

Refining the definition of rail safety work

April 2019

Discussion paper

Report outline

Title	Refining the definition of rail safety work
Type of report	Discussion paper
Purpose	For public consultation
Abstract	This paper focuses on the definition of 'rail safety work' and 'rail safety worker' in the Rail Safety National Law. It outlines options and makes recommendations for ensuring that the definition focuses on managing the risks associated with railway operations.
Submission details	The NTC will accept submissions until Friday 14 June 2019 online at www.ntc.gov.au or by mail to: National Transport Commission Public submission – Refining the definition of rail safety work Level 3, 600 Bourke Street Melbourne VIC 3000
Attribution	This work should be attributed as follows, Source: National Transport Commission 2019, <i>Refining the definition of rail safety work: discussion paper</i> . NTC, Melbourne. If you have adapted, modified or transformed this work in anyway, please use the following, Source: Based on National Transport Commission 2019, <i>Refining the definition of rail safety work: discussion paper</i> .
Key words	Rail Safety National Law, rail safety work, rail safety worker, rail infrastructure
Contact	National Transport Commission Level 3/600 Bourke Street Melbourne VIC 3000 Ph: (03) 9236 5000 Email: enquiries@ntc.gov.au www.ntc.gov.au

Have your say

What to submit

We seek feedback on proposed amendments to the Rail Safety National Law (RSNL) and/or guidance to:

- clarify the requirements relating to rail safety work (and rail safety workers)
- clarify the scope of what is or is not rail safety work
- improve understanding and compliance with the RSNL.

When to submit

We are seeking submissions on this discussion paper by **Friday 14 June 2019**.

How to submit

Any individual or organisation can make a submission to the National Transport Commission.

Making a submission

 Visit www.ntc.gov.au and select 'Submissions' in the top navigation menu.

 Send a hard copy to:

National Transport Commission
Public submission – Refining the definition of rail safety work
Level 3, 600 Bourke Street
Melbourne VIC 3000

Where possible, you should provide evidence, such as data and documents, to support the views in your submission.

Publishing your submission

Unless you clearly ask us not to, we publish all the submissions we receive online. We will not publish submissions that contain defamatory or offensive content.

The *Freedom of Information Act 1982* (Cwlth) applies to the National Transport Commission.

Contents

Report outline	2
Have your say	3
Executive summary	5
Context	5
Issue	5
1 About this project	8
1.1 Project objectives	8
1.2 Background	8
1.3 Approach	9
2 Context of issues	10
2.1 Overview of issues	10
2.2 History of the issue	11
2.3 Objectives and purpose of the Rail Safety National Law	11
2.4 Key terms in the Rail Safety National Law	12
2.5 RSNL obligations relating to rail safety workers	12
2.6 Risk-based approach to safety management	13
2.7 Current rail industry practice	13
3 Analysis and discussion	15
3.1 Overlap of the Rail Safety National Law and work health and safety legislation	15
3.2 Regulatory burden	17
3.3 Location-based definition	21
3.4 Broad definition of rail infrastructure	22
3.5 Work or activities that do not constitute rail safety work	24
4 Recommendations and next steps	25
4.1 Separating risks to railway operations from risks to workers	25
4.2 Qualifying the interpretation of rail infrastructure	25
4.3 Guidance material and industry education	26
4.4 Next steps	26
Appendix A Key terms in the Rail Safety National Law	27
Appendix B Case studies	29
References	32

Executive summary

Context

Australia's rail safety legislation establishes a co-regulatory system involving a process by which rail safety operators assess the risks associated with their railway operations and then establish a safety management system to manage those risks. A co-regulatory system provides flexibility that supports operators to align their risk management with the scope and nature of their operations and risk profile.

The Australasian Railway Association (ARA) has concerns with the definition of 'rail safety work' in the Rail Safety National Law (RSNL). The National Transport Commission (NTC) and the Office of the National Rail Safety Regulator (ONRSR) have sought to address these concerns through legislative review and guidance respectively; however, the ARA believes the definition remains open to broad interpretation, which can result in workers who have no impact on safety being classified as 'rail safety workers'.

The ARA has asked the NTC to consider a proposal developed by representatives of the rail industry to narrow the meaning of 'rail safety work' in the RSNL.

Changes to the current duties in the RSNL relating to rail safety work or rail safety workers are not considered as part of this discussion paper.

Issue

The ARA has proposed amending the definition of rail safety work on the basis that the current definition captures work that is adequately covered by work health and safety (WHS) law and that the burden of managing such work is disproportionate to the risk.

The ARA has raised three main concerns with the definition in the RSNL:

1. The definition of rail safety work is too broad and overlaps with WHS legislation.
2. The broad definition of rail safety work results in a cost and regulatory burden that is unnecessary, unfair and inequitable.
3. The link to location as a determinant for rail safety work (s. 8(1)(f) of the RSNL) results in workers who have no direct impact on the safe operations of the railway being classified as rail safety workers.

The ARA believes an overlap of RSNL and WHS obligations places an unnecessary burden and cost on the industry. The ARA argues that where matters are adequately covered by WHS laws, these should be excluded from the RSNL and that the identification of rail safety workers under the RSNL should focus on workers who undertake safety-critical work.

The ARA has also claimed that the administrative burden in maintaining evidence of compliance under the RSNL is significant and not required under WHS legislation.

Recommendation 1: Amend the definition of rail safety work

The NTC proposes that s. 8(1) ('Meaning of rail safety work') of the RSNL be amended to clearly differentiate risks to the railway operations from risks to workers and to exclude risks to workers that are adequately addressed under WHS legislation – for example, work that does not present a risk to the worker that is particular to rail.

This amendment addresses the ARA's concerns that the current definition of rail safety work includes risks to workers that are adequately addressed under WHS laws. It also removes the specific link to location, concentrating instead on risk and exposure of workers to rail-specific risks.

Recommendation 2: Qualify the interpretation of 'rail infrastructure'

The NTC proposes amending the RSNL interpretation of rail infrastructure to capture only that infrastructure that is 'necessary to enable a railway to operate safely'. This amendment would better align with the objects of the RSNL and meet the ARA's proposal for 'reinforcing the need for rail safety workers to have a direct impact on the safety of rail operations'.

The impact of such an amendment, when coupled with the recommended amendments to s. 8(1) of the RSNL, is expected to address the ARA's concerns that the current definition captures workers who have no direct impact on the safety of rail operations. Examples of workers who would no longer be categorised as rail safety workers might include:

- electricians, plumbers and other tradespeople engaged to perform work on station buildings such as waiting rooms, amenities and office buildings
- construction workers on both greenfield and brown field sites, unless the work being performed could directly affect the safety of infrastructure (such as construction of the railway or signalling structures) or where the workers performing the work are at risk of exposure to moving rolling stock.

