



# Rail Safety National Law Consultation 2026:

Australian Federated Union of Locomotive Employees Feedback

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## AFULE Feedback Context

The Australian Federated Union of Locomotive Employees is a federally registered union amalgamated with the ETU in Queensland, that represents 2000 traincrew in Queensland.

The submissions below come from the perspective of train crew working for both large and small rail operators in the public and private sectors in Queensland.

### Proposed Reform Options – 1, 2, & 3.

The AFULE is of a general view that reform without changes to the RSNL will not achieve the recommendation outcomes. MOUs, guidelines, etc will rely on enforcement by the Office of the National Rail Safety Regulator ('ONRSR') to be effective, and ONRSR has demonstrated it does not have capacity to actively enforce and regulate current matters under its purview, let alone additional ones. Lack of enforcement from ONRSR is one of the contributing factors to the current deficiencies in the application of the RSNL, and therefore this approach will not succeed. The AFULE believes Options 2 and 3 (the 'light' or 'broad' touch changes to the RSNL) are the appropriate means to enact most of the recommended reforms, provided that there is a backstop in place such as there is with most jurisdictions in Australia. However, some of the recommendations by their nature do not require RSNL changes, or the changes proposed in options 2 & 3 will go against overarching purpose of this review or beyond the recommended change and potentially diminish the importance of safety. We have provided specific feedback below.

### ONRSR's revised role

The implementation of the recommendations will require an increase in ONRSR's responsibilities and powers. The impact of interoperability & productivity reforms in particular are highlighted as requiring these powers to be expanded. We are concerned that a safety regulator will have responsibilities enforcing, facilitating, and co-ordinating productivity and interoperability initiatives.

By their very nature, initiatives of this type will put the regulator in a position where they are regulating conflicting areas of enforcement. ONRSR must remain a *safety* regulator first and foremost. Expecting a regulator to effectively balance productivity and safety is unfair and will result in an ineffective regulator that may put the safety of rail workers at risk. Who will have trust in a decision made by a safety regulator with conflicting enforcement responsibilities?

### ONRSR Decision Oversight

Who is overseeing the decisions of ONRSR? The Queensland Industrial Relations Commission ('QIRC') deals with WH&S disputes at the State Level in QLD and can be used as an escalation or review point if a decision of Work Safe Qld does not resolve a safety concern, but there is nowhere for a worker or a representative of a worker, (or a rail operator for that matter), to file a genuine safety complaint if they disagree with a decision of ONRSR, ONRSR is the end of the road.

Recommendation 11 should provide more information on outcomes to members, but there is no appeals process to a decision. This does not provide our members with any level of comfort that their on-ground concerns will be heard and determined by an independent body.

At present, the Qld experience with the ONRSR is that our members' legitimate safety concerns, fall upon deaf ears. As a union, we regularly contact ONRSR and almost always are met with disappointment in terms of our concerns. If all our concerns are to be brought under one umbrella, it would be to say that the Operators have the ear of the ONRSR and there is little to no consultation with the people on the ground or their representatives before decisions are made.

In order to address this, two things need to occur:

1. Consultation must be **early, genuine and informed**. Workers cannot contribute effectively when consultation is limited to late-stage briefings or procedural rollouts. The law should clearly support consultation at the **risk identification and design stage**, not just implementation;<sup>1</sup> and
2. There must be an independent body such as the QIRC or local Civil and Administrative Tribunal ('QCAT') to provide a means of determining whether a change made by an operator has been approved in accordance with the legislation.

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<sup>1</sup> The AFULE provided feedback to ONRSR's recent consultation on a guideline on consultation under the RSNL which occurred as per Recommendation 5. Of particular concern to the AFULE was ambiguous wording implying employers could nominate delegates themselves, and placing additional responsibility on local/low level delegates. The justification for this was that the rail operator may not know who the relevant union was – which in this industry is frankly ridiculous. If they were genuinely baffled, they could just refer to the signatory page of the agreement covering the workers.

