

Notification of Change Guideline for the Australian Rail Industry

Rail Safety Regulators' Panel National Guidance

This guidance has been developed by the Rail Safety Regulators' Panel for rail safety regulators, rail industry stakeholders and others to support consistent interpretation and application of the national model rail safety legislation. The use of this Guidance material is not mandatory. Rail safety regulators may publish appendices to this guidance to provide information about local variations to the national model rail safety legislation which apply in a particular state or territory.



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Foreword

The Rail Safety Regulators' Panel (RSRP) consists of the Rail Safety Regulators from all States and the Northern Territory of Australia and New Zealand.

The key role of the RSRP is to provide advice on rail safety regulatory issues to help enhance safety and regulatory outcomes and work collaboratively to facilitate consistent application of the intent of the national model legislation.

Acknowledgements

RSRP Guidance material is developed through a collaborative process between jurisdictions and industry.

Disclaimer

This publication contains information regarding rail safety. It identifies references to possible obligations under the national model rail safety legislation. To ensure compliance with legal obligations reference must be made to the appropriate Acts that operate in the relevant jurisdiction. When reading this publication reference should always be made to the latest laws. Information on the latest laws can be checked on the relevant jurisdiction's website or via the links provided within this website.

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1. Introduction

This guideline outlines the legislative requirements and associated process for accredited Rail Transport Operators (operators) in regard to advising Rail Safety Regulators (regulators) of Notification of Change(s), as reflected in the national model rail safety legislation (the legislation). The legislation comprises the Rail Safety Bill 2006 and the Rail Safety Regulations 2006.

The legislation is model legislation, and was developed by the National Transport Commission in conjunction with all Australian jurisdictions, the rail industry and rail unions. It is not enacted legislation, but it has legal effect once each jurisdiction enacts its own legislation reproducing the legislation's substantive provisions in accordance with the principles of model legislation.

Model legislation is different to uniform legislation. The latter is legislation where the provisions in separate statutes are essentially the same. In model legislation, however, statutes reflect generally agreed principles and are substantively consistent with the model legislation, but not necessarily identical. The general principles relating to the accreditation of certain operators is one of the agreed principles set out in the legislation.

National guidelines are intended to assist rail safety regulators, industry stakeholders and other relevant parties with duties under the rail safety legislation to understand and comply with the new legislative requirements. National guidelines are administrative documents that are intended to provide practical advice. Guidelines do not extend, add to or modify legislative obligations contained in the Rail Safety Bill 2006 or Rail Safety Regulations 2006.

Depending on the subject matter, guidelines may:

- articulate how rail safety regulators will behave when undertaking their functions to ensure that their processes are

transparent to the duty holders (e.g. *National Guideline for Compliance and Enforcement for Rail Safety*);

- provide nationally consistent and/or integrated processes by which rail safety regulators will make decisions (e.g. *National Guideline for Uniform Administration of Accreditation*); or
- assist duty holders with the interpretation of legislative provisions and provide practical guidance for satisfying these requirements (e.g. *National Guideline for Accreditation of Rail Transport Operators*, *National Guideline for the Requirements of a Rail Safety Management System*).

National guidelines impose no legal duties or requirements. Failure to comply with a national guideline does not give rise to any civil or criminal liability. Where actions or outcomes are described as being mandatory in the guidelines, this is because those actions or outcomes reflect provisions in the Rail Safety Bill 2006 or Rail Safety Regulations 2006.

The advice provided in the national guidelines has been expressed in general terms. Operators and other duty holders should not assume that the advice and any examples provided automatically apply to the operating conditions and environmental circumstances of their railway operations. They should be used as a guide only.

In regard to the content of this guideline, every attempt has been made to provide inter-jurisdictional consistency for notification of change and variation of accreditation requirements. Nothing in this document limits how individual regulators may interpret and apply the specific legislation ultimately enacted in their jurisdiction. This guideline does not replace that legislation, and if there is any inconsistency between this guideline and rail safety legislation, the legislation prevails. Rail industry participants are strongly advised to read the rail safety legislation in their jurisdiction to ensure they know what legal obligations apply to them.

