

# **Compliance and Enforcement Policy for Rail Safety**

**Consultation Draft**

**Prepared by: Rail Safety Regulators Panel**

**MARCH 2007**

*National Transport Commission*

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## REPORT OUTLINE

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<b>Type of report:</b>	Draft National Guideline
<b>Objectives:</b>	This draft National Guideline was prepared by the Rail Safety Regulators Panel. It is being released for public comment as one of a suite of six draft National Rail Safety Guidelines. The Guidelines will be assessed in the light of comments received from this public comment process and will be submitted to Transport Agencies Chief Executives (TACE) for consideration and then to the ATC for approval.
<b>NTC Programs:</b>	Implementation of the National Rail Safety Reforms
<b>Key Milestones:</b>	The public comment period closes on 6 May 2007. After the suite of Guidelines is assessed in the light of comments received, the Guidelines will be submitted to Transport Agencies Chief Executives (TACE) and to ATC in June 2007 for consideration and approval.
<b>Abstract:</b>	This draft National Guideline aims to articulate how rail safety regulators will behave when undertaking their functions to under the recently approved <i>Rail Safety Bill 2006</i> .
<b>Purpose:</b>	<b>For information purposes only</b>
<b>Comments by:</b>	Written comments may be forwarded by 9 May 2007



## 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 Regulations to achieve a nationally consistent approach to regulating rail safety in Australia. They were developed in conjunction with representatives of all jurisdictions, the rail industry and rail unions and were approved by the Australian Transport Council in 2006. The national model Bill and Regulations will receive legal effect when reproduced in each jurisdiction's legislation in mid 2007.

### *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. The National Guidelines are also intended to support consistency in the administration of State and Territory rail safety law.

This draft National Guideline is one of a suite of six national guidelines which are released for public comment. The suite of National Guidelines comprises:

- *Guideline to Accreditation under the National Rail Safety Scheme*
- *Guideline for Establishing a Rail Safety Management System*
- *Guideline on the meaning of So Far As Is Reasonably Practicable (SFAIRP)*
- *Guideline for Compliance and Enforcement Policy for Rail Safety*
- *Business Rules for Uniform Administration of Accreditation*
- *Guideline for Fatigue Management for Rail Safety Workers*

National Guidelines are administrative documents intended to provide practical advice to rail safety regulators and rail transport operators or other parties to whom legislative duties apply. Depending on the subject matter, the Guidelines in this suite 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 compliance and enforcement);
- provide nationally consistent and/or integrated processes by which rail safety regulators will make decisions (e.g. Business Rules for Uniform Administration);
- assist duty holders with the interpretation of legislative provisions and provide practical guidance for satisfying these requirements (e.g. Accreditation, Safety Management Systems, Managing Risks SFAIRP, Fatigue Management).

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 national model legislation.

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 and environmental circumstances of their railway operations. They should be used as a guide only to the processes and procedures involved and should not substitute for the conduct of risk assessment of their own environment and operations.

### *Public Comment*

The suite of draft national guidelines has been developed through the NTC processes by the NTC and rail safety regulators acting as lead agents to the NTC. The Rail Safety Regulators Panel, Australasian Railway Association and Rail Tram and Bus Union have had input into the drafting process.

### **The public comment period closes on 9 May 2007.**

At the completion of the public comment period the suite of guidelines will be assessed in the light of comments received. Following are required amendments, draft guidelines will be finalised and submitted to Transport Agencies Chief Executives (TACE) and to the ATC in June 2007 for consideration and approval.

### *Acknowledgements*

NTC acknowledges the work of Public Transport Safety Victoria on behalf of the Rail Safety Regulators Panel in developing the draft National Accreditation Guideline. NTC thanks the officers of PTSV for undertaking this work and members of the Rail Safety Package Steering Committee for their guidance and advice during the developmental phase of this guideline.

Michael Deegan  
Chairman

## HOW TO MAKE A SUBMISSION TO THE NTC

The NTC invites individual stakeholders and organisations to provide a written submission on this topic. Submissions may be made for a period of six (6) weeks. The submission period closes on **Wednesday, 9 May 2007**.

