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Dear Commissioner Lindwall

National Transport Regulatory Reform – submission on draft report

The Office of the National Rail Safety Regulator (ONRSR) appreciates the opportunity to provide comment on the draft National Transport Regulatory Reform report.

This submission provides clarification on several issues, practical examples of benefits achieved since the introduction of ONRSR and details relating to information requests (related to rail) for the Productivity Commission's consideration. This submission should be read in conjunction with ONRSR's first submission to the inquiry published in June 2019.

1. CLARIFICATIONS

1.1. Funding of ONRSR

The draft report states on several pages¹ that ONRSR does not receive any government funding; this is incorrect.

While it was agreed by the Council of Australian Governments (COAG) at the time of announcing the reform that all regulators were to operate under a 100% cost recovery model it was not financially feasible for rail to move immediately to 100% cost recovery. To enable a smooth implementation of this The Transport and Infrastructure Council (TIC) agreed to retain government contributions but to reduce government contributions by 5% per annum thereby increasing industry contributions by 5% per annum until the cost of regulation is 100% industry funded.

In 2019-20 governments will contribute \$14m (or 37%) towards the cost of rail safety regulation.

¹ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, pages 90, 110, 347

1.2. Spending by regulators

Table 6.3² Refers to total expenditure on rail safety regulation prior to the national scheme as being \$29m in 2008-09. An independent assessment as to the total cost of regulation prior to transitioning to the national scheme as at December 2012 was \$35.22m (including \$16.5m for NSW). The Transport and Infrastructure Council agreed to increase the cost of regulation from January 2013 by \$1.5m to include new policy costs and insurance coverage (previously not required as government regulators) and then by CPI each year.

Total expenses for ONRSR in 2014-15 equalled \$30.1m. This included regulatory oversight of NSW, South Australia, Tasmania, Northern Territory and Victoria from May 2015 (excluding light rail and some tourist and heritage operators). What appears to be a considerable increase in expenditure for 2017-18 to \$36.7m is due to regulatory oversight being extended to cover Western Australia and Queensland.

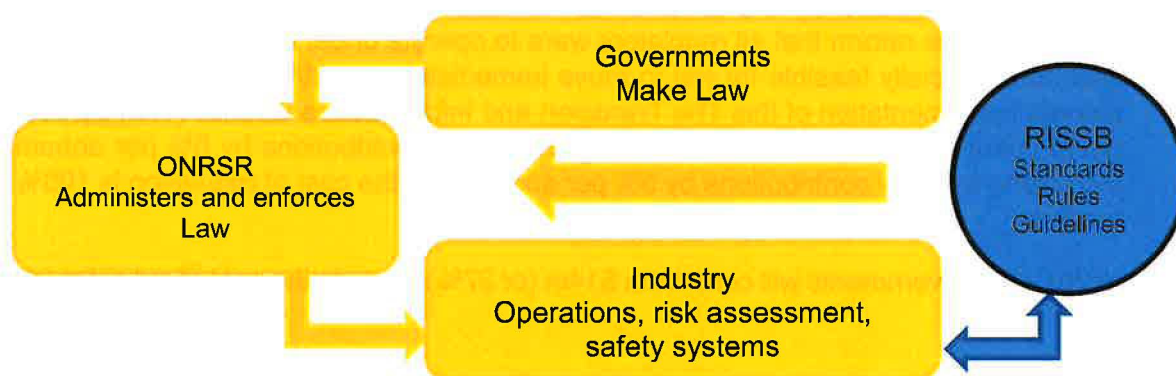
Comments under Table 6.3 refer to NSW transition in 2017 – NSW transitioned in January 2013. Comments also referred to Western Australia and Queensland receiving service level agreement payments from ONRSR. Service level agreements were never in place with Western Australia and Queensland and ONRSR made no payments to these states.

1.3. Co-regulation

As noted in the draft report ONRSR operates under a co-regulatory approach, however the draft report incorrectly states “... which shares regulatory responsibility between the regulator and industry. By contrast, the National Heavy Vehicle Regulator (NHVR) and the Australian Maritime Safety Authority (AMSA) have sole regulatory responsibilities”³.

