Queensland

Transport (Rail Safety) Regulation 2010

Regulatory Impact Statement for* SL 2010 No. 167

made under the

Queensland Civil and Administrative Tribunal Act 2009
Transport Infrastructure Act 1994
Transport (Rail Safety) Act 2010

National Transport Commission

Regulatory Impact Statement

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* Under the *Statutory Instruments Act 1992*, section 46(1)(g), a regulatory impact statement (RIS) need not be prepared for proposed subordinate legislation if the proposed legislation only provides for, or to the extent it only provides for, a matter arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State.

A RIS was not prepared for this subordinate legislation because it is substantially the same as the National Rail Safety (Reform) Regulations.

The National Rail Safety (Reform) Regulations were approved by the Australian Transport Council, the members of which consist of Ministers of the Commonwealth and the States with portfolio responsibility for transport.

A RIS for the National Rail Safety (Reform) Regulations may be viewed at the following website on the internet—

http://www.ntc.gov.au/filemedia/Reports/ModelRailSafetyRegsDraftRISJul06.pdf

A copy of the RIS provided to the Queensland Government is attached.

MODEL RAIL SAFETY (REFORM) REGULATIONS

DRAFT REGULATORY IMPACT STATEMENT FOR CONSULTATION

JULY 2006

Prepared by

National Transport Commission

National Transport Commission

Model Rail Safety (Reform) Regulations Draft Regulatory Impact Statement for Consultation

Report Prepared by: **National Transport Commission**

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FOREWORD

The National Transport Commission (NTC) is an independent body established under Commonwealth legislation and an Inter-governmental Agreement and funded jointly by the Commonwealth, States and Territories. The NTC has an on-going responsibility to develop, monitor and maintain uniform or nationally consistent regulatory and operational reforms relating to road, rail and intermodal transport.

The *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* made it a specific task of the NTC to develop:

> *A framework to improve and strengthen the co-regulatory system for rail safety including the application of mutual recognition (Clause 5.1 (b))"*

In accordance with its duties, the NTC has developed nationally consistent, model legislation for regulation of rail safety (approved by Commonwealth, State and Territory Transport Ministers in June 2006) and is in the process of developing associated model regulations for regulation of rail safety.

This Draft Regulatory Impact Statement (RIS) evaluates the foreseeable impacts of the Rail Safety (Reform) Regulations that are intended to add to and complement the specification of regulatory requirements contained in the Rail Safety (Reform) Bill. This Draft RIS has been prepared for the purpose of consultation. The comment period on this Draft RIS and the proposed Model Regulations closes on **24 August 2006**.

The NTC would like to acknowledge the contribution of Jenny Gabriele and Ian Shepherd of the Victorian Department of Infrastructure to the development of the model Regulations. The NTC wishes to thank members of the Rail Safety Package Steering Committee and the Rail Legislation Advisory Panel for their advice and feedback during the development process. I would also like to recognise the efforts of the following NTC officers: Paul Salter, Ray Hassall, Steven Lee and Ben Piper.

Michael Deegan

Chairman

SUMMARY

A review of the co-regulatory framework for rail safety undertaken by the NTC in 2004 (discussed further in section 2) identified a case for proceeding with a package of regulatory reform. The reform package comprises the following elements:

- nationally consistent, model 'primary' legislation for regulation of rail safety (the model Bill);
- associated model regulations for regulation of rail safety (the model Regulations to which this draft RIS relates);
- a review of institutional arrangements to determine what changes are required (essential) to support operation of the nationally consistent regulatory scheme for rail safety; and
- development and approval of 'nationally approved guidelines' to support consistent regulatory practice across jurisdictions.

The model Bill has been developed and approved for implementation by the ATC. The model Bill provides for:

- General safety duties that require all rail industry participants that form the 'chain of responsibility' to ensure the safety of their railway operations. These statutory duties of care define the required level of safety and makes clear which parties have accountabilities for rail safety.
- A system of accreditation to provide assurance that rail transport operators have the competence and capacity to operate safely before they are permitted to operate. The system of accreditation requires that a rail transport operator must have a Safety Management System (SMS) suitable for the rail transport operator's railway operations. Specific accreditation requirements are to:

    a) Consult with persons who are intended to work on or at railway premises, both during the initial development of the SMS and in the on-going process of maintaining and changing the SMS

    b) Adopt an integrated approach to risk management to ensure that risks are assessed, evaluated and controlled jointly by those parties that will have a safety interface by virtue of the scope and nature of their intended operations

    c) Establish, implement and maintain: security, emergency, health and fitness, drug and alcohol and fatigue management plans.

- Audit and inspection powers necessary to enable the rail safety regulator to monitor the compliance of duty holders with statutory duties and related accreditation requirements.
- A hierarchy of compliance and enforcement powers and sanctions to facilitate an effective and proportionate regulatory response to detected forms of non-compliance by rail transport operators and other persons.
- An array of checks and balances on regulator behaviour to ensure that regulatory decision-making processes are timely, transparent and nationally consistent.

- Creation of subordinate legislation (regulations) to be used to specify more detailed requirements that are not appropriate for inclusion in the Bill itself.

This Draft RIS for consultation, which considers the impacts of the model Regulations, follows on from the RIS prepared in relation to the model Bill. This Draft RIS assesses the likely costs and benefits attributable to the adoption of the Model Rail Safety (Reform) Regulations and considers alternatives. The purpose of this Draft RIS is to facilitate consultation on the form and content of the proposed model Regulations.

The provisions of the model Bill (now settled) naturally constrain the consideration of options for the model regulations. A regulation can not exceed the authority provided to it in the primary legislation (the Act). To do so would be to make a regulation *ultra vires*. In relation to each of the 'heads of power' included in the model Bill for the making of the model Regulations, the following has been considered:

- Is a regulation actually required?
- Is a nationally consistent regulation required or should there be provision for local variation (jurisdiction by jurisdiction)?
- Can regulatory requirements be set by referencing an existing standard or code or are newly drafted regulations required?
- What level of prescription is required in articulating the requirements?
- Which words most accurately express the requirement which is intended?
- Are there any arguments for exemptions from all, or parts, of the model Regulations?

Section 4 highlights the options identified at each level and some of the key decisions taken that led to the development of the model Regulations, as currently drafted.

The proposed model Regulations have five major parts. A fair proportion of the model Regulations represent a restatement of the existing jurisdictional law. As a consequence, there is not expected to be any additional costs or benefits.

The proposed model Regulations, in general, imply two types of changes:

1. the provision of greater information to the rail safety regulator.

   It has been shown that this may involve additional costs for rail transport operators in generating the necessary documentation in circumstances where the required material: (a) would not have already been generated by the rail transport operator for internal management purposes; or (b) was not previously required by the rail safety regulator using its administrative discretion; and

2. improved definition and specificity of the regulatory requirement.

   The benefit of making this type of change is twofold. Firstly, the requirements are made more transparent to all stakeholders, as well as becoming more readily enforceable. Secondly, the regulations will ensure that there is clear regulatory authority underpinning all requirements being implemented by the rail safety regulator.

The ‘order of cost’ estimates that have been incorporated into this Draft RIS indicate that more explicit requirements pertaining to security plans, emergency plans and records of competence are likely to result in additional administrative effort of some significance. In aggregate, these costs are likely to be offset, at least in part, by the potential benefits arising from the replacement of ‘material’ change requirements with the new framework for variation of accreditation and notification of change.

An important issue that emerges from the discussion of expected costs and benefits is the potential for a high incidence of additional compliance costs to be borne by the tourist and heritage sector. The model Regulations are intended to be scaleable[1], however, a minimum level of documentation is required from rail transport operators in order to comply. The generation of such documentation presents a challenge to the tourist and heritage sector as these operators rely on volunteer labour. The prime interest of the volunteer labour is to engage in tasks such as operating trains, undertaking maintenance and participating in the restoration of rolling stock. Accordingly, there are relatively few volunteers who are willing to undertake the administrative work that is required to enable the railway to comply with the regulatory requirements. Representations received by the NTC during the development of the model Bill and during the development of the model Regulations indicate that any increases in the required level of administrative effort may trigger the closure of some tourist and heritage railways. Given the (generally) high level of safety performance achieved by the tourist and heritage sector, this is clearly not the intended outcome. This suggests that more consideration should be given to prescribing exemptions by regulations.

Section 7 considers the reasonableness of assumptions used in the RIS for the model Bill in light of the proposed Regulations and the outcomes of the analysis undertaken in section 6. In general, this Draft RIS tends to reaffirm the view that the incremental increase in compliance costs implied by the rail safety reform package (Bill and associated Regulations) is less than the upper bound estimate of $10 million per annum used in the RIS for the model Bill. Accordingly, this Draft RIS reaffirms the conclusion (reached in the RIS for the model Bill) that adoption of the model Bill and Regulations is expected to yield net benefits to society.

[1] The obligations placed on rail transport operators, while conceptually consistent , will differ substantially in terms of the required resource inputs, given the differing scale, nature and manner of railway operations being undertaken by different parties.

CONTENTS

1 INTRODUCTION

Rail safety regulation in Australia is carried out by State and Territory Governments. The regulatory approach across jurisdictions was harmonised following the establishment of the Rail Safety Inter-Governmental Agreement in 1996 by the Australian Transport Council (ATC)[2]. This harmonised approach to regulation recognises the inter-state linkages in the rail industry and the consequent importance of ensuring that regulatory differences do not unnecessarily impede the economic performance of the rail industry by increasing costs and creating barriers to inter-state rail movements.

Rail safety legislation in all States and Territories is based on co-regulation. Key characteristics of the 'co-regulatory' approach are as follows:

- Responsibilities for regulatory development, implementation and enforcement are shared between industry participants, industry associations and governments.
- Government's role is to establish performance based obligations and specific duties necessary to achieve acceptable levels of safety, meet community expectations and maintain public confidence.
- Rail industry participants accept accountability for achieving required safety outcomes in return for the flexibility to identify and implement the most effective and efficient means of addressing risks to safety.
- Rail industry associations serve to represent industry interests in the regulatory development process, facilitate implementation of safety reforms and to provide guidance to industry in the form of codes and standards indicating effective and efficient means of compliance.
- The Rail Safety Regulator's role is to provide oversight. In the rail safety context this includes assessing the capacity and competence of rail organisations to be safe, ensuring that safety management systems are in place, and monitoring the activities of, and safety outcomes achieved by, individual rail organisations; educating rail organisations on potential opportunities to improve safety performance; and, if necessary, enforcing compliance with performance based obligations and duties using available powers and sanctions.

In support of co-regulation, legislation in all States and Territories is based on application of process-based regulation. Process-based regulation focuses on ensuring regulatory outcomes are achieved via the implementation of systemic management processes based on risk identification, assessment and control. Process regulation is widely used in contexts in which there are multiple risk sources and various means of addressing those risks. The system of process-based regulation used in the rail safety context is based on the accreditation of rail organisations. Rail transport operators are required to gain accreditation before they are allowed to operate. Accreditation is granted by the rail safety regulator. The granting of accreditation indicates that the proponents of the rail organisation have demonstrated that they have the capacities and competencies to operate safely.

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[2] ATC provides a forum for Commonwealth, State, Territory and New Zealand Ministers to consult and provide advice to governments on the co-ordination and integration of all transport and road policy issues.

A review of the rail safety co-regulatory framework undertaken by the NTC in 2004 (discussed further in section 2) identified a case for proceeding with a package of regulatory reform. The reform package comprises the following elements:

- nationally consistent, model 'primary' legislation for regulation of rail safety (the model Bill);
- associated model regulations for regulation of rail safety (the model Regulations to which this draft RIS relates);
- a review of institutional arrangements to determine what changes are required (essential) to support operation of the nationally consistent regulatory scheme for rail safety; and
- development and approval of 'nationally approved guidelines' to support consistent regulatory practice across jurisdictions.

The ATC has approved the model Bill for implementation.

This Draft RIS for consultation, which considers the impacts of the model Regulations, follows on from the RIS prepared in relation to the model Bill.

The RIS for the model Bill examined, in the broadest possible sense, the likely costs and benefits attributable to the reform package based on the information available at that time. At that point, for example, the detail of the regulations was not known. Given that this detail is now known, a number of the assumptions made in that RIS are reconsidered in this Draft RIS.

A further point to be made is that, for the sake of continuity and in recognition of methological limitations, this Draft RIS will adopt the assessment methodology utilised in the Final RIS accompanying the model Bill.

2 BACKGROUND AND PROBLEM STATEMENT

2.1 Review Of Co-Regulatory Framework For Rail Safety

The NTC's role is to progress regulatory and operational reform. Its role is defined under the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (2003)*. As stated in the Inter-Governmental Agreement, one of NTC's tasks is to "…develop proposed reforms in relation to:

(i) A framework to improve and strengthen the co-regulatory system for rail safety including the application of mutual recognition;

(ii) A national policy on key rail safety issues and procedures and standards to manage major risk factors;…"

Consistent with its role and function, the NTC has undertaken a review of the current regulatory framework for rail safety via an extensive consultative process involving all major stakeholders.

In May 2004, the NTC released an issues paper to promote discussion on what changes could be made to the co-regulatory framework in order to improve safety and efficiency outcomes. In June 2004, a major workshop was staged to foster debate and allow participants to gain an appreciation of the approaches adopted in other nations and in other similar industries.

NTC officers subsequently undertook an assessment of the imperatives for reform and the options for change. The assessment drew on the content of submissions, available data, follow-up consultations with rail industry stakeholders and input provided by jurisdictions. In December 2004, the NTC released a Discussion Paper: *Improving the Regulatory Framework for Rail Safety in Australia.* The purpose of the discussion paper was to foreshadow the changes to the co-regulatory framework that the NTC intended (at that point) to recommend to the ATC.

2.2 Findings of the Review

Rail is a relatively safe mode of transport. There is little evidence available (e.g. indications of poor or worsening safety outcomes) to warrant major changes to the existing regulatory approach (e.g. a change towards adoption of a more prescriptive regime). Moreover, the outcomes of inquiries into rail accidents and rail regulatory structures indicate that the capacity of governments to deal with complex organisations and complex safety problems through rules alone is very limited[3]. General regulatory best practice principles also support this view. Best practice suggests a continuation of a co-regulatory approach, based predominately on application of process regulation, is appropriate. There are, however, opportunities to make improvement.

The finding of the review is that there is presently a risk of regulatory failure due to:

1. fact that outcome that regime is trying to deliver is not currently defined;

1.1 [3] See, in particular, Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident *(McInerney Inquiry) Government of New South Wales, (2003);* Final Report of the Special Commission of Inquiry into the Waterfall Rail Accident. *Government of New South Wales, (2001).*

2. uncertainty (or at least inconsistency) in the intended regulatory balance between gaining ex-ante assurance of safety from rail transport operators (via accreditation) and monitoring and enforcing good safety practice by rail transport operators on an ongoing basis (via audit and inspection);
3. regulator training deficiencies, skill shortages and resource constraints;
4. limited range of sanctions and enforcement powers (at least in some jurisdictions);
5. insufficient checks and balances on regulatory decision making;
6. multiple regulatory authorities leading to increased transaction costs for those rail transport operators that undertake business in multiple jurisdictions; and
7. potential for inconsistent regulatory judgements and practices between jurisdictions

The NTC asserted that there is an opportunity to improve regulatory effectiveness (mitigate against the risk of regulatory failure) by:

- making changes to legislation and regulations, such as:
    - Incorporating rail safety duties in rail safety legislation for purpose of, amongst other things, defining the level of safety that is required to be achieved;
    - Defining the purpose of accreditation in legislation such that it is clear that it is a threshold requirement, not an 'approval' of the rail transport operator's safety management system;
    - Providing a hierarchy of sanctions and enforcement powers that can be utilised as appropriate by rail safety regulators;
    - Requiring regulators to give statement of reasons for regulatory decisions and make decisions within time limits; and
    - Providing access to appeal mechanism in relation to all regulatory decisions or sanctions.
- undertake initiatives that enable best use of available regulatory resources and aim to improve the overall skills and competencies of regulator staff.

The NTC further asserted that regulatory efficiency can be improved by:

- putting in place nationally consistent legislation and regulations (noting that there are material differences at present);
- establishing compliance codes with a 'deemed to comply' status across Australia (providing certainty of compliance to those that wish to adopt them); and
- producing nationally consistent guidance materials in support of consistent interpretations and expectations across the country

2.3 Outcomes of the Review

Australian Transport Ministers unanimously voted to approve, in-principle, proposed changes to the co-regulatory framework on expectation that a model Bill and model Regulations (providing the means to put into effect proposed changes) would be submitted for consideration and approval following further rounds of consultation. The in-principle

decision of ATC affirmed the mandate for the development of the national model Rail Safety (Reform) Bill and the associated model Regulations.

On 2 June 2006 ATC members approved the model Rail Safety (Reform) Bill.

This Draft RIS refers to, and explains, some of the content of the model Bill in order to provide contextual information necessary to give consideration to the content of the model Regulations.

This Draft RIS also refers to, and explains, the findings of the RIS for the model Bill. The purpose of doing so is to place the findings of this draft RIS in the context of the broader assessment undertaken in the RIS for the model Bill.

3 STATEMENT OF OBJECTIVES

The primary objective of the proposed package of reforms (inclusive of the model Rail Safety Regulations) is to improve rail safety performance in Australia by implementing best practice approaches to safety based regulation.

A secondary objective is to enhance the cost-effectiveness of the regulatory structure by facilitating regulatory harmonisation, thereby reducing a range of regulatory related costs for rail organisations and government regulators.

The objects of the Regulations are to:

- provide for improve railway operations;
- provide for the management of risks associated with railway operations;
- make special provision for the control of particular risks arising from railway operations;
- promote public confidence in the safe transport of passengers and freight by rail.

4 IDENTIFICATION AND ANALYSIS OF FEASIBLE OPTIONS

Section 8 of this Draft RIS outlines the processes by which the proposed Rail Safety (Reform) Regulations have been developed. In the course of this development process, a range of alternative approaches to achieving the objectives of the model Regulations were considered. This section of the Draft RIS discusses the options identified and evaluated as part of this process.

Conceptually, the consideration of options can be considered at a number of levels. The first is that of the broad shape of the regulatory framework to be employed. That is, given the nature of the rail industry and the safety risks being managed, is self-regulation, co-regulation or full government regulation the preferable regulatory structure? This range of options was considered in relation to the development of the model Bill.

Second, within the context of the co-regulatory structure that has been determined to be the preferred approach, should regulators adopt requirements for an *ex ante* demonstration of safety management capacities – through an accreditation system – or rely on the establishment of regulatory duties and responsibilities, supplemented by *ex post* monitoring and auditing. Again this range of options was considered in relation to the development of the model Bill.

Third, within the context of the specific regulatory approach that has been adopted – relying on a co-regulatory structure and implemented using substantial elements of process-based regulation via an accreditation structure – there are several discrete areas in which alternative approaches to major specific regulatory issues can be identified and must be weighed. This is the level where consideration of options for the model Regulations commences.

It should be noted (as explained in section 8) that the consideration of the content of the model Regulations substantially pre-dates the finalisation of the model Bill. The NTC established a working group and engaged a consultant (ERM) to consider what are the best practice approaches to encouraging and enforcing (a) 'good' risk management practice by rail transport operators; and (b) the adoption of a systematic approach to managing safety performance (through the establishment of safety management systems). The NTC, with the assistance of the working group, identified from the outset that detailed regulations in the areas of 'risk management' and 'requirements for safety management systems' were likely to be required, and, would be of paramount importance to the effectiveness of the regime. This work, in part, informed the development of the model Bill, the development of the discussion paper that was released at the time of the exposure of the model Bill (referred to in section 8 of this Draft RIS) and the heads of power for the model Regulations. The outcomes also provided a starting point for consideration of options pertaining to the content of the model Regulations.

