an operator to surrender its accreditation, registration or exemption by notifying ONRSR on the intention to surrender by a specified date.

While a surrender from an operator can be refused, ONRSR does not unreasonably withhold acceptance of surrender when presented with reasonable arrangements for the management of risks to safety of other rail transport operators or the public associated with the ceasing of railway operations. To provide time to review an operator's arrangements for ceasing operations, advice of the intention to surrender is requested at least 28 days prior to when the operator wants the surrender to take effect.

Any concerns with the arrangements for ceasing of railway operations are advised in writing and best endeavours are used to work with the operator to resolve these concerns prior to the operator's intended date of surrender.

While acknowledging that there may be commercial implications attached to surrender dates, ONRSR does not give effect to a surrender until satisfied with the arrangements to cease operations. Until this occurs the operator is still subject to the RSNL.

3.1.5 MINISTERIAL EXEMPTIONS

Under s203 of the RSNL a Minister may, after consultation with the Regulator, and by notice in the Gazette, grant exemptions from the RSNL or any part thereof, to a specified person or railway. The exemption expires after 3 months, however it can be varied or withdrawn during this time. The exemption may contain conditions and if these are not complied with penalties apply.

3.2

EDUCATION

Education involves the provision of information and advice to rail transport operators and other duty holders to help with the understanding of the requirements of the RSNL and awareness of rail safety issues, with the aim of improving safety of railway operations. This is done through:

- provision of advice and information to individual rail transport operators by rail safety officers when undertaking regulatory activities;
- publication of guidance material to assist operators to understand what is required to comply with the RSNL;
- publication of industry safety performance data and information on rail safety issues;
- publication of safety bulletins/alerts; and
- delivery of targeted educational programs and projects to industry groups and sectors.

As appropriate and practicable, ONRSR works individually with rail transport operators or through workshops or similar sessions with industry groups or sectors. ONRSR's education function is primarily directed towards:

- education and awareness of the legal requirements and the expectations on operators for demonstrating compliance with these requirements;
- raising industry awareness and exposure to information regarding safety issues that exist, or are emerging within the rail industry, that operators should be aware of; and
- sharing examples of good practices and encouraging continual improvement of safety management systems.

3.2.1 OPERATOR SPECIFIC EDUCATION INTERACTIONS

ONRSR's rail safety officers are actively encouraged to use an educational approach as part of their regulatory interactions with individual rail transport operators as an option for securing compliance and improving safety. As discussed in the monitoring section of this document, rail safety officers may provide advice to an operator demonstrating a lack of awareness about, or misinterpretation of the RSNL or the particulars of their accreditation as long as the breach is minor in nature and the rail transport operator demonstrates a willingness to take measures to make improvements. The advice is provided in good faith and based on the considered view of the rail safety officer as to the operator's preparedness and capability to take and consider the advice.

In situations where it is observed an operator is demonstrating a poor understanding of the requirements of the RSNL or where an operator has experienced a turnover of staff that suddenly creates gaps in their knowledge of what is required, ONRSR may conduct a formal education interaction. This is to assess the rail transport operator's awareness and understanding of its legal obligations, provide advice and seek a commitment to act on how to address these gaps.

Information obtained from these interactions is used to shape ongoing regulatory activities with the operator.

3.2.2 EDUCATION WITH INDUSTRY GROUPS AND SECTORS

As previously outlined, some of the key functions of ONRSR include:

- > to work with rail transport operators, rail safety workers, and others involved in railway operations, to improve rail safety nationally;
- > to conduct research, collect and publish information relating to rail safety;
- > to provide, or facilitate the provision of, advice, education and training in relation to rail safety; and
- > to engage in, promote and coordinate, the sharing of information to achieve the objects of this law, including the sharing of information with a prescribed authority.

Safety improvement in the rail industry is a fundamental objective and educational programs are one of the important ways national safety priorities are addressed. In developing these programs ONRSR encourages, enables and supports industry by working with groups such as the Rail Industry Safety and Standards Board (RISSB) and the Australasian Centre for Rail Innovation (ACRI) to develop and encourage the use of educational products and resources.

ONRSR will run safety education programs as part of general safety improvement programs. These education programs are targeted more broadly at industry rather than on the specific requirements of a particular operator. While these can and are discussed at an individual operator level, the focus is on enhancing knowledge and understanding across industry by ONRSR running specific industry forums and/or by using dedicated forums such as the CEO Industry Reference Group and Safety Managers Group.

The tools and material ONRSR develops through its educational projects comes in the form of presentations, instructional videos, interactive information sessions, guidance material, safety bulletins and campaigns.

ONRSR provides industry with a consistent and clear regulatory platform to support the enhancement of rail safety, and works with rail transport operators and other rail safety stakeholders, through the co-regulatory model, to continuously improve rail safety and ensure industry:

- > understands what SFAIRP means;
- > collects and reports safety performance data that can contribute to improved safety;
- > identifies individual operator safety risks;
- > identifies collective industry safety risks nationally, or in sector groupings, that are appropriate for risk mitigation strategy development purposes; and
- > undertakes appropriate research to underpin the development of risk identification and such innovation and knowledge as is necessary to reduce risks SFAIRP.

In doing so ONRSR agrees practical means and timeframes for the implementation of safety initiatives and standards and does not duplicate appropriate safety activities that are already being demonstrably carried out by industry.

3.2.3 EDUCATION AND INFORMATION EXCHANGE FORUMS

Operator Forum

Each ONRSR office may, at its discretion, conduct an Operator Forum. The forum provides the office and representatives of the rail industry with the opportunity to exchange ideas and to discuss operational rail safety issues.

ONRSR Directors Operations work with local industry representatives to develop agendas and protocols for Operator Forums that suit their specific needs.

National Operations Forum

The National Operations Forum is an adjunct to an internal monthly meeting where all ONRSR key operational decision makers are present.

The National Operations Forum is available for any multi-jurisdictional operator to meet and discuss issues with senior ONRSR representatives to gain a greater appreciation of the decision-making processes. The intent is to generate a greater shared commitment to improving rail safety.

