



THE ONR SR WAY

REGULATING RAIL SAFETY

ACROSS AUSTRALIA

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SAFE RAILWAYS FOR AUSTRALIA

FOREWORD



Whatever the endeavour, there can be little doubt that a clear understanding of the fundamentals – the what, why and how if you like – is a critical ingredient in any recipe for success. Clarity breeds confidence which in turn delivers consistency and it's all of these that I want you, as an ONRSR stakeholder, to take from this document and our practical application of the words within.

National rail safety regulation is a reality in Australia and so it is timely that you understand how ONRSR intends to work with you both operationally and strategically as we pursue our vision of safe railways for Australia.

A safe rail network is in everyone's interests, and an elemental expectation of everyday Australians. They should be reassured by, without needing to be intimately aware of, a co-regulatory environment where the management of safety is of paramount concern to both industry and regulator.

Data analysis is at the heart of The ONRSR Way and will ensure we can make both risk and evidence-based decisions when planning our regulatory interactions. When coupled with a scalable approach, consistent across all Australian jurisdictions, this new era of smart regulation will ensure our resources are deployed where and when they are required most.

We will back our enhanced processes with an active engagement program that positions ONRSR as an organisation that informs, educates and collaborates through high quality, targeted communications. At all times our engagement with stakeholders will be strictly reliable, relevant and responsible.

Our record for achievement and reform will be strengthened. It is already typified by the work done to transition jurisdictions into a single national regulator, streamline reporting processes and procedures for operators

and provide invaluable guidance and advice in a range of industry spaces from road rail vehicles to major rail projects. And now we are perfectly placed to continue enhancing the execution of our role – both as monitor and influencer.

Of course all of these interactions and initiatives will be underpinned by ONRSR's values of integrity, respect, independence, diligence and excellence.

By clearly outlining how we will do business, we present to you The ONRSR Way – a way of thinking, a way of working but most importantly a way forward for rail safety in Australia.

Sue McCarrey
Chief Executive
National Rail Safety Regulator

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. We have 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 we are 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 us to tailor our approach to each operator and their 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 we will make the same decision for all operators, or that we would always make the same decision. Every situation will be judged on its merits.

1. Key functions

ONRSR has key functions and powers under the RSNL to:

A. Administer

We administer 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, operators 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, we 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 the 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 our 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

Our education function is primarily directed towards:

- education and awareness of the legal requirements and the expectations we have 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.

C. Monitor

We implement 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

Regulatory activities principally undertaken for determining appropriate enforcement actions are:

- operational investigations;
- compliance investigations.

Our 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 our way of planning regulatory activities across the country and is designed so that regulatory activities are carried out in a coordinated manner. We take a risk-based approach to the design of our work program which focuses our 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 prioritises decision making in accordance with the regulatory importance levels outlined in the Risk-based Regulation Framework. This enables us to prioritise our 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 we prioritise our regulatory attention.

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 our 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 our rail safety officers have wide powers of entry, enquiry, investigation and issuing 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

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

B. Transparent, fair and accountable

Transparency to us means that we will help rail transport operators to understand what is expected of them and what they should expect from us.

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

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

C. Confidential

We are subject to confidentiality provisions within the RSNL and we have processes in place to preserve this. Any publication of data we collect will be in a non-identified format and will report on industry level performance. We 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 our officers will be impartial with any potential conflict of interest that might influence a decision being disclosed prior to the decision being made. Where practical, we will not assign tasks to our officers or involve them in any decision making where a known conflict of interest exists.

We are mindful of the risk of regulatory capture (our officers becoming too close to the operators that they interact with and being influenced through familiarity) and 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. This is why operators will see a change in lead rail safety officer roles for our regulatory activities.

5. Continuous improvement

It is our role to advocate more broadly for continuous improvement across the rail industry, which we incorporate into our 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;
- 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.

INTRODUCTION

Our primary objectives are to encourage safe rail operations, ensure compliance with the RSNL and to promote and improve national rail safety. We provide regulatory oversight of the RSNL throughout Australia. 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 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 our 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 objects 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).

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 operation
- 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.

In exercising these functions we are required to:

- facilitate the safe operations of rail transport in Australia;
- exhibit independence, rigour and excellence in carrying out our 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.)



WHAT TYPE OF REGULATOR ARE WE?

We provide leadership, advice and act on behalf of the community when necessary as part of ensuring compliance with the RSNL.

We have 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 we are not an approver of equipment, services or processes.

In conducting these roles, we seek to engage with operators in a way that directly influences those with the ultimate responsibility for delivery of safe railway operations and environments. We take a predominantly facilitative approach to regulating safety, with our rail safety officers collectively acting as a safety conscience and compliance coach to our 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, we will employ the range of enforcement options available to us to secure safe outcomes and compliance with the law.

We actively engage 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: <ul style="list-style-type: none"> • setting obligations on specific duty holders; and • establishing the role and function of the Regulator
Regulator	Established with functions and powers to: <ul style="list-style-type: none"> • 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 so far as is reasonably practicable (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 & 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 our 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, so far as is reasonably practicable, 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. We have 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, we have 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 us to tailor our approach to each operator and their circumstances, while at the same time we aim to present a consistent regulatory approach to the rail industry so that we do not surprise. We don't see consistency of approach meaning that we will make the same decision for all operators, or that we would always make the same decision. Every situation will be judged on its merits.

When ONRSR says it delivers a consistent regulatory approach, we mean:

- when we undertake a regulatory activity, the administrative process we follow and the outcomes are delivered as expected (e.g. there will always be a report provided following an audit);
- we are transparent in what we are trying to achieve through the various regulatory activities we may undertake and explain why we have chosen them;
- we provide a single, common interpretation to the RSNL and our expectations on operators arising from this interpretation (made public through our published guidance material); and
- we manage 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 our way of planning regulatory activities across the country and is designed so that regulatory activities are carried out in a coordinated manner with our 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.

We do not share the work program with external parties. While we openly communicate our national priorities, we do not provide detail to rail transport operators regarding the scope of specific activities as documented within the work program. We will however meet with operators to discuss the focus of our planned interactions for the year recognising that the program is necessarily dynamic.

1.2

HOW WE OPERATE

The fundamental way we deliver our 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

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

1.2.2 Transparent, fair and accountable

Transparency means we will help rail transport operators to understand what is expected of them and what they should expect from us.

