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Your Ref:



28 June 2019

Mr Paul Lindwall  
Commissioner  
Productivity Commission  
National Transport Regulatory Reform  
LB2 Collins Street East  
MELBOURNE VIC 8003

**National Office**  
PO Box 3461, Rundle Mall  
ADELAIDE SA 5000  
[contact@onrsr.com.au](mailto:contact@onrsr.com.au)  
08 8406 1500  
[www.onrsr.com.au](http://www.onrsr.com.au)  
ABN: 44 260 419 904

Dear Commissioner Lindwall

## **National Transport Regulatory Reform – Office of the National Rail Safety Regulator (ONRSR) submission**

Attached is ONRSR's submission to the National Transport Regulatory Reform addressing the information requests contained within the Issues Paper released in May 2019.

ONRSR considers that the objectives of the reform have been met, or will be met in the near future with removal of the Victorian Service Level Agreement. The establishment of a co-regulatory risk-based model has been of great benefit to the rail industry, and reduced the regulatory burden in a number of ways which are detailed in the attached submission which include:

- > The benefits of a co-regulatory risk based framework which provides greater flexibility to rail transport operators to undertake the development of their safety management system, increases the opportunities for exploitation of innovation and focusses regulatory effort on the safety risks appropriate to their operation.
- > The benefits of a single national rail safety regulator for rail transport operators as well as wider stakeholders including Australasian Railway Association, Freight on Rail Group, Rail Tram and Bus Union, Australian Transport Safety Bureau, Rail Industry Safety and Standards Board, National Transport Commission and Australasian Centre for Rail Innovation.
- > Financial responsibility of ONRSR through introduction of a Major Project fee in 2017, reduction of the cost of regulation by \$1m in 2017/18 via internal efficiencies and significant capital investment within the existing budget.

The attached Submission also raises discussion on remaining derogations within the Rail Safety National Law (drug and alcohol testing and fatigue management) as well as inefficiencies as a result of mirror law in Western Australia.

Additionally, ONRSR has received feedback from industry and other stakeholders about its performance and will continue to gather this feedback to assess its progress and do what it can to promote efficiency in the rail industry in the areas that it can influence.

ONRSR is grateful for the opportunity to make a submission to the Productivity Commission. I would welcome further engagement with the Commission so please contact me if you require any further information or clarification.

Yours sincerely

Sue McCarrey  
**Chief Executive**  
**National Rail Safety Regulator**

Enc: ONRSR submission

# ONRSR Submission

Submission to the Productivity Commission Issues  
Paper on the National Transport Reform Agenda  
(Issued May 2019)

June 2019

Office of the National Rail Safety Regulator  
Level 1, 75 Hindmarsh Square, Adelaide SA 5000  
PO Box 3461, Rundle Mall, Adelaide SA 5000  
Phone: 08 8406 1500  
Fax: 08 8406 1501

E: [contact@onrsr.com.au](mailto:contact@onrsr.com.au)

W: [www.onrsr.com.au](http://www.onrsr.com.au)

 [www.twitter.com/ONRSRAustralia](https://www.twitter.com/ONRSRAustralia)

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## Executive Summary

In 2008, the Council of Australian Governments (COAG) endorsed a broad reform agenda with the distinct but complementary goals of boosting productivity, increasing workforce participation and geographic mobility, and delivering better services for the community.

Within this agenda, COAG agreed to create national regulatory regimes for maritime safety, rail safety and heavy vehicles safety and productivity with the objectives of improving safety and reducing the costs and regulatory burden for transport companies. The relevant state specific laws were replaced with national laws and national regulators in each transport mode. This reform established the national rail safety regulator and created the Office of the National Rail Safety Regulator (ONRSR).

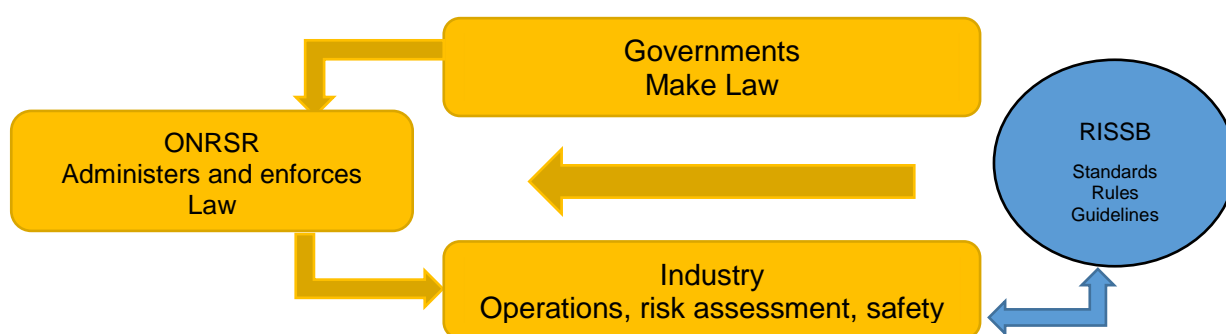
To test the progress of the reforms, and consider the effect of the key objectives of improving safety, and reducing costs and regulatory burden, the Federal Treasurer has asked the Productivity Commission (the Commission) to undertake an enquiry and report on the long-run benefits of the reform, examine the extent to which the reform objectives have been met, and identify further opportunities to integrate and harmonise the national freight market.

The Commission released an Issues Paper in May 2019 seeking submissions that would assist with their enquiry.

ONRSR has prepared this response to the questions posed in the Issues Paper.

ONRSR is the regulator of rail safety in Australia and is established under the *Rail Safety National Law* (RSNL)<sup>1</sup>. Commencing in 2013, ONRSR progressively assumed responsibility for regulation of rail operations as each state passed the enabling legislation and it is anticipated ONRSR will become a truly national regulator, operating under a full direct delivery model by the end of 2019 when a service level agreement is removed in Victoria and legislation is passed to include light rail and remaining tourist and heritage operators under the RSNL.

ONRSR considers that the objectives of the reforms have been met, or will be met in the short term. The establishment of a co-regulatory risk based model (shown in the diagram below) has been of substantial benefit to the rail industry. It has reduced the regulatory burden in the ways detailed in the responses to the Commission's questions ONRSR has provided in this submission.



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<sup>1</sup> Rail Safety National Law is a schedule to the *Rail Safety National Law (South Australia) 2012* and the *Rail Safety National Law (Western Australia) Act*

The key themes of ONRSR's response to the Issues Paper are set out below. They support the regulatory reforms and demonstrate the benefits and productivity gains generated via ONRSR's risk-based regulatory framework.

- > ONRSR initially commenced operation by operating under a direct delivery model in South Australia (SA), Northern Territory (NT) and Tasmania and under a service level agreement in New South Wales (NSW). Victoria joined the national scheme in 2014 under a service level agreement (SLA) and Western Australia (WA) and Queensland joined under the direct delivery model in 2015 and 2017 respectfully.
- > The co-regulatory risk based framework provides greater flexibility to rail transport operators to undertake the development of their safety management system, increases the opportunities for exploitation of innovation and focusses regulatory effort on the safety risks appropriate to their operation.
- > The rail transport operators have benefited from the reduced regulatory burden associated with one RSNL (despite the existence of derogations) and one interpretation of the RSNL.
- > Rail transport operators only require one accreditation to operate nationally, and once accredited with the appropriate scope and nature can undertake rail activities in all states, eliminating the duplication of effort required in obtaining multi-jurisdictional accreditations in the past.
- > The development of a Major Projects Guideline that outlines a consistent approach to accreditation of major projects has reduce the regulatory related project risks as ONRSR works with the proponent throughout the entire project. This ensures rail safety matters are considered throughout the project planning, design, implementation and commissioning and this reduces the risk of issues not being raised until completion of the project.
- > The establishment of ONRSR has created a single regulatory voice in discussions with the Australasian Railway Association (ARA), Freight on Rail Group (FORG), Rail Tram and Bus Union (RTBU), Australian Transport Safety Bureau (ATSB), Rail Industry Safety and Standards Board (RISSB), National Transport Commission (NTC) and Australasian Centre for Rail Innovation (ACRI) among others. This ensures the presentation of a single position for rail safety regulation with these industry and safety bodies around Australia.
- > ONRSR is operating in a financially responsible manner in order to reduce its own costs where possible. The costs of ONRSR have been contained within the initially agreed costs of regulation and in 2017/18 ONRSR reduced the cost of regulation by \$1 million. Capital funding for office expansion and development of information systems has been absorbed within the operating budgets. The number of staff employed by ONRSR and under its service level agreements has remained relatively static since establishment despite an increase in railway activities requiring more compliance activities, the need for more regulatory support for major projects, and more collection, analysis and sharing of information with stakeholders.
- > ONRSR has established new data systems and a website portal which helps rail transport operators lodge information, report occurrences and interact with the regulator improving efficiency for both the operator and ONRSR. This allows ONRSR a more mature data set to assist with risk based oversight of railway operations and to share with operators to assist them in managing their safety risks.

There are however some opportunities for further benefits to be realised and these are summarised below.

- > Removal of the derogations. There are still some major derogations within the RSNL that create differences across jurisdictions and present operational issues for multi-jurisdictional operators in turn risks and costs for ONRSR. The most significant of the derogations are around Drug and Alcohol Management and Fatigue Management. Whilst these have been reviewed and further considered by the Transport and Infrastructure Council (TIC) in 2017 and 2019 a national approach could not be agreed.
- > Mirror law in WA. In all states other than WA, application law is applied so the RSNL is applied simultaneously across the nation. Western Australia mirror law requires amendments be progressed separately through the WA Parliament.

Since the introduction of the RSNL four amendment packages have been enacted through the SA Parliament, with only changes to fees each year being enacted in WA. This has resulted in a number of differences in the law being applied in WA and being reflected in rail transport operators' safety management systems. For those undertaking business across the WA border the complexities and burden is even greater.

Rail Infrastructure Managers (RIMs) – differences in network rules. While this is outside the direct control of ONRSR, network rules applied across different networks, or even within single networks, have not been harmonised by the RIMs.

The introduction of national laws reduced the burden associated with seeking approval from a number of different regulators to allow such enhancements to be undertaken. To date ONRSR has not received any formal application for any significant harmonisation of differing network rules. However, it is acknowledged that discussions are underway with one RIM about the next stage of harmonisation within its own network.

This is an issue often raised by above rail transport operators as having a major impact on their operations due to additional requirements for communication and train management systems which has specific impacts on national freight operators and ONRSR considers that there are opportunities for further benefits to be realised through the existence of common network rules.

- > National Rail Safety Data Strategy – data currently reported to ONRSR is based on the requirements of previous state based Regulators. In partnership with industry, ONRSR is taking the opportunity to review data requirements. The National Rail Safety Data Strategy has been developed as a partnership between ONRSR, the ARA and rail industry representatives to achieve relevant, consistent and quality national rail safety data that is readily available to stakeholders.
- > Confidentiality of information (s244 of RSNL) – this section prohibits ONRSR from disclosing information, without consent that may identify a person or operator. This restriction inhibits ONRSR's ability to share learnings from investigations and other relevant data with the wider rail industry. This section is being reviewed as part of the National Rail Safety Data Strategy.
- > Tourist and Heritage – Of the 185 accredited operators 70 of these are tourist and heritage operators. These operations range from semi commercial (i.e. Puffing Billy in Victoria) to almost static displays in museums. They are predominately run by volunteers and many operate on isolated lines at low speeds. As a result the cost of regulatory oversight and support is not commensurate with the level of risk required to enable compliance with the RSNL. Many of the small tourist and heritage operators find compliance extremely onerous and question the appropriateness of it for their operation. Even with the use of a risk-based regulatory model, these operations might benefit from different regulatory requirements that recognises the scale and size of operation without compromising safety. ONRSR is currently reviewing options in relation to this.