It is noted that the provisions of the model Bill (now settled) naturally constrain the consideration of options. A regulation can not exceed the authority provided to it in the primary legislation (the Act). To do so would be to make a regulation *ultra vires (beyond legal capacity).*

Appendix 3 lists the head of power contained in the model Bill for the making of the model Regulations. In relation to each of these 'heads of power' the following has been considered:

- is a regulation actually required at this point in time?
- is a nationally consistent regulation required or should there be provision for local variation (jurisdiction by jurisdiction)?
- can regulatory requirements be set by referencing an existing standard or code or are newly drafted regulations required?
- what level of prescription is required in articulating the requirements?
- which words most accurately express the requirement which is intended?
- are there any arguments for exemptions from all, or parts, of the model Regulations?

This section considers this series of threshold questions listed above, highlighting the options identified at each level and some of the key decisions that led to the development of the model Regulations, as currently drafted.

4.1 Consideration of whether a regulation is required or not

The key considerations to be made are:

- is the regulation necessary to achieve the intent of the relevant provisions in the model Bill, perhaps by defining the requirement more clearly such that it can be measured and enforced;
- would the addition of a regulatory provision be supportive of achieving the overall objectives of the model Bill and the reform package in aggregate;
- does the regulation represent a change from the status quo; and
- if there is a change, can the expected compliance costs can be justified relative to the expected benefits

The outcome of these considerations is a decision to pursue the option of a regulation or to choose the option to not proceed with a regulation in relation to the relevant provision in the model Bill.

Appendix 3 shows that the decision has been made to 'reserve' (meaning not use at this present point in time) twenty of the sixty-three heads of power for regulations included in the model Bill. The reason for not using many of these heads of power is that a regulation was not believed to be necessary to achieve the intent of the relevant provisions in the model Bill or otherwise would not be supportive of achieving the overall objectives of the reform.

For the purpose of illustration, it should be noted that the decision was made not to prescribe risk management principles, methods and procedures. This decision was not taken lightly, given the strong emphasis the regulatory regime places on encouraging good risk management practice by rail transport operators and other duty holders. The considerations made in coming to this decision were as follows:

- The concept of risk management is embedded in the rail safety duties included in the model Bill. The duties are to ensure safety, so far as is reasonably practicable (SFAIRP). Clause 7 of the model Bill elaborates on this duty making it clear that the obligation is to eliminate risks to safety; or if it is not reasonably practicable, to reduce those risks so far as is reasonably practicable. The provision goes on further to say that in determining what is 'reasonably practicable' regard must be had to:
    - The likelihood of the risk concerned eventuating;
    - The degree of harm that would result if the risk eventuated;
    - What the person concerned knows or ought reasonably to know, about the risk and any ways of eliminating or reducing the risk;
    - The availability and suitability of ways to eliminate or reduce the risk; and
    - The cost of eliminating or reducing the risk
- As a means of ensuring safety, a rail transport operator is required to have a Safety Management System for its railway operations. Clause 57 requires the SMS to:
    - Identify and assess any risks to safety that have arisen or may arise from the carrying out of the railway operations;
    - specifies the controls that are to be used by the rail transport operator to manage the risks to safety and to monitor the risks to safety in relation to its railway operations; and
    - include procedures for monitoring, reviewing and revising the adequacy of those controls
- Given the above, it is clear that the Bill places a specific duty on rail transport operators to (as part of their SMS) identify any risks to safety that have arisen or may arise from the carrying out of the railway operations. The Bill then places a duty on rail transport operators to (when assessing what is reasonably practicable) consider likelihood, consequence, practicable means of eliminating or reducing the risk and the cost of eliminating or reducing the risk. Furthermore, the model Bill requires the effectiveness of risk controls to be monitored, reviewed and revised if necessary.
- The observation made is that the combination of these obligations already sufficiently encourages rail transport operators to practice good risk management. Equally, the observation was made that the prescription of any further requirements pertaining to risk management would introduce the risk of conflict and confusion. Indeed, this was the finding, following consideration of earlier drafts of proposed model regulations pertaining to risk management principles, methods and procedures. Moreover, the NTC and its advisory groups reaffirmed the original policy position foreshadowed in the discussion paper the NTC released in October 2005:
    - *Risk assessment methods need to be tailored to the cultures, systems and risk conditions that exist in individual rail organisations in order to be truly effective; and*

- *The rail organisation should be responsible for interpreting legislative standards into specific methods and criteria, and then providing these to the regulator for review.*

4.2 Option to provide for local variations

Given that the model Regulations are 'model', consideration has to be given to whether nationally consistent regulations in relation to some matters are needed or practicable. Model regulations are desirable when there are potential benefits arising from regulatory harmonisation. However, where a particular risk based concern is localised within a jurisdiction, jurisdictions should have the capacity to address it and other jurisdictions should have the freedom to ignore it (given that it is not relevant to them).

Fourteen of the sixty-three heads of power are characterised as being reserved for 'local variation'. This should be interpreted to mean that jurisdictions are free to use these six heads of powers to prescribe relevant requirements that meet local policy objectives. In general, the option to provide for local variation has only been chosen in instances where the regulation making power has been afforded for the purpose of clarifying 'boundaries'. For example, the definition of 'private siding' included in the model Bill (section 4) provides for *a siding, or a siding of a class, prescribed by the regulations not to be a private siding*. The decision to provide this regulation making power was taken due to the foreseeable risk that a rail facility could meet the definition of private siding in circumstances where this was not intended. The regulation making power affords jurisdictions the capability to remedy anomalies that may arise from time to time.

For the most part, the option to provide for local variations has not been chosen. The key rationale for this decision rests on the foreseeable benefits of a high level of regulatory harmonisation. This is one of the key objectives of the rail safety reform process and is cited as such in section 3 of this Draft RIS. National consitancy has been preferred even in relation to some of the heads of power provided for the purpose of 'clarifying boundaries'. The option to reserve the head of power has been chosen over the possibility of local variation. For example, section 8 of the model Bill provides a head of power to prescribe work that is to be 'rail safety work' and work that is not 'rail safety work'. It is was foreseen that unilateral use of this regulation making power by a jurisdictions could lead to regulatory anomalies and act to limit the portability of labour between jurisdictions. For this reason, the option to provide for local variation was not chosen.

4.3 Option to reference a standard or code

An option in relation to the specification of regulatory requirements is to adopt an existing standard or code 'by reference' giving the requirements articulated in the standard or code a mandatory effect. Where relevant standards or codes exist, for example, in relation to setting requirements applicable to safety management systems and health and fitness assessment, the adoption by reference has been considered as an option.

Setting requirements applicable to safety management systems

During the development of the model Regulations, consideration was given to the option of adopting either the Australian Rail Safety Standard (AS4292.1) or the National Accreditation Package by reference into the regulations. Both documents set out the required content of safety management systems. The content of both documents has been harmonised following an alignment process in early 2006. Each State or Territory (with

the exception of Victoria) currently reference one or the other of these documents as a means of specifying regulatory requirements pertaining to safety management systems.

The option to reference AS4292.1 was ruled out due to the ownership of the document resting with Standards Australia. The considered view is that the required scope and content of rail organisations' Safety Management Systems (SMS) are properly the domain of governments and their representatives (regulators). The use of a standard (AS 4292.1) owned by a third party to specify the minimum scope and content of SMS 'by reference' (the current practice in four jurisdictions) is not consistent with legislative best practice, nor is consistent with directives from the Council of Australian Governments (COAG) pertaining to the de-referencing of such standards. Best practice suggests that general requirements should be specified in legislation and matters of detail should be prescribed in regulations. This will ensure that:

- specification of regulatory requirements are within the control of governments;
- regulators are able to make changes to required scope and content of SMS when and if required in a timely fashion; and
- there is maximum transparency as to what are the regulatory requirements.

The setting of regulations is subject to regulatory impact statements and other checks and balances. The content of Australian Standards is not subject to the same level of scrutiny. Regulations can also provide explicitly for a transitional period to apply when requirements change as an outcome of a review or an update. Transitional periods afford the regulated the opportunity to achieve compliance with the new requirements. Due to this combination of reasons, the option to reference AS4292.1 (and any other standard or code owned by a third party) was rejected.

The National Accreditation Package is differentiated from AS4292.1 because it is an instrument of government representatives (the rail safety regulators). The document was endorsed by ATC in November 2004, but has never been subject to parliamentary or executive government scrutiny in the same way that a Bill or Regulations would. For example, no regulatory impact statement was ever prepared for the proposal to implement the National Accreditation Package. This represents a weakness in its development.

It was determined that the major cost associated with adopting the National Accreditation Package by reference would be the loss of regulatory certainty and enforceability. The considered view is that the National Accreditation package is not expressed or structured in a form suitable to be used as a legislative instrument. This reflects the fact that package was drafted with the intention that it should constitute guidance material, rather than mandatory requirements. An associated problem is that much of the document uses language that is not consistent with the model Bill. If the document were to be referenced, there is a substantial risk that substantial elements of it would be found by the courts to be effectively unenforceable. Thus, its ability to achieve the underlying objectives of the regulations would be significantly compromised. For these reasons, this option was rejected.

It should be noted that AS4292.1, to a significant extent, shares many of the same drawbacks cited above in relation to the National Accreditation Package.

Setting regulatory requirements applicable to health and fitness programs

In 2003/04 a National Standard for Health Assessment of Rail Safety Workers was developed under the auspices of the NTC. In accordance with the COAG guidelines, a regulatory impact statement was prepared in relation to the proposed National Standard. The Standard was approved by ATC and published in June 2004. Since that time, State and Territories have implemented the National Standard as a mandatory requirement. In the majority of cases (the exception being Victoria) implementation as a mandatory requirement has been achieved by reference, typically by making compliance with the National Standard a condition of accreditation.

The approach to undertaking health assessments prescribed in the National Standard is broadly supported by stakeholders. The option to consider alternative approaches and policies in respect of this issue was not considered as part of the development process for the model Regulations. It should be noted that the NTC has maintenance and review processes for all 'Agreed Reforms' (the National Standard being one such agreed reform). In accordance with agreed maintenance processes, amendments and modifications to the Standard have been considered in light of its observed effectiveness over the first 12 months of operation. No amendments are currently proposed. Maintenance activities are ongoing. A more fulsome review of the Standard is scheduled for 2009.

The arguments against referencing the National Standard in the model Regulations is that it suffers from some of the same problems cited as applicable to the National Accreditation Package. That is, the Standard is not expressed or structured in a form that is typical of a legislative instrument. As a consequence, adopting the standard by reference may result in a loss of regulatory certainty and enforceability. Accordingly, attempts were made to draft model Regulations that embodied what were intended to be the mandatory components of the National Standard.

Following numerous attempts at drafting model Regulations that established mandatory requirements for health assessment (consistent with the National Standard), it was recognised that the head of power for the regulations was insufficient to be used to place mandatory requirements on the authorised health professionals engaged by the rail transport operator. While this was cited as a problem in ensuring the enforceability of the National Standard, it was noted that in practice, there was little, if any, non-compliance with the standard. Authorised Health professionals act as if compliance with the National Standard is a mandatory requirement on them because it is the only available reference point for the assessment they are being asked to undertake. In addition, a number of parties privy to the development process for the model Regulations argued that, in general, rail transport operators are complying with the National Standard. In effect, there have been no concerns about compliance and enforceability. As a consequence of these discussions, the decision was made, in this particular case, to adopt the National Standard by reference.

4.4 Consideration of level of prescription that is required

Rail transport operators differ markedly between each other in respect of scale, size and level of complexity. Accordingly, the objective of those involved in developing the model Regulations has been to make the regulatory requirements scaleable: equally applicable to all rail transport operators, irrespective of the size, scale and complexity of the rail transport operator, such that the key determinant of the compliance effort required is the identified level of, and number of, risks associated with the rail transport operator's railway operations. In this way, the model Regulations can be considered as having been

designed with due attention to the need to ensure that disproportionate impacts are not imposed on the small business sector. This approach to the setting of regulations is also consistent with the key tenant of co-regulation, being that rail transport operators takes on accountability in exchange for the maximum degrees of freedom to determine the most practical and cost effective means of controlling identified risks.

Options considered at this level have been determined with regard to the need to trade-off regulatory certainty and enforceability against the need to maximise scalability and organisation's freedom to determine the most fit for purpose form of risk control.

In general, the model Regulations maintain the status quo level of prescription, indicating that the existing regulatory requirements were suitably pitched. In respect of some matters (refer to section 6 of this Draft RIS), for example, security management plans and emergency plans, a need to increase the level of definition (prescription) was required to ensure that compliance could be measured and enforced. In respect of other matters, there have been decisions to reduce the level of prescription relative to the status quo. For example, the level of prescription on 'Engineering and Operational Safety System Requirements' has reduced in order to ensure maximum scalability (refer to section 6 of the Draft RIS).

4.5 Options for expressing the requirements

The lowest level of detail at which options have been considered is at the drafting level. Six drafts of the model Regulations have been prepared by the NTC and considered by the advisory groups involved in the development process for the model Regulations. For each draft, due consideration has been given to alternatives for expression of the requirement, with a view to avoiding unintended interpretations of terms used. This has often involved seeking opinion of those outside the development process and using the knowledge and experience of advisory group members to reality test the expression of the requirement relative to foreseeable scenarios.

4.6 Option to provide for exemptions

As indicated above, one of the considerations made when considering to establish a regulation or not is whether the expected compliance costs can be justified relative to the expected benefits. This assessment is based on a general representation of parties (rail transport operators in this case) that are the intended focus of the regulatory requirement. The 'generalisation' of the rail transport operator for the purpose of the analysis creates a distortion because, in practice, rail transport operators are heterogeneous in their nature. In acknowledgement of this deficiency, there has been consideration of whether the expected compliance costs can be justified relative to the expected benefits in all cases. As is typically the case, the observation is that there are instances where the expected compliance costs are difficult to justify relative to the expected benefits. This may be the case for subsets of the tourist and heritage sector where the safety risks are relatively low and the effect of additional compliance costs are likely to be high. Equally, it may also be the case for certain rolling stock operators such as those that have operations limited to private sidings e.g. rolling stock manufacturers involved in testing their own products on their own private facilities.

In light of the unintended consequences that may arise from the application of 'one rule for all', consideration has been given to making exemptions (by regulation) from regulatory obligations either whole or in part.

The argument against the prescription of exemptions by regulations is the risk that it will not be possible, ex-ante, to define a class of rail transport operators (for example, a definable subset of the tourist and heritage sector) that should be excluded from meeting some, part or all of the detailed regulatory requirements. The associated risk is that exemptions will cause regulatory anomalies, reducing the credibility of the regime, which is particularly important given that one of the prime objectives is to maintain public confidence in the safety of rail transport.

Those involved in the development of the model Regulations have expressed strong concern about the potential for exemptions to cause regulatory anomalies. The prevailing view is that the model Regulations can be made sufficiently scaleable, relative to risk, such that compliance costs are not excessive for small scale, low risk operations. Accordingly proposed exemptions by regulations have not been incorporated in the exposure draft of the model Regulations. The considered view is that better information about the need to grant exemptions by regulation will be made available as an outcome of public comment on this Draft RIS for consultation.

5 DESCRIPTION OF THE MAJOR ELEMENTS OF THE MODEL REGULATIONS

The draft model Regulations has five major parts. These are briefly described below with references to what the model Bill covers. The references to the content of the model Bill are intended to put the content of the draft model Regulations in context. The text in relation to each part indicates the extent to which the draft model Regulations differ from the status quo. However, it should be noted that the status quo provisions in relation to these matters differ between jurisdictions. The text below makes comment on this where appropriate. Appendix 1 provides a summary of the extent to which adoption of the model Regulation's provisions would vary existing regulatory arrangements in each jurisdiction.

5.1 Accreditation

The model Bill includes an explicit statement that the purpose of accreditation is to ensure that the applicant has demonstrated (ex-ante) the capacity and competence to operate safely prior to commencing operations. The aim of this provision is to make it clear that gaining accreditation is no more than a threshold requirement for railway organisations: a precursor to being permitted to operate. The granting of accreditation simply indicates that, in the opinion of the rail safety regulator, the railway organisation has the capacity, competency and systems to carry out the railway operations for which it is seeking accreditation. The granting of accreditation is not a certification of safety. No such warranty could ever be given by a rail safety regulator.

The Bill limits the range of parties to be accredited: only the rail infrastructure manager and the rolling stock operator (collectively referred to as rail transport operators) are required to be accredited. In many Australian jurisdictions, this is consistent with current practice, however it will represent a narrowing of the range of accredited parties in some other cases (particularly in New South Wales and South Australia). The logic of the focus on rail transport operators is that infrastructure managers and rolling stock operators should be primarily responsible for demonstrating the competence and capacity of those other parties with whom they contract due to the fact that the accreditation process essentially relates to the operation of whole systems, characterised by multiple, interacting risks that need to be managed in a systemic fashion. Rail transport operators need to be able to demonstrate that their contractors' practices fit with, and form part of the rail transport operators' safety management systems. Both the capacity and competence of the rail transport operator to manage the contractor and the capacity and competence of the contractor to fulfil the safety critical functions which they are proposing to undertake will be assessed.

5.1.1 Application for Accreditation

Section 33 of the model Bill makes provision in relation to applications for accreditation. It provides that rail transport operators may apply to the Rail Safety Regulator for accreditation in respect of their intended railway operations.

This section -

- allows the rail safety regulator to specify the manner and form in which an application for accreditation must be made;
- requires the applicant to specify the scope and nature of the railway operations the applicant intends to undertake;

- requires the applicant to provide a copy of its safety management plan and associated interface coordination plans as part of the application;
- requires the applicant to declare whether it is, or has applied to be accredited in another jurisdiction;
- requires applications to contain the prescribed information;
- requires applicants to pay the prescribed application fee; and
- allow the Rail Safety Regulator to require an applicant to supply further information or verify by declaration information supplied for the purposes of the application.

The model Regulations will require the applicant to also include, as part of the application the following:

- name and contact details;
- notice of accreditation (if accredited in another jurisdiction);
- identification of any new or additional risk to safety arising from the proposed change in scope of operations (if already accredited in another jurisdiction);
- description of operational assets (infrastructure, rolling stock) the applicant intends to use or manage;
- details of consultation undertaken by the applicant; and
- if the applicant is not an individual, evidence that application has been submitted to and endorsed by the board of directors, governing body, partners, etc (which ever is relevant)

The model Regulations are also used to prescribe an application fee. The fee is set out in schedule 2 item 1 of the model Regulations (discussed further under 4.5).

These requirements included in the model Regulations are more detailed than what currently exists in State and Territory Law and therefore, on face value, represent a change from the status quo.

5.1.2 Prescribed details of the applicant

The model Regulations require that a notice of accreditation must specify the accredited person's —

- name; and
- registered business name, and trading name if that is different to the registered business name; and
- ACN or ABN, if applicable; and
- residential address or, in the case of a body corporate, registered business address.

This is consistent with current practice. The requirements are not onerous and provide a base set of information to assist in processing the application. Their retention is therefore

reasonable. It does not represent a change from the status quo. Accordingly, the content of this regulation is not considered further in this Draft RIS.