Recommendation 3: Support the changes with guidance material and industry education

The NTC recommends that changes to the RSNL be supported by updated ONRSR guidance material and industry education.

Guidance aimed at assisting duty holders in the rail industry to identify and apply appropriate, risk-based compliance solutions will assist railway operators to make better-informed decisions and remove the misclassification of rail safety workers and others. Guidance may assist the transition from a 'one size fits all' approach, which can contribute to unnecessary competencies and health assessments being imposed.

The guidance may include a risk categorisation decision-making tree, like that in the *National Standard for Health Assessments for Rail Safety Workers*, supported by case studies.

Recommendations and next steps

The NTC has examined the concerns raised by the ARA and looked at appropriate solutions to clarify the definition of rail safety work to reduce unnecessary burden without compromising the safety of either railway operations or workers.

In this paper, the NTC recommends the following options to clarify the meaning of 'rail safety worker' and 'rail safety work'.

1. Amend the RSNL interpretation of rail safety work to:
 - a. clearly differentiate between risks to railway operations from the work and risks to those performing the work

- b. focus on risks to workers that are specific to railway operations and therefore not adequately addressed under WHS laws.
2. Qualify the RSNL interpretation of the term ‘rail infrastructure’ so it includes only those facilities that are necessary to enable the railway to operate safely.

The NTC also recommends that the ONRSR support any changes with industry education and updated guidance material.

We are seeking feedback on the following questions until Friday 14 June 2019. We will use this feedback to inform recommendations about changes to the RSNL and supporting guidance material, which we intend to present to transport ministers for consideration in November 2019.

List of questions

- Question 1:** Do you agree with our assessment of the relationship between the RSNL obligations and WHS obligations? 21
- Question 2:** Is an amendment to the existing definition of rail safety work required to ensure the requirements of the RSNL focus on the safety of railway operations and the safety of workers from rail-specific risks? 22
- Question 3:** Does the current definition of rail infrastructure capture facilities and structures that are not critical to the safe operation of the railway? 24
- Question 4:** Do the proposed changes adequately address the issues raised without compromising the safety of either railway operations or workers? 26

1 About this project

Key points

Rail industry representatives have raised issues with the definition of 'rail safety work' in the Rail Safety National Law for some time. They believe the definition remains open to broad interpretation, which can result in workers who have no impact on safety being classified as 'rail safety workers'.

The Australian Railway Association has asked the National Transport Commission to consider a proposal developed by its members to narrow the meaning of 'rail safety work' in the national law.

1.1 Project objectives

The purpose of this paper is to outline the National Transport Commission's (NTC) examination of the definition of 'rail safety work' and to assess its alignment with the objectives of the Rail Safety National Law (RSNL) to:

- determine if there is a case for amending the meaning of 'rail safety work' or, alternatively, if regulatory or administrative amendment options should be pursued.

And, if so,

- elicit feedback from stakeholders on a reform option that meets the Australasian Railway Association's (ARA) concerns while maintaining the objects of the RSNL.

The NTC intends to present findings from our examination and any proposed RSNL amendments (and supporting recommendations) to the Transport and Infrastructure Council for consideration in November 2019.

Changes to the current duties relating to rail safety work or rail safety workers are not considered as part of this discussion paper.

1.2 Background

The ARA has submitted a proposal to amend the definition of 'rail safety work'. The ARA's view is that the current definition captures work that is adequately covered by work health and safety (WHS) law¹ and that the burden of managing such work is disproportionate to the risk.

The ARA has raised issues with the definition of 'rail safety work' in the RSNL for some time.

The NTC and the Office of the National Rail Safety Regulator (ONRSR) have sought to address these issues through legislative review and guidance, respectively; however, the

¹ A reference to WHS legislation is intended to include equivalent legislation, for example, occupational health and safety, in non-WHS jurisdictions.

ARA believes the definition remains open to broad interpretation, which can result in workers who have no impact on safety being classified as rail safety workers.

The need to resolve this issue has become more pressing due to the volume of rail infrastructure projects planned or forecast for the coming decade. To ensure the industry is best placed to meet the health and competency requirements of the RSNL in a cost-effective and efficient manner, without compromising safety of railway operations or workers, the RSNL definition of rail safety work needs to be easily understood and clearly focused on meeting the objects of the RSNL.

1.3 Approach

The NTC received a draft submission outlining the ARA’s concerns in early 2018. The ARA refined its submission in consultation with the NTC, and a stakeholder meeting was held in November 2018 to better understand the concerns.

In drafting this discussion paper, the NTC has reviewed information from several sources, including parliamentary debates, previous legislation from all jurisdictions, statutory drafting instructions, model WHS laws and the Victorian Occupational Health and Safety Regulations 2017. We explored the issue with stakeholders in the rail industry and WorkSafe Victoria.

In February 2018, following the review of this information, we discussed the NTC’s initial recommendations and draft discussion paper with stakeholders.

The potential for incorporating a section on rail safety into the WHS laws was considered during the drafting of this discussion paper but dismissed as unviable due to the differences in scope and objectives of the different laws. Such a move would also result in the primary regulator for rail safety, the ONRSR, not having jurisdiction over the safety of workers exposed to rail specific risks such as moving rolling stock.

An indicative timeline for amending the RSNL is proposed in Figure 1.

Figure 1. Indicative timeline for possible amendments to the Rail Safety National Law



2 Context of issues

Key points

The RSNL imposes duties on railway operators relating to rail safety workers. The ARA believes the current definition of rail safety work is too broad, resulting in:

- the inclusion of workers who are adequately covered under WHS laws
- workers who have no impact on safety being classified as rail safety workers
- unnecessary cost and regulatory burden.

2.1 Overview of issues

The ARA, on behalf of its members, has submitted a proposal to the NTC to amend the definition of rail safety work.

The ARA has three main concerns with the definition in the RSNL. They are:

1. The definition of rail safety work is too broad and overlaps with WHS legislation.
2. The broad definition of rail safety work results in a cost and regulatory burden that is unnecessary, unfair and inequitable.
3. The link to location as a determinant for rail safety work (s. 8(1)(f) of the RSNL) results in workers who have no direct impact on the safe operations of the railway being classified as rail safety workers.

The ARA contends the issue could be resolved by adopting the principles that rail safety work should:

- be based on the task or function being undertaken
- focus only on those who have a direct impact on the safe operation of the railway
- not be based on location.

The ARA has proposed that these principles be implemented by:

- removing the link to location as a determinant of rail safety work
- reinforcing the need for rail safety workers to have a direct impact on the safety of rail operations
- identifying tasks/functions not classified as rail safety work
- supporting any changes with guidance materials and industry education.

