

Guideline

Duty Holders on Transition to the Rail Safety National Law (RSNL)

Document reference number: A332770

Version No.	Approved by	Publication date
1.0	Chief Executive	20 January 2013
1.1	Format review	22 July 2016

Guideline changes to version 1.1

- > Format review and web details update

Copyright information

© Office of the National Rail Safety Regulator 2016

This material may be reproduced in whole or in part, provided the meaning is unchanged and the source is acknowledged.

Level 1, 75 Hindmarsh Square, ADELAIDE SA 5000

PO Box 3461, Rundle Mall, ADELAIDE SA 5000

Phone: 08 8406 1500

Fax: 08 8406 1501

E: contact@onrsr.com.au

W: www.onrsr.com.au

Table of contents

1. Introduction.....	5
1.1 Purpose	5
1.2 Who should read this guideline	5
1.3 Definitions.....	5
1.4 Status	5
1.5 Legislation and policy	6
1.5.1 Legislation	6
1.5.2 Enactment of the RSNL	7
1.5.3 Purpose of transitional legislation.....	7
1.5.4 Policies and other guidance	8
2. Use of this guideline.....	8
3. Operating under the National Rail Safety Regulator (NRSR).....	8
4. Identification of legislative requirements	9
5. General safety duties	10
6. Accreditation.....	10
6.1 Existing accreditations continued.....	10
6.2 Newly-required accreditation under the RSNL	11
6.3 Accreditation not required under the RSNL.....	11
7. Exemptions	11
8. Private sidings	11
8.1 Transfer of registration from physical siding to rail infrastructure manager	12
8.2 Newly-required registrations under the RSNL.....	12
9. Applications in progress, reviews and appeals.....	12
9.1 Reviews and appeals	12
10. Safety management system.....	13
11. Interface agreements.....	13
12. Assessment of rail safety worker competence	13

13. Identification of rail safety workers	13
14. Notifiable occurrences and operator investigations and inquiries	14
15. Safety performance reporting and periodic information to be supplied	14
16. Compliance and enforcement	14
16.1 Alleged breaches of existing rail safety laws.....	14
16.2 Notices, directions and requests from regulators.....	15
17. Fees	15
18. Ongoing transitional periods	15
19. Amendment of transitional periods	15
20. Summary	16
21. Acknowledgements	17
Appendix 1: Ongoing transitional periods	18

1. Introduction

1.1 Purpose

Existing rail safety legislation in each state and territory ('jurisdiction') will effectively be replaced by the Rail Safety National Law (RSNL) and will cease to apply. However, for a period of time, certain parts of existing rail safety legislation will continue to apply instead of the equivalent requirement in the RSNL. This allows duty holders time to comply with the requirements of the RSNL where obligations may be new or substantially modified.

The purpose of this document is to provide rail transport operators and other duty holders with general guidance on transitioning from existing jurisdictional rail safety legislation to the RSNL and National Regulations. General guidance will be provided on which parts of existing rail safety will cease and which parts will continue to apply and for how long.

As states and territories will be passing the RSNL at different times, this document also provides guidance to duty holders on operating whilst legislation is being amended.

1.2 Who should read this guideline

The RSNL specifies requirements for the majority of rail transport operators, amongst various other duty holders that may play a role in rail safety.

This document provides guidance for those parties that have (or had) duties under the rail safety legislation that was in place prior to commencement of the National Rail Safety Regulator (NRSR) and RSNL. This document also applies to those parties that may have new duties under the RSNL.

1.3 Definitions

RSNL – means the *Rail Safety National Law*, which has been enacted as a Schedule to the *Rail Safety National Law (South Australia) Act 2012 (SA)*.

National Regulations – means the *Rail Safety National Law National Regulations 2012*, approved by the Standing Council on Transport and Infrastructure and made under the RSNL.

Definitions provided by the RSNL apply within this document.

1.4 Status

The document is a guide only and is intended to be read in conjunction with the legislation and relevant Office of the National Rail Safety Regulator (ONRSR) policies. The guideline itself imposes no legal duty and where actions or requirements are described as mandatory these reflect requirements in the RSNL or National Regulations. It is not intended to replace the legislation, or to limit or expand the scope of the legislation. In the event of an inconsistency between this guideline and the legislation, the legislation will prevail. It is recommended that duty holders obtain their own independent legal advice about the legislation or contact the ONRSR for advice.