5.1.3 Prescribed conditions of or restrictions on accreditation

The attachment of conditions or restrictions on accreditation has been a long standing practice of rail safety regulators across all jurisdictions. Existing State and Territory Acts provide the administrative discretion to establish conditions and restrictions. The model Bill maintains this administrative discretion to enable specific conditions and restrictions to be tailored to individual rail transport operators in the interests of safety. For example, the rail safety regulator may limit the scope of operations to be undertaken by a rolling stock operator to a particular network or part thereof. This may because the rolling stock operator might not have been able to demonstrate the capacity and competency to operate on remaining parts of the network. In such a circumstance it is better to grant permission for some operations to occur rather than reject the application completely. The ability to attach conditions, or place restrictions on accreditation enables the regulator to do this.

However, there is a view that conditions of accreditation are being over-used. There is a view that many conditions and restrictions have become 'standard' – not tailored to specific rail transport operators but used more generally to establish mandatory requirements applicable to all rail transport operators. It is observed that this is not an appropriate use of the administrative discretion afforded to rail safety regulators. This round of reform was thought to be an opportune time to codify some of these requirements in the form of a regulation.

Section 38 of the model Bill makes accreditation subject to conditions and restrictions prescribed in the regulations. The model Regulations propose that the following conditions and restrictions should apply:

- if the operator is accredited in another jurisdiction, the operator must advise the Rail Safety Regulator in writing immediately if the operator's accreditation in the other State or Territory expires or is suspended, surrendered, or revoked;
- the operator must pay the annual accreditation fee by 30 September of each year;
- the operator must notify the Rail Safety Regulator in writing of proposed changes to the operator's rail operations (before the change comes into operation) that fall within the categories listed under regulation 5, for example, changes to infrastructure standards, introduction of a new type of rolling stock, the construction of new rail tracks, the introduction of new safe working systems etc.
- the operator must notify the Rail Safety Regulator in writing of any change to the person nominated in the safety management system as the contact person for dealing with queries in relation to the safety management system of the operator.

An explicit requirement to advise the rail safety regulator of changes to its accredited status in another jurisdiction is a new requirement.

The requirement for the rail transport operator to pay annual fees by 30 September is consistent with a previous policy agreement reached between State and Territories and endorsed by ATC in late 2004. The standardisation of the due date for fee payment has been (or is being) implemented across all jurisdictions. The model Regulations proposes no change from the status quo in this respect.

The requirement to notify of changes to the identity of the individual responsible for the safety management system is purely an administrative necessity. This has been a long standing requirement set via conditions of accreditation. The model Regulations do not propose any change to the status quo in this area.

The requirement to notify the rail safety regulator of changes (if it is one that is listed under regulation 5) is a new requirement.

5.1.4 Surrender of Accreditation

Section 43 of the model Bill provides for surrender of accreditation, in accordance with the regulations. A party may have reason to surrender its accreditation when it has ceased operations (or plans to) and does not wish to be bound by conditions of accreditation and other duties and obligations that are linked to accreditation.

The model Regulations require accredited persons to notify the Rail Safety Regulator:

- in writing not less than 28 days before the proposed date of surrender; and
- of the arrangements that are proposed in relation to the cessation of the person's rail operations.

In relation to this matter the status quo situation in the States and Territories differs markedly. In NSW and Victoria a rail transport operator needs to gain the permission of the rail safety regulator to surrender its accreditation. In the Northern Territory, Queensland, South Australia, Tasmania and Western Australia the requirement is for the rail transport operator to notify the regulator by 'lodging the approved form' or via 'signed notice'. The draft model Regulation therefore represents a change from the status quo in all jurisdictions.

5.1.5 Application for Variation of Accreditation

The model Bill enables the rail transport operator to apply for a variation of accreditation (section 47) in circumstances where it wishes to change the nature, scope or manner of its railway operations.

The notice of accreditation lists the scope, nature and manor of railway operations the rail transport operator is permitted to undertake. A variation is required when the rail transport operator wishes to undertake railway operations that it is not permitted to do (with reference to the notice of accreditation). A rail transport operator can also apply to change conditions and restrictions on its accreditation (section 52).

All existing State and Territory rail safety law has provisions (equivalent to section 47 of the model Bill) that enable accredited persons to vary their accreditation by application to the rail safety regulator. However, not all jurisdictional law has provisions that enable accredited persons to apply for variations to conditions and restrictions. As indicated in section 2.2 the model Bill provides for an array of checks and balances on regulator decision making. This includes making conditions and restrictions on accreditation subject to review / appeal and making it possible for the accredited person to apply for changes to conditions and restrictions.

The model Regulations require that an application for a variation of an accreditation, or an application for a variation of a condition or restriction imposed by the Rail Safety Regulator, must contain —

- details of the scope and nature of the proposed variation;
- details of the changes that will be made to the applicant's safety management system if the proposed variation occurs;
- details of the consultation that has occurred;
- evidence to demonstrate that the applicant has the competence and capacity to manage the risks to safety associated with the new railway operations the applicant proposes to undertake; and
- the details of the applicant

The requirement to include this type of information in an application for variation is consistent with existing State and Territory law with the exception that existing law does not explicitly require the applicant to provide the details of the consultation undertaken nor does it explicitly require the applicant to demonstrate the capacity and competency to manage the new risks to safety posed by the proposed change in scope, nature and/or manner of railway operations to be undertaken by the applicant.

5.1.6 Late fees

Section 41 of the model Bill provides for the model Regulations to impose additional fees on accredited persons that fail to pay accreditation fees by the due date. The fee for late payment may be, but is not required to be, calculated on a daily basis. The model regulations propose that if payment is not made by the due date [assumes invoice issued allowing for a reasonable period before the amount is due], the Rail Safety Regulator may charge an amount up to [local variation] as a late fee.

The rationale for making provision for a late fee is consistent with usual commercial practice. That is, the prospect of a late fee, that increases as time passes, provides an incentive for debtors to pay fees on time (or at least as soon as they can).

Some jurisdictions already have a capacity to charge a late fee, but not all. For those jurisdictions that previously did not have the capacity to charge a late fee, the capacity to do so is a change to the status quo brought about via section 41 of the model Bill. The model Regulations do nothing more than to prescribe the fee, noting that the fee will differ between jurisdictions. The content of the model Regulations do not, of themselves, imply any costs or benefits relative to the status quo. Accordingly, this Draft RIS considers this matter no further.

5.2 Safety Management

The Safety Management System of the rail transport operator is the means of compliance with rail safety duties specified in section 28 and is both a requirement of accreditation and a means of evidencing the competency and capacity to manage risks to safety. Part 4, Division 4 of the model Bill requires rail transport operators to have a safety management system, comply with it and review it periodically. In particular, section 57 requires rail transport operators to have a safety management system for its rail operations that identifies and assesses risks, specifies the controls, includes procedures for the monitoring, reviewing and revising the adequacy of those controls and specifically requires inclusion of: interface coordination plans; a security management plan, an emergency management plan, a health and fitness management program; a alcohol and drug management program and a fatigue management program in the safety management system. Section 57(1)(b)

requires rail transport operators to comply with 'relevant prescribed requirements' and 'prescribed risk management principles, methods and procedures'. It is proposed to not use the head of power for prescription of risk management principles, methods and procedures.

5.2.1 Safety Management Systems

The model Regulations require that a rail transport operator's safety management system must provide for all of the matters listed in Schedule 1 that are relevant to the rail operations for which the rail transport operator is accredited, or seeking to be accredited, and must provide a level of detail with respect to each of those matters that is appropriate having regard to the scope and nature of those operations.

Schedule 1 provides a systematic listing of matters that need to be considered and provided for in an effective safety management system. Consistent with the policy position documented in the NTC discussion paper released in October 2005 (discussed in section 8 of this Draft RIS) the construction and the content of Schedule 1 is based on the National Accreditation Package (endorsed by ATC in 2004), the Australian Rail Safety Standard - 4292.1 (2006). Where relevant, the NTC has taken into account recommendations of the Safety Management System Expert Panel formed for the purpose of the Special Commission of Inquiry into the Waterfall rail accident.

Currently, four jurisdictions reference AS4292.1 in their primary legislation, giving it a mandatory effect. The National Accreditation Package, which has been aligned and made consistent with AS4292.1, has been implemented in NSW. In Queensland the requirements applicable to safety management systems are not presently prescribed in the Act or the Regulations. However, in practice, rail transport operators based in Queensland and the rail safety officers involved in the 'approval' of operator safety management systems have used AS4292.1 as a point of reference. In addition, consistent with the agreement reached between ATC members (November 2004), the rail safety regulator in Queensland is implementing the National Accreditation Package. The rail safety regulator in Queensland is requiring compliance with the mandatory requirements contained in the National Accreditation Package by 1 January 2007. Victoria is implementing new rail safety regulation on 31 July 2006. These Victorian regulations have been developed concurrently with the model regulations and are equivalent to the model Regulations. Implementation of the model Regulation (on or before 1 July 2007) will not require material changes to the status quo in Victoria.

Given that the model Regulations are based on the content of AS4292.1 and the National Accreditation Package the differences between the status quo (pre 1 July 2007) and the model Regulations are marginal. The differences are as follows:

- consistent with model Bill, the model Regulations articulate more explicit requirements for consultation;
- the model Regulations do not (consistent with the National Accreditation Package) prescribe risk management methods or processes (in contrast to AS4292.1 which prescribes the use of AS/NZS 4360);
- the model Regulations articulates more explicit requirements than that contained in AS4292.1 in relation to the risk register that is to be established and maintained by rail transport operators;

- the model Regulations do not prescribe any requirements in relation to 'human factors';
- the model regulations do not prescribe any requirements in relation to 'safety culture'; and
- in contrast to both AS4292.1 and the National Accreditation Package, the model Regulations contain less detail on 'General Engineering and Operational Safety System Requirements'.

5.2.2 Review of Safety Management System

Section 59 of the model Bill requires that a rail transport operator must review the rail transport operator's safety management system in accordance with the regulations at least once each year or at such other time is agreed between the rail transport operator and the rail safety regulator. In undertaking the review, the consultation requirements articulated in section 57(2) of the model Bill apply. This is a new requirement introduced by virtue of the model Bill. The introduction of the obligation is consistent with the objective of promoting improvement in rail safety outcomes via periodical examination of the effectiveness of the rail transport operator's safety management system.

The model regulations require that the review focuses on the effectiveness of the safety management system as a whole taking into account changes that were made (being made) as a result of any previous review, investigation or audit.

5.2.3 Interface Coordination Plans

Section 61 of the model Bill requires rail transport operators to:

- identify potential risks to safety caused by the railway operations of other rail transport operators; and
- develop and implement one of more interface coordination plans to minimize or eliminate the risks to safety that have been identified.

Rail transport operators are also required to prepare and keep a register of current interface coordination plans.

On 2 June 2006, ATC members approved the proposal to develop an additional provision for inclusion in the model Bill. This provision will place an obligation on road managers to:

- identify risks to safety arising due to interfaces with rail infrastructure managers; and
- develop and implement one of more interface coordination plans to minimize or eliminate the risks to safety that have been identified.

The model Regulations require rail transport operators to:

- identify the rail transport operator(s) with which the rail transport operator has a safety interface;
- identify potential risks to safety; and

- establish and implement a process to seek agreement with the other rail transport operator in relation to:
    - control measures that are to be applied;
    - roles and responsibilities of each party;
    - procedures for monitoring control measures and exchanging information; and
    - when the agreement will be reviewed

The requirements in the model Regulations in relation to this matter are more explicit than currently appears in AS4292.1 or in the National Accreditation Package.

The most significant change introduced by the proposed amendment to the model Bill and the model Regulations is the establishment of an equivalent obligation on road managers to develop, implement and maintain interface coordination plans with rail infrastructure managers with which they have a safety interface(s).

5.2.4 Security Management Plans

Section 62 of the model Bill requires rail transport operators to have and implement security management plans that incorporate measures to protect people from theft, assault, sabotage, terrorism and other criminal acts.

According to the model Regulations a security management plan must include:

- a description of the response measures to be used for responding to acts of terrorism and changes to national terrorism threat levels;
- a description of the protective measures to be used including training, policies, procedures, equipment and other physical resources;
- a description of the arrangements made with those other parties in relation to shared locations; and
- procedures for the recording and analysis of security incidents;
- the allocation of security roles and responsibilities to appropriate people;
- provision for liaison with emergency services and other parties who may be affected by the implementation of the plan, to share information and provide for joint operations; and
- provision for the evaluation, testing and if necessary, the revision of security measures and procedures.

Both the National Accreditation Package (section 3.12) and AS4292.1 (section 2.13) establish a requirement for rail transport operators to develop and implement security policies and plans. In AS4292.1 security is defined as being the *protection of persons, property and railway operation by means of arrangements to reduce the risk of harm from criminal acts of other parties such as theft, assault, sabotage and terrorism.* The National Accreditation Package defines security using the same terms.

AS4292.1 requires security to be *considered in the development and maintenance of the safety management system and in consideration of all safety related tasks.* The Australian Standard goes further to require rail transport operators to *develop and implement effective processes for the integration of security into all aspects of rail safety so that workers and the public can work or travel in a secure environment*. The mandatory requirements contained in the National Accreditation Package are expressed in equivalent terms. A more specific requirement contained in AS4292.1 is to analyse operations in response to changes in national threat assessment levels and make sure that *increased security precautions or responses shall be able to be applied within the requisite response times.* This is equivalent to one of the specific requirements listed in the Model Regulations above.

The primary difference between status quo State and Territory law and the content of the model Regulations is the more explicit nature of the model Regulations regarding what is required to be included in security management plans.

5.2.5 Emergency Plans

Section 63 of the model Bill requires rail transport operators to have an emergency plans and implement it if an emergency occurs. The model Bill requires that the emergency plan must:

- address the matters that are prescribed in the regulations;
- be prepared in conjunction with emergency services and any other person who is prescribed in the regulations;
- be prepared in accordance with the regulations;
- be kept and maintained in accordance with the regulations;
- be provided to emergency services and any other person who is prescribed ; and
- be tested in accordance with the regulations

The model Regulations detail:

- additional parties the rail transport operator must consult with during the preparation of an emergency plan (regulation 14);
- matters to be included in an emergency plan (regulation 15);
- requirements pertaining to the maintenance and testing of the emergency plan (regulation 16); and
- requirements for review of the emergency plan (regulation 17)

The requirements in the model Regulations are far more detailed and explicit than is presently the case in AS4292.1 (8.2) and the National Accreditation Package (3.27).

5.3 Rail Safety Workers

The model Bill contains a number of provisions pertaining to the fitness for duty of rail safety workers. This recognises that competent and fit rail safety workers are critical to the effective functioning of the safety management systems of rail transport operators. The

model Bill (section 8) defines rail safety work very broadly including (in addition to what would be expected):

- work involving the development, management or monitoring of safe working systems for railways (section 8(j)); and
- work involving the management or monitoring of passenger safety on, in or at any railway.

The effect is that the need to be fit for duty is applicable to both railway workers and those involved in the management of railway operations.

5.3.1 Health and Fitness Management Programs

The model Bill (Section 64) requires that a rail transport operator must have a health and fitness management program for its rail safety workers that complies with the model Regulations. The Model regulations require that (regulation 18) a rail transport operator must have, and must implement, a health and fitness program for rail safety workers that complies, so far as is reasonably practicable, with Volumes 1 and 2 of the *National Standard for Health Assessment of Rail Safety Workers*, published by the National Transport Commission as amended from time to time.

The National Standard was approved for implementation by ATC in July 2004. Subsequently, States and Territories implemented the Standard as a mandatory requirement. Most jurisdictions gave the standard a mandatory status by making it a condition of accreditation. NSW and Victoria were the exceptions. NSW required compliance with the standard via regulation. Victoria established the standard as a statutory code of practice meaning that it was not mandatory but a reverse onus of proof applied, that is, if a rail transport operator wished to apply a different standard the onus was on it to prove that its alternative was equivalent or better. The practical effect in Victoria has been that compliance with the standard is regarded as mandatory.

Given the status quo arrangements, the model Regulations are proposing no change in relation to this regulatory matter. Accordingly, this matter is considered no further in this Draft RIS.

5.3.2 Assessment of Competence

The model Bill (section 68) requires a rail transport operator:

- to assess, or cause to be assessed, the competence of rail safety workers with reference to applicable units of competence or qualification recognised under the Australia Quality Training Framework; or
- to comply with the provisions prescribed in the regulations if there is no applicable unit of competence or qualification.

The model Regulations requires that if section 68(1)(a) of the Act does not apply to any rail safety work undertaken for a rail transport operator, the rail transport operator must:

- establish its own units of competence in relation to the rail safety work in question; and
- assess, or cause to be assessed, the competence of each rail safety worker by reference to the unit of competence that has been established.

5.3.3 Records of competence

Section 68(5) of the model Bill requires the rail transport operator to maintain records of competency of rail safety workers in accordance with the regulations. The model Regulations requires records to be kept in relation to:

- the training undertaken by each rail safety worker, including when, and for how long, the training was undertaken;
- the qualifications of each rail safety worker, including —
    - the units of competence undertaken to achieve the qualification;
    - the level of qualification attained;
    - if and when a re-assessment of competence is to be conducted;
    - if and when re-training is due; and
    - the date any re-training was undertaken.
- the name of the organisation conducting the training or re-training; and
- the name and qualifications of the person who assessed the competence of the rail safety worker.

An obligation to maintain records of competence currently exists in AS4292.1 and in the National Accreditation Package. In Queensland, there is no obligation to maintain records of competency under the Act or the regulations but as indicated the National Accreditation Package is being made a condition of accreditation. Accordingly, the status quo situation in Queensland pre-implementation of the model Regulations will be such that there is a mandatory requirement to establish and maintain records of competency. The model Regulations do however, imply a change from the status quo. The model Regulations are more explicit and detailed in their nature relative to the current requirements articulated in AS4292.1 and the National Accreditation Package. The model Regulations are more closely aligned to the obligation to maintain records of competency that currently exist under section 39 of the NSW Act. Victoria's regulations, to be brought into effect 31 July 2006 are identical or otherwise equivalent to that of the model Regulations. Accordingly the implementation of the model regulations in Victoria will pose no material effect.

5.3.4 Alcohol and Drug Controls

The model Bill (section 65) requires rail transport operators to prepare and implement an alcohol and drug management program for its rail safety workers. The program is required to comply with the Act and the Regulations. At this point in time, the model Bill does not propose any regulations relevant to the alcohol and drug management program. It has been agreed that jurisdictions will implement local regulations until such time as a national policy is agreed and associated model regulations are drafted. This matter is discussed no further in this Draft RIS.

5.3.5 Fatigue Management Programs

The model Bill (section 67) requires rail transport operators to prepare and implement a fatigue management program for its rail safety workers. The program is required to comply with the Act and the Regulations. At this point in time, the model Bill does not

propose any regulations relevant to the fatigue management program. It has been agreed that jurisdictions will implement local regulations until such time as a national policy is agreed and associated model regulations are drafted. This matter is discussed no further in this Draft RIS.

5.4 Miscellaneous

5.4.1 Reporting of notifiable occurrences

Section 73 of the model Bill establishes an obligation to report to the rail safety regulator within the time, and in the form and manner prescribed by the regulations, all notifiable occurrences. Under section 4 of the model Bill, notifiable occurrence is defined as an accident or incident associated with railway operations:

- that has, or could have, caused significant property damage, serious injury or death; or
- that is, or is of a class that is prescribed by the regulations

The model regulations (regulation 21) prescribes in detail occurrences that the rail safety regulator is to be notified of. Furthermore, regulation 21 categorises listed occurrences as either type A or type B. In relation to category A occurrences the rail safety regulator is to be notified immediately after the rail transport operator becomes aware of the occurrence and the rail transport operator is required to provide a report within 72 hours thereafter. In relation to category B occurrences the rail transport operator is required to provide a report within 72 hours of first becoming aware that the occurrence has taken place.