Following a stakeholder meeting in February 2019 to further define the issue, the ARA submitted further details on what it believes to be the additional and unnecessary burden imposed by the RSNL. Specifically, the ARA cites that a rail safety worker is subject to the following burdens:

- the risk of prosecution for a positive drug or alcohol test

- the requirement to undertake health assessments commensurate with the risk
- an obligation to report to their employer when they are fatigued and to sign on/off for accuracy of reporting
- the requirement to complete identified training and competency units
- the requirement to hold a current identification card.

The ARA believes the perceived overlap of RSNL and WHS obligations places an unnecessary burden and cost on the industry. The ARA argues that where matters are adequately covered by WHS laws, these should be excluded from the RSNL and that the identification of rail safety workers under the RSNL should focus on workers who undertake safety critical work.

The ARA has also claimed that the administrative burden in maintaining evidence of compliance is significant and not required under WHS legislation.

The relationship between the RSNL and WHS requirements is discussed in further detail in 3.1 of this discussion paper.

2.2 History of the issue

The ARA first raised concerns with the meaning of rail safety work under previous regulatory regimes in 2007. In response to these concerns, the ONRSR worked with the rail industry to develop the *Guideline: Identifying rail safety work under the RSNL* (ONRSR 2016). This guideline assists; however, the ARA believes it does not go far enough.

The need to resolve this issue has become more pressing due to the volume of rail infrastructure projects planned or forecast for the coming decade. To ensure the rail industry is best placed to meet the health and competency requirements of the RSNL in a cost-effective and efficient manner, without compromising safety of railway operations or workers, the RSNL definition of rail safety work needs to be easily understood and clearly focused on meeting the objects of the RSNL.

In 2018 the ARA commissioned BIS Oxford Economics to undertake a workforce capability analysis for the rail industry based on planned and forecast rail infrastructure development in Australia and New Zealand over the next 10 years. In its completed report, BIS Oxford Economics (2018) identifies factors contributing to the looming skills shortage and makes several recommendations to improve the provision and efficacy of training.

2.3 Objectives and purpose of the Rail Safety National Law

The primary purpose of the RSNL is to provide for safe railway operations in Australia.

The relevant objects of the RSNL (taken from s. 4 of the RSNL) are:

- to make provision for a national system of rail safety, including by providing a scheme for national accreditation of rail transport operators in respect of railway operations; and
- to provide for the effective management of safety risks associated with railway operations; and
- to provide for the safe carrying out of railway operations; and

- to provide for continuous improvement of the safe carrying out of railway operations; and
- to make special provision for the control of particular risks arising from railway operations; and
- to promote the provision of advice, information, education and training for safe railway operations; and
- to promote the effective involvement of relevant stakeholders, through consultation and cooperation, in the provision of safe railway operations.

The objective of the RSNL is to develop a seamless and coordinated national approach to rail safety regulation.

2.4 Key terms in the Rail Safety National Law

The interpretation and application of the following terms in the RSNL are fundamental to the issues raised by the ARA:

- rail safety worker
- rail safety work
- railway operations
- rail infrastructure
- associated railway track structures.

The detailed RSNL interpretation of these terms is contained in Appendix A of this discussion paper.

2.5 RSNL obligations relating to rail safety workers

The objects of the RSNL include, among other matters, ‘providing for the effective management of safety risks associated with railway operations’ and ‘to make special provisions for the control of particular risks arising from railway operations’.

To achieve these objects, the RSNL centres on identifying ‘rail safety work’ and imposes a number of duties on a rail transport operator relating to the health, fitness and competency of workers who perform rail safety work in relation to the operator’s railway operations (rail safety workers). These requirements include specific programs and assessments relating to:

- health and fitness
- drugs and alcohol
- fatigue
- competency
- identification.

In addition to the duties of rail transport operators, the RSNL places several specific duties on rail safety workers. For example, these duties prohibit a rail safety worker from working while impaired by drugs, alcohol or fatigue.

The ARA has raised concerns that the duties on rail safety workers in relation to drugs and alcohol means that rail safety workers face potential prosecution should they breach these

provisions. The ARA believes this is unfair and inequitable when compared with WHS legislation.

2.6 Risk-based approach to safety management

The RSNL requires railway operators to apply a risk-based approach to safety management. At the centre of this is the accreditation scheme for rail transport operators, the purpose of which is to attest that the rail transport operator has demonstrated to the ONRSR the competence and capacity to manage risks to safety associated with its railway operations.

To gain and retain accreditation, a rail operator must demonstrate that it has in place an effective rail safety management system that ensures a systematic approach to the identification, assessment, control and monitoring of risks associated with its railway operations. The required content of the safety management system is specified in Schedule 1 of the Rail Safety National Regulations 2012.

In its *Preparation of a Rail Safety Management System Guideline*, the ONRSR (2013) advises operators that the various elements of risk management programs for fatigue or drugs and alcohol will be scalable, commensurate with the operator's assessment of the associated risk.

This scalability of controls is also appropriate when determining health assessment and training and competency standards for rail safety workers. Different rail safety workers will be required to meet different health or competency standards, depending on the level of risk, both to the worker and to the railway operations from the work being performed. Any assessment of the level of risk should consider factors such as supervision and verification of work undertaken.

2.7 Current rail industry practice

The current practice in the rail industry is to apply a broad interpretation of the meaning of rail safety worker, including those workers who have no safety impact on railway operations. This is understood to be due, in part, to a lack of clarity in the RSNL to enable the rail industry to determine whether the work assigned to each worker is rail safety work.

A key concern for the ARA is the burden of complying with the requirements in the RSNL relating to rail safety workers, in particular those relating to health and competency (ARA, 2018). Some operators have also raised that the indirect cost of managing associated processes for ensuring currency of rail safety worker health assessments and competency places additional burden on them.

To establish a national approach to competency management and allow access and portability for rail safety workers across networks, the ARA has developed the Rail Industry Worker Program. This program, under the governance of the Rail Industry Worker Governance Committee, has developed a series of industry-agreed national role matrices that specify the minimum competencies and health assessment required for each role (Rail Industry Worker Governance Committee, 2018).

The national role matrices apply universally, based on the task being performed, and do not differentiate on external factors such as location or other activities occurring in the area that could affect the level of risk. While this standardised approach enables easier movement of rail safety workers between operators and alleviates operators conducting detailed

assessments of requirements, it also results in rail safety workers being required to undertake competencies and/or health assessments that are unnecessary.

For example, in addition to competencies relevant to the work being performed, all roles are identified as requiring the competency 'safely access the rail corridor' regardless of the likelihood of exposure to moving rolling stock, and all non-safety-critical rail safety workers are identified as requiring Category 3 health assessments.²

The *National Standard for Health Assessment of Rail Safety Workers* (the Standard) defines Category 3 health assessment as applying to non-safety critical workers who operate in an uncontrolled environment and are at risk of exposure to moving rolling stock. Category 4 health assessments apply to non-safety critical workers who are not at risk of exposure to movement of rolling stock.