# Specific Feedback

## Recommendation 1 - Productivity

### Option 2

*'Amend the RSNL to highlight productivity or efficiency as a secondary principle to improve productivity through improving rail interoperability and/or harmonising safety across networks*

*For instance, amending the existing 'guiding principle' 3(a) related to productivity to clearly include interoperability as a focus, in addition to amending the main purpose in 3(1)'*

We do not support this option. Any amendment to the principles of the act to include productivity must not take precedence over Safety. In fact, we question how it is possible for a body with a primary objective of safety, to effectively deal with productivity initiatives without taking its eye off its primary objective. The two objectives are incongruous and can never result in a truly safe way of implementing a productivity objective.

By way of example, in Qld, Pacific National has an exemption to the nine hour limitation of a driver only operation where a driver only can work up to 12 hours in some circumstances. That exemption has no end date to it and there is no intention on the part of ONRSR to review or terminate the exemption and there is no way for the workers or their representatives to dispute the exemption. It's purely for the benefit of Pacific National's productivity and it takes the focus off safety.

### Option 3

*'Amend the RSNL to highlight productivity or efficiency as a key principle.*

*For instance, inserting productivity through improving rail interoperability as an 'object' of the RSNL'*

We do not support this option. Anything that goes beyond the scope of the RSNL recommendations should not be implemented. The recommendation is to strengthen the link between safety and productivity, not diminish the RSNL's primary purpose as safety legislation.

## Recommendation 2 - Regulator's Coordination/Facilitation Role

### Option 2

*Amend the RSNL to give the Regulator an explicit role to deliver safety and productivity benefits by improving safety through interoperability and harmonisation*

The AFULE does not support this recommendation. A safety regulator like ONRSR should not have a legislated obligation to delivery productivity benefits as it places the regulator in conflict with its primary purpose.

## Recommendation 4 - Consultation provisions in the RSNL to be strengthened

### Option 1

The AFULE does not believe this will achieve the recommendation. Given the biased draft guideline produced by ONRSR for recommendation 5 which makes understanding genuine consultation with Unions even more confusing, and provides loopholes for rail operators to avoid genuine consultation by claiming ignorance of who the relevant union is, or by placing all responsibility on a local delegate who may not have that responsibility under their union's delegate structure (see footnote 1 & below), option 1 is unlikely to achieve the recommendation.

### Option 2

The AFULE supports this option, but the drafting of such provisions would need to accurately capture the case law and make rail operators' obligations clearer rather than creating new ambiguities. Use of wording directly lifted from *Aurizon Operations Limited v RTBU NSW Branch; ONRSR v RTBU NSW Branch* [2024] NSWCA 24 would assist in this. Eg per Adamson JA at [70], s 99 (3) (iii) '...can be taken to have intended only a union of which at least one of the persons covered by s 99(3)(a)(i) (as I have construed it) was a member' quite clearly articulates a requirement to consult with any union with an impacted member.

The ONRSR draft takes this decision, and somehow decides it means rail operators can run union delegate elections, and that ONRSR gets to place responsibilities on union delegates, when that would be the purview of the Fair Work Commission applying the *Fair Work Act 2009* (Cth) if it was to be anybody save the union itself.

*"If an operator is not sure whether those workers likely affected are represented by a union, when the workers who are likely affected are notified, **the operator should invite them to nominate a union representative.** In terms of identifying specifically who to consult with from a nominated union, consultation should commence with the local union delegate. If wider consultation within the union is required, **it is the responsibility of the local union delegate to escalate this within their union and to keep the operator informed.**"<sup>2</sup>*

## Recommendation 6 – Worker access to SMS & demonstration of competency

### Option 1

*'Emphasise and publicise ONRSR's Safety Management System guideline, or develop an approved code of practice setting minimum requirements associated with existing requirements in sections 14 (internal communication) and 15 (training and instruction) of Schedule 1 to the national regulations.'*

The AFULE does not support this option as it is inadequate to address recommendation 6.

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<sup>2</sup> Office of the National Rail Safety Operator, *ONRSR Guideline Draft Consultation under the Rail Safety National Law* (ONRSR Guideline, 29 January 2026) 8.

