

**NATIONAL POLICY STATEMENT
ON THE RECOGNITION OF
INDUSTRY DEVELOPED
STANDARDS FOR RAIL SAFETY
POLICY STATEMENT**

May 2009



**Prepared by
National Transport Commission**

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**National Policy Statement on the Recognition of Industry Developed Standards
for Rail Safety**

Report Prepared by: **National Transport Commission**

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REPORT OUTLINE

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Abstract:	This National Policy Statement on the Recognition of Industry Developed Standards for Rail Safety establishes a consistent and rigorous process by which national standards for rail safety will be developed, which when followed by industry bodies, can provide state and territory rail safety regulators with confidence about the <i>prima facie</i> quality of the instrument.
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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. The NTC has an on-going responsibility to develop, monitor, maintain and review uniform or nationally consistent regulatory and operational reforms relating to road, rail and intermodal transport.

The NTC has developed a national model *Rail Safety Bill 2006* and model Regulations for the regulation of rail safety, which in 2006 were approved by the Australian Transport Council (ATC). The national model legislation will be given legal effect when the provisions are reproduced during 2007 and 2008, in a nationally consistent and co-ordinated manner in the legislation of each state and territory.

When establishing the policy principles that were to underpin the development of the National Model Rail Safety Legislation, ATC also approved a number of policy principles relating to regulatory instruments and industry developed technical standards. The intent was to establish an agreed process that would recognise industry efforts (through collegiate bodies such as the Rail Industry Safety and Standards Board) to engage with rail safety regulators and to develop technical standards that better meet regulatory requirements.

This *National Policy Statement on the Recognition of Industry Developed Standards for Rail Safety* establishes a process for the development of technical standards, which when followed by industry bodies, may be considered to be sufficiently and consistently rigorous to provide state and territory rail safety regulators with confidence about the *prima facie* quality of the instrument. More recently ATC has endorsed a national transport policy framework and the consideration of governance models for a single national rail safety regulator, into which this national policy statement would neatly dovetail and allow for administrative simplicity in enhancing recognition of industry standards.

The Commission acknowledges the contribution made by the following NTC officers to the production of this national policy statement: Jan Powning, Paul Salter and Tim Eaton. The NTC is grateful for the support and advice afforded to it by the members of the Rail Safety Regulators Panel and Rail Safety Package Steering Committee, and acknowledges the particular contribution of Derek Heneker from the South Australian Department for Transport, Energy and Infrastructure and John Shalders, Phil Sochon and Kevin Taylor from the Australasian Railways Association. Additional assistance and input was received through an Industry Standards Workshop conducted by the NSW Independent Transport Safety and Reliability Regulator (ITSRR) in June 2007. Substantial input has been received from the stakeholders and incorporated into the document.

The proposed *National Policy Statement for Recognition of Industry Standards for Rail Safety* is now forwarded to the Australian Transport Council for approval.



Greg Martin
Chairman

SUMMARY

The national model *Rail Safety (Reform) Bill 2006* and model Regulations for the regulation of rail safety in Australia were developed by the NTC in consultation with all jurisdictions and rail industry stakeholders.

Policy principles approved by Australian Transport Council (ATC) that underpinned the development of the national model rail safety legislation included those relating to regulatory instruments and industry developed technical standards. Industry standards are intended to provide a body of knowledge on which rail organisations can draw for the management of identified and assessed sources of safety risk and include in their safety management system. Although industry standards are an integral building block within the regulatory framework, in general they are not intended to have regulatory status themselves.

Currently, sixteen Australian technical standards and four codes of practice are contained within the Australian Code of Practice covering railway standards and practices. These are managed by the Rail Industry Safety and Standards Board, formerly the Code Management Company. Standards Australia own and manage twenty nine other railway related standards. In the course of the rail reform process, some evidence arose indicating that the previous instruments were not universally adopted by industry or recognised by rail safety regulators to have sufficient technical validation for managing the identified risks. Hence they were not achieving their objective of providing a body of harmonised rail safety standards that are applied across the industry.

A mechanism is needed therefore, which would obviate the need for rail organisations to “prove” an industry developed standard on a case by case basis to the rail safety regulator. Such a mechanism for “recognition” of industry standards would reflect the rail safety regulators’ confidence that the process of development of the industry standard is sufficiently and consistently rigorous, such that in technical terms, any standard developed by that body may be regarded *prima facie* as fit for purpose.

The intent of this *National Policy Statement on the Recognition of Industry Developed Standards for Rail Safety* is to establish such a mechanism. General recognition by government of this mechanism would be achieved by submitting it for approval to the Australian Transport Council (ATC).

The national policy statement describes criteria for good governance and for rigorous processes for developing and managing rail safety standards. Where a credible industry body can demonstrate that its standards setting processes consistently satisfy these criteria, state and territory rail safety regulators when considering an application for accreditation or variation of accreditation, may have confidence that the safety standards may be viewed *prima facie* as being technically accurate, authoritative and representative of industry good practice.

