

**Appendix to *National Rail Safety Guideline for Compliance and Enforcement for Rail Safety: NSW***



INDEPENDENT  
TRANSPORT  
SAFETY AND  
RELIABILITY  
REGULATOR

<p><b>Purpose</b></p>	<p>The ITSRR endorses the compliance and enforcement principles detailed in the <i>National Rail Safety Guideline for Compliance and Enforcement for Rail Safety</i>.</p> <p>This Appendix articulates the way in which the ITSRR implements the <i>National Rail Safety Guideline for Compliance and Enforcement for Rail Safety</i> and explains differences between the NSW Act and Regulations and the National Model Legislation in respect of compliance and enforcement.</p>
<p><b>Scope</b></p>	<p>The ITSRR implements the <i>National Rail Safety Guideline for Compliance and Enforcement for Rail Safety</i> consistently with the NSW <i>Rail Safety Act 2008</i> (the NSW Act) and the <i>Rail Safety (General) Regulation 2008</i>, the <i>Rail Safety (Drug and Alcohol Testing) Regulation 2008</i> and the <i>Rail Safety (Offences) Regulation 2008</i> (the Regulations).</p>
<p><b>Goals of managing compliance</b></p>	<p>The ITSRR aims to achieve the following objectives through its effective management of compliance with the NSW Act and Regulations:</p> <ul style="list-style-type: none"> <li>➤ educate the rail community, and take action to improve rail operators' motivation and capacity to pro-actively manage safety and establish a continually improving safety culture;</li> <li>➤ take appropriate compliance and enforcement action to ensure persons undertaking railway operations meet their obligations to comply with the rail safety legislation; and</li> <li>➤ protect the rail community and the public from those persons who cannot, or will not, operate in accordance with mandatory safety obligations.</li> </ul>
<p><b>Differences between the ITSRR's approach and the approach set out in the National Guideline in respect of compliance and enforcement</b></p>	
<p><b>Compliance and enforcement options</b></p>	<p>Consistent with the National Guideline, the ITSRR takes a graduated approach to managing compliance by employing the following regulatory and non-regulatory actions in a considered, fair and transparent manner in line with the NSW Act and Regulations and as appropriate for the circumstances:</p> <ul style="list-style-type: none"> <li>➤ advice, education and training;</li> <li>➤ non-conformances;</li> <li>➤ improvement notices;</li> <li>➤ prohibition notices;</li> <li>➤ directions to accredited operators to amend their safety management system</li> </ul>

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	<ul style="list-style-type: none"> <li>➤ penalty notices;</li> <li>➤ enforceable voluntary undertakings</li> <li>➤ variation of accreditation or conditions or restriction on accreditation;</li> <li>➤ prosecution; and</li> <li>➤ suspension or revocation of accreditation.</li> </ul> <p>The ITSRR may not use regulatory actions sequentially and may choose to use a combination of these measures to facilitate compliance, beginning at the most appropriate point in the hierarchy.</p> <p>In contrast to the National Guideline, immediate suspension of accreditation may not be used by the ITSRR only as an action of last resort. It is, however, regarded as a severe penalty.</p>
<b>Variation of accreditation, conditions or restrictions</b>	The ITSRR's primary considerations in determining whether to vary an operator's accreditation, vary a condition or restriction on an accreditation, or impose a new condition or restriction on an accreditation are those criteria set out in section 53 of the NSW Act. This is consistent with the National Model Legislation.
<b>Suspension or revocation of accreditation</b>	The ITSRR's primary considerations in determining whether to suspend or revoke an operator's accreditation are those criteria set out in section 53 of the NSW Act. This is consistent with the National Model Legislation.
<b>Circumstances under which an infringement notice may be appropriate</b>	<p>The ITSRR applies the points listed in section 3.4 of the National Guideline as examples of situations in which it may decide an infringement notice is appropriate, rather than as a set of criteria that must be satisfied before an infringement notice may be issued. For example, an infringement notice may be issued irrespective of whether there has been an attempt to conceal the breach from the ITSRR.</p> <p>The ITSRR also refers to its Penalty Notices Policy when considering whether to issue an infringement (penalty) notice.</p>
<b>Differences between the NSW Act and Regulations and the National Model Legislation in respect of compliance and enforcement</b>	
<b>Sharing of information with other regulators</b>	<p>The capacity for ITSRR to share information with rail safety regulators in other jurisdictions is formalised in the NSW legislation through the enactment of section 156 in the <i>Rail Safety Act 2008</i>. This section authorises the sharing of certain rail safety information (including information relating to breaches of the Act) with other regulators by means of an information sharing arrangement.</p> <p>Under clause 18 of the National Model Bill, information that be may shared by a rail safety regulator with a corresponding rail safety</p>

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	<p>regulator is not limited to, but includes information relating to:</p> <ul style="list-style-type: none"> <li>➤ causal factors of rail incidents;</li> <li>➤ accreditation process;</li> <li>➤ investigation methods; and</li> <li>➤ risk assessment methodologies.</li> </ul> <p>Under the NSW Act information will be made available to corresponding rail safety regulators pursuant to an information sharing arrangement entered into under section 156. Such an arrangement will cover the sharing of information relating to:</p> <ul style="list-style-type: none"> <li>➤ possible breaches, the safe carrying out of railway operations, or matters prescribed by the Regulations (section 156); and</li> <li>➤ applications for accreditation, variation of accreditation, or conditions on accreditation by an applicant accredited or seeking accreditation under a corresponding law (section 41).</li> </ul>
<p><b>Appeals and the tribunal</b></p>	<p>Under sections 122 - 124 of the NSW Act, improvement and prohibition notices may be subject to review by the ITSRR and the Local Court constituted by an Industrial Magistrate.</p> <p>Under sections 157-158 of the NSW Act, other specified decisions may be subject to review by the ITSRR and the Administrative Decisions Tribunal.</p>
<p><b>Circumstances under which an improvement notice may be appropriate</b></p>	<p>Under the NSW Act improvement notices may also be issued where a rail safety officer believes on reasonable grounds that a person is a roads authority responsible for a road or work that is part of a rail or road crossing that threatens the safety of railway operations.</p>