This document will be reviewed and amended from time to time to take into account amendments to legislation, feedback from industry as to its usefulness, and changes which the regulators consider desirable.

Responsibility for the granting and ongoing monitoring of accreditation of operators in each State and Territory rests with local regulators. Each regulator has its own office and staff. The contact details for each regulator are set out in section 5 of the guideline. The operators and potential applicants for accreditation are encouraged to contact their local regulator to discuss accreditation issues generally, as well as concerns or questions they have about the requirements of rail safety legislation.

The regulators or their representatives meet regularly as the Rail Safety Regulators' Panel (the panel). The panel also includes representatives from New Zealand. More information about the panel can be found at www.rsrp.asn.au

1.1 Purpose

The purpose of this guideline is to provide accredited operators with advice regarding requirements for the submission of Notification of Change advice.

Difference between 'notification of change' and 'variation of accreditation'

If the proposed change(s) is within the scope and nature of the accreditation, the operator is not required to seek permission from the regulator. Operators however are required to notify regulators in those jurisdictions where accreditation is held of proposed changes to railway operations for which they are permitted to undertake.

Where the proposed change is not within the scope and nature of the 'accreditation' the operator is required to seek the approval of the applicable rail safety regulator(s) to vary its accreditation. The process for applying for a variation to accreditation is detailed in the National Rail Safety Guideline 'Uniform Administration and Accreditation'.

The content of this guideline has been based on the national model rail safety legislation. Stakeholders are encouraged to review and adhere to the rail safety legislation specific to each jurisdiction where accreditation has been granted or sought.

1.2 Key terms

The following key terms are used in this document and defined as followed:

Rail Safety Regulator

- the regulator

Principal Rail Safety Regulator

- the principal regulator

Lead Rail Safety Regulator

- the lead regulator

Rail Transport Operator

- the operator

Rail Safety Regulators' Panel

- the panel

National Model Legislation

- the legislation

National Model Rail Safety Bill 2006

- the Bill

National Model Rail Safety Regulations 2006

- the Regulations

Safety Management System

- SMS

Principal Rail Safety Regulator

The Principal Rail Safety Regulator (the principal regulator) for a particular operator is the regulator of the jurisdiction in which the operator is principally based, typically taken to be the jurisdiction in which the corporate management of the SMS is undertaken and/or administered.

Where considered necessary, the principal regulator can be determined by agreement by the panel. Other factors that may influence the decision on the principal regulator include where the operator was first granted accreditation or where the majority of the operator's railway operations are undertaken.

Lead Regulator

As stated above, usually the principal regulator will be responsible for administration of notification of change advice. However, for those operators that conduct railway operations in multiple jurisdictions and the proposed change is to apply across the multiple jurisdictions, it is not mandatory that the principal regulator undertake these duties. If desired, the affected regulators may wish to appoint one of the other affected regulators as the lead regulator who will undertake the administrative duties associated with the submission of notification of change advice. For those operators conducting railway operations in multiple jurisdictions and where a proposed change is not to be implemented in the jurisdiction where the principal regulator is located, a lead regulator should be appointed.

2. Who is this guideline for?

This guideline is intended for persons who are accredited, as an operator (rail infrastructure manager or a rolling stock operator) in one or more Australian jurisdictions. 'Person' can mean any legal entity, for example, an individual or a body corporate. A body corporate is any body that has been incorporated and includes a private company, a public company, an incorporated association and a body deemed by statute to be a body corporate.

- A rail infrastructure manager means a person with effective management and control of the rail infrastructure of a railway whether or not he or she owns it or has a statutory or contractual right to use, control or provide access to it.
- A rolling stock operator means a person with effective management and control of the operation or movement of rolling stock on a railway's rail infrastructure.

Collectively, rail infrastructure managers and rolling stock operators are referred to as rail transport operators, which for the purpose of this guideline are defined as 'operators' as specified at section 1.2.

3. Legislative requirements

Appendix A provides a detailed list of the key legislation provisions regarding notification of change.

4. Notification of change

4.1 When is notification of change advice required?

Clause 38 of the Bill provides for an accreditation to be subject to conditions or restrictions which are prescribed in the Regulations. Regulation 6 contains the prescribed conditions and restrictions. Regulation 6(1)(c) prescribes a condition that requires an operator to notify the regulator in writing of certain proposed decisions, events or changes, including the timeframes within which they must be notified.

