

National Rail Safety Guideline

Compliance and Enforcement for Rail Safety



This national guideline is one of a series of six containing guidance for rail safety regulators, industry stakeholders and other parties about aspects of rail safety legislation.

ISBN 1 921168 84 6

National Guideline for Compliance and Enforcement for Rail Safety

ISBN: 1 9211 68 84 6

Prepared by: Rail Safety Regulators Panel in conjunction with the National Transport Commission

I Foreword

The National Transport Commission (NTC) is an independent body established under Commonwealth legislation and an inter-governmental agreement, and funded jointly by the Commonwealth, States and Territories. In accordance with its duties, the NTC has developed a national model *Rail Safety Bill 2006* and *Rail Safety Regulations 2006* to achieve a nationally consistent approach to regulating rail safety in Australia. The model legislation was developed in conjunction with representatives of all jurisdictions, the rail industry and rail unions and was approved by the Australian Transport Council in 2006. The national model Bill and Regulations will receive legal effect when enacted in State and Territory law.

Within each State and Territory, the rail safety regulators are responsible for administering rail safety legislation and in some jurisdictions, this responsibility extends to the preparation of rail safety guidelines. Rail safety regulators' national activities are coordinated through their collegiate body, the Rail Safety Regulators Panel (RSRP) which together with the NTC is responsible for the development of this guideline.

National Guidelines

National guidelines are intended to assist rail safety regulators, industry stakeholders and other relevant parties with duties under the rail safety legislation to understand and comply with the new legislative requirements. National guidelines are administrative documents that are intended to provide practical advice. Guidelines do not extend, add to or modify legislative obligations contained in the *Rail Safety Bill 2006* or *Rail Safety Regulations 2006*. Depending on the subject matter, guidelines may:

- articulate how rail safety regulators will behave when undertaking their functions to ensure that their processes are transparent to the duty holders (e.g. *National Guideline for Compliance and Enforcement for Rail Safety*);
- provide nationally consistent and/or integrated processes by which rail safety regulators will make decisions (e.g. *National Guideline for Uniform Administration of Accreditation*); or
- assist duty holders with the interpretation of legislative provisions and provide practical guidance for satisfying these requirements (e.g. *National Guideline for Accreditation of Rail Transport Operators*, *National Guideline for the Requirements of a Rail Safety Management System*).

National guidelines impose no legal duties or requirements. Failure to comply with a national guideline does not give rise to any civil or criminal liability. Where actions or outcomes are described as being mandatory in the guidelines, this is because those actions or outcomes reflect provisions in the *Rail Safety Bill 2006* or *Rail Safety Regulations 2006*.

The advice provided in the national guidelines has been expressed in general terms. Rail transport operators and other duty holders should not assume that the advice and any examples provided automatically apply to the operating conditions and environmental circumstances of their railway operations. They should be used as a guide only.

Acknowledgements

The NTC and Rail Safety Regulators Panel (RSRP) would like to thank the members of the Rail Safety Package Steering Committee for their guidance and advice during the development of this guideline. Appreciation is also extended to those who made contributions during the public comment period. In particular, the NTC and RSRP acknowledges the work of Public Transport Safety Victoria in developing this guideline.

I Contents

1.	Introduction	1
1.1	Purpose	1
1.2	Scope and content	1
1.3	Context – the national model rail safety legislation	2
2.	Roles and Principles.....	5
2.1	The role of the rail safety regulator.....	5
2.2	Compliance and enforcement principles	5
2.3	The role of the rail safety officer	6
2.4	Monitoring compliance	6
3.	Compliance and Enforcement Options	9
3.1	Circumstances under which advice may be appropriate.....	10
3.2	Circumstances under which an improvement notice may be appropriate....	11
3.3	Circumstances under which a prohibition notice may be appropriate	11
3.4	Circumstances under which an infringement notice may be appropriate.....	13
3.5	Circumstances under which enforceable voluntary undertakings may be appropriate	13
3.6	Circumstances under which variation of accreditation or conditions or restrictions may be appropriate	14
3.7	Circumstances under which a prosecution may be appropriate.....	15
3.8	Circumstances under which revocation or suspension of accreditation may be appropriate	15
3.9	Circumstances under which immediate suspension of accreditation may be appropriate	16
	Appendix 1: Rail safety regulator contacts	17
	Acknowledgements	18

1. | Introduction

1.1 Purpose

The national model *Rail Safety Bill 2006* and the national model *Rail Safety Regulations 2006* (collectively referred to as the 'model legislation') place obligations on rail transport operators and other parties (listed below) involved in rail operations to ensure safety, so far as is reasonably practicable.