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

We encourage 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

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

1.2.4 Regulatory capture and conflicts of interest

The decisions made by our 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 will not assign tasks to our officers or involve them in any decision making where a known conflict of interest exists.

We are mindful of the risk of our 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.

1.3

WE ARE STRUCTURED TO DELIVER

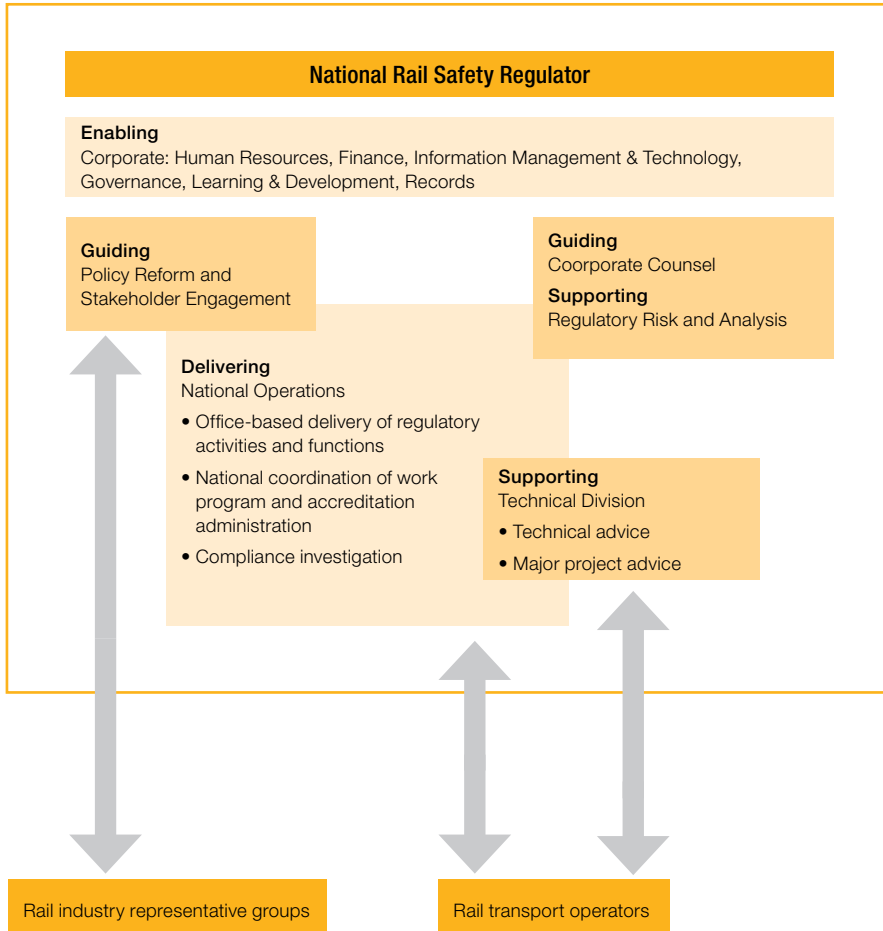
We are structured and geographically located to provide an efficient regulatory coverage of operations across Australia. Delivery of operational regulatory functions is undertaken by staff in a variety of locations.

- 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.
- 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 on the next page.

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 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. 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 our 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 our rail safety officers that we build the overall understanding of an operator’s safety culture. By analysing the range of data and information we collect, we consider the safety and compliance performance of operators to form an opinion of whether each operator is:

- continuing to demonstrate competence 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 our rail safety officers have wide powers of entry, enquiry and investigation and direction 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 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 our expectation that rail safety officers will immediately identify themselves upon arrival at a site and provide proof of identity in the form of an ONRSR identification card. They 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 they do have the discretion to refuse. 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 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 officer and not hinder an 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 develops 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 (for example in relation to fatigue and drug and alcohol management) and provide input into strategic policy positions developed by the National Transport Commission for consideration by Transport and Infrastructure Council.

We have 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 we administer the law in respect of particular subject areas and addresses rail safety issues for broader topics such as level crossings, and are intended to influence decision makers. All ONRSR policies are available on the ONRSR website.

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 public on legislative, regulatory and technical matters.

We also provide additional information 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 done in consultation with stakeholders.



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 we are able to influence through our regulatory activities; and
- designing, prioritising and delivering regulatory activities and outcomes in a way that best maintains and improves rail safety.

Our 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:

2.1.1 Collect regulatory data

We collect regulatory data from a variety of sources, including operator reporting, third party reports and through our interactions with industry. This enables us to monitor operators' safety management and performance to support both our legal requirements and those of industry.

All regulatory data is captured and managed through a regulatory information system that we have developed for this purpose. Our approach to data capture and management is driven by:

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

2.1.2 Analyse regulatory data to understand risks to rail safety

By analysing and drawing upon the regulatory data we collect, we are able to 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.

We need to have a good understanding of the risks to safety being presented by railway operations to focus our regulatory activities towards ensuring that the responsible duty holders are managing those risks. When we refer to risks to rail safety, we primarily mean 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.

Our interest in operational rail safety risks should not be interpreted as us wanting to direct the way these risks are managed or to take a direct role in operational decisions. Our interest, collation of data, risk analysis and safety performance monitoring in this space is conducted in line with the principles of 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 2
ONRSR's model for risk-based regulation

