

File reference: OTSI-1665555560-437239

National Transport Commission
Public submission – RSNL C-RIS
Level 3, 600 Bourke Street
Melbourne VIC 3000

by email

11 May 2026

**SUBMISSION TO CONSULTATION – RAIL SAFETY NATIONAL LAW – CONSULTATION
REGULATORY IMPACT STATEMENT**

Thank you for the opportunity to provide feedback to the Rail Safety National Law Consultation Regulatory Impact Statement (C-RIS).

The Office of Transport Safety Investigations (OTSI) is the independent transport safety investigator for NSW. OTSI undertakes investigations into rail incidents in NSW under NSW Laws as well as rail investigations under the provisions of the Transport Safety Investigation Act 2003 (Cth) in line with a Collaboration Agreement with the Australian Transport Safety Bureau (ATSB).

Due to OTSI's unique role in the rail environment, it is not appropriate for OTSI to identify a preferred option against every recommendation, but I have endeavoured to do so where appropriate and to provide commentary derived from our rail investigations to assist the decision-making process.

If I can be of further assistance, please feel free to contact me.

Yours sincerely

<signature removed>

Jim Modrouvanos
Chief Executive & Chief Investigator

E [REDACTED]

Encl. Consultation Feedback Document

Office of Transport Safety Investigations

Rail Safety National Law

Consultation RIS Submission

Introduction

The Office of Transport Safety Investigations (OTSI) is the independent transport safety investigator for NSW. OTSI undertakes investigations into rail incidents in NSW under NSW Laws as well as rail investigations under the provisions of the Transport Safety Investigation Act 2003 (Cth) in line with a Collaboration Agreement with the Australian Transport Safety Bureau (ATSB).

As part of the process of investigation, the identification of system-wide safety issues and their contributing factors form a core consideration. OTSI investigations regularly find that processes are not implemented as intended by the Safety Management Systems of individual RIM/RSO's or are not aligned with industry or regulatory guidance. This can be for a number of factors including immature systems, local custom and practice, how resources are procured or drift that has occurred over time.

OTSI supports improving the interoperability of the rail network and sees opportunities to improve both the safety and productivity of the network.

Overview

OTSI notes that the consultation document contains a theme throughout that is anticipating the need to reconcile a potential conflict between safety and harmonization/interoperability objectives.

OTSI is of the view that the transition to a harmonized network needs to occur within a robust safety change framework where the safety goals are clearly articulated and the accountabilities of the parties are clearly defined. In practice there is likely to be a number of steps in the interoperability journey which will mean that the network will need to evolve safely through a number of transitional states. OTSI also observes that there is an assumption that the network in its current state is as safe as it can be. The current variability in approach across the network creates the need for a higher consciousness between workers as they need to be cognizant of their specific geographic location and the specific practices and procedures that apply in that environment. This increases the potential for human error and means that the network is not as safe as a harmonized network.

The NTC may wish to consider whether a set of guiding principles may assist to contextualize and illustrate the safety objectives of a harmonized network, which may include:-

- Safety should be considered in terms of the NNI and interconnected networks as a whole. A harmonized network removes the potential for a range of human error scenarios for workers across the network whether they be operational or technical.
- The priority should be to harmonize to improve safety in the first instance then harmonize for productivity.
- At any point in the evolution of the NNI and interconnected networks, the safety target should be for the network to be safer or no less safe than the starting point.
- Risk based principles should form the core of decisions and the temptation to move towards the lowest common denominator should be avoided. If a party has demonstrated that a control is SFARIP then it shouldn't be wound back just because it isn't standard practice for another entity.
- Requirements across the network should be the same for like areas e.g: Remote, Regional, Metropolitan.
- Individual RIMs and governmental bodies should be required to make decisions in consideration of whole of network outcomes rather than what is best for an individual RIM or geographic area.
 - This should flow into the processes for investment decisions particularly funds allocated by commonwealth, state or territory bodies.
- Guidance should be provided for the consideration of harmonization aspects in:-
 - Major upgrades of existing networks
 - Major capital investments in new technology
- The RSNL guiding principle that the operator holds the primary duty for the safety of their operation should remain and that should not be compromised by prescriptive requirements that remove or transfer safety risks.

