
AMWU
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The AMWU

The Australian Manufacturing Workers' Union (AMWU) is the primary union representing manufacturing and maintenance workers in the rail industry. We are more than 55,000 members strong, and we live and work in every region and city of the country. Our members manufacture, maintain and repair trains and trams. We welcome the opportunity to make a submission to the Rail Safety National Law, Consultation Regulatory Impact Analysis Statement (RIS, C-RIS) 2026.

NTC - Rail Safety National Law 2026 Consultation

Introduction

In 2024, the National Transport Commission (NTC) completed its Rail Safety National Law (RSNL) Review – Final Report. The report set out 24 recommendations pertaining to the existing laws regulating the rail industry. Since that time, the NTC has provided a further opportunity for interested parties to comment on the legal reforms it has advocated.

The AMWU welcomes the opportunity to participate in this consultation but holds serious concerns regarding the recommendations the NTC has outlined. It is the view of the AMWU that these recommendations are driven by ideology rather than by an evidence-based approach grounded in the factors most likely to ensure the safety and wellbeing of passenger's, firms and workers in the sector. The remainder of this submission explores these contentions in greater detail and makes the case for sensible, evidence-based reform of the current regulatory regime.

This submission should be considered alongside the consultation discussion held between the National Transport Commissions meeting with the AMWU, Friday, 20 March 2026.

Addressing the RSNL reviews Recommendations

Recommendation 1: Strengthen the link between safety and productivity in the RSNL

The RSNL should be amended to strengthen the link between safety and productivity. This could be done perhaps through the guiding principles of the law, so that the law and Regulator can play a more active role in identifying and resolving barriers (where appropriate/agreed) to productivity at the national level, where these can be balanced against delivery of safety improvements. This could particularly be the case for the defined National Network on Interoperability (NNI) to achieve mandated interoperability outcomes.

The AMWU remains opposed to this attempt to link safety and productivity, with the reviews context of having to strike a balance (i.e. trade off). Productivity is a measure of

efficiency, defined as the ratio of output (goods or services) produced per unit of input (labour, capital, or materials). It measures how effectively resources are used to achieve results, often expressed as output per hour worked. High productivity means generating more output with the same or less input[1]. Safety is the state of being protected from harm, danger, injury, or loss. It involves controlling recognized hazards to achieve an acceptable level of risk, ensuring freedom from conditions that can cause death, damage to property, or environmental harm[2].

The two are mutually exclusive, and whilst it is noted productivity can arise as a result of safety, this is not the context which has been proposed as part of the RSNL review. The proposal to elevate productivity to an equal standing as safety will undoubtedly lead to a dilution of safety in the rail industry as a result of rail operators linking productivity and profit, profit being the key motivator for the majority of the rail industry.

The AMWU recommends a legislative unshackling of safety and productivity. The current guiding principal, *to assist rail transport operators to achieve productivity by the provision of a national scheme for rail safety*, should be deleted.

Recommendation 2: Provide the Regulator with a coordination or facilitation role to deliver safety and productivity benefits

The RSNL be further amended to give the Regulator an explicit role to coordinate and/or facilitate (and powers to do so if needed) delivery of such safety and productivity benefits.

The reviews stated aim of "strengthening the link between safety and productivity" reflects a relationship that is not merely aspirational — it is empirically well established. As safety standards improve across a sector, productivity correspondingly increases. Safer workplaces protect the human capital of the workforce, passengers and network by reducing injury rates and mitigating the psychological and physical stress associated with hazardous conditions, thereby supporting more consistent and efficient performance. Robust safety standards also serve to curb rent-seeking behaviour: in the absence of adequate regulation, firms may pursue profit without sufficiently investing in the safety or productive capacity of their workforce, effectively externalising risk onto workers and the broader community and, in doing so, eroding the very human capital upon which long-run productivity depends.

It is nonetheless apparent that the NTC's framing carries an implicit message — a desire to reduce the administrative burden of the safety regime — and in doing so, reproduces the persistent myth that regulatory compliance suppresses productivity. The AMWU is

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[1] https://www.rba.gov.au/education/resources/explainers/productivity.html#:~:text=Download%20the%20complete%20Explainer%20154KB,explained%20by%20changes%20in%20inputs.

[2] https://dictionary.cambridge.org/dictionary/english/safety

concerned by this framing. It reflects a conflation of productivity with profit that has become increasingly prevalent in employer discourse, and which this submission respectfully submits has no place in the reasoning of a safety regulator. Put plainly: rail operators wish to spend less on safety in order to improve their margins and are seeking regulatory support for that objective.