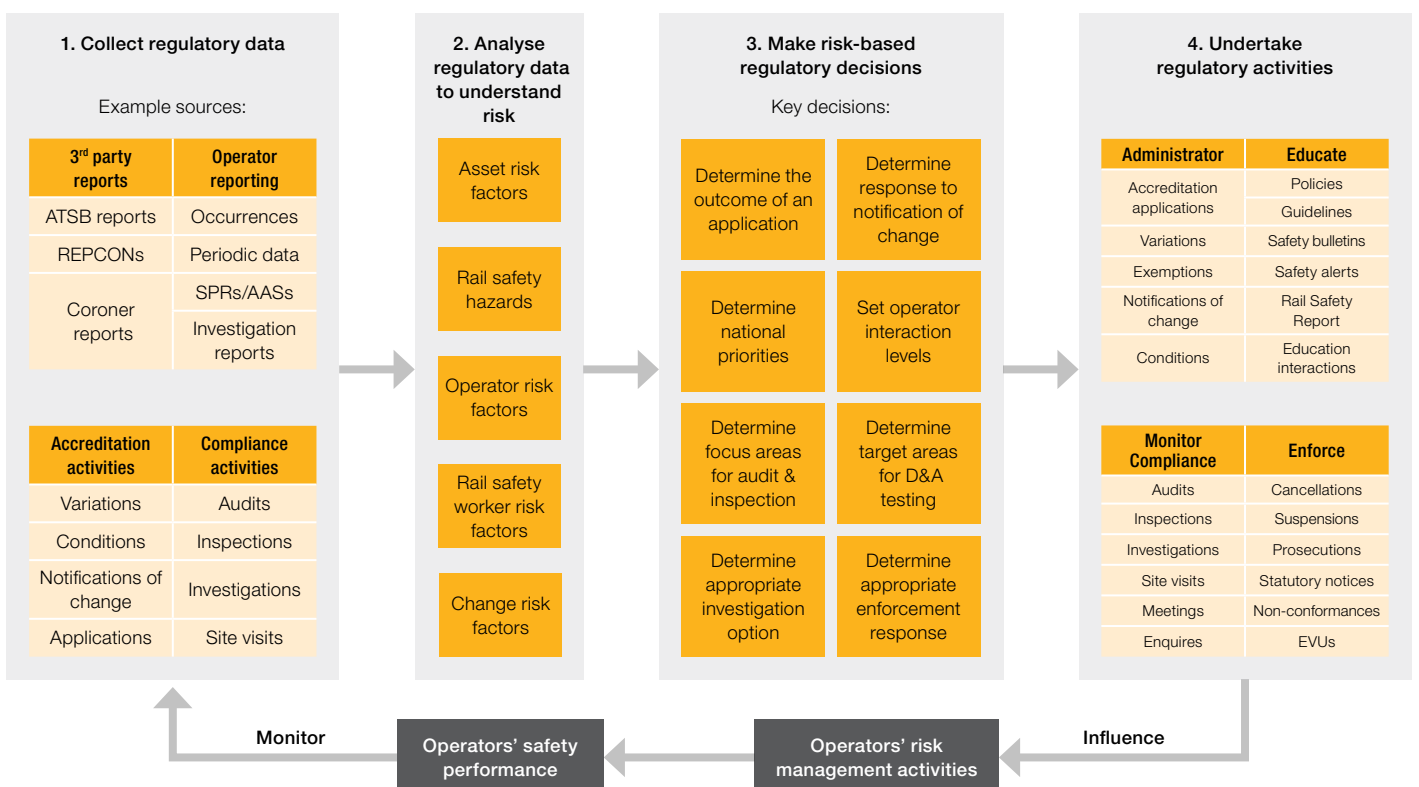
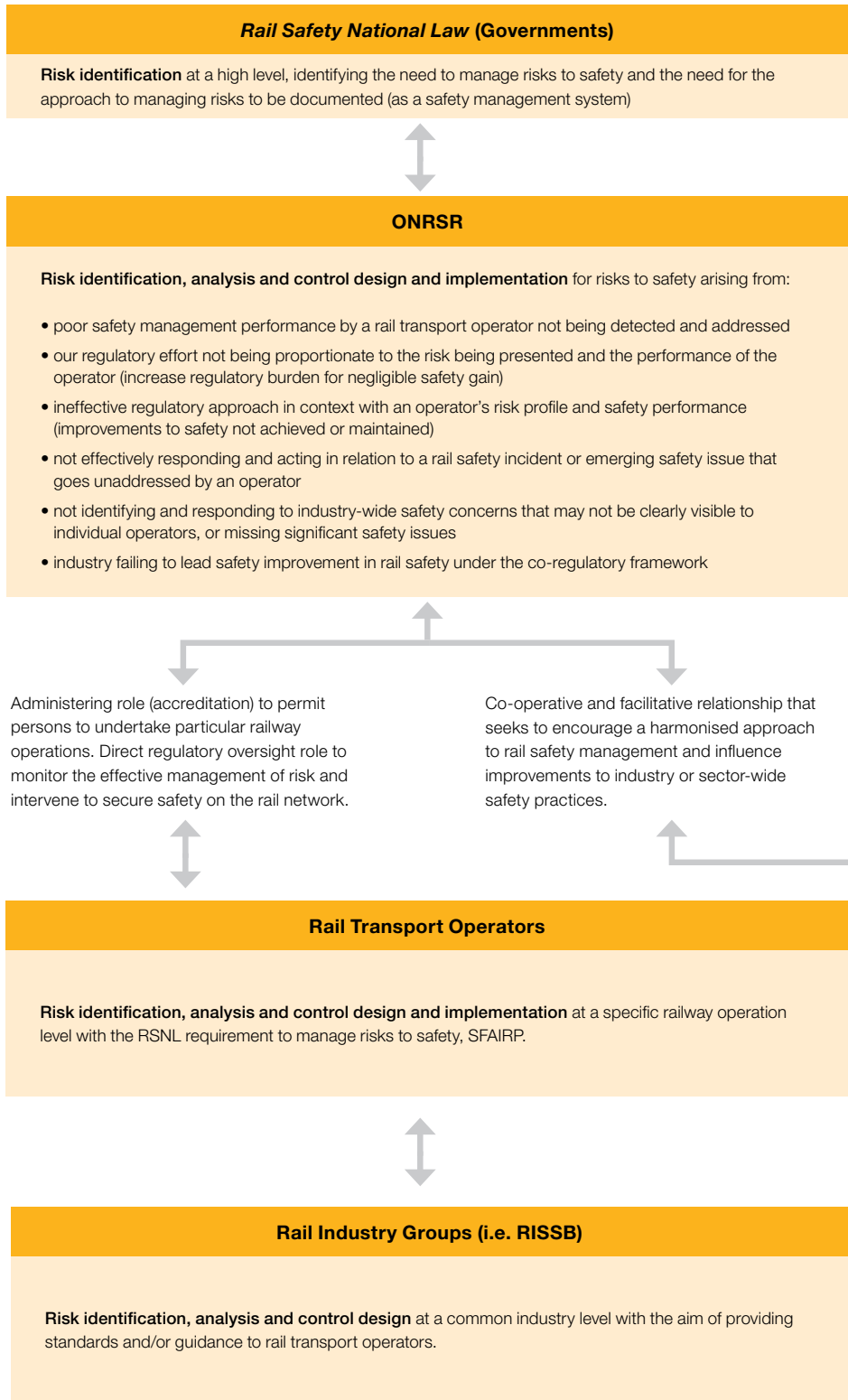


FIGURE 3

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, we make informed regulatory decisions to best drive and influence risk reduction across industry.