All persons with obligations under the legislation may be subject to compliance monitoring and investigation by the rail safety regulator and, where appropriate, the use of compliance and enforcement measures, including prosecution.

This guideline describes how rail safety regulators may use the compliance and enforcement powers that the model legislation provides, to achieve the objectives of the model legislation.

The guideline applies to all those with obligations under the legislation, including:

- rail transport operators – including rail infrastructure managers, rolling stock operators and those who are both rail infrastructure managers and rolling stock operators;
- contractors to rail transport operators and the employees of these contractors;
- persons who design, commission, manufacture, supply, install or erect any thing to be used as, or in connection with, rail infrastructure or rolling stock;
- rail safety workers;
- road authorities;
- rail safety regulators; and
- persons engaged in the administration of the legislation (e.g. rail safety officers).

1.2 Scope and content

Compliance with legislative obligations can be encouraged through information, education and monitoring, or compelled by enforcement. Rail safety regulators will consider the circumstances of a failure to comply and apply a compliance tool that is appropriate to those circumstances and in proportion with the risk presented or harm done.

This guideline describes compliance and enforcement options available and provides guidance as to circumstances in which options might be applicable.

Definitions provided by rail safety legislation apply within this guideline.

Use of the word 'consider' or 'may' indicates an option however the rail transport operator is free to follow a different course of action provided that it complies with the legislation.

Use of the word 'should' indicates a recommendation of the Rail Safety Regulators Panel, however the rail transport operator is free to follow a different course of action provided that it complies with the legislation.

Use of the words or terms such as 'must' or 'mandatory' indicates a legal requirement exists with which compliance is necessary.

Where terms are not defined within legislation the ordinary meaning of the term applies.

This guideline is intended to be a guide only and in no way fetters any statutory function, power or discretion which may be exercised by the rail safety regulator. In the event of any inconsistency between this guideline and the legislation under which the rail safety regulator exercises a statutory function, power or discretion, the legislation shall prevail.

This document will be reviewed and amended from time to time to take into account amendments to legislation, feedback from industry as to its usefulness, and changes which the rail safety regulators consider desirable.

1.3 Context – the national model rail safety legislation

1.3.1 *The national model rail safety legislation*

The Inter-governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport requires the development of a framework to improve and strengthen the co-regulatory system for rail safety. The national model *Rail Safety Bill* was developed by the National Transport Commission in accordance with the requirements of the inter-governmental agreement.

The model *Rail Safety Bill* was developed by the National Transport Commission (NTC) following an extensive review of the current co-regulatory approach to rail safety in Australia. It was developed in conjunction with representatives from the rail safety regulators and transport agencies of all states, territories and the Commonwealth, the rail industry and rail unions and other relevant regulatory agencies.

The model Bill is accompanied by regulations and both will be given legal effect when their provisions are reproduced in the legislation of each State and Territory.

The objectives of the model Bill place a high value on the effective management and control of risk to improve safety in railway operations and to promote public confidence in the safety of rail transport.

The model Bill brings rail safety legislation in Australia into line with modern regulatory approaches for safety. The key features include:

- general duties that apply to responsible parties and establish a 'chain of responsibility' for rail safety;

- risk management criteria based on the requirement to ensure so far as is reasonably practicable, that rail operations are safe;
- detailed requirements for the development and contents of safety management systems;
- clear criteria for the accreditation of rail infrastructure managers and rolling stock operators;
- clearer responsibilities for the Rail Safety Regulator and strengthened audit and enforcement powers; and
- a hierarchy of sanctions and penalties where breaches of rail safety requirements occur.