Productivity is not profit. Productivity is a measure of the output generated from a given set of inputs — as the efficiency of those inputs improves, so too does productivity. Profitability is a distinct and separate concept. Under the Corporations Act, a firm's primary legal obligation is the pursuit of profit — not productivity, not workforce wellbeing, and not safety. When regulators uncritically adopt the language and assumptions of commercial actors, they risk reorienting policy around profit maximisation rather than the genuine safety and productivity outcomes the regime exists to deliver.

The AMWU recommends the NTC to develop a full and considered understanding of what productivity means, what it does not mean, and how it is genuinely advanced. The AMWU further submits that the NTC's mandate does not extend to economic policymaking. Its function is to ensure the safety of workers, passengers and infrastructure across the industry. That remains the task — and it should not be diluted. We oppose the regulator having an explicit role to coordinate and/or facilitate (and powers to do so if needed) delivery of **productivity** benefits. The examples as provided by the reviewer were limited to national processes to provide for equipment type approvals, mandating of requirements to achieve specified interoperability outcomes. This language is more appropriate and less open to misinterpretation.

Recommendation 3: Enable the mandating of requirements to help achieve interoperability outcomes

Provisions be established in the RSNL to enable the mandating of requirements to achieve specified interoperability outcomes that will deliver safety and productivity benefits across the national rail network, and for the rail industry more broadly. Details of these provisions and any impact analyses may be developed as part of the NTC's work on rail interoperability under the NRAP and the National Standards Framework.

Recommendation 4: Strengthen consultation requirements in the RSNL

The consultation provisions in the RSNL to be strengthened (including the possible addition of offences) to require employers to demonstrate that meaningful consultation with affected workers and unions on any proposed change to safety management systems (SMS) or accreditation has occurred. In this instance, meaningful consultation is not about increasing the scope of consultation but rather providing evidence of the quality of existing consultation requirements.

The AMWU supports this recommendation and is concerned by the approach the NTC has taken by way of interpreting/misinterpreting the recommendation. Option 1 will do nothing

to change the culture within the rail industry to sidelining rail workers and their representatives' voices. Option 2 moves to partly address the issue by creating a requirement of evidence of consultation, but in the absence of adopting an offence, we cannot see this proposal making any difference. The issue is cultural/behavioural, it is our recommendation that the only way to move this behaviour is if non-compliant behaviour is punished. So as to achieve the intent of the recommendation, consideration should be given not to just financial punishments but broader disincentives including public notices.

Recommendation 6: Establish a positive obligation in the RSNL allowing workers to access the details of safety management systems

Establish a positive obligation in the RSNL to ensure rail safety workers have access to aspects of a RTO's SMS that impacts them and/or their work, including an obligation on RTO's to demonstrate that all rail safety workers (employees and contractors) are competent in the carrying out of rail safety work and the SMS that applies to that work.

The AMWU supports this recommendation and notes its alignment to obligations which exist under Work Health and Safety Laws.

Recommendation 11: Review the RSNL confidentiality provisions allowing workers to access the details of safety management systems

The confidentiality provisions in the RSNL be reviewed to ensure that important rail safety information can 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 AMWU supports this recommendation.

Recommendation 16: List interoperability as an object in the RSNL

Interoperability should be listed as a new object in the RSNL to build on the already ministerially approved requirement for an interoperability management plan to be included as an additional element of the SMS.

Recommendation 18: Compel RIMs to consider implications to the wider network in implementing network rule or infrastructure changes

For any changes to network rules or infrastructure, the RSNL should compel RIMs to:

> *a. Consider implications to their own and adjacent networks;*
> *b. Require consultation with all interfacing rail transport operators and other affected parties, and provide fair consideration of their reasonable operational requirements; and*
> *c. Have regard to potential impacts to the wider national network and consider the overall network as a national 'system'.*

Recommendation 19: Allow a presumption of mutual recognition for technology approvals

There should be a presumption of mutual recognition whereby testing and assessments for technology approved by one operator can be relied upon by an adjacent operator if the operating conditions and circumstances are similar. Where there are differences, only those differences should be tested, and previous work can be relied on to meet any other requirements of an SMS. This may be an area where the Regulator works with industry to develop nationally consistent processes to facilitate mutual recognition. This is intended to remove duplication, to promote interoperability, and for the same solutions to be used to mitigate safety risks across all networks as much as possible. Depending on the final outcome, there may be a need to develop accompanying principles for the fair sharing of costs of assessment between operators.