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1. INTRODUCTION

The NTC is responsible under the *National Transport Commission Act 2003 and the Inter-governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (2003) (Inter-governmental Agreement)* to:

“develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road, rail and inter-modal transport” (cl. 5.1).

In June 2006, ATC approved the Rail Safety Reform Implementation Package. The Package incorporated recommendations arising from the NTC’s *Review of the Institutional Arrangements (Phase A)* which included a recommendation to establish a formal process for recognition of industry developed technical standards.

In 2006 ATC also agreed that a national policy statement would be developed by the NTC. It would outline the mechanism by which any industry standards setting body might establish a standards development and management process such that the standards would be recognised or accepted by rail safety regulators and rail transport operators as being robust. It was acknowledged that recognition was not of the standards directly but of the standards development process, and by extension, the standards developed from that process.

The intent of this draft *National Policy Statement on the Recognition of Industry Developed Standards for Rail Safety* is to establish a mechanism. This is approached by describing the criteria which governments agree should underpin good governance and rigorous processes for developing and managing rail safety standards. Where a standards setting body can demonstrate that it consistently satisfies these criteria, government and industry may be confident that the resulting standards may be recognised and accepted as being of suitable quality for application in the Australian rail industry. It is intended that this national policy statement be submitted to the ATC for consideration and approval, consistent with its June 2006 decision.

In turn, there are potential efficiency and safety gains for those rail organisations which include in their safety management systems standards that have been developed by a body meeting the criteria in the national policy statement. This would arise because the rail transport operator would not generally need to develop its own standards or otherwise “prove” an industry developed standard to the rail safety regulator on a case by case basis. When those rail transport operators’ safety management systems are examined as a result of an application for accreditation, variation of accreditation or other compliance inspection or audit, such standards may be viewed with greater confidence by the rail safety regulator.

Within the regulatory framework that has been established, industry standards are intended to provide a body of knowledge on which rail organisations can draw for the management of identified and assessed sources of safety risk. Although they are an integral building block within the regulatory framework, in general they are not intended to be mandatory for application across the industry, or to have regulatory status themselves.

1.1 Purpose of this National Policy Statement

The purpose of the *National Policy Statement on the Industry Developed Standards for Rail Safety* is to establish a mechanism for the “recognition” of industry developed standards for rail safety. The policy statement establishes criteria for good governance and for standard development and maintenance processes aimed to provide a level of assurance, especially to rail safety regulators and rail operators, that both the standards development process and the resultant standards are robust.

1.2 Scope

The national policy statement is aimed at new standards setting bodies, particularly ones associated with industry bodies, entering into this field and not at existing standards setting bodies such as Standards Australia whose standards are already well accepted in Australia.

1.3 General Principles

The national policy statement for the “recognition” of industry developed standards is underpinned by the three general principles derived from the recommendations of the NTC *Review of Institutional Arrangements (Phase A)*. They are:

- there should be no limitation on who can have standards recognised, notwithstanding the scope of the policy statement outlined above;
- “recognition” is subject to the industry body demonstrating that it can satisfy the criteria for good governance and criteria for good practice in the development and management of standards outlined in this national policy statement; and
- the development and management processes for standards must allow for appropriate involvement of rail safety regulators (for example through invited comment and/or representation) either individually or through their collegiate body, the Rail Safety Regulators’ Panel.

2. BACKGROUND AND ISSUES

2.1 Role and Legal Status of Industry Standards

Industry developed technical standards articulate specifications and procedures designed to ensure product services and systems are safe, reliable and consistently perform the way they were intended to do. They establish a common language which defines good practice in the management of hazards and/or risks and are informed by regulatory requirements¹.

These instruments are an integral building block for the development of safety management systems, but in general, are not intended to be mandated across the industry or have regulatory status themselves. Rather, they are intended to aid rail organisations in the development of safety management systems and promote harmonisation in the industry.

As such, it is appropriate for standards to include detailed, even prescriptive specifications, pertinent to particular hazards upon which they were developed. This contrasts with a

¹ The development of guidelines for compliance with regulatory requirements is directly the role of regulators and/or government policy processes.

primary Act which is likely to establish broad principles and requirements which are increasingly written in the form of process requirements and/or performance outcomes. The role and function of technical standards and industry within the hierarchy of the regulatory framework is shown in Figure 1.

