



Background

This Fact Sheet provides guidance for operators on areas where it has been identified that the current pandemic COVID-19 (as declared by the World Health Organisation in March 2020) is impacting the ability of rail transport operators to meet normal regulatory requirements.

The position that ONRSR is taking regarding these matters is based on risk whilst also being cognisant of the statutory legal requirements of the Rail Safety National Law (RSNL) to ensure that operations continue in a safe manner.

We will also be taking a risk-based approach to what regulatory activities are undertaken. We will be responding to incidents and will undertake rail safety duties where we see a need based on risk.

****Note: This document has been updated since the first publication on 23 March 2020. Updates have been made as follows:**

- **30.03.2020: Section 4 updated with additional information about government exemptions for health standards**
- **09.04.2020: Section 4 updated to reflect the gazettal of exemptions to section 114 of the RSNL in the Northern Territory, Tasmania and South Australia**
- **16.04.2020: Section 2 updated with additional information regarding drug and alcohol testing. Section 8 provides details of how operators can share information through the ONRSR website.**
- **17.04.2020: Section 4 updated to reflect the gazettal of exemptions to section 114 of the RSNL in the ACT and Queensland.**
- **24.04.2020: Section 4 updated to reflect the gazettal of exemptions to section 114 of the RSNL in Victoria, New South Wales and Western Australia.**
- **24.07.2020: Section 4 updated to reflect the lapsing of previous exemptions and a new exemption for Victoria.**

1. The ONRSR work program

ONRSR has reviewed its program of regulatory activities encompassing audits, inspections and site visits and postponed a number of non-critical activities.

A number of these activities will continue albeit potentially with amended scopes that allow for more desktop type analysis and electronic exchange of information.

Rail safety officers will still respond to and attend safety critical incidents and undertake certain field based activities where it is deemed appropriate to do so and all health and safety aspects can be addressed.

Investigations underway will continue with contingency measures put in place for certain aspects such as the requirement for records of interview and critical face to face meetings with external parties.

2. Drug and alcohol testing

The statutory requirements for post incident drug and alcohol testing remain unchanged and should proceed in accordance with each rail transport operator's drug and alcohol management program (DAMP).

ONRSR acknowledges that changes to other aspects of an operator's DAMP are being implemented or considered, including changes to testing schedules and the operating procedures that apply to the conduct of testing (e.g. in regard to the conduct of the tester and rail safety worker being tested or the manner in which tests are being undertaken). These changes can be undertaken based on risk management principles, and in the context of testing as a deterrent that ensures the risk of rail safety workers working while under the influence is being managed - so far as is reasonably practicable.

ONRSR encourages operators, in conjunction with testing providers where relevant, to seek advice on how to safely test while observing social distancing and ensuring validation of the test is undertaken in accordance with their DAMP. The use of wall

mounted screening test devices may also be an option for undertaking screening tests.

In making any such changes to a DAMP, operators should ensure their required change management processes are followed, including risk assessing any change and documenting it.

When an operator changes its DAMP there is generally no requirement under Regulation 9 of the RSNL to submit a notification of change.

NSW ONLY

ONRSR reminds operators conducting railway operations in NSW that the minimum 25% requirement for the testing of rail safety workers (under Regulation 28(2)(a)(i) of the National Rail Safety National Regulations 2012) is an annual requirement measurable across a calendar year. At this time ONRSR understands that some testing rates may be reduced but is expecting operators to manage testing rates based on risk and to monitor this rate against the yearly minimum requirement. Testing that contributes to this regulated minimum is testing undertaken under the direction of an authorised officer and does not include pre-sign on testing. Any rail safety worker that records a non-negative result during the screening testing is still required to be taken to the police station for a breath analysis test.

We will continue to monitor this requirement for the duration of the COVID-19 pandemic.

3. Monthly reporting

Monthly reporting should continue as usual regardless of whether operations have been temporarily suspended or not. Reporting remains unchanged through the ONRSR portal.

4. Complying with medical standards

There is currently no legal provision for ONRSR to approve any exemption from the medical requirements of the National Transport Commission's (NTC) *National Standard for Health Assessment of Rail Safety Workers* (Standard).

Because of concerns raised by industry in being able to comply with the requirements of section

114 of the RSNL (which requires complying with the Standard), ONRSR worked with State, Territory and Commonwealth Governments to gazette a number of temporary three-month exemptions.

The initial exemptions have now lapsed in all states and territories but please note that Victoria has gazetted a new exemption:

- > On 24 July the Victorian Government gazetted an exemption, with conditions, to section 114 of the RSNL. Operators in Victoria can access the gazettal [here](#).

This exemption only applies to periodic health assessments and will expire 3 months after the gazettal date. All rail transport operators in Victoria (as listed in the gazette) should familiarise themselves with the details of the Notice.

ONRSR is also aware of a statement issued by the Chief Medical Officers Council on 30 March 2020 informing accredited operators of what is acceptable for medical assessments during COVID-19. This information is contrary to the requirements of the RSNL and operators should not rely upon it.

5. Timelines for compliance with regulatory notices

Some rail transport operators are having difficulties complying with regulatory notices that require compliance within certain timeframes. This includes Improvement Notices, section 122 investigations and section 20 requests for information.

If unforeseen circumstances associated with COVID-19 are causing problems in meeting timelines please contact your usual nominated contact person within ONRSR.

ONRSR will take a pragmatic approach to these situations and work with operators on a case by case basis so that the underlying safety issue still gets addressed in a timely manner.

In these circumstances please contact ONRSR as soon as possible and do not wait until the 'due date' to make contact.

6. Recertification of competencies

Rail transport operators must ensure that each rail safety worker who is to perform rail safety work in relation to its railway operations, has the competence to carry out that work safely. The COVID-19 situation does not change this requirement.

However, the COVID-19 situation may mean that access to training providers is temporarily unavailable or not reasonably practicable to access.

If access to formal training providers is temporarily unavailable then rail transport operators may use other methods to satisfy themselves (and the Regulator) that the worker has the competency and capacity to undertake rail safety duties.

If an operator chooses to change aspects of its competency assessment system, then it should ensure its change management procedures are followed. This must include risk assessing any change and documenting the change.

When an operator changes its competency assessment system there is generally no requirement under Regulation 9 of the RSNL to submit a notification of change.

Note – this applies to recertification of existing rail safety workers only and not to initial certification of new employees or workers moving into new positions.

7. Reporting of notifiable occurrences and prescribed incidents

There is no change to the requirement to immediately report Category A notifiable occurrences (regulation 57) and prescribed incidents (regulation 28).

Category B notifiable occurrences must also still be reported. If an operator is facing difficulty in meeting the 72-hour reporting requirement because of the impacts of COVID-19 then they should discuss options with ONRSR for potentially extending the 72-hour requirement.

8. Industry information sharing

ONRSR can assist with the sharing of information across industry regarding any learnings, changed practices or approaches being applied in response to the COVID-19 situation. If you have information you would like us to post on our website, please forward your contribution (a few paragraphs only) along with a contact name and details (to respond to any follow-ups) to contact@onrsr.com.au

9. Next steps

As the COVID-19 situation continues to develop, ONRSR will provide rail transport operators with further practical information and guidance.

This Fact Sheet will be updated if and when changes occur or if additional issues are raised that require clarification.

For further information or discussion regarding the information provided in this Fact Sheet, operators should contact their nominated ONRSR contact person in the first instance.

If you have further issues that require clarification, please contact:

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