Risk-based decision making is fundamental to our risk-based approach to regulation. However, not all of our decisions carry the same level of regulatory importance, or have the same potential to impact rail safety.

For example, a decision to accredit a new operator has a much greater potential to impact rail safety, and is therefore of greater regulatory importance than a decision to select a new publishing provider for corporate reports.

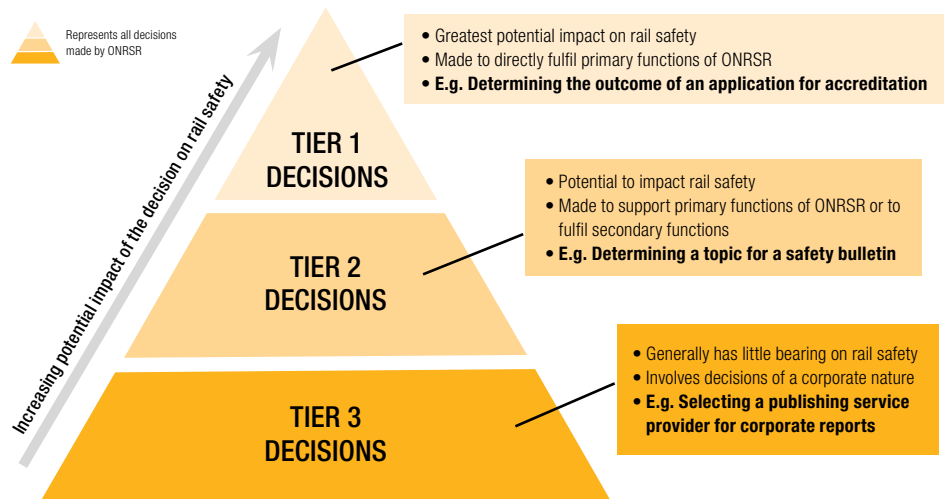
A scalable approach to risk-based decision making is therefore required to ensure the level of effort expended on a decision is commensurate to the regulatory importance of that decision. To achieve this, our framework for risk-based regulation categorises regulatory decisions into one of three tiers of importance:

- Tier 1 decisions, which are those with the greatest potential to impact rail safety and are therefore the primary focus of risk-based regulation;
- Tier 2 decisions, which are of a secondary focus; and
- Tier 3 decisions, which do not generally impact rail safety.

This is depicted in Figure 4. Further examples of our Tier 1 decisions are provided in Figure 2.

FIGURE 4

Decision tiers of regulatory importance



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

2.1.4 Undertake regulatory activities

We implement our risk-based decisions and plans by interacting with industry using a variety of regulatory activities, tools and measures, ranging from publication of guidelines to taking enforcement actions.

Our regulatory activities are designed to achieve an appropriate balance between focusing on program-centric work and problem-centric work. At its simplest level our program-centric work focuses on broad safety issues and is evidenced in the way we conduct activities addressing our national priority areas. Our engagement with industry in safety initiatives and education programs are other examples of regulatory activities that fall into the program-centric sphere. Problem-centric regulatory activities are where we take action to address a specific issue or risk, usually targeting an individual rail transport operator.

MAKING A PROPORTIONATE RESPONSE

2.2

In keeping with the co-regulatory framework, we have 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, we will assess the circumstances of each identified breach to determine what the relevant and proportionate level of enforcement required is.

We do not progressively escalate our response to contraventions of the RSNL through the range of enforcement options that are available to us; rather, we select the option we consider is the best to achieve a safe and compliant outcome given the specific circumstances. The likelihood of us selecting one of the various compliance tools (see section 3.4) or sanctions that are available to us depends 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 safety to 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 us 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 our rail safety officers, to ensure we meet those functions. Figure 5 identifies the activities against the key functions. The expectations and regulatory outcomes from these activities are expanded on throughout this document and summarised in Appendix 2.

In addition to the above activities, our rail safety officers may also request information from operators to confirm facts, clarify uncertainties with information we hold or improve our 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 outlined in Figure 5 are used principally to administer and monitor compliance with and, if necessary, initiate actions to enforce or sanction breaches of the RSNL. Our rail safety officers will select that activity which best fits their intended purpose for interacting with an operator. However, at all times our 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, our 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 our officers are going to change the nature of the regulatory activity being undertaken a representative of the operator will be advised.

FIGURE 5

Regulatory activities

Administer	Accreditation	Education	Publications	
	Applications Variations		Policies	
	Variations		Guidelines	
	Exemptions		Safety Bulletins	
	Notifications of Change		Safety Alerts	
Enforce	Enforcement Actions	Monitor	Rail Safety Report	
			Conditions	Education Interaction
			Compliance	
			Cancellations/ Suspensions	Audits
			Prosecutions	Inspections
			Statutory Notices	Investigations
Non-conformance	Site Visits			
Advice	Meetings			
Enforceable Voluntary Undertaking	Follow up enquiry			
	Preliminary enquiry			

ADMINISTER

We administer a national scheme of accreditation, which includes registration and exemption. It 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 our 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 wants 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.

3.1

A **rail transport operator** falls under one or both of these definitions

- **rail infrastructure manager** - having effective control and management of the rail infrastructure whether or not the person owns the 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.

We 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.

We are 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 will depend on the scope and complexity of the applicant's railway operations and the completeness and quality of the documentation provided with the application. We will use our best endeavours to work with applicants' operational timeframes but we will not enter an agreement that shortens the relevant period for our 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 we are satisfied the rail transport operator has demonstrated to us it has the competency and capacity to manage the risk to safety associated with its specific railway operations. It does not mean that we have approved or endorsed an organisation's safety management system, specific technology or methods of operation. These are subject to ongoing oversight by us through our regulatory activities.

We grant accreditation through the issue of a notice of accreditation, which sets out the scope of operations for which the operator is being accredited.

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 we assess in the same way as an accreditation.