The meaning of railway operations to which the model Bill applies is very broad. It includes the operations and movement of rolling stock by any means; the construction of rolling stock or a railway, tracks or associated track structures; and the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure and similarly, of rolling stock.

1.3.2 National guidelines for rail safety

This guideline is one of a suite of National Rail Safety Guidelines which are intended to assist rail safety regulators, industry stakeholders and other relevant parties with duties under the rail safety legislation to understand and comply with the new legislative requirements.

National guidelines are administrative documents that are intended to provide practical advice. Guidelines do not extend, add to or modify legislative obligations contained in the *Rail Safety Bill 2006* or *Rail Safety Regulations 2006*. Depending on the subject matter, guidelines may:

- articulate how rail safety regulators will behave when undertaking their functions to ensure that their processes are transparent to the duty holders (e.g. *National Guideline for Compliance and Enforcement of Rail Safety*);
- provide nationally consistent and/or integrated processes by which rail safety regulators will make decisions (e.g. *National Guideline for Uniform Administration of Accreditation*);
- assist duty holders with the interpretation of legislative provisions and provide practical guidance for satisfying these requirements (e.g. *National Guideline for Accreditation of Rail Transport Operators*, *National Guideline for Requirements for Safety Management Systems*).

National guidelines impose no legal duties or requirements. Failure to comply with a national guideline does not give rise to any civil or criminal liability. Where actions or outcomes are described as being mandatory in the guidelines, this is because those actions or outcomes reflect provisions in the *Rail Safety Bill 2006* or *Rail Safety Regulations 2006*.

The advice provided in the national guidelines has been expressed in general terms. Rail transport operators and other duty holders should not assume that the advice and any examples provided automatically apply to the operating conditions and environmental circumstances of their railway operations. They should be used as a guide only.

National Rail Safety Guidelines are developed and maintained through a formal process agreed by and involving rail safety regulators and industry, and facilitated by the National Transport Commission. Through this process, this guideline will be reviewed and amended from time to time to take into account amendments to legislation, feedback from industry as to its usefulness, and changes which the rail safety regulators consider desirable.

2. Roles and Principles

2.1 The role of the rail safety regulator

Rail safety regulators have the following functions under the national model legislation:

RSB S18

- to administer, audit and review the accreditation regime;
- to work with rail transport operators, rail safety workers, others involved in railway operations and corresponding rail safety regulators to improve rail safety in their own jurisdictions and nationally;
- to provide information to corresponding rail safety regulators, including information about causal factors of rail incidents, accreditation processes, investigations methods and risk assessment methodologies;
- to collect and publish information relating to rail safety;
- to provide, or facilitate the provision of, advice, education and training in relation to rail safety; and
- to monitor, investigate and enforce compliance with the legislation.

2.2 Compliance and enforcement principles

In meeting their compliance and enforcement obligations, rail safety regulators are committed to having in place systems and processes to support the following principles:

2.2.1 Accountability

Rail safety regulators' employees must be conscious at all times of their role and their accountability for promoting the highest reasonably practicable safety standards.

2.2.2 Consistency

Like situations should be treated in a like manner. Duty holders need to have full confidence that rail safety regulators' decision-making and actions will be fair and that comparable situations will have comparable outcomes.

2.2.3 Transparency

Duty holders must be in no doubt as to the criteria used by rail safety regulators in coming to a decision. A decision and its reasons need to be communicated clearly to the person involved. All decisions must be documented. For example, if the rail safety regulator chooses to issue an improvement notice then the rail safety regulator will need to ensure it has the evidence to support this decision.

2.2.4 Impartiality

Decisions made by rail safety regulators must be impartial and be seen to be impartial. Any potential conflict of interest that might influence a decision must be disclosed. The decision to take action must not be influenced by:

- the personal feelings of a rail safety officer concerning the non-compliant person or corporation;
- possible political or commercial advantage or disadvantage to the Government or any entity or political party; or
- public, industry or political criticism, or the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

2.2.5 Proportionality

Decisions made by rail safety regulators will be proportionate to the identified risk to safety, the seriousness of any perceived breach, and/or the level of non-compliance with legislative requirements.