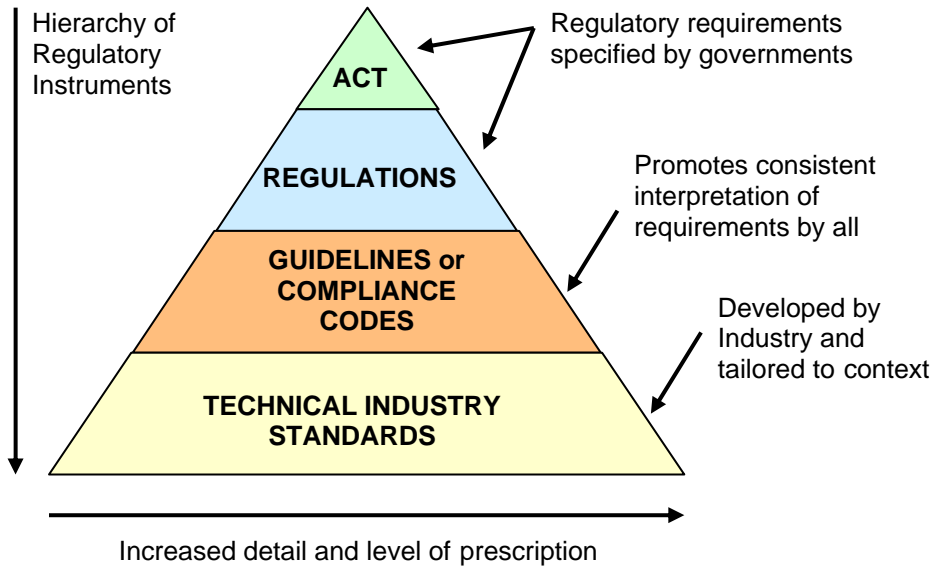


Figure 1. Regulatory Framework

Industry standards are intended to benefit industry for a number of reasons:

- the development process provides a means to pool technical and operational knowledge and expertise to produce a quality product more efficiently than would otherwise be the case if each rail organisation attempted to develop these materials separately;
- the output should provide industry with good practice guidance in technical and operational areas of railway operations, thereby assisting with achieving compliance with risk management and other regulatory requirements;
- industry-wide application of the standards provides a means of promoting harmonisation of technical and operational practices where harmonisation is desirable, for example, where there are interfaces and/or a need/desire for interoperability between rail transport operators.

2.2 Nature of the Regulatory Problem

There are a number of standards setting bodies operating in Australia and overseas, including Standards Australia and the International Standards Organisation. The standards developed by such bodies are used by many rail transport operators and are recognised as being an important source of knowledge and technical or operational information to assist rail transport operators to comply with legislated obligations arising from their business operations.

The credibility or recognition of the standards developed by such bodies is derived from their longstanding operation and an acceptance that the processes by which their standards are developed and the resultant standards are rigorous and robust.

The Rail Industry Safety and Standards Board, formerly the Code Management Company of the Australasian Railways Association was established in July 2007. The Rail Industry

Safety and Standards Board is a close affiliate of the Australasian Railways Association, an industry body, and was set up for the express purpose of developing and managing rail industry standards, rules and codes of practice intended to have national application.

Technical standards developed by the Rail Industry Safety and Standards Board are contained within the Australian Codes of Practice and managed by the Rail Industry Safety and Standards Board. When completed, the Rail Industry Safety and Standards Board's standards on rolling stock will replace the technical advice previously covered by Railways of Australia Manuals. Standards Australia own and manage twenty nine other rail standards. All of these standards are intended to provide a body of knowledge on which rail transport operators can draw for input to their safety management system to control identified and assessed sources of safety risk.

During the course of the NTC's *Review of the Institutional Arrangements (Phase A)*, evidence arose which indicated that the existing Australian Codes of Practice (developed prior to formation of the Code Management Company/ Rail Industry Safety and Standards Board) were not being adopted by rail transport operators and were not achieving their objective of harmonising (where desirable) the standards that are applied across the country. Anecdotal reports suggested that rail safety regulators did not generally accept the Australian Codes of Practices' content as being adequate. Regulators have not been confident that particular codes represent industry good practice or sufficiently take into account the interests, experience and expertise of all relevant stakeholders.

The NTC observed that this perception (whether justified or not) discouraged the adoption of the Australian Codes of Practice as a means of complying with regulatory requirements. This had the effect of working against achieving harmonisation and devaluing the investment made in the development process for the Australian Codes of Practice².

In 2007 the Rail Industry Safety and Standards Board sought and achieved accreditation as a Standards Development Organisation from Standards Australia. The Rail Industry Safety and Standards Board's objective was to demonstrate to government and industry that it has a rigorous process for the development of industry standards and that the resulting standards may be recognised and accepted by rail safety regulators as being of suitable quality for application in the Australian rail industry.

What remains to be established however, is a mechanism which provides the benchmarks against which the Rail Industry Safety and Standards Board or any other credible standards setting body, can make a case to the rail industry and rail safety regulators that the process it uses to develop and manage standards is sufficiently and consistently rigorous, such that in technical terms, any standard developed by that body may be regarded *prima facie*³ as fit for its intended purpose.

The Australian Codes of Practice managed by Rail Industry Safety and Standards Board comprise rules, standards, guidelines and codes. On advice from the Rail Industry Safety and Standards Board, it is intended that this national policy statement applies only to the technical standards and industry codes and rules within the Australian Codes of Practice.

² NTC, *Review of Institutional Arrangements Supporting Regulation of Rail Safety (Phase A)*, October 2005, pp 27 - 29

³ "at face value"

2.3 Observations on Relevant International and Australian Standards

Although they have varying legal status, a range of technical standards of European or British origins are widely recognised to be technically authoritative and representative of good practice in the standards development process.