This guideline provides general advice only on transitioning to the new law. It does not replace the need for duty holders to review their obligations under the law and determine the requirements that will apply.

1.5 Legislation and policy

1.5.1 Legislation

At the commencement of the RSNL in each jurisdiction, existing rail safety legislation will be repealed and will cease to apply.¹ However, the transitional legislation (included as part of the applying law explained in part 1.5.3 of this document) in each jurisdiction will preserve the operation of specified parts of the existing laws, as set out (in part) in this document.

The rail safety laws that are to be, or have been, replaced by the RSNL are specified in Table 1. For the purposes of this document, whether they have been or are yet to be replaced by the RSNL, they will be referred to as ‘existing rail safety laws’.

Table 1: existing rail safety laws

Jurisdiction	Primary legislation	Subordinate legislation
New South Wales	<i>Rail Safety Act 2008</i>	<ul style="list-style-type: none">• <i>Rail Safety (General) Regulation 2008</i>• <i>Rail Safety (Drug and Alcohol Testing) Regulation 2008</i>• <i>Rail Safety (Offences) Regulation 2008</i>
Northern Territory	<i>Rail Safety Act 2010</i>	<i>Rail Safety Regulations 2010</i>
Queensland	<i>Transport (Rail Safety) Act 2010</i>	<i>Transport (Rail Safety) Regulations 2010</i>
South Australia	<i>Rail Safety Act 2007</i>	<ul style="list-style-type: none">• <i>Rail Safety (General) Regulations 2008</i>• <i>Rail Safety (Alcohol and Drug Testing) Regulations 2008</i>
Tasmania	<i>Rail Safety Act 2009</i>	<i>Rail Safety Regulations 2010</i>
Victoria ²	<i>Rail Safety Act 2006</i>	<i>Rail Safety Regulations 2006</i>
Western Australia	<i>Rail Safety Act 2010</i>	<i>Rail Safety Regulations 2011</i>

Consequential amendments will be required to other legislation as a consequence of repealing existing rail safety legislation and implementing the RSNL.

¹ It should be noted that the existing rail safety legislation in Victoria will continue to apply to selected railways that are to be excluded from coverage by the RSNL.

² The *Rail Safety Act 2006* (VIC) and *Rail Safety Regulations 2006* (VIC) will continue to apply to the tram network and selected Victorian tourist and heritage railways in Victoria that are to be excluded from coverage by the RSNL.

1.5.2 Enactment of the RSNL

The RSNL is to be first enacted in South Australia as a Schedule to the *Rail Safety National Law (South Australia) Act 2012 (SA)*.

For the most part, each jurisdiction will then pass an 'application law', which explains that the RSNL (being the Schedule to the South Australian law) is the rail safety law in that jurisdiction, replacing what is currently in place. The application law establishes the NRSR as the body responsible for delivery of the regulatory functions relating to rail safety in that jurisdiction and will also contain jurisdiction-specific information, such as the transitional legislation.

Due to parliamentary processes, each jurisdiction will pass its applying law at different times. The transitional periods specified in this document are to be taken from the date that the application law is commenced in a particular jurisdiction. Duty holders should confirm the dates provided in the application laws of the jurisdiction(s) in which they operate.

Until the application law is passed in a particular jurisdiction, existing rail safety laws will apply and these will continue to be administered by the existing jurisdictional rail safety regulator. Interstate operators may therefore be required to comply with the RSNL (and work with the NRSR) in some jurisdictions and existing rail safety laws (and existing rail safety regulators) in other jurisdictions for a period of time.

Important note

Until the application law is passed in a particular jurisdiction, existing rail safety laws will apply and these will continue to be administered by the existing jurisdictional rail safety regulator. For rail transport operators in these jurisdictions, there is no change to reporting requirements and current contacts with existing regulators should be maintained.

1.5.3 Purpose of transitional legislation

For some jurisdictions the differences between existing rail safety laws and the RSNL are more substantial than in others. Where the RSNL may impose new or substantially modified requirements on duty holders, it is not reasonable to expect duty holders to comply immediately. The transitional legislation preserves specified parts of existing rail safety law for a period of time to provide duty holders with an opportunity to gradually transition to the new requirements.

What this means is that, for a period of time, certain parts of existing rail safety legislation may continue to apply instead of the equivalent requirement in the RSNL. The requirements will exist in parallel and duty holders are expected to make efforts towards complying with the RSNL requirements during the transitional period.