2.3 The role of the rail safety officer

RSB Part 5

Under the model *Rail Safety Bill*, rail safety officers are given wide powers of entry, enquiry and investigation.

Rail safety officers are appointed under the legislation in each State and Territory giving legal effect to the *Rail Safety Bill* by the rail safety regulators in each jurisdiction.

Rail safety officers must comply with that legislation, as well as the internal policies and processes of the rail safety regulator, when undertaking their functions under the legislation.

The role of rail safety officers generally includes, but is not limited to, the following:

- providing practical, constructive information to duty holders about legislative requirements, particularly in relation to risk management and safety management systems;
- conducting safety audits and compliance inspections to assess compliance with rail safety duties and obligations;
- determining whether an inspection should be undertaken;
- compelling rail transport operators to undertake remedial action to rectify safety breaches through the use of statutory instruments such as improvement or prohibition notices; and
- conducting investigations as required, including those arising from issues identified through safety audits or compliance inspections.

RSB S95

A rail safety officer may direct a rail transport operator or a rail safety worker to provide reasonable assistance to enable the rail safety officer to exercise his or her powers. If such a direction is made then it is an offence for that person to fail to comply, unless the person has a reasonable excuse.

2.4 Monitoring compliance

A rail safety officer may undertake the following activities on behalf of the rail safety regulator to monitor compliance with the model *Rail Safety Bill*.

2.4.1 Safety audits

A safety audit involves a review of all or part of a rail transport operator's risk management and safety management system. It may also involve field inspections to examine the application of these systems in practice.

RSB S75

Safety audits may be undertaken as part of an annual audit program, but may also be undertaken in response to circumstances arising at other times. Normally at least 24 hours written notice will be given if this occurs.

A rail safety regulator's audit program may focus on one or more of the following:

- particular rail transport operators;
- particular criteria relating to rail transport operators;
- particular aspects of rail safety; and
- particular aspects of railway operations.

2.4.2 Compliance inspections

In addition to safety audits, rail safety regulators may conduct compliance inspections. A compliance inspection assesses a duty holder's compliance with his/her obligations and responsibilities under the model legislation.

RSB S76

Compliance inspections may be conducted in a range of circumstances, such as:

- in response to a notifiable occurrence;
- an observation made or information received by a rail safety officer; or
- a request from a member of the public or a person in the rail industry.

A compliance inspection may also be part of the rail safety regulator's ongoing activities which target areas for risk management and prevention, such as when a safety audit has brought to light specific risk factors and/or where indicated by incident trends or operator-specific issues.

2.4.3 Investigations

There are broadly two types of investigations – 'just culture' and compliance investigations. Just culture investigations may be conducted by an authority other than the rail safety regulator¹. In jurisdictions where there is such a separate authority or body, the rail safety regulator will enter into a Memorandum of Understanding with that other authority or body to agree on protocols for investigating incidents or occurrences to avoid unnecessary interference and delay for industry.

A compliance investigation is conducted by the rail safety regulator for the purpose of establishing whether a breach of the model legislation has occurred. This policy only applies to compliance investigations.

¹ Just culture investigations may be conducted by the Australian Transport Safety Bureau, or the independent investigator of the jurisdiction such as NSW Office of Transport Safety Investigations, or the VIC Office of the Chief Investigator.

A compliance investigation can be conducted in a range of circumstances which include but are not limited to notifiable occurrences, rail safety regulator audit outcomes, compliance inspection outcomes and identified trend analysis, or other intelligence reports.

Rail safety regulators also have a role in reviewing investigations conducted by the rail industry and independent organisations.

3. | Compliance and Enforcement Options

Rail safety regulators adopt a graduated approach to compliance and enforcement. Under the *Rail Safety Bill*, a range of options are available to the rail safety regulator, ranging from administrative decisions to legal sanctions. Local variations apply throughout the *Rail Safety Bill* in respect of compliance and enforcement options.