In addition to these forums, ONRSR is represented by Executive members at industry forums such as Safety Managers Group and Australian Tourist and Heritage Railway Association (ATHRA) meetings which provide further opportunities for sharing information and education as well as consulting with industry on policy and guideline development and educational initiatives.

It is recognised that ONRSR, RISSB and the Australian Railway Association (ARA) all hold responsibilities in relation to information sharing and education and partner together to hold information and education sessions across Australia.

3.3

MONITORING

Monitoring is the ongoing oversight and examination of organisations' railway operations and safety management performance. It also builds knowledge and understanding of a rail transport operator's specific railway activities and safety risk profiles that are used to tailor regulatory activities.

ONRSR oversees a continuing examination of operators' safety management system implementation and safety performance under the test of whether safety is being managed SFAIRP and whether the operator continues to demonstrate the competency and capacity to safely undertake the railway operations.

Monitoring activities are scheduled using the risk-based decision making processes outlined in section 2 of this document. Monitoring activities undertaken range from simple queries to those described in the following that, along with their regulatory outcomes, are summarised in Appendix 1.

3.3.1 NOTIFICATION OF CHANGE

The purpose of the notification of change is to inform ONRSR of certain operational changes that are within the scope of the rail transport operator's accredited railway operations, as specified in their notice of accreditation. This helps ONRSR to better monitor railway operations and is one aspect of regulating management of change.

ONRSR does not approve or reject these changes. By initially granting accreditation to a rail transport operator, the Regulator has been satisfied that the operator has the competence and capacity to manage the risks, implement the controls and manage changes associated with the railway operations for which it is accredited.

Receipt of a notification is acknowledged and then assessed as to whether the change meets the requirements for a notification of change (i.e. is within the scope and nature of the operator's accreditation, as specified in their notice of accreditation, and meets the requirements of regulation 9). In determining what further action to take in response to a notification ONRSR considers whether the rail transport operator:

- > is following its risk and change management processes;
- > is complying with the requirement to notify ONRSR of certain changes to the safety management system; and
- > has considered the impact the change may have on others (including through consultation as appropriate).

On expiration of the notification period under regulation 9 the rail transport operator may implement the change as planned. However, ONRSR may still request information or undertake an audit or inspection at any point as part of compliance monitoring activities.

If the change is outside the scope of the accreditation or raises safety concerns, ONRSR will contact the operator as early as possible to discuss the situation. Note that this will very likely impact planned change timeframes.

3.3.2 SITE VISIT EXPECTATIONS

Rail safety officers undertake site visits to observe railway operations and railway premises for the purposes of:

- gathering information about a rail transport operator's railway operations;
- seeking clarification about the nature of an incident or potential safety issue;
- raising familiarity and awareness for ONRSR's staff regarding the operator and its railway operations; and
- observing a specific feature of an operator's railway operations.

During a site visit rail safety officers may request assistance with accessing track and/or rolling stock or entry to a maintenance workshop or construction site.

The following can be expected regarding ONRSR's site visits:

- site visits are conducted with and without notice;
- regardless of whether notice is provided, upon exercising the legislative power to enter railway premises rail safety officers present to a representative of the operator and ask to be directed to the person responsible for the site, to explain the purpose of the visit;
- rail transport operators are not expected to make available any other staff than would be normally present at the site, unless additional representation from the railway organisation is discussed and agreed prior to the site visit; and
- requests for access to documented elements of the safety management system (e.g. procedures, standards or instructions) and records generated under the system that would normally be available at the site.

3.3.3 INSPECTION EXPECTATIONS

ONRSR's rail safety officers undertake inspections to observe and enquire into the management and conduct of railway operations on railway premises to:

- confirm that the practices of an operator in conducting its railway operations are compliant with its processes and procedures (as set out in the safety management system); and
- review whether the practices, processes and/or procedures of the rail operator are effective in addressing safety.

An inspection may be initiated as a proactive action for compliance monitoring (typically scheduled in our work program), reactively in response to an identified safety incident or issue, as follow-up to a notification of change or as a means of confirming the implementation of an operator's safety action in response to a non-conformance report or statutory notice.

An inspection may involve witnessing railway operations, conducting a detailed review of any part of a rail transport operator's operating methods and the application of processes and procedures from the safety management system, or an examination of records or other information generated by the system.

Inspections are generally conducted by two or more rail safety officers, one of which is identified as the lead officer for managing the conduct of the inspection and to be the primary contact for the operator in regard to the inspection.

3.3.4 AUDIT EXPECTATIONS

ONRSR's rail safety officers undertake audits of accredited and registered rail transport operators for the purpose of examining the content and application of an operator's safety management system to:

- > confirm the safety management system is compliant with the requirements of the RSNL;
- > confirm the safety management system is implemented and being used to manage the safety of the operator's railway operations; and
- > review whether the safety management system is effective in addressing the safety risks associated with the operator's railway operations.

An audit is generally initiated as a proactive action for compliance monitoring, typically scheduled in the work program, or reactively in response to an identified safety incident or issue. An audit involves a detailed review of all or any part of a rail transport operator's safety management system, including an examination of records or other information generated by the system.

Audits may be conducted by two or more rail safety officers, one of which is identified as the lead officer for planning the audit arrangements, managing the conduct of the audit and to be the primary contact for the operator in regards to the audit.

3.3.5 ENQUIRIES

An enquiry is ONRSR's term for when a rail safety officer is tasked with obtaining more information following a notifiable occurrence or when information is received of a safety issue via other formal channels such as REPCon confidential reports. The rail safety officer conducting an enquiry initially seeks to establish the basic facts surrounding the incident or safety issue, which informs ONRSR's decision on whether to require the rail transport operator to investigate the incident (e.g through s122 of the RSNL) and/or initiate an ONRSR investigation or other regulatory response. The outcome may also be that no further action is needed.