OTSI observes that the tensions between safety and harmonization/interoperability arise from various factors that if addressed could provide the pre-conditions for a safe transition towards greater harmonization. Previous challenges to greater interoperability have included:

- Lack of clear national policy objectives.
- The significant investment required to move away from legacy assets.
- No mechanisms to resolve conflicts between the state interest and the national interest.
- Lack of financial return on parts of the network to justify investment.
- Differing priorities across the network.
- Lack of alignment of investment cycles across the network.
- The need to plan projects around minimizing or eliminating network disruption
- Competition between projects for scarce resources

Question 1:

RSNL Review recommendation 1.

OTSI observes that Option 1 effectively represents the status quo and Option 3 may be too restrictive. There are circumstances where interoperability has a direct safety benefit to the NNI by harmonizing systems in a way that removes a layer of human error. This has been observed in many OTSI investigations where track workers or drivers make mistakes due to the differences between systems. It should also be recognized that harmonization may also be driven by economic factors for networks that are not part of the NNI. Conformity with like standards would allow non NIN participants access to greater economies of scale and a larger pool of skilled personnel.

RSNL Review recommendation 2.

The primary duty should always be to maintain the safety of the network. If there is a conflict between safety objectives and harmonization objectives ie the harmonized solution is less safe than the current state, further safety engineering should be undertaken to ensure the network is no less safe.

RSNL Review recommendation 3.

There should be a principle that the harmonized safety outcome should be as safe or safer than the base case. Reasonable practicality as established across the network should be considered rather than harmonization at the lowest common denominator.

As interoperability applies to the NNI only, care should be taken to ensure that harmonization of standards across the NNI does not degrade the safety of interconnected non NIN networks.

RSNL Review recommendation 16.

Safety must be a primary consideration. The objective should be to deliver a safe interoperable system across the NNI. In addition consideration should also be given to the flow on effect that changes will have on the safety of interconnected networks, as this has a relationship to amongst other things, harmonised competence, training and assessment.

RSNL Review recommendation 18.

On the basis discussed above, the optimal safety outcomes should be considered on a whole of network basis.

RSNL Review recommendation 19.

The safety principle whereby RSO's are responsible for managing their own operational risks should be maintained. Mandated acceptance of testing by other RSO's may limit the RSO's ability to manage risk and assure operational safety in a manner consistent

with their unique operating risks. It is important that a clear understanding is formed of common tests and assessment activities that do not need to be replicated and unique activities which need to be undertaken to address unique safety and operational risks.

RSNL Review recommendation 20.

OTSI observes that the options discussed here largely represent the status quo. National standards exist currently for competence and competency assessment, however the quality and delivery of training to current national standards is varied. There is an opportunity to provide ONRSR with powers to regulate the quality of rail training and assessment organisations, and the assurance of competency (not just acceptance of qualifications) on engagement of RSW's.

OTSI observes that training is presently delivered in a manner contextualized to the operator and specific job demands, with additional variances observed between Registered Training Organisations depending on their individual interpretation of the relevant nationally recognized training packages.

Skills are not directly transferrable to a new operator without competency assurance activities, and additional training and assessment. Mandating the acceptance of qualifications would require a much tighter quality control of training outcomes and a stricter definition of the competencies to be mutually recognised.

Competency of RSWs associated with the emerging RSW labour hire market also need to be addressed. In these circumstances RSWs are provided by organisations that are not regulated but may work for a range of regulated entities. OTSI has observed in our investigations that assurance activities are not always being undertaken to ensure that labour hire staff are competent in the environment in which they are being engaged. Qualifications issued in a different operating environment are being accepted as evidence that workers are competent in all environments which carries significant safety risks. There is an opportunity to provide ONRSR with more powers to strengthen safety by regulating entities providing staff through these means.

OTSI supports the harmonizing of training packages and standards as a means to address these concerns, but care should be taken with mandating the acceptance of qualifications issued on local standards.

Institutional Governance

Interoperability assessment of future investments

OTSI observes that these requirements should flow through to the investment decision frameworks of state governments and the commonwealth. The connection between interoperability outcomes and funding will be a key lever for the transition of the network.

Safety and interoperability should be tied together.

National standards development and adoption

Option 2 would provide strong motivation for industry participants to contribute to the development of the common standards base.

Skills and competency oversight

Please refer to our answer for recommendation 20. Safety must be the primary duty underpinning the changes. A competency register alone in isolation of additional competency assurance and risk management requirements would not provide improved safety outcomes based on OTSI's safety investigation observations.

Rollingstock Approval

Option 2 is supported as it would provide a central database of approvals and evidence of compliance which could be accessed by parties as part of their assurance processes.