We encourage all potential applicants for accreditation, registration or exemption to discuss their intended railway operations (or change to operations) with us before making an application.

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. We will not commence the detailed assessment of an application until we have confirmed 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 will be straightforward and 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 our 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 we can make as to who can be accredited for what railway operations. We will work with parties to provide advice on the implications of their contracting, or other similar decisions, to ensure 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 we request evidence for consideration around the following:

- 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. Our view on granting accreditation to enable tendering for railway work

We can only grant accreditation to an organisation that can demonstrate they are the effective control and management party for their proposed railway operations. We have 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.

We are able to, and will, 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.

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

C. What do we do to assess an application for accreditation?

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 us 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. We are looking to determine whether the rail transport operator can demonstrate organisational level competency and capacity. This is not about us 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
- evidence that the safety management system has been implemented (to the extent possible prior to operations, e.g. change management processes are documented for amendments to the system that are being made in response to our assessment process).

We will sample a range of elements of the safety management system and may require the detailed documentation and access to the staff, where available, 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 us of their competence and capacity to manage risks to safety associated with its proposed railway operations, we will refuse the application and provide the applicant the reasons for refusal in a written response.

E. What consultation needs to have been undertaken?

During the assessment process we will look for:

- 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.

Where it is feasible for an applicant to have undertaken consultation with affected stakeholders (particularly in regard to interface agreement requirements) and considered and actioned the feedback obtained, we expect this has occurred prior to making an application for accreditation or variation of accreditation or is intended to be completed during the early stages of our assessment period.

F. What insurance arrangements are we satisfied with?

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

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

G. Why we impose conditions and restrictions on accreditation

The RSNL enables us 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 our 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, we will monitor the effectiveness and relevance of what we have imposed. We will act to remove these, without initiation by the operator, should we decide that the condition or restriction is no longer needed for our 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?

We acknowledge that when constructing railway infrastructure there is a range of work that 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 we do not include these activities in the definition of construction of a railway, railway tracks and associated railway track structures.

As each project or construction work is different we always encourage operators or other interested parties to come and speak to ONRSR so that a more detailed assessment of the activities can be done. It will never be 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, we are aware that sometimes the line between rail infrastructure operations (i.e. construction, repair and maintenance) and road or utility operations can blur.

Our approach to applying the law is not to require organisations that are principally road or utility managers to also act and be required to be accredited as a rail transport operator. We will not seek to have road managers or utility managers 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.

Our 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).

We will work with infrastructure managers to provide clarification of requirements under the RSNL on representation from one or both of the managers. We will intervene where we have identified difficulties 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 we do not publish operators' notices of accreditation or exemption, the RSNL does require an accredited (or exempted) rail transport operator to make their current notice of accreditation or notice of exemption available for inspection by any person at the operator's place of business. As such, we draft our notices so they can be read and understood by a person not directly involved with the operator.

We draft the notice of accreditation 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 (such changes are captured by the notification of change provisions of the Regulations); and
- provides sufficient description of the extent of permission being given to the railway operations that were requested. We will 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 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.

ONRSR will acknowledge receipt of a notification and assess whether the change meets the requirements for a notification of change (i.e. is within the scope and nature of the operator's accreditation and meets the requirements of regulation 9). ONRSR will also give regard to the safety risks of the change and whether the rail transport operator:

- is following its risk and change management processes;
- complies with the requirement to notify ONRSR of certain changes to their 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 its compliance and enforcement activities.

If the change is outside the scope of the accreditation or raises safety concerns we will contact the operator as early as possible (note: that this will very likely impact planned change timeframes).

3.1.3 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, so far as is reasonably practicable, the risks to safety associated with their operations.

ONRSR needs to establish that:

- the applicant is, or is to be, the rail infrastructure manager of the private siding (i.e. has the effective control and management); 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 our opinion, the appropriate action.

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

A. When is registration appropriate?

Our decision as to whether the railway operations to be undertaken within a private siding are appropriate for the granting of a registration is a decision we base on the potential risks to safety. This assessment will be 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 we are 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. We have an expectation that rolling stock operators will 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 our decision of whether registration is appropriate will be influenced.

Other key factors that influence our decision 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).¹

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. We do not include sidings that are used solely to support bulk handling facilities (e.g. coal, grain or mineral facilities) within the definition of a freight terminal and will include them 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 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 shunting type operations (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 being 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 we will consider accreditation as 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 we will consider the need for accreditation.

3.1.4 Exemption

We 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 exemption will be limited to exceptional circumstances.

Exemption from the requirement for rail transport operator accreditation will be considered where a railway or railway operations are captured by the RSNL but in their nature, are not railways of a type intended to be regulated under 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 we do not grant exemptions based on whether an operator can or cannot demonstrate an effective safety management system.

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

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

¹ As of publication date, definition of private siding differs in Victoria.

3.1.5 Exemption from specific program requirements under the RSNL

The RSNL enables the Regulator to grant an exemption from the requirements of the RSNL² 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 will not typically be needed as most rail transport operators should be able to find a means of compliance. We will only consider exemptions against the above as a last resort and 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 we are unlikely to grant an outright exemption from the requirements for the above plans, it is more likely that any exemption will be due to a unique environment or conditions.

Our 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 so far as is reasonably practicable, as well as other duties that may be applicable. To ensure that safety is not reduced we may impose conditions 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.

We treat and assess each application for exemption 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. We are 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).

Exemption is granted by the issue of:

- a notice of exemption (in the case of a variation of exemption, this will be 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 will cover, 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 we consider it is reasonable for the operator to comply with the plan and/or program requirements of the RSNL, notification will be by a letter setting out the reasons for refusal.

² Note these specific Exemptions are differentiated from the more general Exemptions that are referenced in section 207 of the RSNL and addressed in section 4 of this document.

A. Surrendering accreditation, registration or exemption

We acknowledge that 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 us on the intention to surrender by a specified date.

While we can refuse a surrender from an operator, we will not unreasonably withhold our 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 for us to review an operator's arrangements for ceasing operations we do request we be advised of the intention to surrender at least 28 days prior to when the operator wants the surrender to take effect.

Where we have concerns with the arrangements for ceasing of railway operations we will advise of these concerns in writing and use our best endeavours 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, we will not give effect to a surrender until satisfied with the arrangements to cease operations. Until this occurs the operator will still be subject to the RSNL.