## Option 2

*‘Amend the RSNL to include a positive obligation on RTOs to demonstrate that all rail safety workers (employees and contractors) are competent in the carrying out of rail safety work*

*For instance, section 52 - Duties of Rail Transport Operators’*

The AFULE strongly supports Option 2 (a positive obligation on RTOs to demonstrate all rail safety workers are competent in carrying out safety work), but an enforceable right of access for workers and their representatives is needed.

## Recommendation 11 — Confidentiality Provisions

### Option 1

*‘Introduction of a MOU or a ministerial statement outlining that important rail safety information should be shared by the Regulator with the rail industry in a timely manner. This will facilitate learning and provide opportunities to improve safety and offer greater transparency to stakeholders on the Regulator’s activities’*

The AFULE does not support this option as it is inadequate to address recommendation 11.

### Option 2

*‘Amend the RSNL confidentiality provisions to allow information sharing between the Regulator and industry. Where there is a safety benefit, give ONRSR the power to share information. Note the intention is to allow the Regulator to share information as appropriate, and not introduce a broad proactive obligation.’*

The AFULE supports this option. Where breaches are raised to ONRSR, we are not able to get any follow up information or outcome details. ONRSR should be able to provide information to at least to the same level as the state WHS regulators regarding a complaint if requested: i.e., Has it been investigated? Is the investigation over? Was a contravention found? Although a proactive obligation is not required, where a request is made, ONRSR should not be able to unreasonably refuse such requests.

Where we have made a complaint of a suspected breach, as a bare minimum, knowing if a breach had actually occurred or not greatly assists us in advising and supporting members with their safety concerns.

## Recommendation 16 – Interoperability (encompassing Recommendation 3)

### Option 1

*‘Amend the RSNL to include interoperability as a secondary object.’*

*For instance, section 3(2) - Purpose, objects and guiding principles of Law.’*

We are concerned that even as a secondary object, this option still risks diminishing the importance of safety under the RSNL. Any amendment would need to explicitly stress the secondary nature of interoperability as a focus, and the supremacy of safety as principal object.

## Option 2

*‘Amend the RSNL to highlight interoperability as a key object and a guiding principle, with equal weighting to safety. To the extent that interoperability and safety duties conflict, the safety duty will prevail*

*For instance, inserting interoperability as an ‘object’ of the RSNL in section 3(2)*

*Include a definition of interoperability, adopting similar language to that in section 20A of the RSNL Regulations or adopting the definition proposed in section 1.2 of this C-RIS document ‘*

The AFULE does not support this option. This option goes further than the recommendation requires, and as this proposal would diminish safety, should not be implemented.

## Recommendation 20 - National Skills and Competencies

*‘Establish a national set of competencies that would be recognised by all RTOs and includes the following elements:*

- a) The mandating and awarding of qualifications and units of competency for nationally recognised training (NRT);*
- b) Nationally recognised qualifications and units of competency where emerging gaps are identified;*
- c) The validation of localised training and competency assurance processes;*
- d) Mandating a national competency management system to support mutual recognition;*
- e) Established national safeworking rules, and ensuring changes are made at a national level;*  
*and*
- f) Defining and implementing national rail roles’*

## AFULE Feedback

This recommendation is of key importance to the AFULE, as the training & qualifications provided to ‘Train Drivers’ is an inconsistent mess.

Train driver is not defined by the RSNL.<sup>3</sup> Currently, assessment is covered by **s 117 Assessment of competence**, and the existence of an AQF qualification in the form of a Certificate IV in Train Driving means that is the primary qualification sought and expected of a train driver. The closest thing to a definition of what a qualified train driver is, is provided in the ONRSR Fact Sheet: *Interpretation of Queensland Specific Fatigue Requirements: FAQs 2020*. This factsheet states:<sup>4</sup>

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<sup>3</sup> Excluding s 20 of the [Rail Safety National Law \(Queensland\) Act 2017](#) which provides a definition in relation for that section relating to when a police officer has authority over a rail safety worker operating or suspected of operating a train.