Transitional legislation also preserves certain actions taken and decisions made under existing rail safety laws. For example, if an existing rail safety regulator has directed a rail transport operator to provide information prior to the commencement of the RSNL, that direction can still be kept valid after the RSNL has commenced.

As existing rail safety legislation differs between states and territories, it was not appropriate to include transitional arrangements in the RSNL itself. Each jurisdiction is required to customise transitional legislation, taking into account the requirements of existing rail safety legislation and how great a change the RSNL represents when compared to existing requirements. As such, a jurisdiction's application laws will contain the transitional arrangements that apply in that particular jurisdiction.

1.5.4 Policies and other guidance

Guidance and policy documents have been produced to assist duty holders in complying with their legislative obligations under the RSNL. These cover areas such as accreditation, safety management systems, exemptions and private sidings.

These policies and guidelines will progressively become available on website www.onrsr.com.au

2. Use of this guideline

Transitional principles have been developed and agreed by existing regulators, government and industry stakeholders to guide how jurisdictions will develop the transitional arrangements in their application laws. The principles are intended to ensure that a co-ordinated approach is taken to implementation of the RSNL, and that, so far as possible, jurisdictions adopt harmonised transitional arrangements in their application laws. The principles cover most areas that will require transitional arrangements to be put in place, but are not exhaustive. Matters unique to a particular state or territory may require separate consideration and these will be contained in the jurisdiction's application law.

This document reflects the agreed general transitional principles and aims to provide general guidance to duty holders. It covers the majority of matters that will be transitioned and highlights some of the more substantial regulatory changes. However, duty holders should note that this guideline is not comprehensive.

As is currently the case, the RSNL (refer to clause 6 of Schedule 1 to the National Regulations) requires that a rail transport operators have systems and procedures for the identification of safety requirements under the Law and other safety legislation. This is particularly relevant for determining what specific transitional arrangements apply in a particular jurisdiction of operation. Duty holders must therefore review relevant jurisdictional application laws to identify any specific requirements that will apply.

In some cases, the application law of a jurisdiction may not address a matter included in this document (that is, it may remain silent on the transition). Where this is the case, the NRSR will be guided by this document and expect compliance in accordance with the specified timeframes.

Important note

This guideline does not discuss all transitional arrangements and provisions may vary depending on the jurisdiction in question. Duty holders must review the relevant jurisdictional application law to identify the requirements that will apply.

3. Operating under the National Rail Safety Regulator (NRSR)

When the RSNL is commenced in a particular jurisdiction, it establishes the NRSR as the regulator in that jurisdiction. The NRSR is then responsible for administering the rail safety law and delivering the associated regulatory functions. The office of the jurisdictional regulator will essentially become part of the branch office structure of the NRSR. Refer to website www.onrsr.com.au for a description of the ONRSR's organisation.

Some of the high-level decisions will be centralised in the ONRSR National Office, based in Adelaide. The majority of the routine functions, such as audits and inspections, will continue to be performed by the branches.

On a day-to-day basis, there should be little change for duty holders when dealing with the new regulator, as existing frontline staff, such as rail safety officers, will continue their functions as ONRSR staff.

Upon commencement of the NRSR, there will be a single contact number to report immediately reportable Category A notifiable occurrences. There will also be a centralised system for both hard copy and electronic reporting applicable for written reports of notifiable occurrences, periodic information to be supplied and safety performance reporting.

If duty holders have any queries or wish to submit applications they should, in first instance, contact the ONRSR.

Contact details will be available on website www.onrsr.com.au

4. Identification of legislative requirements

Rail transport operators must identify any new or substantially modified safety requirements under the RSNL, including determining any specific transitional arrangements that may apply in a particular jurisdiction of operation.

For the most part, the requirements of the RSNL are not substantially different from the requirements of existing rail safety laws. Even where there are changes in the wording or more detail in the requirements, duty holders may find that they are already complying with the new legislation.

Guidance and policy documents have been produced to assist duty holders in understanding their legislative obligations under the RSNL, which will progressively become available on website www.onrsr.com.au

Rail transport operators should take the following steps when assessing the need for change:

- > Identify changes to their legislative obligations;
- > Review relevant sections of their safety management systems to assess whether they already comply with the requirements of the RSNL;
- > If there are new or substantially modified requirements, plan, develop and implement a change management process such that compliance with the RSNL is gradually achieved throughout the transitional periods referred to in the document.