EDUCATION

This involves the provision of information, advice and education to rail transport operators and other duty holders regarding compliance with the RSNL and awareness of rail safety issues. We do this in the following ways:

- 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 safety improvement programs and projects.

Where appropriate and practicable, we work with rail transport operators by providing education and advice to help duty holders understand the requirements of the RSNL and to improve the safety of railway operations.

Our education function is primarily directed towards:

- education and awareness of the legal requirements and the expectations we have 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.

We actively encourage our rail safety officers 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, our 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.

3.2

3.2.1 What to expect from our education interactions

Education interactions generally occur at one of two levels, either by rail safety officers when undertaking audits, inspections or site visits or through facilitated workshops or sessions as part of ONRSR's safety improvement program.

In situations where we observe a small-scale operator is demonstrating a poor understanding of the requirements of the RSNL, or in situations where these operators have been subject to a turnover of staff that suddenly creates gaps in their knowledge of what is required, we may conduct a formal education interaction. This is to assess the rail transport operator's awareness and understanding of their legal obligations and provide advice on how to address these gaps.

We will also use information obtained from these interactions to shape our ongoing regulatory activities with the operator.

Educational interactions as part of a safety improvement program being run by ONRSR are targeted more broadly for industry rather than on the specific requirements of a particular operator. While these can and will be discussed at an individual operator level, if appropriate, the focus is on enhancing knowledge and understanding across the industry. These interactions are purely educational and do not shape ongoing regulatory activities with a particular operator.

3.2.2 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 office representatives will 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 we all follow. 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 provides further opportunities for sharing information and education as well as consulting with industry on policy and guideline development and safety improvement 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.

MONITORING

3.3

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

We implement 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 their railway operations.

Our monitoring activities are scheduled using our risk-based decision making processes outlined in section 2 of this document. Monitoring activities and their regulatory outcomes are summarised in Appendix 2.

3.3.1 Site visit expectations

Our 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 our staff regarding the operator and its railway operations; and
- observing a specific feature of an operator's railway operations.

During a site visit our 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 our conduct of a site visit:

- site visits will be conducted with and without notice.
- regardless of whether notice is provided, upon exercising the legislative power to enter railway premises our rail safety officers will 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.
- requests for access to documented elements of the safety management system (e.g. procedures, standards or instructions) and records generated under the system will be limited to those that would normally be expected to be available at the site.

3.3.2 Inspection expectations

Our 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 methods of operation 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 may be conducted by two or more rail safety officers, one of which will be identified as the lead officer for managing the conduct of the inspection and to be our primary contact for the operator in regard to the inspection.

3.3.3 Audit expectations

Our 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 may be initiated as a proactive action for compliance monitoring, typically scheduled in our work program, or reactively in response to an identified safety incident or issue. An audit will involve 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 will be identified as the lead officer for planning the audit arrangements, managing the conduct of the audit and to be our primary contact for the operator in regards to the audit.

3.3.4 Preliminary enquiry expectations

A preliminary enquiry is ONRSR's term for when a rail safety officer is tasked with obtaining more information regarding a safety issue that has come to our attention. The rail safety officer conducting the preliminary enquiry will seek to obtain additional information generally either by phone or email.

A preliminary enquiry is deliberately low key and relatively informal. Unless an immediate threat to safety is identified (which may warrant a prohibition notice) no further regulatory outcome should be expected. If the preliminary enquiry highlights concerns then the rail safety officer will escalate the matter and utilise a more formal enforcement tool.

3.3.5 Follow-up enquiry expectations

A follow up enquiry is ONRSR's term for when a rail safety officer is tasked with obtaining more information following on from a notifiable occurrence or when we receive information via other formal channels such as REPCON confidential reports. The rail safety officer conducting the follow up enquiry will seek to establish the basic facts surrounding the incident, which will inform ONRSR's decision on whether to require the rail transport operator to investigate the incident and/or ONRSR to undertake an operational investigation or potentially a compliance investigation. The outcome may also be that we are satisfied that no further action is needed.

Where there has been an incident(s) of a serious nature (or cases of repeated incidents) the Regulator will want to be satisfied the rail transport operator has the ability to safely continue carrying out railway operations. Accordingly, a rail safety officer or the Regulator will either request (or if necessary require) the rail transport operator to provide information and or documents so that the rail safety officer can consider whether the rail transport operator has:

- demonstrated an understanding of the factors that led to the incident; and
- identified actions that have been taken to give confidence that such an incident will not be repeated.

It is important to note this process 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 will be 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 the section 3.4.3 Tools for achieving compliance and expectations.

It is acknowledged that any actions implemented in this immediate context can only be made 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 so as to reflect the new information and inform ONRSR appropriately.

3.3.6 Notifiable occurrences

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

While we receive immediate notification of Category A incidents we do not have a first responder or emergency response role. Our 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
- make a decision whether to undertake our own post incident drug and alcohol testing.

Should we decide to deploy a rail safety officer to an incident site, we will liaise with other agencies on site including the Australian Transport Safety Bureau and emergency services as well as any rail transport operators involved. Our 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.

We have the power under the RSNL to secure evidence at the site and when we do so we will liaise with the rail transport operator affected.

3.3.7 Other monitoring activities

Another key monitoring activity undertaken by our rail safety officers, which may also initiate additional interaction with operators, is the review of reports and other information required to be or otherwise provided to us to identify any regulatory action we need to undertake.

This includes:

Review of a notification of change	Initiated following the receipt of a notification of change from an operator and undertaken to determine what, if any, regulatory activity should be triggered because of the proposed change.
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 on a daily basis upon processing of received notifiable occurrences. We review all notifiable occurrences and make decisions on a daily basis regarding whether anything needs to be responded to immediately. Ongoing trend monitoring of notifiable occurrences is a key input into our risk-based regulatory decision making processes that inform our work program.
Review of safety performance report or annual activity statement	Initiated following the receipt of a report or statement from an operator. We review 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. Our 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 we will treat these as confidential.

Monitoring closure of NCRs and Notices

We monitor the corrective action plans submitted by operators in response to Non Conformance Reports (NCR), improvement notices and prohibition notices and will 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 will occur in various ways but will typically involve:

- requesting information;
- meeting with the operator; or
- conducting a site visit, inspection or audit.