ONRSR has, and will continue to undertake stakeholder surveys to monitor its own performance and respond to suggestions for improvements. ONRSR's most recent survey was undertaken in early 2019 and information from this survey is included in this response where appropriate. Generally the feedback has been very positive in relation to the effective implementation of the reforms.

In summary ONRSR considers that the reforms had sound objectives and that those objectives are being realised. However, ONRSR also recognises that while benefits to date have been substantial for rail transport operators regulated under RSNL, this is a journey and the final destination has not yet been reached.

## Scope of the enquiry

The Commission has released an Issues Paper (extracts below), dated May 2019 which set out a broader discussion of the transport reforms and identifies a series of questions which seek information from stakeholders as per the on the terms of reference for the enquiry.

## The Issues Paper

The terms of reference for the inquiry require the Commission to:

- investigate the long-run benefits of COAG's transport regulatory reform agenda
- examine the implementation and development of the national regulators and the extent to which the objectives of the agenda have been achieved
- identify opportunities to further integrate and harmonise the national freight market and the current focus and remit of the three national regulators.

The Commission has been asked to consider the broader COAG reform goals, and the Commission is to have regard to complementary reforms, including (but not limited to): rail standards harmonisation and interoperability; improved network access for higher productivity vehicles; and the development of the National Freight and Supply Chain Strategy.

Further clarification for other transports modes identifies that reform measures that are being progressed separately, such as cost reflective heavy vehicle pricing, are to be excluded from the inquiry except where their consideration is necessary for the Commission to reach a view on COAG's transport regulatory reforms. This does not apply so much to rail.

## Timing

The Commission has been asked to complete the inquiry by April 2020 and to consult with stakeholders, including transport operators, drivers, industry groups, end users and state, territory and local governments. Hearings will follow release of the draft report (figure 1).

Figure 1 **Key steps in the Commission's inquiry process**



There are two opportunities to make a submission. The first opportunity is to make a submission by 28 June 2019. The second opportunity is to make a further submission the month after the Draft Report is released in November 2019.

ONRSR's first submission is contained within this document.

## Background

### Initiating the transport reforms

In 2008, the Council of Australian Governments (COAG) endorsed a broad reform agenda with the goals of boosting productivity, increasing workforce participation and geographic mobility, and delivering better services for the community. Wider objectives included social inclusion, closing the gap on Indigenous disadvantage and environmental sustainability (COAG 2008b, 2008a). One element of this agenda targeted overlapping and inconsistent national, state and territory regulations — with the aim of fostering a seamless national economy. In this context, transport was identified as one sector for action.

Consequently, in 2009 COAG agreed to create national regulatory regimes for maritime safety, rail safety and heavy vehicle safety and productivity. COAG's intention was to improve safety while reducing costs and regulatory burden for transport companies and, as a result, lowering costs of exports and trade (COAG 2009). State-specific laws, regulations and regulators were to be replaced with national laws and regulators in each transport mode. Intergovernmental agreements to this effect were signed in 2011 (COAG 2011c, 2011a, 2011b). Estimates of the likely benefits of this reform agenda were substantial for the changes to heavy vehicle regulation.

### The establishment of ONRSR

The July 2009 Regulatory Impact Statement prepared by the NTC<sup>2</sup> (2009 RIS) noted that at that time, there were seven rail safety regulators operating across eight states and territories administering different laws, and processes to regulate the rail safety for a national population of 21 million people and 38,500 kilometres of track. Further, it was noted that a third of the rail transport operators conducted rail operations in multiple states and had to comply with two or more regulators and two or more sets of rail safety requirements.

Managing the local variations, different interpretations of national laws and maintaining different policies, requirements and organisational cultures lead to unnecessary regulatory and compliance costs for rail industry operators. This diverted resources away from improving the national transport sector in rail.

The 2009 RIS recorded the results of consultation with governments, industry bodies and unions.

The 2009 RIS stated:

*“Research and consultation identifies two main options for moving to a single, national rail safety regulatory framework: retain and significantly enhance the state-based regulation of rail safety, or establish a national regulatory body.*

*Similarly, there were two main options for moving to a single, national rail safety investigation framework: enhancing the current arrangements or moving to a national, ideally multi-modal, investigatory body.”<sup>3</sup>*

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<sup>2</sup> [https://www.ntc.gov.au/Media/Reports/\(F113666D-93AB-0B28-90D3-2F85ECA91B40\).pdf](https://www.ntc.gov.au/Media/Reports/(F113666D-93AB-0B28-90D3-2F85ECA91B40).pdf)

<sup>3</sup> 2009 RIS, page 7 (summary)

Further, the NTC made a recommendation following its consultations:

*“The NTC recommends the establishment of a single, national rail regulator as the best option for delivering improved safety outcomes on Australia’s rail system, reducing the regulatory burden on industry and increasing cost-effectiveness for governments. A single, national regulator would also help to deliver ATC’s vision of creating a single national transport market in rail.”*<sup>4</sup>

The 2009 RIS discussed the advantages of a co-regulatory model, which was described as a ‘middle ground’ between prescriptive regulation and self-regulation. Government needed to ensure that safety regulation was being administered, but the rail industry was very diverse (small operators, passenger operators, single product heavy haul, and large multi stage operators). Co-regulation allowed the rail transport operators to manage the safety risks, as the ones best able to identify and manage those risks. Further, there were relatively few operators in the rail industry, less than 200 including the tourist and heritage sector.

COAG signed up to the reforms, and set up a project office to establish the national rail safety regulator. In 2012, the RSNL was passed, and in January 2013 rail safety in SA, NT, Tasmania and NSW was regulated by ONRSR.

Victoria followed in May 2014, ACT in November 2014, WA in November 2015, and Queensland in July 2017. While all had agreed to the concept of a national law, there were some areas where agreement could not be reached at the time of establishing the national rail safety regulator. At that time derogations were agreed in the national law and also required in the respective states application law to allow alignment with other state based legislation. The intention was to resolve the national law derogations through reviews to be undertaken by ONRSR post transition.

That process established a single rail safety regulator for Australia.

## Responses to the Issues Paper

This section sets out ONRSR’s response to each of the questions raised in the Issues Paper and in the order raised in the Issues Paper.

To ensure there is a response recorded against each question, the question has been extracted from the Issues Paper and included here for reference, along with the assignment of a number for ease of cross reference throughout this submission. The page numbers after the notation ‘Information Request’ references the page number in the May 2019 Issues Paper.

Each set of questions is preceded by a heading extracted from the issues paper.

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<sup>4</sup> ibid – page 8 (summary)

## Other key bodies in the new regulatory arrangements

INFORMATION REQUEST [PAGE 5]

**Q1.1** *The regulatory frameworks differ across modes and consequently the three regulators operate in different ways — for example, the rail model is co-regulatory.*

*What are the practical effects of co-regulatory versus non-co-regulatory regimes?*

Co-regulation is the term used to describe the Australian rail safety regulatory framework established by the TIC and given effect through the RSNL.

The regulatory framework is co-regulatory in that the Australian governments do not directly prescribe the standards or rules by which the railways need to operate. Rather they set a performance requirement on railways to operate safely and provide operational flexibility to establish and implement standards, rules and methods of operation necessary when undertaking their operations.

The practical effects of co-regulation relate to the flexibility and responsiveness of the regulatory framework to match the safety risks presented by the risk profile, scale, size and complexity of the individual rail transport operator regulated under the framework.

Government, through TIC, determines the requirements of the RSNL which stipulates the co-regulatory framework and it is ONRSR that applies the framework, enforces the requirements of the law and a single interpretation of the law resulting in consistency in its application and in rail safety regulation.

ONRSR considers that the co-regulatory framework works well, and provides rail transport operators with a number of benefits that are outlined in this paper. This is key to the delivery of the reform benefits considered in the transport reform agenda.

Co-regulation is not a partnership between ONRSR and the rail industry. This is particularly obvious when it comes to the obligation to ensure, so far as is reasonably practicable (SFAIRP), the safety of railway operations. This responsibility for rail safety clearly rests with those parties that are directly in a position of control and management of railway operations, which is principally the accredited or registered rail transport operators and their various suppliers and contractors.

The effects of the co-regulatory frameworks are outlined below:

- > Shift in focus – the regulated parties are responsible for managing safety of their railway operations SFAIRP. Some tourist and heritage operators find this aspect challenging and have indicated that they would prefer a more prescriptive approach whereby it was set out clearly what they were required to do in order to meet their safety obligations. ONRSR does not support this approach as the rail transport operators are in the best position to identify and manage their risks SFAIRP according to the scale and complexity of their operations.
- > Communication - all parties being prepared to engage in an open and frank exchange in the disclosure of information regarding the management of safety and safety performance.
- > Cooperation – the various parties identified (Government, the Regulator, the rail transport operators and industry bodies) effectively deliver against their role and accountabilities in cooperation and in consultation with other affected parties.
- > Flexible and responsive – enables ONRSR to tailor its approach to each operator and their circumstances, using the right regulatory tools to achieve the right regulatory outcomes. We do this while at the same time aiming to present a consistent regulatory approach (for like circumstances) to the rail industry.

- > Risk based – in that the management of risks is the responsibility of the rail transport operator, which must identify and manage the safety risk using the resources available to it. The focus is on managing risk rather than satisfying a prescriptive set of rules. Setting the ‘output objective’ of managing the safety risk as compared to an ‘input objective’ of complying with a standard set of rules is economically efficient and scalable to the operator.
- > Supports innovation – as it allows rail transport operators to introduce new technologies to support their management of safety risks in a timelier manner when compared to a more prescriptive regime where innovation generally cannot be introduced until the rules change to allow it.

**Q 1.2** *If you work with more than one of the national regulators, what are the strengths and weaknesses of the different approaches?*

Not applicable to ONRSR

**Q 1.3** *Differences in the regulatory frameworks are also apparent in the degree to which the national laws are prescriptive or more risk-management based.*

*What are the practical effects of prescriptive versus risk-management based approaches?*

From ONRSR’s perspective, the co-regulatory model provides for a risk-based form of regulation where regulatory effort is generally commensurate with risk inherent in the rail transport operator’s operations. It also allows the rail transport operator to manage their business within a well-defined regulatory framework. Noting that there are prescriptive requirements in the RSNL in relation to the derogations pertaining to drug and alcohol management and fatigue management.

Administering the RSNL using a risk-based approach means that the key decisions including the setting of national priorities and the development of the work program to manage rail safety risks, are informed by an assessment of the risks to rail safety.

This involves:

- > Developing an understanding of the risks to the safety of railway operations in Australia;
- > Prioritising these risks and determining which risks we are able to influence through our regulatory activities; and
- > Designing, prioritising and delivering regulatory activities and outcomes in a way that best maintains and improves rail safety.

The practical effects of ONRSR’s risk-based regulatory approach recognise the broad range of operators and other duty holders with responsibilities under the RSNL, and accounts for their varying safety risk profiles and the different environments in which they operate when setting expectations and making regulatory decisions that impact them. The interpretation of the law by ONRSR is therefore consistently applied across all rail transport operators, but recognises their differences.

