

# Industry Briefing on the *Rail Safety Act 2008*

February 2009



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SAFETY AND  
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REGULATOR



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# Briefing outline

- General duties
- Accreditation
- Safety management
- Reporting
- Compliance and enforcement
- *Rail Safety Act 2008* & OHS legislation



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# Briefing outline (2)

- Website resources
  - Tea & coffee break --
- Q&A session



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# General duties

Who has general duties? What is the duty?

- Rail transport operators & others carrying out railway operations
  - To ensure, so far as is reasonably practicable (SFAIRP), the safety of those rail operations
- Designers, suppliers, installers and manufacturers of things used in connection with rail infrastructure or rollingstock
  - To ensure, SFAIRP, that those things are safe if used as intended
- Rail safety workers when carrying out rail safety work
  - To take reasonable care for their own safety and that of others
  - Co-operate with the rail transport operator
  - Prohibited from intentionally or recklessly interfering with or misusing anything provided by rail transport operator in interests of safety
  - Prohibited from wilfully or recklessly placing the safety of another person on or in the immediate vicinity of rail infrastructure risk



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# General duties (2)

## Purpose of general duty

- Places a positive obligation on rail transport operators and others carrying out railway operations, as well as designers, manufacturers, suppliers etc to managing safety risks because the onus is on them to review safety management to ensure its at SFAIRP.
- The introduction of general duties also makes it clear that accreditation is not a certification of safety.



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# General duties (3)

## Onus of Proof

- In the event of a prosecution it will be for the defendant to prove, on the balance of probabilities, that they did everything reasonably practicable to eliminate or minimise risks to the safety of their railway operations.
- How do you comply?
  - Refer to the National Guideline on SFAIRP and NSW Appendix.



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# Accreditation

Who requires accreditation?

- Rail transport operators (RIM and/or RSO) who has **effective management and control** of rail infrastructure and/or rolling stock operations.

What if organisation is neither a RIM nor RSO?

- Railway operations must be conducted by, or on behalf of, a rail transport operator that is either accredited or exempted by ITSRR.



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# Accreditation (2)

What must a rail transport operator demonstrate?

- effective management and control of rail infrastructure and/or rolling stock operation
- competence and capacity to manage risks
- competence and capacity to implement its safety management system (SMS)
- consultation requirements met
- financial capacity or public insurance to meet reasonable potential accident liabilities.



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# Accreditation (3)

How long does it take?

- 6-month time period for determining applications for accreditation

What about national operator?

- Requirement for ITSRR to consult with other regulators where an applicant:
  - is applying for accreditation in 2 or more jurisdictions
  - is already accredited in another jurisdiction

Appeals?

- Reviewable decision

Same process applies for variations



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# Accreditation (4)

For operators:

- National Rail Safety Guideline for Accreditation
- National Application for Accreditation Form & guidance.

For regulators:

- National Rail Safety Guideline for Uniform Administration of Accreditation & NSW Appendix.



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# Exemptions from accreditation

- Rail transport operators that are a rail infrastructure manager of a “private siding” are exempt from accreditation, but subject to general duties, registration and other conditions
- Other exemptions from Accreditation or from the Act may be granted by regulation if approved the Minister and the Governor
- Or at the discretion of ITSRR (ie fatigue, consultation on emergency management)
- See ITSRR Exemption Policy.



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# Risk management & SMS

- Accredited operators' safety management systems (SMS) must comply with the risk management requirements and principles outlined in the Act and regulations

The SMS must:

- identify and assess any risks to safety arising out of railway operations
- specify the controls (audits, expertise, resources and staff) to be used to manage risks and monitor safety
- include procedures for monitoring, reviewing and revising the adequacy of controls
- Comply with Schedule 1 of *Rail Safety (General) Regulation 2008*



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# Risk management & SMS (2)

- Continuing accredited operators have 12 months to comply with the new SMS requirements – Schedule 1 of *Rail Safety (General) Regulation 2008*.

How do I comply?

- Guidance – National Rail Safety Guideline for an SMS & NSW Appendix.
- Contractors must comply with the rail transport operator's SMS to the extent that it applies to the contractor's railway operations. Guidance on Contractor Obligations and Management (RSRP).



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# Ongoing obligations

Accredited rail transport operators:

- Health & fitness management
- Drug & alcohol management
- Fatigue management
- Emergency management
- Security management
- Rail safety worker competence (new requirements come into effect in 2 years)
- Interface coordination (requirements for road/rail interfaces take effect in 3 years)



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# Reporting

- Safety performance reports
- Notification of change
- Notification of occurrences



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# Compliance & enforcement

- ITSRR takes a graduated approach to managing compliance.
- Consistent with National Rail Safety Guideline for Compliance & Enforcement for Rail Safety.