The transition periods referred to in this document are to be taken as the maximum time allowed. A stated transition period does not prevent a rail transport operator from complying with the requirements of the RSNL prior to expiry of the allowed transitional period and rail transport operators are encouraged to do so, particularly where the changes are minor.

The NRSR is responsible for oversight of rail transport operators' safety management systems and transition during the transitional periods following commencement of the RSNL. During the transitional periods, the NRSR will actively be looking for change management processes to be planned and implemented.

The NRSR will work with duty holders during this time to ensure that the transition is achieved. Penalties may be imposed if duty holders do not comply by the end of the transitional periods, so it is important that rail transport operators contact the NRSR if they face difficulties in transitioning.

5. General safety duties

There will be no transitional periods associated with the 'general safety duties'.

The general safety duties under existing rail safety laws will cease to apply on commencement of the RSNL. The equivalent duties in the RSNL (refer to Part 3, Division 3 of the RSNL) will be applicable immediately.

There are some duties that may be new, for example, the duty of persons loading or unloading freight (section 54 of the RSNL). However, despite some minor changes, no 'grace period' is required because all duties under the RSNL, including any new or substantially modified duties, can be considered to express duties already covered by existing rail safety laws, work health and safety legislation or the safety expectations of the Australian community.

Duty holders should review the requirements of Part 3, Division 3 of the RSNL to be clear, however, duty holders would most likely already be complying with the duties.

6. Accreditation

Most rail transport operators that required accreditation under existing rail safety laws will still require accreditation under the RSNL. Similarly, there will be few rail transport operators that will need to be accredited where they previously did not require it. Nonetheless, there are some changes and transitional arrangements have been provided for where this may be the case.

Rail transport operators should review the following parts of the law to understand their accreditation requirements:

- > Section 7 (Railways to which this Law does not apply);
- > Regulation 7 (Act to apply or not to apply in certain cases);
- > Division 4 of Part 3 (Accreditation);
- > Division 5 of Part 3 (Registration of rail infrastructure managers of private sidings).

Guidance in relation to accreditation is also available on website www.onrsr.com.au

6.1 Existing accreditations continued

There is no requirement for re-accreditation when the RSNL comes into force. An accreditation issued under existing rail safety laws will be taken as an accreditation issued under the RSNL upon commencement of the RSNL (unless there is no requirement to hold an accreditation under the RSNL). The accreditation will be subject to the same conditions and restrictions.

When an operator holds an accreditation in more than one jurisdiction, the operator will, under the RSNL, hold one accreditation. However, the scope and nature of the railway operations, and associated conditions and restrictions applied by each jurisdiction in which it holds an existing accreditation, will continue to apply within that jurisdiction. It is intended that over time the Regulator will consolidate the permissions and conditions and restrictions of accreditation so that the multiple jurisdictionally-issued notices of accreditation are replaced by a single notice of accreditation.

An accreditation that, upon commencement of the RSNL, was suspended or cancelled under existing rail safety laws is taken to have been suspended or cancelled under the RSNL. If a period of time relates to the suspension or cancellation, this period is to continue as if stated under the RSNL.

The effect of the above is that there is no change in practice to a rail transport operator's existing accreditation as a result of the RSNL.

6.2 Newly-required accreditation under the RSNL

There may be some rail transport operators that did not require accreditation under existing rail safety laws (or were provided exemption from accreditation), that will require accreditation under the RSNL. These operators will be provided with a period of up to 3 years to seek accreditation or exemption under the RSNL and achieve the necessary level of compliance. This includes those rail transport operators that were previously deemed to be private sidings under existing rail safety laws, which require accreditation under the RSNL.

6.3 Accreditation not required under the RSNL

If a rail transport operator was required to be accredited under existing rail safety laws, but is not required to be accredited under the RSNL, no provisions of the existing rail safety laws relating to accredited parties will continue to apply upon commencement of the RSNL (unless the operator is a rail infrastructure manager of a private siding or is prescribed as being covered by the RSNL under regulation 7(2) of the National Regulations). Such accreditations are automatically to be taken to have been surrendered.

7. Exemptions

Exemptions refer to situations where rail transport operators are not required to comply with certain provisions of the law, while still being accredited. Exemptions that were granted under existing rail safety laws, which relate to matters for which there is an equivalent provision in the RSNL (with exemption allowed), will be recognised for up to 2 years after the commencement of the RSNL.