2.3.1 European Standards

Standards that are often used by the Australian rail industry are the European Technical Specifications for Interoperability, which detail legally enforceable requirements for rolling stock and infrastructure on the European international rail network, and European Norms (ENs) which provide the national rail standards for the EU member countries. The European Norms are set by CEN, the European Committee for Standardisation⁴ which operates in parallel with CENLEC (the Committee for Electrotechnical Standardisation) and European Telecommunications Standards Institute.

2.3.2 British Railway Group Standards

British Railway Group Standards are also considered to be authoritative documents that may be referenced in the safety management systems of Australian rail transport operators. Railway Group Standards are operational procedures and technical standards which set out the requirements for system safety and safe interworking and are designed to facilitate the safe operation of the rail network. Arrangements for their management and future development necessarily are taking account of the superior standing of the Technical Specifications for Interoperability.

Railway Group Standards are developed and maintained by the British Rail Safety Standards Board and are mandated through regulation on all Railway Group members in Britain. In 2006 the Rail Safety Standards Board produced a new *Railway Group Standards Code*⁵ which is subject to regulatory approval and provides for the establishment and management of “procedures for the creation, modification, review and monitoring of the effectiveness of Standards”.

The new code facilitates “much greater involvement of rail industry players in the Railway Group Standards process” through the Industry Coordination Committee whose members include elected industry members of the Rail Safety Standards Board and co-opted persons.

2.3.3 American (USA) Standards

The body that is ultimately responsible for American National Standards is the American National Standards Institute, whose role is to accredit standards development organisations to ensure they write standards that are considered to be appropriate. The main US railway standards development organisation is the Association of American Railroads, with support from its subsidiary the Transportation Technology Center, Inc. Its almost exclusive focus is on issues that relate to freight traffic and to the safety and efficiency of interchange services. The Transportation Technology Center, Inc provides technical and administrative support to the Association of American Railroads’ committee structure. These committees of industry experts are responsible for the development and maintenance of industry standards. The committees include railroad and non-railroad experts in the

⁴ Comite’ European de Normalisation.

⁵ Rail Safety Standards Board, *Railway Group Standards Code*, Issue Two, 1 February 2006, <http://www.rssb.co.uk/rqsc.asp>

areas of quality assurance, locomotives, intermodal equipment, open top loading, freight car design, freight car truck systems, railway electronics and freight and locomotive braking systems.⁶

The American Public Transportation Association is also a significant US publisher of rail standards. In addition, the Federal Railroad Administration is unusual in that it is a government agency that sets standards. The majority of drafting is delegated to the Railroad Safety Advisory Committee which includes representatives from government agencies, trade unions and railway trade associations. These standards are legally enforceable.

2.3.4 Standards Process Comparison

These (and other) European, British and North American standards setting processes were compared in a report commissioned by the NTC in January 2007⁷. With regard to these bodies, the report concluded that:

- all of the standards organisations pursue a similar process for developing standards;
- most standards are accepted by the industry because of the involvement of many representative parties in the drafting process; and
- generally railway regulators do not participate in the writing of standards, however they often take careful note of new standards as they are being drafted and most standards bodies take care to ensure that regulators have every opportunity to see and influence the contents at strategic points in the development process.

2.3.5 Australian Standards

In Australia the principal non-government standards development body is Standards Australia established in 1922. This body owns and manages twenty nine rail standards. Standards Australia has wide “brand recognition” by the public and in a broad range of industries.

Standards Australia follows a similar path in standard development to that of other international standard bodies mentioned above. The need for a new standard is usually identified through regular meetings of committees that consist of industry representatives, standard body representatives and government regulators⁸. These committees assess the benefits of creating the standard and prepare a business case with the aim of providing a standard that is “fit for purpose”.

Development of a standard is usually considered if an external source such as a trade, industry sector or technical committee makes a request, or it is considered that certain categories of international standards should be adopted as they are published by ISO (International Organisation for Standardisation) or other international bodies. The policy of adopting international standards wherever possible is a recognised strength of Standards Australia.

⁶ The Association of American Railroads and the Transportation Technology Center, Inc have documented the procedures for considering proposals regarding changes to the manual of standards in administrative standard S-050.

⁷ Halcrow Ltd, *Recognition and Acceptance of Industry Codes and Technical Standards*, January 2007

⁸ Standards Australia, 2005, *Preparing Standards-Standardization Guide No.1*

Standards Australia is one of the few standards organisations that publicises information on the membership of its standard development committees. However, a perception that the nomination processes are insufficiently transparent or result in membership that is representative of the activity under consideration has been observed as a weakness across a range of industries and stakeholders. Whilst the terms of reference for the committees do not specify a need to discuss or consult with government, these bodies have the opportunity to offer comment on a standard during the consultative process and may be invited to be part of the committee.

