

# Competence and Capacity Guideline

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## Contents

1. Overview and Purpose .....	4
2. Context .....	5
3. Competence, Capacity and Safety .....	5
4. Identifying Risks .....	6
5. Dealing with Risks .....	7
6. Non-Risk demonstrations of Competence and Capacity .....	7
7. Acknowledgements .....	8

## 1. Overview and Purpose

The Office of the National Rail Safety Regulator (ONRSR) has been established under the Rail Safety National Law (RSNL) to administer a national system of rail safety regulation.

The purpose of accreditation is to attest that the rail transport operator has demonstrated to the National Rail Safety Regulator (NRSR) the *competence and capacity* to manage risks to safety associated with those railway operations (refer to s61 of the RSNL).

Accreditation is a method by which the NRSR can give an assurance to the public that a rail transport operator has systematically considered the risks that may reasonably be expected to arise from its intended operations, and that it has a safety management system that is appropriate to eliminate risks to safety, or if they cannot be eliminated, reduced so far as is reasonably practicable (s52 of the RSNL). A rail transport operator must be able to demonstrate a commitment to implement its safety management system, and safely manage changes to its operations over time.

Due to the potential hazards involved with railway operations, the assurance that risks have been considered and improved is required before a person is permitted to conduct railway operations. The NRSR must not grant accreditation to an applicant for accreditation unless they demonstrate that they have the competence and capacity to manage the risks to safety which could reasonably be expected to arise in the operation of its rail business, including the competence and capacity to implement its safety management system (refer to s65 of the RSNL). A rail transport operator that has been accredited must demonstrate in turn, that it continues to have the competence and capacity to manage the risks to safety associated with the operation of its rail business.

The purpose of this document is to outline what evidence an applicant should provide to the NRSR in order to demonstrate that it has the competence and capacity to safely undertake the rail operations for which it has applied.

This guideline should be read in conjunction with relevant ONRSR documents, including:

- > *ONRSR Policy: Accreditation*
- > *ONRSR Policy: Exemption*
- > *ONRSR Policy: Regulatory response to the management of change*
- > *ONRSR Guideline: Preparation of a rail safety management system*
- > *ONRSR Guideline: Meaning of the duty to ensure safety 'so far as is reasonably practicable'*

## 2. Context

The ability to demonstrate competence and capacity is fundamental to a rail transport operator applying for accreditation. Section 65 of the RSNL provides that the NRSR cannot accredit a person (including natural person or corporate entity) unless that person has demonstrated that they are (or will be) a rail infrastructure manager or rolling stock operator in respect of the railway operations for which accreditation is sought; and they have:

- > 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; and
- > Complied or can comply with any other legislative requirements.

More information on the requirements for accreditation is provided in the *ONRSR Policy: Accreditation*.

## 3. Competence, Capacity and Safety

Competence and capacity relates to the ability to meet designated requirements of accreditation under the RSNL, including the ability to identify and eliminate the risks to safety of their operations so far as is reasonably practicable, as part of a compliant safety management system.

A rail transport operator that is competent will have the skills, knowledge and qualifications appropriate for identifying and managing risks to safety associated with their railway operations. The capacity of the rail transport operator relates to having adequate finances and resources to establish and maintain safe operations by implementing the proposed safety management system.

In making an application for accreditation, variation of accreditation or exemption, the applicant will need to demonstrate the competence and capacity to identify, prioritise, eliminate, control, or lessen the risks associated with their proposed rail operations.

The applicant must demonstrate that it has the competence and capacity to manage the identified safety risks associated with its proposed operations, with particular emphasis on managing those risks that are more likely to cause serious harm.

Evidence of a rail transport operator's competence and capacity will be routinely reviewed by the NRSR as part of ongoing audits, inspections and safety performance reporting.

## 4. Identifying Risks

In order to demonstrate the competence and capacity to manage the risks to safety associated with its rail transport operation, a person applying for accreditation has to do several things. The first is to demonstrate the ability to identify the risks associated with the rail transport operation (refer to s64 (2)(b) of the RSNL).

In identifying the risks to safety associated with the rail operations, the applicant should consult risk management guidance and standards (such as AS/NZS ISO 31000:2009 Risk management— Principles and guidelines). The RSNL and National Regulations and the *ONRSR Guideline: Preparation of a Rail Safety Management System* provide more detail on risk management obligations and other requirements of a safety management system. If there is uncertainty on how to apply these, applicants are encouraged to contact the ONRSR for further information.

