



Message from the Chief Executive

Earlier this month I had the pleasure of speaking at the Rail Safety 2009 conference. I would like to congratulate both the Australasian Railway Association and the Rail Industry Safety & Standards Board for hosting such an insightful event. The range of topics and high calibre speakers demonstrated strong support in the rail industry for safety improvement.

One area that has emerged in safety improvement is worksite protection. In this edition of *The Regulator* you will see what ITSRR is doing to promote safety improvement in worksite protection. With data showing some concerning trends in this area, ITSRR is using a combination of

targeted inspections, research and raising industry awareness to promote the need for safety improvement.

I have been encouraged by the widespread participation of rail representatives at ITSRR's industry briefings on the introduction of the new *Rail Safety Act 2008*. I trust that all who attended found the briefings to be informative. The next stage for ITSRR is to begin briefings on the issue of private sidings and interface agreements for road and rail authorities. ITSRR also plans on running operational hazard analysis workshops for the heritage sector (see page 5 for more information).

Those of you with an appreciation of how data can assist in safety improvement will be interested to know ITSRR has released a new tool for the systematic collection and analysis of safety data. The Contributing Factors Framework (CFF) is a classification tool for classifying or coding the findings of accident investigations into their contributory factors. This will help identify potential risk treatments.

Ongoing reporting of progress on the Waterfall recommendations is an important part of ITSRR's commitment to an open and transparent regulatory environment. ITSRR has expanded on this transparency by introducing a new quarterly report on the status of recommendations arising from independent transport accident investigations into rail, bus and ferry incidents in NSW. The first of these reports will be available soon on ITSRR's website.

I look forward to your ongoing commitment to meeting the challenges and opportunities of ongoing safety improvement.



Carolyn Walsh
Chief Executive
ITSRR

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Action needed to improve worker safety on track

Safeworking arrangements for work on track and worksite protection practices are being put under the spotlight by ITSRR in an effort to reduce the number of incidents and near misses on the NSW rail network.

ITSRR has called on rail infrastructure managers and their contractors to also make worksite protection a priority and improve safety for workers on track.

Speaking at the recent Rail Safety 2009 conference, ITSRR Chief Executive Carolyn Walsh labelled the rate of incidents associated with work in the rail corridor as unacceptable.

ITSRR records show that in the 19 years to 2007-08, almost 1,100 worksite protection incidents – including several fatalities – occurred on the NSW rail network.

Ms Walsh said factors such as improved reporting, increased rail infrastructure works and critical staff shortages (resulting in fewer protection officers) were all affecting the rate of worksite protection incidents.

To tackle the issue, ITSRR has developed a worksite protection safety improvement strategy using field officer feedback, reports from industry and analysis of its intelligence and research. The strategy comprises a combination of activities including audits and inspections, research and development, and information and awareness.

ITSRR's rail safety officers are conducting in-field inspections and systems audits looking at planning, risk assessment and compliance with network rules. Ensuring operators are applying the appropriate level of protection for the assessed risk will be a key focus.

ITSRR data shows that 40% of worksite protection incidents relate to inappropriate planning. In the worst cases, workers are performing work on track without any protection at all.

Given that human error is the major risk factor in worksite protection, ITSRR is developing a checklist that rail transport operators and contractors will be able to use to identify and control the causes of incidents. The checklist will be one of the tools featured at ITSRR's April Executive Safety Seminar (see the article on page 4).

ITSRR is also preparing to publish the findings of its international research into worksite protection practices overseas over the coming months. This

research is designed to provide the rail industry with some ideas about practices and technologies that could potentially be applied in NSW.

Keep an eye on ITSRR's website for more information or click on the link below to view Ms Walsh's presentation from Rail Safety 2009: http://www.transportregulator.nsw.gov.au/Documents/presentation_worksite_protection.pdf

New tool to improve safety through better incident analysis

Rail transport operators, rail safety regulators and investigators can now collect systemic safety data to identify patterns and trends in safety issues and take action to rectify them thanks to a new tool – the Contributing Factors Framework (CFF).

The CFF is a system for recording and analysing the contributing factors identified during the systemic investigation of rail safety occurrences.

Benefits of the CFF include:

- the collection (over time) of aggregate data, which will allow the identification and analysis of safety trends
- the development of a more informed understanding of the systemic issues associated with rail safety occurrences leading to the enhanced identification of more sustainable solutions
- an improvement in systemic investigation skills.

From July 2009, ITSRR and the Office of Transport Safety Investigations (OTSI) will use the CFF while the Australian Transport Safety Bureau (ATSB) will use a compatible coding framework in investigations they conduct or receive from accredited rail transport operators. Other rail safety regulators throughout Australia will also use the CFF.

