

# Guideline

## Using the template interface agreement for rail or road crossings guideline

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#### **Guideline details to version 1.0**

- > Guidance incorporates all the ONRSR participating jurisdictions (including WA), and facilitate national useability and consistency with the RSNL.

#### **Guideline details to version 1.1**

- > Format review only

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**Table of contents**

- 1. Purpose ..... 4**
- 2. Background..... 4**
- 3. Scope..... 4**
- 4. Definitions ..... 4**
- 5. Legislative framework ..... 5**
  - 5.1 General requirements.....5
  - 5.2 Scope of an interface agreement.....6
  - 5.3 Definition of rail or road crossings .....6
  - 5.4 Identification and assessment of risks .....6
  - 5.5 Refusal to enter into an interface agreement .....6
  - 5.6 Register of interface agreements.....7
- 6. Completing the ONRSR template interface agreement ..... 7**
  - 6.1 Clause 1 – Interpretation .....7
  - 6.2 Clause 3 – Scope of this agreement.....7
  - 6.3 Clauses 4, 5, 6 & 7 – Identification, assessment and management of risk.....7
  - 6.4 Clause 8 – Ongoing monitoring and review of risk.....9
  - 6.5 Clause 10 – Communications and meetings.....9
  - 6.6 Clause 11 – Dispute resolution.....10
  - 6.7 Clause 12 – Governing law .....10

## 1. Purpose

The purpose of this document is to provide guidance to rail infrastructure managers and road managers in meeting their obligations to enter into interface agreements for rail or road crossings on public and private roads under Part 3, Division 6 of the *Rail Safety National Law* (RSNL).

This guideline is to be read in conjunction with the Office of the National Rail Safety Regulator's (ONRSR) *Template Interface Agreement* which is available on the ONRSR website at [www.onrsr.com.au/operations/safety-management/interface-coordination](http://www.onrsr.com.au/operations/safety-management/interface-coordination).

The *ONRSR Template Interface Agreement* has been specifically developed to meet the requirements set out in the definition of interface agreement in section 105 of the RSNL. It provides for rail infrastructure managers and road managers to agree on measures to manage risks to safety arising from one or more rail or road crossings in sections 107 and 108 of the RSNL.

It is not mandatory to use the *ONRSR Template Interface Agreement* when entering into an interface agreement.

As the purpose of entering into an interface agreement is for the parties to fulfill their respective legislative obligations in relation to the same under the RSNL, it is recommended that if clauses are added to or deleted from the *ONRSR Template Interface Agreement* parties seek independent legal advice to ensure that they comply with the RSNL.

## 2. Background

The purpose of the interface coordination provisions of the RSNL is to ensure that all rail transport operators (i.e. rail infrastructure managers and rolling stock operators) and road managers identify risks to safety arising from rail or road crossings, determine measures to manage, so far as is reasonably practicable, those risks and seek to enter into interface agreements to manage the risks.

The provisions are intended to ensure that risks arising from rail or road crossings are identified and that accountabilities for risk control measures are clearly articulated.

## 3. Scope

Section 106 of the RSNL requires that rail transport operators (i.e. rail infrastructure managers and rolling stock operators) must seek to enter into interface agreements with other rail transport operators to manage the risks to safety arising from their railway operations.

This guideline does not apply to rail transport operators who enter into interface agreements with other rail transport operators.

Further, this guideline does not apply to the obligation of rail infrastructure managers and road managers to identify risks to safety arising from the existence of road infrastructure of a prescribed public road under section 107 (1) (a) (i) of the RSNL.

## 4. Definitions

Definitions provided by the RSNL and the National Regulations apply within this guideline.

- > **RSNL** – means the *Rail Safety National Law* which has been enacted as a Schedule to the *Rail Safety National Law (South Australia) Act 2012 (SA)* as it applies in each state and territory. In Western Australia, RSNL means the Rail Safety National Law which has been enacted as mirror legislation in the *Rail Safety National Law (WA) Act 2015*.
- > **National Regulations** – means the Rail Safety National Law National Regulations 2012; or the Rail Safety National Law (WA) Regulations 2015 in Western Australia.

The use of the words ‘consider’ or ‘may’ indicates an option however the rail infrastructure manager and road manager is free to follow a different course of action provided that it complies with the legislation.

The use of the word ‘should’ indicates a recommendation of the ONRSR; however the rail infrastructure manager and road manager is free to follow a different course of action provided it complies with the legislation.

Use of the words or terms such as ‘must’ or ‘mandatory’ indicates a legal requirement exists, where compliance is necessary.

Where terms are not defined within the legislation (section 4 – Interpretation) or regulations, the *Macquarie Dictionary* definition applies.

## 5. Legislative framework

This section provides guidance on the legislative requirements relating to interface agreements that are detailed in sections 105 to 111 of the RSNL.

### 5.1 General requirements

The RSNL requires that rail transport operators, rail infrastructure managers and road managers must identify risks to safety arising from rail or road crossings, determine measures to manage, so far as is reasonably practicable, those risks and seek to enter into interface agreements to manage the risks.