The risk-based form of regulation works well in the rail industry because:

- > there are a relatively small number of rail transport operators operating in Australia.
- > all rail transport operators have to be accredited and there are very few exceptions<sup>5</sup>.
- > there are some practical issues for entry into the rail industry in that a rail transport operator must either build their own infrastructure, or enter into an access arrangement with another entity for access to the fixed rail infrastructure on which to operate.
- > the legislation provides appropriate “compliance tools” and powers for the Regulator to apply if an operator is not managing its risks SFAIRP.

Some examples of the practical outcomes of risk-based regulation are explained below.

### ***Adopting new technologies***

Under the co-regulatory risk-based model administered by ONRSR, rail transport operators are able to more quickly innovate and move to adopt new technologies to improve their commercial operations, and improve safety at the same time. In a prescriptive approach, this might have required a rewriting of the rules in which a rail transport operator can operate, and have to consider various options and obligations around what the rail transport operator can do. Under the co-regulatory risk-based framework, the rail transport operator considers the safety aspects within the business case for the new technology, can assess the risks and the safety management responses, and finally demonstrate how these will be managed SFAIRP. This allows ONRSR to consider and grant a variation to their accreditation, once satisfied that all the risk are being managed SFAIRP, allowing the implementation of the new technology in a timely manner.

The practical outcomes of this approach have allowed Australian businesses to extract efficiencies in the development and introduction of the following projects without the need for legislative amendments:

- > Driverless trains in Sydney;
- > Autonomous, driverless trains in the Pilbara hauling minerals for Rio-Tinto – a world first for heavy haulage; and
- > New train management systems.

### ***Managing risks efficiently***

Another practical outcome of the risk-based approach is the management of risks in an efficient manner for the small rail transport operator such as the tourist and heritage operator. However some tourist and heritage operators find this challenging and have indicated that they would prefer more direction specific to their circumstances.

A prescriptive approach would require a small operator to demonstrate compliance with a detailed list of rules which prescribe the safety aspects of a rail business. Under a risk-based approach, the rail transport operator can focus their limited resources on the response to the management of safety risks that are relevant to their operations. This allows for flexibility, scalability and focuses their attention in effort that reduces the safety risks specific to their operation.

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<sup>5</sup> For example, an exception might relate to an exemption from accreditation if a small rail system was required for the purposes of constructing a tunnel. The exemption would apply in this example if the rail system was isolated, temporary and had appropriate other safety measures in place.

## **Major projects**

A key area of the ONRSR regulatory framework applies a co-regulatory risk-based approach to the development of major rail projects in Australia. This ensures that the projects are not delayed by prescriptive regulatory hurdles.

The Major Projects team in ONRSR works with the project team of the proponent to ensure that the relevant rail safety risks are managed effectively through the planning, development and implementation and commissioning of the rail project. This ensures that commercial decisions are made on relevant rail safety issues throughout the process reducing project risk for the end operator.

A Major Project fee, payable by the project proponent, was introduced in 2017 to reduce the cross subsidy of rail regulatory costs between the new proponent and existing rail transport operators. This has allowed ONRSR to reduce the cost of regulation for business as usual operations by \$1.12m for 2017-18 and 2018-19, and \$1.14m in 2019-20.

The combined effect of these outcomes is the efficient and cost-effective regulatory oversight of rail safety risks for new projects in Australia.

*Q 1.4 If you work with more than one of the national regulators, what are the strengths and weaknesses of their different approaches to regulation?*

Not applicable to ONRSR

*Q 1.5 To what extent are the differences in regulatory frameworks between modes justified, for example, by the size and number of operators in the markets, nature of businesses being regulated or the technical nature of the activity being regulated?*

ONRSR considers that the co-regulatory risk-based regulatory framework is the right fit for the Australian rail sector due to the small number of operators, the multijurisdictional environment of the operators participating in the industry and the varying size of the operators representing a broad range of operations from small isolated tourist and heritage networks to large national wide freight and passenger operations and heavy haulage systems.

Prior to being able to operate accreditation must be obtained from ONRSR. In order to be granted such the operator must show that they have the competence and capacity to manage the risks of their railway and demonstrate this through their Safety Management System. Such stringent entry requirements are not required in some other industries.

## **Inquiry scope, Concurrent research and reforms, Assessment framework**

INFORMATION REQUESTS/QUESTIONS [PAGE 10]

**Q 2.1** *In light of the other reviews relating to heavy vehicles where do you think the Commission could best add value to the policy and reform agenda?*

Not applicable to ONRSR

**Q 2.2** *Are there any other reviews that the Commission should be aware of?*

The Commission will be aware of the National Freight and Supply Chain Strategy being developed following the recent National Freight and Supply Chain Enquiry, for TIC. This strategy is representing a framework for developing a 20-year national integrated approach to make the movement of goods faster, easier, safer and less expensive.

Whilst not specifically focused on safety reform, this strategy review is likely to have impacts across the freight modes of road, rail and maritime.

This can be found at <https://www.infrastructure.gov.au/transport/freight/national-strategy.aspx>

**Q 2.3** *What other relevant research on the net benefits of transport reform should the Commission draw on?*

ONRSR considers that there is relevant material available which will help the Commission identify net benefits of rail safety reform, and therefore meet its objectives under this review through the following reports.

### ***Houston Kemp – 2018***

ONRSR considers that methodologies and evidence for the calculation of net benefits of reform of the transport sector are set out in the Houston Kemp report “Measuring the Economic Benefits of National Transport Reform” prepared for the Department of Infrastructure, Regional Development and Cities – 2 October 2018.

This report provides evidence of the benefits of the transport reform in the rail sector and the rail safety regulation as described in the Issues Paper.

The Houston Kemp report also identifies questions that might be asked of stakeholders should a survey of the net benefits be undertaken by the Commission. Some of these questions were also included in the MCM Strategic Communications 2019 survey mentioned below.

### ***MCM Strategic Communications – 2016 and 2019***

ONRSR periodically surveys its stakeholders via an independent communications consultant. The survey elicits qualitative and quantitative data through a combination of face to face interviews and an online survey of rail transport operators, industry associations, government, Ministerial staff and unions. The latest survey was completed in May 2019.

The purpose of this survey is to develop an assessment of:

- > The effectiveness of ONRSR’s performance against the objectives of the national rail safety reform;
- > The views of external stakeholders of the performance of ONRSR in delivering its key functions; and
- > The effectiveness of ONRSR’s engagement with stakeholders.

The use of an independent communications consultant provides an avenue for open and honest communication about the effectiveness of ONRSR, as the identity of individual participant remains confidential in the report.

Some comments and results have been extracted from that report and included in this response to various questions from the Issues Paper. The full report could be made available to the Commission on a confidential basis if required.

### **Consultation Papers for 'Drugs and Alcohol'**

During the introduction of the RSNL, TIC agreed that NSW could continue with its existing requirements for rail transport operators' drug and alcohol management plan, subject to a review within three years from the commencement of ONRSR.

TIC later agreed to delay this review by one year and the outcomes of the review, undertaken by ONRSR, were considered by TIC in May 2018. TIC agreed to the introduction of mandatory post-incident testing requirements for operators in certain circumstances, the inclusion of urine as a drug testing method available to the Regulator, and that further research be conducted into how consistency could be achieved in ONRSR's testing program. However, there was not unanimous support for those recommendations which would have removed the derogations from the RSNL impacting rail transport operators in NSW.

The practical effect is that the drug and alcohol testing regime in NSW is more prescriptive and different to the rest of Australia. Removal of this inconsistency would simplify the requirement for inclusion in an operators Safety Management System, allow for adaptability and scalability and reduce the regulatory burden. Although the law requires urine testing to be undertaken for drug testing in NSW the positive results from this cannot be used by the Regulator to progress a prosecution under the RSNL without further evidence of impairment.

The consultation paper is available on the ONRSR website<sup>6</sup>.

### **Consultation Papers for 'Fatigue Management'**

In May 2012, prior to the commencement of the RSNL, NSW maintained its requirements of prescribed outer limits for hours of work and rest for rail safety workers who drive trains. These provisions were agreed to by TIC to be included in the National Regulations.

TIC also agreed that a further review of fatigue arrangements be undertaken by ONRSR within three years of commencement of ONRSR. Following the decision of May 2012 by TIC, the timeframe for the review was extended, recognising the time it has taken for all jurisdictions to transition to the RSNL and the complexity of the task of reviewing fatigue risk management requirements and practices in the rail industry.

Further, conditional on Queensland adopting the RSNL was the acceptance into the RSNL of fatigue provisions which had previously been passed by the Queensland Parliament but had not been implemented. These included prescribed outer limits of hours of work and rest for train drivers in Queensland. However, the requirements are different to those included by NSW. These were also included in the National Regulations.

In 2019, ONRSR completed a review<sup>7</sup> of fatigue risk management with a view to meeting the following objectives:

- > Examine current fatigue risk management legislation and policies to determine the appropriateness and effectiveness of different requirements prescribed within the RSNL;
- > Consider leading practice approaches to the regulation of fatigue risk for all rail safety workers, particularly within a co-regulatory model;
- > Assess options for fatigue risk management in terms of safety and regulatory burden on industry; and
- > Recommend a consistent national regulatory approach.

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<sup>6</sup> Drug and Alcohol Management Review – July 2017

[https://www.onrsr.com.au/\\_data/assets/pdf\\_file/0003/19749/Draft-Drug-and-Alcohol-consultation-paper-June-2017.pdf](https://www.onrsr.com.au/_data/assets/pdf_file/0003/19749/Draft-Drug-and-Alcohol-consultation-paper-June-2017.pdf)

<sup>7</sup> ONRSR Fatigue Risk Management Consultation Paper <https://www.onrsr.com.au/news-and-events/news-and-events/onrsr-fatigue-risk-management-review-consultation-paper>

ONRSR does not believe that mandated 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. In view of this from a safety perspective and given that it is unlikely that a change to remove mandated hours will gain the required unanimous agreement by members of TIC a recommendation for change was not made by ONRSR.

Both of these matters, drug and alcohol and fatigue management are covered by derogations contained in the RSNL not application law.

## Have safety outcomes improved?

INFORMATION REQUEST [PAGE 13]

### Q 3.1 What impact have the national reforms had on safety outcomes?

No specific rail safety measure was agreed to prior to the commencement of ONRSR.

However, while it is difficult to obtain a definitive measure of rail safety that would provide statistically supportable outcomes, ONRSR considers that rail safety has improved through the reform process.

An important element of the transition of jurisdictions into ONRSR's fold has been the transfer of data that records rail safety related incidents from state-based systems into the national reporting system.

The data reported in the subsequent ONRSR Rail Safety Reports<sup>8</sup> has converted pre-ONRSR data into a nationally consistent format. While more detailed and less significant data is recorded in the categories and format of the previous state-based regulator of the day and has not been converted, all current and new data for occurrences listed below are now recorded in a nationally consistent format and published on the ONRSR website.

- > Fatalities
- > Collisions
- > Derailments
- > Signal passed at danger
- > Serious injuries
- > Level crossing safety
- > Track worker safety

ONRSR considers that despite the absence of a specific measure of safety, the national reforms and the resultant establishment of a single national rail safety regulator have had a positive impact on safety because:

- > The establishment of ONRSR creates a regulator that is independent of Ministerial or other government or industry influence in their decision making in relation to rail safety.
- > ONRSR has a well-defined governance structure that is focussed on rail safety regulation through the RSNL.
- > The RSNL has a range of compliance tools available to the Regulator to use as required
- > ONRSR have a team of technical experts that are utilised nationally whereby under previous arrangements it was not financially viable to have all expertise in every regulators office.
- > ONRSR has resources in all major capital cities across Australia and these are utilised across Australia as required.