It is important to note that, providing the change is within the scope and nature of the operator's accreditation as outlined in the Notice of Accreditation, these prescribed changes (and any other changes that are within the scope and nature of accreditation) do not require the approval of the regulator and do not require nor trigger the need to apply for a variation to accreditation. Notification of these changes is not intended to be a holding point in a project nor a point where the operator must await approval or permission from the regulator to continue the implementation of the change. However, notification affords the regulator an opportunity to review the proposed change advice submission which may result in the regulator requiring further information or undertake an audit or inspection to be satisfied that the change and its impact on railway operations is within the scope and nature of the operator's accreditation. The regulator may also monitor the implementation of the change and/or review it at a subsequent audit/inspection.

Under the legislation, operators are required to notify regulators, in those jurisdictions where accreditation is held, of prescribed proposed changes to railway operations for which they are permitted to undertake. The operator's Notice of Accreditation details what railway operations the operator is permitted to undertake, as well as details of any restrictions or conditions on those accredited operations imposed by the regulator. The submission of notification of change advice is applicable if the proposed change is within the scope and nature of the railway operations an operator is permitted to undertake and does not conflict with any conditions or restrictions of accreditation.

Provided below in section 4.2 are the requirements from the Regulations (r.6(1)(c)) regarding what requires the submission of notification of change advice and when the advice must be submitted to the regulator(s).

If an operator is in any doubt whether the proposed change is or is not within the scope and nature of railway operations it is permitted to perform, it is encouraged to contact the appropriate regulator.

Unless otherwise specified by the applicable regulator, an operator may submit notification of change advice to the regulator either on a form developed by the operator or on the sample form (Appendix B).

4.2 Changes that necessitate submission of notification of change advice in accordance with regulation 6(1)(c)

The matters prescribed in the Regulations requiring the submission of notification of change advice are detailed on the following page.

Decision, event or change	When notification must be given
1. A decision to design or construct, or to commission the design or construction of, rolling stock or new railway tracks.	As soon as is reasonably practicable after the decision is made.
2. The introduction into service of rolling stock of a type not previously operated by the operator, or the re-introduction into service of rolling stock not currently operated by the operator.	At least 28 days before the date the operator intends to introduce or re-introduce the rolling stock into service.
3. A change to a safety critical element of existing rolling stock.	At least 28 days before the date the operator intends to bring the change into operation.
4. A change to one or more of the classes of rail infrastructure used in the operator's accredited operations.	At least 28 days before the date the operator intends to introduce the new class of rail infrastructure into service.
5. A change to a safety standard for the design of rail infrastructure or rolling stock.	At least 28 days before the date the operator intends to adopt the change.
6. The decision to adopt a new safety standard for the design of rail infrastructure or rolling stock.	At least 28 days before the date the operator intends to adopt the new standard.
7. A change to the frequency or procedures for the inspection or maintenance of railway infrastructure or rolling stock.	At least 28 days before the date the operator intends to bring the change into effect.
8. A change to any safeworking system rule or procedure relating to the conduct of the operator's railway operations.	At least 28 days before the date the operator intends to bring the change into effect.
9. A decision to introduce a new safeworking system rule or procedure relating to the conduct of the operator's railway operations.	As soon as is reasonably practicable after the decision is made.
10. The replacement of the person nominated in the safety management system as the contact person for dealing with queries in relation to the safety management system of the operator with another person.	As soon as is reasonably practicable after it is known that the replacement will occur.

4.3 Review of notification of change advice

Contingent that the proposed change is within the existing scope and nature of an operator's accreditation, the process of notifying affected regulators is not complex. On receipt of a notification the regulators do have the discretion, however, to take other action as deemed appropriate, which may include, but is not limited to:

- seeking more information;
- discussion with the operator clarifying the proposed change;
- site inspection; and/or
- reviewing the change at the next scheduled audit.

If the proposed change is outside of the scope and nature of railway operations an operator is permitted to undertake, an application for a variation of accreditation is required. For example, an operator will be accredited to conduct railway operations within a defined geographic area. If the operator wishes to undertake railway operations outside of the geographic region it is accredited to operate within, it must apply to the regulator in the affected jurisdiction for a variation of accreditation.