Review of other reports

We receive and monitor reports from other agencies including Coroner's Courts, Commissions on Enquiry, as well as REPCON confidential reports passed onto us 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.

Regulatory activities that are principally undertaken for determining an appropriate enforcement action are:

- operational investigation; and
- compliance investigations.

The need to undertake enforcement actions may be identified from any of the monitoring activities previously discussed. Our 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. We will determine the seriousness of a matter 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.

3.4.1 Operational investigation expectations

An operational investigation is a detailed and systematic review of an operator's actions and operations in response to an occurrence or a safety issue to better inform the Regulator of the effective management of safety issues contributing to the occurrence or issue.

Any operational investigation instigated by ONRSR will utilise appropriate subject matter experts, working in conjunction with rail safety officers. The findings from an operational investigation may lead to the initiation of other monitoring or enforcement options.

3.4.2 Compliance investigation expectations

A compliance investigation is a formal investigation to determine whether a breach of the RSNL has occurred and we 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 operational investigation;

- 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

We target our investigative resources to investigating the more serious incidents or those with the potential to be serious. It is neither possible, nor necessary in our statutory role, 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, we consider the following factors:

- 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;
- our knowledge of the operator’s compliance history; and
- the wider relevance of the event, including serious public concern or scrutiny.

3.4.3 Tools for achieving compliance and expectations

When presented with a potential breach against the RSNL we have 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>Our 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 will provide advice in the form of identifying opportunities for improvement (referred to as ‘observations’). Observations will be 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 us and we do not expect or require a formal response from the operator but we will keep a record 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>Our 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>We issue a non-conformance report (NCR) in writing, typically contained within a report of the regulatory activity during which the breach was identified. The NCR will detail the identified breach and we will provide clear reasons for raising the NCR.</p>

A NCR is not enforceable and represents the highest level of informal advice to correct an identified breach. We will request an operator provide us with written advice of the corrective action(s) that will be taken to address the non-conformance including timelines. We expect 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.

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 we may escalate the matter.

Improvement notice

Our rail safety officers may issue an improvement notice where they reasonably believe a rail transport operator is:

- contravening or has contravened a provision of the RSNL; and
- carrying out or has carried out railway operations that threaten safety.

We will issue improvement notices as stand-alone written notices in which we will describe the contravention or threat to safety, the reasons for the officer's decision and any directions in regard to rectifying the contravention or safety threat. We will provide advice on the legal procedures associated with the notice which will include the right of appeal.

An improvement notice will be issued where a rail safety officer is of the belief 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.

We aim 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, which 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.

In deciding whether an enforceable requirement should be placed on an operator through an improvement notice, officers will consider the:

- 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 our officers will make based on the historical performance and the immediate presentations being made by the operator regarding the contravention or safety threat.

When setting timeframes for the operator's response to an improvement notice we will consult with the operator on the likely timeframe for their intended corrective actions, but the setting of a timeframe for compliance will not be by agreement. We will retain the decision as to required timeframes and sole discretion for granting any extensions to these timeframes that may be requested by the operator.

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.

Prohibition notice

Our 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.

A prohibition notice may be issued verbally but we will always confirm the notice by issuing a stand-alone written notice (typically by the following business day). A verbal notice has immediate effect.

In deciding whether a prohibition notice should be issued, officers will consider the:

- 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 our officers will 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.

Our 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 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.

Non-disturbance notice

Our 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 conduct an investigation following an incident and requires the rail transport operator to ensure the preservation of evidence associated with the incident.

The non-disturbance notice will prevent 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.

Infringement notice

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 penalty provisions are listed in s233 of the RSNL. An infringement notice is not subject to right of review, nor is ONRSR required to conduct or cause to be conducted a cost benefit analysis. An infringement notice must be issued within 12 months from ONRSR forming the view that a breach has occurred.

The issuing of an infringement notice is viewed as a serious consequence for non-conformance with the RSNL. Prior to issuing an infringement notice ONRSR will take into consideration:

- the level of the breach;
- the seriousness of any harm or injury that may have resulted from the breach;
- the adequacy of the prescribed penalty in relation to the severity of the breach;
- whether the breach is a one-off situation that can be remedied easily;

	<ul style="list-style-type: none"> • whether the issue of an infringement notice is likely to be a practical and viable deterrent; • the level of evidence to substantiate the breach; and • the time lapse between the offence and the issue of the infringement notice. <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>The person who is the subject of an infringement notice has the right to refuse to pay the infringement fine however, if the infringement notice is not paid and is not withdrawn the Regulator may pursue alternative debt recovery options or institute proceedings in respect of the breach.</p>
<p>Direct amendment of a safety management system</p>	<p>We can direct a rail transport operator to amend its safety management system in a specified manner to address any deficiencies that we have identified.</p> <p>Our preferred approach is for operators to remain fully responsible for selection of risk controls and the content of their safety management systems. We will only consider this option where we consider 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 we will provide the operator 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>
<p>Prosecution</p>	<p>We can act to prosecute organisations or individuals for breaches of the RSNL. The circumstances that may give rise to us considering a prosecution include:</p> <ul style="list-style-type: none"> • 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); • there has been 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. <p>In making the decision to prosecute we take into consideration:</p> <ul style="list-style-type: none"> • 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 will only be pursued where we have collected sufficient evidence to provide a realistic prospect of conviction and believe it is in the public interest to prosecute. We recognise that prosecutions can be resource intensive and our available resources are finite. We will only seek to expend our resources on appropriate cases.

Regarding public interest and community expectations, the following factors will also be 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).
- 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

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, we may consider accepting an enforceable voluntary undertaking on application by the offending individual or organisation.

An enforceable voluntary undertaking represents a high level commitment from the rail transport operator and it is up to the operator to make the case to us that acceptance of the undertaking represents a better outcome to safety than the compliance action we are proposing to take.

While it is a voluntary action on behalf of the operator to seek agreement to an undertaking from us, once accepted it becomes a legally binding agreement that we will enforce through the courts if required.

We will consider accepting an enforceable voluntary undertaking where:

- 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

ONRSR-initiated variation 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.

In considering a decision to impose or vary conditions or restrictions on accreditation or registration for the purposes of enforcing compliance, ONRSR will consider whether:

- the rail transport operator's history of compliance demonstrated that railway operations are or are not conducted to an adequate standard of safety and the safety management system complies with the RSNL; and
- 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.