Health assessment categories are detailed in 3.2 of this discussion paper.

² The *National Standard for Health Assessment of Rail Safety Workers* divides health assessments into four categories. Categories 1 and 2 apply to 'safety critical workers' (workers whose sudden incapacity could lead directly to a serious incident affecting the public or the rail network). Categories 3 and 4 apply to 'non-critical safety workers'.

3 Analysis and discussion

Key points

- The current definition of rail safety work is open to broad interpretation, which can lead to the over-classification of workers. This leads to unnecessary administrative and cost burden.
- While many of the risks to workers currently captured in the meaning of rail safety work could be addressed under the general duties of WHS legislation, these duties do not adequately address risks that are particular to railway operations. Additionally, the primary purpose/objective and guiding principles of the RSNL and WHS law are quite different.
- The interpretation of rail infrastructure in the RSNL omits the word 'safely', which existed in now superseded rail laws in every jurisdiction. It is unclear why this omission occurred.
- Inserting the word 'safely' would provide better alignment with the objectives of the RSNL and would meet the ARA's proposal for 'reinforcing the need for rail safety workers to have a direct impact on the safety of rail operations'.

The ARA has raised three main concerns with the definition in the RSNL:

1. The definition of rail safety work is too broad and overlaps with WHS legislation.
2. The broad definition of rail safety work results in a cost and regulatory burden that is unnecessary, unfair and inequitable.
3. The link to location as a determinant for rail safety work (s. 8(1)(f) of the RSNL) results in workers who have no direct impact on the safe operations of the railway being classified as rail safety workers.

The ARA submission includes additional suggested options for addressing its concerns:

- amending the definition of 'rail infrastructure' to include the word 'safely' as a means of reinforcing that a rail safety worker must have a direct impact on the safety of rail operations
- establishing a list of work or activities that do not constitute rail safety work.

3.1 Overlap of the Rail Safety National Law and work health and safety legislation

While many of the obligations in the RSNL appear to be the same as the WHS legislation, the scope and purpose of these obligations are not the same. The primary purpose/objective and guiding principles of the RSNL and the WHS are quite different.

The primary purpose and objective of the RSNL, outlined in 2.3 of this discussion paper, are aimed at ensuring the safety of railway operations in Australia. WHS laws provide a framework to secure the health and safety of workers and workplaces by protecting workers and others against harm to their health, safety and welfare by eliminating risks arising from

work. The WHS legislation is not concerned with protecting property or infrastructure, other than where it may give rise to a risk to workers or other people.

WHS legislation has a stepped approach, imposing general duties that apply to all workers and all workplaces, and more specific duties for activities considered to pose a higher risk. These more specific requirements include additional controls such as additional training and competency requirements (above those required under the primary duty of care), licences and health monitoring for the following risks/activities:

- noise
- hazardous manual tasks
- confined spaces
- falls
- high-risk work
- demolition
- electrical safety in workplaces
- diving
- construction
- hazardous chemicals
- mines.

These specific requirements are generally activity-based and apply equally to all workplaces. There are very few requirements in WHS legislation aimed at specific types of workplaces, the most notable exception being the inclusion of requirements for mines in the WHS regulations in some jurisdictions. In jurisdictions where mines are not included in WHS legislation, separate legislation for mines is in place.

This is an important factor when considering the argument that risks to workers performing rail safety work are adequately covered under WHS legislation. There are no requirements in WHS legislation aimed specifically at the rail industry, but there are risks in the rail industry that are specific to rail, the primary of these risks being exposure to moving rolling stock.

The risk and potential consequences of a worker being struck by moving rolling stock is significant enough to warrant controls that are additional to the general duties in WHS legislation, in the same way as other high risks. Track worker safety is one of five national priority areas for the ONRSR due to the consistently high number of incidents. Such risks are therefore not considered to be adequately covered in WHS legislation.

The RSNL provides more prescriptive protections, rights and obligations than those in WHS legislation, considered necessary because of the special risks associated with railway operations. The RSNL is intended to provide for the safety of people, including rail safety workers, passengers, other users of railways, users of rail or road crossings and the general public. The primary purpose/objective and guiding principles of the RSNL and WHS legislation are quite different.

The more detailed and specific provisions in the RSNL, such as those relating to drug and alcohol testing for rail safety workers, reflect the level of risk and ensure the enforceability of such testing. This is in keeping with the regulatory approach for other high-risk workplaces (such as a mine) where the relevant legislation imposes specific duties and obligations on both employer or a 'person conducting a business or undertaking' (PCBU) and workers in relation to alcohol and drugs, resulting in any breach being liable for prosecution.

While it may be possible to achieve a similar result through appropriate policies and procedures under WHS legislation, this is unlikely to have the same level of rigour or enforceability. For example, a passenger safety officer working at a railway station would be captured under the RSNL (s.8(k)), regardless of any employer–employee or PCBU–worker relationship but may not be captured under an organisation’s policies and procedures.

The obligations in the WHS legislation are on the PCBU and relate to the level of control the PCBU has over the activity.

It is not a matter of WHS legislation or the RSNL applying; both apply. The RSNL does not impose different obligations from those in WHS legislation; it simply adds more prescription on how to ensure safety from certain risks such as drugs and alcohol, fatigue, health and competency.

3.2 Regulatory burden

The ARA wants to reduce the number of workers completing tasks with no impact on safety being classified as rail safety workers, which the ARA believes imposes an additional regulatory and cost burden that they feel is ‘unnecessary, inequitable and unfair’.

The obligations relating to rail safety workers in the RSNL are in place to minimise so far as is reasonably practicable (SFAIRP) the risk of harm to people (passengers, the public and workers) and damage to property. Except for minimising harm to property, these obligations are not dissimilar to duties under WHS legislation. The required level of protection afforded to a worker under WHS legislation is no less than that afforded to a rail safety worker under the RSNL. The following primary duty of care is provided for comparison.