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<sup>8</sup> Rail Safety data available at: <https://www.onrsr.com.au/publications/rail-safety-report> and a complete data set is publicly available at <https://www.onrsr.com.au/publications/national-safety-data>

- > National operators have a single senior ONRSR Director with responsibility for regulatory oversight of that operator across the country. Accountable Directors provide one regulatory strategy, one consolidated key decision maker, one national analysis task. This ensures ONRSR has a national picture of that operator as opposed to pre-ONRSR where there could have been up to seven state regulators with differing strategies, requirements and processes.
- > There is now a national oversight to safety data and performance and an operator's occurrence data is captured nationally allowing for analysis and comparison by ONRSR of that operator's performance across all jurisdictions. This was previously unavailable. State based data was previously published by the ATSB, as outlined in response to question 3.5.
- > The establishment of ONRSR has enabled RISSB to be able to obtain national data from ONRSR which has supported them in developing an industry risk model (Australian Rail Risk Model (ARRM)) which further assists industry in identifying and managing their risks.
- > The capture and publication of more data nationally provides more information for ONRSR, rail transport operators and other stakeholders on emerging trends which were not apparent through state-based collections. It allows for better interpretation of data through an amalgamated pool. With the use of this data both rail transport operators and ONRSR are better equipped to identify and address emerging risks. It also provides rail transport operators with valuable information to enable benchmarking of their own performance and identification on where improvements could be made.
- > In addition to the data available on ONRSR's website ONRSR provides over 25 specific tailored data reports per year to stakeholders including level crossing committees, government departments and TrackSAFE. Furthermore, ONRSR typically responds to over 20 ad-hoc data requests per year from stakeholders such as government departments, RISSB, ACRI and the media. These data reports and the analysis contained within are used by these stakeholders to inform rail safety decision making and investment.
- > There is now a provision for safety alerts based on national data.
- > The move to a single national rail safety regulator has allowed for a single interpretation of the law which improves the consistency in approach to safety regulation.
- > There is provision for publications (guidelines, policies, fact sheets) that provide information on ONRSR's expectations. These publications are available on the ONRSR website<sup>9</sup>.

Through its regulatory approach ONRSR identifies national priorities which are the identification of areas of rail safety that applies to multiple jurisdictions and operators and warrants a sustained period of regulatory attention. ONRSR addresses the national priorities either through operator-centric national compliance projects or industry-wide safety improvement projects<sup>10</sup>.

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<sup>9</sup> ONRSR Fact Sheets, Guidelines and Policies (Including expectations of ONRSR officers) are available at <https://www.onrsr.com.au/publications/fact-sheets-guidelines-and-policies>

<sup>10</sup> ONRSR National Priorities include Track worker safety, Road rail vehicle safety, level crossing safety and Tourism and heritage sector – safety management capability. They are presented on the ONRSR web site at <https://www.onrsr.com.au/about-onrsr/national-priorities>

**Q 3.2** *What impact have other contributors to safety outcomes had since the reforms were introduced?*

The benefits of the RSNL were expected to be developed through the removal of duplication and inconsistency of interpretation of the law, combined with the streamlining of regulatory activity. This was expected to reduce the regulatory burden on rail transport operators delivering regulatory activities more cost effectively and lowering the rail safety risks over time through information sharing and the adoption of best practice risk-based regulatory practices.

Other 'contributors to safety outcomes' have realised efficiencies for rail transport operators due to the national approach to regulation of rail safety. The efficiencies lead to the rail transport operator having the flexibility to manage their risks through adoption of new technologies and application of resources, rather than strict compliance with prescriptive rules and legislation.

Improvements in safety is therefore more easily attained through other contributions by:

- > Easier adoption of new technologies that improve safety, as they can be adopted nationally on one set of interpretations of regulatory requirements, rather than on a state by state basis. Further, the use of new technologies to improve safety are more readily attained under a risk-based approach;
- > Accrediting operators nationally, improving consistent application of the law across a business operating in multiple jurisdictions;
- > Capturing nationally consistent data on rail safety, allowing sharing (with prescribed bodies) and national based analysis, thereby exploiting the value of a larger data set of safety related information;
- > Reducing duplication of compliance issues, releasing staff to focus on resourcing rail safety improvements;
- > Using specialised ONRSR staff nationally to exploit experience in specialised areas and improve safety outcomes;
- > Creation of the ONRSR portal for use by rail transport operators nationally;
- > Improvements in information collection to support nationally based decision making about safety outcomes;
- > Ability for benchmarking for operators by sector (e.g. freight, passenger, tourist and heritage).

**Q 3.3** *What impacts do contracting practices and competitive pressures have on safety outcomes? How might these be addressed?*

Contracting practices and competitive pressures should not have a negative impact on safety outcomes and are accommodated in the co-regulatory framework as outlined below.

In respect to **contracting**, a contractor either works on rail infrastructure and rail related matters under their own accreditation, or as a contractor to a rail transport operator and working under that rail operator's accreditation.

A contractor working under their own accreditation (such as a major construction company building rail infrastructure) will have the rail safety systems appropriate for their activities and be accredited nationally under the ONRSR regulatory framework. Prior to ONRSR, a separate accreditation process was required for each jurisdiction. Under ONRSR, contractors have a central point of contact and single assessment process available to expand upon any previous geographical restrictions that were necessarily in place due to state-based regulators.

Provided their Safety Management System is appropriate and a contractor is assessed as having the competence and capacity to undertake their operations safely the scope and nature of their accreditation could be national. Therefore they would be able to bid for major project works in any jurisdiction without incurring costly and timely delays associated with gaining additional accreditations in each jurisdiction. It is understood that in some cases, prior to ONRSR, it was considered too hard and contractors would not bid for work in other jurisdictions thereby reducing the pool of contractors able to work in each state to only those who were accredited in that state.

Under a co-regulatory framework, if a contractor is not an accredited rail contractor, the responsibility for rail safety rests with the rail transport operator which is the accredited entity. They will have approved Safety Management Systems and practices that accommodate contractors, and require contractors to adhere to relevant practices as part of their engagement by the accredited party. This allows the accredited operator to conduct their business in an efficient and safe manner, and use contractors that can demonstrate compliance with the Safety Management System of the accredited rail transport operator.

This process provides the benefits of:

- > Safety (as the contractor must comply with the safety principles employed by the accredited operator);
- > Efficiency (as the operator is free to engage with appropriate contractors who have the best skills and experience for the outcomes required, subject to them complying with the accredited operations conditions); and
- > Flexibility (as the operator can use contracting resources as required, and as needed to manage the work flow from time to time);
- > The use of nationally accredited major construction contractors which are accredited in their own right, and can work on projects nationally, reducing their bid costs and increasing competition on rail construction projects.

In respect to the **competitive pressures** a national regulatory environment can assist in increasing competition in the supply of services as rail transport operators accreditation covers the scope and location of their activities which can now be across the whole of Australia with only one accreditation. It is also easier to apply to have an accreditation scope changed as again this is only required once. Under the state based approach, a rail transport operator would need to be accredited in each state, therefore a rail transport operator with experience in rail services in one state might not invest the time and cost developing rail safety processes for a different state's regulatory environment without a reasonable prospect of being able to win work to recoup the cost. Under a national approach contractors can now compete nationally with their existing accreditations, resulting in improvements in competition without any compromise to safety<sup>11</sup>. This can reduce the cost of rail services in Australia and allow for the promotion of economically efficient services.

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<sup>11</sup> WATCO was accredited to operate in Western Australia to haul grain having been formed in 2010. In 2019 it will commence operations in Queensland under its national accreditation.

**Q 3.4 *Have any compromises involved in the creation of the national law impacted safety outcomes? Do the national laws reflect best practice safety regulation?***

ONRSR does not consider there are compromises resulting from the creation of the RSNL but does recognise there remains differences between state jurisdictions.

For example, there are differences in the legislation relating to fatigue management and drug and alcohol management between the various States. However, whilst there are differences in the prescriptive approaches to deliver safety outcomes driven by respective state and territories, operators are still required under the RSNL to have an appropriate drug and alcohol management plan and to manage fatigue, each discussed in 2.3.

In 2016 ONRSR undertook an exercise whereby it identified 85 derogations to the RSNL predominately contained in application law. At that time industry identified only five of the 85 derogations were of major safety and productivity concern to them.

In addition to derogations relating to specific provisions within the RSNL the use of mirror law in WA has an impact on the rail industry. Since the introduction of the Rail Safety Law (WA) there have been four amendment packages progressed through the SA Parliament and these are yet to be incorporated into the WA mirror law resulting in a further 28 derogations and the increasing impact on ONRSR and industry.

ONRSR would expect that there would be cost savings due to reduced regulatory burden and administrative costs if the remaining major derogations were removed. Further, the removal of the mirror law in WA would reduce the administrative burden on operators who operate in WA and other jurisdictions and on ONRSR and also allow operators the benefit of the amendments that in some cases have been specifically included to reduce regulatory burden – ie double reporting in relation to drug and alcohol testing.

ONRSR has been working with the WA Government and understand that consideration is being given to the impacts of mirror law and possible changes.

**Q 3.5 *What are the best measures of safety in rail, road and maritime? Where can the Commission source such data?***

The measures of safety in rail are difficult to quantify, as there is no single measure of safety performance. Furthermore the use of incidents as a measure does not take account of the variation in the volume of passenger numbers and train kilometres travelled and the underlying risk profile. In any case the number of incidents is relatively low meaning minor changes in occurrences are likely to skew the results. As stated previously no measure of safety was agreed prior to commencement of ONRSR.

Safety data is collected, and reported publicly each year in ONRSR's Rail Safety Report where ONRSR publishes data on rail safety events and incidents that demonstrate rail safety performance metrics over time. The first Rail Safety Report published in 2013 covered data from 2008 to 2013. A spreadsheet containing summary data is also available publicly. References to this data is contained in our response to question 3.1.

Data is presented in the number of incidents, and normalised in the rate of incidents, (that is for example, the number of incidents per million passenger kilometres which is useful for comparison over time and takes account of differing volumes of rail activity between the years).

The 2018 Rail Safety Report<sup>12</sup> provides data covering the five years from 2013-14 to 2017-18 and provides notation of when various states' data was included. Performance can be measured with reference to:

- > Railway related fatalities
- > Passenger train derailment
- > Freight train derailment
- > Collision between trains with rolling stock
- > Signals passed at danger and other proceed authority exceedances
- > Other noteworthy occurrences

Rail safety occurrence data pre-ONRSR is available on the Australian Transport and Safety Bureau website. While definitions may differ slightly this data provides an overview of occurrences including fatalities, serious personal injury, derailments, collisions as well as track and train kilometres. The data published by the ATSB excludes tram, light rail and monorail operations.<sup>13</sup>

Additional safety measurement data can be found in the ARRM<sup>14</sup> managed by RISSB as explained in our response to question 3.1.