Where there has been an incident (or repeated incidents) or a safety issue identified of a serious nature the Regulator wants to be satisfied the rail transport operator has the ability to safely continue carrying out railway operations associated with the incident or issue. Accordingly, a rail safety officer's enquiry will seek information and evidence that the rail transport operator has:

- > demonstrated an understanding of the factors that led to the incident and the subsequent risk of the incident reoccurring; and
- > identified and taken action(s) to give confidence that such an incident will not be repeated if the railway operations are to continue.

It is important to note that an enquiry is not intended in any way to prejudice investigations being undertaken by the rail transport operator or ONRSR. The aim is to ensure any immediate safety concerns have been considered and addressed at the time rather than waiting for the conclusion of any investigative process.

In cases where the rail safety officer or Regulator is not satisfied the rail transport operator has demonstrated the matters referred to above, enforcement action is considered. This action includes (but is not limited to) the issue of a prohibition notice (where there is an immediate risk to safety) or an improvement notice, to prevent any further carrying out of the activity that led to the incident. The Regulator may even consider suspending an

operator's accreditation or registration. For more detailed information on this process, see section 3.4.2 Tools for achieving compliance and expectations.

It is acknowledged that any actions implemented immediately following an incident can only be taken based on the information available at the time. As an investigation by the rail transport operator and/or ONRSR develops over time it is accepted that information may come to light that renders the immediate actions taken obsolete or no longer appropriate. In such cases ONRSR expects the rail transport operator to amend its actions to reflect the new information and, where the incident response is being monitored by ONRSR, inform ONRSR appropriately.

3.3.6 NOTIFIABLE OCCURRENCE RESPONSE

The RSNL requires rail transport operators to report Category A notifiable occurrences and prescribed incidents (rail safety incidents) immediately, and in writing within 72 hours for all Category B occurrences identified in the regulations to the RSNL.

ONRSR receives immediate notification of Category A and prescribed incidents, but does not have a first responder or emergency response role. ONRSR's role in response to being notified of a notifiable occurrence is principally to:

- confirm the details and circumstances of the occurrence;
- make an assessment as to any ongoing concerns with continuing railway operations in light of the incident and respond accordingly; and
- decide whether to undertake independent post incident drug and alcohol testing.

Any rail safety officers that may be deployed to an incident site, liaise with other agencies on site including the Australian Transport Safety Bureau and emergency services as well as any rail transport operators involved. ONRSR's objectives when attending an incident site are to preserve evidence and gain a fuller understanding of the facts to inform any follow up regulatory activities.

ONRSR has the power under the RSNL to secure evidence at the site and will liaise with the rail transport operator affected if this occurs.

3.3.7 OTHER MONITORING ACTIVITIES

Another key monitoring activity undertaken by rail safety officers, which may also initiate additional interaction, is the review of reports and other information required, or otherwise provided, in order to identify any regulatory action that needs to be undertaken.

This includes:

Review of investigation report into notifiable occurrences	Initiated on receipt of an investigation report following a request or requirement (Notice under s122 of the RSNL) to provide an investigation report into a notifiable occurrence or safety issue.
Reviewing notifiable occurrences	Initiated daily upon processing of received notifiable occurrences. All notifiable occurrences are reviewed and decisions are made daily regarding whether anything needs to be responded to immediately. Ongoing trend monitoring of notifiable occurrences is a key input into ONRSR's risk-based regulatory decision making processes that inform the work program.
Review of safety performance report or annual activity statement	Initiated following the receipt of a report or statement from an operator. ONRSR reviews the contents of safety performance reports and annual activity statements to gain an overall impression of the safety and safety management of a rail transport operator's operations. Rail safety officers may use the intelligence from these reports to inform and plan compliance activities. A safety report or annual activity statement is not a public report and are treated as confidential.
Monitoring closure of NCRs and Notices	ONRSR monitors the corrective action plans submitted by operators in response to Non Conformance Reports (NCR), improvement notices and prohibition notices and trigger actions to follow-up with the operator to confirm that progress is being made and targets are being met against the plans. Follow-up occurs in various ways but typically involves: <ul style="list-style-type: none">> requesting information;> meeting with the operator; or> conducting a site visit, inspection or audit.
Review of other reports	ONRSR receives and monitors reports from other agencies including Coroner's Courts, Commissions of Enquiry, as well as REPCON confidential reports from the ATSB. These reports are reviewed and assessed on their merits as appropriate.

3.4

ENFORCEMENT

Enforcement aims to facilitate an improvement to safety or compliance with the RSNL by giving direction to a rail transport operator, imposing sanctions or seeking court penalties for contraventions of the RSNL.

The need to undertake enforcement actions may be identified from any of the monitoring activities previously discussed. Enforcement decisions are made proportionate to the identified risk to safety, the seriousness of any perceived breach, and/or the level of non-compliance with legislative requirements. The seriousness of a matter is determined by considering several factors, including:

- the actual or potential harm caused to employees and third parties, including passengers and other railway users, and to the public interest;
- the degree to which the requirements of the law have not been met;
- the culpability of the offender, including whether the rail transport operator has acted negligently, recklessly, knowingly or intentionally; and
- the history of compliance and incidents involving the party.

Enforcement action that involves the application of sanctions or penalties will typically be taken on completion of an investigation, which is principally undertaken to determine breaches of the RSNL.

3.4.1 INVESTIGATION EXPECTATIONS

An investigation is a formal, detailed and compliance focused examination of the circumstances and operators' actions associated with an occurrence or safety issue to determine whether a breach of the RSNL has occurred. ONRSR may initiate an investigation in response to a range of triggers that include, but are not limited to:

- a notifiable occurrence;
- an adverse finding from an audit;
- outcomes identified from an inspection;
- outcomes identified from an enquiry;
- confidential or other intelligence reports; or
- a written direction from a responsible Minister for a participating jurisdiction on a rail safety matter relating to that jurisdiction.

ONRSR targets its investigative resources to investigating the more serious incidents or those with the potential to be serious. In ONRSR's statutory role, it is neither possible, nor necessary, to investigate all potential issues of possible contravention of the law. In selecting which complaints or reports of incidents or injury to investigate, and in deciding the level of resources to be used, the following factors are considered:

- the severity and scale of potential or actual harm resulting from an incident or potential breach of the law;
- the seriousness of any potential or actual breach of the law;
- knowledge of the operator's compliance history; and
- the wider relevance of the event, including serious public concern or scrutiny.