Recommendation 20: Establish a national set of skills and competencies

a. The mandating and awarding of qualifications and units of competency for nationally recognised training;
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

Whilst the AMWU does not oppose the 6 principals which the reviewer sort in his recommendations, we opposes this recommendation with regards to the proposed way it should be implemented, and flag that the proposition of handing all control to an employer association conflicts with the purpose of the Commonwealth Governments Jobs and Skills Councils which were established by the Minister for Skills and Training in December 2022 following the Jobs and Skills Summit. Much of the rails industries skills and training qualification are looked after by Industry Skills Australia, whilst most of our members qualifications are looked after by Manufacturing Industry Skills Alliance.

In the absence of a tripartite body for the rail industry (which formed part of our recommendations to the reviewer in 2024), there is no government body which could reliably identify the skill sets and qualifications required for all roles across our industry. Reliance on Australasian Railway Association or Australian Rail Industry Standards Organisation (ARISO), a straw horse employer association which locks out workers voices, is unacceptable.

We note the consultation paper in addressing recommendation 20 (p34) states, *The institutional governance reforms set out below seek to explore options to deliver these arrangements through a coordinated, holistic approach to interoperability that also takes into account the strengthened role ministers agreed for the new RISSB (now ARISO), as the industry-led standards setting body (noting ARISO is also progressing work on its own*

governance arrangements necessary to implement the ITMM decision as part of national reform). We note that ARISO's governance is populated by only rail operators/employers.

As well as recommendation regarding skills and qualifications, the proposal that national safe working rules is something that would be established without rail workers having an equal voice at the table given their personal stake, our members find offensive and conflicting with Australia's ILO obligations (c155).

Interoperability

The recommendations addressing interoperability — particularly Recommendations 3, 16, 18, and 19 — reflect a broader recognition that meaningful network integration will not be achieved through goodwill alone. Interoperability is, at its core, a collective action problem: while a seamlessly interconnected network benefits passengers, freight customers, and the broader economy, it rarely benefits the private operators who control critical segments of that network. For those firms, fragmentation is a feature, not a bug. Siloed systems, proprietary technologies, and incompatible infrastructure create switching costs, lock in customers, and insulate incumbents from competitive pressure. Private rail infrastructure managers and operators accordingly have every commercial incentive to resist standardisation and coordination — particularly where doing so would erode their market position or expose their operations to greater scrutiny.

This is precisely why voluntary and cooperative frameworks for interoperability have consistently underdelivered in privatised or partially privatised rail environments. Where interoperability has been achieved across comparable jurisdictions, it has almost invariably required either strong regulatory compulsion or public ownership — not industry-led initiative. The recommendations under consideration represent a meaningful step toward the former approach: embedding interoperability as a legislative object under the Rail Safety National Law, empowering regulators to mandate interoperability outcomes, and requiring Rail Infrastructure Managers to account for network-wide impacts when making infrastructure or operational changes. These are not minor procedural reforms. They are an acknowledgment that the current framework lacks the coercive capacity necessary to bring private actors into alignment with the public interest.

It is nonetheless worth being clear-eyed about the limits of a purely regulatory solution. Compelling commercially resistant entities to act against their short-term interests tends to generate regulatory gaming, protracted disputes, and diluted outcomes over time — placing sustained and significant demands on the regulators tasked with enforcement. Nationalisation of key rail infrastructure would sidestep this tension entirely by removing the profit motive that drives fragmentation in the first place. That option may not be politically viable in the near term, but it should not be foreclosed as a structural alternative. In the meantime, the recommendations under consideration are a necessary and overdue correction — their effectiveness, however, will depend not only on whether regulators are

granted the power to mandate interoperability, but on whether they are given the resources and institutional will to enforce it.

What would evidence based reforms to the RSNL look like?

Consultation and tripartism

The current state of the RSNL serves as a cautionary tale about what happens when regulatory design is shaped by a single voice. When only one perspective dominates, the resulting framework inevitably reflects the interests and blind spots of that stakeholder — leaving workers, unions, and others without meaningful representation in decisions that directly affect them.

Effective regulation is born from genuine consultation across an entire sector. Regulators, unions, and employer groups each bring distinct and necessary perspectives, and any framework constructed without that breadth of input will always be incomplete. A balanced approach is not simply fairer — it produces stronger, more durable regulation that serves the sector as a whole.

