

# RSNL - Consultation Regulatory Impact Analysis

## Executive Summary

Pacific National supports the current objectives of the Rail Safety National Law (RSNL) to deliver improved rail safety outcomes, but is concerned that using the RSNL to address interoperability and productivity issues risks regulatory overreach leading to increased compliance and cost burdens for rail operators at a time when Australia needs to incentivise freight onto rail and increase the productivity of the national rail network.

Pacific National understands, however, that there are limited options for the Commonwealth to meaningfully affect nationally coordinated, productivity and interoperability outcomes and is therefore supportive of non-regulatory options or lighter touch changes to the RSNL which will help increase the interoperability of the national network without stymying its productivity.

For example, Pacific National supports the development of nationally consistent interoperability standards addressing rollingstock-infrastructure interfaces, signalling and communications interfaces, and operational rule consistency where appropriate. Pacific National also recognises that a skilled and mobile workforce is necessary to support a safe, interoperable, and productive national rail network.

Pacific National does not advocate for embedding interoperability requirements into an RTO's safety duty or reform that increases fragmentation through inconsistency in implementation or planning, duplication of existing requirements, or increased compliance without clear safety or productivity benefits. It is recognised that there is always a regulatory impost in delivering reforms to pivotal legislative regimes. However, this cannot come at the risk of operational disruption, commercial disadvantage, or investment uncertainty.

## About Pacific National

Pacific National is Australia's largest private rail freight operator with operations across multiple jurisdictions and networks. The business operates in diverse operating environments, including metropolitan, regional, remote, and heavy-haul contexts. Pacific National maintains a mature Safety Management System and training frameworks that meet or exceed current regulatory requirements.

In an average week, Pacific National hauls 2.26m tonnes of coal, 280,000 tonnes of bulk freight, and 12,518 twenty-foot equivalent intermodal containers, across networks managed by 11 separate rail infrastructure managers, in some 210 different classes of wagon, propelled by 25 unique classes of locomotives, powered by some 3,000 employees across the country.

Interoperability is strategically important to Pacific National because it impacts safety, efficiency, cost, network access, and long-term competitiveness in Australia's complex multi-operator rail environment. For this reason, Pacific National supports a pathway that is phased, proportionate and commercially pragmatic in its approach to interoperability reform.

## Principles for RSNL Reform

### A clear pathway for reform

The success of the RSNL reform program is dependent on a clear, practical pathway to implementation. The creation of new obligations and review of the existing legislative regime should support the objectives of any such roadmap.

Pacific National acknowledges the proposed interoperability pathway narrative, but before interoperability and productivity reforms can effectively be embedded in the Australian rail sector, explicit clarity on who is responsible for delivering each component of that interoperability pathway is necessary.

Pacific National supports a pragmatic, phased, and proportionate approach, ensuring that commercial implications of implementation are carefully considered. Investment decisions are not the purview of the Regulator.

An effective interoperability roadmap should articulate the goals, and essential steps required to achieve the long-term plan to deliver greater interoperability and improved transparency and accountability across the entire rail ecosystem. It must provide the industry with greater certainty to support long-term investment and planning, staged implementation to manage transition risk and cost escalation, and enable the embedding of interoperability reforms into business-as-usual operations across a diverse sector.

With the recent enhancements sought through the Interoperability Management Plans (IMP), the development of mandatory standards, defining the National Network for Interoperability (NNI), and updating the role of ARISO, each of which has an impact on interoperability, the necessity for a coordinated, consistent implementation strategy is enlivened further.

With a longer-term view, any proposed amendments to the RSNL should include an independent review mechanism to ensure that the legislative reforms proposed remain effective, proportionate and adaptable in an evolving, interdependent landscape. Such a mechanism would verify whether the proposed reforms are achieving the intended goals, determine whether any unintended consequences have arisen and consider if there are any new or emergent issues the framework is unable to manage in its current form – all of which is aligned to a clear, concise, coordinated implementation strategy and pathway for reform.

### Safety Must Remain the Core Purpose of the RSNL

Pacific National supports reforms that are intended to improve interoperability across Australia's rail network and recognises the role that nationally consistent standards may play in lifting long-term network productivity and efficiency.

However, Pacific National does not support the introduction of an interoperability duty framed as an extension of the general safety duty and interoperability objectives are best progressed through a separate, clearly defined regulatory framework, distinct from the existing goal-based rail safety regime. This approach provides regulatory clarity, mitigates unintended consequences for safety regulation, and supports effective, staged implementation.

Any proposed reforms should prioritise safety as the primary objective of the RSNL. Initiatives aimed at improving interoperability must be pursued in ways that reinforce safety outcomes, without diminishing the current rail safety framework, which is widely recognised and well understood.