The Rail Safety National Law (South Australia) Act 2012 (RSNL) establishes ONRSR as the national rail safety regulator and confers sole accountability “to administer, audit and review the accreditation regime under this Law”.

Under a co-regulatory approach both operators and ONRSR have safety responsibilities. Operators are responsible for managing the risks to safety within their organisation and regulatory responsibility rests solely with ONRSR as shown below:



² Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, page 216

³ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, page 73

The roles of governments, ONRSR and industry under a co-regulatory framework are provided in *The ONRSR Way*⁴, including:

Key roles under the Australian rail safety co-regulatory framework are:	
Governments	<p>Establish through public policy the preferred regulatory framework and set the law to implement this policy, inclusive of:</p> <ul style="list-style-type: none"> • setting obligations on specific duty holders; and • establishing the role and function of the Regulator
Regulator	<p>Established with functions and powers to:</p> <ul style="list-style-type: none"> • administer the accreditation regime; • monitor rail safety management performance of operators and duty holders; and • ensure operators and duty holders comply with the requirements and safety management standard set by the law through utilising powers to monitor, facilitate or enforce compliance with the RSNL
Rail Transport Operators	<p>Accountable for ensuring so far as is reasonably practicable (SFAIRP) the safety of their specific railway operations, including impacts on interfacing railway and road operations. Accountable for the establishment and implementation of the standards, rules and procedures for the safe operation of their railway, in the form of a documented and implemented safety management system.</p>
Contractors, Suppliers & Manufacturers	<p>Captured as duty holders under the RSNL and accountable for ensuring, SFAIRP, the safety of their activities as they may impact on safe railway operations. Accountable for the delivery of railway operations for rail transport operators in accordance with rail transport operators' safety management systems.</p>
Rail Industry Standards Groups	<p>Supporting rail transport operators and other duty holders through the development of good practice guidance or standards for the effective management of safe railways.</p>

1.4. Derogations

As advised in the initial submission ONRSR undertook an exercise in 2016 that identified 85 derogations in the RSNL. ONRSR worked extensively with industry who identified only five derogations as being significant in effecting nationally consistent regulation and ONRSR has continued to work with stakeholders in an attempt to resolve these five derogations. It was not considered to add value to pursue the remaining 80 delegations. The five key derogations identified were: drug and alcohol testing; train communications systems (now resolved from an operational perspective); data loggers (now resolved); fatigue management and mirror law applied in Western Australia.

As detailed in ONRSR's initial submission extensive reviews were undertaken on drug and alcohol testing and fatigue management.

⁴ ONRSR, *The ONRSR Way*, page 8

Drug and Alcohol Testing

In 2018 TIC considered the recommendations relating to the drug and alcohol review, however there was not unanimous support for those recommendations which would have removed the derogations from the RSNL impacting rail transport operators in NSW.

Fatigue Management

In 2019 ONRSR completed a review of fatigue risk management that included an objective to recommending a consistent national regulatory approach.

ONRSR does not believe that prescribed hours in legislation are required to safely manage fatigue under a risk-based approach recognising, however, that the management of rail safety workers' hours are an essential part of managing fatigue. There was no conclusive evidence that prescribed hours were more or less safe than a risk-based approach.

The outcome of the review was that mandated hours are not necessary, however both Queensland and NSW indicated at that time that they would not support a change to their current arrangements.

ONRSR requests that consideration of the recent reviews undertaken be taken into account by the Commission specifically as it relates to draft finding 41.1 and recommendation 5.3.

Mirror Law applied in Western Australia

Since the introduction of the RSNL there have been four amendment packages containing a total of 32 amendments (excluding fee amendments) that have been approved by TIC, progressed through the South Australian Parliament and applied in other jurisdictions. Two of these relating to regulation changes which were incorporated in Western Australia mirror law prior to transition in November 2017, and a further regulation amendment has since been incorporated into the mirror law. There are still a further 29 derogations between the Western Australian mirror law and the RSNL which impact industry and ONRSR in day to day operations.

The Major Projects Fee was introduced into the RSNL in July 2017. This is one of the amendments that has not been progressed in Western Australia. This has resulted in major projects being undertaken in Western Australia not being required to pay a fee and therefore the regulatory oversight costs associated with these being funded from annual fees paid by other operators.