## AIM:

- use regulatory and non-regulatory actions in a considered, fair and transparent manner in line with the legislation and as appropriate to the circumstances.

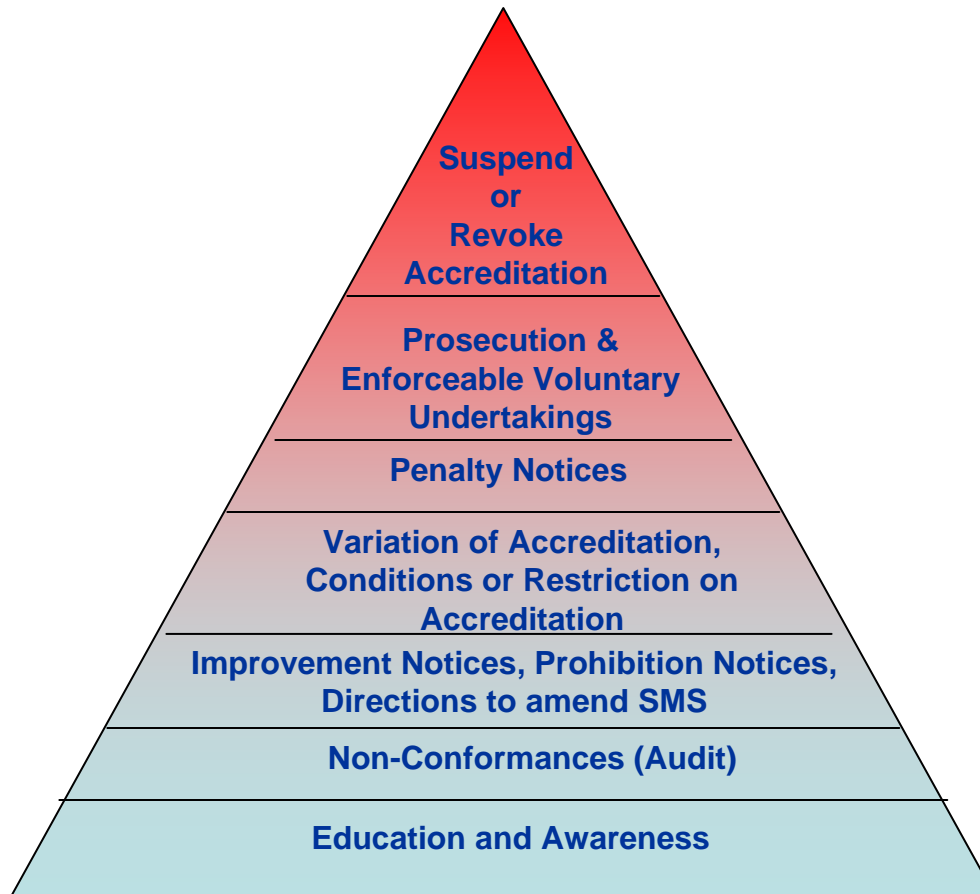


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# Compliance & enforcement (2)



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# Compliance & enforcement (3)

- ITSRR Policy on Compliance & Prosecution
- ITSRR Policy on Managing Compliance Through Advice, Education & Training
- ITSRR Policy on Managing Compliance Through Audit
- ITSRR Policy on Managing Compliance Through Inspections



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# Compliance & enforcement (4)

- ITSRR Policy on Managing Compliance Through Investigations
- ITSRR Policy on Enforceable Voluntary Undertakings
- ITSRR Policy on Suspending or Revoking Accreditation



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# Rail Safety Act & OHS Act

- NSW Occupational Health and Safety (OHS) law continues to apply to NSW rail operators, including in relation to duties around workplace safety.
- If there is any overlap or conflict between the OHS provisions and the Rail Safety provisions, the OHS legislation will apply.
- MoU in place with WorkCover to ensure the most appropriate agency leads any investigation into breaches of safety obligations that overlap OHS legislation.



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# Website resources

- Fact sheets
- Legislation
- Guidelines
- Policies



The screenshot shows a Microsoft Internet Explorer browser window displaying the website for the Independent Transport Safety and Reliability Regulator. The address bar shows the URL: <http://www.transportregulator.nsw.gov.au/publications/facts.html>. The website header includes the New South Wales Government logo and the text "Independent Transport Safety and Reliability Regulator" and "safe and reliable transport in New South Wales". The main content area is titled "Fact Sheets" and is divided into sections for Rail, Bus, and Ferry. The Rail section includes text about requirements under the rail safety legislation and issues of interest to the rail industry, and mentions the Rail Safety Act 2008. The Bus section mentions the Ministry of Transport as the main agency responsible for bus regulation. The Ferry section mentions NSW Maritime as the main agency responsible for recreational and commercial vessels. The website also features a search bar and a navigation menu on the left side.



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