The CFF is endorsed by the Rail Safety Regulators' Panel (RSRP) of Australia and New Zealand. It complements current occurrence reporting processes such as ON-S1 and OC-G1.

Use of the CFF by the rail industry is voluntary but strongly encouraged.

During the first 12 months, ITSRR and OTSI will liaise closely to ensure the CFF is working effectively. ITSRR will also be looking at what resulting data can be published.

For more information including access to the CFF manual, go to the [CFF page](#) on ITSRR's website.

Rail Safety Act 2008 implementation update

Commencement of the *Rail Safety Act 2008* at the beginning of this year was a major milestone for rail safety, not only in New South Wales but nationally. The new Act ushered in a number of changes to implement the National Model Rail Safety Legislation and deliver more consistency nationally.

Over the past few months ITSRR has been engaged in a number of projects to help the rail industry understand the changes and make the transition to the new requirements.

Almost 230 industry representatives took up the invitation to attend a series of briefings in Sydney and Newcastle where senior ITSRR staff outlined the major differences between the 2002 legislation and the 2008 Act.

In support of these briefings, ITSRR has produced an extensive range of online resources including publication of the regulations, policies and guidelines that support the Act and a series of plain English fact sheets to explain the main changes in the Act.

See the [Publications](#) and [Rules and Laws](#) pages of ITSRR's website for more information.

Notices of Accreditation

Along with introducing the new Act, ITSRR is reviewing the accreditation of all rail transport operators in NSW to transition those organisations still requiring accreditation over to nationally consistent requirements.

To date, ITSRR has prepared almost a quarter of the new Notices of Accreditation ready to be re-issued and is progressing well on the remaining notices.

Private sidings

Several changes to the definitions and treatment of private sidings have been made under the new Act. ITSRR has planned a series of information sessions to assist owners of private sidings to understand these changes.

Dates of the information sessions – to be held in Sydney, Ballina, Port Macquarie, Newcastle, Bathurst, Dubbo, Wollongong and Wagga Wagga – will be available on ITSRR's website soon.

If you would like to nominate your interest to attend one of these information sessions email contact@transportregulator.nsw.gov.au

See the [Private Sidings fact sheet](#) on ITSRR's website.



ITSRR's Executive Director Policy & Strategy, Natalie Pelham, presents at one of the industry briefings in Sydney.

Safety incidents continue to decline

The number of rail safety incidents in NSW in several key categories fell in the last financial year or remained consistent with long-term trends, ITSRR's *Rail Industry Safety Report 2007-08* has revealed.

The report – which covers rail-related injury (including fatalities), key rail safety occurrences (such as derailments and level crossing incidents), precursor rail safety occurrences (such as track and signalling irregularities), and drug and alcohol testing – was published in February.

Key findings from the report are:

- the number of rail-related passenger and public fatalities in 2007-08 was at, or close to, the lowest of the past 10 years
- the total number of injury-related fatalities reported during 2007-08 was at or close to lowest for 10 years but included the deaths of two track workers in a single incident near Singleton
- there was a decreasing trend in the number of trespasser/suicide related fatalities over the past 10 years
- a decreasing trend in the number of running line derailments over the past 10 years
- a decreasing trend in the number of collisions between trains and road vehicles at level crossings over the past 10 years
- a long-term increasing trend in on-train fires over the past 10 years due largely to acts of vandalism on passenger trains.

The [Rail Industry Safety Report 2007-08](#) is available for download from ITSRR's website.

Liability of “contact person” under *Rail Safety Act 2008*

ITSRR has become aware of the concern of some in the rail industry about the role, responsibilities and potential liabilities that attach to the nomination of a manager or director within an organisation as the “contact person” in accordance with clause 22(1) (c) of *Rail Safety (General) Regulations*.

There appears to be a specific concern that in being nominated as the contact person for the purposes of the Act, a particular manager or director will become solely liable for any breaches of the organisation under the legislation, thereby limiting the liability of the other directors and managers of the organisation under the Act.

Clause 22(1) (c) of *Rail Safety (General) Regulations* provides that:

the operator must ensure that there is at all times available one of its directors or managers as a contact person should the ITSRR wish to communicate with it, and that the ITSRR is provided with sufficient details so that for any particular time the ITSRR knows who the contact person is, and how to contact that person.

The purpose of this requirement is to ensure that ITSRR has the name of one of the directors or managers of the rail transport operator who can be the initial contact in relation to any enquiries ITSRR should have in relation to that accredited operator. It is important to note, however, that the contact person does not assume responsibility for the actions of the corporation concerned, unless of course they are a director or manager for the purposes of the “deemed liability” provisions (as outlined below). The aim of clause 22(1)(c) is simply to facilitate communication between the organisation and ITSRR in an efficient manner.