ONRSR is continuing to work with the Western Australian government to assist where possible in removing as many of the derogations as possible through either an amendment to the current mirror law or introduction of the applied law.

1.5. Inconsistencies for above-Rail Operators

The draft report⁵ discusses inconsistencies experienced by above-rail operators not as a result of legislative derogations but from different requirements of network owners including network rules of below-rail operators, and in some instances differing rules within a single below-rail operator's network and finds:

⁵ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, pages 129-130

"Draft finding 4.4

Despite having one national safety law and one national safety regulator, rail operators face differing standards, operating codes and procedures, set by rail network owners. Differences across networks create costs and delays for above-rail operators."

While ONRSR does not have legislative powers/authority to compel rail infrastructure managers to change their access requirements (unless a major safety issue is involved) ONRSR is aware that industry representatives have been working towards development of consistent network rules for decades, however no changes have yet been made.

This has also been recognised through the National Rail Plan and RISSB will continue working with industry to progress this. However, to actually see some change expedited in this area, it is suggested by ONRSR that a small number of rules that cause the most significant cost and inefficiencies to above-rail operators be identified and then the appropriate rail infrastructure managers work together to agree on consistency with this small number of rules. This would complement the larger project being undertaken by RISSB as part of the National Rail Plan and provide productivity benefits to above-rail operators in a much shorter timeframe (whilst demonstrating that consistency can be achieved) than waiting for the full national project to be complete. ONRSR would work closely with this project to ensure a more streamlined approval process is also achieved.

As ONRSR now has regulatory responsibility nationally, the environment exists for a consistent set of network rules to be considered by a single regulator. This is supported by an ONRSR external stakeholder survey that found 57% of responders agreed or strongly agreed "... *that the existence of a single national rail safety regulator has made it easier to progress an industry approach to network rules*".

ONRSR will continue to encourage industry and work with them as much as possible to achieve changes that provide efficiencies and productivity for above-rail operators as soon as possible whilst continuing to maintain safety standards.

1.6. Regulator Resourcing should be Certain

The draft report states "*The 2009 COAG reforms brought together activities previously undertaken by the States and Territories, offering the potential for economies of scale. Evidence suggests that, so far, these efficiencies are unlikely to have been realised, at least for the NHVR and ONRSR. This is not surprising, given that transfers of staff and responsibility are still occurring and given the complexities that have been faced by each regulator.*"⁶

Since the draft report was released ONRSR achieved COAG's goal and became a truly national regulator on 2 December 2019. Removal of the final Service Level Agreement in Victoria provides regulatory responsibility by ONRSR for the rail operators that had previously been excluded from the RSNL (light rail and some tourist and heritage operators) and allows direct employment of all staff undertaking duties under the RSNL nationally.

Some economies of scale had already been achieved with ONRSR reducing its budget by \$1m in 2017/18 without reducing regulatory oversight. Further economies of scale are expected to be realised now that ONRSR is a fully national regulator. See section 2.1 for further information.

⁶ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, Page 18

Establishment of national regulatory responsibility through ONRSR has ensured that other benefits identified in the Regulatory Impact Statement for a single national rail safety regulator of “... eradication of duplicated functions and the resultant efficiency gains for both government and industry” and “... improved and consistently applied regulatory standards, better data gathering and analysis and the scale benefits (including career development pathway for regulatory staff)”⁷ have been achieved and will continue to be built on. Examples of benefits achieved to date are detailed further below in section 2.

1.7. Relationship between ONRSR and Rail Industry Safety and Standards Board (RISSB)

The draft report notes that some respondents “... expressed concerns about the delineation of responsibilities between RISSB and ONRSR⁸” with the draft report concluding “The Commission understands that ONRSR and RISSB are working on a joint statement to clarify their roles. The Commission considers that no further action is required at this time⁹”.

While ONRSR and RISSB work closely in relation to rail safety, figure 3.5 incorrectly shows a two-way relationship in relationship to “assessment and accreditation schemes”. This arrow should be removed as RISSB has no involvement in assessment of accreditation applications nor operator’s compliance with the RSNL and has no powers under the RSNL.