Appendix 1 indicates that the obligation in the model Bill and the details prescribed in model regulation 21 is consistent with status quo State and Territory law. It is noted that the neither the Queensland Act nor the regulations contains equivalent obligations. In Queensland the equivalent obligation is implemented as a condition of accreditation.

The model Regulations incorporate two discreet changes to the status quo:

- Removal of requirement to notify the regulator of any ‘significant unplanned delay’; and
- Addition of requirement to notify of events caused by illegal action that affect safe railway operations and includes actions resulting from trespass and terrorism (i.e. a security breech)

5.4.2 Documents to be made available for public inspection

To promote transparency of safety performance, the model Bill (section 46) establishes an obligation to keep and make available for public inspection the current notice of accreditation and any other document prescribed by the regulations. The model Regulations require that the following be made available for public inspection:

- each annual safety performance report prepared under section 60 of the Act; and
- any acknowledgement of registration issued to a rail infrastructure manager by the Rail Safety Regulator in respect of a registration made under section 56(2)(a) of the Act.

The requirement to make annual safety performance reports available for public inspection represents a new requirement relative to the status quo. No jurisdiction currently requires safety reports to be available for public inspection.

5.4.3 Embargo Notices

Section 90 of the model Bill provides for embargo notices to be issued by the rail safety regulator. An embargo notice is a notice forbidding the use, movement, sale, leasing, transfer, deletion of information etc without the written consent of the rail safety regulator. It is able to be used in circumstances where the rail safety regulator is authorised to seize a thing but is not able to do so immediately because it cannot be readily be physically seized and removed. The power to issue embargo notices was introduced via the model Bill. It is but one of a suite of new compliance and enforcement powers introduced via the model Bill. The model Regulations merely articulate what details the rail safety regulator must include in the embargo notice. Ex-ante there is no regulatory or compliance costs that can attributed to this, given that the use of the embargo notice is at the discretion of the regulator. Accordingly, this matter is not considered further in the Draft RIS.

5.5 Fees

The model Bill enables fees to be charged in relation to accreditation applications, private siding registrations and applications for variations of accreditation as well as providing for annual accreditation fees to be charged by the rail safety regulator. This is consistent with existing State and Territory legislation and aims to achieve a level of cost recovery. The level of cost recovery differs between jurisdictions.

In November 2004, ATC agreed to the proposal to adopt a consistent methodology for the determination of annual accreditation fees, recognising that the level of fees may differ between jurisdictions, reflecting the fact that the resourcing of regulators and the level of cost recovery to be achieved differs between jurisdictions. State and Territories have subsequently implemented this nationally consistent methodology following a transitional period. Part 6 of the model Regulations and Schedule 2 is merely intended to support a continuation of the nationally consistent methodology that has been agreed. Accordingly the model Regulations pertaining to these fees do not represent a change form the status quo. The content of these model Regulations is discussed no further in this Draft RIS.

6 EXPECTED BENEFITS AND COSTS OF PROPOSED CHANGES

This section identifies and evaluates the benefits and costs expected to arise from the adoption of each of the major elements of the model Rail Safety Regulations. The approach adopted is one of incremental analysis. That is, the analysis focuses on differences between the status quo and the model Regulations and assesses the likely costs and benefits in circumstances where the adoption of the model Regulations would imply a change. In circumstances where the model regulations do not apply a change to the status quo no consideration of benefits and costs is given. Indications were made to this effect in relation to certain regulatory provisions discussed in section 5.

The analysis is largely qualitative in nature. This, in part, reflects the nature of many of the changes and the inherent difficulties associated with quantifying their impacts.

6.1 Accreditation (Part 2)

6.1.1 Application for Accreditation

If applicant is accredited in another jurisdiction

The requirement to include in the application for accreditation (in circumstances where the applicant is accredited in another jurisdiction):

- the notice of accreditation; and
- statements 'identifying new or additional risks'.

is intended to streamline the application process. It will enable the rail safety regulator to use its discretion to focus on what is new (in terms of risk); and how it is being controlled; taking the capacity and competency to operate safety in the other jurisdiction as a given. It is current and common practice for rail safety regulators to ask for this information at the time of application. Accordingly, the inclusion of this requirement in the model regulations should not be regarded as a new requirement, but instead should be regarded as a codification of existing practice. It avoids either:

- The prospect of the rail safety regulator in the second jurisdiction reviewing all necessary documentation with a view to identifying: relevant changes to the rail transport operators safety management system; and specific evidence of capacity and competency; or
- The delay associated with the rail safety regulator subsequently asking for this information and the rail transport operator having to provide it.

Accordingly, the strongly held belief is that the marginal costs of highlighting certain information that is specifically relevant to the rail transport operators proposed operations in the second jurisdiction is outweighed by the savings in administrative effort undertaken by the regulator and the consequent risk of delay that potentially could be borne by the applicant.

Description of operational assets

In the past, rail safety regulators have required rail transport operators to provide a description of operational assets using the discretion they have to request further information relevant to the application. Accordingly, the inclusion of this requirement in the model regulations should not be regarded as a new requirement, but instead should be regarded as a codification of existing information requirements. As argued above, an ex-ante articulation of this information requirement avoids delay associated with the rail safety regulator subsequently asking for this information and the rail transport operator having to provide it.

Details of consultation undertaken

Clause 57(2) of the model Bill makes it an explicit requirement to consult with a range of parties before establishing a safety management system and in circumstances where a party is reviewing or varying any such safety management system. Strong consultation requirements are consistent with the underlying assumptions of process based regulation, which focus on systemic management of risk, necessarily including the involvement of staff members in risk identification and mitigation activity. In the Final RIS for the model Bill it was argued that the cost impacts of this change are not directly estimable, but it is arguable that making better use of staff expertise and including them in the process at an earlier stage will make for more efficient development of SMS.

The explicit requirement to document who was consulted, when and how the consultation occurred and the results of the consultation is a new requirement established via the model Regulations. The quantum of effort associated with generating this documentation can therefore be attributed to the model Regulations. The requirement to document who was consulted, when, how and the results could be expected to take an individual an hour, perhaps even several hours depending on scope, size and significance of the railway and the associated escalation of people who were consulted in accordance with section 57(2). However, given the relatively small number of accreditation applications that are prepared and processed on an annual basis (1-2 per jurisdiction per year) the summation of this cost across the country is very small.

The benefit of requiring this documentation at the time of application is that it delivers the primary means of monitoring compliance with the consultation requirements established under 57(2).

6.1.2 Prescribed conditions of or restrictions on accreditation

Notification if accreditation status changes in another jurisdiction

An explicit requirement to advise the rail safety regulator of changes to its accredited status (suspended, surrendered, or revoked) in another jurisdiction is a new requirement. Its introduction is consistent with the inclusion of provisions (in particular section 36) that require rail safety regulators to coordinate their decision making. The advice from the rail transport operator about the change in status will prompt the rail safety regulator to contact its counterpart and discuss the reasons for the change in status of the rail transport operator. The direct compliance costs are small (for example, an email) and affords the rail transport operator the opportunity to advise the rail safety regulator in the other jurisdiction(s) in which the rail transport operator is accredited the circumstances that led to the change in status. The benefit to the rail safety regulator in the other jurisdiction(s) is early advice on which to make judgements about whether further action is required.

Notification of prescribed changes

The requirement to notify the rail safety regulator of changes (if it is one that is listed under regulation 5) is a new requirement. In combination with various provisions in the model Bill, this requirement is intended to be a replacement for the current 'material' change application process, which has historically been put into place across the jurisdictions as a condition of accreditation. The existing conditions of accreditation require rail transport operators to gain permission from the rail safety regulator to implement 'material' changes to their safety management systems. A historical problem is the lack of consistency regarding what constitutes a 'material' change. A second and more significant issue is whether this requirement has artificially grown to replace the system of accreditation. The system of accreditation was intended to be the ex-ante assurance mechanism. The test for accreditation is prescribed in legislation. In contrast, the test applicable to whether a 'material' change should be permitted or not is not defined specifically, except in guidelines produced at the discretion of the regulator.

The observation made over the period of the reform process is that some jurisdictions have implemented 'material' change requirements in a highly interventionalist manner, requiring 'sign-off' on almost all changes to the rail transport operators safety management system. This level of 'permissioning' was not intended. Anecdotal evidence and assertions from industry members suggests that the requirement to gain permissions to proceed with 'material' changes acts to delay incremental improvements in safety, blurs lines of accountability for safety and when applied unnecessarily, results in wasted time and effort.

The model Bill places an obligation on the rail transport operator making the application to be very deliberate about the 'permissions' the applicant is seeking. The model Bill then places an obligation on the rail safety regulator to be clear in articulating the permissions that have been granted in the notice of accreditation. In some cases the permissions will be limited and constraining to the extent that relatively small changes to the scope, nature and manner of railway operations will necessitate a variation of accreditation. In other cases, particularly where the rail transport operator is able to demonstrate a high level of capacity and competency, the rail transport operator may be permitted to incrementally change the scope, nature and manner of its railway operations without needing to apply for a variation of accreditation. It is only if the rail transport operator is proposing a change that exceeds the authority provided in the notice of accreditation, that they need to apply for a variation. This approach to accreditation enables it to be a flexible performance based regulatory instrument.

The trade-off in affecting this change is to accept the need to notify the rail safety regulator of certain types of changes, should these changes not require a variation of accreditation[4]. The rationale for this is twofold:

- some types of changes (such as those in regulation 5) have the potential to affect multiple rail transport operators, not just the rail transport operators with the necessary permissions to implement the change. Accordingly there is need for the rail safety regulator to be notified of these changes in order to be able to monitor the response of other rail transport operators to the change; and
- there are likely to be 'grey areas' in interpreting whether a rail transport operator has the necessary permissions to implement certain changes to the scope, manner

[4] As indicated, whether a variation of accreditation is needed or not will depend on what permissions have already been granted to the rail transport operator.

and nature of their operations. Notification of changes (of the type listed in the regulation) enables the regulator to monitor compliance with the limitations implied by what is on, and not on, the notice of accreditation.

The benefits and costs that are likely to arise from this change will vary depending on the nature of the rail transport operator. If the rail transport operator has a limited capacity and competency to implement the type of changes listed in regulation 5, then there will be no change relative to the status quo. That is, this type of rail transport operator will need to seek a case by case permission (via a variation of accreditation instead of a 'material change') to implement changes of this type. In contrast, if the rail transport operator is able to demonstrate the capacity and competency to implement changes of this type (and consequently gains the permissions to do so ex-ante) then the change is beneficial. This is because such a rail transport operator would only need to notify, rather than gain permission, when implementing changes of this type. This avoids the potential for delay in implementing such changes and the effort involved in going through the permissioning process.

The beneficial effect of this change could be significant. The large scale commercial rail transport operators (the type more likely to gain ex-ante permissions to implement changes of the type listed in regulation 5) are the rail transport operators more likely to have a want to implement changes of this type. Indications received from a select sample of commercial operators suggests that on average, each of these organisations implement in excess of six changes of this type per year[5]. Those questioned, indicated that the main benefit would be the saving of time and avoidance of the risk of further delay. The saving of administrative effort associated with going through a permissioning process was regarded of lesser importance[6]. More changes of this type are likely to occur, given the availability of significant funding for rail infrastructure upgrades and new investment though AusLink and State and Territory budget initiatives. In future years, this will amplify the resources saved due to the increase in regulatory efficiency.

The NTC seeks comment on how many of the type of changes listed in the proposed model regulation your organisation would tend to make on an annual basis.

6.1.3 Surrender of Accreditation

As indicated in section 5.1.4, the model Regulations require accredited persons to notify the Rail Safety Regulator:

- in writing not less than 28 days before the proposed date of surrender; and
- of the arrangements that are proposed in relation to the cessation of the person's rail operations.

In relation to this matter the status quo situation in the States and Territories differs markedly. The draft model Regulation represents a change from the status quo in all jurisdictions.

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[5] The estimated number of these types of changes varies significantly between those that formed the selected sample. One rail transport operator indicated that approximately 40 of these type of changes would occur per annum whereas others indicated that these type of changes were relatively rare.

[6] In aggregate, the estimated savings in administrative effort on the part of these large scale commercial operators (there are appropriately 20 in Australia that could be classified in this way) is in the order of $0.9m per annum. However, as indicated, this benefit is believed to be outweighed by saving in time and avoidance of risk of further delay.

The rationale for having requirements pertaining to the surrender of accreditation is that safety issues can arise from an abrupt, unplanned cessation of railway operations. For example, rolling stock may be left blocking running lines or otherwise remain unsecured; bridges overhanging roads could be left in a state of disrepair and at risk of collapse, etc. The potential for these risks to safety motivated NSW and Victoria to include provision in their existing Acts that requires rail transport operators to gain permission to surrender accreditation.

The argument against this requirement (to seek 'consent') is the potential risk of it conflicting with duties and obligations placed on administrators and liquidators, by for example, requiring the rail transport operator to continue to trade in some capacity (in order to comply with accreditation requirements) while insolvent. The existing legislative provisions also suffer from a lack of definition regarding what considerations need to be made by the rail safety regulator in deciding whether to 'consent' or 'not consent' to the surrender of accreditation. A further argument against a continuation of this practice is that, given the hierarchy of sanctions and enforcement powers afforded to the regulator in the model Bill, the regulator has a number of means to ensure that any safety issues that arise are rectified. There is no need to rely on powers afforded to the regulator through accreditation.

Due to a combination of the above arguments, the proposition to base the model Regulations on the NSW and Victorian provisions was rejected. However, during the discussions the argument was made that prior notice of the cessation of railway operations is needed and that there is benefit in the rail transport operator seeking to surrender its accreditation, to plan for the cessation of railway operations and to indicate as such to the rail safety regulator.

The requirement to provide 28 days prior notice is justified on the basis that it at least provides a prompt for the rail safety regulator to monitor the 'wind down' of operations and to take action if needed to ensure that residual risk to safety are adequately addressed. If there were no such requirement, notice of the surrender of accreditation may not arrive until the rail transport operator has ceased operations and disposed all interests such that the regulators compliance and enforcement powers (afforded to it via the model Bill) cannot be used. This is one reason why a requirement to simply notify of the surrender of accreditation is insufficient.

The requirement for the rail transport operator to declare arrangements for the cessation of railway operations is justified on the basis that it requires the rail transport operator to give risks to safety consideration and systematically plan to address residual safety matters. This is consistent with the general philosophy governing the operation of the rail safety regime. Importantly, from a practical perspective, it is foreseeable that a diligent rail safety regulator, having received prior notice of the proposed cessation of railway operations, would ask for this information in any case using the powers afforded to it by the model Bill. Accordingly, the practical effect of requiring this information up-front is that it avoids the need for the regulator to ask for it subsequently.

In terms of benefits and costs:

- the model Regulations imply a change that is of benefit to rail transport operators relative to the status quo arrangements in NSW and Victoria; but conversely
- the model regulations imply additional costs and inflexibilities in those jurisdictions where only a notice of surrender of accreditation was required.

As argued above, the imposition of these costs in jurisdictions other than NSW and Victoria are justified because providing notice is insufficient to protect against any transport operators leaving safety risks uncontrolled (recognising that risk control is undertaken at a cost, implying a potential incentive to avoid such liabilities). In any case, the summation of such additional costs is expected to be low given the infrequent occurrence of a rail transport operators wishing to surrender their accreditation. Secondly, such additional costs can be traded off against the reduction in costs borne by those wishing to surrender their accreditation in NSW and Victoria.

6.1.4 Application for Variation of Accreditation

Details of consultation undertaken

The obligation to consult is contained in the model Bill (Section 57(2)) but is explicitly intended to be consistent with the obligation that is contained in State and Territory occupation health and safety laws (refer to drafting note in the model Bill). The obligation to consult is therefore not new, but the obligation to document the details of the consultation is new and is attributable to the model Regulations. As indicated in 5.1.1, the requirement to document who was consulted, when, how and the results could be expected to take an individual an hour, perhaps even several hours depending on scope, size and significance of the railway and the associated number of people who were consulted in accordance with section 57(2). The benefit of requiring this documentation is that it delivers the primary means of monitoring compliance with the consultation requirements established under 57(2).

It is not possible to estimate with any precision the number of variations of accreditation that are likely to occur under the new regime. The model Bill does not impose a one rule for all approach to this. Whether a rail transport operator needs to apply for a variation of accreditation is dependent on what permissions the operator has been granted on its notice of accreditation. The best means available to make an estimate is to extrapolate information received regarding the frequency of changes of the type listed in regulation 5. This is likely to overestimate the number applications for two reasons:

- The sample from which this information was sourced is more likely to undertake these types of changes; and
- It is foreseeable that not all changes of this type will necessitate a variation of accreditation (depending on the permissions granted to the rail transport operator).

For the sake of indicating an order of cost, this is deemed acceptable.

The estimate is 300 applications for variations of accreditation per annum. The task of generating the documentation (pertaining to consultation that has been undertaken) is assumed to take a half day at $100 an hour (salary and on costs). The summation of the incremental cost is therefore in the order of $120,000 per annum. This number constitutes a relatively small number bearing in mind that this relates to the total cost implied by this requirement across the country.

Demonstration of capacity and competency

The obligation of the applicant to demonstrate the capacity and competency to manage new risks to safety arising from the proposed variation is consistent with the test applicable to accreditation (section 34 of the model Bill: ‘what applicant for accreditation must demonstrate). Section 49 (‘Determination of application for variation’) requires the rail

safety regulator to apply the test of capacity and competency to variations of accreditation. Inclusion in the model Regulations of the requirement to provide evidence of capacity and competency merely clarifies the intent of the model Bill: it makes the test applicable to variation of accreditation explicit to the applicant[7].

It is in the applicant's interest to provide this information. If the applicant did not provide this information, then the rail safety regulator could ask for it making use of the power under section 47(3) (a) of the model Bill. If the applicant continues to not be forthcoming with this information then the regulator would have no choice but to refuse the application for variation of accreditation.

No specific costs can be attributed to the inclusion of this provision in the model Regulations. It is merely represents a clarification of the requirements of the model Bill.

6.2 Safety Management

6.2.1 Safety Management Systems

With the exception of Queensland, status quo jurisdictional law prescribes requirements for safety management systems 'by reference' to a standard or other quasi-regulatory instrument. The status quo law in the States and Territories makes compliance mandatory with either AS4292.1 (2006) or the National Accreditation Package (version 2, 2006).

The option to not prescribe safety management system requirements was considered, but was rejected in favour of being transparent about what governments expect rail transport operators to address in their safety management systems. Prescribing such requirements avoids the risk of safety management system requirements being 'read up' or 'read down' in the absence of specificity.

Given that the model Regulations are based on the content of AS4292.1 and the National Accreditation Package the differences between the status quo (pre 1 July 2007) and the model Regulations are marginal. The differences are assessed as follows.

Rearticulation of requirement for consultation

Schedule 1, for the sake of completeness, includes reference to the requirement to undertake consultation with the range of parties referred to in Section 57(2) of the model Bill. The reference to schedule 1 is merely intended to make it clear that the safety management system should ensure a procedure, or procedures, to enable the rail transport operator to maintain compliance with this requirement when the safety management system is either reviewed, revised or varied. The inclusion of this item in schedule 1 does not imply any specific costs on the part of rail transport operators beyond those implied by the provision in the model Bill.