### Who Can Make a Submission?

Any individual or organisation can make a submission to the NTC. There are no restrictions on who can provide comment, e.g. individuals, community groups, private organisations and representatives of government departments and agencies.

### Structure of submissions

Please use the structured submission forms provided. Comment on matters you consider relevant to the topic. Where possible, you should provide evidence, such as data and documentation, to support your views.

If you are representing an organisation, please indicate your position in your organisation, and if relevant, specify at what level the submission has been authorised (branch, executive, president, sub-committee, executive committee, national body).

### How to Submit Online

Online submissions are preferred. To make an online submission please follow these steps:

- Step 1** On the NTC homepage ([www.ntc.gov.au](http://www.ntc.gov.au)) select a Report Issued for Comment or click on the link forwarded to you through a web alert.
- Step 2** Select the Name of the NTC representative in the **New Comments To** column of the Report Issued for Comment table.
- Step 3** Enter your NTC website login name and login password (you would have typed in these details when you registered to receive NTC alerts. If you cannot remember these details or have not registered then do so by selecting the **'Register'** button to register as a new user.
- Step 4** On entry to the **Respond to RFC Topics** homepage enter any **General Comments** to accompany your submission.
- Step 5** Select Browse to upload your comments if they are contained in a separate document. If you are submitting an electronic version of your submission, it should be compatible with Microsoft Word 2003 (.doc) or be in Adobe Portable Document File (.pdf) format.
- Step 6** Enter your **Document Author Details**
- Step 7** Select **Save**.

Once your submission has been saved it is automatically sent via email to the nominated NTC representative. You will receive a confirmation email to your preferred address once the submission is received by the NTC.

### Publication of Submissions

Unless submissions are made in confidence or accompanied by a request to delay release, all submissions will be published online. Copyright of received submissions, however, will reside with the author(s), not with the National Transport Commission.

### Important - Confidentiality

The NTC accepts confidential submissions. If you want to provide content not for public release, provide two copies of your submission, one with the confidential content and the other with content suitable for public release. You are encouraged to contact the NTC before submitting confidential material. If material is agreed to be confidential it will be withdrawn. Note that access to confidential material is determined in accordance with the Freedom of Information Act 1982. In the absence of any clear indication that a submission is confidential, the NTC will treat the submission as non-confidential.



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## 1. INTRODUCTION

The National Model Rail Safety Bill 2006 (**RSB**) and the National Model Rail Safety Regulations 2006 (**Regulations**) (collectively referred to as the “model legislation”) reflect a co-regulatory approach to rail safety. The Co-regulatory approach acknowledges that the objectives of the legislation are best achieved where the roles of those who influence safety are acknowledged. Accordingly the model legislation imposes obligations on:

- Rail transport operators (RTOs) – including rail infrastructure managers (RIMs), rolling stock operators (RSOs) and those who are both RIM and RSO ;
- 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;
- The public;
- Rail safety regulators (RSRs); and
- Persons engaged in the administration of the legislation (eg rail safety officers).

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.

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 policy provides a guide to the way the RSR proposes to use the compliance and enforcement powers that the model legislation provides, to achieve the objectives of the model legislation.

This policy 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 policy and the legislation under which the rail safety regulator exercises a statutory function, power or discretion, the legislation shall prevail. Please contact your solicitor for legal advice.

## 2. OBJECTIVES OF THE MODEL LEGISLATION

The objectives of the model legislation are:

- To provide for improvement of the safe carrying out of railway operations;
- To provide for the management of risks associated with railway operations;

- To make special provision for the control of particular risks arising from railway operations;
- To promote public confidence in the safety of transport of persons or freight by rail.

### **3. THE ROLE OF THE RAIL SAFETY REGULATOR**

RSB S18

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

- To administer, audit and review the accreditation regime under the RSB;
- 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;
- To monitor, investigate and enforce compliance with the RSB.

### **4. 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 their:

#### **4.1 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.

#### **4.2 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.

#### **4.3 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.

#### **4.4 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;
- public, industry or political criticism, or the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

In particular such systems and processes should support the creation and management of records documenting decisions and actions taken and the reasons for them; and the implementation, and publication where appropriate, of policies that promote consistency and transparency in decision making.