The options available to rail safety regulators under the *Rail Safety Bill* in taking compliance and enforcement action may include:

- provision or facilitation of advice, education and training in relation to rail safety;
- improvement notices;
- prohibition notices;
- infringement notices;
- enforceable voluntary undertakings;
- the variation of accreditation or conditions or restrictions on the accreditation;
- prosecution; and
- suspension or revocation of accreditation.

These measures do not need to be used sequentially. It is not necessary, for example, to give advice or issue notices before taking prosecution action, if such action is appropriate.

The rail safety regulator may also choose to use a combination of measures (subject to certain legal restrictions) to facilitate compliance.

Each compliance and enforcement activity must be considered in terms of the principles described in this guideline, and in accordance with the relevant rail safety legislation, so that the most appropriate option (or options) for the circumstances are applied. Rail safety regulators adopt an approach to compliance which is most likely to promote the objectives of the *Rail Safety Bill*.

To ensure consistency, transparency, accountability and impartiality in decision-making by rail safety officers, all decisions and the reasons for these decisions must be clearly documented. Each decision to take enforcement action must be supported by evidence that is sufficient to substantiate the alleged breach. Such evidence may include: field notes, photographs, diagrams etc. Many of the options set out below may be subject to external review by a tribunal.

3.1 Circumstances under which advice may be appropriate

In the *Rail Safety Bill* there is an emphasis on a proactive approach to compliance through the provision of advice, education and training (for example, see section 18). Such guidance is aimed at helping duty holders to improve their safety processes and prevent or remedy safety breaches. A common form in which the advice can be given is a non-compliance report.

There is no legal obligation for an operator to comply with advice given by the rail safety regulator. Advice is only given to facilitate compliance with the law. However, where advice such as non-compliance reports are ignored by an operator, then the rail safety regulator may consider it appropriate to adopt a different compliance option, for example, issue an improvement notice.

Advice may be given verbally or in writing. This advice is given in good faith and based on the considered view of the rail safety regulator. Such advice might take the form of a Safety Advice, Safety Alert, or audit findings or reports.

If a decision is made to use advice rather than an improvement notice or prohibition notice, the rail safety regulator must document this decision and the reasons for this decision. The type and level of evidence documented may vary according to the particular circumstances but must be sufficient to make clear the reasons for the decision.

Provision of advice may be appropriate in circumstances where there is a lack of awareness about, or misinterpretation of, the law or conditions of accreditation, and the breach or the circumstances surrounding it are minor in nature.

The rail safety regulator may decide that a breach is minor after considering the following:

- the safety consequences of the breach, and in particular, the likelihood of a notifiable occurrence taking place;
- if a notifiable occurrence might occur as a result of the breach, whether that occurrence would be likely to be a serious one;
- whether the breach might trigger other, more serious breaches, or encourage others to fail to comply;
- whether the breach is systemic or an isolated occurrence;
- whether the rail transport operator has other measures or procedures in place which would help prevent adverse consequences flowing from the specific breach;
- the history of the rail transport operator's performance in respect of the breach – that is, whether the rail transport operator has had several similar breaches;
- whether the breach is one which is not open to interpretation (e.g. failure to report notifiable occurrences);
- whether the breach is the result of a knowing disregard for safety; and
- whether the breach is the result of a disregard of the relevant safety management system.

3.2 Circumstances under which an improvement notice may be appropriate

An improvement notice may be issued when a rail safety officer believes on reasonable grounds that a breach of the legislation is occurring or has occurred and is likely to continue or be repeated.

RSB S100

The improvement notice must state the date by which compliance must be achieved. The compliance date must be at least seven days after the notice was served.

Improvement notices may be appropriate in circumstances wherever a breach is not minor in nature, having consideration to the points provided in the previous section.

Improvement notices are subject to the right of review.

3.3 Circumstances under which a prohibition notice may be appropriate

A prohibition notice may be issued when the rail safety officer believes on reasonable grounds that there is an immediate risk to safety.

