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# IMPLEMENTATION OF THE NSW GOVERNMENT'S RESPONSE to the Final Report of the Special Commission of Inquiry into the Waterfall Accident

*Reporting Period: January - March 2010*



*ITSRR Quarterly Report Twenty-One*

**IMPLEMENTATION OF THE  
NSW GOVERNMENT'S RESPONSE**  
to the Final Report of the Special Commission  
of Inquiry into the Waterfall Accident

*Reporting Period:*  
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30 April 2010

The Hon David Campbell MP  
Minister for Transport  
Level 35, Governor Macquarie Tower  
1 Farrer Place  
Sydney NSW 2000

Dear Minister,

I am pleased to provide the Twenty-first Quarterly Report on the implementation of the Government's response to the recommendations contained within the *Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident*.

This report reflects implementation progress from 1 January to 31 March 2010. At the close of this period, there are four open recommendations. ITSRR reports publicly on open recommendations and continues to monitor as part of its ongoing regulatory activities the recommendations that have been closed subject to the implementation of an approved program or plan to ensure that the Government's response is fully implemented.

Further information about the history and progress of the implementation of all the Inquiry's recommendations can be found on the ITSRR website [www.transportregulator.nsw.gov.au](http://www.transportregulator.nsw.gov.au). ITSRR's past Quarterly Reports as well as a table of all 177 recommendations and a summary of the 16 recommendations that have been closed subject to the implementation of an approved program or plan are available on the website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Len Neist'.

Len Neist  
**Chief Executive**

## Summary of Progress

The Independent Transport Safety and Reliability Regulator (ITSRR) is responsible for overseeing the implementation of the NSW Government's response to the recommendations contained within the *Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident*.

This role includes verifying that recommendations have been effectively implemented or there is an approved program or plan in place for implementation. ITSRR produces quarterly public reports on the progress of open recommendations.

At the end of the reporting period, the status of the 177 recommendations (including 127 recommendations and 50 sub-elements) was as follows:

- four remain open
- 16 are closed subject to the implementation of an approved program or plan
- 151 are closed and verified as fully implemented
- one is closed because it is no longer applicable
- five are rejected by the Government and these were closed-rejected.

(The Methodology and Taxonomy for the Classification System used for the Waterfall recommendations are in Appendix 1 and 2 respectively.)

The four open recommendations, which are outlined in further detail in Appendix 3, are:

- 32: RailCorp should progressively implement, within a reasonable time, level 2 automatic train protection (ATP). ATP systems provide automatic enforcement (slowing/braking) of authority (speed/location) if a train is behaving in an unauthorised way. Implementation will involve significant infrastructure change and is the subject of a major project. The current interim target date<sup>\*</sup> for the next milestone relating to this recommendation is 31 July 2010 when the NSW Treasury Gateway Review of the project business case is to be completed.

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<sup>\*</sup> This is an indicative timeframe which has been agreed to by the agency responsible and ITSRR.

- 36: The ITSRR should impose a standard in relation to the collection and use of data from data loggers, which record information on a train's operations. ITSRR has requested that the National Transport Commission (NTC) include the development of data logger regulations in legislative changes currently being examined for the establishment of a national regulator.
- 37: The standard in relation to the collection and use of data from data loggers should provide that such information must be accessed in the circumstances of any accident or incident and can be accessed to monitor driver performance generally. ITSRR has requested that the NTC include the development of data logger regulations in legislative changes currently being examined for the establishment of a national regulator.
- 38: There must be compatibility of communication systems throughout the rail network. It is essential that all train drivers, train controllers, signallers, train guards and supervisors of trackside work gangs in NSW be able to communicate using the same technology. The target date for the full implementation of RailCorp's new digital train radio system and the development of a national communications standard is 31 December 2012.

The Australasian Railway Association is working with operators and rail safety regulators to develop a national approach on communications systems to ensure that agreed functionality and compatibility requirements are included in the national standard being developed by the Rail Industry Safety and Standards Board.

It should be noted that there already exists compatibility such that trains can already communicate with other trains operating on the rail network through network control in an emergency situation. The existing communications system enables network control to send an emergency broadcast call to all passenger and freight trains in the immediate vicinity of the emergency. Train drivers cannot communicate directly to other train drivers without the call going through network control which is in line with national rail safety principles.