Non-prescription of risk management methods or procedures

The model Regulations do not prescribe risk management methods or processes (in contrast to AS4292.1, which prescribes the use of AS/NZS 4360). The decision to not prescribe such matters is consistent with the findings forthcoming from earlier consideration undertaken by an NTC working group and its consultants, ERM (discussed

[7] It can argued that this can be inferred by the rail transport operator from Section 49 of the model Bill. While this is true, the inclusion of the provision in the regulations brings the need to provide such evidence more directly to the attention of the applicant.

further in section 8 of this Draft RIS). The discussion paper released in October 2005 (discussed further in section 8 of this Draft RIS) included the following text:

> *NTC rejects the option of legislation imposing particular risk assessment tools, methods and procedures, noting that:*
>
> - *Risk assessment methods need to be tailored to the cultures, systems and risk conditions that exist in individual rail organisations in order to be truly effective; and*
> - *The rail organisation should be responsible for interpreting legislative standards into specific methods and criteria, and then providing these to the regulator for review.*

It is noted that the National Accreditation Package adopts this approach. Accordingly, the jurisdictions in which the content of the model Regulations represents a change are those that reference AS4292.1 in their legislation. This does not imply any specific costs because rail transport operators are free to continue to use AS/NZS 4360 as their risk management method and process. However, if the use of AS/NZS 4360 has been problematic in the past because it has not been fit for purpose, then the model Regulations afford the rail transport operators the opportunity to make beneficial changes to their risk management methods and procedures.

Explicit requirements for risk registers

The model Regulations articulates more explicit requirements than that contained in AS4292.1 in relation to the risk register that is to be established and maintained by rail transport operators. AS4292.1 requires rail transport operators to establish and maintain a risk register linking risks to controls. The National Accreditation Package includes mandatory requirements pertaining to risk registers (refer to section 3.16.5) that are equivalent to that in the model Regulations. The model regulations require the risk register to include:

- a listing of the risks to safety that have been identified;
- details of the assessment of identified risks; and
- the risk control measure or measures to be used, including references to:
    - who is responsible for implementing the control, or controls; and
    - principal element in the safety management system describing the control

The different phrasing of the requirement relative to what appears in 3.16.5 of the National Accreditation Package is aimed at providing better clarity and avoiding the potential for unintended interpretations. For example, there was a concern that cross referencing controls to specific parts of the safety management system may become unworkable and difficult to maintain if this cross-referencing was required to be undertaken with a level of precision. This is because low level rules and procedure document are changing all the time (with a view to making incremental improvements).

The argument in favour of increasing the level of prescription beyond requiring a 'register linking risks to controls' is that it enables greater consistency between the jurisdictions. The requirement to have a 'register linking risks to controls' is considered too vague and open to interpretation as to what is acceptable and what is not. Such interpretations can,

and have[8], manifested themselves in inconsistencies between jurisdictions. Such inconsistencies imply a need to establish and maintain two separate registers, which acts to distract resources from the ongoing task of analysing the risk register and making incremental improvements in risk management.

The considered view of the industry representatives and government representatives involved in the development of the model regulations is that the level of prescription contained in the model Regulations (in relation to risk registers) is appropriate and is necessary to protect against varying interpretations.

The primary reason why the level of prescription is considered appropriate is that the model Regulations describe risk registers as they are implemented now by commercial rail transport operators. Accordingly, the inclusion of this detail in the model Regulations does not, in practical terms, imply any additional compliance costs. This may not be the case in relation to the tourist and heritage sector of the rail industry. Some additional compliance costs may be borne by this sector in establishing and maintaining risk registers that meet the minimum requirements prescribed in the model Regulations. Due to the absence of information on the current state of risk registers established and maintained by members of the tourist and heritage sector it is not possible to indicate the size and significance of the change implied by the model regulations. The particular challenges the tourist and heritage sector may have in complying with this and other similar requirements contained in the model Regulations is discussed further in section 6.5.

The NTC seeks comment on the extent to which your organisations risk register would meet the requirements articulated in the proposed model Regulations.

No prescribed requirements in relation to 'Human factors'

The model Regulations do not prescribe any requirements in relation to 'human factors'. Both the National Accreditation Package and AS4292.1 include references. It is noted that the references in the National Accreditation Package and AS4292.1 do not establish requirements that are measurable or enforceable, but rather point to 'human factors' as a matter that 'shall be considered in the development and maintenance of the safety management system' (refer to 2.12 of AS4292.1). The view of the NTC and its advisory groups is that such material is suitable for inclusion in guidance materials but does not provide a sufficient basis for a regulation.

The practical effect of this change (to not include references to 'human factors') is nil, on the assumption that rail transport operators are encouraged to consider human factors via nationally consistent guidance materials (which is what AS4292.1 can be considered to be under the new arrangements).This implies that no additional costs or benefits will arise from the absence of references to 'human factors' in the model regulations.

No prescribed requirements in relation to 'Safety Culture'

The model Regulations do not prescribe any requirements for a 'safety culture'. Both the National Accreditation Package and AS4292.1 include references. It is noted that the references in the National Accreditation Package and AS4292.1 do not establish requirements that are measurable or enforceable, but rather, encourage rail transport operators to 'include in its safety management system methods to develop and maintain a positive safety culture' (refer to 2.14 of AS4292.1). The view of the NTC and its advisory

[8] Statement supported by anecdotal evidence only

groups is that such encouragement is embedded in the other prescribed requirements. For the purpose of illustrating this, consider that AS4292.1 recommends that in order to develop and maintain a positive safety culture consideration should be given to (‘ ’ are quotes from 2.14 of AS4292.1):

- ‘the importance of leadership and commitment of senior management’: this is the function of the safety policy required under schedule 1;
- ‘the executive safety role of line management’: this is addressed via the articulation of roles, responsibilities and accountabilities requires by virtue of provisions included in schedule 1;
- ‘the need to involve rail safety workers at all levels’: this is encouraged by the consultation requirements specified by the model Bill and referred to in schedule 1;
- ‘the need for openness of communication’: schedule 1 includes requirements pertaining to internal communications;
- ‘the need for human factors to be positively addressed’: the possibility (and indeed probability) of human error is considered within the context of good risk management practice, which in turn is encouraged via various provisions in schedule 1;
- ‘awareness and recognition of opportunities for safety improvement’: addressed via requirements for audit, investigation and review of the safety management system; and
- ‘willingness to devote resources to safety’: motivation by combination of benefits internalised due to safety related activities and by enforcement of regulatory requirements (with seek to address market failures).

The practical effect of this change (to not include references to ‘safety culture’ in schedule 1) is nil, on the assumption that rail transport operators are encouraged to consider how best to encourage a safety culture via nationally consistent guidance materials (which is what AS4292.1 can be considered to be under the new arrangements).This implies that no additional costs or benefits will arise from the absence of references to ‘safety culture’ in the model regulations.

Less detail on Engineering and Operational Safety System requirements

In contrast to both AS4292.1 and the National Accreditation Package, the model Regulations contain less detail on ‘General Engineering and Operational Safety System Requirements’.

During development of the model regulations, section 6 of AS4292.1 (Engineering and operational Systems Safety) was considered for inclusion in schedule 1. Section 6 of AS4292.1 contains the same content as section 3.20 and 3.21 of the National Accreditation Package. The observation was that requirements articulated in that section of the standard are duplicated in many parts reflecting the fact that the provisions are intended to be good guidance rather than a succinct articulation of what rail transport operators are required to do. The observation was made that substantive requirements, which should be captured in the model Regulations, are listed in section 6.1 (general) and 6.2 (process control) of the standard. The remaining sub-sections (6.3 to 6.9) are observed to be more detailed requirements, relating to matters that are already dealt with in section 6.2 (process control).

Accordingly, the decision was made to limit the level of prescription to be included in schedule 1 to the requirements listed in section 6.2 of the standard.

The practical effect of this change (to not include sections 6.3 to 6.9 of the standard) is nil. Rail transport operators will have the freedom to continue with their current practices. In this case, the content (or lack thereof) of the model Regulations implies no additional costs or benefits. Rail transport operators may foresee an opportunity to apply to make changes to the safety management system in relation to process control, but changes are likely to be subject to a permission from the regulator (via an application for variation of accreditation). Rail transport operators will continue to be encouraged to consider guidance regarding what constitutes good process control. AS4292.1 can continue to fulfil this function.

A potential benefit from this change is that the requirements incorporated into schedule 1 remains more scaleable. This is because the requirements are pitched at a higher level. This is desirable to the extent to which it affords greater flexibility to rail transport operators to determine the most cost effective and practical means of meeting that requirement.

The NTC seeks comment on whether or not your organisation has experienced difficulty in the past in meeting the detailed requirements of section 6 of AS4292.1.

6.2.2 Review of Safety Management System

The model Regulation in relation to the periodic review of the rail transport operator's safety management system is needed to qualify section 59 of the model Bill. If the nature and the extent of the review is left unspecified there is risk that this requirement will be interpreted by rail transport operators, rail safety officers or both as requiring an in depth examination of each and every part of the rail transport operator's safety management system. This is not consistent with the intent of the provision in the model Bill. The periodic review provided for in the model Bill was intended to be a high level review of the effectiveness of the safety management system overall, giving regard to results of internal audits, investigations and the performance indicators that are required to be established, measured and monitored in accordance with schedule 1 of the model Regulations.

Representations from industry to the NTC during the development process of the model Bill and the model Regulations have suggested that it is more efficient and effective for the review of the detail of the safety management system to be conducted via a program of internal audits (possibly spread over a number of years) or else via investigations (triggered by an occurrence). This view has previously been accepted, noting that regulator audit and investigation activities will also result in examination of the effectiveness of the rail transport operator safety management systems. The outcomes of regulator led audit and investigation activities are likely to prompt, from time to time, the review and revision of aspects of the safety management system. The combination of these activities is sufficient to achieve the desired objective: an environment that is conducive to improvements in the effectiveness of safety management systems over time.

As indicated, the benefit to be gained from this provision in the model Regulations is the avoidance of the considerable costs involved in reviewing all aspects of the rail transport operator's safety management system on an annual basis. An annual review of this nature is viewed as being unjustified, particularly when considered in the context of the other review / audit / investigation activities that are required to occur.

6.2.3 Interface Coordination Plans

Detail of interface coordination plans between rail transport operators

The requirements in the model Regulations in relation to this matter are more explicit than currently appears in AS4292.1 or the National Accreditation Package. However, rail transport operators currently seek to, and most cases do, reach agreement on the matters such as:

- control measures that are to be applied;
- roles and responsibilities of each party;
- procedures for monitoring control measures and exchanging information; and
- when the agreement will be reviewed

in their existing interface coordination plans.

The more explicit nature of the regulatory requirements is therefore argued to be a codification of existing practice rather than a change to, or extension of, the obligation. This implies that there are no specific compliance costs attributable to this regulation.

The potential benefit of the regulation is that of consistent implementation of interface coordination plans across the country and reduction of the potential for a rail safety regulator to place an interpretation on the requirement that differs from that of other rail safety regulators.

Detail of interface coordination plans between rail infrastructure managers and road managers

As indicated in 5.2.3, ATC members have approved the proposal to develop an additional provision for inclusion in the model Bill. This provision will place an obligation on road managers to:

- identify risks to safety arising due to interfaces with rail infrastructure managers; and
- develop and implement one of more interface coordination plans to reduce the risks to safety that have been identified.

Road and rail intersections pose risks to safety. There are approximately 100 crashes between a road vehicle and a train in Australia each year, and about 8% of these result in deaths. Many crashes occur while pedestrians are crossing railways on public streets and about 22 pedestrians die each year as a result. The obligation to be established and applied to road managers and rail infrastructure managers is fundamental in its nature: a precursor to improved management of road and rail intersections. The current absence of a systematic approach to risk identification, assessment and control is not conducive to achieving acceptable safety outcomes, meeting community expectations and maintaining public confidence.

ATC members were asked to consider two options:

- establish an obligation on road managers in State and Territory road management legislation that corresponds with the obligation placed on rail infrastructure managers in State and Territory rail safety legislation (based on the model Bill); or

- establish an obligation on road managers in State and Territory rail safety legislation (based on the model Bill).

The NTC recommends option 2 on the basis that there is not an 'independent' safety regulator, providing regulatory oversight of infrastructure manager activities, in the road management sector. The NTC's view, supported widely by jurisdictional officers involved in the rail safety reform process, is that the obligation on rail infrastructure managers and road managers should be enforced in an integrated way by the one regulator; the rail safety regulator; rather than adopting a piecemeal approach administered by two regulators.

Consultation revealed broad unqualified support for this option. State and territory road authorities expressed some concerns but, in principle, were not opposed to the idea of adopting a more systematic approach to the management of interfaces with rail infrastructure.

Submissions received in response to the exposure draft of the model Bill (which included a draft obligation on road managers) confirmed that at present, in practice, a level of coordination between rail infrastructure managers and road managers is achieved. However, those that made submissions from the rail industry noted that the level of coordination and general approach to risk management could be improved. The most common criticism of the status quo is that road managers are reluctant to make the time to systematically consider level crossing issues in partnership with the relevant rail infrastructure manager.

Fatalities at railway level crossings are equivalent to a very small proportion of the deaths that occur on roads each year. This explains, in part, the reluctance of road managers to pay particular attention to reduction of risks to safety at level crossings. This is understandable to a point. It stands to reason that road managers should focus their expenditure on safety in those areas which generate the highest returns. This logic, however, does not in any way excuse road managers (or rail infrastructure managers) from better understanding what the potential returns are from investing in the safety of road and rail intersections. The reluctance to obtain this information amounts to making decisions 'in the dark'.

Several possible railway level crossing crash scenarios, representing major community disasters, are foreseeable, some of which are:

- a crash involving a train carrying many passengers,

- a crash involving a goods train or truck carrying dangerous goods,

- a crash involving a bus,

- a derailment which closes a major freight or passenger line for many days.

The latent risk of such occurrences is of serious concern. A precursor to improved safety management at level crossings is enforcement of the requirement for both the relevant rail infrastructure manager and road authority to get together and systemically identify and assess risks.

In generic terms, interface coordination plans for road and rail intersections are expected to include, but not be limited to: a description of the intersections to which the coordination plan applies, summary of results of risk identification and assessment, statement as to the risk controls that are to be applied, roles and responsibilities of parties and articulation of process by which interface coordination plans will be maintained, reviewed and changed when required. This is what the model Regulations provide for.

The development, implementation and maintenance of interface coordination plans in relation to road and rail intersections is a pre-existing practice across many jurisdictions but accordance with this practice is not uniform. The incremental effect of the new legislative provision (to be included in the model Bill and complemented by the model Regulations) is the development of interface coordination plans in circumstances where they do not already exist.

The estimated cost of implementing the legislative requirement for interface coordination plans between rail infrastructure managers and road managers (across Australia) is between $1.35m and $5.9m in present value terms[9]. The considered view is that the actual costs of implementing this requirement across the country will be at the lower end of the range[10]. Assuming the worst case ($5.9m), for the initiative to be of net benefit, level crossing occurrences will need to reduce by 3% over the next ten year period. This is a relatively low level of reduction and is considered achievable. Accordingly there is confidence that this safety initiative is of net benefit.

ATC members have accepted the arguments for interface coordination plans between rail infrastructure managers and road managers and have approved the inclusion of the new provision in the model Bill. As indicated, the model Regulations relating to this matter merely clarify expectations by prescribing, in generic terms, the development process for interface coordination plans. It should be noted that neither the model Bill nor model Regulations prescribe the details of what must be agreed between the rail infrastructure manger and the road manager. The level of risk controls and number of controls to be applied is to be agreed between the parties relative to the nature and level of risks identified. In forming such an agreement both parties will give due regard to statutory duties of care applicable to each. For the rail infrastructure manager, the applicable statutory duty of care is articulated in rail safety legislation (to be based on the model Bill) and in State and Territory occupational health and safety legislation. For the road manager, the statutory duty of care (or equivalent) is articulated in road management legislation. The power that the model Bill will afford to the rail safety regulator is the power to enforce the requirement to develop and then implement interface coordination plans (not determine what is in them). This is consistent with the rail safety regulatory framework, which is based mainly on application of process regulation, rather than being prescriptive about how risks are to be controlled.

The NTC is in the process of drafting the amendment to the model Bill that is required, consistent with the decision of ATC. In addition to seeking comment on the proposed model Regulations, the NTC seeks comment on whether the proposed obligation should apply to private road managers.

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[9] NTC submission to ATC dated 10 April 2006

[10] two reasons: (a) interface coordination plans between rail infrastructure managers and road managers already exist for a percentage of Australia's level crossings; and (b) rail infrastructure managers and road managers are likely to choose to establish interface coordination plans that address all the level crossings that occur between them – rather than preparing a separate plan for each and every level crossing.

6.2.4 Security Management Plans

The primary difference between status quo State and Territory law and the content of the model Regulations is the more explicit nature of the model Regulations required in security management plans. Rather than broadly defining the requirement to consider security matters, develop a *security policy* and *security plan* and *integrate into all aspects of rail safety* (AS4292.1), the model Regulations defines the specific requirements to be met by the security management plan, noting that the security plan will form part of, and integrate with, the rail transport operator's safety management system.

The primary reason for making this change is to ensure that the compliance can be measured and enforced. The current requirements articulated in AS4292.1 and the National Accreditation Package are not conducive to measurement of compliance and are difficult, if not impossible to enforce. Greater definition also provides protection against interpretations by rail safety officers that manifest into significant effort on the part of the rail transport operator in order to achieve, what is perceived to be, compliance. Equally, it provides a level of protection against differing interpretations between jurisdictions.

Consideration of the matters listed in regulation 13 and incorporation of appropriate response measures into security management plans is consistent with existing best practice. Accordingly, those rail transport operators that are already operating at industry best practice will face no additional compliance costs by having to comply with the model Regulations. This is the case for large scale public transport providers and large scale commercial freight service providers. Such rail transport operators have previously been identified as a potential security target and accordingly have worked with government agencies (including, in some cases, the rail safety regulator) to develop and implement security management plans.

Consistent with the nature of the rail safety regulatory framework (process / performance based regulation) the requirements for security management plans are scaleable, relative to the scope, nature and manner of railway operations undertaken by the rail transport operator. That said, there are aspects of the inputs required to put the security management plan together (in the first instance) that are not scaleable. Due to this, it is foreseeable that some rail transport operators may incur one-off compliance costs in translating their existing security policies and plans into an explicit security management plan that is sufficient to comply with the requirements articulated in the model Regulations. This circumstance is most likely to apply to railways that form part of the tourist and heritage sector.

It is not possible to estimate the likely costs associated with this change with any precision. The expectation is that the level of compliance with the new, more explicit requirements articulated in the model Regulations will vary markedly between rail transport operators. If it is assumed that there is high level of compliance with the existing regulatory requirements then it is to be expected that rail transport operators will be in a position to comply without having to incur significant compliance costs[11]. Alternatively, due to the lack of definition, ability to measure and ability to enforce these requirements in the past it might be appropriate to assume a high level of non-compliance. Adopting this as the worst

[11] Compliance activity may be limited to the consolidation of existing documentation. If this assumption holds the compliance costs would be in the order of $100k in total.

case scenario[12], the present value of compliance costs (development and implementation of plan) would be in the order of $1.6m, spread over a transitional period of 2007/08 and 2008/09. There is insufficient information to narrow this range of compliance cost estimates any further ($0.1m to $1.6m).

It should be noted that the costs associated with implementing preventative measures or otherwise making provision for response to a security incident is in addition to the estimated costs above. It is assumed (and stands to reason) that the benefits of undertaking preventative measures or making provision for responses more than offset the costs. If this were not true, then the preventive measure should not be implemented or the provision for response should not be afforded. The duty applicable to rail transport operators does not require implementation of measures where costs exceed benefits.

The NTC seeks comment on the extent to which your organisation's security management plan would meet the requirements articulated in the proposed model Regulations.

6.2.5 Emergency Plans

The requirements in the model Regulations are far more detailed and explicit than is presently the case in AS4292.1 (8.2) and the National Accreditation Package (3.27).