The standards development process followed by Standards Australia is illustrated in Figure 2

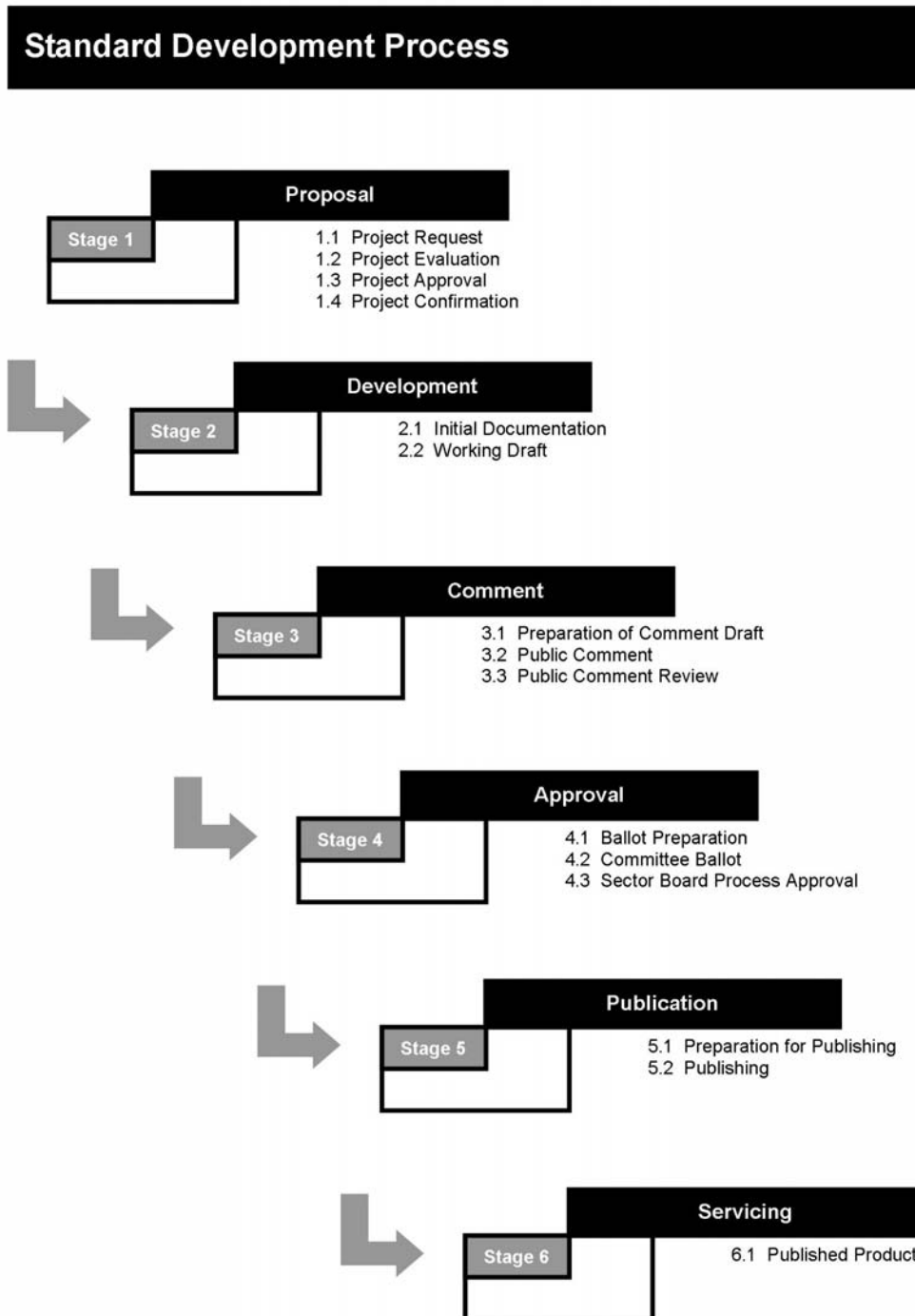


Figure 2. Standards Australia process for issuing and developing standards

2.3.6 Industry Standards and Codes of Practice in the Australian Road Transport Industry

The road transport industry in Australia also uses standards, as well as codes of practice. Comparisons between industry standards and codes of practice in road and rail must be cognisant of the differing natures of the two industries' regulatory frameworks. Standards developed within rail's co-regulatory framework are substantively different from standards developed within the road transport regulatory framework.

The Australian Design Rules are national, minimum, standards for vehicle safety, anti-theft and emissions. Australian Design Rules are generally performance based and cover issues such as occupant protection, structures, lighting, noise, engine exhaust emissions, braking and a range of miscellaneous items.

The current standards, the Third Edition Australian Design Rules, are administered by the Australian Government under the *Motor Vehicle Standards Act 1989*. All road vehicles, whether newly manufactured in Australia or imported as new or second hand vehicles, must comply with the relevant Australian Design Rules at the time of manufacture and supply. Generally vehicles must continue to comply with the Australian Design Rules relevant at the time of manufacture. New Australian Design Rules, or significant changes that increase the stringency of existing Australian Design Rules, are subject to a vote by the Australian Transport Council. Following the vote, the relevant Commonwealth Minister may then determine the new or amended standards.

Road industry codes of practice are voluntary instruments. They identify practices for the heavy vehicle industry or a particular business to achieve compliance with the "chain of responsibility"⁹ provisions in the national model *Road Transport Reform (Compliance and Enforcement) Bill 2003* and model regulations. National implementation of the laws commenced from late 2005.