4.4 Accreditation held in multiple jurisdictions

Regarding those operators that hold accreditation and conduct railway operations in multiple jurisdictions, they must notify the regulators of a proposed change to its railway operations in those jurisdictions where the change is to be applied. When a notification is received from an operator that operates in multiple jurisdictions, and the change is to be applied in multiple jurisdictions, the affected regulators will contact each other, where appropriate, and arrange to coordinate any subsequent regulatory actions.

Before an operator submits a notification of change, it is encouraged to review the specifics of its Notice of Accreditation to be confident that the proposed change is **not** outside of the scope and nature of its

accreditation. For those operators that operate across multiple jurisdictions, it is important to confirm that there aren't conditions or restrictions specific to an individual jurisdiction. If a condition or restriction exists that would preclude an operator from implementing a proposed change, the operator would be required to apply to the applicable regulator for variation of a condition or restriction; for further information regarding variations of accreditation, refer to the Australian Transport Council approved National Rail Safety Guideline '*Uniform Administration and Accreditation*'. If an operator is in any doubt about whether a proposed change is within the scope and nature of its accreditation, it should contact the appropriate regulator and discuss the proposed change. Usually the principal regulator will coordinate cross jurisdictional communication and administrative functions in relation to notification of change advice. However, the affected regulators may wish to consider appointing one of the other affected regulators as the lead regulator, similar to the process for considering applications for variation of accreditation as detailed in the '*Uniform Administration and Accreditation*' Guideline.

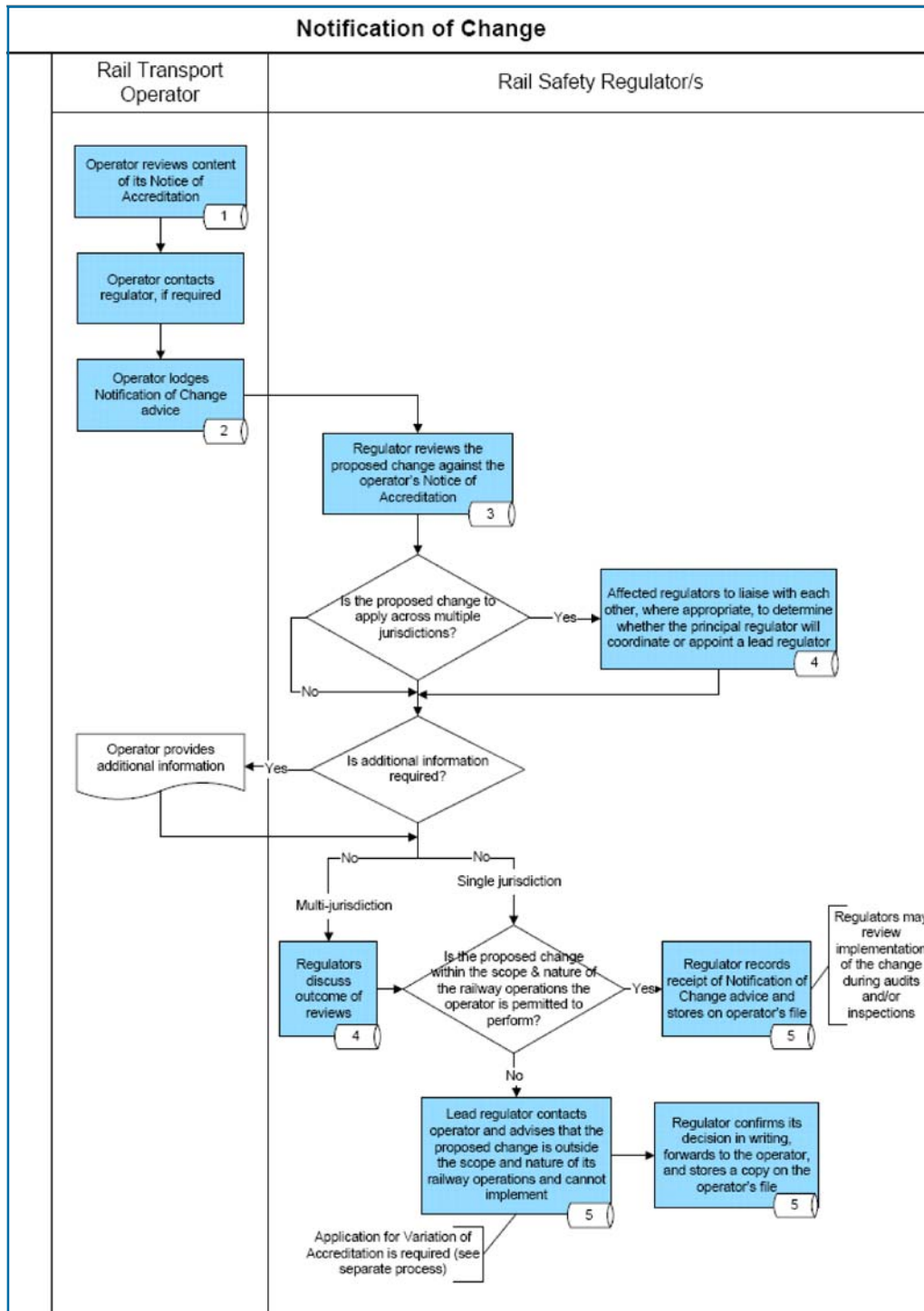
The lead regulator will be responsible for managing all administrative functions in relation to notification of change advice such as being the primary contact for the operator, and arranging teleconferences with other affected regulators. While joint consideration of notification of change advice should be undertaken, each regulator however still remains obliged to satisfy themselves that the applicant's proposed change is within the scope and nature of the railway operations it is permitted to undertake in the jurisdiction. This obligation cannot be undertaken by either the principal or lead regulator from another jurisdiction or a cross-jurisdictional committee.