**Q 3.6 *What changes, if any, to the current system would improve safety outcomes?***

While ONRSR considers that the rail safety regulatory framework as set out in the RSNL is appropriate and delivers on the objective of managing and regulating rail safety in Australia there are areas where improvements to safety outcomes could be achieved under the current system. In addition to the removal of the major derogations and mirror law in WA, these include:

- > Completing the National Rail Safety Data Strategy – a process of reviewing data needs and outcomes and provide a better opportunity to share data to reduce risks in the future to:
  - improve risk-based management as it provides more data with which to analyse safety issues and outcomes.
  - improve the economic benefits associated with information sharing, where operators can learn from other operator experiences, and the regulator can identify emerging issues.
  - provide better data back to industry for analysis of rail related hardware components, processes, and other risk-based procedures.
- > Investigate confidentiality clause (S244 pf RSNL) provisions to allow for improved sharing of information amongst stakeholders.
- > Share more detailed data with stakeholders though the industry on level crossings for example and potentially through a portal of self-help.
- > Implementing recommendations of the Drug and Alcohol review in relation to undertaking further research into how consistency could be achieved in ONRSR's testing program.

**Q 3.7 *What have been the costs, or unintended consequences, of moving towards uniform national standards?***

ONRSR has not identified any unintentional outcomes to industry from "moving towards uniform national standards".

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<sup>12</sup> 2018 Rail Safety Report [https://www.onrsr.com.au/\\_data/assets/pdf\\_file/0018/22626/17789-ONRSR-Safety-Report-Spreads.pdf](https://www.onrsr.com.au/_data/assets/pdf_file/0018/22626/17789-ONRSR-Safety-Report-Spreads.pdf)

<sup>13</sup> <https://www.atsb.gov.au/publications/2012/rr-2012-010/>

<sup>14</sup> ARRM.org.au

Under a risk-based model, the rail industry does not have 'uniform national standards' but rather a single Rail Safety National Law and a single regulator which has a consistent interpretation and application of that law. The rail transport operators then develop risk management procedures and processes that manage the risks so far as is reasonably practicable to their operation. This provides for safe operations however does not address the issue of different network rules, requirements for operators using the networks to have different communication and train management systems.

**Q 3.8** *How does transport safety regulation interact with other regulatory schemes, for example, workplace health and safety regulation? Where is there a conflict, what issues arise as a result? How should this conflict be addressed?*

Rail safety regulation works with other regulatory schemes including the work health and safety regulatory environment to ensure that there are no conflicts in understanding responsibilities and safety outcomes. In that regard, Section 48 of the RSNL clearly addresses the relationship between the RSNL and relevant Occupational Health and Safety legislation. This is important 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 and agreed Memoranda of Understanding (MOUs) with a number of organisations and government authorities to ensure strong understanding of the hierarchy of responsibilities and minimise disruption to operators. These MOUs are set out in the following matrix.

MOU	Explanation
Work Health and Safety	Workplace safety authorities including Comcare, Worksafe ACT, Safework NSW, NT Worksafe, Worksafe SA, Worksafe Tasmania, Worksafe Victoria and Department of Mines, Industry Regulation and Safety in WA.
Police	At the present time, ONRSR has MOUs with police forces in Queensland, South Australian, Victoria and Western Australia <sup>15</sup>
Dangerous Goods regulators	Whilst there is an Australian Dangerous Goods Code for the transport of dangerous goods in Australia it is managed by individual state law. ONRSR has MOUs with relevant state-based regulators to manage safety issues with regard to the transport of Dangerous Goods by rail.
Others	Including the Utilities Regulator in the ACT, Officer of the Chief Investigator Transport Safety (Victoria) and the National Transport Commission.  Negotiations are also underway with Energy Safe Victoria and the Independent Pricing and Regulatory Tribunal in NSW

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<sup>15</sup> Pre-existing arrangements with other police forces have been carried over from other jurisdictions.

## **Other work in relation to interaction with other laws and regulations.**

**Rail Safety Worker** – Discussion Paper<sup>16</sup> from the National Transport Commission on the definition of ‘Rail Safety Work’, the ‘Rail Safety Worker’ (RSW) and related matters.

The definition of RSW has been an issue predominantly raised by industry over many years. Guidance material had been issued by ONRSR to try and gain clarity but confusion still existed and therefore the paper was released in April 2019 focusing on the definition of ‘rail safety work’ and ‘rail safety worker’ in the RSNL. It outlines options and makes recommendations for ensuring that the definition focuses on managing the risks associated with railway operations. The paper starts a process to respond to industry’s concerns regarding the clarification of who is deemed to be a rail safety worker, and the requirements of these roles over and above the requirements in the Work Health and Safety legislation<sup>17</sup>.

**Tourist and Heritage** – Proposal seeking exemption from High Risk Work Licencing in April 2018. This was a submission by The Association of Tourist and Heritage Rail Australia (ATHRA) to the model Work Health and Safety laws review in 2018. ATHRA sought an exemption from the High Risk Work Licences (HRWL) concerned with firing and driving steam locomotives (BS/BA and ES) on tourist and heritage railways for persons who have obtained the applicable certificate of competency through the ATHRA training and accreditation scheme and for operators accredited by ONRSR. HRWL is concerned with stationary boilers in power stations, hospitals and industry, the provisions of which are largely irrelevant to steam locomotives. The RSNL under section 117 requires the accredited operator to ensure that their RSWs are competent and ONRSR has the responsibility to oversee this. ONRSR recognises that if a person is trained and assessed under the ATHRA competencies, which are specific to the steam locomotive boiler that is being operated, then they have the competency to undertake their tasks.

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<sup>16</sup> Refining the definition of rail safety worker – NTC - April 2019

[https://www.ntc.gov.au/Media/Reports/\(94E743A4-3D2B-0D83-8A1C-803685FD819F\).pdf](https://www.ntc.gov.au/Media/Reports/(94E743A4-3D2B-0D83-8A1C-803685FD819F).pdf)

<sup>17</sup> Safework Australia has prepared a report which will inform a Regulatory Impact Statement to be prepared later in 2019. The paper is available at:

[https://www.safeworkaustralia.gov.au/system/files/documents/1902/review\\_of\\_the\\_model\\_WHS\\_laws\\_final\\_report\\_0.pdf](https://www.safeworkaustralia.gov.au/system/files/documents/1902/review_of_the_model_WHS_laws_final_report_0.pdf)

## Has nationally consistent regulation been achieved?

INFORMATION REQUEST [PAGE 15]

**Q 4.1** *What have been the practical effects, particularly on safety, regulatory burden, costs and productivity, of:*

- **Q4.1a** *States and Territories not participating in the national approaches? For example, has non-participation by Western Australia and the Northern Territory caused complications for industry?*
- **Q 4.1b** *variations between States and Territories in the time taken to pass legislation to apply a law or make amendments? For example, does interstate variation in the speed with which amendments take effect have an impact on operators?*

All states and territories signed up to participating in the national reform for rail. Introduction of Application Law by the states and territories took place over five years as shown below. Even though Victoria passed application law in 2014 this excluded light rail and some Tourist and Heritage operators, however legislation is currently being drafted to include these operators into the national scheme. It is anticipated that this will progress through parliament by the end of 2019.

- > 2013 – 20 January - SA, NT, Tasmania and NSW joined ONRSR
- > 2014 – 19 May Victoria joined ONRSR (excluding light rail and some tourist and heritage operators)
- > 2014 – 20 November - ACT joined ONRSR
- > 2015 – 2 November - WA joined ONRSR
- > 2017 – 1 July - Queensland joined ONRSR.

NSW initially joined operating under a SLA which was removed in 2017 and replaced by a direct delivery model by ONRSR. Victoria is operating under a SLA which is expected to be removed by the end of 2019.

The progressive adoption of the RSNL has allowed an orderly transition to the national objectives, and has not resulted in any significant cost burden to the industry. It has however required significant resources from ONRSR to facilitate these transitions which were not included in the initial cost of regulation. However ONRSR has met these costs through other efficiencies requiring no further additional funding from TIC. For all intents and purposes, the national rail safety objectives are being met and there is no material 'non-participation' from a rail safety regulatory perspective.

There are a number of derogations as mentioned above in response to question 3.4 that remain and have a practical effect on costs and productivity.

The remaining inconsistencies from derogations are:

- > Fatigue – Discussed in response to Questions 2.3.
- > Drug and Alcohol – Discussed in response to Question 2.3
- > Mirror law for Western Australia – Discussed in response to Question 3.4

**Q 4.1c** *State and Territory government exemptions from the national laws? For example, does the grandfathering from survey of some vessels have any safety implications?*

In respect to RSNL there are no grandfathering provisions and except for the exclusion of light rail and some tourist and heritage operators in Victoria all other railway operations intended to be covered by the RSNL are regulated under this law. ONRSR does not believe that the exclusions in Victoria have any safety implications as they are regulated by the Victorian Government. It is anticipated that regulatory responsibility for these operators will transfer to ONRSR by the end of 2019.

Transition provisions were provided for allowing operators up to three years to comply with new requirements under the RSNL.

It was never the intention for the RSNL to include sugar cane railways in Queensland as the Queensland Government are satisfied that these are being regulated adequately under the Queensland work health and safety legislation.

**Q 4.2** *Should any inconsistencies in the current system be addressed? If so, what are these and how should they be addressed?*

There are some inconsistencies in rail safety regulation, but in the detail rather than in the delivery of national rail safety objectives.

The inconsistencies arise from historical positions of previous regulators (as mentioned in response to question 2.3 and 3.4) and cover:

- > **Fatigue** – Discussed in response to Question 2.3.
- > **Drug and Alcohol** – Discussed in response to Question 2.3
- > **Mirror law for Western Australia** – Discussed in response to Question 3.4.

Operators need to be aware of this when developing their Safety Management System.

## What are the effects of remaining State-level regulation and regulators?

INFORMATION REQUEST [PAGE 16]

**Q 5.1** *What have been the practical effects, particularly on safety, regulatory burden, costs and productivity, of:*

**Q 5.1a** *the co-existence of national and State-level regulation? For operators? For regulators?*

Since ONRSR was established by the RSNL, ONRSR has assumed the responsibility for rail safety regulation progressively with states and territories adopting the RSNL over the period 2013 to 2017. Most of the state-based regulatory responsibility has been transferred to ONRSR with the exception of:

- > Victoria – has its own legislation for light rail and some tourist and heritage operators administered by Transport Safety Victoria. It is not considered to have any impact on safety or regulatory burden for operators as they are working with only one regulator.

As these are only small in number there would be a duplicate cost of administration by the Victorian Government in maintaining separate legislation, IT systems, training and general overheads. There is no cost implication to ONRSR.

Victoria has also chosen to operate under a service level agreement, whereby they are responsible for the duplicate costs such as human resources, finance and other state specific costs. It is expected that the service level agreement will be removed by the end of 2019 which will see Victoria operating under a direct delivery model which ONRSR believes will provide efficiencies for ONRSR and the rail industry in general.

- > Western Australia – which operates under mirror law, and therefore national law passed through the SA Parliament as outlined in response to question 3.4
- > A small number of the remaining derogations covered in the response to questions 2.3 and 3.4. The practical effects of these state-based derogations on **operators** are set out in the response to question 3.4, but principally relate to the burden of costs in having to understand the regulatory effect of differences applied in two jurisdictions.
- > The practical effects of these state-based derogations on **ONRSR** relates to the costs of regulating operators and understanding and applying the differences.

**Q 5.1b** *variation in remaining State-level regulation?*

Nothing further applicable to ONRSR

**Q 5.2** *Are there other examples of inconsistency? If so, what has been their practical effect?*

There are no other material examples of inconsistency other than those already mentioned above.

**Q 5.3** *Should any inconsistencies in the current system be addressed? If so, how?*

The derogations listed above represent inconsistencies with the two major items being Drug and Alcohol Management and Fatigue Management. These have been considered by TIC and it has been agreed not to remove the derogation.