This guideline applies to rail infrastructure managers and road managers that:

- > Must enter into interface agreements in relation to rail or road crossings on public roads (section 107 of the RSNL).
- > May also be required to enter into interface agreements in relation to rail or road crossings on private roads if the responsible rail infrastructure manager has determined that risks to safety must be managed in conjunction with the relevant road manager.
- > After making this determination, the rail infrastructure manager must advise the road manager of this decision in writing (section 108 of the RSNL).

A rail infrastructure manager is the person who has effective management and control of the rail infrastructure of a railway, whether or not the person owns the rail infrastructure or has a statutory or contractual right to use the rail infrastructure or to control, or provide, access to it.

In relation to a public road, a road manager is defined as the authority, person or body responsible for the care, control or management of the road.

The road manager for a private road is the owner or other person responsible for the care, control or management of the road.

## 5.2 Scope of an interface agreement

An interface agreement is a written agreement for managing risks to safety in relation to rail or road crossings (section 105 of the RSNL). As a minimum an interface agreement must include provisions for:

- > Implementing and maintaining measures to manage those risks identified during the risk assessment process.
- > The evaluation, testing and, where appropriate, revision, of those measures.
- > The respective roles and responsibilities of each party to the agreement in relation to those measures.
- > Procedures, by which each party to the agreement will communicate, monitor and determine whether the other party complies with its obligations under the agreement.
- > A process for keeping the agreement under review and its revision.

## 5.3 Definition of rail or road crossings

A rail or road crossing is a railway crossing, that is a level crossing or any area where a footpath crosses a railway or tram tracks at substantially the same level, or a bridge carrying a road over a railway or a bridge carrying a railway over a road.

## 5.4 Identification and assessment of risks

Section 109 of the RSNL, requires rail infrastructure managers and road managers to identify and assess risks to safety relating to rail or road crossings (i.e. conduct a risk assessment).

A rail infrastructure manager or road manager may do so by:

- > Itself identifying and assessing those risks.
- > Identifying and assessing those risks jointly with the other party.
- > Adopting the identification and assessment of those risks carried out by the other party.

## 5.5 Refusal to enter into an interface agreement

Where a rail infrastructure manager or road manager unreasonably refuses or fails to enter into an interface agreement with another person as required under Part 3, Division 6 of the RSNL; or is unreasonably delaying the negotiation of an agreement, the party aggrieved by that delay may make written application under section 110 of the RSNL to the ONRSR.

The information provided in such an application should be sufficient to enable the ONRSR to determine whether the rail infrastructure manager or road manager is unreasonably refusing or failing to enter into an interface agreement.

If the Office of the National Rail Safety Regulator is satisfied that a party is unreasonably refusing or failing to enter into an interface agreement, it may by written notice, warn the party of the implications of non-compliance.

The ONRSR may also by written notice determine the arrangements to apply and direct the parties involved to give effect to those arrangements within a specified time. Compliance with any direction or notice issued by the ONRSR is mandatory and failure to comply could incur penalties of up to \$20,000 for an individual or \$100,000 for a body corporate.

## 5.6 Register of interface agreements

In addition to entering into interface agreements to manage risks to safety arising from rail or road crossings, rail infrastructure managers and road managers must each maintain a register of interface agreements for the same crossings to which they are a party and a register of arrangements determined by the ONRSR under section 111 of the RSNL.

Penalties apply to rail infrastructure managers and road managers for failing to comply with these arrangements under section 111 of the RSNL (i.e. penalties of up to \$5,000 for an individual and \$25,000 for a body corporate).

## 6. Completing the ONRSR template interface agreement

### 6.1 Clause 1 – Interpretation

The RSNL was adopted by participating jurisdictions at various times. Therefore, the definitions contained in clause 1 of the *ONRSR Template Interface Agreement* have been specifically designed to accommodate any differences in the meaning for the State or Territory where the interface agreement is being made.

For example, the definition of a *public road* has a different meaning in Tasmania than in the other States or Territories. Therefore, this definition would not be used for an interface agreement being made in South Australia.

### 6.2 Clause 3 – Scope of this agreement

Parties should record the names and location of rail or road crossings in schedule 1 together with a detailed description of the infrastructure comprising the rail or road crossing. It is also recommended that parties provide details of the surrounding physical environment in which the rail or road crossing is located.

Relevant diagrams, photographs, engineering standards, rail network or road rules, and technical or engineering drawings should be attached to or referenced in schedule 1.

Other State and Territory legislation (e.g. the *Civil Liability Act 2002 (NSW)* and its equivalents in other States and Territories) provide certain civil liability protections for public authorities. The ONRSR recommends that the parties seek independent legal advice in relation to any relevant legislation that may impose obligations or provide protections to the parties.