ONRSR considers RISSB and ONRSR are very clear in relation to their responsibilities and legal framework, however to ensure this is clearer to stakeholders RISSB and ONRSR along with ATSB, ARA, ACRI and TrackSAFE are developing a joint statement clearly articulating the different roles of each organisation.

1.8. Relationships between the ATSB and National Regulators¹⁰

Current practice within ONRSR is to ensure that safety messages arising from investigations or other sources are communicated effectively and efficiently with industry. This is done through several avenues including safety alerts, monthly newsletter (Engauge), individually with operators either through audit and inspection programs, safety improvement initiatives and at Forums held by ONRSR or attended by ONRSR.

ONRSR follows up with operators on the implementation of safety issues and actions identified in ATSB investigation reports. ONRSR also discusses issues raised by the ATSB with other operators who may not have been directly involved in the ATSB investigation but could benefit from awareness of the issues.

ONRSR and the ATSB have a strong existing relationship and have a clear understanding of each other’s role in relation to rail safety, supported by an existing Memorandum of Understanding and regular meetings to discuss and review any issues that may arise. All safety occurrence data reported to ONRSR is shared with the ATSB and regular dialogue is held to try and work together to continue to improve the quality of the data we receive.

⁷ Single, National Rail safety Regulatory and Investigation Framework, Regulatory Impact Statement, Volume 1, July 2009, page 110

⁸ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, page 237

⁹ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, page 238

¹⁰ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, page 325

1.9. Focusing on Safety outside the Commercial Transport Sector

Similar to the findings outlined in the draft report¹¹ for heavy vehicles involved in serious and fatal crashes, 96% of level crossing collisions between train and road vehicles between July 2014 and June 2019 were due to road user behaviour and a further 2% due to a combination of road user and rail transport operator behaviour.

1.10. National Systems are in Place

In at least two places the draft report¹² refers that “RSNL replaced 46 pieces of Commonwealth, State and Territory law”. ONRSR questions this figure as the RSNL replaced seven rail safety acts and associated regulations, one in each jurisdiction (there was no Commonwealth rail safety legislation). Through records from the Project Office and discussions with the NTC no justification can be made available to identify the 46 pieces of law reported as being replaced as stated in the draft report. ONRSR would like to see this either verified or reduced to refer to the seven principle Acts replaced.

1.11. Other Points for Clarification:

<i>Page</i>	<i>Current statement</i>	<i>Clarification</i>
3	Second last sentence on the page “The National Heavy Vehicle Regulator (NHVR) and Office of the National Rail Safety Regulatory (ONRSR) were established in 2012 and 2013 respectively.	ONRSR was established in 2012 under the Rail Safety National Law however commenced operations in 2013.
8	Last sentence of first paragraph “Inconsistencies with the RSNL have lasted up to two years” .	As <i>noted above</i> the majority of amendments to the RSNL have not been incorporated into the <i>Rail Safety National Law (WA) Act</i> since it came into effect in November 2015.
8	Last sentence under heading of “Some residual State and Territory responsibilities remain” on “ <i>The national regulators in heavy vehicle and rail have stated that they intend to terminate the remaining SLAs within the next few years.</i> ”	As advised the final service level agreement that was in place for rail has been removed and the ONRSR became a truly national regulator from 2 December 2019.
86	“ONRSR was established under the RSNL and commenced operation in 2013. ONRSR regulates above and below rail operations, as well as rail equipment manufacturing in all States and Territories”.	The RSNL also equips ONRSR with powers in relation to general safety duties for rail designers, manufacturers and suppliers as well as an education role.

¹¹ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, page 29

¹² Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, pages 6, 86

<i>Page</i>	<i>Current statement</i>	<i>Clarification</i>
234	Last sentence of second paragraph <i>"New South Wales fully transitioned after its SLA expired in 2016"</i> .	The New South Wales service level agreement was removed in March 2017.
347	Table 10.1 "Government funding provided to regulators 2017-18" shows \$0 government funding and \$39m from fees, fines and charges.	Figures should be read: <ul style="list-style-type: none"> - Government funding - \$16.4m - (Government funding was reduced to \$14m in 2018-19) - Revenue from fees, fines and charges - \$22.3m (including Major Project Fee).