<sup>4</sup> Office of the National Rail Safety Operator, *Interpretation of Queensland Specific Fatigue Requirements: FAQs*, (ONRSR Fact Sheet, October 2020) 4.

### 13. What competencies does a rail safety worker have to hold to be defined as a qualified driver?

To be a qualified driver a person must be competent as per section 117 of the RSNL including:

- > classroom training (completion of the core competencies of TLI42615 Certificate IV in Train Driving or other as per the ONRSR Application of the AQF to Rail Safety Worker Competence Assessment Policy; and
- > practical training in traction and safe working.

Note- A second driver would still be recognised as being qualified provided the above training had been completed but may still be learning a route or undergoing an assessment.

The ONRSR Policy *Application of the Australian Qualifications Framework to Rail Safety Worker Competence Assessment* referred to is a broad policy on training for Rail Safety Workers generally, and when applied to train drivers, simply lists the many ways an operator can employ train drivers **without ensuring** they have the AQF Cert IV in Train Driving.<sup>5</sup>

Many of these considerations may be adequate and appropriate for other rail safety workers, but for train drivers, the opaqueness provides loopholes that pose genuine safety risks due to poor training, the ability for the Limitation of Hours of two driver operations to be applied to crews where one ‘driver’ is not actually a driver, and ways for operators to ‘trap’ employees by failing to provide them the nationally recognised qualification – the Cert IV. This last point impacts productivity in the same manner non-compete clauses do, and is therefore against public policy,<sup>6</sup> and within consideration of the scope of recommendation 1.

We quite regularly encounter drivers who have been with Aurizon in Queensland for many years and have not been upskilled to the Cert IV. Sometimes they aren’t even *aware* they lack a Cert IV. As of April 2026, we have encountered two such situations this year. The first had several years away from train driving performing another role within the company but had been back driving for two years. They were repeatedly rebuffed when seeking to have their Cert III upgraded to a Cert IV, as the Training Supervisor claimed that as per s 117 of the RSNL, a cert IV was not required. The driver felt trapped and unable to look for work elsewhere.

Under the ONRSR policy - *Application of the Australian Qualifications Framework to Rail Safety Worker Competence Assessment*, a rail operator is not expected to **immediately** re-assess workers under new AQF qualifications, however ONRSR does expect re-assessment to new qualification to occur within a reasonable period.<sup>7</sup> It was only after the AFULE reminded Aurizon of this fact, that the Cert IV training was scheduled in for our member.

The second driver had been with Aurizon for 20 years and was a driver trainer. He only discovered he did not have a Cert IV after he was terminated when he sought a copy of it to find employment elsewhere.

We have not encountered this issue with long term drivers with Queensland Rail. It appears that QR drivers employed before the Cert IV, have been up skilled to the new certificate. Queensland Rail has

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<sup>5</sup> Office of the National Rail Safety Operator, *Application of the Australian Qualifications Framework to Rail Safety Worker Competence Assessment*, (ONRSR Policy, No ONRSR-1963997744-2852, 15 October 2025) 4-6 (*‘ONRSR AQF Policy’*).

<sup>6</sup> See e.g. ‘Cracking down on non-compete clauses to boost wages and productivity’ (Joint Media Release, Ministers of the Employment and Workplace Relations Portfolio, 25 March 2025) <<https://ministers.dewr.gov.au/chalmers/cracking-down-non-compete-clauses-boost-wages-and-productivity>>.

<sup>7</sup> *ONRSR AQF Policy* (n 5) 6-7.

however, failed to maintain competency and assessment records for other qualifications, and members have discovered that QR has, for example, no record of their diesel qualifications, despite these drivers having been operating diesel locomotives, and the clear requirement that QR maintain such records.