If the existing exemption was subject to a time limit that expires before the expiry of the 2 year transitional period mentioned above, the existing time limit will continue to apply

(i.e. the exemption will expire before the 2 year maximum).

Before the expiry of the 2 year period, rail transport operators must either seek an exemption under the RSNL or comply with the requirements of the RSNL in full (with respect to the matter for which an existing exemption applies).

8. Private sidings

What is and what is not a private siding is defined in the RSNL (refer to section 4 of the RSNL). Guidance is available in the ONRSR Guideline: Registration of Rail Infrastructure Managers of Private Sidings available on website www.onrsr.com.au

In general, under existing rail safety laws, private sidings have an exemption from accreditation, requiring a registration process in its place. Each physical siding is currently registered. However, under the RSNL it is the rail infrastructure manager of the private siding that is required to be registered. What this means is that, if a rail infrastructure manager owned multiple sidings, only one registration would be required under the RSNL.

An application for registration that was refused under existing rail safety laws may be re-submitted under the RSNL to the NRSR.

The following process is proposed to transition registrations under existing rail safety laws to registrations under the RSNL.

8.1 Transfer of registration from physical siding to rail infrastructure manager

In order to transfer the registrations from the physical siding to the rail infrastructure manager of the private siding, the following will occur:

- > Upon commencement of the RSNL, the registration of a private siding under existing rail safety laws will be transferred to the party identified as the rail infrastructure manager on the current jurisdictional register. Registration will be taken as issued under the RSNL, maintaining any conditions and restrictions stated on the registration;
- > A period of 2 years is to be provided to allow rail infrastructure managers to comply with any additional or substantially modified requirements (other than duties) that will be introduced by the RSNL;
- > No 'grace period' will be provided for after commencement of the RSNL with respect to duties.

8.2 Newly-required registrations under the RSNL

Rail infrastructure managers of private sidings that newly require registration under the RSNL will be provided with a period of up to 3 years to seek registration or exemption.

9. Applications in progress, reviews and appeals

At the time of commencement of the RSNL, there may be applications in progress; made by a rail transport operator, but not yet decided by the jurisdictional regulator. Applications could relate to accreditation, registration, variation, exemption or surrender. These applications will be determined by the NRSR in accordance with the RSNL even though the application was made under existing rail safety laws.

The relevant period for the determination of an application is to be taken from the date of application, even if that date precedes the commencement of the RSNL. For example, if a rail transport operator's application for variation of accreditation was made 1 month prior to commencement of the RSNL, the application must be determined by the NRSR within 5 months following commencement of the RSNL (subject to the provisions of section 69(5)(b) and (c) of the RSNL).

Applications submitted after the commencement of RSNL are to be determined in accordance with the RSNL, including variations to existing accreditations.

9.1 Reviews and appeals

Review and appeal provisions under existing rail safety laws will continue to apply to reviewable decisions made before commencement of the RSNL.

If a decision was reviewable under existing rail safety laws, the application was made under existing rail safety laws but determined after commencement of the RSNL (in accordance with the RSNL), then the applicant may apply under the RSNL for a review (subject to the expiry of the relevant period).

10. Safety management system

Some of the requirements for safety management systems may be different when comparing existing rail safety laws and the RSNL (refer to section 99). The magnitude of that variation differs between jurisdictions. Rail transport operators should review their systems to determine whether they already meet the requirements of the RSNL.

Transitional periods will apply to any new or substantially modified requirements for safety management systems. Rail transport operators already accredited under existing rail safety laws will be provided with a period of 2 years from the commencement of the RSNL to achieve compliance or seek exemption from the requirement.

Compliance obligations may have changed with respect to the following areas in particular:

- > Health and fitness management program (section 114 of the RSNL)
- > Drug and alcohol management program (section 115 of the RSNL)
- > Fatigue risk management program (section 116 of the RSNL)

Rail transport operators are encouraged to refer to the *NRSR Guideline: Preparation of a Safety Management System*, available on website www.onrsr.com.au for further guidance.

11. Interface agreements

The requirements for interface agreements are relatively consistent across jurisdictions and between the RSNL (refer to Subdivision 2 of Division 6 of Part 3 of the RSNL).

An interface agreement negotiated under existing rail safety laws will be recognised as an interface agreement under the RSNL. Negotiations already underway between parties to reach an interface agreement are to continue and will be subject to the provisions of the RSNL.