2. BENEFITS ACHIEVED UNDER ONRSR

In the draft report the Productivity Commission states that evidence suggests that efficiencies from the regulatory reform are unlikely to have been realised¹³. The Regulatory Impact Statement identified a number of key benefits relating to consistency and improved productivity that could be achieved under a national rail safety regulator. While ONRSR achieved COAG's goal of a national rail safety regulator in December 2019, improvements for regulatory consistency, efficiency and productivity have already been achieved by ONRSR to date. Examples of these include:

2.1 Reduction in the Cost of Regulation

The move to a national rail regulatory system reform has reduced the regulatory costs to governments. There is no government funding from three jurisdictions and the remaining four jurisdictions continue to reduce their contribution to rail safety regulation at the rate of 5% per annum in accordance with the Transport and Infrastructure Council policy decision in 2012 as a pathway to full cost recovery from industry.

Additionally and significantly, the cost of ONRSR delivering its services has increased each year by CPI only with no requests for additional funding for IT or any other capital works. **In 2017/18 ONRSR reduced its costs by \$1m** as a result of internal efficiencies and economies of scale. Regulatory oversight was not reduced. The introduction of the Major Project Fee resulted in reduced funding being collected through operator annual accreditation fees (this was not additional funding). The reduction in operating costs through efficiencies and the Major Project Fee resulted in an approximate 5% reduction of ONRSR operating costs being recouped through annual operator accreditation fees.

2.2 National Rail Safety Data

Under the previous state-based regulatory schemes, each regulator collected and classified rail safety incident data and activity data (e.g. train km operated) separately. Whilst the reporting requirements of the separate regulators were broadly similar, there were significant variations in classification schemes and data validation practices, which made it difficult to

¹³ Productivity Commission, 2019, National Transport Regulatory Reform Draft Report, Page 18

report safety performance at a national level and accurately compare safety performance across the country.

The establishment of ONRSR has led to one single set of reporting requirements for all operators, for which incident data and activity data is validated consistently. This has resulted in several benefits to the regulator and industry. For example, as a national regulator ONRSR can benchmark the safety performance of an operator against similar operators from across the country, facilitating wider safety improvement conversations and leading to actionable rail safety insights. ONRSR can also review safety performance nationally and benchmark against overseas jurisdictions such as the UK.

External stakeholders have also benefited. ONRSR routinely reports nationally consistent rail safety data to several parties, enabling them to make more informed, data-driven, safety investment decisions. Examples include regular reporting to the RISSB SPAD Working Group, TrackSAFE and numerous level crossing committees around the country.

The establishment of ONRSR also contributed to the successful development of the RISSB Australian Rail Risk Model (ARRM), which quantifies the level of safety risk across the industry and provides valuable information to inform operator's safety-related decisions. ONRSR, under the provisions of the RSNL, provides an annual feed of nationally consistent occurrence data to feed the model.

ONRSR continues to recognise that the collection and use of data is a key benefit to assisting in the delivery of safety outcomes. However, it also recognises that there is a significant cost to industry to comply with data submission and collection requirements across a number of bodies.

Accordingly, ONRSR, in partnership with the Australasian Railway Association (ARA) and industry representatives, is taking the next step to achieve relevant, consistent and quality national rail safety data, with the intention that data, as far as possible, is collected by one organisation and is shared appropriately with others requiring this data, through the development and implementation of the National Rail Safety Data Strategy¹⁴.

2.3 Reduction of Regulatory Burden

a) Consistent interpretation of the law

Having consistent legislation in the form of the RSNL, even with some derogations, has a major impact on reducing regulatory burden. An even greater impact on regulatory burden was related to not what was specifically stated in the different state based laws but the many day to day interpretations of the law by seven different regulators all requiring a different approach on what operators needed to do to 'meet' the requirements of the law. These requirements were at times, quite specific and many in number. This range of approaches and specific requirements have been removed with a single rail safety regulator.

b) Single accreditation process

Prior to the commencement of ONRSR engineering and construction companies seeking to undertake work in multiple jurisdictions had two choices to work in the respective states. They

¹⁴ <https://www.onrsr.com.au/publications/national-safety-data/national-rail-safety-data-strategy>

could either seek their own accreditation from that state regulator or alternatively work under the accreditation of another entity – usually the network owner. Both options presented challenges.