### 6.3 Clauses 4, 5, 6 & 7 – Identification, assessment and management of risk

Rail infrastructure managers and road managers must identify, assess and manage risks relating to rail or road crossings so far as is reasonably practicable.

In order for schedule 3 to be completed:

- > Risks to safety that may arise at a rail or road crossing must be identified.
- > A risk assessment must be conducted.
- > Existing and required measures to manage risks (risk controls) so far as is reasonably practicable must be identified.
- > The party responsible for implementing or maintaining risk controls must be identified.
- > The timeframe for implementing risk controls agreed and established.

A rail infrastructure manager or road manager who is required to identify and assess risks to safety relating to rail or road crossings may do so by:

- > Itself identifying and assessing those risks.
- > Identifying and assessing those risks jointly with the other party.
- > Adopting the identification and assessment of those risks carried out by the other party.

**Instructions for rail infrastructure managers:**

Clauses 4.1 (rail or road crossings on public roads) and 6.1 (rail or road crossings on private roads) of the *ONRSR Template Interface Agreement* should be completed by the rail infrastructure manager. This is a declaration by the rail infrastructure manager stating that a risk assessment of the rail or road crossing has been conducted and how that risk assessment was conducted (i.e. individually, jointly or adopting the road manager's risk assessment).

Clause 6 should only be completed if after conducting a risk assessment, the rail infrastructure manager has determined that risks to safety must be managed in conjunction with the relevant road manager. After making this determination, the rail infrastructure manager must advise the road manager of this decision in writing (clause 6.2).

**Instructions for road managers:**

Clauses 5.1 (rail or road crossings on public roads) and 7.1 (rail or road crossings on private roads) of the *ONRSR Template Interface Agreement* should be completed by the road manager. This is a declaration by the road manager stating that a risk assessment of the rail or road crossing has been conducted and how that risk assessment was conducted (i.e. individually, jointly or adopting the rail infrastructure manager's risk assessment).

Clause 7 should only be completed if the responsible rail infrastructure manager for the rail or road crossing has advised the road manager in writing that the risks to safety must be managed in conjunction with the relevant road manager.

Risks that may occur over the life cycle of rail or road crossings and those that may occur due to changes in the use of the rail or road crossing should be identified.

Life cycle phases of rail or road crossings include:

- > Installation of a new rail or road crossing.
- > Maintenance of an existing rail or road crossing.
- > Providing new controls at an existing rail or road crossing.
- > Substituting one type of road or rail crossing with another e.g. replacing a level crossing with a bridge.
- > Closure of a rail or road crossing.



Changes in the use or application of the infrastructure that should be considered include:

- > Changes in rail speed, usage or any other change to rail traffic, including type and / or volume of rail traffic.
- > Changes in rail infrastructure.
- > Changes in road speed, usage or any other change to road traffic, including type and/or volume of road traffic.
- > Changes in road infrastructure.
- > Changes in both road and rail traffic.
- > Degraded operations.

Rail infrastructure managers and road managers should refer to *ISO31000:2009 Risk management – Principles and guidelines* for guidance on risk management methodologies.

When identifying risk controls, parties should consider in the following order:

- 1 Elimination of the risk.
- 2 Substituting the hazard giving rise to the risk with a hazard that gives rise to a lesser risk.
- 3 Isolating the hazard from the person put at risk.
- 4 Minimising the risk by engineering means.
- 5 Minimising the risk by administrative means (for example, by adopting safe working practices or providing appropriate training, instruction or information).
- 6 Using personal protective equipment.

It may be appropriate to use a combination of controls to manage risk.

New, required risk controls may be identified through the process of identifying and assessing safety risks. Where these risk controls cannot be immediately implemented, a timetable for their implementation should be agreed and recorded.

#### **6.4 Clause 8 – Ongoing monitoring and review of risk**

Rail infrastructure managers and road managers should continuously monitor and review the risks to safety arising from rail or road crossings as well as the measures to manage those risks (including the evaluation, testing, (and where appropriate), revisions of measures in relation to identified risks and incidents considered). This activity should be a planned part of the risk management process. If changes are identified through monitoring and review of risk, schedule 3 should be revised to reflect the changes.

In addition, rail infrastructure managers should ensure that the changes (recorded in schedule 3) are reflected in their risk register and safety management system more broadly.

#### **6.5 Clause 10 – Communications and meetings**

Details of the parties' representatives for the purposes of the interface agreement and emergency contact details should be recorded in schedule 4. Position names may be recorded in schedule 4 rather than the names of persons.

Parties should ensure that the details recorded in schedule 4 are kept up to date.

## **6.6 Clause 11 – Dispute resolution**

Parties should identify a person to make a determination in the event that a dispute arises and conciliation is unsuccessful. The name of the person should be included in clause 11.5 of the template interface agreement.

## **6.7 Clause 12 – Governing law**

The name of the State or Territory where the rail or road crossing(s) is / are situated should be recorded in clause 12.1 of the template interface agreement. The laws pertaining to that particular State or Territory are applicable to the interface agreement.