The primary reason for making this change is to ensure that compliance can be measured and enforced. The current requirements articulated in AS4292.1 and the National Accreditation Package are not conducive to accurate measurements of compliance and are difficult to enforce.

A benefit of greater definition is that it provides protection against the prospect of interpretations by rail safety officers that manifest into significant effort on the part of the rail transport operator in order to achieve what is perceived to be compliance. Equally, it provides a level of protection against differing interpretations between jurisdictions.

As is expected to be the case with security management plans, those rail transport operators that are already operating at industry best practice will face no additional compliance costs by having to comply with the model Regulations. This is expected to be the case for large scale public transport providers and large scale commercial freight service providers.

Consistent with the nature of the rail safety regulatory framework (process / performance based regulation) the requirements for emergency management plans are scaleable, relative to the scope, nature and manner of railway operations undertaken by the rail transport operator. However, there are aspects of the inputs required to establish an emergency management plan that are not scaleable. Due to this, it is foreseeable that some rail transport operators may incur one-off compliance costs in reviewing and revising their current plans such that they are sufficient to comply with the requirements articulated in the model Regulations. Again, the sector of the industry most likely to incur on-off compliance costs (of a significant quantum) is the tourist and heritage sector.

It is not possible to estimate the likely costs associated with this change with any precision. The expectation is that the level of compliance with the new requirements articulated in the

[12] Specifically, it is assumed that rail transport operators that form part of the tourist and heritage sector have to start from scratch to develop and implement a security management plan that complies with the regulations. Estimated cost per organisation is $25k.

model Regulations will vary markedly between rail transport operators. If it is assumed that there is high level of compliance with the existing regulatory requirements then it is to be expected that rail transport operators will be in a position to comply without having to incur significant compliance costs[13]. Alternatively, due to the lack of definition, ability to measure and ability to enforce these requirements in the past it might be appropriate to assume a high level of non-compliance. Adopting this as the worst case scenario[14], the present value of compliance costs (development and implementation of plan) would be in the order of $2m, spread over a transitional period of 2007/08 and 2008/09. There is insufficient information to narrow this range of compliance cost estimates any further ($0.1m to $2m).

It should be noted that:

- the costs of making a provision for emergency response is not included in the estimates above. It is assumed (and stands to reason) that the benefits of making provision for emergency response more than offsets the costs. If this were not true then the provision for response should not be afforded. The duty applicable to rail transport operators does not require implementation of measures where costs exceed benefits; and

- it is usual practice to undertake exercises, that is, test the preparedness to implement different forms of emergency response that are governed by the rail transport operators emergency management plan. It is assumed that there had been compliance with this practice and that this will continue to be the case, under the new arrangements. The cost of undertaking such exercises is not a cost that should be attributed to the model Regulations. It is a cost that is associated with having an emergence response plan.

The NTC seeks comment on the extent to which your organisation's emergency management plan would meet the requirements articulated in the proposed model Regulations.

6.3 Rail Safety Workers

6.3.1 Assessment of Competence

The model Regulations make it clear that rail transport operators (either individually or collectively through bodies such as the Code Management Company) have the accountability to develop units of competency in circumstances where there are no applicable units of competency or qualifications under the Australian Quality Training Framework. The model Bill then obliges rail transport operators to assess, or cause to be assessed the competency of each rail safety worker to perform the rail safety work the rail transport operator requires the individual to undertake.

In effect, the model Regulation pertaining to the assessment of competence enables rail transport operators to continue the status quo practice of using the national competency

[13] Compliance activity may be limited to the consolidation of existing documentation. If this assumption holds the compliance costs would be in the order of $100k in total.

[14] Specifically, it is assumed that rail transport operators that form part of the tourist and heritage sector have to start from scratch to develop and implement an emergency management plan that complies with the regulations. Estimated cost per organisation is $20k. It is noted that the estimate accords with submissions prepared by members of the tourist and heritage sector.

framework to the extent to which it is applicable, or otherwise developing and applying specific competencies that are tailored to the requirements of the rail transport operator's safety management system.

The impact of the regulation is neutral as it enables the status quo arrangements to continue under the new legislative framework. Accordingly, it is anticipated that there will be no specific costs or benefits arising from provision of the model regulation pertaining to the assessment of competence.

The change relative to the status quo is embedded in the model Bill (the explicit reference to the Australian Quality Training Framework). The rationale for this change is to provide for greater portability of labour and to ensure that there is on-going relevant, consistent and up to date framework (inclusive of units of competency and qualifications) in support of competency based training for the benefit of the rail industry (i.e. the Australian Quality Training Framework).

6.3.2 Records of competence

Existing State and Territory law, through AS4292.1 and the National Accreditation Package requires rail transport operators to establish and maintain records of competence. The model Regulations are more explicit and detailed in their nature relative to the current requirements articulated in AS4292.1 (section 4.2) and the National Accreditation Package (3.18).

The benefit of requiring this documentation are that it delivers the primary means of monitoring compliance. The requirement ensures, so far as is reasonably practicable, that a rail safety worker who is to carry out rail safety work in relation to the rail transport operators railway operations is competent to carry out rail safety work of that kind. The competency of rail safety workers is a key determinant of the effectiveness of the safety management system.

The considered view is that the current requirements articulated in AS4292.1 and the National Accreditation Package are not sufficient in detail to be effective. For example, AS4292.1 requires that *records of attainment of competence for all workers involved in safety related work shall be maintained.* Compliance with this requirement as stated in AS4292.1 would not require the rail transport operator to have records which substantiate the currency of the competency. This is a clear example of why there needs to be greater definition of the records that must be kept.

A benefit of providing greater definition is that it provides protection against the prospect of interpretations by rail safety officers that manifest into significant effort on the part of the rail transport operator in order to achieve what is perceived to be compliance. Equally, it provides a level of protection against differing interpretations between jurisdictions.

For their own benefit, some rail transport operators already maintain records that are sufficient to comply with the record keeping requirements contained in the model Regulations. This is expected to be the case for large scale public transport providers and large scale commercial freight service providers. However, it is to be expected that the tourist and heritage sector would find it more difficult to establish and maintain records of this type.

Rail transport operators in NSW and Victoria (including the tourist and heritage sector) are already (will be) required to maintain records of competency that are equivalent to the

requirements articulated in the model Regulations. Consequently there is no effective change from the status quo in these jurisdictions. The model regulations represent a change in the other jurisdictions.

It is not possible to estimate the likely costs associated with this change with any precision. The expectation is that the level of compliance with the new requirements articulated in the model Regulations will vary between rail transport operators. The compliance costs implied by this change will depend on the transitional provisions which are adopted in relation to new requirements pertaining to assessment of competence of rail safety workers. The current national policy position is that a 3 year or 5 year period should be afforded to achieving compliance. The choice is dependent on investigations into the frequency by which rail safety worker competencies are reassessed.

The aim is to afford sufficient time for new records to be generated naturally as a consequence of the periodic reassessment of rail safety workers rather than trying to substantiate existing records or create new records via reassessment of rail safety competencies as part of an accelerated program that is intended to achieve compliance with the new regulatory requirements. The management of the transition in this way will ensure that the incremental costs of achieving compliance with the new record keeping requirements are minimised. Assuming this strategy is effective, the incremental cost of the change is likely to be limited to the establishment of the database and associated changes to training procedures, etc. The estimated one-off compliance cost (excluding operators already required to maintain records) is in the order of $300,000.

The NTC seeks comment on the extent to which your organisation's records of staff competencies would meet the requirements articulated in the proposed model Regulations. The NTC specifically seeks information on the training lifecycle within your organisation. This will assist in determining the most appropriate transitional provisions.

6.4 Miscellaneous

6.4.1 Reporting of Notifiable occurrences

Removal of requirement to notify of 'significant unplanned delays'

This requirement has been removed as it is not considered that the matters giving rise to delays are necessarily safety related issues. Moreover, where delays do result from safety related causes, the adoption of the requirement to report on notifiable occurrences will ensure that such matters are brought to the attention of the regulator. The removal of the existing requirement will result in some cost savings in relation to complying with the reporting requirements, by comparison with the existing situation.

Addition of requirement to notify of security breaches

A change from the status quo that is embedded in the model Bill in the inclusion of regulatory requirements pertaining to security. The inclusion of requirement to notify the rail safety regulator of security breaches is consistent with this change. The collection of this data and report of it to the rail safety regulator provides the primary means of monitoring the effectiveness of security management plans. For this reason, it is implied by the requirement to have a security management plan (a pre-existing requirement in AS4292.1 and the National Accreditation Package) that rail transport operators will be (are) monitoring the occurrence of security breaches and maintaining associated statistics. The compliance cost implied by the change is therefore restricted to the effort involved in

notifying the rail safety regulator. As there are no data reported on security breaches at present the compliance costs associated with notification can not be quantified.

The observation is that the removal of the requirement to notify of 'significant unplanned delays' offsets at least in part (perhaps even completely) the requirement to notify of security breaches.

The NTC seeks comment on the number of reports that would need to be submitted due to the new requirement to notify of security breaches.

6.4.2 Documents to be made available for public inspection

The requirement to make annual safety performance reports available for public inspection represents a new requirement relative to the status quo. No jurisdiction currently requires safety reports to be available for public inspection.

The production of such reports is already required under section 60 of the model Bill and indeed it has been a long standing requirement of status quo jurisdictional law. Given that the report is already required, the cost of making this available for public inspection is virtually nil.

The potential dis-benefit of requiring this documentation to be available for public inspection is the effect it may have on the performance reporting behaviour of the rail transport operators. There is a concern that the public status of this report could impede its primary function: the exchange of safety performance information between the rail safety regulator and the rail transport operator.

6.5 Summary

A fair proportion of the model Regulations represent a restatement of the existing jurisdictional law. As a consequence there is not expected to be any additional costs or benefits.

The remaining model regulations, in general, imply two types of changes:

1. the provision of greater information to the rail safety regulator.

   It has been shown that this may involve additional costs for rail transport operators in generating the necessary documentation in circumstances where the required material: (a) would not have already been generated by the rail transport operator for internal management purposes; or (b) was not previously required by the rail safety regulator using its administrative discretion; and

2. improved definition and specificity of the regulatory requirement.

   The benefit of making this type of change is twofold. Firstly, the requirements are made more transparent to all stakeholders, as well as becoming more readily enforceable. Secondly the regulations will ensure that there is clear regulatory authority underpinning all requirements being implemented by the rail safety regulator.

As has been stated in the preceeding sections, it is not possible to estimate the likely costs associated with these changes with any precision. The 'order of cost' estimates that have been incorporated into the discussion indicate that more explicit requirements pertaining to security plans, emergency plans and records of competence are likely to result in additional

administrative effort of some significance. In aggregate, these costs are likely to be offset, at least in part, by the potential benefits arising from the replacement of 'material' change requirements with the new framework for variation of accreditation and notification of change. Moreover, the quantum of these additional costs needs to be considered in the context of the aggregate benefits and costs implied by the complete package of rail safety reform. This is considered in more detail in section 7 of this Draft RIS.

An important issue that emerges from the discussion of expected costs and benefits is the potential for a high incidence of additional compliance costs to be borne by the tourist and heritage sector. The model Regulations are intended to be scaleable[15], however there is a minimum level of documentation that is needed to be generated by rail transport operators in order to comply. The generation of such documentation presents a challenge to the tourist and heritage sector due to these operators being reliant on volunteer labour. The prime interest of the volunteer labour is to engage in tasks such as operating trains, undertaking maintenance and participating in the restoration of rolling stock. Accordingly, there are relatively few volunteers who are willing to undertake the administrative work that is required to enable the railway to comply with the regulatory requirements. Representations received by the NTC during the development of the model Bill and during the development of the model Regulations indicate that any increases in the required level of administrative effort may trigger the closure of some tourist and heritage railways. Given the (generally) high level of safety performance achieved by the tourist and heritage sector, this is clearly not the intended consequence. This suggests that more consideration should be given to prescribing exemptions by regulations.

Section 162(2)(f) of the model Bill provides the power to exempt rail transport operators or classes of rail transport operators from any provision of the regulations, whether unconditionally or on specified conditions ether wholly or to such an extent as is specified. Section 162(3) provides the power to exempt, or provide for the exemption of, either absolutely or subject to conditions, any person, railway, part of a railway or operation from all or any of the provisions of the Act. The argument for using these powers to exempt a class of tourist and heritage operators from, for example, complying with detailed requirements pertaining to security management plans and emergency plans is twofold:

- Neither the observed performance of the class of operators in respect to management of security and emergence response, nor the latent risks associated with security and emergency response is sufficient to justify the imposition of new regulatory requirements; and

- It is foreseeable that the enforcement of compliance with these requirements could manifest in the closure of railways of this class, resulting in a loss of community amenity that more than outweighs the incremental benefit of enforcing the requirement.

The argument against the prescription of exemptions by regulations is the risk that it will not be possible, ex-ante, to define a class of rail transport operators (a definable subset of the tourist and heritage sector) that should be, in concordance with the arguments expressed above, excluded from meeting the detailed regulatory requirements. The associated risk is that exemptions may cause regulatory anomalies, reducing the credibility

[15] The obligations placed on rail transport operators, while conceptually consistent , will differ substantially in terms of the required resource inputs, given the differing scale, nature and manner of railway operations being undertaken by different parties.

of the regime, which is particularly important given that one of the prime objectives is to maintain public confidence in the safety of rail transport.

The NTC seeks comment on the arguments for and against the provision of exemptions to small scale tourist and heritage rail transport operators. The NTC also seeks comment on what specific proposals for exemptions should be considered.

7 CONCLUSION: IMPACTS OF THE PROPOSED REGULATIONS IN CONTEXT OF BROADER REFORM PACKAGE

The RIS for the model Bill explicitly recognised that the model Bill constitutes a part of a broader package of reforms that includes model regulations, changes to institutional arrangements and the development of nationally approved guidelines to support consistent regulatory practice across jurisdictions. It was acknowledged in the RIS that implementation of the complete package of reforms is needed to achieve the improvements in regulatory efficiency and effectiveness that were foreshadowed. It was asserted that further RISs (such as this Draft RIS) should re-examine assumptions used and estimations made in this RIS in light of specific proposals embodied in subordinate instruments. This was considered the most appropriate approach and the most practical way of assessing aggregate impacts given that the likely benefits and costs of changes embodied in subordinate instruments can only be estimated when the specifics of the subordinate instruments are known. This section considers the reasonableness of assumptions used in the RIS for the model Bill in light of knowledge about the content of the proposed Regulations and the outcomes of the analysis undertaken in section 6. In conclusion it makes comment on whether, in light of new information about the expected costs and benefits implied by the model regulations, the implementation of the rail safety reform package promises to be of net benefit.

7.1 Aggregate benefits

In the RIS for the model Bill it was estimated that a continuation of existing trends toward improvements in rail safety outcomes would yield benefits with a present value of $311.9 million over ten years. The RIS also indicated, consistent with expectations and perceptions, that there is potential for significant benefits to be achieved via regulatory harmonisation between the jurisdictions. The quantum of these potential benefits could not be estimated.

It was asserted that regulatory reforms proposed in the model Bill (and detailed in the subordinate instruments) can be expected to contribute substantially to the achievement of these potential benefits, although other factors will also necessarily be significant. Key factors that can be expected to contribute to improved rail safety performance and economic efficiency include:

- technological improvements relating to both infrastructure and rolling stock;
- investment in safety-related equipment; and
- incremental improvements in management of safety risk by virtue of rules, procedures, etc.

The relative importance of regulatory improvements and these other factors is inherently difficult to estimate. A fundamental issue is that of attribution of causality to various changes: given the nature of the regulatory structure, many initiatives could arguably be attributed to either regulatory requirements or to management initiatives taken in pursuit of other corporate goals.

The NTC investigated information sources with a view to determining whether a statistical correlation could be estimated between regulatory reform and improvements in rail safety outcomes taking into account changes in investment and operational reforms. Information limitations precluded such an examination.

In any case, the NTC adopted the view that a statistical correlation between contributing factors and improvements in rail safety outcomes would not be sufficient to prove causation. The factors influencing rail safety outcomes (investment, operational reform and regulatory reform) are not likely to be mutually exclusive. For example, provisions contained in the model Bill will be key enablers or drivers of certain investments and operational reforms. Overall, this suggested that the comparison of benefits and costs attributable to the model Bill should be based on a break even analysis.

The examination of expected benefits in this Draft RIS does not bring into question any of the estimates of aggregate benefits included in the RIS pertaining to the model Bill.

7.2 Aggregate Costs

The expected costs of the Model Bill (assuming the articulation of detailed requirements in the model regulations) were estimated to total around $9 million per annum, equivalent to $69.5 million over ten years in present value terms. An upper bound estimate of $12 million per annum, or $92.7 million over ten years has also been derived. These estimates are based on increased regulatory costs of around $2 million per annum and a speculative estimate of $7-$10 million per annum in additional compliance costs to industry, based on the application of a multiplier of regulatory costs.

The examination of compliance costs that are likely to be borne, relative to the status quo, due to changes implied by the model Regulations are relatively small (refer to section 6 of this Draft RIS). Moreover the changes implied, for example, in order to comply with more detailed requirements pertaining to security management and emergency response, are 'one-off' in their nature. There are no changes embodied in the model Regulations that imply substantial ongoing increases in compliance costs.

Importantly, the examination of expected benefits and costs undertaken in section 6 indicates a real possibility that some of these additional costs will be offset. For example, the replacement of the requirement to gain permissions to proceed with 'material changes' with the combination of new requirements pertaining to variation of accreditation and notification of change (refer to section 6.1.2) promises to, in some cases, save administrative effort, time and avoids the risk of further delays. The savings will be on-going.

In general, this Draft RIS tends to reaffirm the view that the incremental increase in compliance costs implied by the rail safety reform package (Bill and associated Regulations) is less than the upper bound estimate of $10 million per annum used in the RIS for the model Bill.

7.3 Break-Even Analysis

A break-even analysis compares the costs associated with a policy proposal–in this case the rail safety reform package–with the potential benefits. The purpose is to determine the degree of regulatory effectiveness that would be required if the proposal is to have a net benefit, or break-even. In the current context, the purpose of the break-even analysis is to determine the minimum contribution that the rail safety reform package would be required to make to the achievable benefits in order for it to have a net benefit. Determining this contribution, expressed as a percentage of the estimated available benefits, allows policy-makers and stakeholders to make clear judgements as to whether this minimum degree of effectiveness is likely to be achieved in practice and, as a result, whether they believe that a net benefit would be associated with the adoption of the reform package.

The upper bound estimate of the costs implied by the reform package is around $12 million[16] per annum, or $92.7 million in present value terms over ten years. The mid-point estimate of the costs is $9 million per annum, or $69.5 million[17].

Given these estimates, in the base case, the reform package would yield net benefits if it is responsible for a minimum of 22.2% of the estimated achievable safety benefits over ten years. In the case of the upper bound cost estimate, the reform package would need to be responsible for a minimum of 29.7% of the estimated achievable safety benefits over ten years in order to yield a net benefit.

In considering whether this break-even threshold is likely to be met, the following factors can be weighed:

7.3.1 Additional benefits due to Regulatory Harmonisation

The benefits associated with regulatory harmonisation were discussed in the RIS for the model Bill but were not quantified. The addition of these benefits (in quantitative terms) would reduce the break-even threshold from that indicated above.

7.3.2 Contributing factors are unlikely to be mutually exclusive

Regulatory reform, operational reform and investment all contribute to improved rail safety performance. In general, the rail safety reform package is likely to be a precursor to a range of operational reforms and infrastructure investments that will improve safety outcomes in line with the total estimated quantum of achievable benefits. It is foreseeable that without some of the improvements made to the regulatory framework, operational reform and investment would be impeded.