To seek accreditation a company would need to meet the specific requirements of the state regulator and requirements were different in each state. This meant systems and processes needed to be modified for each different state to meet state-based legislation or policy and processes required by each regulator, which was inefficient in terms of administrative burden. It also imposed additional financial costs and timeframes and productivity was impacted by having to train a workforce in different requirements depending on which state they were working. Some companies chose not to be accredited in more than one or two jurisdictions due to this administrative burden, reducing the pool of operators and potentially reducing competition in the market.

The alternative of having to work under the accreditation (and hence procedural requirements) of another accredited entity was an inhibitor to innovation and productivity. Engineering and construction companies with national and international experience were finding themselves having to comply with outdated practices as mandated by the accredited party who were often not subject to competitive pressures to improve and innovate.

Case Study 1

A well-known international company with experience in delivering large scale rail infrastructure projects would not apply for its own accreditation in Western Australia under the previous state-based regime. The administrative hurdles it faced in gaining accreditation outweighed the benefits that were there to be reaped by having the ability to work under its own safety management system rather than those of the network owners in that state. This organisation engaged with ONRSR in the months leading up to Western Australia's transition to the National Regulator and was one of the first applications received seeking an expansion of accreditation under ONRSR. This organisation was subsequently accredited to operate throughout Australia and has reaped productivity benefits from having certainty and consistency with the safety systems under which it operates.

Case Study 2

A freight company had successfully operated in one state of Australia for many years and because of its history had only ever needed to be accredited to operate in that state. When a business opportunity arose in another state this company engaged with ONRSR in order to expand the breadth of the geographical boundaries in which it could operate. For ONRSR this was a relatively easy process as we had a full understanding of its operations and were familiar with its systems and processes. The assessment process essentially came down to the operator being able to demonstrate what differences there were from a risk perspective between its existing operations and its proposed new operations and how they would manage the new identified risk. This was worked through in a co-operative manner and that company is now operating its business in two states with a goal to expand further.

Under the previous model of separate state regulators any expansion from one state to another would see the new state regulator completely re-evaluate the systems of the company from the ground up. It was treated as (and legally was) a new operator to the new state and little credence was given to the track record the company had in the original

state. This previous arrangement would also have seen the company having to modify its systems in order to satisfy the specific (and different) requirements of each separate state-based regulator.

Under the previous state based regulatory schemes larger operators ended up with very complex and confusing permissions in order to meet the specific and different requirements of each state. Differences included how geographic boundaries would be described, different activities allowed in different states, different terminologies, even different operational permissionings meaning that operational practices would have to change at state borders. This led to inefficiency and confusion and rail companies had to compromise by having different systems in different states in order to comply with its different accreditation requirements around the country. Anecdotally, this acted as a deterrent to expanding operations and therefore less competition.

Under ONRSR there has been a consolidation of permissionings with Notices of Accreditation being simplified and streamlined.

Case Study 3

One of the largest freight companies in Australia was able to demonstrate its competence and capacity to manage all its functions across Australia and hence now has a broad permission to operate across the country where it has a business need to do so. This simple and national approval means the company can streamline its processes and achieve productivity gains by being able to apply a single system to all its operation. This was not achievable under the previous state-based regime.

2.4 Single Point of Contact and Process for Variations and Notice of Change

Under The Rail Safety National Regulator there is now a single point of contact for processing variations and notices of change rather than many under the previous regulatory model.

Case Study 4

Prior to establishment of ONRSR a large rail infrastructure manager consulted the Rail Safety Regulators Panel to discuss a conceptual change to a signal system prior to undertaking significant financial investment.

While all relevant state regulators responded, as a result of different legislation and regulator policies and procedures, and different requirements in each state's notice of accreditation, the information required to be provided by the company to each regulator was considerably different. Some regulators advised that they would require the company to submit an application for a major variation to their accreditation, whilst others advised due to the permissioning under the company's notice of accreditation and other legal requirements in that state, a notice of change was all that was required.