The RSNL has been intentionally structured as a coregulatory, duties-based safety regime. Implementation of an interoperability duty could jeopardise the integrity of this framework, and as such, it is Pacific National's view that non-regulatory alternatives or minimal adjustments to the RSNL be pursued.

### **ONRSR has a limited role to play in driving interoperability**

Expanding ONRSR's remit to include productivity or interoperability enforcement, risks diverting regulatory focus, capability, and resources from safety outcomes.

ONRSR's role in relation to interoperability should focus on monitoring compliance with prescribed standards, supporting national consistency and facilitating learning and coordination where appropriate.

Pacific National does not consider it appropriate for interoperability reforms to result in ONRSR being placed in the position of endorsing individual design decisions, approving network solutions, or arbitrating "reasonable" levels of interoperability outside clearly defined standards.

The existing regulatory framework acknowledges that RTOs possess the necessary expertise to identify, evaluate, and control risks to safety within their own operations. Broader interoperability coordination and compliance with mandatory standards must be approached in the same way. To integrate coordination with the Regulator's enforcement role may compromise the effectiveness of the co-regulatory principles upon which the RSNL framework is built.

### **Increased compliance costs must not impede productivity**

Pacific National believes that the cost-benefit analysis is reasonable but that it does not adequately account for transition costs related to compliance, accreditation impacts, workforce training and operational disruptions. Further work is required to quantify costs and benefits which can only be completed when a more complete structure of each reform has been decided.

Generally, the benefits largely depend on how implementation is designed, including prioritisation and sequencing of steps, enforceability of mandatory standards and clearer responsibilities for participants.

ONRSR's cost of regulating rail safety is funded by industry and government contributions. Most industry funding is provided via annual accreditation and registration fees, with the level of government contributions decreasing year on year. Any new, additional or expanded functions and objectives placed on ONRSR will require the provision of further ongoing funds.

These additional compliance and accreditation costs will impact RIMs and RSOs and, without further analysis, there is a risk that the reform program may overstate benefits or understate the burden of implementation.

## **Pacific National's Response**

### **INTEROPERABILITY OPTIONS**

#### **RSNL Review Recommendation 1**

#### **The RSNL should be amended to strengthen the link between safety and productivity**

Pacific National does not support amending the RSNL to highlight productivity or efficiency as a key principle.

Initiatives aimed at improving interoperability must be pursued in ways that reinforce safety outcomes, without diminishing the current rail safety framework.

Making productivity a legal 'object' or a secondary principle, increases the risk of conflicts with existing WHS principles, especially in multi-jurisdictional operating environments.

A collaborative approach by, for example, a Statement of Expectations, allows for flexibility to adapt to changes in the interoperability pathway without imposing rigid requirements in legislation. This approach provides clarity and consistency, without stymying productivity through further compliance encumbrances.

### **RSNL Review Recommendation 2**

#### **The RSNL be further amended to give the Regulator an explicit role to coordinate and/or facilitate delivery of safety and productivity benefits**

Pacific National does not support amendments to the RSNL which would require ONRSR to coordinate the delivery of productivity benefits outside its safety remit. Broader interoperability coordination should sit outside ONRSR's enforcement role.

Integrating coordination with the Regulator's enforcement role may compromise the effectiveness of the co-regulatory principles upon which the RSNL framework is built. Initiatives aimed at improving interoperability must be pursued in ways that reinforce safety outcomes – there can be no blurring of the RSNL's safety focus.

ONRSR's primary focus should remain compliance, rather than facilitating or coordinating broader productivity outcomes.

### **RSNL Review Recommendation 3**

#### **Establish provisions in the RSNL to enable the mandating of requirements to achieve specified interoperability outcomes**

Amending the RSNL now to enable the mandating of interoperability requirements is premature. The RSNL National Regulations requiring rail operators to have an IMP have only recently come into effect and a reasonable period will be required to assess the success of the regulatory change and determine if further action is required.

### **RSNL Review Recommendation 16**

#### **Interoperability should be listed as a new object in the RSNL**

The requirement to have an IMP has been made under regulation. An amendment to the RSNL, listing interoperability as a secondary object under the Act would be redundant.

Introducing a separate duty increases the risk of conflicts with existing WHS principles, especially in multi-jurisdictional operating environments. Interoperability must serve as a key factor in enhancing safety and efficiency, by simplifying processes and minimising risks – to emphasise the importance of interoperability without changing the law's safety focus.

### **RSNL Review Recommendation 18**

#### **The RSNL should compel RIMs to consider implications to their own and adjacent networks**

Pacific National is concerned about excessive administrative and cost burdens on operators. RIMs are already required to consider interoperability as part of an IMP and, as noted above, the IMP regulatory change has just come into effect.