The new digital radio system currently being designed will enhance communication between trains and network control in an emergency as well as enable communication between other staff for all rail operations on the RailCorp network.

This statement provides implementation progress on these four recommendations from 1 January to 31 March 2010.

During the reporting period there were no slippages in the agreed timeframes for these recommendations. The following progress was made in relation to recommendations 36 and 37.

The NTC has previously advised that it will incorporate the development of national regulations for data loggers into its maintenance and reform program. However, following the Council of Australian Government's (COAG) decision to establish a national rail safety regulator, the NTC has delayed the development of national regulations for data loggers until the development of national regulations to be administered by the national regulator. The NTC is currently examining legislative changes (including regulations) to support the proposed national regulator and intends to submit proposed legislative reforms to the Australian Transport Council (ATC) for approval by the end of 2010.

ITSRR has written to the NTC requesting that consideration of the Waterfall recommendations relating to data loggers be included in this legislative review, in accordance with the NTC's earlier commitment in relation to these recommendations. This would ensure that any proposal to introduce regulations in relation to data loggers is included in the package of legislative proposals to be submitted to ATC in late 2010 for approval. It would also ensure that any proposed regulations addressing these recommendations could be included in the model template legislation and regulations to be drafted in 2011, and to be submitted for final ATC approval in late 2011 before the national regulator commences operation in late 2012, in accordance with the COAG timeframe. ITSRR is currently awaiting a reply from the NTC to this request. The current interim target date is 25 June 2010.

## **APPENDIX 1 – METHODOLOGY**

This section outlines the processes which ITSRR has instituted to develop and monitor the Implementation Plan for the Government's response to the *Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident* (SCOI Final Report).

### **Implementation Plan**

ITSRR has reviewed the SCOI Final Report and determined action required to implement each recommendation in line with the Government's response and which company or agency has responsibility for that action. These expectations then formed the basis for determining whether the response put forward by a company or agency is appropriate to meet the recommendation and/or satisfy the safety objective of the recommendation. Responsible agencies have assigned indicative timeframes for each safety action and ITSRR will review the appropriateness of each. Timeframes agreed with responsible companies or agencies have, to the greatest extent possible, been made realistic and achievable. Details of the Implementation Plan for outstanding issues and progress against it may be found in Appendix 3 on page 10.

### **Classification System for Recommendations**

In order to provide a graduated view of progress against the Implementation Plan, ITSRR has developed a classification system to indicate the relative status of each recommendation. The taxonomy for the Classification System has been drawn from accepted international practice and is listed in Appendix 2 on page 8.

The process for assigning status to a recommendation is as follows:

Step 1            The Government's response to the SCOI Final Report determined which recommendations were accepted. ITSRR has articulated its expectations in regards to all remaining recommendations.

- Step 2 All accepted recommendations are assigned the status "Open - Await Response". These recommendations are then referred by ITSRR to the relevant company or agency to prepare a response to the recommendation(s) and submit it to ITSRR.
- Step 3 ITSRR reviews the response and determines whether it is acceptable or not. If it is acceptable then the status of the recommendation is assigned either "Open - Acceptable Response" or "Open - Acceptable Alternative Response". A recommendation would be assigned an "Open - Acceptable Alternative Response" status when the intent of a recommendation will be met but will be implemented by alternative means. If the response is not acceptable then the recommendation is assigned the status of "Open - Response Rejected". In this case, the company or agency is informed of the decision and requested to re-submit a revised response taking into account ITSRR's concerns. This process continues until the response to the recommendation is accepted by ITSRR.
- Step 4 ITSRR monitors progress of all accepted responses to ensure a company or agency is meeting agreed implementation timeframes. This is done through both desktop reviews of reports received by agencies and in-field inspections to verify progress claimed.
- Step 5 Once a company or agency has completed a required action it will submit to ITSRR a claim for closure of the recommendation. This application indicates that the company or agency believes it has completed the required action. The status of the recommendation is changed to "Open – Company Claims Closure".
- Step 6 In most cases, ITSRR will verify closure through an in field compliance inspection or audit. Once verification has taken place the recommendation status is changed to indicate it is "Closed - Verified".

Note 1: some recommendations may be verified by examination of documentation submitted by the agency that claims closure rather than through a field inspection. In these cases, recommendation status is indicated by “Closed – Not Verified”.

