



Message from the Chief Executive

Over the past three months ITSRR has continued working on a range of initiatives to assist rail transport operators in understanding and meeting their obligations under the *Rail Safety Act 2008*.

In early September, we held the first of a series of heritage operator workshops which I am facilitating along with other senior ITSRR staff throughout NSW. These workshops will assist operators to analyse operational hazards so they can identify appropriate controls, and evaluate and manage their risks. More information on these workshops is on page 3.

ITSRR has also been busy re-issuing notices of accreditation to rail transport operators in line with the new *Rail Safety Act 2008*. As this includes consultation with all operators, it is much more than just an administrative exercise and I am pleased to report that we have processed more than half of the 71 accredited operators to date. See page 5 for further details.

To complement ITSRR's existing range of publications several new resources were released during the last quarter including the Signals Passed At Danger (SPAD) Management Information Paper. Links to this and other publications are available on page 5.

Looking forward we recently finalised ITSRR's Corporate Priorities for 2009-10. As you will see from the article in this edition, worksite protection and contractor management remain high on our priority list.

Work on a number of these priorities is well underway. For example, we held an Executive Safety Seminar focusing on contractor management in August 2009 (page 2).

Finally, as you may be aware some major changes to the NSW public sector took effect in July 2009 with formation of 13 new super agencies.

I would like to take this opportunity to reaffirm ITSRR's independence in relation to its safety and reliability functions. While we maintain and exercise our independence, we will be working closely with Transport and Infrastructure Director General, Les Wielinga, to assist in delivering a more capable, safe and reliable transport network across NSW.



Len Neist,
ITSRR Chief Executive

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Obligations for contractor management

The *Rail Safety Act 2008* places obligations on both rail transport operators and their contractors (persons, other than employees, who undertake railway operations for, or on behalf of, accredited rail transport operators) in the management of rail safety.

A rail transport operator's safety management system must include systems and procedures for contract management. Contractors must comply with the safety management system of the rail transport operator, to the extent that it applies to those operations.

The *Rail Safety Act 2008* limits accreditation to rail transport operators (rail infrastructure managers and rolling stock operators) to ensure accountabilities and responsibilities for management of contractors sits with the accredited party.

Consistent with current occupational health and safety law, this approach operates under the principle that safety cannot be contracted out. The *Rail Safety Act 2008* prohibits any person, including a rail transport operator, who has obligations under the legislation from "contracting out" safety obligations.

Rail transport operators and others carrying out railway operations also have a general duty to ensure, so far as is reasonably practicable, the safety of those railway operations.

Some rail transport operators and contractors may undertake activities that are both "railway operations" under the *Rail Safety Act 2008* and "construction work" under occupational health and safety (OHS) legislation.

The *Rail Safety Act 2008* provides that if a provision of the OHS legislation applies to railway operations, that provision continues to apply in addition to the rail safety legislation.

This means that rail transport operators and contractors who undertake activities that are both "railway operations" and "construction work" must comply with the relevant requirements of both rail safety legislation and OHS legislation.

To assist rail transport operators and contractors in understanding their obligations for managing safety in an operator/contractor relationship, ITSRR held an Executive Safety Seminar on the topic on 31 August 2009.

OH&S law expert Michael Tooma was the key speaker at the seminar and explained the application of the new requirements and how rail transport operators and their contractors can meet their obligations in practice.

Michael's [presentation](#) was followed by a panel discussion featuring Natalie Pelham (ITSRR), Campbell Clark (RailCorp), Bruce Farrar (Robson Civil), Lindsay Holt (Laing O'Rourke), Graham Jackson (Transport Infrastructure Development Corporation) and Tim Ryan (Australian Rail Track Corporation).

The panel discussed hypothetical scenarios and how they may be applied in the rail industry.

For more information read the [Contractor Management fact sheet](#) on ITSRR's website

Forum meets to discuss safety issues

The Rail Safety Strategic Forum (RSSF) – ITSRR's consultative forum with the rail industry – will meet again on 24 November 2009.

The RSSF last met on 8 July. Three of ITSRR's executive team were in attendance and were joined by 14 industry representatives, which included special guests from the WorkCover Rail Forum.

Some of the key issues discussed were:

- issues arising from the Rail Safety Co-regulation Group
- the definition of driver only operation
- strategic safety issues that ITSRR has been focusing on (asset management, track worker safety and compliance)
- rail safety work and its associated competencies
- ITSRR's drug and alcohol discussion paper
- how the RSSF can better coordinate with WorkCover's Rail Forum.

Details of RSSF membership and minutes from its meetings are available on [ITSRR's website](#).

Heritage operator hazard workshops kick off

A series of free on-site hazard identification workshops for NSW heritage rail transport operators kicked off in September as part of ITSRR's ongoing work to assist the sector to meet safety obligations under the *Rail Safety Act 2008* and its regulations.

ITSRR's Chief Executive, Len Neist, facilitated the first workshop with Zig-Zag Railway at Lithgow on 2 September, along with other senior ITSRR officers.

Mr Neist said the heritage operators who take advantage of the free workshops would be better prepared for ITSRR's inspection and audit program to assess their compliance with the requirements of their accreditation.