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.

Suspension of accreditation or registration

We can suspend an accreditation or registration (in full or in part) where the accredited or registered rail transport operator:

- 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.

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 we suspend accreditation or registration we will 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.

Cancellation of accreditation or registration

We can cancel an accreditation or registration (in full or in part) where the accredited or registered rail transport operator:

- no longer can 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;

We view cancellation of accreditation 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.

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.

A summary of the most common compliance tools and the expectation on operator response to these is provided at Appendix 1.

REVIEWABLE DECISIONS

We accept that many of our decisions are reviewable under section 215 of the RSNL. As an independent regulator we accept such decisions are subject to rigorous and appropriate scrutiny. When we provide notification of a decision that is subject to a formal review process under the RSNL we will also provide details as to what the review process is.

3.5

NATIONAL RAIL SAFETY REGISTER

We are required by the RSNL to establish and maintain a National Rail Safety Register, which is made available on our website: www.onrsr.com.au. 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

We aim to review and update the contents of the register monthly. While information will not normally be removed from the register we will, in the case of cancelled statutory notices, remove the record of the notice from the register six months after the date the notice has been cancelled.

3.6



CONTINUOUS IMPROVEMENT

It is not our 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 our role to advocate more broadly for continuous improvement across the rail industry, which we incorporate into our 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;
- 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.

IDENTIFYING AND ACTING ON NATIONAL PRIORITIES

4.1

A national priority is defined as a rail safety area of regulatory focus that applies to multiple operators and warrants a sustained period of regulatory attention of at least one year. We typically target our national priorities through operator-centric national compliance projects or industry-wide safety improvement projects.

Our national priorities and the associated national compliance and safety improvement projects are reviewed annually and are communicated to industry in the ONRSR Rail Safety Report, published in December each year.

Setting our national priorities is one of the Tier 1 decisions within our framework for risk-based regulation (refer to section 2.1.3). As such, we apply a structured, evidence-based risk assessment process to inform the decision outcome. The process involves an analysis of multiple sources of regulatory data including:

- ATSB investigation reports;
- REPCON reports;
- operator notifiable occurrence reports;
- operator safety performance reports;
- operator investigation reports; and
- the findings of our regulatory interactions with operators

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

We then undertake an assessment of a series of quantitative and qualitative risk factors including:

- **National exposure** – the number of our jurisdictions affected by safety issues relating to the priority area;
- **Rail industry exposure** – the number of operators and/or industry sectors exposed to safety risks relating to the priority area;
- **Regulatory response** – the frequency of issues relating to the priority area that have prompted regulatory intervention;
- **Level of control** – operators' scope for the management and control of risks relating to the priority area;
- **Novelty** – the novelty to the Australian rail industry of risks relating to the priority area;
- **Harm to people** – the worst credible harm that could eventuate following an accident related to the priority area;
- **Occurrence frequency** – the number of notifiable occurrences reported to us in relation to the priority area;
- **Stakeholder concern** – the level of safety concern held across our stakeholders in relation to the nominated area; and
- **Scope for improvement** – the scope for safety improvement across industry in relation to the priority area.

Finally, we review the potential priority areas to identify those that most warrant a nationally coordinated and sustained period of regulatory focus, and 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.

While the legislation clearly articulates our powers to monitor and enforce operator and duty holder compliance with the requirements of the RSNL, there is little detail on the specifics of our 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, we are 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 our principal objective of facilitating the safe operation of rail services across Australia and we will always strive to work with the broader industry on problem-centric issues to achieve this objective.

The type and level of engagement used for a particular matter reflects the intended purpose of that engagement. In general, we engage 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 we have been 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.

We also engage with other regulators within Australia and overseas due to our 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 a number of forums set up to support this engagement these being:

- Chief Executives' forum
- National and local operations forums
- Specific reference groups
- 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.

APPENDIX 1

TABLE OF MOST COMMON COMPLIANCE TOOLS

Outcome	Operator action required
No Adverse Findings	The rail safety officer has not identified any issue of concern.
Observation	Observations will be made in writing. ONRSR will 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 will communicate the NCR in writing and request a written corrective action response from the rail transport operator. Rail transport operator is 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	Prohibition is communicated in a Prohibition Notice and may be initially issued verbally. Compliance with prohibition notice required.

APPENDIX 2

REGULATORY OUTCOMES FROM RAIL SAFETY OFFICER-LED REGULATORY ACTIVITIES

			Regulatory Outcome		
Regulatory Activity	Purpose	Notification	No adverse findings (minimum response)	Observation	Non-conformance Report (NCR)
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) within 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) within 5 days post site visit.	
		Unannounced - Notification on entry.			
Inspection	Formal review of the application of an SMS for specific railway operations and activities.	Announced - Written notification and scope provided.	Written confirmation (letter) 5 days post visit.	Issued in writing (letter) within 5 days post inspection.	Issued in writing within Inspection Report within 4 weeks of the inspection. A preliminary report may be issued for factual comment.
		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.	Issued in writing within Audit Report. Preliminary Report provided for factual comment 4 weeks post audit.
Preliminary Enquiry	Obtain additional information regarding an occurrence or safety issue.	Initiated by enquiry (verbal or in writing).	No response may be provided other than confirmation information has been received.		
Follow-up Enquiry	Obtain and analyse additional information regarding circumstances and operator response to an occurrence or safety issue.	Initiated by enquiry (verbal or in writing).	No response may be provided other than confirmation information has been received.	Issued in writing (letter).	Issued in writing within an enquiry summary report.
Operational Investigation	Detailed investigation by ONRSR into an occurrence or safety issue.	Written notification (letter).	Written summary of investigation outcome (letter).	Issued in writing (letter).	
Compliance Investigation	Formal investigation into potential breach of the RSNL.	Written notification (letter).	Written summary of investigation outcome (letter).	Issued in writing (letter).	

Improvement Notice				
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 separate to other correspondence.	Notice issued in response to an immediate risk to safety.	Notice issued separate to other correspondence.		
Notice issued separate to other correspondence.	Notice issued in response to an immediate risk to safety.	Notice issued separate to other correspondence.	Managed through standalone documentation & 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.	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 & correspondence.	Managed through stand-alone documentation & correspondence.

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

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



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