Nor is the role of the contact person under the 2008 Act equivalent to the role of the “designated person” previously required under the *Rail Safety Act 2002* when a corporation was seeking to be accredited. Under the 2002 Act, it was a requirement that a corporation designate certain directors and managers for the purpose of assisting ITSRR to decide if the operator was fit and proper to be responsible for the safety carrying out of railway operations. There is no equivalent provision under the 2008 Act.

If a corporation contravenes, whether by act or

omission, any provision of the *Rail Safety Act 2008* or the regulations, then each director of the corporation and each person concerned in the management of the corporation are deemed to have contravened the same provision. A similar provision existed under the 2002 Act and reflects those contained in OH&S legislation.

The purpose of this provision is to ensure that directors and managers are not shielded from responsibility for rail safety breaches by the corporation. The managers and directors affected by “deemed liability” are those who are concerned in the management of the corporation. It is intended to capture only those managers who have the real ability to influence the conduct of the corporation in relation to a contravention. ITSRR will decide whether it is appropriate to prosecute any of the managers or directors of a corporation on the basis of the facts of each individual case as they arise.

For these reasons, the appointment of a specific director or manager as the contact person under the Act does not result in that director or manager assuming responsibility for the actions of the corporation under the Act, unless they are also deemed to be liable for an offence in accordance with the deeming provisions outlined above.

For further information on the rail safety obligations of directors and managers, you should refer to [ITSRR's fact sheet](#) on this issue.

Applying human factors tools to the rail safety environment

ITSRR's first Executive Safety Seminar for 2009 will focus on tools that can help rail operators and investigators reduce incidents and near misses by identifying the role of human performance and behaviours on safety occurrences. A series of presentations will outline the tools developed by ITSRR for use in investigations but that can also be applied to proactive risk management planning.

ITSRR's Director, Transport Safety Improvement, Simon Meiers, said: “There are many areas in the rail environment that are dependent on people's performance levels and behaviours, such as at level crossings, worksite protection and in Signals Passed at Danger (SPAD).”

The seminar will be held on Monday 6 April. Register to attend by contacting Scott Sloan on email scott.sloan@transportregulator.nsw.gov.au or phone (02) 8263 7129.

97% of Waterfall recommendations closed

A further three Waterfall recommendations were verified and closed in the most recent reporting period, bringing the total to 97% of all recommendations.

In February, ITSRR published its sixteenth quarterly report on the implementation of the NSW Government's response to the Special Commission of Inquiry (SCOI) into the Waterfall Accident.

The report showed the total number of recommendations currently closed was 172 – or 97% of all recommendations – at the end of the reporting period (1 October – 31 December 2008). During the quarter three recommendations (1, 20 and 30) were verified and closed:

- Recommendations 1 and 20 are intended to ensure RailCorp has effective procedures in place and staff are adequately trained to respond in the event of an incident or emergency. ITSRR closed the two recommendations after an extensive verification process which included meeting with RailCorp corporate training personnel, conducting site visits and interviewing operational staff.
- Recommendation 30 required the rail safety regulator to set standards for the design, manufacture, testing and commissioning of rolling stock to ensure it is fit for purpose. This recommendation has been met with the introduction of the NSW *Rail Safety Act 2008* and Rail Safety Regulations on 1 January 2009, which require all rail transport operators to have a documented set of engineering standards and procedures for the design, manufacture, testing and commissioning of rolling stock.

The [Waterfall Report](#) is available to download on ITSRR's website.

Operational hazards analysis workshops for heritage

ITSRR is planning a series of one-on-one operational hazard analysis workshops with heritage operators over the coming months.

The workshops are part of a package of initiatives developed by ITSRR in consultation with heritage operators to assist them to meet their rail safety obligations.

Operators will need to submit a detailed description of their operational context to ITSRR before their individual workshop, which will be run on the operator's site over one to two days.

During the workshops, ITSRR staff will work with operators to analyse their operational context and identify and analyse the hazards arising from the activities and assets. Following the workshop operators will be expected to:

- use the hazard analysis to assess and characterise risks and identify controls
- create or update their risk register
- submit the risk register to ITSRR as part of their obligations under their safety management system (SMS) implementation plan or within an agreed timeframe.

For more information view the [presentation](#) from ITSRR's December 2008 information session for heritage operators and the [heritage strategy information alert](#) on ITSRR's website. Alternatively contact Cathy Dowe on 8263 7142 or cathy.dowe@transportregulator.nsw.gov.au

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