RSB S105

RSB S107

The prohibition notice requires the immediate cessation of the relevant activity until the matters that give, or will give, rise to the risk(s) are remedied. A prohibition notice may be issued as an oral direction prior to the service of a written notice.

The decision to issue a prohibition notice is reached after objectively considering and assessing all the relevant facts and issues, including the consequences of not issuing a notice. Evidence must be available to substantiate an opinion of immediate threat to safety, not only that a breach has occurred.

Prohibition notices are a tool to achieve compliance with existing legislation. They are not a means of imposing new obligations on a person or the rail industry as a whole. That is the province of Acts and Regulations issued by Parliament and Government. A prohibition notice is a tool that is used to achieve short term, localised action in relation to a specific activity at a specific locality and its associated risks.

Because prohibition notices may only be issued where there is an immediate threat to safety, non-compliance with a prohibition notice is a serious breach of safety legislation and will lead to prosecution. However, an operator can lawfully fail to comply if a 'reasonable excuse' exists. What constitutes a 'reasonable excuse' may vary depending on the facts. Mere inconvenience to the operator is not sufficient. But if a prohibition was issued directing the operator to immediately cease operating a particular class of rolling stock, but this would mean effectively abandoning rolling stock on the main line and creating risk to another operator, then there would be a reasonable excuse to continue operating that rolling stock in order to stable it at the nearest siding or yard.

The rail safety officer issuing the notice must follow up to determine whether the breach has been corrected. Evidence collected to support a decision to prosecute for non-compliance after a prohibition notice has been issued must be of sufficient standard to be presented to court.

A rail safety regulator or officer may issue both an improvement notice and a prohibition notice in relation to an observed breach. The prohibition achieves cessation of the activity constituting the immediate risk to safety, that is occurring at the specific place and time witnessed by the rail safety regulator, and for which evidence has been collected. The improvement notice addresses the systemic failures or deficiencies that allowed the breach to occur and that may have relevance to similar activities conducted at other locations and times.

A prohibition notice is complied with as soon as the activity giving rise to the risk ceases. The activity may resume as soon as the specific risk in the specific location has been remedied. There is no compliance date specified.

The improvement notice is complied with when the systemic deficiencies have been remedied, this work may take considerably longer and may continue after the local activity is resumed. A compliance date is required to be specified on the notice.

For example:

During an inspection the rail safety regulator observes that track work on the main line is being undertaken without appropriate protection measures in place. The rail safety regulator may issue a prohibition notice which requires that work stops until the appropriate protection measures are in place. The regulator may also issue an improvement notice requiring the rail transport operator to review and if necessary amend their systems to ensure (so far as reasonably practicable) that track work cannot commence without appropriate protection measures in place.

The track work must stop immediately, but may resume once the protection measures are in place at that worksite. The rail safety regulator conducts a follow up inspection of the worksite and, once satisfied that the risk has been remedied, the notice is recorded as complied with and no longer actively monitored.

Review and amendment of the safety management system in regard to addressing any systemic issues may proceed for some time. The improvement notice continues to be active and the regulator continues to monitor progress until satisfied that any systemic deficiencies have been adequately addressed. When systems have been upgraded the improvement notice is recorded as complied with and no longer actively monitored.

3.4 Circumstances under which an infringement notice may be appropriate

A rail safety officer may issue an infringement notice if they believe on reasonable grounds that a person has committed an offence for which a penalty notice has been prescribed under the model legislation.

RSB S138

An infringement notice may be appropriate where:

- there is a benefit in providing immediacy to the consequences for non-compliance;
- there was an attempt to conceal the act or omission from the rail safety regulator;
- the act or omission is not ongoing or is able to be rectified quickly; and
- where the extent of harm arising from the act or omission can be immediately assessed.

3.5 Circumstances under which enforceable voluntary undertakings may be appropriate

The rail safety regulator may accept written undertakings from a person in connection with a contravention or alleged contravention of the legislation. Having accepted such an undertaking the rail safety regulator cannot then take prosecution action against the person over the matter to which the undertaking relates. If the person fails to do what they undertook to do, the rail safety regulator may apply to the court to have the undertaking enforced.