Industry codes of practice may be developed by any industry or business using heavy vehicles to transport goods by road, although there is clearly greater advantage in developing an industry-wide code to promote industry-wide benchmarks for achieving compliance. When developing an industry code, an industry or business should:

- consult with the appropriate stakeholders, noting details of consultation in the code;
- appoint an administrator to be responsible for the development and administration of the code, with their name and functions and operations being specified in the code; and
- ensure it is not written in an anti-competitive way.

To be effective, the code should have broad rules that focus on each and every reasonable risk of non-compliance with the relevant heavy vehicle laws for that particular industry or business. They should also contain the broad type of controls that are necessary in a business compliance system.

⁹ The chain of responsibility concept is that all those with responsibility for activities that affect compliance with the road transport laws should be held legally accountable if they don't meet their responsibility. Chain of responsibility provisions impose obligations on all parties in the transport chain, and all individuals in the corporate chain of command to either take reasonable steps to prevent a contradiction of the road transport laws, or to not encourage or coerce others to contravene those laws.

Some jurisdictions allow for industry codes of practice for mass, dimension and load restraint to be registered.¹⁰ A code must be registered separately in each state or territory that allows for registration of codes. NTC has issued *Guidelines for the Industry Codes of Practice in the Australian Road Transport Industry* on the benefits of and processes for registering industry codes where available. An industry code that meets all of the requirements of the NTC guidelines may be registered in those jurisdictions that offer registration once the code has been endorsed by an accredited auditor. Registration of a code does not have the effect of making the code mandatory. However, it provides a person who is abiding by the letter and spirit of the code an opportunity to establish a legal defence in the event of inadvertent breaches.

¹⁰ It is also possible that future 'chain of responsibility' provisions may allow for registration of industry codes for other areas of heavy vehicle regulation.

3. CLARIFICATION OF KEY CONCEPTS

3.1 Scope of application of this National Policy Statement

This *National Policy Statement on the Recognition of Industry Developed Standards for Rail Safety* applies to technical standards and industry codes developed for the rail industry.

This national policy statement does not apply to statutory codes of practice that have legislative backing. It does not apply to guidelines developed by regulators or NTC.

3.2 Summary of the Meaning of “Recognition”

In this national policy statement, the meaning of “recognition” derives from the standards setting body demonstrating that it satisfies specified criteria for “good governance” and “good practice” in the processes for developing and managing a particular standard and that the body has the mechanism/s in place to ensure it does so consistently.

“Recognition” that industry developed standards are technically accurate, authoritative and representative of industry good practice does not require the rail safety regulator to certify or accredit the standards setting body or bestow administrative or statutory status on the individual technical standards that it produces.

Rather, “recognition” is a function of the confidence with which state and territory rail safety regulators and industry may view *prima facie* the technical integrity of the instruments. In practice, this confidence enables the rail safety regulators to focus on the application of such standards by rail transport operators to the management of hazards/risks associated with their particular rail operations without the need for the individual rail transport operators to re-validate the technical content of these industry standards.

Such confidence would arise from the standards setting body demonstrating its processes for governance and for developing and managing standards always and consistently adhere to the criteria established in this national policy statement. Mechanisms for making this demonstration are also outlined in this document.

3.3 Industry Good Practice

The criteria for development and management processes that are outlined in this national policy statement make reference to the importance of standards reflecting industry good practice. This section clarifies the meaning of this concept, recognising it is important for industry that there is broad agreement with the rail safety regulator as to the means of determining what is industry good practice and therefore the basis on which rail safety standards are developed.

A railway business may aspire to being the best in the world and indeed, should funding and other resources be available, may take steps to adopt and deploy best practice approaches in terms of both equipment and management process. However, such an approach is voluntary as it goes beyond the test necessarily applicable in the risk based regime inherent in the national model *Rail Safety Bill 2006*.

The objective of demonstrating that risk is controlled so far as is reasonably practicable is not predicated on an infinite supply of money and other resources to continually achieve

best practice. Rather, demonstrating that the ‘so far as is reasonably practicable’ test has been satisfied is one of industry good practice.

In so far as standards developed by industry are concerned, it is therefore essential that they set out industry good practice and that they remain in management and thus subject to regular review. What is seen to be industry good practice in 2008 may not satisfy such a test in 2018.

3.4 Rail Transport Operator’s Selection and Application of a Standard

The national model Bill establishes an obligation for each rail transport operator to develop a safety management system that demonstrates how it will manage the risks associated with its operations. Industry developed technical standards are the building blocks on which individual rail transport operator may base their safety management system. They include the operating rules, those of a departmental nature and local instructions necessary to secure system safety and safe inter-working.

The standards that a rail transport operator chooses to apply must be referenced within the safety management system and supported by a demonstration of the rail transport operator’s capacity and competence to secure compliance. Such standards may arise internationally or nationally, for example from any of the sources outlined in the previous section.