The workshop commences with a site tour to observe operations that take place on site and allow participants to identify hazards in an operational context. This is followed by a facilitated workshop in which participants are collectively encouraged to build on guidance provided in previous workshops and identify hazards associated with heritage railway operations.

Once the workshop has been completed and a list of identified hazards has been recorded, operators are then expected to update their risk register or create a register around the list of hazards and submit it to ITSRR within a designated timeframe.

The voluntary workshops were offered by ITSRR to assist operators to analyse operational hazards so they can then identify appropriate controls and manage their risks.



ITSRR's Chief Executive, Len Neist, and Executive Director Operations, Simon Foster, at Zig-Zag Railway.

Operators across the state have been scheduled in for one- and two-day workshops which will continue to be conducted until March next year.

For information on upcoming hazard identification workshops contact Cathy Dowe, Policy Officer, on 8263 7142 or cathy.dowe@transportregulator.nsw.gov.au

Performance reports provide indicator of safety culture

Safety performance reports are more than just a legal requirement. For the rail safety regulator, their quality and timeliness are indicators of a rail transport operator's safety culture.

All rail transport operators must submit to ITSRR an annual safety performance report outlining performance and safety initiatives planned and implemented over the previous 12 months. The requirements for safety performance reports are set out in section 15 of the *Rail Safety Act 2008* and clause 17 of the *Rail Safety (General) Regulation 2008*.

To assist operators, the Rail Safety Regulators Panel (of which ITSRR is a member) has developed guidance material on safety performance reports. The guidance covers:

- relevant provisions of the national model rail safety laws, and variations and additions to these provisions in State and Territory rail safety acts and regulations
- content requirements for the reports
- advice on developing key performance indicators
- the timeframes and process for submitting reports to the rail safety regulator(s).

ITSRR reminds rail transport operators of their obligations to provide annual safety reports by the due date. Operators who do not comply will face further regulatory action.

For more information see:

- [RSRP Guidance for Safety Performance Reports](#)
- [ITSRR Safety performance reports fact sheet](#)
- Section 15 of the *Rail Safety Act 2008* and clause 17 of the *Rail Safety (General) Regulation 2008*.

Drug & alcohol policy consultation update

ITSRR will undertake further research and another round of consultation before proceeding with any amendments to the regulations governing drug and alcohol testing in NSW.

In May 2009 ITSRR released a discussion paper inviting comments on two key amendments to the *Rail Safety (Drug and Alcohol Testing) Regulation 2008* which would provide for oral fluid (saliva) testing to detect presence of certain drugs and introduce offences for the presence of certain drugs.

Feedback was also sought on the proposal to standardise on-site urine drug screening by complying with AS/NZS 4308:2008, procedures for specimen collection and the detection and quantitation of drugs of abuse in urine.

Fourteen submissions were received during the consultation process and ITSRR collected feedback from several forums including the Transport Regulators Executive Committee (TREC), ITSRR Advisory Board and the Rail Safety Strategic Forum (RSSF).

Consultation to date has revealed that the issues are more complex than anticipated, and a further round of research and consultation will be required before any amendments can be made.

ITSRR expects to publish the responses and its comments on its website some time in October 2009.

Further information on the ongoing research and consultation process is available from Cathy Dowe, Policy Officer, on (02) 8263 7142 or cathy.dowe@transportregulator.nsw.gov.au

Further progress made in Waterfall Report 18

The latest quarterly report in response to the NSW Government's Special Commission of Inquiry (SCOI) into the Waterfall Rail Accident shows continued progress towards closing the remaining recommendations.

The eighteenth quarterly Waterfall report, published by ITSRR in August, outlines progress made in implementing the following three recommendations:

- RailCorp advised ITSRR that Cabinet has given in-principle funding approval for the introduction of the ATP program. Preparation of a business case for the first stage of the rollout of the program for the outer metropolitan network is currently underway. The next key milestone for this project is the NSW Treasury Gateway Review of this business case which is to be completed by 31 July 2010 (Recommendation 32).
- The National Transport Commission (NTC) notified ITSRR that it no longer intended to include development of national regulations for data loggers into its 2008-09 work program. Instead, the NTC suggested that the making of regulations could be incorporated into legislation to be administered by the proposed national rail safety regulator (Recommendations 36 and 37).

At the end of the reporting period 97% of the recommendations were verified and closed. ITSRR will continue to monitor the remaining five recommendations and report on the implementation progress in November 2009.

The latest [quarterly report](#) is available on ITSRR's website.

Regulating rail safety in the ACT

NSW is working with the Australian Capital Territory (ACT) Government to examine a proposal to apply the *Rail Safety Act 2008* in the ACT to ensure seamless regulatory coverage for rail operations that continue from NSW into the territory.

Currently, as the *NSW Rail Safety Act 2008* does not apply in the ACT, ITSRR will usually limit the exercise of its functions to within NSW. This means ITSRR is limited to investigating accidents or incidents that occur in NSW or have connection with this jurisdiction (such as a rail transport operator that is accredited in NSW).