Model Work Health and Safety Bill

19 Primary duty of care

- (1) *A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of:*
 - (a) *workers engaged, or caused to be engaged by the person; and*
 - (b) *workers whose activities in carrying out work are influenced or directed by the person,**while the workers are at work in the business or undertaking.*
- (2) *A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.*
- (3) *Without limiting subsections (1) and (2), a person conducting a business or undertaking must ensure, so far as is reasonably practicable:*
 - (a) *the provision and maintenance of a work environment without risks to health and safety; and*
 - (b) *the provision and maintenance of safe plant and structures; and*
 - (c) *the provision and maintenance of safe systems of work; and*
 - (d) *the safe use, handling and storage of plant, structures and substances; and*
 - (e) *the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and*
 - (f) *the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and*

- (g) *that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.*

The RSNL and regulations include more specific duties relating to health and competency, including drug and alcohol programs, fatigue programs, health and fitness programs, health assessments and competency assessments. While these requirements are mandatory, they are also scalable, commensurate with the level of risk to the worker or to the rail operations or other persons from the work being performed. This scalability is inherent in the Standard and is also discussed in the *Guideline: Identifying Rail Safety Work under the RSNL* (ONRSR, 2016).

Similarly, the duty of care under WHS legislation requires a PCBU to implement a risk-based approach by identifying and assessing the risks to workers and others from the activities being undertaken and to eliminate or minimise those risks, SFAIRP.

The concept of SFAIRP is the same in both the RSNL and WHS legislation and provides that in determining what is (or was at a certain time) reasonably practicable, regard must be had to the following matters:

- (a) *the likelihood of the hazard or the risk concerned occurring;*
- (b) *the degree of harm that would result from the hazard or the risk;*
- (c) *what the person concerned knows, or ought reasonably to know, about –*
 - (i) *the hazard or the risk; and*
 - (ii) *ways of eliminating or minimising the risk;*
- (d) *the availability and suitability of ways to eliminate or minimise the hazard or risk; and*
- (e) *after assessing the extent of the risk and the available ways of eliminating or minimising the risk, the cost associated with available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk.*

It can be argued that any specific programs identified in the RSNL as being necessary to minimise the risks from particular activities undertaken by a rail safety worker would also be a minimum expectation under matter (c)(ii) of SFAIRP for any non-rail safety worker performing the same activities.

The concept of scalability is an important factor when considering whether the RSNL imposes an additional or unnecessary burden in relation to rail safety workers. Scalability in relation to health assessments and competency is discussed in further detail below.

Health

The Standard sets out how rail safety workers should be assessed. The required health assessments, including frequency, are divided into four categories based on the level of risk. Categories 1 and 2 apply to safety critical work/workers and categories 3 and 4 to non-safety critical work/workers. A 'safety critical worker' is defined in the Standard as a 'Worker whose action or inaction, due to ill health, may lead directly to a serious incident affecting the public or the rail network' (NTC, 2017, p. 17). Non-safety critical workers are further divided into 'around the track personnel' (ATTP) and workers who do not work around the track.

Workers who do not work around the track and ATTP who work within a 'controlled environment'³ are not at risk of exposure to moving rolling stock and are therefore classified as category 4 workers. Category 4 workers have no specific health assessment requirements under the RSNL. Provided workers are not at risk of exposure to moving rolling stock, category 4 workers could include such workers as:

- security personnel working at stations or on-board trains
- cleaners
- refrigeration mechanics
- trades – plumbers, painters, electricians
- volunteer guides at stations or on trains
- construction workers in an area where there is no rolling stock (rail-bound or road/rail) operating.

Case studies 1 and 2 contained in Appendix B of this discussion paper provide worked examples of the categorisation of workers under the Standard. These case studies demonstrate that the health assessment requirements are commensurate with the level of risk to the worker.

Competency

Section 52 of the RSNL contains a general duty for rail transport operators to ensure (SFAIRP) that rail safety workers are provided with the information, instruction, training and supervision to enable them to perform their work in way that is safe and to ensure rail safety workers are competent to undertake their work.

Section 117 of the RSNL provides details on assessment of competency.

The RSNL and regulations do not specify specific training for particular roles or situations, instead leaving it to the railway operator to determine the appropriate competencies.

This is in line with requirements under WHS laws, which include general duties relating to information, training, instruction and supervision for all workers and more detailed competency and health assessment requirements for high-risk activities. Table 1 provides a high-level overview of the requirements under WHS legislation and the RSNL.

³ A 'controlled environment' is defined in the Standard as a rail workplace where a risk assessment has been performed to identify hazards and implement controls to ensure that any person working in or transiting the area is not placed at risk from moving rolling stock SFAIRP. Examples of controlled environments include barrier segregation, permits to work, supervision, special instructions, possession and special instructions.

Table 1. High-level overview of requirements under RSNL and WHS legislation

Requirement	WHS	RSNL
Identify hazards/risks	Identify hazards that could give rise to risks to health and safety	Identify any risks to safety in relation to their railway operations
Control risks	Implement controls to eliminate, or, if not practicable to eliminate, reduce the risk SFAIRP	Implement controls to eliminate or, if not practicable to eliminate, reduce the risk SFAIRP
Provide information, instruction, training and supervision	All workers	Rail safety workers
Ensure competency	Specified for certain workers or activities but required for others based on hazard/risk	Ensure rail safety workers are competent to undertake their work
Conduct health assessments	Specified for certain workers Required for others based on hazard/risk	Required for workers at risk or where their incapacitation would pose a risk or the worker is at risk from moving rolling stock

Rail operators are required to apply the risk management processes in their rail safety management plan to identify the hazards and level of risk associated with each activity and ensure that workers hold the relevant competency to perform those activities without risk to railway operations.

Case study 3 in Appendix B of this discussion paper provides a worked example for determining competency requirements under the RSNL and demonstrates the application of a risk-based approach to selecting competencies.

In line with the risk-based principles of the RSNL, operators are required to use their rail safety management systems to identify the different types of rail safety workers, related duties and how the operator meets these duties. This process assists operators to develop a set of risk-based principles to guide them in meeting their obligations relating to rail safety workers in an effective and efficient manner.

The three case studies demonstrate how a risk-based approach can be applied to identify the relevant health assessment and competency assessment requirements for rail safety workers relevant to the work activities they perform.

Administrative burden

A specific concern raised by the ARA is the administrative burden and associated costs associated with rail safety workers, which they believe are excessive when compared with WHS requirements. Examples provided by the ARA to support this view can be divided into the following two categories:

- inconsistent interpretation and application of the RSNL across jurisdictions and the rail industry
- identifying rail safety workers, ascertaining compliance requirements and maintaining evidence of how this was done and ongoing compliance.

Amending the meaning of rail safety work in the RSNL to provide clarity would assist in addressing consistency of interpretation issues but, ultimately, this is an issue for the regulator and the rail industry to address.

The ARA believes that WHS laws do not require ongoing monitoring of compliance or records to be maintained. This is not correct. While the requirements of the WHS legislation focus on controlling risks rather than maintaining documentary evidence of compliance, the evidentiary expectation is commensurate with that in the RSNL. A comparable example is the safety case and safety management system requirements for a major hazard facility.

Question 1: Do you agree with our assessment of the relationship between the RSNL obligations and WHS obligations?