12. Assessment of rail safety worker competence

Rail transport operators already accredited under existing rail safety laws will be provided with a period of 2 years from the commencement of the RSNL to achieve compliance with the assessment of competence requirements (section 117 of the RSNL).

This period only applies where the requirement is substantially modified from the equivalent provision under existing rail safety laws, in particular, with respect to the requirement to assess competence in accordance with the Australian Quality Training Framework (AQTF).

If the requirement to assess competence in accordance with the AQTF (as per section 117 of the RSNL) is consistent with the equivalent requirement in an existing rail safety law, no transition period will be provided.

13. Identification of rail safety workers

Identification requirements for rail safety workers under the RSNL (section 118) are considered to be consistent with equivalent requirements under existing rail safety laws. Rail transport operators complying with existing rail safety laws should therefore comply with the requirements of the RSNL.

As such, no grace period will be provided for after commencement of the RSNL for the identification requirements for rail safety workers, as defined under existing rail safety laws.

Identification documents for rail safety workers will be recognised under the RSNL with no need for reissue.

14. Notifiable occurrences and operator investigations and inquiries

A notifiable occurrence report made under the existing rail safety laws (for an occurrence that happened prior to commencement of the RSNL) will be taken as an acceptable notifiable occurrence report under the RSNL.

However, from the commencement of the RSNL, the notifiable occurrence and operator investigation requirements of the RSNL (Part 3, Division 8 of the RSNL) will apply and there will be no transitional period.

The provisions of RSNL will apply immediately to any operator investigation or inquiry of any notifiable occurrence, railway accident or railway incident that commenced under existing rail safety laws. Anything done or required to be done under existing rail safety laws in connection with any such inquiry or investigation will be subject to the RSNL from its commencement.

15. Safety performance reporting and periodic information to be supplied

The RSNL specifies the requirements for annual safety performance reporting (section 103) and monthly periodic information to be supplied (regulation 39). The RSNL contains flexibility for rail transport operators to negotiate alternative arrangements.

It is understood that rail transport operators may have negotiated arrangements under existing rail safety laws for the equivalent requirements. For example, some rail transport operators may be required to submit the equivalent data for monthly periodic information on a quarterly basis under existing arrangements. These already-negotiated periods will be honoured by the NRSR.

16. Compliance and enforcement

When the RSNL commences, there may be investigations or prosecutions underway by rail safety regulators and there may be notices, directions or requests still current. The following outlines how these will be treated following commencement of the RSNL.

16.1 Alleged breaches of existing rail safety laws

As a general rule, the applicable compliance and enforcement provisions will be those contained in the law applicable at the time of the alleged breach.

What this means is that, if an offence occurred while an existing rail safety law was in place (even if an investigation into it by the Regulator first started after commencement of the RSNL), any prosecution would be taken under existing rail safety law. Likewise, if an offence occurred when the RSNL was in place, any legal action would be taken under the RSNL.

It follows that any legal proceedings underway or warrants will be governed by the laws that the prosecutions were brought under. For example, if a proceeding is brought under an existing rail safety law, the proceeding will continue under that law even after commencement of the RSNL.

The RSNL may contain new offences and it should be noted that these only apply from the date of commencement for the RSNL. So, if the RSNL makes an act or omission an offence, the act of omission is only an offence if committed after the RSNL commences.

16.2 Notices, directions and requests from regulators

If they were in force at the time the RSNL commenced, the following will continue to apply:

- > Improvement notices, prohibition notices and non-disturbance notices (including any directions stated in such notices);
- > Directions, notices and requests to supply information by rail safety regulators or authorised/appointed persons of regulators (for example, a rail safety officer);
- > Enforceable undertakings made and remedial actions taken.
- > These actions will be recognised under the RSNL and will continue to have force and effect as if they were issued under the RSNL.

17. Fees

A rail transport operator that has paid fees for a given specified period under existing rail safety laws will be considered to have paid the required fee for that period under the RSNL. A rail transport operator will not be eligible for reimbursement if the fees under the RSNL are of a greater or lesser amount respectively during that period.

The provisions of existing rail safety laws will continue to apply to a notice that has been provided to a rail transport operator requiring payment of an amount, by a given date, even if that date is after commencement of the RSNL, until the notice is addressed.

Rail transport operators are encouraged to refer to the *ONRSR Policy: Fees Payable by Rail Transport Operators*, available on website www.onrsr.com.au for further information.