Additional changes at this time could necessitate less optimal outcomes that diminish flexibility or increase costs without delivering proportional benefit.

A review of this change should occur before further actions are considered.

### **RSNL Review Recommendation 19**

#### **Regulator works with industry to develop nationally consistent processes to facilitate mutual recognition**

Pacific National generally supports mutual recognition where it clearly identifies the relevant operating conditions, removes duplication and mitigates safety risks. When creating a system that uses mandatory

standards as the main basis for mutual recognition, it is important to consider the current responsibilities of duty-holders. This approach should maintain their accountability for final decisions.

This reform cannot lead to increased compliance and cost burdens for rail operators at a time when Australia needs to incentivise freight onto rail. It must also be accompanied by principles for the fair sharing of cost, as this initiative cannot come at the risk of commercial disadvantage, or investment uncertainty.

### **RSNL Review Recommendation 20**

#### **Establish a national set of competencies that would be recognised by all RTOs**

Pacific National supports the recognition of transferrable skillsets across jurisdictions. This reform option must result in nationally aligned competencies and roles, with assurance visibility for verification by the Regulator.

Pacific National does not advocate for the duplication of existing systems, which could increase the administrative burden on industry and risk unnecessary cost and disruption.

## **INSTITUTIONAL GOVERNANCE REFORM OPTIONS - INTEROPERABILITY**

### **Interoperability assessment of future investments**

Any interoperability assessments of future RIM investments should be coordinated by a national council of network owners and RIMs that is required to report to ITMM on a yearly basis. The formation of this council and its requirement to report should be established through an intergovernmental agreement and not by amendments to the RSNL, as investment decisions are not the purview of the Regulator.

The establishment of a national council of network owners and RIMs would provide whole of network oversight. The council could be supported by a national technical assurance function, facilitated by an agency or industry body (e.g. ARISO).

### **National standards development and adoption**

Pacific National does not support inclusion of harmonised standards (tier 2) in the RSNL, giving them a similar status to Codes of Practice, noting that only those with a safety outcome will be relevant under the RSNL in any case.

Pacific National supports clearly identified and approved mandatory standards carrying legislative force; however, Pacific National does not endorse requiring the Regulator to consider nationally harmonised tier 2 standards and refer to them in regulatory activities.

### **Skills and competency oversight**

Pacific National endorses a national set of competencies. A national competency register should be held and coordinated by a relevant industry body such as ARISO or Industry Skills Australia.

### **Rolling stock approval**

Pacific National supports an Intergovernmental Agreement (IGA), MoU or similar as a mechanism to drive mutual recognition of evidence of rolling stock approval processes, noting that the legislative option is proposed to be funded by RIMs and operators. Legislative reforms at this time could diminish flexibility or increase costs without delivering proportional benefit.

## TRANSPARENCY AND ACCOUNTABILITY OPTIONS

### RSNL Review Recommendation 4

#### The consultation provisions in the RSNL to be strengthened

Pacific National does not support strengthening consultation provisions.

Under the RSNL rail safety is the shared responsibility, and as such rail safety workers are able to participate in, be consulted on and be involved in the formulation and implementation of measures to manage risks to safety associated with railway operations.

At Pacific National we meet these requirements to allow RSW access to the SMS, and as such, Pacific National does not believe that reforms to these obligations are required. To do so would be to increase the compliance burden on operators and add complexity and duplication to the existing framework.

### RSNL Review Recommendation 6

#### Establish a positive obligation in the RSNL to ensure rail safety workers have access to aspects of a RTO's SMS

Rail safety workers have access to parts of an RTO's SMS that impacts them or their work and participate in the development and review of an RTO's SMS. These are existing requirements under the RSNL and National Regulations. Pacific National supports the existing requirements in this respect.

Further regulatory intervention risks duplication, inconsistency and increased compliance burden without proportional gains.

### RSNL Review Recommendation 11

#### Review the confidentiality provisions in the RSNL

Pacific National acknowledges the importance of sharing rail safety information, as ONRSR already does through multiple channels.

Reforms must balance transparency with the safeguarding of legal privilege, and commercial sensitivity. Sharing of information must meet a public interest threshold and be protected from misuse.

### RSNL Review Recommendation 22

#### The Regulator be given the power to review and direct amendments to interface agreements

Pacific National doesn't support either option.

Interface agreements serve as operational tools, providing value by allocating risk between parties in complex environments. Expanding the reach of the Regulator introduces uncertainty where the RSNL currently contains several provisions that, when read as a whole, provide a framework for the management of these risks at rail interfaces.