

Policy

Compliance Audit

Document reference number: A390177

Version No.	Approved by	Publication date
1.0	Executive Director National Operations	January 2013
2.0	Chief Executive	December 2015
2.1	Chief Executive	April 2016
2.2	Format template	25 July 2016

Policy changes to version 2.2

- > Format template

Copyright information

© Office of the National Rail Safety Regulator 2016

This material may be reproduced in whole or in part, provided the meaning is unchanged and the source is acknowledged.

Level 1, 75 Hindmarsh Square, ADELAIDE SA 5000

PO Box 3461, Rundle Mall, ADELAIDE SA 5000

Phone: 08 8406 1500

Fax: 08 8406 1501

E: contact@onrsr.com.au

W: www.onrsr.com.au

Table of contents

1. Purpose.....	4
2. Background	4
3. Scope	4
4. Definitions	4
5. Legislative framework	5
6. Compliance audit purpose	5
7. The compliance audit process.....	5
7.1 Compliance audit notification and entry meeting.....	6
7.2 Compliance audit scope.....	6
7.3 Compliance audit conduct.....	6
7.4 Compliance audit closure and outcomes	7
8. Compliance auditing of contractors and other duty-holders.....	8

1. Purpose

The purpose of this policy is to provide direction to Office of the National Rail Safety Regulator (ONRSR) staff, specifically rail safety officers, and advice to rail transport operators and associated entities (such as contractors, designers, suppliers, and related corporate entities) about the purpose and conduct of compliance audits.

2. Background

The ONRSR has been established under the Rail Safety National Law (RSNL) to administer a national system of rail safety regulation, including the effective management of rail safety risks through a national scheme for accreditation of rail transport operators in relation to rail operations.

To support the objective of facilitating the safe operation of rail transport, the ONRSR conducts compliance audits as a means of monitoring the implementation, application and effectiveness of a rail transport operator's safety management system. It also provides formal regulatory advice, where necessary, as to whether a rail transport operator is complying with its rail safety duties and obligations, and in particular, adhering to their safety management system. The Regulator authorises rail safety officers to conduct compliance audits under the RSNL.

3. Scope

This policy sets out and defines the ONRSR's approach to conducting compliance audits of accredited, registered and exempt rail transport operators.

This policy applies to the ONRSR and its officers, including those staff operating under Service Level Agreements or any other such agreements or arrangements that require persons to act as an agent of the ONRSR.

The document is intended to be read in conjunction with the legislation and other relevant ONRSR policies. The policy itself imposes no legal duty and where actions or requirements are described as mandatory these reflect requirements in the RSNL or National Regulations. It is not intended to replace the legislation, or to limit or expand the scope of the legislation. In the event of an inconsistency between this policy and the legislation, the legislation will prevail.

4. Definitions

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

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.

Where terms are not defined within the legislation or regulations the Macquarie Dictionary definition applies.

Use of the word 'should' indicates a recommendation of the ONRSR. However, the rail transport operator is free to follow a different course of action provided it complies with the legislation. Use of the word 'must' indicates a legal requirement where compliance is necessary.

5. Legislative framework

The primary section of the RSNL relating to compliance audits is s133.

Persons registered as rail infrastructure managers of private sidings are required under r13 of the National Regulations to have a 'scheme for the management of risks to safety associated with the railway operations to be carried out in the private siding', which may be audited. Further details on the requirements of this safety scheme can be found in r13 of the National Regulations.

6. Compliance audit purpose

The ONRSR supports rail safety in Australia by working together with rail transport operators, in order to achieve a continuous improvement process. Compliance audits are a pro-active measure by which the ONRSR provides regulatory advice to assist rail transport operators to comply with their obligations under the RSNL.

In this context, the ONRSR has the objectives of:

- > educating the rail community and taking action to improve rail transport operators' motivation and capacity to pro-actively manage their safety risks and establish a continually improving safety culture;
- > taking appropriate action to ensure persons undertaking railway operations meet their obligations to comply with the rail safety legislation; and
- > protecting the rail community and the public by ensuring rail transport operators have the appropriate knowledge, capacity and expertise to operate and meet their mandatory safety and regulatory obligations.

7. The compliance audit process

Once the Regulator has granted a rail transport operator accreditation, registration or an exemption, they must comply with any conditions or restrictions on their Notice of Accreditation, Notice of Registration or Notice of Exemption and all applicable requirements of the RSNL.

After commencing rail operations, a rail transport operator can expect that the ONRSR will conduct a compliance audit of their railway operations. The timing and extent of the compliance audit will be determined through a risk based approach. All rail transport operators can expect to be contacted, either through compliance audits, compliance inspections or other interactions, at least once a year.

The key steps within the ONRSR compliance audit process are:

- > notification of compliance audit;
- > entry meeting;
- > conducting the compliance audit;
- > exit meeting;
- > preparation of the Compliance Audit Report;
- > consultation with the rail transport operator on the contents of the Compliance Audit Report, including any non-conformance issues and observations identified;
- > finalisation of the Compliance Audit Report;
- > rail transport operator establishes a plan to address any findings of non-conformances identified; and

- > ongoing monitoring (possibly including further compliance activities) to verify the corrective action process and progress.