3.4.2 MEANS OF GATHERING INFORMATION FOR AN INVESTIGATION

Rail safety officers have various powers under the RSNL to compel the production of documents and to require answers to questions for the purposes of investigating suspected contraventions of the RSNL.

The three primary ways to compel information are:

- > using s154 of the RSNL to require the production of documents and answers to questions once a rail safety officer has entered onto railway premises;
- > using the delegated power under s20 of the RSNL to obtain information; and
- > using s168 and/or s168A of the RSNL to require a person to supply their name and address, and to produce specific types of documents, respectively.

s154 powers	<p>The powers to require production of documents and answers to questions in s154 of the RSNL arise when a rail safety officer has lawfully entered railway premises. Once entry has lawfully occurred, the rail safety officer may, under s154(1) of the RSNL:</p> <ul style="list-style-type: none">> require a person to tell the officer who has custody of, or access to, a document;> require a person who has custody of, or access to, a document to produce that document to the officer while the officer is at the place, or within a specified period; or> require a person at the place to answer any questions put by the officer. <p>The “person” referred to in each of these three powers will be an individual (not a corporation). Before exercising one or more of the powers, the rail safety officer needs to be satisfied that the power of entry in s143 of the RSNL has been exercised.</p> <p>s154(2) requires the rail safety officer to give written notice to produce documents, unless the person elects to volunteer the information, or the circumstances require the rail safety officer to have immediate access to the document.</p> <p>Immediate access refers to where a rail safety officer has, while on railway premises, required a document to be produced in circumstances that requires access without delay. In all other circumstances, any requirement to produce a document will be done under a s154 Notice to produce that document to the rail safety officer while they are on premises, or within a specified period. Documents, in these circumstances, also includes any computer, disc, tape or other article or material from which sounds, images, writings or messages are capable of being reproduced; photographs, drawings, plans or maps.</p> <p>When exercising powers under s154 rail safety officers are required under s156 to give a warning to the person that explains the implications of the power being exercised.</p>
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s20 powers	<p>s20 is a delegated power that applies if the Regulator has reasonable grounds to believe that a person is capable of giving information, 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.</p> <p>If one of the above circumstances apply, the Regulator may by written notice under s20(2) of the RSNL served on a person (an individual or a corporation), require the person to do one or more of the following:</p> <ul style="list-style-type: none"> ➢ give the Regulator in writing signed by the person (or in the case of a corporation, by a competent officer of the corporation) and within the time and in the manner specified in the notice, that information of which the person has knowledge; ➢ produce to the Regulator, in accordance with the notice, documents; and ➢ appear before a person appointed by the Regulator on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give either orally or in writing that evidence and produce those documents.
s168 and a168A powers	<p>A rail safety officer may, under s168(1) of the RSNL, require a person to provide the person's name and residential address if:</p> <ul style="list-style-type: none"> ➢ the officer finds the person committing an offence against the RSNL; or ➢ the officer finds the person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has committed an offence against the RSNL; or ➢ the officer reasonably believes that the person may be able to assist in the investigation of an offence against the RSNL. <p>A rail safety officer may, under s168A (1) of the RSNL, direct a person to make available for inspection by the officer, or produce to the officer for inspection, at a specified time and place:</p> <ul style="list-style-type: none"> ➢ a document that is required to be kept by the person under the RSNL; or ➢ a document prepared by the person under the RSNL for the management of rail infrastructure or the operation of rolling stock that the officer reasonably believes is necessary to consider in order for the officer to understand or to verify a document that is required to be kept under the RSNL; or ➢ a document held by, or under the control of, the person relating to the carrying out of railway operations. <p><i>NOTE: At the time of printing s168A does not apply in Western Australia.</i></p>

3.4.3 TOOLS FOR ACHIEVING COMPLIANCE AND EXPECTATIONS

When presented with a potential breach against the RSNL, ONRSR has a range of powers and legislative sanctions that can be applied to facilitate or require improved safety management, require compliance or penalise non-compliant behaviour from rail transport operators and other duty holders. These are outlined below:

Provision of advice or education	<p>Rail safety officers may provide advice or education in regard to legal requirements in response to an identified breach of the RSNL in circumstances where:</p> <ul style="list-style-type: none">➢ an operator is demonstrating a lack of awareness about, or misinterpretation of the RSNL or the particulars of their accreditation;➢ the breach is minor in nature; and➢ the rail transport operator demonstrates a willingness to take measures to make improvements to comply with the RSNL. <p>Rail safety officers may give advice verbally or in writing. It is provided in good faith and based on the considered view of the rail safety officer as to the operator's preparedness and capability to take and consider the advice. Typically, during an audit or inspection, rail safety officers provide advice in the form of identifying opportunities for improvement (referred to as 'observations'). Observations are provided in writing to the operator as informal advice, with a supporting explanation.</p> <p>There is no legal obligation for an operator to comply with informal or general advice given by ONRSR and a formal response from the operator is not expected or required, but a record is kept that advice was given and any action taken by the operator may be followed up as part of future compliance activities.</p>
Finding of non-conformance	<p>Rail safety officers may issue a finding of non-conformance in response to identifying a breach of the RSNL by an operator where:</p> <ul style="list-style-type: none">➢ the breach does not present an immediate threat to safety or is believed to be relatively minor or administrative in nature; and➢ the rail safety officer is satisfied the rail transport operator has demonstrated a willingness and capability to address the breach within its safety management system procedures. <p>ONRSR issues a non-conformance report (NCR) in writing, typically contained within a report of the regulatory activity during which the breach was identified. The NCR details the identified breach and provides clear reasons for raising the NCR.</p> <p>A NCR is not enforceable and represents the highest level of informal advice to correct an identified breach. An operator is requested to provide written advice of the corrective action(s) that will be taken to address the non-conformance, including timelines. It is expected the rail transport operator will record and address any non-conformances through its own audit / review / corrective action processes, as part of its safety management system.</p> <p>If a rail transport operator fails to provide advice of the intended corrective actions or to adequately address a non-conformance within the agreed timeframe the matter may be escalated.</p>