The advantages of addressing these derogations is to reduce the inconsistencies move to one set of legislation under which these safety issues can be addressed within the rail industry. This would result in national operators having one set of procedures to apply to a particular safety issue within their safety management system and ONRSR not having to ensure that safety management systems are being applied appropriately in different jurisdictions. The impacts of this are relevant with the introduction of new requirements for post incident drug and alcohol testing on 1 July 2019 whereby the changes (including immediate reportable occurrences to ONRSR) do not apply in WA or NSW however internally ONRSR manages this as a national program.

For example, if there was no longer a need for a derogation for fatigue management, then a business operating across multiple jurisdictions would only need one set of procedures for fatigue management which would:

- > Reduce costs in training and implementation of the rules to its staff;
- > Reduce the risk of non-compliance where the incorrect rule was applied in a specific jurisdiction;
- > Reduce costs administering additional rules; and
- > Increase operational flexibility and reduce rail operating costs.

## Have administrative costs fallen for governments?

INFORMATION REQUEST [PAGE 17]

**Q 6.1** *How has the move to a national regulatory system affected operators' regulatory burden and compliance costs?*

### **Cost of regulation**

In 2017/18 ONRSR reduced the cost of regulation by \$1 million through identification of internal efficiencies and in 2017 applied the major projects fee which saw the reduction in cross subsidisation whereby major projects were paying for their regulatory oversight and the cost of regulation for business as usual operations (as discussed under 1.3).

At the time of approving the national reform TIC also made a decision to have the cost of regulation paid 100% by industry. At that time the percentage of government contributions across jurisdictions ranged from 9% to 100% and therefore to move immediately to 100% cost recovery from industry would have resulted in an unmanageable price shock for industry. A decision was taken by TIC to reduce government contributions by 5% each year until the jurisdiction was at 100% cost recovery. Currently only three jurisdictions are 100% funded by industry. At the same time a national fee setting model was introduced to recover the agreed cost of regulation however this saw some operators paying more fees and other less but the overall amount collected did not change. Operators in jurisdictions that are not yet at 100% cost recovery are also experiencing an increase in their fees as 5% of the cost of regulation is passed back to industry each year while the overall amount collected only increases each year by CPI.

A number of operators have seen this as an increased compliance cost due to the reform.

ONRSR will continue to realise efficiencies once operating as a truly national model.

The move to a national regulatory system have positively affected operators' examples are:

- > The RSNL has led to the removal of duplication in regulatory obligations for rail operators and facilitated a transition to a national risk-based approach to rail safety regulation. Both the removal of duplication, and the move to a risk-based model of regulation reduces the operators' regulatory burden and compliance costs.
- > Rail transport operators have directly benefited through reduced costs and burden by:
  - removing duplication of regulatory obligations particularly through the introduction of a national accreditation program;
  - improved consistency and certainty of compliance activities; and
  - improvements in regulatory service delivery including shifting towards greater use of on-line systems for regulatory reporting.
- > There have been additional benefits arising from:
  - efforts to reduce the cost of undertaking regulatory activities through streamlining processes and a focus on cost efficiency by ONRSR (including the use of a portal for providing and receiving information);
  - reducing barriers for adoption of innovation prior to ONRSR an operator working across multiple jurisdictions may not be able to change a process as it would require multiple regulators to grant the variation;
  - removing the risk that one jurisdiction may not approve the change, so innovation is stifled by regulatory risk in a multi-jurisdictional model which is not the case in the national model.
- > Rail safety risks are better managed through a greater focus on risk-based compliance and enforcement which allows for better targeting of safety risks from available resources engagement with the industry improved training procedures and processes for rail safety officers and improved availability of data.

As discussed under 2.3 ONRSR periodically surveys its stakeholders through an independent communications consultant. The survey elicits qualitative and quantitative data through a combination of face to face interviews and an online survey of rail transport operators, industry associations, government, Ministerial staff and unions.

The latest survey was completed in May 2019. There were 34 interviews conducted and 100 responses from 195 invited to participate in the on-line survey.

The responses by the stakeholders are supportive of a process that has reduced regulatory costs to the rail operators as evidenced in the following pages. An extract of some of the questions and the degree to which the participants agreed is set out below.

Question	Percentage that agreed or strongly agreed	Neutral	Disagree
How strongly do you agree that ONRSR's accreditation process is straightforward and easy to manage	56%	27%	17%
How strongly do you agree that the occurrence reporting process required of operators are straightforward and easy to adhere to?	71%	19%	10%
How strongly do you agree that the current regulatory arrangements compare favourably to what was in place before ONRSR was established?	64%	27%	9%
How strongly do you agree that the existence of a single national rail safety regulator has made it easier to progress an industry approach to network rules	57%	32%	11%
How strongly do you agree that the work undertaken by ONRSR contributes to the national transport reform agenda – specifically providing for continuous improvement of the national regulatory framework?	68%	24%	8%
As a risk-based regulator, ONSR prioritises regulation based on the level of risk associated with both the nature of rail operations and performance. Do you think ONRSR generally targets the right areas through its regulatory activities	84%	13%	3%

A few of the text responses from survey participants also supporting the efficiency of ONRSR are set out in answers provided by stakeholders responding to the following questions.

- > How has the advent of a single regulator allowed you to enhance your business?
  - “National consistency”
  - “Working across state borders has become easier with 1 regulator and 1 accreditation”
  - “As an RTO I think a single national rail regulator has streamlined our compliance requirements in all states we operate giving our business the opportunity to grow all over Australia”

- > Do you have any other comments about the establishment and operation of a single national rail safety regulator?
  - “It makes for an efficient approach to rail safety and reduces the regulatory burden on operations”
  - “Just that it was a great move for industry and rail safety for the establishment of a single national regulator”

**Q 6.2** *How has the move to a national regulatory system affected the costs to government of administering transport safety regulation?*

The move to a national rail regulatory system reform has reduced the regulatory costs to government and will continue to reduce costs in the short term as government funding of the regulatory activities is withdrawn.<sup>18</sup>

Specifically, the cost of ONRSR delivering its services has increased each year by CPI only and in 2017/18 ONRSR reduced its costs by \$1m as a result of internal efficiencies. The cost to government has reduced through a move to transition to a funding model where the rail transport operators pay 100% for regulation through their accreditation fees. The fees for Tourist and Heritage operators are applied at a reduced rate and governments generally cover these fees through a community service obligation and the remainder of the costs are cross subsidised by other rail transport operators.

Other costs to government such as the cost of managing legislative changes will also decrease with the use of the host jurisdiction (South Australia) to manage legislative process and most other states accepting the legislation through ‘application law’.

**Q6.3** *How might the costs and benefits of any changes in regulatory burden, and any changes in compliance or administrative costs best be measured? Where can the Commission source relevant data?*

ONRSR does not have specific data on the cost savings that have accrued to the rail operators as a result of the reforms however, it may be possible to survey the rail operators and establish metrics that quantify the savings.

The data that supports these costs savings would be primarily available from the rail operators.

The Houston Kemp report identifies questions that might be considered in a survey to establish and quantify these savings. Refer to the response to question 2.3 above.

**Q 6.4** *How might any unnecessary regulatory burden and compliance or administrative costs be reduced?*

There are a number of opportunities to reduce regulatory burden, compliance and administrative costs as outlined below.

- > **Removal of derogations** - ONRSR would expect that there would be cost savings due to reduced regulatory burden and administrative costs if the remaining major derogations were removed. Further, the removal of the mirror law in WA would, remove derogations and reduce the administrative burden on operators who operate in Western Australia and other jurisdictions as well as on ONRSR and the WA Government who would no longer be required to draft and progress legislation through their own parliament.

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<sup>18</sup> This is separate to the costs to government owned rail infrastructure and rail operators as the shift in cost recovery is being transferred to the industry which includes some government owned businesses.

- > **Reconsider slow speed isolated rail operations** – Of the 185 accredited operators 70 of these are tourist and heritage operators. These operations range from semi commercial (i.e. Puffing Billy in Victoria) to almost static displays in museums. They are predominately run by volunteers and many operate on isolated lines at low speeds. Due to this the cost of regulatory oversight and support is not commensurate to the level of risk required to enable compliance with the RSNL. Many of the small tourist and heritage operators find compliance extremely onerous and question the appropriateness of it for their operation type. Even with the use of a risk-based regulatory model, these operations might benefit from different regulatory requirements that recognises the scale and size of operation without compromising safety. ONRSR is currently reviewing options in relation to this.
- > **Budget management** – ONRSR is actively managing the budget that funds the ONRSR activities and is acutely aware of the need to manage costs to reduce the burden on rail operators. The strong financial management by ONRSR has:
  - reduced operating costs by \$1 million in 2017/18 resulting in a reduction in the cost of regulation from that year going forward;
  - operated within the existing budgets since its inception, with increases only for changes in the CPI. Efficiencies have been extracted through improvements in operation and good management and kept the funding increases to CPI notwithstanding that the majority of costs relate to labour which is currently increasing at slightly higher than CPI and the growth in railway activity;
  - carried out the fit-out expansion of the national office in Adelaide within its operating budget; and
  - developed new software systems, including information systems and the online portal for receiving information within the annual operating budgets.

Further, there are other matters that are outside of the control of ONRSR that relate to costs and productivity. If these can be resolved, this would unlock the currently unrealised productivity gains expected from the transport reforms.

- > **Differences in network rules applied by Rail Infrastructure Managers (RIMs)** –RIMs apply different network rules between and within networks, or even within a single network notwithstanding that ONRSR has accredited a RIM to operate in all states under one accreditation. The accreditation process ensures the RIM has demonstrated that they have the relevant competencies, capacity and systems to manage their risks across the full spectrum of their operations (in any jurisdiction).

The existence of different network rules applied across jurisdictions appears to be the result of legacy issues that have not been resolved by the RIMs. If these can be resolved, above rail operators who seek access to the networks run by the RIMs will benefit from simplification of procedures and reductions in duplicated effort, training and administration resulting in productivity improvements likely to be assumed in the transport reforms but as yet unrealised. ONRSR does not have any powers to compel the RIMs to change their access requirements to unlock these benefits.

## Have productivity and efficiency improved?

INFORMATION REQUEST [PAGE 18]

- Q7.1 *Is the Commission's understanding of heavy vehicle productivity accurate?*
- Q7.2 *How can heavy vehicle productivity be best measured?*
- Q7.3 *Have there been changes to heavy vehicle productivity since the national reforms were implemented? If yes, how did the reforms contribute relative to other productivity drivers?*
- Q7.4 *What has been the cost of implementing the heavy vehicle productivity reforms for government and operators?*
- Q7.5 *Where can the Commission source data relevant to the above lines of inquiry?*
- Q7.6 *If the relevant reforms have improved safety, has this led to productivity benefits for operators? If so, how do these manifest and how can they be measured?*
- Q7.7 *What other effects, if any, have the reforms had on the productivity and efficiency of the transport industry? What are the main drivers of any such effects?*
- Q7.8 *What changes to the current system could improve productivity outcomes?*
- Q7.9 *Should the remit of ONRSR and AMSA be expanded to include productivity objectives or should this be the responsibility of other institutions and agents?*

Not applicable to ONRSR

INFORMATION REQUEST [PAGE 19]

- Q7.10 *What, if any, indirect benefits have flown from the reforms to industries that interact with the transport industry, governments and the broader community? For example, have any cost savings been realised?*

Direct benefits have been realised (and will continue to be realised) in the rail sector and by its rail operators as a result of the reforms but additional indirect benefits are realised by the operators due to the reduction of duplicated effort, more efficient use of resources and the development of the risk-based regulatory model.