3.3 Location-based definition

Notwithstanding the overlap of WHS and RSNL obligations, it is worth examining the interpretation of ‘rail safety work’ to validate its alignment with the objects of the RSNL and to determine if rewording would better assist duty holders.

The ARA contends that the safety of workers is adequately addressed through the requirements of the relevant WHS laws and, therefore, rail safety work should ‘not be based on location’. The ARA submission specifically requests that s. 8(1)(f) of the RSNL be amended to remove the words ‘work on or about ... rail infrastructure’. While the requirements of the WHS legislation apply to **all** workers, regardless of the industry in which they work, as discussed in 3.1 of this discussion paper, the legislation also includes more specific requirements for certain high-risk activities. The risk of exposure to moving rolling stock is a particular risk that is specific to the rail industry that is not considered to be adequately dealt with under WHS legislation.

The objects of the RSNL include, among other matters, ‘providing for the effective management of safety risks associated with railway operations’ (s. 13) and ‘to make special provisions for the control of particular risks arising from railway operations’ (s. 13). The risks addressed by the RSNL can be broken into two core categories:

- risks to railway operations and therefore potentially to the public
- risks to workers.

This is demonstrated in the Standard’s health assessment requirements, where category 1 and 2 health assessments apply to ‘workers whose action or inaction, due to ill health, may lead directly to a serious incident affecting the public or the rail network’ and to category 3 health assessments, which apply to ATTP who are at risk of exposure to moving rolling stock. Likewise, the competency requirements include competencies to address the risks to the railway operations from rail safety work and the risks to rail safety workers.

The definition of rail safety work aims to capture all work that could give rise to these risks. Any proposed amendment to the definition of rail safety work needs to ensure that these risks are not excluded and that the definition remains in keeping with the objects of the RSNL. In particular, care needs to be taken to ensure that controls for particular risks arising from railway operations are addressed through the RSNL and not left to the general requirements of WHS legislation.

This discussion paper proposes amending ss. 8(1)(d) and 8(1)(f) of the RSNL to clearly differentiate risks to the railway operations from risks to workers. It's also proposed that the words 'or associated works or equipment' be deleted because they are already included in the interpretation of 'rail infrastructure'.

Question 2: Is an amendment to the existing definition of rail safety work required to ensure the requirements of the RSNL focus on the safety of railway operations and the safety of workers from rail-specific risks?

3.4 Broad definition of rail infrastructure

A key component of the RSNL and the definitions relevant to rail safety workers is work relating to rail infrastructure. The RSNL defines rail infrastructure as 'facilities that are necessary to enable a railway to operate and includes...'. The ARA has suggested that, as a means of reinforcing that a rail safety worker must have a direct impact on the safety of rail operations, the definition should be amended to 'facilities that are necessary to enable a railway to operate **safely** and includes...'.

The current wording in s. 4 of the RSNL reads, **rail infrastructure** means 'the facilities that are necessary to enable a railway to operate and includes...'.

The ONRSR has previously sought to address this in its *Guideline: Identifying rail safety work under the RSNL*, where it states that 'for the purposes of defining rail safety work, ONRSR interprets "facilities that are necessary to enable the railway to operate" as including those facilities that have an impact upon (or are associated with) the safety of the railway operations' (ONRSR, 2016, p. 6).

A review of repealed rail safety related Acts across the jurisdictions shows that, in every instance, the definition of rail infrastructure was qualified with the term 'necessary to enable a railway to operate safely' (see Table 2).

Table 2. 'Rail infrastructure' definitions in superseded legislation

Jurisdiction	Act	Definition of 'rail infrastructure'
Victoria	<i>Rail Safety Act 2006</i>	" rail infrastructure " means the facilities that are necessary to operate a railway safely and includes...'
New South Wales	<i>Rail Safety Act 2008</i>	'rail infrastructure means the facilities that are necessary to enable a railway to operate safely ...'

Jurisdiction	Act	Definition of 'rail infrastructure'
Queensland	<i>Transport (Rail Safety) Act 2010</i>	'Rail infrastructure is a facility that is necessary to enable a railway to operate safely and includes...'
South Australia	<i>Rail Safety Act 2007</i>	'rail infrastructure means the facilities that are necessary to enable a railway to operate safely and includes...'
Western Australia	<i>Rail Safety Act 2010</i>	' rail infrastructure means the facilities that are necessary to enable a railway to operate safely and includes...'
Tasmania	<i>Rail Safety Act 2009</i>	' rail infrastructure means the facilities that are necessary to enable a railway to operate safely and includes...'
Northern Territory	<i>Rail Safety Act 2010</i>	' Rail infrastructure is any facility necessary to enable a railway to operate safely , including...'

It's unclear why the word 'safely' was not included in the RSNL interpretation of rail infrastructure. While the ONRSR has taken steps to provide clarification, amending the interpretation in the RSNL would provide greater clarity and address concerns raised by the ARA.

To the extent that it is limiting, a change to the definition of rail infrastructure could have a flow-on effect on the definition of rail safety work, potentially reducing the range of workers captured under the following subsections:

8(1)(d) *maintaining, repairing, modifying, monitoring, inspecting or testing –*

(ii) ***rail infrastructure***

8(1)(f) *work on or about **rail infrastructure** relating to the design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of the **rail infrastructure** or associated works or equipment, including checking that the rail infrastructure is working properly before being used*

8(1)(g) *installation or maintenance of –*

(i) *a telecommunications system relating to rail infrastructure or used in connection with **rail infrastructure**;*

(ii) *the means of supplying electricity directly to rail infrastructure, any rolling stock using rail infrastructure or a telecommunications system*

8(1)(h) *work involving certification as to the safety of **rail infrastructure** or rolling stock or any part or component of **rail infrastructure** or rolling stock*

8(1)(i) *work involving the decommissioning of **rail infrastructure** or rolling stock or any part or component of rail infrastructure or rolling stock*

Question 3: Does the current definition of rail infrastructure capture facilities and structures that are not critical to the safe operation of the railway?

3.5 Work or activities that do not constitute rail safety work

One solution suggested by the ARA is to establish a prescriptive list of work or activities that do not constitute rail safety work and, therefore, workers performing these activities would not be classified as rail safety workers.

The NTC does not recommend this option.

Section 8(2) of the RSNL provides that 'For the purposes of this Law, **rail safety work** does not include any work, or any class of work, prescribed by the national regulations not to be rail safety work'. The ARA has proposed establishing a list of work or activities to be prescribed under that section as a means of excluding classifications of workers that are perceived to have no impact on rail safety and where the work is adequately covered under WHS legislation.