Improvement notice	<p>Rail safety officers may issue an improvement notice where they reasonably believe a rail transport operator is:</p> <ul style="list-style-type: none"> > contravening or has contravened a provision of the RSNL; and > carrying out or has carried out railway operations that threaten safety. <p>Improvement notices are issued as stand-alone written notices, which describe the contravention or threat to safety, the reasons for the officer's decision, any directions in regard to rectifying the contravention or safety threat, and provide advice on the legal procedures associated with the notice. The notice includes the right of appeal.</p> <p>An improvement notice is issued where a rail safety officer believes that it is necessary to place an enforceable requirement on an operator to remedy the contravention or address the threat to safety. It is also to ensure that action is taken, and/or to require certain matters to be considered or actions taken, by the operator in rectifying the contravention or safety threat.</p> <p>ONRSR aims to provide operators the opportunity to remedy contraventions or threats to safety in a way that is best suited to the operator's operational and risk environment. This is consistent with ensuring the risk management responsibility (and ownership of the risk controls, which are contained in the safety management system) remains with the operator.</p> <p>In deciding whether an enforceable requirement should be placed on an operator through an improvement notice, officers consider the:</p> <ul style="list-style-type: none"> > risks to safety being presented by the contravention or safety threat and the respective urgency for securing a remedy; > safety performance and history of compliance of the rail transport operator; and > effective management of prior contraventions and threats to safety and demonstrated willingness of the operator to act to remedy the matter. This is a judgement rail safety officers make based on the historical performance and the immediate presentations being made by the operator regarding the contravention or safety threat. <p>When setting timeframes for the operator's response to an improvement notice, while ONRSR consults with the operator on the likely timeframe for their intended corrective actions, the setting of a timeframe for compliance is not by agreement. ONRSR retains the decision as to required timeframes and sole discretion for granting any extensions to these timeframes that may be requested by the operator.</p> <p>If the operator is directed to take specified action to remedy a contravention (or a likely contravention) or to prevent the likely contravention, or to remedy the things or operations causing the contravention (or likely contravention), ONRSR must also consider whether a cost benefit analysis is required, in accordance with the ONRSR Application of Cost Benefit Analysis Requirement Policy.</p>
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Prohibition notice	<p>Rail safety officers may issue a prohibition notice where they believe on reasonable grounds there is an immediate risk to safety if railway operations continue in the way they are being conducted and that immediate action is required to cease the activity until the matters that give rise to the risk to safety are remedied.</p> <p>A prohibition notice may be issued verbally by rail safety officers but is always confirmed by issuing a stand-alone written notice (typically by the following business day). A verbal notice has immediate effect.</p> <p>In deciding whether a prohibition notice should be issued, rail safety officers will consider the:</p> <ul style="list-style-type: none"> > consequences associated with the immediate risks to safety and the respective urgency that the unsafe practice be ceased; and > demonstrated willingness of the operator to act and the actions being undertaken immediately by the operator to remedy the matter. This is a judgement rail safety officers make based on the historical safety management and corrective action performance of the operator and the immediate presentations being made by the operator regarding the safety threat. <p>Rail safety officers are encouraged to act to secure safety in response to observing or identifying a threat to safety during all their interactions with operators. Where the rail safety officer has identified an immediate safety issue, and the rail transport operator is reluctant to address the concern, they are expected to issue a prohibition notice.</p>
Non-disturbance notice	<p>Rail safety officers may issue a non-disturbance notice when it is imperative to the work being undertaken by ONRSR that evidence is preserved. An example could be where ONRSR elects to investigate following an incident and requires the rail transport operator to ensure the preservation of evidence associated with the incident.</p> <p>The non-disturbance notice prevents the site, including the operation of plant from being disturbed for a period of no more than 7 days. If required, further non-disturbance notices may be issued for periods not exceeding 7 days at a time.</p>

Infringement notice	<p>ONRSR has the power under the RSNL to issue an infringement notice in circumstances where a rail transport operator or an individual has breached the RSNL. Infringement notices impose administrative fines and are an alternative to prosecution for breaches. If an operator or individual is issued with an infringement notice, they can choose to pay it (which will finalise the matter) or elect to have the matter dealt with by the court.</p> <p>Infringement penalty provisions are listed in s233 of the RSNL and include, but are not limited to, matters such as a failure to provide materials within a specified timeframe. An infringement notice will be issued within 12 months from ONRSR forming the view that a breach has occurred.</p> <p>As infringement notices are administrative, there are circumstances in which ONRSR may need to consider escalating its enforcement activities beyond infringement notices, such as:</p> <ul style="list-style-type: none"> ➢ where there was a serious risk to safety; ➢ where the offence was intentional or formed a pattern of breaches; ➢ where the penalty would be inadequate in relation to the nature and or gravity of the offence; and ➢ where the penalty would not provide sufficient deterrent. <p>ONRSR can, at any time before the deadline for payment of the infringement notice, withdraw the infringement notice by serving a withdrawal notice on the rail transport operator or individual.</p> <p>If the infringement notice is not paid and is not withdrawn the Regulator may institute proceedings in respect of the breach.</p>
Direct amendment of a safety management system	<p>ONRSR can direct a rail transport operator to amend its safety management system in a specified manner to address any deficiencies that have been identified.</p> <p>The preferred approach is for operators to remain fully responsible for selection of risk controls and the content of their safety management systems. This option is only considered where ONRSR believes there to be only one option for the operator to address a significant risk to safety and that the use of other compliance tools or imposition of sanctions (including prohibition) are not warranted to address the safety issue.</p> <p>If a direction is being considered, the operator is provided the opportunity to propose their own response to the matter of concern before proceeding with a direction. ONRSR must also consider whether a cost benefit analysis is required, in accordance with the ONRSR Application of Cost Benefit Analysis Requirement Policy.</p>

Prosecution

ONRSR can act to prosecute organisations or individuals for breaches of the RSNL. The circumstances that may give rise to considering a prosecution include:

- significant and/or repeated breaches of a similar nature that give rise to increased risk because of persistent and significant poor compliance;
- rail safety operations have been undertaken without, or in serious non-compliance with, a legal authorisation to do so (i.e. without the appropriate accreditation, registration or exemption);
- a failure to comply with an improvement or prohibition notice or there has been a repetition of the specific contravention;
- false information has been supplied wilfully, or there has been an intent to deceive, in relation to a matter which gives rise to significant risk;
- a rail safety officer has been intentionally obstructed by the rail transport operator in a way that prevents them from carrying out their lawful duties; and
- a rail safety officer has been the subject of an assault.

