



Association Number A03958 | ABN 64 217 302 489

AUSTRALASIAN RAILWAY ASSOCIATION SUBMISSION

To the
National Transport Commission
On the
RSNL Amendments
(Refining the definition of Rail Safety Work)



THE INDUSTRY

The Australasian Railway Association (ARA) is a not-for-profit member-based association that represents rail throughout Australia and New Zealand. Our members include rail operators, track owners and managers, manufacturers, construction companies and other firms contributing to the rail sector. We contribute to the development of industry and government policies in an effort to ensure Australia's passenger and freight transport systems are well represented and will continue to provide improved services for Australia's growing population.

The ARA and its members thank the National Transport Commission (NTC) for the opportunity to provide comments on its proposed amendments to the Rail Safety National Law (RSNL) designed to refine the definition of Rail Safety Work.

Any questions regarding the content of this submission should be directed to Emma Woods, General Manager Passenger and Corporate Services via ewoods@ara.net.au or 0438 209 588.

INTENTIONS

According to Debra Kirk's email of 12.07.19, *The draft amendments are intended to:*

- 1. achieve a clear distinction between risks to railway operations from the work and risks to those performing the work*
- 2. remove risks to workers that are not specific to railway operations and therefore are adequately addressed under WHS laws*
- 3. qualify the definition of 'rail infrastructure' so it includes only those facilities that are necessary to enable the railway to operate safely.*

The ARA and its members support these objectives.

PROPOSED RSNL AMENDMENTS

Adding 'safely' to rail infrastructure

Support.

Section 8 (1)(d): adding 'constructing'

Do not support.

The ARA does not believe adding 'constructing' to section 8 (1)(d) aligns with the NTC's proposed intention number two; *'remove risks to workers that are not specific to railway operations and therefore are adequately addressed under WHS laws'*.

The ARA acknowledges that the proper management of the construction of rail infrastructure and rolling stock has an impact on the safety of the operating railway or rolling stock. The ARA notes that construction of rail infrastructure and rolling stock are railway operations for which Rail Transport Operators (RTOs) and others have safety duties and RTOs have safety management obligations under the RSNL including engineering management and systems safety. The inclusion of construction of rail infrastructure and rolling stock as rail safety work applies requirements to the management of workers within those construction activities that go beyond the stated intent of the amendments.

The ARA agrees that worker safety in the construction context where workers are not exposed to operating rolling stock should be dealt with under WHS. Further, as indicated below, the ARA supports the position that those who certify the safety of rail infrastructure or rolling stock before it is put into or back into service should be regarded as rail safety work. Adding 'constructing' to section 8 (1)(d) will capture construction risks, not specific to railway operations that would otherwise be adequately addressed under WHS law, going against the NTC's intention number two.

Section 8 (1)(d)(ii): adding 'including checking that the rail infrastructure is working properly before being used'

Support.

Section 8 (1) (f): amend to: work on or about rail infrastructure or associated works or equipment, that places, or may place, the person performing the work at risk of exposure to rolling stock

Support in part.

Recommendation two of the NTC's discussion paper about refining the definition of rail safety work, referred to the "exposure to moving rolling stock". It is the exposure to the movement of rolling stock that presents a risk, not stationary rolling stock as could be captured by the current proposed amendment. The ARA believes the inclusion of 'moving' is vital and therefore proposes that 'moving' or 'movement of' is added before 'rolling stock'. Therefore, the ARA proposes:

(f) *work on or about rail infrastructure or associated works or equipment, that places, or may place, the person performing the work at risk of exposure to movement of rolling stock;*

In addition, the ARA has concerns that the updates to Section 8(1)(f) removes some clarity and could broaden the clause, seeing more people captured as rail safety workers when this process was initiated to 'refine the definition'. For example, in considering the operation of railways such as light rail operations members have sought clarification as to whether council workers or others may be captured by the amended clause. On further consideration, the ARA notes the RSNL links management action in relation to rail safety workers, to the conduct of railway operations in sections, 114, 115, 116 and 117 and proposes a note referencing these links in the legislation or in accompanying guidance material could be beneficial to provide clarity to this clause and others in section 8.

To ensure consistency within the RSNL, the ARA recommends that the definition of Railway Operations and Railway Infrastructure is also considered as part of the review of the rail safety work definition to ensure all three align.

ADDITIONAL COMMENTS

Section 8(1)(j)

The current wording of 'safe working' as two separate words leads to confusion – does this mean network rules and procedures or safe working as in the means you work safely around railways?

The industry view is that the intention is in relation to the development, implementation and monitoring of safety systems for the railway. To achieve clarity, the ARA proposes amending safe working to one word 'safeworking' as follows:

(j) work involving the development, management or monitoring of ~~safe working~~ safeworking systems for railways;

Section 8(1)(k)

In the ARA's original proposal to narrow the definition of Rail Safety Work, we stated:

Additionally, in section 8(1)(k) 'work involving the management or monitoring of passenger safety on, in or at any railway' can be interpreted to include security staff as Rail Safety Workers. Security are employed to oversee the general safety of the travelling public which can be interpreted as monitoring and assisting passenger safety.

Industry believes that clarity is required to clearly articulate that Rail Safety Workers must have a direct impact on safety. This would mitigate employees like cleaners and security personnel being unnecessarily deemed Rail Safety Workers.

Another example is staff providing assisted boarding to passengers who are currently captured as rail safety workers. As these staff have no impact on the safety of rail operations, the ARA does not believe that staff providing assisted boarding to or from a train or tram should require different treatment to staff providing boarding assistance to or from a bus, taxi or ferry.

The risk that these staff face is not specific to railway operations. The current proposed RSNL amendments do not consider industry's concerns. The current wording of section 8(1)(k) would be suitably covered by WHS, therefore warrants amending in line with the NTC's intention number two.

The ARA proposes that clarity could be achieved by incorporating a similar approach as proposed by the NTC elsewhere; that section 8(1)(k) relates to railway operations and the exposure to the movement of rollingstock. Addressing section 8(1)(k) would also support NTC intention number two.

Guidance materials

The Rail Industry is eager to work closely with the NTC and ONRSR in the development of guidance materials to support the amendments to the RSNL. Guidance specific to light rail and heavy rail operations will be important.

Conclusion

The ARA thanks the NTC for the opportunity to consider its initial RSNL amendments and would welcome the opportunity to review its revised amendments.