

ONRSR Policy

Compliance and Enforcement



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Policy changes to 3.0

- > Consequential amendments arising from *The ONRSR Way*

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1 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 including the effective management of rail safety risks through a national scheme for accreditation of rail transport operators in relation to rail operations.

Compliance by rail transport operators with the RSNL and with the terms of their accreditation and/ or registration is central to rail safety. ONRSR monitors operators for compliance and if necessary, pursues enforcement activities to facilitate the safe operations of rail transport in Australia.

The purpose of this policy is to:

- > set out ONRSR's approach to compliance and enforcement activities, and
- > facilitate a consistent approach to compliance and enforcement measures throughout Australia.

2 Scope

This policy describes ONRSR's approach to applying the compliance and enforcement provisions available in the RSNL. It applies to rail safety officers appointed under the RSNL.

3 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.

4 Legislative framework

Relevant compliance and enforcement provisions are found in Parts 3, 4 and 5 of the RSNL.

The functions and objectives of ONRSR are specified in s13 of the RSNL and include the following:

- > to work with rail transport operators, rail safety workers, and others involved in railway operations, to improve rail safety nationally
- > to provide, or facilitate the provision of, advice, education and training in relation to rail safety
- > to monitor, investigate and enforce compliance with this Law.

Section 134 of the RSNL states that enforcement of the RSNL should be undertaken for the purpose of:

- > protecting public safety
- > promoting improvement in rail safety
- > removing incentive for any unfair commercial advantage that might be derived from contravening the rail safety requirements under this Law

- > influencing the attitude and behaviour of persons whose actions may have adverse impacts on rail safety
- > securing compliance with this Law through effective and appropriate compliance and enforcement measures.

5 Compliance and enforcement approach

The way in which ONRSR delivers its compliance and enforcement functions is articulated in *The ONRSR Way*, available from ONRSR's website (www.onrsr.com.au). ONRSR's approach to compliance monitoring activities and enforcement decisions is underpinned by the following key principles:

- > independent and impartial
- > transparent, fair and accountable
- > confidentiality
- > avoiding regulatory capture and conflicts of interest.

5.1 Monitoring compliance

ONRSR will undertake ongoing oversight and examination of the railway operations, safety management and safety performance of rail transport operators and other duty holders under the RSNL. This will be delivered through a nationally coordinated, risk-based program that will provide an examination of:

- > safety management and performance under the test of whether safety is being managed so far as is reasonably practicable;
- > compliance with the development and implementation of safety management system requirements as relevant to accredited, registered or exempted rail transport operators;
- > compliance with implemented safety management systems; and
- > whether the operator continues to demonstrate the competency and capacity to safely undertake their railway operations.

A range of compliance monitoring activities will be employed, ranging from reporting requirements, requests for information through to formal audit, inspection and investigation activities. The findings from compliance monitoring activities will be a primary input into ONRSR decisions regarding ongoing compliance monitoring, educational or enforcement action.

5.1.1 Education

Where the need is identified during ONRSR's compliance monitoring activities and where an operator has demonstrated a willingness to engage with ONRSR, where appropriate and practicable ONRSR will work with rail transport operators by providing education and advice to help duty holders improve the safety of railway operations and understand the requirements of the RSNL.

5.2 Enforcement

ONRSR has a range of compliance and enforcement options, ranging from provision of advice, issue of non-conformance reports through to the issue of statutory notices, prosecution or suspension or cancellation of accreditation, which will be used to:

- > facilitate an improvement to the safety of railway operations
- > facilitate or require compliance with the RSNL; or

> impose sanctions or seek punitive outcomes (court penalties) for contraventions of the RSNL.

ONRSR's enforcement response to identified safety deficiencies or breaches of the RSNL will take into consideration the range of options available under the RSNL and give consideration to the:

- > severity of the deficiency or breach
- > seriousness of any realised or potential consequences
- > historical safety performance of the operator
- > operator's demonstrated safety culture and capacity to address the deficiency or breach
- > corrective actions already taken by the operator
- > operator's demonstrated cooperation and willingness to address the deficiency or breach
- > whether there is an immediate risk to safety
- > whether (in the case where prosecution is being considered) there is a prima facie case and reasonable prospects of success of a conviction (and see 5.3 below).

In keeping with the co-regulation framework of the RSNL, ONRSR will typically give rail transport operators the opportunity to directly manage the correction of identified deficiencies through the processes set out in their safety management systems. This may involve a level of consultation with an operator to identify mutually acceptable corrective actions.

However, ONRSR may directly apply enforcement decisions independently from operator's own actions or safety management system where the circumstances or seriousness of any consequences require more immediate regulatory enforcement action.

5.3 Prosecution

ONRSR can prosecute rail transport operators and individuals for breaches of the RSNL. Resorting to prosecution to improve safety is a significant step and a number of factors, such as the circumstances, possible safety outcomes, the prospect of conviction, public interest, community expectations and other considerations are taken into account in deciding whether to prosecute.

5.4 Transparency and Review

To ensure consistency, transparency, accountability and impartiality in decision making, all decisions and the reasoning for each decision will be clearly documented. Each decision to take enforcement action is to be supported by evidence that is sufficient to substantiate the actions taken.

Some decisions to take enforcement action are subject to a formal review process set out in the RSNL. See ONRSR's *Review of decisions policy* for further information.