In making the decision to prosecute the following is taken into consideration:

- whether the person or organisation has been reckless towards managing the risk to an individual that could lead to death, serious injury or illness;
- the gravity of an alleged safety offence, in context with the seriousness of the potential or realised consequences of events related to the alleged offence; and
- whether there has been a significant financial benefit or competitive advantage to the offending rail transport operator as a result of the alleged offence.

Prosecution is only pursued where sufficient evidence has been collected to provide a realistic prospect of conviction and it is in the public interest to prosecute. ONRSR recognises that prosecutions can be resource intensive and available resources are finite. ONRSR only seeks to expend resources on appropriate cases.

Regarding public interest and community expectations, the following factors are also considered:

- expectation for action in response to the seriousness of the realised, or potential, consequences of an incident related to an alleged offence. For example, where a death or serious injury has occurred because of an action or inaction leading to an alleged offence;
- the prevalence of the alleged offence and the impact of prosecution-related action on general deterrence (i.e. reducing the likelihood that other duty holders will commit similar offences) or specific deterrence (i.e. reducing the likelihood that the duty holder will commit a further breach of rail safety laws);

Prosecution (continued)	<ul style="list-style-type: none"> ➤ the availability and likely effectiveness of any alternatives to prosecution, such as one of the other enforcement options, for example enforceable voluntary undertakings. ➤ the public expectation for punitive action to be taken following serious incidents that have involved death or serious injury to persons outside the rail workplace, or significant property damage to property not part of the railway.
Acceptance of enforceable voluntary undertaking	<p>Having made a case to launch a prosecution or initiate a suspension or cancellation of accreditation against an individual or organisation for an alleged contravention of the RSNL, ONRSR may consider accepting an enforceable voluntary undertaking on application by the offending individual or organisation.</p> <p>An enforceable voluntary undertaking represents a high level commitment from the rail transport operator and it is up to the operator to make their case that acceptance of the undertaking represents a better outcome to safety than the compliance action being proposed.</p> <p>While it is a voluntary action on behalf of the operator to seek agreement to an undertaking from ONRSR, once accepted it becomes a legally binding agreement that is enforced through the courts if required.</p> <p>Accepting an enforceable voluntary undertaking is considered where:</p> <ul style="list-style-type: none"> ➤ it is not for a contravention, or alleged contravention, of a Category A offence (as defined in the RSNL); ➤ the public interest is better served by acceptance of a voluntary undertaking rather than proceeding with prosecution or cancellation or suspension of accreditation or registration; ➤ the organisation is likely to comply with the undertaking, considering the organisation's record of compliance and upholding of previous commitments; ➤ the actions proposed to be undertaken address and are likely to provide effective long-term rectification of the matters that have given rise to the contravention; or ➤ a reasonable period to complete the tasks identified in the undertaking is proposed, and the tasks are given a high priority by the organisation and appropriately resourced.

Condition or restriction of accreditation or registration	<p>ONRSR-initiated variations of an accreditation, or the variation or imposition of conditions or restrictions on an accreditation or registration may be appropriate in circumstances where the rail safety officer has formed an opinion that the rail transport operator does not have the competence and capacity to undertake railway operations to the extent allowed by its current notice of accreditation or registration.</p> <p>In considering a decision to impose or vary conditions or restrictions on accreditation or registration for the purposes of enforcing compliance, ONRSR considers:</p> <ul style="list-style-type: none"> ➢ the rail transport operator's history of compliance whether railway operations are or are not conducted to an adequate standard of safety and the safety management system complies with the RSNL; and ➢ whether the rail transport operator is temporarily or permanently unable or unwilling to undertake any relevant remedial action necessary to satisfy the requirements for accreditation or registration. <p>Prior to varying, revoking or imposing a new condition or restriction, ONRSR must provide the rail transport operator with a notice to "show cause" why the condition or restriction should not be varied, revoked or imposed as the case may be. ONRSR must also consider whether a cost benefit analysis is required, in accordance with the ONRSR Application of Cost Benefit Analysis Requirement Policy.</p>
Suspension of accreditation or registration	<p>ONRSR can suspend an accreditation or registration (in full or in part) where the accredited or registered rail transport operator:</p> <ul style="list-style-type: none"> ➢ no longer can demonstrate the requirements for accreditation or registration or satisfy the conditions or restrictions of the accreditation or registration; ➢ contravenes the law; ➢ has not conducted the railway operations or managed the private siding/s for which the accreditation or registration was granted for at least the preceding 12 months; or ➢ has failed to pay the annual fee for accreditation. <p>Unless there is an immediate and serious risk to safety (in which the Regulator may immediately suspend the accreditation or registration for a period up to 6 weeks), prior to making the decision to suspend ONRSR must provide the rail transport operator with a notice to "show cause" why the accreditation or registration should not be suspended. Where accreditation or registration is suspended, ONRSR continue to work with the suspended operator to provide appropriate guidance and information regarding what they need to address in order to have the suspension cancelled.</p>

<p>Cancellation of accreditation or registration</p>	<p>ONRSR can cancel an accreditation or registration (in full or in part) where the accredited or registered rail transport operator:</p> <ul style="list-style-type: none"> ➢ can no longer demonstrate the requirements for accreditation or registration or satisfy the conditions or restrictions of the accreditation or registration; ➢ contravenes the law; or ➢ has not conducted the railway operations or managed the private siding/s for which the accreditation or registration was granted for at least the preceding 12 months; <p>Cancellation of accreditation is viewed as a last resort in response to a sustained history of poor safety performance, sustained non-compliant behaviour, a demonstrable lack of intent by the operator to address safety risks or no intent to resume operations at any stage in the future.</p> <p>Prior to making the decision to cancel the accreditation or registration ONRSR must provide the rail transport operator with a notice to “show cause” why the accreditation or registration should not be cancelled.</p>
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A summary of the most common compliance tools and the expectation on operator response to these is provided at Appendix 2.