Where rail transport operators choose to adopt externally developed standards it will be because these are generally already regarded as representing industry good practice and that they suit the risk environment in which they would be used. However, this standing will be more difficult to demonstrate if the standards in question have been out of management for a number of years. Where this is the case it is the responsibility of the user of the standard to determine if it remains industry good practice.

Where companies develop their own standards to apply within their safety management systems, it is essential that they are able to demonstrate that they have been competently developed and that they have arrangements in place to secure their on-going management.

The obligation to validate the choice and application of a particular standard to control a particular risk rests with the individual rail transport operator. This requires the rail transport operator to assure itself the selected standard is appropriate to manage the risks it is addressing to a level that is reasonably practicable, with or without the use of additional risk control measures.

The acceptability or otherwise of the application of the selected standard to a given type of railway operation in a particular risk environment is generally examined by a rail safety regulator when making determinations about whether to grant the permissions needed to operate (namely the accreditation of a rail transport operator, or variations of accreditation), or through the ongoing activities of audit and inspection of safety management systems.

This scrutiny of industry standards is undertaken within the context of the specific rail transport operator’s risk profile and specific operations. This is because the rail transport operator must be able to demonstrate to the rail safety regulator that the application of a specific industry developed standard is “fit for purpose” for the particular operation and associated risk profile and risk mitigation framework to which it is being applied.

3.5 Confidence in the Technical Integrity of the Standard

The issue for rail transport operators is not just whether the appropriate standard has been selected, but also whether the industry developed standard being applied is technically accurate in an intrinsic sense, is authoritative and represents accepted industry good practice.

Confidence in the integrity of the standard will derive by necessity from the process by which the standard is developed. That is, confidence on the part of the rail transport operator and rail safety regulator will stem from their knowledge that the particular standards setting body always and consistently follows a specified, rigorous and transparent development process for the development of the standards. On this basis, the rail transport operator is able to adopt the standard as part of the safety management system with the confidence that the rail safety regulator will not then require the individual rail transport operator to re-prove the technical accuracy of the instrument.

3.6 What the Rail Transport Operator would need to Demonstrate

”Recognition” of a standard for use within a safety management system would not imply that a railway would be regarded as safe by the rail safety regulator, or that the rail transport operator has done all that is necessary to manage associated risks as far as is reasonably practicable. The onus would still be on the rail transport operator, whether seeking accreditation or variation to accreditation or during a rail safety audit or inspection, to demonstrate that:

- it has the type of railway (defined by the risk environment) to which the standard should be applied;
- the standard has been appropriately applied in relation to the risks/hazards that standard has been prepared to address;
- there has been consideration of whether the resulting level of safety associated with the adoption of the code or standard represents that which is reasonably practicable to achieve – in situations where the operator has determined that amendments to an industry code or standards are required to demonstrate that safety has been ensured, so far as is reasonably practicable, then the operator will need to be able to “prove” the adequacy of the resulting code or standard;
- where a standard provides options, that the rail transport operator has documented its selection of option appropriate to its operations and risks; and
- the railway transport operator has the capacity and competency to implement, operate and comply with the specific industry code or standard that has been adopted.

4. CRITERIA APPLICABLE TO A STANDARDS SETTING BODY'S GOVERNANCE AND PROCESSES FOR THE DEVELOPMENT AND MANAGEMENT OF INDUSTRY STANDARDS

4.1 Criteria for “Good Governance”

In this national policy statement, “governance” is used to refer to the people, policies, systems and processes that provide the framework by which an organisation operates. Governance may also refer to the processes that determine how interested parties are given a voice and how decisions are made on issues of public interest.

A framework for “good governance” is intended to ensure that the standards setting body’s business is accomplished with proper accountability, openness, due regard for the law and in a manner that is independent and free of inappropriate influence or corruption. Criteria for good governance which would be satisfied by the standards setting body would include:

- a body and/or arrangements established to ensure there is effective oversight of the processes for the development and management of the standards and that the governance arrangements are subject to regular audit to ensure the consistency of the development and management processes for all standards;
- the body that coordinates the processes for a specific standard comprises a fair and balanced representation and participation by experienced and competent persons from all classes of stakeholders likely to be materially affected, noting that:
 - in addition to relevant rail transport operators this may include as appropriate, producers and users of the end product, representatives of professional bodies, regulators and other government agencies, unions and others, including representatives of the general public, and
 - the ability of interested parties to participate in the processes should not be limited by unreasonable physical or economic barriers;
- opportunity for involvement at appropriate points in the development activities, including opportunities for consultation on particular standards, would be provided to the rail safety regulators of states and territories;
- proposals for the development, maintenance, revision, or abolition of a standard would receive full and fair consideration (other than any which are trivial or vexatious); and
- a stakeholder aggrieved in any material respect (for example commercially, or regarding intellectual property) by a decision relating to the development, maintenance, revision, or abolition of a standard may have the matter considered by an independent “panel” of (or on behalf of) the standards setting body and the deliberations conducted in a transparent manner. The process adopted should be independent, transparent and commensurable with the appeals process available to stakeholders appealing a decision by an existing standards setting body such as Standards Australia.