The benefits to the transport industry, government and the broader community include the following.

- > Facilitating an improved ability for rail transport operators to introduce change and innovation allows contractors, service providers, freight operators and other businesses associated with the rail industry to innovate, change and adapt new ideas to the rail sector.
- > Providing nationally consistent set of guidelines allows freight operators to consider their operations in a national context and make decisions based on the mode of transport (rail, road, marine) without necessarily considering the need to accommodate different jurisdictional requirements, opening up (and simplifying) the freight market. This will increase competition and reduce the risk of 'regulation hurdles' impacting commercial decisions.
- > Being recognised as a single voice for rail safety regulation (as compared to the state based system) improves standing in the community on matters of rail safety.
- > There is potential for benefits to flow to the heavy vehicle industry and others if a concept currently being progressed by ONRSR through the National Level Crossing Safety Committee to develop a portal allowing different stakeholders access to data and information in relation to all public level crossings in Australia comes to fruition.

- > Promotion of major projects in Australia through the simplification of the rail safety components of major rail projects leads to increased investment in Australia. Further, the introduction of major projects fees will allow ONRSR to be adequately resourced to support major projects, reducing the risk of delays in the assessment process and resulting in a reduction in overall project risk to the investors.
- > Having a national approach to the accreditation and registration of rail transport operators has removed the situation where some operators held both accreditation and registration in different states. A rail infrastructure manager now is either accredited for all of their rail infrastructure or registered (in the case of private sidings) for all of their siding locations. This reduces the regulatory burden and costs of complying with both accreditation and registration requirements.
- > ONRSR has developed safety improvement programs as part of its education role within the rail industry.
- > The development of the ONRSR website and the online portal help provide, and receive appropriate and consistent information to/from rail transport operators in an autonomous manner, improving the efficiencies and accuracy of information collection to reduce the administrative burdens.
- > Continuously working with other entities to support the rail sector with policy development and consultation through relationships with the ARA, RISSB, FORG, various unions, ACRI and Tracksafe Foundation.
- > Any industry participant including suppliers and manufacturers of rail equipment now has a single organisation to contact regarding the necessary regulatory approval processes that may or may not apply to their products. This also applies when a company is exploring the potential for any new or innovative form of technology and has the potential to reduce cost and inefficiencies in the research and development sector. There are potential benefits to the wider community if innovation is encouraged and safety also improves at the same time.

**Q 7.11 What data and tools should the Commission draw on to estimate any indirect net benefits?**

ONRSR does not have data available that could estimate indirect benefits. This data may be able to be sourced directly from rail transport operators.

**Q 7.12 Has the creation of a national system made it easier to change regulation?**

Prior to the introduction of the national system legislative and policy changes were either undertaken by the NTC and/or individual governments. The development of the model law in 2005 led by the NTC and involving stakeholders from all jurisdictions, industry and unions, centralised the development of policy and drafting of model legislation including the development of a Regulatory Impact Statement. Once approved by TIC all jurisdictions then had to draft the new law based on the model law, but did not require any further approvals to include any variations they saw fit to include, and progress it through their respective parliaments.

Under the national system new policy is developed with a similar stakeholder group led jointly by the NTC and ONRSR and the legislation is required to be drafted once and progressed through the South Australian Parliament following unanimous agreement by TIC members. Due to the requirement for all jurisdictions to agree to the changes, the Council meets twice a year and following agreement by Council changes then have to progress through the South Australian Parliament meaning the average time from commencement of policy development to implementation is generally between 18 months and two years. Previously this was potentially quicker as changes only needed to progress through Cabinet and then through the jurisdictions Parliament and the priority for this was determined by the Cabinet.

ONRSR considers that the national system has not significantly influenced the effort to change regulation in rail safety, as this requires unanimous agreement by the jurisdictional transport ministers (through the TISOC to TIC). This process is important to the coordinated progress of managing changes in rail safety policy over time.

The use of application law in states allows for a more streamlined approach to statute amendments in all jurisdictions but WA.

However, what has been important to rail safety reform and the development of productivity improvements is the way the changes are operationalised into the rail sector. This is where ONRSR has been able to deliver the benefits through an efficient and coordinated approach that interfaces with the rail industry participants who are the net beneficiaries of the reforms, through improved safety and lowered costs.

*Q 7.13 Has the creation of a national system had any effects on other areas of regulatory effort, for example, on the residual functions retained by States and Territories?*

No residual functions retained by states under rail except for Victoria which have been address in 4.1b. Victoria is expected to have all railway operations regulated under the RSNL by the end of 2019.

## How have the regulators performed in undertaking their regulatory functions?

INFORMATION REQUEST [PAGE 20]

**Q 8.1** *Are the regulators effective? Are they adequately resourced? Do they have appropriate powers to achieve their objectives?*

ONRSR believes it is an effective regulator and has delivered national rail safety regulation and implemented the transport reform without increasing the cost of regulation. There are many benefits delivered to rail operators through the establishment of ONRSR and there are more benefits to be realised in the future.

ONRSR has delivered these benefits within a stable resource base, further supporting the delivery of expanded services without the need to increase staff. ONRSR is managing the costs and the transition from state-based regulation to the national framework, increasing services, regulatory support and communication without any increases in resources.

ONRSR believes it has an appropriate range of enforcement measures, as detailed in Part 5 of the RSNL, to achieve its objectives. These range from issuing improvement and prohibition notices through to suspension/withdrawal of accreditation and legal action.

In support of the effectiveness of its regulatory operations, as outlined under 2.3 ONRSR undertakes stakeholder surveys and the 2019 survey revealed the following in relation to effectiveness.

Question	Very effective or effective	Neutral	Ineffective
How effective is the ONRSR in fulfilling its functions as stated in the RSNL?	80%	17%	3%

Some text comments included by the respondents' state:

- > "they have been very effective with our contact"
- > "Effective however at times it takes a bit longer to get a response"
- > "Effective at enforcing the law, not so much on education and provision of safety performance material to assist the industry"
- > "the staff seem to be very informed and the audits are thorough. We get information quite often"
- > "They have worked in a co-regulatory manner with industry to improve the implementation of rail safety"
- > "Always available for advice, whether on-site or remote. Excellent guidance and skills knowledge"

Other survey responses that support the effectiveness of ONRSR are included below.

Question	60% to 80% better	40% to 60% better	0% to 40% better
Under ONRSR how much better are regulatory processes and procedures for industry?	60%	17%	23%

Question	Very effective or effective	Neutral	Ineffective
How strongly do you agree that under ONRSR the Australian rail industry has improved national coordination of safety-related regulatory activities?	62%	31%	7%
How strongly do you agree that under ONRSR the Australian rail industry has improved data and information on safety risks?	70%	25%	5%

Question	High	Moderate	Average	Below average and low
Which would most accurately describe the level of confidence you have in the ONRSR?	50%	35%	11%	4%

ONRSR is transparent in how it operates under a co-regulatory risk-based model as explained in the ONRSR publication “The ONRSR Way”, and various ONRSR guidelines available to rail transport operators through the ONRSR website.

**Q 8.2** *Where regulatory arrangements are not operating as expected, what are the reasons? For example, are there issues with the regulatory structure or with government policies? How might any issues best be addressed?*

ONRSR is very positive in relation to the regulatory arrangements and believe that they are working as expected. This has been confirmed by the majority of stakeholder feedback in the recent stakeholder survey.

So much has been achieved through this reform in particular in relation to national consistency as was the intent. There are still the two major legislative derogations as mentioned previously and these can only be resolved through unanimous agreement by members of TIC.

**Q 8.3** *Are current accountability arrangements for the national regulators effective? If not, why not and how might they be improved?*

ONRSR is satisfied that the accountability mechanisms already set within the RSNL are sufficient, effective and functional, and ensures that there is a transparent and robust process for the administration of the Rail Safety National Law, and the regulatory decisions made by the Regulator as evidenced by:

- > Oversight provisions contained in the RSNL relating to freedom of information, state records, Ombudsman and the public finance and audit legislation.
- > ONRSR has a professional relationship with the South Australian oversight agencies, and has recently progressed an amendment to the Freedom of Information (FOI) legislation as it applies to ONRSR through TIC to ensure a more functional application for those people seeking access to documents held by ONRSR.
- > Under the RSNL (S43) the Regulator must provide by 30 September each year a report on ONRSR’s activities for the previous financial year.
- > The Regulator must also report twice a year to each responsible Minister.
- > Provision for administrative review contained in the RSNL. There are 40 possible regulatory decisions throughout the RSNL that are reviewable decisions, meaning that there is both an internal review mechanism as well as an external review mechanism.

- > The RSNL provides clear administrative processes for the way ONRSR must be governed and run. There is reporting mechanism for the Regulator and the Non-Executive Members to ensure that matters such as disclosure of conflict of interests, or of certain events such as being convicted of an offence are reported to the responsible Ministers, and there are processes for their involvement if necessary.
- > Requirement of the RSNL for the National Rail Safety Register to be established which requires that certain decisions of the Regulator are published on the register for public viewing. This provides a further accountability mechanism to demonstrate transparency of decision making, and for any person to be able to see the relevant regulatory decisions being made by ONRSR and their status.

## Implementation and development of the national regulators

INFORMATION REQUEST [PAGE 21]

### Q 9.1 *What kinds of implementation issues are still to be resolved?*

ONRSR has achieved most of the consolidation of safety related regulatory activities under the national approach. There are only a small number of matters still to be resolved and they include:

- > Victoria's SLA being removed and all rail services including light rail and remaining tourist and heritage coming under ONRSR's regulatory framework which, subject to passage of legislation, is expected to occur by the end of 2019. ONRSR will continue to work with Victoria to ensure the transition is smooth and efficient.
- > Removal of derogations refer response to question 3.4

### Q 9.2 *Have there been any limitations on the national regulators arising from the original COAG negotiations? Grandfathering arrangements or service level agreements might be examples. Are these limitations still in force? If so, are they still appropriate?*

New South Wales and Victoria operated under service level agreements and efficiencies were not able to be achieved under this process as ONRSR had very limited input into the allocation of resources and recruitment, HR and finance policies etc. The New South Wales SLA was removed in 2017 and it is anticipated that the Victorian SLA will be removed by the end of 2019.

### Q 9.3 *What if anything, needs to be done to address any outstanding implementation issues?*

Removal of the SLA for Victoria by the end of 2019 will address outstanding implementation issues. At that time ONRSR will become a truly national rail safety regulator

## How have other institutions performed in supporting the reform agenda?

INFORMATION REQUEST [PAGE 22 AND PAGE 23]

*Q 10.1 Are the current roles and responsibilities (for transport regulation) of each level of government clear and appropriate? If not, what changes (if any) to the roles of the different levels of government would support a safer national system of transport?*

ONRSR considers that the roles and responsibilities for rail safety regulation are clear across the levels of government and does not consider that there are any necessary changes required.

*Q 10.2 Are the national transport regulators working effectively with local governments?*

ONRSR has worked effectively with local governments across a number of forums since its commencement in 2013.

Recently ONRSR worked directly with the Australian Local Government Association (ALGA) in relation to changes to the RSNL which could potentially effect local councils.