The JobKeeper scheme stands as one of Australia's most cited examples of tripartism delivering results under pressure. Designed and implemented at speed during the COVID-19 pandemic, the scheme was shaped through rapid but genuine consultation between the federal government, employer groups, and the union movement. The ACTU's direct involvement was critical in ensuring the payment flowed to workers rather than simply shoring up business bottom lines. The result was a policy that kept millions of Australians employed and preserved the employment relationship through an unprecedented economic shock — an outcome that would have looked markedly different had only one side of the table been consulted. The lesson is straightforward: tripartite consultation produces better outcomes. It should be the rule, not the exception.

That principle has direct application here. Going forward, employer groups, government, and trade unions must each hold an equal seat at the table when rail safety regulation is developed and revised — not employer associations alone.

Australia's international obligations point in the same direction. At its 110th Session in June 2022, the International Labour Conference resolved to include a safe and healthy working environment within the ILO's framework of fundamental principles and rights at work, designating the Occupational Safety and Health Convention 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention 2006 (No. 187) as fundamental Conventions. All member states — whether or not they have ratified those instruments — now carry an obligation arising from ILO membership itself: to respect, promote, and realise, in good faith, the principles concerning the fundamental right to a safe and healthy working environment.

That obligation has structural consequences. Article 4 of Convention No. 187 requires the establishment of a national tripartite advisory body, or bodies, for the governance of workplace safety. SafeWork Australia fulfils that function within the scope of the model Work Health and Safety laws. No equivalent tripartite body exists for the National Rail Safety laws. That gap is not merely an oversight in regulatory design — it leaves Australia short of meeting its obligations as an ILO member, and it should be remedied.

Skills

Micro-credentialing represents a significant and underappreciated risk to occupational health and safety in the rail sector, as well as productivity. Workers operating in complex environments require well-rounded, deeply embedded skill sets — competencies that cannot be adequately captured by narrow, task-specific credentials, and that should not be defined by employer convenience.

The proposal to transfer regulatory powers over skills from the Jobs and Skills Council to an employer-controlled body is without merit. It is, moreover, a further instance of the conflation of profitability with productivity that this submission has addressed elsewhere. Employers have a direct commercial interest in minimising the cost of labour inputs, including training. Entrusting them with the governance of occupational competency standards is not a neutral administrative arrangement — it is a structural conflict of interest.

Co-regulation

The neoliberal deregulatory project, which gathered force in the 1970s and has persisted largely unchallenged since, has consistently advocated for co-regulation — arrangements that provide private stakeholders with a significant role in governing their own conduct. This is frequently presented by its proponents as "principles-based" regulation: ostensibly flexible, ostensibly efficient, and ostensibly better suited to allowing firms to tailor compliance to their operational needs. The framing is superficially appealing. The substance is not.

Co-regulation rests, implicitly and fundamentally, on a view of corporations as rational actors who will mitigate their own risks or else face financial consequences sufficient to discipline their behaviour. That was broadly the regulatory philosophy that prevailed in the financial sector in the decades preceding the Global Financial Crisis — and it has been identified by scholars across jurisdictions as one of its principal drivers. The logic is not difficult to follow. When firms play a central role in designing the regulatory framework to which they are subject, that framework will rarely produce serious consequences for breaching it. The result is an environment of private profit and public risk: firms do not bear the true cost of their conduct, precisely because the permissive regulatory architecture they helped to design ensures they need not. The externality is borne by the public.

That this approach has failed in theory is well established. That it has failed in practice is beyond serious dispute. The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry documented, in forensic detail, what years of light-touch, principles-based regulation had produced: systemic misconduct, fees charged to deceased customers, and an industry that had come to assume — correctly, for a long time — that regulators would not and could not hold it to account. ASIC and APRA were found to have been captured by the very culture they were mandated to police, defaulting to negotiation and guidance where enforcement was warranted. The Commission did not find a system that had malfunctioned. It found a system that had functioned precisely as its design implied it would.

This brings into focus a foundational principle that the co-regulatory model discards without acknowledgment: nemo iudex in causa sua — no one should be a judge in their own cause. It is a maxim so elementary that it sits at the base of the rule of law itself, yet co-regulation and self-regulatory frameworks ask us to set it aside as an inconvenient formalism. To invite an industry to set, interpret, and enforce the standards by which it is governed is not pragmatic flexibility. It is an institutional arrangement designed — whether by intention or by structural logic — to produce impunity. When the costs of misconduct are socialised and the profits are privatised, the rational firm does not self-correct. It continues. The market does not discipline what the regulator declines to punish.

The answer is not more guidance, more principles, or more industry working groups convened to design the rules they will subsequently be asked to follow. It is clear legislative standards, meaningful enforcement, and regulators prepared to act as genuine adversaries to misconduct — not as collaborative partners with it.

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