Note 2: some recommendations may be verified “Closed – Subject to the Implementation of an Approved Program or Plan”. In these cases, ITSRR agrees to closure if the Chief Executive of the organisation has approved the program or plan and ITSRR is of the view that it meets the Government’s response to the recommendation. This categorisation is used generally when implementation may take place over a prolonged period of time and/or capital expenditure is involved.

This process will continue until all recommendations are closed.

## APPENDIX 2 – TAXONOMY FOR CLASSIFICATION SYSTEM

|    | STATUS                                 | DEFINITION   |
|----|--|--|
| 1. | Open – Await Response                  | This status is automatically assigned to an accepted recommendation. Affected parties will be asked to submit their response for implementing the recommendation to ITSRR.   |
| 2. | Open – Response Received               | ITSRR has received a response from an affected party and this response is under review by ITSRR. It has not yet been accepted by ITSRR.  |
| 3. | Open – Acceptable Response             | ITSRR agrees that the planned action, when completed, meets the recommendation.  |
| 4. | Open – Acceptable Alternative Response | ITSRR agrees that alternative action, when completed, satisfies the objective of the recommendation.   |
| 5. | Open – Response Rejected by ITSRR      | ITSRR does not agree that the planned or alternate action meets the recommendation. The company or agency is advised of the rejection and requested to provide a revised response.                                   |
| 6. | Open – Company Claims Closure          | The company or agency claims that the planned or alternate action has been completed. The action has not yet been verified by ITSRR. ITSRR has not yet agreed that the item is closed.                               |
| 7. | Closed – Recommendation Rejected       | ITSRR has determined through further analysis and review that the recommendation is not appropriate (i.e. will not achieve the desired safety outcomes) and has rejected the recommendation. It is therefore closed. |

|     |   |  |
|-----|---|--|
| 8.  | Closed – No Longer Applicable   | <p>The recommendation has been overtaken by events and action is no longer required.</p> <p>For example, a new technology has eliminated the reason for the recommendation, it has been superseded by other recommendations issued, or the operator affected has gone out of business.</p> |
| 9.  | Closed – Action Verified  | <p>Completion of the planned or alternate action has been verified by ITSRR through a compliance inspection or audit.</p>  |
| 10. | Closed – Action Not Verified  | <p>ITSRR accepts that the planned or alternate action has been completed following a review of documentation submitted. Field verification is not necessary.</p>   |
| 11. | Closed – Subject to the implementation of the approved program or plan. | <p>A long term implementation plan has been approved. ITSRR will monitor reported progress against the plan to ensure compliance with delivery schedule.</p>   |

## APPENDIX 3 – IMPLEMENTATION PLAN: OUTSTANDING RECOMMENDATIONS

NB: This table lists only the recommendations which were closed in the last quarter, or remain to be implemented. Those recommendations closed in previous quarters do not appear. A complete list of all recommendations is available on ITSRR's website at: <http://www.transportregulator.nsw.gov.au>

| Recommendation   | Government Response  | ITSRR Expectation  | Agency   | Status | ITSRR Assessment    | Target Date |
|--|--|--|----------|--------|---------------------|-------------|
| 32. RailCorp should progressively implement, within a reasonable time, level 2 automatic train protection. | Requires further detailed review. The Government supports the implementation of additional train protection systems. Implementation of level 2 ATP as detailed in the recommendation would involve the replacement of all line-side signalling on the RailCorp network with on-train control systems. In addition every intra and inter-state train accessing the network would also need to be equipped with level 2 ATP technology. RailCorp has already retained consultants to undertake evaluation and risk assessment regarding implementation of additional automatic train protection systems on the RailCorp network. RailCorp will work with the Australian Rail | A detailed technical review of available options. This is to be a project lead by RailCorp. The major outcome of the project is to be a business case to support a Government decision concerning implementation of ATP. | RailCorp | Open   | Acceptable Response | *31/07/2010 |

\* This is an indicative timeframe which has been agreed to by the agency responsible and ITSRR.

+ This indicates a slippage with a revised date.