3.5

REVIEWABLE DECISIONS

Many of the decisions made by ONRSR are reviewable under section 215 of the RSNL. As an independent regulator ONRSR accepts such decisions are subject to rigorous and appropriate scrutiny. When notification of a decision that is subject to a formal review process under the RSNL is provided, ONRSR also provides details as to what the review process is.

3.6

NATIONAL RAIL SAFETY REGISTER

ONRSR is required by the RSNL to establish and maintain a National Rail Safety Register, which is made available on our website. The register provides summary information about the accreditation, registration and exemption of rail transport operators and information about improvement, prohibition and non-disturbance notices issued to these operators or any person, as well as information relating to rail safety undertakings.

The purpose of the register is to provide a public record of the major decisions that impact railway operations across Australia, specifically recording:

- > persons and organisations that are permitted to undertake railway operations through accreditation, registration or exemption to these; and
- > statutory notices that have been issued to operators.

ONRSR aims to review and update the contents of the register monthly. While information is not normally removed from the register, in the case of cancelled statutory notices, the record of the notice is removed from the register six months after the date the notice has been cancelled.

4

CONTINUOUS IMPROVEMENT

It is not ONRSR's role to draw the line under an operator's safety management system and state they have ensured the safety of their operations SFAIRP. This task is a duty requirement placed on rail transport operators. It is ONRSR's role to advocate more broadly for continuous improvement across the rail industry, which is incorporated into ONRSR's approach through:

- identifying and focusing activities towards national priorities;
- taking an active role in the identification of industry wide safety issues and facilitating safety improvement in these areas through education, guidance and other regulatory activities;
- publication of, and providing access to, relevant rail safety data to enable duty holders and other stakeholders to make informed decisions;
- engaging in industry led safety improvement projects and initiatives;
- being a participant in national rail safety regulatory reform; and
- networking with other related safety regulators.



4.1

IDENTIFYING AND ACTING ON NATIONAL PRIORITIES

A national priority is defined as a rail safety area of regulatory focus that applies to multiple jurisdictions and operators and warrants a sustained period of regulatory activity. ONRSR targets national priority areas using tailored regulatory solutions, typically through operator-centric, national compliance projects or industry wide or sector wide educational programs.

ONRSR's national priorities and the associated compliance and educational projects are reviewed at least every two years, and are communicated to industry in the ONRSR Rail Safety Report, published in December each year.

Setting national priorities is one of the key decisions within scope of ONRSR's framework for risk-based regulation (refer to section 2.1.3). As such, a structured, evidence-based risk assessment process is applied to inform the decision. The process involves an analysis of multiple sources of rail safety data and intelligence including:

- > ATSB Rail Safety Investigation Reports;
- > REPCON reports;
- > rail operator notifiable occurrence reports;
- > rail operator safety performance reports;
- > rail operator incident investigation reports;
- > outcomes and findings of regulatory interactions with operators; and
- > findings from stakeholder forums and consultation groups.

These inputs are reviewed and analysed to identify common themes, trends, systemic issues and areas of concern for consideration as an ONRSR national priority.

A risk score is then assigned to each priority area under consideration, based on an assessment of a series of quantitative and qualitative risk factors, such as:

- **industry safety management performance** – industry's performance at controlling risks related to the priority area, SFAIRP;
- **industry exposure** – the extent and applicability of issues relating to the priority area across industry sectors and operators;
- **regulatory response** – the amount of unplanned regulatory effort recently expended on issues relating to the priority area;
- **degree of influence** – operators' level of control over the risks related to the priority area;
- **worst credible harm** – the most severe level of harm to people that could reasonably be expected in the event of an accident relating to the priority area; and
- **industry concern** – the level of safety concern in relation to the priority area recently expressed by industry.

Finally, ONRSR reviews the potential priority areas in order of risk score to identify those that most warrant a nationally coordinated and sustained period of regulatory focus and, with the additional consideration of other intelligence and knowledge of operator safety performance from our regulatory officers, the appropriate regulatory response to deliver safety benefits for the community.

4.2

ENGAGING WITH OTHERS FOR REFORM AND IMPROVEMENT

ONRSR undertakes regular and purposeful engagement with operators and other stakeholders focused on improving the operation and outcomes of the regulatory scheme and rail industry safety in Australia.

The type and level of engagement used for a particular matter reflects the intended purpose of that engagement. In general, ONRSR engages actively with industry and other stakeholders as rail safety is co-regulatory and a range of parties associated with railways have safety responsibilities.

We participate actively in higher level policy development when it affects the regulation of rail safety in Australia. This involves developing policy where requested to do so, such as for drug and alcohol, fatigue and cost recovery. ONRSR also undertakes joint processes with the National Transport Commission and others in policy development and legislative change.

ONRSR develops operational policy and engages with stakeholders in undertaking this work and consults widely prior to issuing policies and guidelines or implementing change processes.

ONRSR also engages with other regulators within Australia and overseas due to a collective interest in good regulatory practice and safety for industry and the community, as well as state, territory and Commonwealth senior officials and Ministers.

There are several forums set up to support this engagement, these being:

- > Chief Executives' forum;
- > national and local operations forums;
- > specific reference groups; and
- > RSNL maintenance group.

ONRSR representatives also attend industry forums such as the Safety Managers Group and ATHRA meetings to ensure input is received from a broad range of stakeholders.