Conversations continued over a period of time with the individual regulators, however no change was progressed nationally at that time.

This 'single process' concept change to the signal system has now been progressed under ONRSR. It is expected that the rail infrastructure manager will achieve significant efficiencies and productivity when fully implemented, which has the potential to flow on to above ground operators.

Case Study 5

A major freight operator was required to have train driver rosters approved by a previous regulator on a regular basis; others were required to gain approval for a train to enter a specific section; requirements and specific rules existed in another jurisdiction covering the regulator's requirements for a driver only operation. Without commenting on where these may be required based on risk, it indicates the different interpretations and specific requirements of regulators in different jurisdictions regularly affecting the one operator. ONRSR now has a consistent approach based on risk.

2.5 Consistent Regulatory Guidelines

Since commencement of operations ONRSR has issued 65 regulatory guidance documents giving industry a clear and consistent understanding of ONRSR's expectations.

In 2013 ONRSR identified the need to provide a framework to enable industry to deliver major rail projects with confidence about their obligations under Rail Safety National Law.

Following extensive consultation, in 2014 ONRSR published its Major Project Guideline which provides:

- guidance on safety duties and related obligations under the RSNL; and
- explains ONRSR's minimum expectations when reviewing the processes and associated evidence used to demonstrate that safe outcomes are being planned and, ultimately, have been achieved by major projects.

In rail, the overall cost of many of these major projects is often several billion dollars. As is the case in any industry, a critical concern for any major project is the possibility of a project being delayed due to lack of clarity on what is expected by the relevant regulator.

For the rail industry, ONRSR has addressed this with its Major Project Guideline providing consistency and clarity in ONRSR's regulatory approach Australia-wide.

Since its initial publication in November 2014, the Guideline has been extensively adopted by government and industry. Since 2017, ONRSR has been aware that more and more contracts for the delivery of major rail projects are being awarded with the specific requirement that the contractor is to engage with ONRSR in accordance with ONRSR's Major Project Guideline, and indeed many cases the terms of those contracts make the provisions of the ONRSR Guideline mandatory. This creates a benefit to both the operator and the contractor by removing the need for high level safety requirements being re-invented for each new project. The use of the ONRSR Guideline ultimately leads to the avoidance of reworking or reinventing documentation and the costs associated with this activity.

This is very real acknowledgement both by governments and the rail industry of the value and safety benefit that ONRSR has created and continues to deliver in the major project environment.

3. INFORMATION REQUESTS

> Information Request 5.1

The Commission is seeking additional information about the operation and effectiveness of the Rail Safety National Law in relation to interface agreements, including:

- *the extent to which interface agreements are contributing to better safety outcomes;*
- *options that could improve the negotiation process, and the extent to which risks are appropriately shared between road managers and rail operators.*

An interface agreement is the tool used to bring parties together (generally the road manager and the rail infrastructure manager) to identify the risks at the interface and agree on mitigations and responsibilities to reduce these risks as far as reasonably practicable. Discussions to develop an interface agreement benefit both parties through a common understanding of a range of issues including: geographic boundaries; identification of risks; the roles and responsibilities of each party in relation to those measures; how parties will communicate and monitor compliance with their obligations under the agreement; and the process for review and revision of the agreement. The most common type of interface agreement is the interface of road and rail at level crossings.

Having effective agreements in place whereby risks are managed contributes to better safety outcomes and efficiencies. It is a requirement under the RSNL¹⁵ for interface agreements to be in place at all interfaces. Even though this requirement has been in place since the Model Law in 2006 it has been a challenge for parties to comply with this requirement with only 57% of identified required level crossing agreements being in place in 2019.

Many reasons have been given as to why the execution of these has not been timely, with one being that it was largely seen as the responsibility of the rail infrastructure manager when in fact both parties have equal responsibility. To further emphasise this, from 1 July 2019 the RSNL was amended whereby a penalty (\$50,000 for an individual or \$500,000 for a body corporate) now applies to any party who fails to comply with the interface agreement requirements to identify and assess, so far as is reasonably practicable, risks to safety that may arise from the existence or use of any rail or road crossing that is part of the road infrastructure. Previously this applied only to rail infrastructure managers and the amendment means it is now extended to also apply to road managers.