7.3.3 Conclusion

Given the above, it is believed that the model Bill and Regulations will be responsible for at least the proportion of the achievable benefits identified above as the break-even level and, as a result, adoption of the model Bill and regulations is expected to yield net benefits to society. This reaffirms the conclusion reach in the RIS for the model Bill.

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[16] $10 million industry compliance costs and $2 million increase in regulator costs

[17] Present values of these cost estimates are calculated using a 5% real discount rate, consistent with the present value of the achievable benefits.

8 CONSULTATION

The proposed model Regulations are a product of a lengthy policy development process that has included substantial consultation at all stages. A summary of the key elements of the process is provided in the following sections.

8.1 Development of reform proposals

In May 2004 the NTC released an issues paper entitled; "*Improving the Regulatory Framework for Rail Safety in Australia*". It was intended to promote discussion on what changes could be made to the co-regulatory framework in order to improve safety and efficiency outcomes. Also made available at the same time were the following related papers:

- *Rail Safety Co-regulation – Roles and Accountabilities of Accreditation Authorities and Accredited Railway Track Managers and Operators,* Accreditation Authorities Group, May 2001
- *Identification and examination of best practice principles for national rail regulation,* Working paper, Jaguar Consulting, January 2004
- *Rail Safety Accreditation, Mutual Recognition, and Rail Safety Management,* ACIL Tasman, November 2003
- *Rail safety regulation: a one stop shop?* ACIL Tasman, December 2003

During the consultation period the NTC and Australasian Railways Association (ARA) jointly hosted a workshop on rail safety regulation at the Melbourne Exhibition Centre, Southbank. The workshop was attended by approximately seventy delegates representing railway organisations and governments.

It was hoped that the workshop would better enable participants to make submissions in response to the issues paper. The submission period for the issues paper formally concluded on the 19 July 2004. The NTC received twenty responses including a number that were submitted following the closure of the formal submission period. All submissions were used as inputs into the production of a Discussion Paper, published by the NTC in December 2004.

The purpose of the December 2004 Discussion Paper was to foreshadow the changes to the co-regulatory framework NTC intended to recommend to the ATC. NTC requested comment on the proposed reforms outlined in the Discussion Paper. Key proposed reforms identified in the Discussion Paper were:

- development of nationally consistent model legislation;
- development of nationally consistent model regulations;
- development of guidance materials;
- undertaking of review of institutional arrangements, including:
    - review of mechanisms for collection and publication of safety performance data;
    - consideration of framework for nationally consistent competency standards for safety critical workers and regulator personnel; and

- development of formal processes by which industry can seek endorsement of standards and codes of practice.

The submission period for the discussion paper closed in March 2005. Submissions and on-going policy discussions with jurisdictions and industry representatives confirmed strong support for the reform proposals but resulted in reconsideration of some policy positions.

In April and May 2005 the NTC undertook a series of policy discussions with TACE, with input from the ARA. The outcome of these discussions was in-principle support for a set of proposed changes to the co-regulatory framework. The proposed set of changes to the co-regulatory framework for rail safety were submitted for consideration and approval by ATC in May 2005. The formal vote closed in July 2005. Ministers unanimously voted to approve, in-principle, proposed changes to the co-regulatory framework on expectation that a model Bill will be submitted for consideration and approval following a further round of consultation. That is, following:

- the release of the draft RIS and associated draft model Bill;
- consideration of submissions made in response by interested stakeholders; and
- final amendments and revisions.

The in-principle decision of ATC affirmed the mandate for the development of a national Model Rail Safety Bill, which itself contains provisions referring to the need for national model regulations.

8.2 Development of the Model Bill

In November 2004, in response to interim findings forthcoming from the NTC's review of the co-regulatory framework for rail safety, ATC:

> *…endorsed the need to accord high priority to reform rail safety regulation and further agreed to the need to accelerate the development of model safety legislation and other aspects of the regulatory framework (ATC Minutes p6).*

Acting on the instruction of ATC, the NTC established the Rail Legislation Advisory Panel by invitation to TACE members seeking the participation of senior legal and policy staff. Senior representatives of peak industry bodies were also invited to participate. The Panel was established as a forum that the NTC could utilise to seek advice on legislative policy and legislative detail as part of developing model rail safety legislation and regulations. The membership of the Rail Legislative Advisory Panel is listed in Appendix 2.

The Panel met five times during the period December 2004 to May 2005 and worked towards translating the content of the Discussion paper: *Improving the Regulatory Framework for Rail Safety in Australia* into a set of drafting instructions for the Model Rail Safety Bill.

The Victorian Office of Parliamentary Counsel acted on behalf of the NTC to draft the Model Bill. The arrangement with the Victorian Office of Parliamentary Counsel was an outcome of an initial approach to Parliamentary Counsels Committee, the peak body representing all jurisdictional Parliamentary Counsels. The drafting instructions developed by the NTC in consultation with the Rail Legislative Advisory Panel were provided to Parliamentary Counsel in March 2005. This was followed by a supplementary set of

instructions in April and May 2005. An initial draft of the Model Bill was provided by Parliamentary Council to NTC in July 2005.

In August 2005, the rail transport group (Rail Group) reporting to the Standing Committee on Transport (SCOT) established a high level steering committee to provide advice and support to the NTC during the development of the Rail Safety Reform Package. The Rail Safety Package Steering Committee (RSPSC) role has been to consider policy issues arising from the development of the Model Bill (that otherwise could not be resolved by RLAP) and policy issues arising during the development of other element of the reform package. The membership of the Steering Committee is listed in Appendix 2.

Both the Steering Committee and the Panel were involved in the finalisation of the exposure draft of the Model Bill.

The exposure draft of the Model Bill, the Draft RIS for consultation and discussion papers relating to the NTC's review of institutional arrangements and NTC's proposals for model regulations were released in October 2005.

During the consultation period the NTC, with the assistance of jurisdictions, held a series of seminars in the capital cities of Hobart, Brisbane, Victoria, Sydney, Adelaide and Perth. Different seminars were held for commercial rail transport operators and unions, contractors, tourist and heritage groups and jurisdictional staff from transport departments and others government departments and agencies thought to be affected. These seminars occurred over the period spanning late October to early November 2005.

The submission period closed in late November 2005. Twenty-Three submissions were received making comment on the Model Bill. Submissions are available for inspection on the NTC website.

Submissions raised a number of legitimate concerns with provisions included in the Model Bill. The NTC, with the support and participation of both Steering Committee and the Rail Legislation Advisory Panel worked through these concerns in December 2005.

At the end of December 2005, Parliamentary Counsel was given instruction and asked to develop a further iteration of the Model Bill.

During January the NTC prepared and issued formal written responses to parties that made submissions during the consultation period. In most cases, the NTC responded to identified concerns point by point in a tabulised format.

Parliamentary Counsel delivered the final draft iteration of the Model Bill for consideration in early February 2006. Following a final review by the Steering Committee, the Model Bill was finalised to the satisfaction of Steering Committee members and NTC executive management in March 2006. Parliamentary Counsels Committee (PCC) was subsequently asked to settle the Model Bill. PCC formally indicated their endorsement of the quality of the Model Bill in early April 2006. Immediately thereafter the model Bill, final RIS and a package of other materials were sent to ATC members for consideration and approval.

On 2 June, ATC members voted unanimously to approve the model Bill. Accordingly, the model Bill can now be regarded as an 'Agreed Reform'. Jurisdictions have an obligation to implement Agreed Reforms in accordance with the terms and conditions of the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport (2003).*

8.3 Development of the Model Regulations

The policy advice provided to ATC members in November 2004 noted the intention to develop and submit for approval a proposed set of model regulations to complement the model Bill. ATC members indicated their support for this initiative.

The NTC formed a working group of representatives of jurisdictions and industry associations to assist it in considering what requirements should be established in a model set of regulations.

In January 2005, the NTC engaged the Australian office of ERM, an international consultancy with particular expertise in risk management and a strong background in rail safety, to provide advice to the NTC and its working group. Two report were prepared (April 2005) and were released in October 2005:

- Risk Management Framework and Acceptence Criteria: Feasibility Study prepared for the National Transport Commission, Environmental Resources Management, Australia.

- Accreditation Acceptance Criteria: Initial Development, Report prepared for the National Transport Commission, Environmental Resources Management, Australia.

The advice of ERM and the advice of working group members underpinned the development of a discussion paper on *Risk Management and Safety Management System Requirements under Proposed Model Rail Safety Regime*. In preparing the discussion paper, the NTC sought to draw on outcomes of inquiries, reviews, and academic research where relevant, as well as giving due consideration to existing regulatory requirements and case law.

The discussion paper was released in October 2005 to coincide with the release of the model Bill and other associated materials. These matters (risk management, safety management systems) were previously identified by the working group as being key to the effective functioning of the regulatory regime. The concurrent release of the discussion paper was driven by the view that the model Bill should be considered in knowledge of proposals in relation to these matters and vice versa.

In short, the discussion paper indicated to stakeholders that the NTC would, in the majority of cases, not be looking to change the nature of existing regulatory requirements dealing with the range of matters referred to. It was made clear, however, that the NTC had undertaken an examination of what SMS and risk management requirements should apply and that the purpose of the discussion paper was to seek comment on the draft positions adopted by the NTC.

Submissions from stakeholders in response to the release of the discussion paper were received during November and December 2005. Submissions indicated that:

- There is strong support for the proposition to base model regulation on the requirements specified in the National Accreditation Package (endorsed by ATC in 2004), the Australian Rail Safety Standard - 4292.1 (2006) and where relevant, take into account recommendations of the Safety Management System Expert Panel formed for the purpose of the Special Commission of Inquiry into the Waterfall rail accident.

- There is strong support for the proposition that regulations dealing with risk management should preserve rail organisations discretion to adopt the most

appropriate risk management tools rather than seek to prescriptively define the risk management process or mandate particular tools or approaches.

- There is strong support for the proposition that regulations should not require rail organisations to set a risk tolerability limit, although the regulations should require a methodology for justified decision making to be set up-front by the rail organisation. The methodology adopted by the rail organisation may include the use of a risk tolerability limit.

The NTC sought consideration of the outcomes of consultation at meetings of the Rail Safety Package Steering Committee that occurred during the first quarter of 2006. The outcomes of these discussions confirmed the above as a true reflection of stakeholder positions. The NTC, with the assistance of the Rail Legislation Advisory Panel, have subsequently taken these policy directions and translated them into draft regulations. Considerations made by the NTC and members of the Panel are articulated in section 4 and section 6.

The Rail Safety Package Steering Committee have considered the proposed model Regulations, confirmed their consistency with policy directions previously articulated and have endorsed their release for public comment (during July and August 2006).

8.4 Next Steps

The purpose of this Draft RIS is to facilitate consultation on the form and content of the proposed model Regulations. Following the release of this Draft RIS and the proposed model Regulations the NTC will undertake information sessions in all States and Territories (with the exception of the Australian Capital Territory). The purpose of these sessions will be to explain the form and content of the proposed model Regulations to

As with the exposure draft of the model Bill, the NTC will respond in writing to submissions received in response to this Draft RIS or the exposure draft of the model Regulations.

Both the Rail Safety Package Steering Committee and the Rail Legislation Advisory Panel will play an advisory role in the finalisation of the model Regulations.

Subject to the proposed model Regulations (amended as necessary) receiving a significant level of endorsement, the NTC will submit the model Regulations to ATC (out of session) for consideration and approval. This is expected to occur in the 4th Quarter of 2006.

9 IMPLEMENTATION, MAINTENANCE AND REVIEW

The Council of Australian Governments' *Principles and Guidelines for national Standard Setting and Regulatory Action by Ministerial Council and Standard setting Bodies* require that RIS's should include a discussion of the means by which proposed regulation will be implemented and what arrangements are to made for its review.

9.1 Implementation

As noted in the consultation section, the process of development of the proposed model Regulations has been an extensive one, concurrent with the development of the model Bill, covering a period of 18 months. As would be expected, the jurisdictions' understanding of what is required to implement jurisdictional law based on the model Bill and Regulations has gained clarity during this period, particularly in recent months.

In March, April and May 2006 the NTC scoped, in consultation with jurisdictions and industry stakeholders a proposed implementation package for consideration of ATC members at the time of voting on the model Bill (June 2006). ATC members approved the implementation package at their meeting in June 2006. Through this implementation package, the NTC will:

- facilitate and support the establishment of jurisdictional law based on the model Bill and Regulations (when and if approved);
- communicate changes to status quo arrangements that are embodied in the model Bill and Regulations to rail organisations and other stakeholders;
- develop and implement, in consultation with jurisdictions, a strategy for the management of the transition between the status quo and new jurisdictional law based on the model Bill and Regulations; and
- support the development and approval of subordinate instruments needed to support nationally consistent implementation of the model legislative provisions (e.g. nationally approved guidelines and compliance codes).

The NTC considers that the earliest possible commencement date for new jurisdictional legislation and regulations based on the model Bill and the model Regulations (if and when approved) is mid 2007. Jurisdictional Bills based on the model Bill could be introduced to State and Territory parliaments as early as spring 2006 but this is clearly dependent on the priority placed on resolving rail safety regulation relative to other law making needs. ATC approval of the model Regulations will be sought in the fourth quarter of 2006 meaning that the outcome of the out of session vote will not be known until late 2006. Following this, (depending on the jurisdiction) some months will be needed to have this subordinate legislation approved by State and Territory Executives (including, in some cases, having to go through separate State and Territory RIS processes). Accordingly, a commencement date before mid 2007 is not thought feasible for the majority of jurisdictions.

9.2 Maintenance

It is recognised by NTC that an important aspect of national regulatory reform is ensuring that reforms are kept up to date and effective. Maintenance refers to the amending and updating of existing national reforms as need arises. The NRTC (predecessor organisation) formalised its maintenance role in 1999 when the ATC approved the Australian Road Rules and agreed to a maintenance strategy for the Rules, recognising that

without a concerted effort to keep them up to date, national uniformity or consistency would rapidly be lost.

More recently, the IGA (2003) demonstrates that the ATC expects the NTC to lead any maintenance of the regulatory framework. The IGA (2003) provides that, having regard to its objectives, and to matters contained in the NTC Act and elsewhere in the IGA, the ongoing responsibilities and functions of the NTC will include:

(a) monitoring the implementation of agreed reforms and regularly reporting to the ATC; and

(b) maintaining and reviewing agreed reforms.[18]

In October 2005 (at the same time as the exposure draft of the Model Bill) the NTC released a discussion paper entitled *Review of Institutional Arrangements supporting regulation of Rail Safety: Phase A*. In this paper, amongst other things, the NTC put forward its proposals for maintenance arrangements that should apply to rail safety regulatory instruments that are voted on by ATC members and become 'Agreed Reforms'. Submission received in response to the release of the discussion paper indicate that a systematic program of maintenance for the regulatory scheme for rail safety will engender both the confidence of the stakeholders in that scheme and the public's confidence in rail safety more generally. Moreover there is a general acceptance that the benefits of a national approach to rail safety regulation should be safeguarded by ensuring that it is maintained over time, for scope, content, effectiveness and relevance.

In its discussion paper (October 2005) the NTC postulated that the important issues to be considered in settling those maintenance processes for use in the rail safety context include:

(a) how and by whom proposals for maintenance are to be initiated, considered and responded to[19];

(b) whether any such proposals need not be considered on a national basis (e.g., minor formal changes to regulation to update or correct references could be simply dealt with in the relevant jurisdiction);

(c) what the requirements should be for the regulators or industry or both to respond to any changes decided upon by the ATC or NTC;

(d) how urgent issues are to be dealt with;

(e) the cycle, priorities and process for the evaluation of the implementation of rail transport safety regulatory reforms; and

(f) how and when the periodic reviews of relevance and effectiveness of the reforms are to be conducted and what the requirements should be for responding to any decisions by ATC on recommendations by the NTC about those reviews.

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[18] IGA, Part 5, Responsibilities and functions of the National Transport Commission, paragraphs 5.1(f) and (g). "Agreed reforms' are defined in Part 3 of the IGA as reforms proposed by the NTC or the NRTC and agreed by the ATC, including any amendments to a reform that have been made in accordance with the IGA or its predecessors.

[19] One respondent gave the example of Victoria's review of the implementation of medical assessment standards in the industry, noting that it was timely, soundly based on evidence from surveys, full participation by all industry stakeholders and led to recommendations for improvements.

In its discussion paper, the NTC then went on to table a suggested set of processes for the maintenance, evaluation and periodic review of the rail safety regulatory instruments. Submissions indicated strong support for these proposals. These proposals formed the basis of recommendations that were put to ATC members for a vote at the same time as the model Bill. These proposals were approved unanimously. Accordingly, the implementation package endorsed by ATC members now includes in its scope the requirement to implement the maintenance processes approved as being applicable to model rail safety instruments.

9.3 Review

In addition to the maintenance of implemented reforms, there is also a need for the periodic and comprehensive review of the reform to ensure its continued relevance and effectiveness.

At their meeting in April 2003, Transport Agency Chief Executives (TACE) considered that nationally implemented reform should be reviewed on a cycle of ten years after ATC approval. The national review would be a comprehensive evaluation of the reform, distinguishable from the maintenance of the reform, which would occur on an as needs basis. TACE also considered that a minor review of implemented reforms be conducted by the NTC at the five year mark to gauge whether the reform is meeting its objectives.

In relation to this reform, in accordance with previously endorsed views of TACE, the NTC proposes to undertake a minor review of the effectiveness of jurisdictional law based on the model Bill and Regulations within 5 years of ATC approval of model legislation, and a comprehensive review within ten years.

10 STATEMENT OF COMPLIANCE WITH NATIONAL COMPETITION POLICY

The National Competition Policy Agreements set out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5(1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

> *The guiding principle is that legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:*
>
> *(a) The benefits of the restriction to the community as a whole outweigh the costs; and*
>
> *(b) The objectives of the regulation can only be achieved by restricting competition.*

Clause 5(5) provides a specific obligation on parties to the agreement with regard to newly proposed legislation:

> *Each party will require proposals for new legislation that restricts competition to be accompanied by evidence that the restriction is consistent with the principle set out in sub-clause (1).*[20]

Therefore, all RISs must include a section providing evidence that the proposed regulatory instrument is consistent with these National Competition Policy obligations.

The key competition-related aspect of the proposed model Regulations (as is also the case with the model Bill) is that it will constitute a vehicle for making further progress toward regulatory harmonisation in the rail industry. To this extent, it can be expected to have a pro-competitive impact, by reducing regulatory barriers to inter-state trade.

The proposed regulations do not impose any direct restrictions on competition. While they increase the safety related requirements applicable to accredited rail transport operators, these new requirements are equally applicable to existing rail transport operators and new entrants and so do not constitute a barrier to entry. Moreover it is not anticipated that these requirements will have any significant impact in reducing or deterring entry to the industry.

Therefore, the regulations are considered to be fully compliant with the National Competition Policy.