PROVISION OF RAIL SAFETY DATA AND INFORMATION

Not only is access to and use of regulatory and rail safety data an important element of ONRSR's risk-based regulatory approach, ONRSR recognises the value of the information it holds to regulated parties and other key industry and government stakeholders. ONRSR is able to collate information at an industry sector or whole-of-industry level that may be used to assist others for making safety decisions, investment decisions or to benchmark safety performance.

ONRSR's data and information use, particularly regarding the publication and release, is governed by the confidentiality provisions set out in the RSNL. In accordance with these provisions, ONRSR provides data and information to the rail industry in several ways, including:

- > publication of the ONRSR *Rail Safety Report* (annual);
- > publication of national safety data on the ONRSR website (www.onrsr.com.au), including the ability to download the published data sets;
- > provision of summary data to industry working groups, jurisdictional level crossing committees and other stakeholder forums;
- > provision of benchmarking data to regulated rail transport operators; and
- > on request to rail safety related stakeholders (in some circumstances, where permitted under the RSNL).

ONRSR continues to examine how it can provide, to relevant parties, the data and information that is collected through legislative reporting requirements and generated through regulatory activities to improve the level of information available to support rail safety decision making outside of ONRSR's own regulatory decision making. ONRSR will do this in a way that appropriately preserves confidentiality (and compliance with the RSNL) and in acknowledgement of the importance of maintaining frank and open exchanges of information between ONRSR and regulated parties under the co-regulatory framework for rail safety regulation.

APPENDICES



APPENDIX 1

Regulatory outcomes from rail safety officer lead regulatory activities

Regulatory Activity	Purpose	Notification	REGULATORY OUTCOMES	
			No adverse findings (minimum response)	Observation
Discussion	Externally initiated safety or compliance matter discussion.		Acknowledgement of discussion, may lead to other activity.	
Meeting	Facilitate discussion on any compliance, accreditation or safety matter.	Meeting arranged between parties.	Mutual agreement for documenting outcome.	Issued in writing (email or letter) 5 days post meeting.
Site Visit	Rail safety officer visit to rail premises to observe site and/or operations.	Announced - Mutual arrangements confirmed in writing (email).	Verbal or email confirmation of site visit as soon as practicable post visit.	Issued in writing (letter) 5 days post site visit.
		Unannounced – Notification on entry.		
Education Interaction	Provide education to an operator regarding RSNL requirement or safety issue.	Mutual arrangements confirmed in writing (email). -	Written confirmation of the interaction setting out expectations (letter) 5 days post interaction.	Issued in writing (letter) 5 days post interaction.
Inspection	Formal review of the application of a SMS for specific railway operations and activities.	Announced - Written notification and scope provided.	Written confirmation (letter) 5 days post visit.	Issued in writing (letter) 5 days post inspection.
		Unannounced – Notification on entry.	Verbal or written (email or letter) confirmation 5 days post inspection.	
Audit	Formal review of a SMS against the requirements of the RSNL, including implementation and effectiveness.	Arrangements agreed between parties. Written notification and scope provided 20 days prior to audit.	Audit Report issued. Preliminary Report provided for factual comment 4 weeks post audit.	Issued in writing within Audit Report. Preliminary Report provided for factual comment 4 weeks post audit.
Enquiry	Examination of an operator's risk management and actions arising from an incident or safety issue.	Notification verbally or in writing (email or letter).	No response may be provided other than confirmation the enquiry has been completed.	Issued in writing (letter) post enquiry.
Investigation	Formal investigation into potential breach of the RSNL.	Written notification (letter).	Written summary of investigation outcome (letter).	

NOTE: In the above, days are working days and the time frames are indicative targets. Where a preliminary audit or inspection report is issued the operator is typically provided 10 days for factual review and comment with the final report issued within 10 days of ONRSR receiving the operator's comments.

*includes prosecution, voluntary enforceable undertakings, cancellation or suspension of accreditation.

REGULATORY OUTCOMES					
Non-conformance Report (NCR)	Improvement Notice	Prohibition Notice	Infringement Notice	Vary condition or restriction of accreditation	Prosecution or higher order enforcement*
		Notice issued in response to an immediate risk to safety.			
		Notice issued in response to an immediate risk to safety.			
		Notice issued in response to an immediate risk to safety.			
Issued in writing within an Inspection Report 4 weeks post inspection. A preliminary report may be issued for factual comment.	Notice issued separate to other correspondence.	Notice issued in response to an immediate risk to safety.	Notice issued separate to other correspondence.		
Issued in writing within Audit Report. Preliminary Report provided for factual comment 4 weeks post audit.	Notice issued separate to other correspondence.	Notice issued in response to an immediate risk to safety.	Notice issued separate to other correspondence.	Managed through stand-alone documentation and correspondence.	
Issued in writing within an investigation summary report post investigation.	Notice issued separate to other correspondence.	Notice issued in response to an immediate risk to safety.			
	Notice issued separate to other correspondence.	Notice issued in response to an immediate risk to safety.	Notice issued separate to other correspondence.	Managed through stand-alone documentation and correspondence.	Managed through stand-alone documentation and correspondence.

APPENDIX 2

It is important that rail transport operators have clear expectations as to what outcomes may follow on from compliance monitoring activities and what response is required from them when various compliance tools are applied.

Below is a summary of the most common tools and outcomes.

OUTCOME	OPERATOR ACTION REQUIRED
No Adverse Findings	The rail safety officer has not identified any issue of concern.
Observation	Observations are made in writing. ONRSR does not seek a specific action in regard to such advice but rail safety officers may review how the advice has been considered and implemented during future compliance audits and inspections.
Non Conformance Report (NCR)	ONRSR communicates the NCR in writing and request a written corrective action response from the rail transport operator. Rail transport operator expected to comply with rectifying identified non-conformances.
Improvement Notice	Findings are communicated in an improvement notice. Further action from the rail transport operator to comply with the notice is required.
Prohibition Notice	Compliance with prohibition notice required.

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