18. Ongoing transitional periods

It is recognised that some jurisdictions are still transitioning duty holders to the requirements of existing rail safety laws from those laws that preceded them.

Where the provision in an existing rail safety law is consistent with the equivalent provision in the RSNL, the transition period provided for by the existing rail safety law for that provision will be preserved.

Where the provision in an existing rail safety law is inconsistent with the equivalent provision in the RSNL, the transition period provided for by the existing rail safety law for that provision will lapse and the transition period provided for in this document will apply.

Those transitional periods that will not have expired by January 2013 are documented in Appendix A: Ongoing transitional periods. The time period for compliance with the requirements is also included in the appendix.

19. Amendment of transitional periods

Transitional periods stated in this document are the maximum times allowed and may be reduced by agreement with the NRSR.

Transitional periods stated in this document may be extended in extenuating circumstances faced by either the NRSR or duty holder, by agreement with the NRSR.

20. Summary

The key matters and transitional arrangements addressed in this document can be summarised as follows:

- > This guideline does not discuss all transitional arrangements and provisions may vary depending on the jurisdiction in question;
- > Existing rail safety legislation in each jurisdiction will cease to apply on commencement of the RSNL but the transition legislation in each jurisdiction may preserve the operation of specified parts of the existing rail safety laws;
- > Rail transport operators must identify any new or substantially modified safety requirements under the RSNL, including determining any specific transitional arrangements that may apply in a particular jurisdiction of operation;
- > Guidance and policy documents have been produced to assist duty holders in understanding their legislative obligations under the RSNL, which will progressively become available on website www.onrsf.com.au ;
- > For the most part, the requirements of the RSNL are not substantially different from the requirements of existing rail safety laws. Even where there are changes in the wording or more detail in the requirements, duty holders may find that they are already complying with the new legislation. Duty holders should review their systems and initiate a change management process if required;
- > The provided transitional periods are the maximum times allowed and duty holders are encouraged to comply before the expiry of the period;
- > General safety duties under the RSNL will apply immediately upon commencement of the RSNL;
- > An accreditation issued under existing rail safety laws will be taken as accreditation issued under the RSNL, meaning that there will be no re-accreditation;
- > Exemptions from certain provisions granted under existing rail safety laws will be recognised for up to 2 years after the commencement of the RSNL, within which time the rail transport operator must seek an exemption under the RSNL or comply in full with the requirements of the RSNL;
- > The registration of a private siding under existing rail safety laws will be transferred to the party identified as the rail infrastructure manager on the current jurisdictional register. A period of 2 years will be provided to allow rail infrastructure managers to comply with any additional or substantially modified requirements (other than duties) that will be introduced by the RSNL;
- > Rail transport operators that newly require accreditation or rail infrastructure managers of private sidings that newly require registration under the RSNL will be provided with a period of up to 3 years to seek accreditation or exemption;
- > Applications made but not decided before commencement of the RSNL, for example those relating to accreditation, variation, registration, exemption, surrender of accreditation or review, are to be determined in accordance with the RSNL;

- > Already accredited rail transport operators will be provided a period of 2 years to achieve compliance with any new or substantially modified requirements for safety management systems or for assessment of rail safety worker competence;
- > A previously-negotiated reporting period for safety performance reporting or periodic information to be supplied between a rail transport operator and rail safety regulator will be honoured;
- > An improvement notice, prohibition notice, non disturbance notice, direction or enforceable undertaking issued or remedial action taken under existing rail safety laws that is in force at the commencement of the RSNL (including any direction stated in such a notice), will continue to have force and effect as if it were a notice issued under the RSNL;
- > A rail transport operator that has paid fees in respect of a specified period under existing rail safety laws will be considered to have paid the required fee for that period under the RSNL;
- > Transitional periods may be reduced or may be extended in extenuating circumstances upon agreement with the NRSR.
- > Duty holders are encouraged to contact the ONRSR if further advice is required on transitioning to the requirements of the RSNL.

21. Acknowledgements

The National Rail Safety Regulator Project Office acknowledges the assistance of members of the Interim NRSR Operations Executive Group, Jurisdictional Advisory Group and the Australasian Railways Association in the preparation of this document.

Appendix 1: Ongoing transitional periods

Transitional periods provided in existing rail safety laws, which will not have expired by January 2013, will be provided.

Details will be progressively added as ongoing arrangements are confirmed through the jurisdictional application laws.