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[20] *Competition Principles Agreement*, Clause 5. 1995. See: www.ncc.gov.au

APPENDIX 1: SUMMARY OF MAJOR CHANGES BY JURISDICTION

	Is there a change from the status quo legislative position in each separate jurisdiction?						
	NT	TAS	SA	WA	QLD	NSW	VIC
ACCREDITATION							
Current Accreditation Requirements	*NT Rail Safety Act – Part 2*	*Rail Safety Act 1997 – Part 2*	*Rail Safety Act 1996 – Part 2*	*Rail Safety Act 1998*	*Transport Infrastructure Act 1994 – Chapter 7, Part 3*	*Rail Safety Act 2002 – Part 2* *Rail Safety Regulations (2006 Amendment)*	*Rail Safety Act 2006 – Part 5*
	Equivalent requirements to those under the model Regulations. There are more explicit requirements to provide details of consultation process when submitting an application for variation of an accreditation and to provide evidence of competence & capacity to manage the proposed variation.					*Equivalent requirements to those under the model Regulations.*	*Equivalent requirements to those under the model Regulations.*
SAFETY MANAGEMENT							
Current SMS Requirements	*NT Rail Safety Act– s38* *An operator must comply with AS4292#*	*Rail Safety Act 1997 – s24* *An operator must comply with AS4292#*	*Rail Safety Act 1996 – s25* *An operator must comply with AS4292#*	*Rail Safety Act 1998 – s26* *An operator must comply with AS4292#*	*Transport Infrastructure Act 1994 – Chapter 7*	*National Accreditation Package (NAP)* *(gazetted 30/6/06)*	*Rail Safety Act 2006* *Proposed Regulations*

AS4292.1 2006 will come into effective by 31 December 2006.

	Is there a change from the status quo legislative position in each separate jurisdiction?						
	NT	TAS	SA	WA	QLD	NSW	VIC
Safety Management Systems	The SMS requirements are currently outlined in section 2 of AS4292.1 2006. The SMS requirements under the model Regulations are equivalent to those under AS4292.1 However there are more explicit requirements for consultation, the details to be included in the risk management register and for procurement and contract management.				*The Act requires Accredited Rail Operators to have an approved SMS. The requirements of an SMS are not prescribed in the Act or Regulations.* The model Regulations prescribe in detail the requirements for a SMS.	The SMS requirements under the model Regulations are equivalent to those under NAP	The requirements under the proposed Victorian Regulations are equivalent to those under the model Regulations.
Interface Co-ordination plans	*An obligation to enter into Interface Management Plans currently exists under Section 7 of AS4292.1 2006.* Under the model Regulations, there is a more explicit requirement for operators to work together to identify risks to safety and to seek agreement on the elimination/control of those risks.				*There is no obligation under the Act or Regulations to develop Interface Co-ordination Plans (ICPs).* The model Regulations prescribe the process for the development and implementation of ICPs.	*NAP refers to AS4292 to provide further guidance on ICPs..* Under the model Regulations, there is a more explicit requirement for operators to work together to identify risks to safety and to seek agreement on the elimination/control of those risks.	The requirements under the proposed Victorian Regulations are equivalent to those under the model Regulations.

	Is there a change from the status quo legislative position in each separate jurisdiction?						
	NT	TAS	SA	WA	QLD	NSW	VIC
Security Management Plans	*An obligation to develop a security management plan that complies with regulations exists under section 2.13 of AS 4292.1 2006.* Under the model Regulations, there are more explicit requirements on what a security management plan must include.				*There is no obligation under the Act or Regulations to develop Security Management Plans.* The model Regulations prescribe what a security management plan must include.	*An obligation to develop a security management plan exists under 3.12 of NAP.* Under the model Regulations, there are more explicit requirements on what a security management plan must include.	There is currently no requirement to develop a security management plan under the proposed Victorian Regulations
Emergency Plans	*An obligation to establish and maintain an emergency response plan exists under section 8.2 of AS4292.1* Under the model Regulations, there are more explicit requirements for the content of an emergency plan and for the keeping, maintaining and testing of the plan.				*There is no obligation under the Act or Regulations to develop Emergency Plans.* The model Regulations prescribe the process for developing, testing & reviewing an emergency plan and what it must include.	*An obligation to establish and maintain an emergency response plan exists 3.27 of NAP.* Under the model Regulations, there are more explicit requirements for the content of an emergency plan and for the keeping, maintaining and testing of the plan.	The requirements under the proposed Victorian Regulations are equivalent to those under the model Regulations.

	Is there a change from the status quo legislative position in each separate jurisdiction?						
	NT	TAS	SA	WA	QLD	NSW	VIC
RAIL SAFETY WORKERS							
Health & Fitness Programs	*An obligation to establish and maintain procedures for identifying the health and fitness of rail safety workers exists under sec 4.3 of AS4292.1 2006. The National Health Assessment Standard for Rail Safety Workers was introduced in July 2004 to help operators meet these obligations.* There are no additional requirements under the model regulations. The current Health Assessment Standard will be introduced as a Code of Practice under the new regime.				*There is no obligation under the Act or Regulations to establish procedures for identifying health and fitness of rail safety workers.* Under the model Regulations, operators are required to have a health and fitness program that complies with the National Health Assessment Standard.	*An obligation exists for operators to use the National Health Assessment Standard as a minimum under 3.17 of NAP.* There are no additional requirements under the model regulations. The current Health Assessment Standard will be introduced as a Code of Practice under the new regime.	*The National Health Assessment Standard has already been adopted as a Code of Practice in Victoria.*
Records of Competence	*An obligation to maintain records of competence currently exists under Sec 4.2 of AS4292.1 2006* Under the model Regulations, there are more detailed requirements as to the details an operator must keep on competences.				*This is no obligation to maintain records of competence under the Act or Regulations.* The model Regulations prescribe the details that must be keep under records of competence.	*An obligation to maintain records of competence currently exists under Sec 39 of the Act.* Under the model Regulations, there are more detailed requirements as to the details an operator must keep on competences.	The requirements under the proposed Victorian Regulations are equivalent to those under the model Regulations.
Alcohol and Drug Control	Regulations are yet to be developed for Alcohol & Drug Control. Current jurisdictional arrangements will continue to apply.						

APPENDIX 2: CONSULTATIVE COMMITTEES AND PARTICIPANTS IN THE REFORM PROCESS

Membership of RLAP

Name	Organisation
Mr Phil Sochon	Australasian Railway Association
Mr Tim Ryan	Australian Rail Group
Mr Andrew Kitto	Australian Rail Track Corporation
Mr Brett Hughes	Department for Planning and Infrastructure
Mr Nicholas Colwell	Department of Infrastructure
Ms Jan Powning	Department of Infrastructure
Mr Ian Shepherd	Department of Infrastructure
Ms Sherree Goldsworthy (replaced by Mr. Phil Scotney-Turnbil)	Department for Transport, Energy and Infrastructure
Mr Tom Holmes	Dept. of Infrastructure, Energy & Resources
Mr Greg Almond	Dept. of Infrastructure, Energy & Resources
Ms Jenny Renko	Independent Transport Safety & Reliability Regulator
Mr Paul Salter	National Transport Commission
Ms Kirsty McIntyre	National Transport Commission
Ms Louise McSorley	National Occupational Health and Safety Commission
Mr Paul Milevskiy	Queensland Rail
Mr Greg Ford	Queensland Transport
Mr Roger Jowett	Rail Tram & Bus Union
Mr Peter McLoughlin (replaced by Carol Rowe)	Department of Transport and regional Services
Mr Bill Ellis	Australasian Railway Association
Mr Leon Cholsh	Australian Rail Track Corporation
Ms Joan Howard	RailCorp
Mr Peter Winder	Pacific National
Mrs Natalie Pelham	Independent Transport Safety & Reliability Regulator

Membership of RSPSC

Name	Organisation
Mr Alex Rae	Department of Infrastructure, Planning and Environment
Mr Andy Milazzo (replaced by Mr. Derek Heneker)	Department for Transport, Energy and Infrastructure
Ms Carolyn Walsh (Chair)	Department for Planning and Infrastructure
Mr Brett Hughes	Independent Transport Safety & Reliability Regulator
Mr Jim Wolfe	DoTARS
Mr John Hartigan	Department of Infrastructure
Ms Kirsty McIntyre	National Transport Commission
Mr Mark Addis	Department of Infrastructure, Energy and Resources
Mr Paul Salter	National Transport Commission
Mr Phil Sochon	Australasian Railway Association
Mr Tony Wilson	National Transport Commission
Mr Tony Kursius	Queensland Transport
Ms Julie Bullas (formerly Dr Graham Edkins)	Rail Safety Regulators Panel

APPENDIX 3: HEADS OF POWER FOR THE MODEL REGULATIONS CONTAINED IN THE MODEL BILL

No	Head of Power	Used or not?
1	s.4"**corresponding law"** means- (a) the law of another jurisdiction corresponding, or substantially corresponding, to this Act; or (b) a law of another jurisdiction that is **declared under the regulations** to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act;	Local variation Agreement is to declare all other Rail safety law and RSR as 'corresponding'.
2	**s.4** "**corresponding Rail Safety Regulator**" means- (a) the Rail Safety Regulator within the meaning of a corresponding rail safety law (except in the case of a jurisdiction for which a person is prescribed under paragraph (b)); or (b) a person **prescribed_by the_regulations** as the corresponding Rail Safety Regulator for another jurisdiction for the purposes of this Act;	Local variation Agreement is to declare all other Rail safety law and RSR as 'corresponding'.
3	**s.4** "**notifiable occurrence**" means an accident or incident associated with railway operations- … (b) that is, or is of a class that is, **prescribed_by the_regulations** to be a notifiable occurrence or class of notifiable occurrence	r. 20
4	But does not include an accident or incident, or class of accident or incident, that is **prescribed by the_regulations** not to be a notifiable occurrence;	reserved
6	**s.4 Private siding** (e) a siding, or a siding of a class, **prescribed_by the_regulations** not to be a private siding;	Local variation
7	**s.4 Rail infrastructure** (h) any facility, or facility of a class, that is **prescribed_by the_regulations** not to be rail infrastructure;	Local Variation
8	**s.4** "**railway**" means a guided system, or proposed guided system, designed for the movement of rolling stock having the capability of transporting passengers or freight or both on a railway track with a gauge of 600mm or more, together with its rail infrastructure and rolling stock and includes- … (h) a guided system, or guided system of a class, **prescribed_by the_regulations** to be a railway;	Local variation
9	**s.4 "relevant concentration of alcohol"** means the concentration of alcohol present in the breath or blood of a person that is **prescribed_by the_regulations**, being zero or a positive amount;	Local variation
10	**6. Railways to which this Act does not apply** (f) a railway, or class of railway, that **the regulations prescribe** to be a railway to which this Act does not apply [local variations].	Local variation
11	**8(1). Rail safety work** (l) any other work that is **prescribed_by the_regulations** to be rail safety work.	Reserved
12	(2) The following are not rail safety work for the purposes of this Act … (b) any work **prescribed_by the_regulations** not to be rail safety work.	Reserved
13	**19. Information to be included in annual reports** (1) The Rail Safety Regulator must in each annual report relating to a financial year include- (a) information on the development of rail safety including an aggregation of statistics of a **prescribed class** reported to the Rail Safety Regulator under this Act or the	Reserved

No	Head of Power	Used or not?
	regulations in respect of that year; …	
14	**22. Appointment** (1) The Rail Safety Regulator, by instrument in writing, may appoint a person, or person of a **prescribed class**, to be a rail safety officer for a term, and subject to the conditions, specified in the instrument.	Local variation
15	**23. Reciprocal powers of rail safety officers** (2) The Minister may enter into an agreement with a Minister of another jurisdiction for the purposes of this section, including an agreement to amend or revoke any such agreement. … (5) **The regulations may make provision** for or with respect to the exercise of powers under this section.	Local variation
16 17	**33. Application for accreditation** 2) An application must be made in the manner and form approved by the Rail Safety Regulator and— (e) must contain the **prescribed information**; and … (f) must be accompanied by the **prescribed application fee** [local variations].	r.3 Schedule 2
18	**34. What applicant for accreditation must demonstrate** (e) that the applicant has complied with the requirements **prescribed by the regulations** (if any) for the purposes of this section.	Reserved
19 20 21 22	**37. Determination of application** (1) Subject to this section, the Rail Safety Regulator must give to the applicant, within the relevant period - (a) if the Rail Safety Regulator is satisfied as to the matters referred to in section 34 and, if applicable, section 35, notice in writing in the **prescribed form** granting accreditation to the applicant with or without any conditions or restrictions; or (2) A notice under sub-section (1) granting an application must be in the **prescribed form** and must specify- (a) **the prescribed details of the applicant**; and … (d) any other **prescribed information**.	Reserved Reserved r. 4 reserved
23	**38. Prescribed conditions or restrictions** Accreditation granted to an applicant under this Part is subject to any conditions or restrictions **prescribed by the regulations** for the purposes of this section and that are applicable to the grant of accreditation.	r.5
24	**40. Annual fees** (1) Subject to this Part, an accredited person must pay the annual accreditation fee **prescribed by the regulations** [local variations for manner of fixing fees].	r.25 & Schedule 2
25	**41. Late payment fees** (1) The regulations may impose additional fees for late payment of fees after the due date for payment.	r.26 & Schedule 2
26	**43. Surrender of accreditation** An accredited person may, in **accordance with the regulations**, surrender the person's accreditation.	r.6
27	**46. Keeping and making available documents for public inspection** A rail transport operator must ensure that- … (b) any other **document prescribed by the regulations** for the purposes of this section are available for inspection	r.21

No	Head of Power	Used or not?
	47. Application for variation of accreditation (1) An accredited person may apply to the Rail Safety Regulator, in the manner and form approved by the Rail Safety Regulator, for a variation of the accreditation. (2) An application for variation—	
	(a) must specify the details of the variation being sought; and	
28	(b) must **contain the prescribed information**; and	Reserved
29	(c) must be accompanied by **the prescribed application fee** [local variations].	r.24 & Schedule 2
	49. Determination of application for variation (1) Subject to this section, the Rail Safety Regulator must, within the relevant period, give to the applicant -	
30	(a)…notice in writing in the **prescribed form** varying the accreditation, with or without any conditions or restrictions; or	Reserved
	(2) A notice under sub-section (1) varying an accreditation must-	
31	(a) specify the **prescribed details of the applicant**; and	r.4
32	(d) specify **any other prescribed information**.	reserved
	56. Exemption from accreditation …	
33	(b) comply with conditions imposed by the Rail Safety Regulator (from time to time) or **prescribed by the regulations** with respect to the safe construction, maintenance and operation of the private siding;..	Reserved
	56. Exemption from accreditation	
34	(a) register the private siding with the Rail Safety Regulator and pay **the prescribed annual fee**; and …	r.23 & Schedule 2
	57. Safety management system (1) A rail transport operator must have a safety management system for railway operations carried out on or in relation to the rail transport operator's rail infrastructure or rolling stock that-	
	(a) is in a form approved by the Rail Safety Regulator; and	
35	(b) complies with the **relevant prescribed requirements** and	r. 8 & Schedule 1
36	**the prescribed risk management principles, methods and procedures**;...	Reserved
	59. Review of safety management system	
37	A rail transport operator must review the rail transport operator's safety management system in **accordance with the regulations at** least once each year or at such other time as is agreed between the rail transport operator and the Rail Safety Regulator.	r. 17
	60. Safety performance reports (1) A rail transport operator must give the Rail Safety Regulator a safety performance report in respect of each reporting period that-	
	(a) is in a form approved by the Rail Safety Regulator; and	
38	(b) complies with the requirements (if any) **prescribed by the regulations** for the purposes of this section; and (c) contains-	Reserved
39	(iv) any other information or performance indicators **prescribed by the regulations** for the purpose of this section.	Reserved

No	Head of Power	Used or not?
	61. Interface co-ordination	
	(1) A rail transport operator-	
	…	
40	(b) in **accordance with the regulations**, must develop and, where necessary implement, one or more interface co-ordination plans to minimize or eliminate those risks.	r.9
	62. Security management plan	
	A rail transport operator –	
	(a) must have a security management plan for railway operations carried out by or on behalf of the operator on or in relation to the operator's rail infrastructure or rolling stock that-	
41	(ii) complies with this Act **and the regulations**; and	r.13
	63. Emergency plan	
	(2) The emergency plan must—	
	(b) be prepared—	
	…	
42	(ii) in **accordance with the regulations**; and	r.14
43	(c) be kept and maintained **in accordance with the regulations**; and	r.16
	…	
44	(e) be tested in **accordance with the regulations**.	
	63. Emergency plan	
	(1) A rail transport operator must have an emergency plan for railway operations carried out by or on behalf of the operator on or in relation to the operator's railway operations that complies with sub-section (2).	
	(2) The emergency plan must—	
45	(a) address and include the **matters that are prescribed**; and	r.15
	(b) be prepared—	
46	(i) in conjunction with emergency services [local variations]and any **other person who is prescribed**; and	Local variation
	…	
47	(d) be provided to the emergency services and any other **person who is prescribed**; and	Local variation
	64. Health and fitness management program	
48	A rail transport operator must have and implement a health and fitness program for rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock that complies with the **prescribed requirements** relating to health and fitness programs.	r.18
	65. Alcohol and drug management program	
49	A rail transport operator must prepare and implement an alcohol and drug management program for rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock that complies with this Act **and the regulations**.	Local variation
	66. Testing for presence of alcohol or drugs	
50	The Rail Safety Regulator may arrange with a rail transport operator or a person undertaking railway operations on or in relation to the rail transport operator's rail infrastructure or rolling stock for the testing for the presence of alcohol or any other drug, **in accordance with the regulations**, of any person on duty for the purpose of carrying out rail safety work.	Local variation
	67. Fatigue management program	

No	Head of Power	Used or not?
51	A rail transport operator must prepare and implement a program, in accordance with the **prescribed requirements**, for the management of fatigue of rail safety workers who carry out railway operations in relation to the rail transport operator's rail infrastructure or rolling stock.	Local variation
52 53 54	**68. Assessment of competence** (1) A rail transport operator must assess, or cause to be assessed, the competence of each rail safety worker who is to carry out rail safety work in relation to the rail transport operator's rail infrastructure or rolling stock by reference to— … or (b) if paragraph (a) does not apply, the **applicable prescribed provisions** (3) A rail transport operator must ensure that a rail safety worker who is to carry out rail safety work in relation to the rail transport operator's rail infrastructure or rolling stock meets the **relevant prescribed requirements** for or with respect to the competence of rail safety workers who carry out rail safety work of that kind. … … (5) A rail transport operator must maintain records in **accordance with the regulations** of the competence of rail safety workers who carry out rail safety work on or in relation to the rail transport operator's rail infrastructure or rolling stock.	r.19 reserved r.20
55	**72. Rail transport operators to provide information** (1) A rail transport operator must provide to the Rail Safety Regulator in a manner and form approved by the Rail Safety Regulator information in accordance with this section **and the regulation**s concerning- (a) measures taken by the rail transport operator to promote rail safety; or (b) other matters relating to rail safety or the accreditation of the rail transport operator	Reserved
56	**73. Notification of notifiable occurrences** (1) A rail transport operator must report to the Rail Safety Regulator or another authority specified by the Rail Safety Regulator within the time, and in the form and manner, **prescribed by the regulations,** all notifiable occurrences that happen on, or in relation to, the rail transport operator's railway premises or railway operations	r. 21
57	**75. Inspection of railway operations of rail transport Operators** (4) The **regulations may establish procedures** for the conduct of audits and inspections under this section, including procedures to ensure the confidentiality of records.	Reserved
58	**90. Embargo notices** (4) The embargo notice must— (a) be in the form, or contain the particulars, **required by the regulations**; and	r.23
59	**149. Confidentiality** (2) A person to whom this section applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of this Act except— (f) in **accordance with the regulations**.	Reserved
60 61 62 63	**160. Prescribed persons** A person **prescribed by the regulations** for the purposes of this section must give notice in the **prescribed form** and within a **prescribed period** to a rail transport operator of the commencement, or discontinuation, or completion **of prescribed operations** or activities that may adversely affect the safety of any rail infrastructure or rolling stock of a rail transport operator.	Reserved

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Transport and Main Roads.