The RSNL was designed as a co-regulatory, risk-based regime rather than being prescriptive in nature, recognising that not all rail safety workers or rail safety work are the same. The RSNL requires each transport operator to determine the appropriate levels of protection, training and management for each role involving rail safety work through appropriate risk assessment processes and to manage rail safety-related risks via a rail safety management system.

While the RSNL makes provision for prescribing certain work to not be rail safety work, taking such a step should only be considered where it is believed that the issue cannot be address using a more performance-based approach.

Creating a prescriptive list of exempt workers is likely to raise concerns with stakeholders for being out of step with the risk-based nature of the RSNL.

4 Recommendations and next steps

Key points

This NTC supports reducing unnecessary burden without compromising the safety of either railway operations or workers.

To achieve this outcome, the NTC recommends amending the RSNL to:

- clearly distinguish between risks to the safety of rail operations and risks to the safety of workers, which will remove obligations relating to the safety of workers where these are adequately addressed through WHS legislation
- amend the interpretation of rail infrastructure to clarify the intent that rail infrastructure means the facilities that are necessary to operate the railway safely.

Further, if the amendments are agreed and progressed, the NTC recommends that the ONRSR produces updated guidance for industry based on the amended RSNL.

4.1 Separating risks to railway operations from risks to workers

The NTC proposes that s. 8(1) ('Meaning of rail safety work') of the RSNL be amended to clearly differentiate risks to the railway operations from risks to workers and to exclude risks to workers that are adequately addressed under WHS legislation, such as work that does not present a risk to the worker that is particular to rail.

This amendment addresses the ARA's concerns that the current definition of rail safety work includes risks to workers that are adequately addressed under WHS laws. It also removes the specific link to location, concentrating instead on risk and exposure of workers to rail-specific risks.

The NTC also proposes that the words 'or associated works or equipment' be deleted because they are already included in the interpretation of 'rail infrastructure'.

4.2 Qualifying the interpretation of rail infrastructure

Amending the RSNL interpretation of rail infrastructure so it captures only that infrastructure that is 'necessary to enable a railway to operate **safely**' would better align with the objects of the RSNL and would meet the ARA's proposal for 'reinforcing the need for rail safety workers to have a direct impact on the safety of rail operations'.

The impact of such an amendment, when coupled with the recommended amendments to s. 8(1) of the RSNL, is expected to address concerns raised by the ARA that the current definition captures workers who have no direct impact on the safety of rail operations. Examples of workers who would no longer be categorised as rail safety workers might include:

- electricians, plumbers and other tradespeople engaged to perform work on station buildings such as waiting rooms, amenities and office buildings

- construction workers on both greenfield and brown field sites, unless the work being performed could directly affect the safety of infrastructure (such as the construction of the railway or signalling structures) or where the workers performing the work are at risk of exposure to moving rolling stock.

4.3 Guidance material and industry education

The NTC recommends that any changes to the RSNL be supported by the ONRSR through updated guidance material and industry education.

Detailed guidance aimed at assisting duty holders in the railway industry to identify and apply appropriate, risk-based compliance solutions will assist railway operators to make better informed decisions and remove the over-classification and under-classification of rail safety workers.

Guidance focused on identifying and managing risk in compliance with the RSNL will assist operators and rail industry bodies to apply risk-based controls appropriate to the actual risks rather than applying a 'one size fits all' approach, which can contribute to unnecessary competencies and health assessments being imposed.

The guidance would benefit from a risk categorisation decision-making tree, in line with that in the Standard, and a series of case studies.

Question 4: Do the proposed changes adequately address the issues raised without compromising the safety of either railway operations or workers?

4.4 Next steps

We are seeking submissions on this discussion paper by Friday 14 June 2019. See the 'Have your say' section at the start of this paper for information about how to make a submission.

Feedback from submissions on this paper will be used to develop recommendations for transport ministers to consider in November 2019.

If any legislative amendments to the RSNL are agreed, they will be progressed through the parliamentary process in the first half of 2020.

Appendix A Key terms in the Rail Safety National Law

rail safety worker means an individual who has carried out, is carrying out, or is about to carry out, rail safety work.

rail safety work

8(1) Subject to subsection (2), any of the following classes of work is **rail safety work** for the purposes of this Law:

- (a) driving or despatching rolling stock or any other activity which is capable of controlling or affecting the movement of rolling stock;
- (b) signalling (and signalling operations), receiving or relaying communications or any other activity which is capable of controlling or affecting the movement of rolling stock;
- (c) coupling or uncoupling rolling stock;
- (d) maintaining, repairing, modifying, monitoring, inspecting or testing—
 - (i) rolling stock, including checking that the rolling stock is working properly before being used; or
 - (ii) rail infrastructure;
- (e) installation of components in relation to rolling stock;
- (f) work on or about rail infrastructure relating to the design, construction, repair, modification, maintenance, monitoring, upgrading, inspection or testing of the rail infrastructure or associated works or equipment, including checking that the rail infrastructure is working properly before being used;
- (g) installation or maintenance of—
 - (i) a telecommunications system relating to rail infrastructure or used in connection with rail infrastructure;
 - (ii) the means of supplying electricity directly to rail infrastructure, any rolling stock using rail infrastructure or a telecommunications system;
- (h) work involving certification as to the safety of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
- (i) work involving the decommissioning of rail infrastructure or rolling stock or any part or component of rail infrastructure or rolling stock;
- (j) work involving the development, management or monitoring of safe working systems for railways;
- (k) work involving the management or monitoring of passenger safety on, in or at any railway;
- (l) any other work that is prescribed by the national regulations to be rail safety work.

(2) For the purposes of this Law, **rail safety work** does not include any work, or any class of work, prescribed by the national regulations not to be rail safety work.

railway operations means any of the following:

- (a) the construction of a railway, railway tracks and associated railway track structures;

- (b) the construction of rolling stock;
- (c) the management, commissioning, maintenance, repair, modification, installation, operation or decommissioning of rail infrastructure;
- (d) the commissioning, use, modification, maintenance, repair or decommissioning of rolling stock;
- (e) the operation or movement, or causing the operation or movement by any means, of rolling stock on a railway (including for the purposes of construction or restoration of rail infrastructure);
- (f) the movement, or causing the movement, of rolling stock for the purposes of operating a railway service;
- (g) the scheduling, control and monitoring of rolling stock being operated or moved on rail infrastructure;

rail infrastructure means the facilities that are necessary to enable a railway to operate and includes—

- (a) railway tracks and **associated railway track structures**; and
- (b) service roads, signalling systems, communications systems, rolling stock control systems, train control systems and data management systems; and
- (c) notices and signs; and
- (d) electrical power supply and electric traction systems; and
- (e) associated buildings, workshops, depots and yards; and
- (f) plant, machinery and equipment,

but does not include—

- (g) rolling stock; or
- (h) any facility, or facility of a class, that is prescribed by the national regulations not to be rail infrastructure;

associated railway track structures includes—

- (a) associated works (such as cuttings, sidings, tunnels, bridges, stations, platforms, tram stops, excavations, land fill, track support earthworks and drainage works); and
- (b) over-track structures and under-track structures (including tunnels under tracks)