ONRSR also works with local governments via state level crossing committees and in supporting rail infrastructure managers when negotiating interface agreements

*Q 10.3 Does the current regulatory framework achieve an appropriate balance between local and national interests? Issues here might include the level of truck traffic on local roads or the reservation of corridors for future freight traffic. Are decisions made by the right level of government?*

Not Applicable to ONRSR as ONRSR regulates rail safety under a single national law and is not involved in access regulation.

*Q 10.4 Does local government have the resources, access to data and expertise needed to process access applications efficiently, evaluate the impact of road access decisions on the supply chain, or to take into account broader demographic and technological shifts?*

*Q 10.5 If not, what options might be available to support local governments to perform these functions?*

*Q 10.6 Has the involvement of local government in heavy vehicle access approvals contributed to efficiency improvements or better investment decisions?*

*Q 10.7 Where disputes about access arise, are these being resolved in an effective way?*

*Q 10.8 Is the process of completing interface agreements working effectively?*

*Q 10.9 What practical changes would lead to more effective regulatory arrangements involving local government approval processes?*

This predominately relates to the National Heavy Vehicle Regulator however it is a requirement under the RSNL for rail infrastructure managers and road managers to enter into an interface agreement where there is a shared road or rail crossing. There are currently over 50% of the required interfaces outstanding and the majority of these are with local governments. Local governments have a number of concerns and lack of resources that allow them to progress these in a timely manner. ONRSR has been working with ALGA and some individual councils and the rail infrastructure managers to progress these. Legislative changes are coming into effect on 1 July 2019 which will see a similar penalty provisions for road managers as apply to infrastructure managers who do not comply with their requirements for interface management.

## Other bodies?

INFORMATION REQUEST [PAGE 24]

**Q 11.1** *How is the effectiveness of the national regulators in pursuing the objectives of the COAG transport regulatory reforms affected by the various other government bodies that help to regulate transport?*

ONRSR is responsible for the regulation of rail safety in the sector. A co-regulatory framework allows and encourages collaboration with other bodies to help achieve the safety objectives of the reform. ONRSR works with other bodies to achieve this outcome including:

- > Comcare, and the state based workcover regulators;
- > Safework Australia and the state based work health and safety regulators; and
- > Dangerous Goods regulators/competent authority in each state.

Where appropriate, ONRSR has established memoranda of understanding (as detailed in the response to question 3.8) to manage the relationships and recognise the roles and responsibilities.

**Q 11.2** *Does the involvement of these other agencies in setting standards complement or undermine the role of national regulators in meeting safety and productivity objectives? Are there opportunities to make these arrangements work better?*

ONRSR is a safety regulator and is not of the opinion that other agencies such as RISSB or Worksafe undermine its role in meeting its safety objectives and in most cases complements its role.

There is however one area where other agencies regulatory needs have caused some concern in the rail industry and this was set out in the response to question 3.8. The matter relates to the regulation of pressure vessels under Worksafe legislation. Under the RSNL operators must ensure that their rail safety workers are competent to undertake rail safety work and ONRSR assesses this independently of requirements of other legislation. The Worksafe requirements for operating a boiler are largely irrelevant for a steam locomotive, however a national Worksafe position on this could not be reached and the requirements differ between states and territories.

A review of the work health and safety regulations under way in 2019 would be an opportunity to address this overlap.

**Q 11.3** *Several regulators have responsibility for regulating intermodal transport hubs such as a port. Are there opportunities for improvement?*

Not applicable to ONRSR

**Q11.4** *How well is no-fault accident investigation working in maritime and rail? Is there a case for no-fault accident investigation in heavy vehicles? If so, how might it best be achieved? Would the ATSB — properly resourced — be the best agency to undertake this investigation?*

The ATSB is responsible for 'no fault' investigation for rail and ONRSR has procedures in place so that relevant safety critical information is received from the ATSB for verification and action as appropriate.

This model works well for rail as it protects the identity of reporters but still allows ONRSR to remedy any safety issue that needs addressing.

ONRSR is not equipped to comment as to whether this model would work in other transport modes.

**Q 11.5** *Multiple bodies are involved in enforcement, including police and the regulators. Are there opportunities to make this work better?*

ONRSR has effective MOUs in place with various police departments in Australia. ONRSR work with the police in determining the appropriate party to lead a prosecution and also have arrangements in place with police agencies to provide assistance with evidentiary breath analysis of rail safety workers where required.

## Opportunities for further integration

INFORMATION REQUEST [PAGE 25]

*Q 12.1 What are the impediments to further harmonisation within the three transport modes? What are the best options to address those impediments? What net benefits might be expected from achieving common systems and consistency?*

ONRSR considers continual improvement important which would include consideration for further harmonisation of safety improvements across the transport modes.

*Q 12.2 Interoperability within and across the three modes is becoming more important — how might regulatory structures best support this?*

ONRSR's co-regulatory model supports interoperability across the three modes of transport while nationally consistent rail safety guidelines, and a risk-based model for safety regulation in rail should ensure that there is no impediment for intermodal operations from a safety perspective.

*Q 12.3 Would there be net benefits from further harmonisation and joint operations and policies amongst the four national safety regulators (including the Civil Aviation Safety Authority)?*

ONRSR considers that there is an opportunity for more communication and sharing of information on transport safety, investigation and training with the other national safety regulators.

## Future developments in transport and the role of governments

INFORMATION REQUEST [PAGE 26]

**Q 13.1** *Where are the biggest opportunities for future safety and productivity gains in the transport sector, and what impediments exist? What new challenges may arise?*

ONRSR considers that there are further benefits to be realised in the future. These include:

- > More efficient headways between trains – to reduce network congestion and make more efficient use of infrastructure;
- > Application of new technologies to improve safety and increase efficiencies in train operation;
- > Other works to reduce congestion on network infrastructure;
- > Consistency in network rules by RIMs;
- > Managing the risks of cyber security;
- > Improved productivity through advanced train management, heavier trains etc.;
- > Upgrading older network infrastructure to improve performance;
- > Better signalling on older networks to improve train speeds and network efficiency;
- > Upgrading network capacity;
- > Encouraging the Rail Infrastructure Managers (RIMs) to harmonise their access rules to form a national approach;
- > Removal of the derogations (as detailed in the response to question 3.4); and
- > Removal of the mirror law in WA (as detailed in the response to question 3.4).

**Q13.2** *What role should the regulators play in achieving these outcomes and how might they need to change to do so? How might other institutions need to change to make the work of the regulators more effective? Some of these other institutions might include, but are not limited to:*

*the different levels of government*

*road managers*

*the Australian Motor Vehicle Certification Board*

*the Rail Industry Safety and Standards Board.*

ONRSR does not specifically endorse RISSB standards, but rather recognises the value of an operator adopting and any other standards including international standards in their safety management system. Therefore, the benefit to the operator is to identify and then manage the rail safety risks SFAIRP which can include applying the standards developed by RISSB in response to the risks that the standards seek to address.

ONRSR sees the potential for significant benefits to industry (in terms of cost and efficiency) and the community more broadly (in terms of increased safety) should there be some type of oversight of the technologies and systems that operators currently apply in isolation across different networks across Australia.

While ONRSR has the technical ability to form an opinion as to what technologies and processes could achieve a safety improvement if applied more uniformly – any argument as to the economic benefits could only be at a very fundamental level and is an area where ONRSR would either need to be resourced differently or leverage off the expertise of another body with more economic expertise. Even on the safety front regulatory changes would be necessary for ONRSR to have the ability to enforce or mandate specific technologies or systems in the absence of existing systems not being demonstrably unsafe.

## Digitalisation and the use of data

INFORMATION REQUEST [PAGE 27]

**Q 14.1** *What role should national safety regulators play in the management, collection, sharing and usage of logistical data?*

ONRSR considers that it is not the responsibility of a safety regulator to manage logistical data. ONRSR manages and reports on safety related data, and ensures that information that is collected is relevant to the implementation and regulation of national safety standards in rail.

ONRSR considers that the Bureau of Infrastructure, Transport and Regional Economics (BITRE) already has a role to manage data in that regard. Further, the ARA could also consider progressing this further through its involvement in the development and implementation of the National Rail Safety Data Strategy.

## Digitalisation and automation

INFORMATION REQUEST [PAGE 29]

**Q 15.1** *Are there other technological changes and technologies emerging with the potential to significantly affect the transport sector?*

Innovation and change within the rail industry are likely to benefit from the national reforms which have reduced the duplication and inconsistency within the regulatory environment. Under a co-regulatory risk-based model, ONRSR already has the capacity and tools to consider new technologies in the supply of rail operations while maintaining current and improved levels of safety.

**Q 15.2** *How should regulatory arrangements take account of technological changes and emerging technologies? Are current arrangements fit for purpose?*

The co-regulatory arrangements already accommodate for new technologies as seen with the recent introduction of driverless trains. As it is a risk-based model, new technologies can be assessed with appropriate risk identification processes, and the risks managed with rules, processes and procedures, supported by training and development that manages the risks identified.

The current arrangements are therefore acceptable for managing the risks of the emerging technologies.

**Q 15.3** *What role, if any, should existing regulators have in encouraging better use of technology and ensuring public safety?*

ONRSR does not promote any specific technology but rather has a flexible and adaptive arrangement that removes the impediment of any inconsistent safety regulation from the commercial and economic assessment of a new technology. This does not remove the need for safety, but rather promotes the best safety solution within the overall objectives of the rail sector.

The use of a co-regulatory environment actually promotes the use of technology in seeking safety solutions to risks identified as it provides a framework that can employ the most efficient solution to an identified risk and apply it nationally.

**Q 15.4** *What role, if any, should national transport regulators and other government agencies play in the sharing, collection, management and usage of logistical data?*

Refer to response to question 14.1.

## Concluding comments

ONRSR appreciates the opportunity to make a submission to the Commission in respect to the productivity gains to the rail industry from the transport reforms associated with rail safety regulation in Australia.

The creation of a single regulator, and the establishment of a co-regulatory risk-based framework has seen benefits realised by the industry allowing more focused risk-based effort, more efficient allocation of resources, and an environment that promotes innovation for safety and efficiency in operations.

ONRSR has achieved the national regulation of rail safety within its budgets and expanded the information processes to improve efficiency in the industry. ONRSR has received feedback from industry and other stakeholders about its performance and will continue to gather this feedback to assess its progress and do what it can to promote efficiency in the rail industry in the areas that it can influence.

A great deal has been achieved and there are more benefits to be realised in the near future.

## Appendix 1: List of acronyms

ACRI	Australasian Centre for Rail Innovation
ALCAM	Australian Level Crossing Assessment Model
ALGA	Australian Local Government Association
ARA	Australasian Railway Association
ATHRA	Association of Tourist and Heritage Rail Australia
ATSB	Australian Transport Safety Bureau
BITRE	Bureau of Infrastructure, Transport and Regional Economics
COAG	Council of Australian Governments
FOI	Freedom of Information
FORG	Freight on Rail Group
HRWL	High Risk Work Licences
MOU	Memorandum of Understanding
NTC	National Transport Commission
ONRSR	Office of the National Rail Safety Regulator
RIM	Rail Infrastructure Manager
RIS	Regulatory Impact Statement
RISSB	Rail Industry Safety and Standards Board
RSNL	Rail Safety National Law
RSW	Rail safety worker
RTBU	Rail, Tram and Bus Union
SFAIRP	So far as is reasonably practicable
SLA	Service Level Agreement
TIC	Transport Infrastructure Council (Responsible Ministers)
TISOC	Transport and Infrastructure Senior Officials' Committee