RSB S140

RSB S141

Acceptance of a voluntary undertaking may be appropriate where:

- the actions proposed to be undertaken address the matters which have given rise to the perceived breach - they must include firm future actions to prevent a recurrence of the breach;
- the actions proposed to be undertaken can be (and have been) described with sufficient clarity and specificity to enable compliance with the undertaking to be established - the description of deliverables must be precise and detailed;
- compliance date must be specified - large programs of work may need specific project milestone dates for compliance; and
- the public interest would be better served by acceptance of a voluntary undertaking than proceeding with prosecution.

3.6 Circumstances under which variation of accreditation or conditions or restrictions may be appropriate

RSB S53

The *Rail Safety Bill* empowers the rail safety regulator to:

- vary an accreditation; or
- vary a condition or restriction that has been imposed on an accreditation by the regulator, or
- impose a new condition or restriction on an accreditation.

Conditions and restrictions of accreditation may be used to articulate the railway operations to which the accreditation relates and any limits to the accredited person's demonstrated competence and capacity. They are not a means of imposing new obligations on an accredited person or the rail industry as a whole. That is the province of Acts and Regulations issued by Parliament and Government.

For example:

An investigation into a notifiable occurrence reveals deficiencies in the safety management system or engineering standards of an accredited person. Consequently there may be action necessary on the part of the accredited person to address these deficiencies. The safety management system of the accredited person is explicitly required by the legislation to have systems and processes to ensure that corrective action is taken in relation to such reports. It is not appropriate to impose a new condition of accreditation requiring such remedial action to be taken. If the safety management system of the accredited person is deficient in the mechanisms to ensure corrective action, one or more improvement notices may be issued to address these deficiencies. In the event of a failure by the accredited person to take appropriate corrective action, the regulator may take enforcement action for failure to comply with an improvement notice and/or a breach of the general safety duty or other relevant obligations under the model legislation.

Regulator initiated variation of an accreditation, or the variation or imposition of conditions or restrictions on an accreditation may be appropriate in circumstances where the rail safety regulator has formed an opinion that the accredited person does not have the competence and capacity to undertake railway operations to the extent allowed by its current accreditation.

In making a decision whether or not to take such action, the rail safety regulator will consider:

- the railway operator's history of compliance;
- whether railway operations are/are not conducted to an adequate standard of safety and the safety management system complies with the model legislation; and
- whether the accredited operator is temporarily or permanently unable or unwilling to undertake any relevant remedial action necessary to satisfy the requirements for accreditation.

Subject to any local legislative variations, the rail safety regulator is required to give the operator written notice of a decision to take such action, and to provide reasons. The operator has the right to make written representations about the intended action within the statutory time frame.

3.7 Circumstances under which a prosecution may be appropriate

To determine whether prosecution should take place following an investigation or breach of some other matter, such as failure to comply with a notice, rail safety regulators will take into account all relevant information and the following criteria:

- whether there is sufficient evidence to support a reasonable prospect of conviction; and
- whether it is in the public interest, determined by such factors as:
 - the seriousness of the alleged offence and whether its nature is of considerable public concern;
 - the impact of prosecution-related action on general deterrence (i.e. reducing the likelihood that other duty holders will commit similar offences) or specific deterrence (i.e. reducing the likelihood that the duty holder will commit a further breach of rail safety laws);
 - the availability and likely effectiveness of any alternatives to prosecution, such as one of the other regulatory options noted above; and
 - whether the operator has repeatedly breached safety duties.

3.8 Circumstances under which revocation or suspension of accreditation may be appropriate

The rail safety regulator may suspend or revoke an accreditation (or part of an accreditation) where the accredited person:

RSB S44

- can no longer satisfy the requirements for accreditation;
- has not conducted the railway operations for which the accreditation was granted for at least the preceding 12 months; or
- contravenes the *Rail Safety Bill*.

RSB S34

In making a decision whether or not to take such action, the rail safety regulator will consider:

- the railway operator's history of compliance;
- whether railway operations are/are not conducted to an adequate standard of safety and the safety management system complies with the model legislation; and
- whether the accredited operator is temporarily or permanently unable or unwilling to undertake any relevant remedial action necessary to satisfy the requirements for accreditation.