# This indicates Closure – Subject to the Implementation of an Approved Program or Plan.

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| Recommendation | Government Response   | ITSRR Expectation | Agency | Status | ITSRR Assessment | Target Date |
|----------------|---|-------------------|--------|--------|------------------|-------------|
|                | <p>Track Corporation (which operates the interstate network) to develop, in conjunction with ITSRR and interstate rail regulators, a national standard for an automatic train protection system. RailCorp will also undertake a comprehensive review which will include a risk assessment, technical feasibility and cost benefit analysis of introducing level 1 ATP as well as level 2 ATP, as recommended by the Commission. Consistent with recommendation 34 any future options will need to be assessed by independent verification of acceptable risk.</p> |                   |        |        |                  |             |

<sup>\*</sup> This is an indicative timeframe which has been agreed to by the agency responsible and ITSRR.  
<sup>+</sup> This indicates a slippage with a revised date.  
<sup>#</sup> This indicates Closure – Subject to the Implementation of an Approved Program or Plan.

| Recommendation  | Government Response   | ITSRR Expectation   | Agency   | Status | ITSRR Assessment    | Target Date |
|---|---|---|--|--------|---------------------|-------------|
| 36. The ITSRR should impose a standard in relation to the collection and use of data from data loggers. | Supported in principle for implementation through other means. ITSRR will introduce regulations including for data loggers that set out the expectations (or performance outcomes) required of industry. The regulations will be developed on a national basis, through the National Transport Commission process, to ensure consistent application across the Australian rail industry. Notwithstanding the expectation that industry will develop and maintain appropriate safety standards, ITSRR will retain the power to mandate such standards if the industry clearly fails to deliver satisfactory safety outcomes. | ITSRR will refer matter to NTC for development of National Regulation. In the interim, ITSRR will review existing standards set in access agreements to ensure adequate standards for collection and use of data. | Independent Transport Safety & Reliability Regulator | Open   | Acceptable Response | *25/06/2010 |

\* This is an indicative timeframe which has been agreed to by the agency responsible and ITSRR.

+ This indicates a slippage with a revised date.

# This indicates Closure – Subject to the Implementation of an Approved Program or Plan.

| Recommendation   | Government Response  | ITSRR Expectation   | Agency   | Status | ITSRR Assessment    | Target Date |
|--|--|---|--|--------|---------------------|-------------|
| 37. The standard in relation to the collection and use of data from data loggers should provide that such information must be accessed in the circumstances of any accident or incident and can be accessed to monitor driver performance generally. | Supported in principle for implementation through other means. (See R 36) Information from data loggers can be accessed to monitor for any incident or accident and can be accessed to monitor a driver's performance generally. | ITSRR will refer matter to NTC for development of National Regulation ITSRR will adopt National Regulation In the interim, ITSRR will seek from RailCorp proposals to improve the monitoring of driver performance (especially for training purposes) | Independent Transport Safety & Reliability Regulator | Open   | Acceptable Response | *25/06/2010 |

\* This is an indicative timeframe which has been agreed to by the agency responsible and ITSRR.

+ This indicates a slippage with a revised date.

# This indicates Closure – Subject to the Implementation of an Approved Program or Plan.

| Recommendation   | Government Response   | ITSRR Expectation  | Agency  | Status      | ITSRR Assessment           | Target Date       |
|--|---|--|---|-------------|----------------------------|-------------------|
| <p>38. There must be compatibility of communications systems throughout the rail network. It is essential that all train drivers, train controllers, signallers, train guards and supervisors of trackside work gangs in New South Wales be able to communicate using the same technology.</p> | <p>Supported and being implemented. The National Standing Committee of Transport endorsed the Australasian Railway Association working with operators and regulators, including RailCorp and ITSRR, to develop a national approach on communications systems, which has agreed minimum functionality requirements for train radio systems. RailCorp plans to implement a digital train radio system. An objective of this system is for it to be interoperable with existing analogue radio systems. Because of the technical complexities associated with achieving inter-operability, this has been a longer-term initiative and the first stage of its implementation will commence in 2005.</p> | <p>ITSRR to ensure functionality and compatibility requirements included in national standard, currently under development by the Australasian Railway Association. ITSRR to ensure RailCorp/ARTC Radio Functionality for next generation technology compatibility requirements.</p> | <p>Independent Transport Safety &amp; Reliability Regulator</p> | <p>Open</p> | <p>Acceptable Response</p> | <p>31/12/2012</p> |

\* This is an indicative timeframe which has been agreed to by the agency responsible and ITSRR.  
+ This indicates a slippage with a revised date.  
# This indicates Closure – Subject to the Implementation of an Approved Program or Plan.