

# Scoping Paper: Review of fatigue risk management arrangements under Rail Safety National Law

## Purpose

This paper sets out the objectives and scope of a review of the legislative framework for fatigue risk management (FRM).

The intention of the review is to identify an appropriate framework for managing fatigue risk in the rail industry with a view to achieving nationally consistent legislation.

## Background

During the development of the Rail Safety National Law (RSNL), the then Australian Transport Council (ATC) commissioned an Independent Expert Panel on Rail Safety to examine some rail safety policy issues.

The Panel was directed to investigate and make recommendations on unresolved policy issues relating to FRM.

In particular, it was asked to consider whether the National Law should place limits around hours of work and rest for rail safety workers as a 'safety net'.

The majority report to the Ministerial Council in 2011 recommended<sup>1</sup> that there should be a broad safety net framework established, but it should not be in the form of a single legislated limit for all rail safety workers.

A minority report issued by a panel member<sup>2</sup> opposed the recommendations of the majority report and supported prescribing in legislation limits around hours of work and rest periods.

A regulatory impact statement (RIS) prepared by the National Transport Commission (NTC) explored the impacts, costs, and benefits of regulating hours of work and rest for rail safety workers. It examined existing

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<sup>1</sup> N.R.S.R. (2011). Independent expert panel on some rail safety policy issues – Report. National Rail Safety Regulator. P. 31

<sup>2</sup> Ibid., p.44

state-based approaches and alternative regulatory options to assess the advice provided by the Expert Panel.

In May 2012, the Ministerial Council considered the RIS options, and:

**AGREED** that no additional regulation of hours of work and rest for rail safety workers is required to supplement the existing provisions of the Rail Safety National Law, consistent with the conclusions of the Regulatory Impact Statement: Fatigue Risk Management – Hours of Work and Rest.

**NOTED** that the national regulations will allow NSW to retain their current prescribed train hours limits and **AGREED** that a further review of fatigue arrangements be undertaken by the National Regulator within three years from the commencement date of the National Regulator.

Since that decision, the timeframe has been extended by the Ministerial Council until 2017, recognising that a number of jurisdictions were still to join the Office of the National Rail Safety Regulator (ONRSR).

Consistent with the Ministerial Council recommendations, ONRSR proposes to undertake a review of fatigue risk management arrangements in the following manner.

## Objectives of review

The objectives of the review are to:

- examine current fatigue risk management legislation and policies to determine the appropriateness and effectiveness of different requirements prescribed within the RSNL;
- consider leading practice approaches to the regulation of fatigue risk for all rail safety workers, particularly within a co-regulatory model;
- assess options for fatigue risk management in terms of safety and regulatory burden on industry; and
- recommend a consistent national regulatory approach.

## Scope of review

The scope of the review will include:

1. Examination of the degree to which fatigue is a risk factor for rail incidents.
2. Assessment of the effectiveness of rail transport operators in managing the fatigue risk on rail safety workers while operating under the national law and NSW's specific provisions
3. Investigation into current and innovative fatigue risk management frameworks and research:
  - from Australia and overseas; and
  - from within and outside the rail industry.
4. Development of options for an effective legislative framework to reduce the safety risks arising from fatigue.
5. Assessment of the current legislative frameworks against (4) above.

In undertaking the review, consideration will be given to:

- the regulatory framework created by the RSNL (being a safety duty/risk management based law underpinning the co-regulatory framework);
- relevant Council of Australian Government (COAG) principles established to guide the development of the national rail safety regulator;
- the research and recommendations of the previous 'Independent Expert Panel';
- the 2010 NTC Fatigue Management Discussion Paper;
- the NTC's regulatory impact statement including submissions and responses: Fatigue Risk Management – Hours of Work and Rest;
- RISSB's Fatigue Management Guideline
- the contents of the ONRSR Regulatory Approach, Compliance and Enforcement Policy and Safety Improvement Policy; and other documents and research papers, as required.

The final report detailing the findings, options, and recommendations will be submitted to Ministerial Council in 2017.

If a RIS is required, the process to be followed to develop it will need to be finalised, and it will be prepared between July 2016, and December 2016.

### **Out of scope for the review**

The review may recommend legislative change, but the process for implementing such change would be addressed following a Ministerial Council decision.

### **Stakeholder engagement**

Stakeholder engagement is to occur at two primary levels. The first will be a reference group, which will be established in the coming months and will comprise representatives from industry (nominated by the ARA), governments, unions and independent experts. It is envisaged this group will input significantly to the review process and deliverables.

Broader consultation with industry, unions and governments will also take place once the draft report has been prepared and at other stages as deemed necessary by the reference group.