ITSRR will notify rail transport operators if the current regulatory arrangements in the ACT change.

For more information contact ITSRR on (02) 8263 7100 or email contact@transportregulator.nsw.gov.au

Re-issuing notices of accreditation in full swing

Since the introduction of the *Rail Safety Act 2008* on 1 January 2009, ITSRR has been working towards re-issuing notices of accreditation to all accredited rail transport operators in NSW.

So far ITSRR has consulted with 40 (56%) operators in almost every sector of the industry, from passenger to freight, NSW-based to nationally accredited, and heritage. As a result, ITSRR has issued 33 new notices of accreditation and 1 notice of exemption, while 2 accreditations have been surrendered and 1 accreditation was not required under the *Rail Safety Act 2008*.

Oversight of this major project has been given to a project team led by Carolyn Boden, Manager, Major Change Programs. The team has taken on the task of reviewing accreditation documentation of the 71 existing accredited operators, which in some cases date back to 1993, to determine if accreditation is required under the *Rail Safety Act 2008*.

The review process involves the preparation and issue of new notices of accreditation based on the scope and nature of the operator's previous accreditation, the transfer of any current conditions and/or restrictions previously imposed, and finally consultation with operators and interstate regulators to ensure that the permissions granted are consistent.

A major benefit of this project will be the capture of key accreditation documentation by ITSRR, which its rail safety officers will be able to access remotely to assist in audit and compliance activities.

For more information on the project contact Carolyn Boden on (02) 8263 7122 or carolyn.boden@transportregulator.nsw.gov.au

SPAD paper on list of new publications

An information paper on the management of signals passed at danger (SPADs) is one of several new publications ITSRR has recently released on transport safety and reliability issues in NSW.

Safety

The SPAD Management Information Paper details better practices from NSW and the UK and is designed to assist rail transport operators in gathering information to better manage SPADs.

Analysis of SPADs can be a powerful way of diagnosing weaknesses in the safety system that if left, could lead to more serious consequences such as collisions and derailments. Access the paper on ITSRR's website: [SPAD Management Information Paper](#).

Follow the links to these other safety-related publications released during the quarter:

- [Fatigue Management fact sheet](#) (revised)
- [Rail Safety Worker Competence fact sheet](#) (revised)
- [Implementation of recommendations from transport incident investigations](#) (quarterly report covering March – May 2009).

Transport reliability

ITSRR released its inaugural Survey of Sydney Metropolitan Bus Users on 3 September. Similar to the CityRail survey ITSRR has undertaken since 2004, the bus survey involved interviews with users of Sydney Buses and private bus operators in the Sydney metropolitan area on various aspects of bus services.

The survey will be conducted annually to measure changes over time in the quality of bus services from a customer perspective. See the findings on the website: [Survey of Sydney Metropolitan Bus Users 2009](#).

Other reliability publications released during the last quarter can be accessed via the links below.

- Transport Reliability Bulletins:
 - [Effective performance measurement for commuter rail services](#) (24 July 2009)
 - [Five-year trends in CityRail service quality from a customer perspective](#) (10 July 2009)
- [CityRail Customer Survey 2009](#) (24 September 2009)

Regulator maintains independence in the super agency

The recent establishment of a new transport super department for NSW has not affected ITSRR's independence in relation to key safety and reliability functions.

NSW Transport and Infrastructure is one of 13 super agency clusters created on 1 July 2009 as part of the NSW Government's public sector reforms. Each cluster comprises direct report agencies and other entities that remain separate reporting bodies for statutory and other purposes.

Since ITSRR began operations in 2004, its Chief Executive has reported directly to the NSW Minister for Transport while maintaining independence on decisions regarding key safety and reliability functions.

This situation remains unchanged with the creation of the super agency although ITSRR's Chief Executive, Len Neist, and the ITSRR Advisory Board, are working closely with Transport and Infrastructure Director General, Les Wielinga, to assist in delivering a more capable, safe and reliable transport network across NSW.

The streamlined transport structure is intended to deliver integrated transport planning and service delivery, and consolidation of like-functions to reduce costs and provide additional funds for front-line staff and services.

For more information on the allocation of bodies to super departments, see the [Department of Premier and Cabinet website](#).

A fact sheet on [ITSRR independence](#) is available on ITSRR's website.

ITSRR releases 2009-10 corporate priorities

Working with the rail industry to improve track worker safety, and integrating human factors processes into safety management system design and implementation are two of ITSRR's priorities for 2009-10.

Other priorities for the year include:

- working with the rail industry to promote better practice asset sustainability management and contractor safety risk
- advising the NSW Government on technology, rolling stock and infrastructure issues to inform investment decisions
- capturing value from regulatory intelligence to inform and guide ITSRR's operations.

The 2009-10 priorities were identified following an analysis of industry safety trends and an assessment of where ITSRR can add most value.

They reflect ITSRR's legislative mandate to improve rail safety practices and provide an independent source of advice to inform Government decision-making on critical transport safety and reliability issues.

ITSRR will publish a full version of the 2009-10 corporate priorities on its website and distribute hard copies to all accredited rail transport operators and other key stakeholders in the coming weeks.

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