Another significant reason identified for the slow completion of these agreements has been progress with local governments, their understanding of the requirements and their concerns in relation to potential increase in costs and accountabilities. In order to address some of these concerns ONRSR has worked closely with the Australian Local Government Association to provide information on the legislative requirements to local governments across the country including development of a fact sheet specifically for road managers detailing the changes and requirements. It is also of note that some states have local legislative provisions (which are varied) in relation to parties' maintenance responsibilities at level crossings.

ONRSR also wrote to all local governments that have outstanding agreements in June 2019 explaining their responsibilities under the RSNL and offering assistance to them in relation to progressing the agreements. These letters received a positive response from local

¹⁵ RSNL s106

governments with a number contacting ONRSR and ONRSR being able to facilitate engagement with the rail infrastructure manager. ONRSR has also written to those rail infrastructure managers who still have a significant number of outstanding interface agreements.

Additionally, ONRSR attended successful workshops organised by two state local government associations that provided councils an opportunity to raise concerns directly with ONRSR and discuss possible options to resolve any outstanding interface agreements.

In the six months since the introduction of the penalty applying to road managers and engagement between ONRSR and local governments the number of outstanding interface agreements has reduced by 4%. ONRSR is continuing to work closely with relevant parties in order to further reduce the number outstanding agreements.

> Information Request 5.3

The Commission is seeking additional information about the situations where greater clarity is required between the operational jurisdiction of national transport regulators and workplace health and safety regulators and overlaps in their responsibilities. What options for rectification would be desirable?

Rail safety regulation works with other regulatory schemes including the work health and safety (WH&S) regulatory environment to ensure that there are no conflicts in understanding responsibilities and safety objectives. In that regard, Section 48 of the RSNL clearly addresses the relationship between the RSNL and relevant WH&S legislation. This is critical to the efficient use of resources and to avoid omissions or duplications of effort.

To manage areas where there might be an overlapping responsibility, ONRSR has developed a Memoranda of Understanding with WH&S authorities to ensure there is a clear understanding of the hierarchy of responsibilities and minimise duplication and disruption to operators. This works well in the majority of cases.

As WH&S legislation is not consistent across the country and has remained as state-based legislation (similar to the previous arrangement for rail safety with model legislation) this has impacts on operators, particularly those that operate across borders as well as requiring different arrangements between ONRSR and the state-based regulators.

> Information Request 10.1

What productivity-related issues could be better progressed in rail freight? What institutional arrangement would be valuable in driving the productivity agenda in rail, and if such changes involve the Office of the National Rail Safety Regulator, what would its role be?

There has been much discussion in relation to the future of freight on rail and productivity issues facing the future of freight on rail, as well as the perceived competitive advantage for road freight. This raises many road/rail transport policy issues around transport investment, funding and road/rail pricing.

ONRSR believes to fully understand any impediments to rail freight efficiency and competitive neutrality, including the regulatory environment, further independent research would be required which could then inform Transport Ministers to assist in policy making and regulatory environment.

ONRSR's current role was clearly articulated when establishing the national regulators, being a defined focus on safety with improved productivity to be achieved through national consistency. The outcomes to be achieved were:

- *"promotion of safety and safety improvement in the delivery of rail transport;*
- *improved productivity and efficiencies from consistent national requirements; and*
- *decreased regulatory burden¹⁶".*

It was a very conscious decision when establishing ONRSR not to have a Board, as the ultimate accountability for safety regulation needs to rest with one person and cannot be shared. The legislation therefore established the National Rail Safety Regulator with appropriate powers to undertake this responsibility, however it included the role of two part-time Non Executive Members with a responsibility to ensure the law is being implemented in the way it was intended and to oversee appropriate governance.

Please do not hesitate to contact myself

or Julie

Bullas, Executive Director, Policy Reform and Stakeholder Engagement

should you wish to discuss any of the issues raised.

Yours sincerely

Sue McCarrey
Chief Executive
National Rail Safety Regulator

¹⁶ <https://www.coag.gov.au/content/intergovernmental-agreement-rail-safety-regulation-and-investigation-reform>