### **5. THE ROLE OF THE RAIL SAFETY OFFICER**

RSB Part 5

Under the RSB, rail safety officers are given wide powers of entry, enquiry and investigation. Rail safety officers are appointed under the RSB by the rail safety regulators in each jurisdiction and must comply with the RSB 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 (SMSs);
- 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;
- Conducting investigations as required, including those arising from issues identified through safety audits or compliance inspections.

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.

### **6. MONITORING COMPLIANCE**

RSB S95

A rail safety officer may undertake the following activities on behalf of the rail safety regulator to monitor compliance with the RSB:

### 6.1 Safety audits

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

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.

An RSR'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;
- Particular aspects of railway operations.

### 6.2 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. 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.

### 6.3 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 regulator<sup>1</sup>. 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.

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.

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<sup>1</sup> 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.

## **7. COMPLIANCE AND ENFORCEMENT OPTIONS**

Rail safety regulators adopt a graduated approach to compliance and enforcement. Under the RSB, a range of options are available to the rail safety regulator, ranging from administrative decisions to legal sanctions.

The options available to rail safety regulators in taking compliance and enforcement action may include:

- provision or facilitation of the provision of advice, education and training in relation to rail safety
- improvement notices
- prohibition notices
- infringement notices
- enforceable voluntary undertakings
- disciplinary inquiries
- the variation of accreditation or conditions or restrictions on the accreditation,
- prosecution
- 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 factors described in this policy, and in accordance with the model 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 RSB.

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.

## **8. CIRCUMSTANCES UNDER WHICH ADVICE MAY BE APPROPRIATE**

RSB S18

In the RSB there is an emphasis on a *pro-active* approach to compliance through the provision of advice education and training (for example, see s18). Such guidance is aimed at helping duty holders to improve their safety processes and prevent or remedy safety breaches.

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.

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:

1. The safety consequences of the breach, and in particular, the likelihood of a notifiable occurrence taking place;
2. If a notifiable occurrence might occur as a result of the breach, whether that occurrence would be likely to be a serious one;
3. Whether the breach might trigger other, more serious breaches, or encourage others to fail to comply;
4. Whether the breach is systemic or an isolated occurrence;
5. Whether the RTO has other measures or procedures in place which would help prevent adverse consequences flowing from the specific breach;
6. The history of the RTO's performance in respect of the breach – that is, whether the RTO has had several similar breaches;
7. Whether the breach is one which is not open to interpretation (eg failure to report notifiable occurrences).
8. Whether the breach is the result of a knowing disregard for safety
9. Whether the breach is the result of a disregard of the relevant SMS.

## **9. 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.

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 issued.

Improvement notices may be appropriate in circumstances wherever a breach is not minor in nature, having consideration to the 9 points provided in the section above.

Improvement notices are subject to the right of review.

## 10. 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*. 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 an 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.

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.

### *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 RTO 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 SMS 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.*

## **11. CIRCUMSTANCES UNDER WHICH AN INFRINGEMENT NOTICE MAY BE APPROPRIATE**

RSB S138

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.

An infringement notice may be appropriate where

- there is a benefit in providing immediacy to the consequences for non-compliance;
- when the act or omission was deliberate,;
- 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; .
- where the extent of harm arising from the act or omission can be immediately assessed.

## **12. CIRCUMSTANCES UNDER WHICH ENFORCEABLE VOLUNTARY UNDERTAKINGS MAY BE APPROPRIATE**

RSB S140

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.

Acceptance of a voluntary undertaking may be appropriate where:

- 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.

### **13. CIRCUMSTANCES UNDER WHICH VARIATION OF ACCREDITATION OR CONDITIONS OR RESTRICTIONS MAY BE APPROPRIATE**

RSB S53

The RSB 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 SMS 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 SMS 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 SMS 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 regulatory 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 SMS 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.

#### **14. 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;
  - whether the operator has repeatedly breached safety duties.

#### **15. CIRCUMSTANCES UNDER WHICH REVOCATION OR SUSPENSION OF ACCREDITATION MAY BE APPROPRIATE**

RSB S44

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

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

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 SMS 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 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.*

## **16. 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.