The obligation of the duty holder for risk assessment and assurance must remain and not be diminished by any requirements to accept testing or qualifications. That does not mean that a duty holder needs to duplicate testing that has already been undertaken, however they should assure themselves that the testing conducted is directly applicable to their circumstances and to identify any exceptions or local domain circumstances that need to be added to the base of acceptable prior testing.

Transparency and Accountability

RSNL Review recommendation 4.

OTSI has observed in a number of its investigations that consultation has not been undertaken with the workers that actually undertake the work but by more senior staff that may have undertaken such work in the past but are not doing so today. Meaningful consultation should be undertaken with staff actually performing the task and their feedback should be appropriately recorded, assessed and decisions documented.

RSNL Review recommendation 6.

Option 2 is supported as it would align very well with options outlined in recommendation 20 to assure competency.

RSNL Review recommendation 11. The confidentiality provisions in the RSNL be reviewed

OTSI observes that reference should be made to specific information such as notifiable occurrences. Although OTSI is a NSW statutory office with the powers to investigate rail incidents in NSW, previous regulators have declined to provide key information to inform OTSI's investigative priorities. Although this is not an issue currently, such a change would ensure that continuity of this information in the future would not be impacted by the views of individuals.

RSNL Review recommendation 22.

OTSI observes that the current arrangements have not been effective in the management of key risk areas such as level crossings. OTSI supports a comprehensive approach as the best means to ensure safety.

Consultation Questions

Question 1: Which is your preferred option for each recommendation?

Due to OTSI's unique role in the rail environment, it is not appropriate for OTSI to identify a preferred option in every case, but we have endeavoured to do so where appropriate.

Question 2: It is proposed that all the reforms would be made nationally (avoiding separate pieces of legislation for NNI and other networks), but it is recognised that the application of the legislation may vary between networks. Are there specific reforms that should only be applied to some networks?

Technical interoperability would not need to apply in cases of network isolation such as gauge separation, metro systems or tourist railways, however the other components relating to competency and interface agreements should be applicable.

Some of the requirements of the NNI would also flow into networks that interface with the NNI such as a common set of scalable safeworking rules.

Question 3: Will the relationship between the WHS legislation and RSNL change because of the expanded scope? Will WHS law still prevail to the extent of any inconsistency? If so, would this negate any legislative change designed to facilitate interoperability - if for instance a safety requirement under WHS prevails over an interoperability requirement of the RSNL?

The principle should be to achieve safe interoperability in terms of whole of network. An individual RSO or RIM could argue that a particular solution gives the optimal safety outcome for their specific circumstances but the flow on effect to the network may be to introduce inconsistencies which reduce safety across the whole network.

Question 4: How can the RSNL be amended to reflect its focus on rail operations, while clarifying WHS legislation's focus on other workplace safety matters?

Potentially by drawing a larger distinction between the rail safety element of work and generic work activities that are better regulated by WHS legislation .

Question 5: What additional or different functions and powers will ONRSR need to support compliance with interoperability requirements? For example, requiring additional periodic reporting from RTOs, additional powers to publish data, any additional functions related to the certification, registration and testing of rolling stock etc

ONRSR would need powers to require RTOs to provide evidence of interoperability and risk assessments. This may include a positive obligation on RTOs to advise when they are making a decision that is not aligned with interoperability goals. ONRSR may also need the ability to issue sanctions or corrective notices to RTOs in circumstances where a decision to act against interoperability is not justified.

Question 6: Rec 2 - Will it be necessary for a RTO to consent to the Regulator having a coordinator or facilitation role in any specific issue? If not, how will the Regulator assume such a role?

The intent of the recommendation is to coordinate the delivery of safety and productivity benefits. It would be expected that the RTO would be motivated to achieve these outcomes for commercial reasons or through government policy levers. The regulator would be expected to consult broadly and lay out a plan that all parties would need to adopt as part of their strategic planning and investment pipeline.

Question 7: Rec 2 - What skills and qualifications would the Regulator's delegate need to possess in order to competently provide a coordination or facilitation role?

OTSI is of the view that ARISO is better placed to advise as they have been working across the industry to harmonise standards for some time.

Question 8: Rec 2 - Is there a need to have a new class of 'rail safety officers' within ONRSR who would only carry out the coordinating and facilitating role, and not any enforcement role?

ONRSR already possesses staff whose purpose it is to educate the industry. This is consistent with standard regulatory approaches which seek to achieve behavioral change through a blend of education and enforcement. This new function appears to fit within that range of activity.