Risk to safety is inclusive of risks arising from physical hazards, hazardous events, or latent conditions such as organisational factors. Documentation should demonstrate that the rail transport operator is aware of the sources of safety risk (hazards) specific to its railway operations, together with any interface issues.

Hazards contributing to the overall risk of the operation, including those which refer to catastrophic or fatal consequences should be recorded, together with associated hazards or precursors.

A ‘precursor’, is a system failure, sub-system failure, component failure, human error or operational condition which could individually or in combination with other precursors (cause) result in the occurrence of a hazardous event. For example, a broken rail, signal passed at danger (SPAD) or dragging brakes are precursors to the hazardous events derailment, collision and fire respectively.

There is no prescribed way by which a person identifies the risks associated with its operation. A person may choose whatever methodology they consider is the most appropriate and the most thorough in identifying risks. Whichever methodology used, an operator must keep a detailed record of all aspects of the risk assessment process and should be able to justify its choice to the NRSR including why certain risks and controls were chosen over others (refer to s100 of the RSNL).

The identification methods used should be appropriate to the magnitude of the risks involved and specifically tailored to address technical, operational and organisational issues. A systematic approach should be evident to ensure that all parts of the organisation’s activities have been covered, including where there are interfaces with other parties or infrastructure.

Accredited rail transport operators should refer to section 99 of the RSNL, Part 4 and Schedule 1 of the National Regulations and the *ONRSR Guideline: Preparation of a Rail Safety Management System* for more information on meeting the requirements for risk management and a compliant safety management system.

## 5. Dealing with Risks

The second requirement is to demonstrate the ability to eliminate, control, reduce or mitigate those risks (as appropriate). This will include demonstrating:

- > the ability to identify and put in place appropriate risk controls;
- > the resources, skills and know-how to operate safely; and
- > the operational structures and systems to support the safe operation of the railway operations.

The NRSR needs to be satisfied that the applicant has the competence and capacity to comply with the safety obligations required under the RSNL before beginning operations. The operator's implementation of its risk management process in demonstrating the requirement to manage risks so far as is reasonably practicable will be continually reviewed by the NRSR on an ongoing basis.

Finally, the applicant must demonstrate that an appropriate process is established for the review of risk assessments and control measures and to take appropriate remedial action when deficiencies in the management of risks to safety are identified.

Competence and capacity to manage the risks to safety relies not only on the ability to identify and assess risks and identify and implement control measures, but to establish and maintain the control measures and to establish and implement a self sustaining, continuous improvement system that is appropriate for the scope and nature of the railway operations.

## 6. Non-Risk demonstrations of Competence and Capacity

A person also has to demonstrate that they have the competence and capacity to implement their safety management system. For example, a company which has applied for accreditation and is in internal disarray, lacks proper governance arrangements or lacks funds and other resources necessary to maintain operations safely in compliance with the RSNL and its proposed safety management system, may have difficulty persuading the NRSR that it has the competence and capacity to operate a railway safely.

The following are suggestions as to how an applicant may be able to demonstrate to the NRSR that it has the competence and capacity to meet the requirements of the RSNL:

- > organisational charts which show key personnel, reporting lines, and corporate structure;
- > job descriptions, or other evidence of the key roles for ensuring training and maintenance of competence;
- > processes are either in place or able to be put in place to ensure key personnel maintain the required knowledge, skills and experience;
- > the ability of senior management to make safety decisions (ie. relevant qualifications of key personnel or relevant previous experience of key personnel);
- > procedures for monitoring competency against set standards;
- > arrangements to ensure staff comply or will comply with their safety/investigations training, and are supervised or mentored appropriately; and

- > processes for identification of safety critical tasks that require specially trained or experienced workers.

In relation to competence and capacity generally, including financial capacity, the applicant may provide details about the resources and systems that it will rely on to carry out its business safely, including, for example, information about:

- > technical operations;
- > human resources;
- > legal resources;
- > financial resources (including relevant financial statements);
- > assets;
- > information technology systems; and
- > maintenance systems.

The applicant could also provide a statement of how resourcing will occur, and how it will plan resourcing and scheduling, taking into account the proposed scope of the operations or assets.

## 7. Acknowledgements

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