With the smaller operators, we have encountered issues with route competency training and assessment. For example, Watco has trainers who do not hold the relevant route qualification, assessing and signing off drivers on the route, with an ‘SME’ in the cab – a driver with the route qualification, but no training qualifications. Where a driver acting as ‘SME’ expressed discomfort with the appropriateness of this arrangement and said they did not want to participate, Watco threatened disciplinary action against them for not following a lawful and reasonable instruction. When we raised our concerns with this arrangement to ONRSR, they were unconcerned.

No other operator in Qld has this arrangement – routes are taught and assessed by drivers who have the route qualification already. Many serious incidents are caused by lack of vigilance or errors in cross calling (eg the Westwood incident which occurred during route tuition), and having someone who does not have competency in the route assessing route competency, relying on a driver with no training qualifications, is demonstrably, a recipe for disaster.

## Option 1

*‘An MOU between operators to recognise each other’s competencies or mutually recognise national competencies.*

*Introduction of an industry code outlining that RIMs and RSOs will deliver or utilise standard qualifications and issue accreditation for training provided.*

*Rec 20 (b-c)*

*The NRAP program will support delivery of a mutual recognition framework, including national competencies and courseware’*

The AFULE does not support this option. These recommendations will not address any of the issues impacting train drivers. MOU’s and industry codes will not be evenly adopted or enforced. It is inadequate to meet the requirements of recommendation 20, and would achieve little more than maintain the status quo.

## Option 2

*‘Rec 20 (a-d) Pursue regulatory amendment to ensure transferrable skillsets are recognised and reduce existing potential for variance across jurisdictions by: strengthening the requirement to issue qualifications and units of competency where they exist, requiring the use of a national competency management register (containing competency information including inputs from competency management systems where they currently exist)*

*Rec 20(e) Include mechanism for driving adoption of harmonised national safe working rules as part of tier 2 standards, rules and processes.*

*Rec 20(f) Include national rail roles in the RSNL (eg encompassing roles such as train driver, train controller, signalling engineer as well as a range of maintenance roles)’*

**Rec (a- d)** The AFULE supports these recommendations, particularly *‘requiring the use of a national competency management register (containing competency information including inputs from competency management systems where they currently exist)’*

**Rec 20 (f)** The AFULE strongly supports this recommendation, and believes such definitions are vital to successfully implement recommendation 20 and would address many of the competency and qualification issues impacting Train Drivers. To that end, a system of licensing for train drivers could be appropriate. However, we suggest an exception or consideration on what defines a ‘train driver’ for certain rail operators may be appropriate:

## Qualifications for Historical and Boutique Railways

We have noted that the 2024 changes to the National Standard for Health Assessment for Rail Safety Workers have placed a financial burden on retiree & volunteer drivers within historical and social associations to pass additional sleep apnoea testing and purchase C-Pap machines which has threatened the ongoing operation of some of these associations. Therefore, in exception to rec 20(f) the above, we believe that drivers with historical societies or boutique private railways operating within a closed system should be competent on the operation of their locomotive class, with training provided by the historical association and previous experience and qualifications considered, but those operating on the mainline should be a ‘train driver’ as per any definition of the role added to the RSNL.

For example: A volunteer retired driver operating on a closed system as part of a historical association, who is a qualified driver under the current RSNL, would still be deemed qualified and not required to undertake expensive retraining to meet a new definition of train driver.

Further feedback. Although as noted, there may be an additional administrative burden on operators as a result of option 2, it will alleviate some current administrative burdens, such as the requirement for smaller and heritage operators to assess how s 117 applies to their workers as per *ONRSR Policy Application of the Australian Qualifications Framework to Rail Safety Worker Competence Assessment*. We have had feedback from operators in Queensland that this can be challenging and confusing.

## Option 3

*‘Amend the RSNL to require the use of a national competency management system (rather than RTOs or industry bodies maintaining their own) in order to recognise transferrable skillsets and reduce existing potential for variance across jurisdictions’*

*‘Impose mandatory standards for national safe working rules. Note that recommendation 20(e) did not originally foreshadow the mandating of safeworking rules’.*

The AFULE supports these recommendations being implemented alongside the recommendations in Option 2 – such as the national rail roles.