7.1 Compliance audit notification and entry meeting

The ONRSR will contact the rail transport operator to organise suitable date(s), time(s) and location for the compliance audit.

The ONRSR will provide the compliance audit notification, compliance audit scope and schedule to the rail transport operator prior to the compliance audit. The ONRSR will endeavour to provide this at least 20 working days prior to the compliance audit taking place. Where this is not possible, the ONRSR is required to give at least 24 hours' notice.

The rail safety officer may request from the rail transport operator, any current and relevant electronic or hard copy documentation, based on the scope of the compliance audit.

On arrival at the compliance audit premises, the rail safety officer must first notify the rail transport operator representative of their presence and produce their rail safety officer identification card on request.

At the commencement of the compliance audit, the rail safety officer conducting the compliance audit will explain the process that will be followed during the compliance audit and what is required from the rail transport operator.

7.2 Compliance audit scope

The ONRSR uses available rail safety data including past compliance audit scopes and outcomes, rail safety intelligence, and compliance inspection and investigation findings to determine the frequency and scope of the compliance audits.

The ONRSR's compliance audit scope may include:

- > the scope and nature of the operations specified in the Notice of Accreditation, Registration or Exemption;
- > the elements of the safety management system or scheme for the management of risks (for registered persons);
- > specific aspects of the rail transport operator's Notice of Accreditation, Registration or Exemption, including variations, conditions, restrictions, notices and undertakings;
- > emerging safety concerns, identified through data analysis;
- > the scope of agreements and controls in place for contractors of rail transport operators;
- > open non-conformances or statutory notices; and
- > any other mandatory requirements under the RSNL.

7.3 Compliance audit conduct

The ONRSR conducts compliance audits to assess the compliance of a rail transport operator's rail operations with its Notice of Accreditation/Registration/Exemption, safety management system, and the RSNL and National Regulations. This includes the provision of information, guidance and direction to improve the rail transport operator's compliance with the RSNL, whereby any deficiencies within their safety management system may be identified.

Under the RSNL, compliance audits are undertaken by authorised rail safety officers, who represent the Regulator. Rail safety officers have a defined set of powers that include (but are not limited to):

- > the power to enter rail premises;

- > the power to inspect, examine and make inquiries, including conducting tests and making recordings;
- > the power to require the production of documents and the answering of questions; and
- > the power to enter or open rail infrastructure and rolling stock.

There are significant penalties for failing to assist a rail safety officer as reasonably directed to do so, or for hindering a rail safety officer from carrying out their duties.

Rail safety officers may be accompanied by a person/s to assist them in their duties under their direction. The person/s accompanying the rail safety officer has the right of entry and the right to undertake duties as directed by the rail safety officer they are accompanying (that are within the rail safety officer's powers).

While the ONRSR works in collaboration with the rail transport operator, the ONRSR reserves the right to undertake appropriate enforcement action at any time, dependent upon the issue/s raised during a compliance audit or with the findings at the conclusion of the compliance audit.

In circumstances where a significant issue is detected, or there is an immediate risk to safety, a rail safety officer may choose to:

- > change the audit scope to explore the risk to safety in greater detail;
- > suspend a compliance audit;
- > immediately commence a compliance inspection;
- > take enforcement action as deemed necessary to eliminate the risk.

The ONRSR compliance audits are conducted in accordance with its policies and procedures, in order to maintain a transparent, equitable and consistent approach to its compliance audit process.

7.4 Compliance audit closure and outcomes

At the completion of the compliance audit, the rail safety officers will detail their findings and observations and discuss them amongst themselves.

At the exit meeting, the rail transport operator is presented with the preliminary compliance audit findings. The rail transport operator can provide feedback on any issues raised, validate the accuracy of the findings and be given the opportunity to provide any supporting evidence in support of any findings.

The ONRSR will aim to prepare and submit the preliminary Compliance Audit Report to the rail transport operator within six weeks following the receipt of any additional information or evidence from the rail transport operator. Upon receiving the preliminary Compliance Audit Report, the rail transport operator should check the accuracy of the Compliance Audit Report. It is here that the rail transport operator has the opportunity to provide further feedback on the factual content of the report, including supporting evidence to the ONRSR.

Following consideration of any feedback and additional evidence from the rail transport operator, the ONRSR will finalise the Compliance Audit Report.

The Compliance Audit Report may include observations for improvement and/or an account of non-conformances that require response from the operator in accordance with the *ONRSR Compliance and enforcement policy*.

The ONRSR conducts compliance audits in an open and transparent manner. An operator that is the subject of a compliance audit can expect to be able to contact the rail safety officer responsible for the conduct of their compliance audit directly, in order to freely discuss any matters of importance relating to the compliance audit.

The Compliance Audit Report remains the property of the ONRSR, is confidential and will not be distributed publicly (unless compelled by law).

8. Compliance auditing of contractors and other duty-holders

Contractors and other duty-holders that perform rail safety work and are not accredited themselves are still bound to abide by the general duty provisions of the RSNL and other requirements and may also be subject to compliance audits.

The ONRSR may also include contractors in a compliance audit of the safety systems and procedures of rail transport operators.