4.2 Criteria for “Good Practice” in the Processes for Developing and Managing Standards

The hallmarks of a good practice for the processes of development and management of standards are that the standard has been developed, modified, reviewed (or abolished):

- where there is a clear demand for it to be created and it can be demonstrated that it serves a purpose that is not covered by existing standards;
- on the basis of a rigorous assessment process to identify the hazard/s to be addressed so that it can be demonstrated that the standard will be appropriate for the hazards in general terms. A risk analysis would be undertaken by the end user to ensure that the standard is applicable to a particular operating environment (see paragraph 3.3);
- with the substantive input of persons with a high level of relevant expertise, including appropriate qualifications and/or experience;

- around a consensus of the views of the participants, where “consensus” means an agreement that is greater than a majority opinion, but is not necessarily a unanimous opinion;
- where drafts of the standards have been made freely available for public consultation and comment;
- an independent validation stage so that any errors or deficiencies are corrected and the technical accuracy and quality of the standard can be assured; and
- where adequate information about (or within) the standard is provided. Information should describe the purpose, intended use and any conditions associated with the use of the standard in a safe manner. It should enable the rail transport operator to be confident about their selection of the standard within their safety management system, based in particular upon the hazard analysis and independent validation stages.

In addition to the above criteria applying to the development and management processes, the standards that are developed as a result of this good practice would:

- be consistent with any applicable legal requirements or obligations;
- where appropriate, be informed by relevant international and national standards;
- avoid duplication of, and conflict with, existing standards and practices unless it is intended that it will replace the existing measures;
- be non-discriminatory and not impose undue costs that may discourage economic activity (the compliance burden of the standard should be as small as is practicable); and
- set clear requirements in a way that it can be readily demonstrated whether or not they have been met.

It is good practice for standards to be reviewed no less frequently than once in five years and intermediately when necessary.

4.3 Mechanism for the Standards Setting Body to Demonstrate Transparency and Consistency in Satisfying the Good Governance and Good Practice Criteria

In order for standards it produces to gain recognition, a standards setting body would need to demonstrate on a systematic basis that it has the mechanism/s in place to ensure its processes satisfy the criteria for good governance and good practice in the case of developing and managing each and every standard. Such a mechanism may involve at least the following two components.

- *Documentation and accessibility of governance arrangements and the development and management processes*

Transparency is facilitated by the standards setting body documenting its governance arrangements and the standards development and management processes that it intends to follow, and making this accessible to government and industry stakeholders.

In the UK, the Rail Safety Standards Board has developed and published a *Railway Group Standards Code* which documents procedures for the “creation, modification (or abolition), review and monitoring” of standards. The Code was approved by the Office of Rail

Regulation in January 2006 and the Rail Safety Standards Board's adherence to the Code provides the basis for regulator and industry "recognition" of its standards in the UK¹¹.

- ***Independent audit and validation of process***

To ensure that it is conforming with its documented processes, the standards setting body would also have in place a process for undertaking an independent audit, or validation to be activated for each and every standard that is developed. To undertake this, the standards setting body may choose to either:

- engage a third party to undertake the audit or validation; or
- establish an independent "review panel" within its own corporate structure which would comprise parties which have not been involved in the development process itself.

The purpose of this audit or validation function is to enable the standards setting body to acquire the evidence for demonstrating to rail safety regulators and industry that it always and consistently adheres to criteria for good governance and good practice in the development and management of a standard.

5. ACTION TO INITIATE THE DEMONSTRATION OF CONSISTENCY WITH THIS NATIONAL POLICY STATEMENT

A standards setting body wishing to establish the consistency of a standard with this national policy statement may take one or more of the following steps:

- ***Step 1:*** submit the documentation of their governance arrangements and development and management processes to safety regulators for comment. Submission would typically be made through the national Rail Safety Regulators' Panel, or through an approach to any jurisdictional safety regulator. This may involve providing a presentation to, and opportunity for discussion with, safety regulator representatives.
- ***Step 2:*** establish an independent audit and validation process and if this is to be an internal "review panel", seek nominations for the membership, which may involve seeking participation from a rail safety regulator representative.
- ***Step 3:*** provide updates to the Rail Safety Regulators' Panel at regular intervals (as agreed between the Panel and the standards setting body).

Circumstances may also arise where a safety regulator may be approached by a transport operator wishing to demonstrate that it meets the criteria established in the national policy statement with respect to the standards they have developed in-house for adoption in their safety management system.

6. REVIEW OF NATIONAL POLICY STATEMENT

The NTC will review this national policy statement and its effectiveness no later than two years after it has been approved by ATC.

¹¹ This policy statement does not advocate regulator approval of the standards setting body's documented procedures. Instead, the standards setting body would demonstrate to regulators that it satisfies the criteria established in the national policy statement which have been submitted to the ATC for approval.

7. REFERENCES

Australian Transport Council (2003) *Inter-governmental Agreement for Regulatory and Operational Reform in Road, Rail and Inter-modal Transport*

National Transport Commission Act 2003

National Transport Commission: national model *Rail Safety (Reform) Bill 2006* and *Model Rail Safety Regulations 2006*