The regulator must advise the operator of the intention to suspend the accreditation and accept representations before this takes place in accordance with the relevant statutory provisions.

The suspension of an accreditation may have serious consequences for the rail operator and may also have serious adverse 'flow on' effects for employees, the public, dependent businesses and so on. Rail safety regulators acknowledge the role that the rail industry performs in the community and the need to balance continued provision of rail services against the need to protect the safety of the public and the railway system.

Revocation or suspension of part of an accreditation is achieved by regulator initiated variation of the accreditation and/or the conditions or restrictions on the accreditation or the imposition of new conditions or restrictions on the accreditation.

3.9 Circumstances under which immediate suspension of accreditation may be appropriate

RSB S45

The rail safety regulator has the power to immediately suspend an accreditation, (or part of an accreditation) if they consider that there is, or would be, an immediate and serious risk to safety unless the accreditation is suspended immediately.

Immediate suspension of an accreditation is an action of last resort and should not be taken unless there is no other effective means of intervention available to prevent such a threat to safety being realised.

Appendix 1: Rail safety regulator contacts

Answers to specific queries about the legislation relevant to a particular State or Territory can be obtained directly from the relevant rail safety regulator.

New South Wales: Independent Transport Safety and Reliability Regulator.

<http://www.transportregulator.nsw.gov.au/>

Northern Territory: Department of Planning and Infrastructure, Rail Safety

transport.dpi@nt.gov.au

Queensland: Queensland Transport

<http://www.transport.qld.gov.au/Home/Safety/Rail/>

South Australia: Department for Transport, Energy & Infrastructure

<http://www.transport.sa.gov.au/safety/rail/>

Tasmania: Department of Infrastructure, Energy & Resources

<http://www.dier.tas.gov.au/>

Victoria: Public Transport Safety Victoria

<http://www.doi.vic.gov.au/doi/internet/vehicles.nsf/headingpagesdisplay/public+transport+safety+victoria>

Western Australia: Department for Planning & Infrastructure

<http://www.dpi.wa.gov.au/>

I Acknowledgements

Principal Authors

Public Transport Safety Victoria, Department of Infrastructure

Rail Safety Package Steering Committee

Carolyn Walsh (Chair)	ITSRR, NSW
Natalie Pelham	ITSRR, NSW
Bruce Chan	Department for Planning and Infrastructure, WA
Derek Heneker	Department of Transport, Energy and Infrastructure, SA
Alex Rae	Department of Infrastructure, Planning and Environment, NT
John Hartigan	Department of Infrastructure, VIC
Julie Bullas	Queensland Transport, QLD and Rail Safety Regulators' Panel
Mark Addis	Department of Infrastructure, Energy and Resources, TAS
Jim Wolfe	Department of Transport and Regional Services
Roger Jowett	Rail Tram and Bus Union
Paul Milevsky	Queensland Rail, ARA
Phil Sochon	Australasian Railway Association, ARA
Clare Kitchener	RailCorp NSW, ARA
Andrew Kitto	Australian Rail Track Corporation, ARA

Rail Safety Regulators' Panel

Julie Bullas (Chair)	Queensland Transport, QLD
Janice McLoughlin (Sec)	Queensland Transport, QLD
Natalie Pelham	ITSRR, NSW
Michael Quinn	ITSRR, NSW
Rob Burrows	Department for Planning and Infrastructure, WA
Derek Heneker	Department of Transport, Energy and Infrastructure, SA
Alex Rae	Department of Infrastructure, Planning and Environment, NT
Alan Osborne	Public Transport Safety Victoria, VIC
Craig Hoey	Department of Infrastructure, Energy and Resources, TAS
Mervin Harvey	Land Transport Department, NZ

National Transport Commission

Jan Powning
Paul Salter
Kirsty McIntyre
Ray Hassall
Tim Eaton

Communicating for Health

Fiona Landgren
Jessie Murray