



RAIL SAFETY REGULATION REFORM

20th October 2005

SUPPLEMENTARY BULLETIN FOR TOURIST AND HERITAGE OPERATORS

INTRODUCTION

The NTC has recently released consultation materials explaining proposed changes to the co-regulatory framework for rail safety.

The Model Bill and associated RIS

The NTC in conjunction with the Rail Legislation Advisory Panel and in consultation with key stakeholders has developed draft national model rail safety legislation (the draft model Rail Safety (Reform) Bill). The model Bill sets out nationally consistent legal duties and operating requirements on all parties responsible for rail safety and will underpin future national model rail safety regulations, codes of practice, standards and guidelines. The potential benefits and costs of the changes to current legislative arrangements are outlined in the draft RIS that has been released for consultation purposes.

Discussion Paper on proposed risk management and SMS requirements

The purpose of this paper is to

- seek comments on NTC's proposals for the content of national model rail safety regulations dealing with accreditation, SMS, and risk management requirements in the rail sector;
- indicate how the 'So Far As Reasonably Practicable' requirement has been, is, and should be interpreted; and
- outline the NTC's proposals for future administrative guidelines and other guidance material relevant to rail safety.

The proposals contained in this paper and the feedback received from interested stakeholders will serve as significant inputs to the development of model rail safety regulations.

Review of Institutional Arrangements

In the context of the proposed changes to the co-regulatory framework, the NTC is reviewing certain key aspects of the existing institutional arrangements for rail safety regulation, both within and between jurisdictions. These institutional arrangements are critical to the effectiveness of any reform of regulatory requirements. As such, this discussion paper outlines NTC's proposed improvements to the existing institutional arrangements that are intended to support the implementation of the model rail safety Bill and seeks stakeholder comments on these changes.

IMPLICATIONS FOR TOURIST AND HERITAGE OPERATORS

Greater Certainty and Transparency of Decision Making

Inconsistencies between jurisdictions in the criteria for accreditation and what constitutes material change have led to uncertainty in the decision making process for industry. The model Bill will set out the purpose of accreditation, the circumstances where an application for variation of accreditation is required, and articulate what must be demonstrated by rail organisations when applying for accreditation or variations of accreditation. Such requirements are to be specified in

more detail in the model regulations (see the Discussion Paper on proposed risk management and SMS requirements).

Provisions in the model Bill also require time frames in which regulatory decisions are to be made and require regulators to give a statement of reason for their determination. It is anticipated that the combination of these provisions will provide greater certainty and transparency for industry.

Access to ‘workable’ appeal mechanisms

Under the model Bill, rail organisations will have greater access to administrative review mechanisms in situations where they are aggrieved by a regulator’s determination. These include internal review, mediation and external tribunal mechanisms. Importantly, these provisions provide a formal process by which any unjustified decision can be remedied.

Clarification of accountability for rail safety

General duties included in the Rail Safety (Reform) Bill make it clear that primary accountability for ensuring safety rests with rail organisations. More generally, duties cement the case law principle that those in the best position to control risks to safety should have an obligation to do so. The model Bill proposes that rail infrastructure managers, rolling stock operators and rail contractors have general duties. This addition to rail safety legislation is intended to achieve an effective chain of responsibility between those parties that have influence on, and responsibility for, rail safety outcomes.

Clarity regarding who is responsible for ensuring safety assists all in better understanding the intended purpose of accreditation. Accreditation is the mechanism by which the community gains an assurance of safety before operations commence. The grant of accreditation is therefore an endorsement of the rail organisation's ability to be safe; it is not an ‘approval’ of the rail organisation's Safety Management System (SMS) as being safe.

Consistency with Occupational Health and Safety (OHS) legislation

Duties included in the Rail Safety (Reform) Bill are entirely consistent with those that exist in OHS legislation. This is intended to ensure that there is no confusion and that there is consistency between rail safety legislation and OHS legislation as to the level of safety that is required: duty holders are required to ensure safety, so far as is reasonably practicable (SFAIRP).

There will clearly be overlap between the requirements of the rail safety legislation and OHS legislation, however, such overlap is no greater than that which has existed previously. It is proposed that overlap will continue to be managed in accordance with administrative agreements (such as Memorandum of Understanding) between the rail safety regulator and the OHS authority. The NTC believes that consistency between requirements of rail safety legislation and OHS legislation will enable administrative agreements to become more effective in the avoidance of duplication of regulatory activities and compliance costs.

Regulator powers and sanctions

The model Bill gives the rail safety regulator greater powers to direct rail organisations to undertake certain actions in order to mitigate immediate and substantial risks and expands the current range of enforcement responses that can be used in cases of non-compliance. It is anticipated that these changes will create a more robust framework for ensuring better safety outcomes; however it is unlikely to have an impact on rail organisations that are already complying with the safety requirements of accreditation.

Scope for Exemptions

The model Bill will apply to tourist, heritage, volunteer and not-for-profit sectors of the rail industry. However, there is an awareness of the challenges faced by these sectors and the varying risk profiles. The model Bill, therefore, provides scope for exemptions from accreditation

requirements. Not all tourist and heritage rail organisations will be able to gain access to exemptions from accreditation requirements. In order to maintain consistency with the wider regulatory regime applied, the decision to grant (or not grant) an exemption must necessarily be risk based. An exemption policy proposal will be developed in consultation with the Australian Tourist & Heritage Rail Association (ATHRA) and the Rail Safety Regulators Panel.

NEXT STEPS

The NTC will be running information sessions on the proposed framework of regulatory instruments in each jurisdiction during late October and early November 2005. For further information on these sessions, visit the NTC website at www.ntc.gov.au.

Following the current round of consultation and consideration of comments, the NTC will revise the model Bill, as necessary, and submit this, and the supporting RIS, to the Australian Transport Ministers in late 2005 for approval.

The Bill is in model form to allow for implementation in each State and Territory using the most convenient and effective regulatory manner available. Hence, if approved by the Australian Transport Ministers, the model Bill will have no legal effect, but will provide the basis for nationally consistent legislation in each State and Territory.

Subject to approval by the Ministers, it is anticipated that legislation based on the model Bill will be ready for introduction into State and Territory Parliaments in early 2006.

HOW TO MAKE COMMENTS

Submissions making comment on the proposed regulatory instruments are due on 18 November 2005. They can be made directly to the NTC or to the Association of Tourist and Heritage Rail Australia (ATHRA).

Email Comments to: NTC

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ATHRA

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Submissions by email are preferred; however responses may be mailed to the following addresses:

Mail Comments to:

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