Question 9: Rec 2 - Will there be an immunity from prosecution or other enforcement action if a RTO acts on any advice given by the Regulator when the Regulator is carrying out a coordination or facilitating role?

No, it should be the RTO's role to execute any activities in a manner consistent with established safety principles. If an RTO identifies a safety issue resulting from a direction of the Regulator, then there should be a means of identifying the issue and engineering a solution that delivers an appropriate level of safety.

Question 10: Rec 2 - To the extent that the Regulator is empowered to make any decisions in connection with its coordination or facilitation role, would those decisions be reviewable?

Yes, particularly to resolve issues of disagreement over safety outcomes, however reviewable decisions should be restricted to issues of significance.

Question 11: Rec 3 - What factors should the Regulator consider, beyond the definition of interoperability, to ensure that any general duty for interoperability under the RSNL is clearly understood and practically enforceable?

The Regulator may wish to consider how transitional states are structured, implemented and managed. The progression towards an interoperable outcome may

require interim steps which may seem to be working against an interoperable outcome but are necessary to ensure that the transition occurs in an orderly and safe sequence.

Question 12: Recommendation 3 to mandate requirements to achieve specified interoperability outcomes includes options to include interoperability as a sub-part of the general safety duty or as a separate explicit duty in the RSNL. How do you think these options may work in practice?

The party would exercise their duty by providing evidence that they understand the interoperability outcome and that they have made decisions consistent with that outcome. Each business case should include either fully or partially interoperable options as part of the base case.

Question 13: Rec 4 - Do the current consultation provisions allow for input from affected workers and/or their representatives?

In theory, however, OTSI has identified many cases where insufficient consultation has occurred.

Question 14: Rec 4 - How should the principle of ‘meaningful consultation’ be applied to strengthen the consultation requirements of the RSNL?

Consultation should be undertaken with the workers that are actually undertaking the work and evidence collected of their feedback, its consideration and any actions taken. This consultation should occur in circumstances where:

- Processes undertaken by workers are being introduced or altered.
- Safety cases are being developed that impact specific workers

Question 15: Rec 4 - What evidence should be relied upon to demonstrate that meaningful consultation has occurred? Who should determine non-compliance?

Evidence should be collected of the questions asked, the feedback, its consideration and any actions taken. A guideline could be published by ARISO that contains the type and form that the information could take.

Question 16: Rec 11 - What safety information should the Regulator make available to the industry to improve safety outcomes? How should this information be shared between parties?

Incident types, common risks, trends and common factors found in its regulatory actions. Case studies and knowledge articles on technology use across other international rail operations.

Question 17: Rec 18 - Should recommendation 18 to compel RIMs to consider implications to the wider network in implementing network rule or infrastructure

changes be extended to rolling stock operators, network authorities, and/or infrastructure owners?

In many cases the investment decision that will determine the extent of interoperability is not being made by a RIM but by a funding entity such as a commonwealth, state or territory government.

In the case of rollingstock operators there may be a case for a minimum set of interoperable systems in order to streamline the training of drivers and maintenance personnel.

Question 18: Rec 18 - How should the SFAIRP principle apply to any interoperability requirements? If not qualified by SFAIRP, are there any other qualifications that would apply?

The party implementing the requirement would need to continue to meet SFAIRP requirements. This is particularly the case where localized decisions may seem safer at first glance but introduce inconsistency which lessens safety across the network.

Question 19: Rec 18 - What kind of tangible evidence would be required to satisfy ONRSR that a RIM had in fact given consideration to interoperability?

Most RIMs would have a robust Asset Management System which would include procedures for the allocation of funds to major renewals or capital works. These systems should include interoperability options as part of their process. In any funding decision the RIM should be able to provide evidence of how interoperability was considered and assessed in the decision. This would be further evidenced by the procedures that will be harmonized, systems that will be changed or staff competencies that will be aligned.

Question 20: Rec 19 - Should the ability of a RTO to mutually recognise the approval of technology be optional or mandatory?

Perhaps both will be necessary as confidence is built in the process. Initially optional which would then transition to a mandatory recognition.

Question 21: Do you think the governance suite of options are effective to support interoperability?

The majority of large steps towards interoperability will be taken through decisions of governments. The ITM role needs to be strengthened such that interoperability decisions are backed by the policies of commonwealth, state and territory governments. These policies should also be enshrined in their investment decision processes such as those governed by Infrastructure Australia and Infrastructure NSW. In terms of the private sector there may be other levers that can influence decisions

such as government grant and taxation processes that would be predicated upon investments that further interoperability.