Appendix B Case studies

Case study 1: Refrigeration mechanic on site to repair an air-conditioning unit on a train

Scenario: A specialised refrigeration mechanic is required to repair an air-conditioning unit in a train carriage and issue a *Certificate of Electrical Compliance*. The train has been moved to the rail siding and a lockout device put in place. All work can be completed from inside the carriage and will be completed under the operator's Permit to Work system. The operator has determined that due to the nature and location of the work, the worker is a rail safety worker and therefore subject to the requirements of the *National Standard for Health Assessment of Rail Safety Workers* (the Standard). Following the risk categorisation process in the Standard, the operator has ascertained the mechanic to be non-safety critical 'around the track personnel'. What category health assessment applies to the mechanic under the RSNL?

Option A: If the location of the carriage is such that the access can be made without crossing any area where there could be movement of rolling stock, the mechanic would not be at risk of exposure to moving rolling stock and would therefore be classified as category 4 under the Standard and would not require any specific health assessment.

Option B: The only option for locating the carriage is in a location where access is across another line in the siding, placing the mechanic at risk of exposure to moving rolling stock. The operator temporarily blocks all movement of rolling stock into, within or from the rail siding and has a fully competent and qualified rail safety worker escort the mechanic during access to or from the carriage. The environment is now controlled, removing the risk of exposure to moving rolling stock. The mechanic is therefore classified as category 4 under the Standard and would not require any specific health assessment.

Option C: The only option for locating the carriage is in a location where access is across another line in the siding, placing the mechanic at risk of exposure to moving rolling stock. For operational reasons, the operator is unable to temporarily block all movement of rolling stock into, within or from the rail siding. The mechanic is escorted to and from the carriage by a fully competent and qualified rail safety worker. The environment is now controlled, removing the risk of exposure to moving rolling stock. The mechanic is therefore classified as category 4 under the Standard and would not require any specific health assessment.

Option D: The mechanic is a preferred supplier and is frequently called to conduct work at the site. The operator would like the mechanic to access the area unescorted and therefore decides to prequalify him or her. The mechanic will need to be fully inducted and meet all the relevant requirements for uncontrolled access, including a category 3 health assessment. A Permit to Work will still be required every time the mechanic works at the site.

Case study 2: Volunteer in the heritage and tourist sector guiding passengers on platforms and occasionally supervising passengers on trains

Scenario: A heritage and tourist railway operator has several volunteer workers who act as passenger guides on the platforms and occasionally as 'on-train' passenger supervisors. On-train supervisors are responsible for monitoring the safety of passengers and assisting in guiding passengers to safety in the event of a breakdown. The operator's breakdown procedures do not allow passengers or supervisors to alight the train until the railway line is 'closed' and trained personnel arrive to manage the process. As the work will occasionally involve monitoring passenger safety, the operator has classified the volunteers as rail safety workers. What category health assessment applies to the volunteers under the RSNL?

Answer: All activities performed by the volunteers are conducted in a 'safe place'⁴ or within a controlled environment. The volunteers are not at risk of exposure to moving rolling stock. Following the categorisation process in the Standard, the volunteers would be category 4 around the track personnel, with no specific health assessment requirements.

Case study 3: Competency requirements to upgrade an existing station to a transport interchange

Scenario: The scope of works include removing all existing rail and infrastructure including demolition of existing buildings and construction of a new transport interchange in its place. The interchange will receive heavy rail trains before passengers board the light rail service. The line has been truncated and rail services are now terminating prior to the station. The interchange and station platforms will be largely constructed before construction of the tracks, overheads and signalling. The project is split into the following three main work packages:

1. removal of existing rail, overheads and signalling equipment
2. demolition of existing buildings and construction of new station buildings, platforms and other structures
3. reinstatement/construction of rail infrastructure.

What competencies are required?

Option A: The operator determines that activities in packages 1 and 3 involve rail safety work, but the work in package 2 is construction work and not rail safety work. On this basis, all workers involved in packages 1 and 3 are required to meet the relevant

⁴ In accordance with the Rail Industry Standards Board's *Australian Network Rules and Procedures*, a 'safe place' might include (but is not limited to) areas protected by features such as signals, protective barriers, standing train protection, and so forth. A station platform is considered to be a safe place behind the yellow line, but people working in such locations might still need additional protection.

competency requirements as set out in the industry-agreed national competency matrices. This includes, as a minimum, Safely Access the Rail Corridor (SARC), construction induction (white card) and other agreed rail industry minimum competencies relevant to the worker's role. The operator has determined that workers involved in package 2 are not rail safety workers and are not subject to the requirements of the RSNL.

Discussion: The arbitrary classification of workers as rail safety workers or non-rail safety workers may result in the over-classification of some workers and under-classification of others. In particular, many of the activities in package 2 are likely to be considered rail safety work under the RSNL. Construction work and rail safety work are not mutually exclusive, so the operator must meet their obligations under both the RSNL and WHS legislation. The activities across all three packages are construction work⁵ under WHS legislation. As the site is a construction site, all workers on the project are required to meet the construction-specific provisions (white card, site inductions, etc.) in the WHS legislation as well as all general provisions. Specialised trades, supervisors and others in control of certain tasks or workers are required to also hold additional certificates and competencies as relevant. The requirement to apply a risk-based approach and to eliminate or minimise risks so far as is reasonably practicable would mean that the operator's drug and alcohol programs, health assessment requirements and competency requirements would need to be applied to all workers subject to the same risk, regardless of whether they are classified as a rail safety worker. To not do so would be subjecting non-rail safety workers to a lesser standard of safety than rail safety workers.

Option B: Rather than defaulting to the industry-agreed minimum requirements, the operator takes a risk-based approach based on their rail safety management system. In applying a risk-based approach, the operator determines that virtually all workers will be undertaking rail safety work at some stage of the project and therefore decides to treat them all as rail safety workers. In doing this, the operator understands that when undertaking hazardous and risk activities it will need to consider the risks to railway operations as well as the risks to health and safety to ensure they address the requirements of both the RSNL and WHS legislation. As with option 1, the operator splits the projects into three main work packages and identifies that rail-bound or road/rail rolling stock will be used during packages 1 and 3 but not during package 2. Based on this, while all workers on the project will require basic competencies such as site inductions and trade qualifications, SARC is only necessary for workers on packages 1 and 3. Workers engaged solely for work during package 2 do not require SARC.

⁵ The Model WHS Regulations define **construction work** as any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure.

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