If a regulator has assessed that a proposed change(s) is outside of the scope and nature of the railway operations that an operator is permitted to perform, the regulator in question will liaise with other affected regulators before a response is finalised.

Regulators will work collegiately and make every effort to provide a consistent outcome to operators. If after consulting with other regulators, a regulator maintains that a proposed change is outside the scope and nature of the operator's railway operations, the operator will be contacted by the affected regulator and the outcome

discussed. Ultimately in these situations, operators will be required to submit an application for variation of accreditation. The affected regulator will formalise the outcome in writing explaining its decision to the operator, including forwarding a copy of the response, at the same time, to other affected regulators.

4.5 General steps in submission and review of notification of change advice



4.6 Business process for submission and review of notification of change advice

The column on the left sets out the steps to take regarding notification of change advice. The column on the right provides details of the process that will be followed including relevant references to the Bill, Regulations and guidelines relating to those steps.

Step	References
<p>Step 1</p> <p>The operator and regulator determines if notification of change advice required</p>	<p>The operator reviews the content and schedules of the current Notice of Accreditation to determine whether the proposed change is likely to be within the scope and nature of railway operations it is permitted to perform under its accreditation. The operator is to confirm that there are no conditions or restrictions which may affect the proposed change.</p> <p>If in doubt, the operator is encouraged to contact the regulator to discuss the proposed change in comparison against the scope and nature of railway operations it is permitted to perform under its accreditation, as specified in its Notice of Accreditation. The regulator will be able to indicate whether the proposed change is or is not likely to be within the scope and nature of the operator’s railway operations.</p> <p>If the regulator considers that the proposed change is outside of the scope and nature of railway operations permitted, it will advise the operator that an application for a variation of accreditation is required (refer to the Business process for submission and assessment of applications for variation of accreditation included in the National Rail Safety Guideline ‘Uniform Administration and Accreditation’).</p> <p>Alternatively, the regulator will advise that the submission of notification of change advice is required.</p>
<p>Step 2</p> <p>The operator submits notification of change advice</p>	<p>Clause 38 of the Bill provides that accreditation is subject to any conditions or restrictions imposed by a regulator as a condition of accreditation.</p> <p>Regulation 6(1)(c) requires an operator to notify the regulator in writing of any of the proposed decisions, proposed events or changes, detailed in that section and within the stated applicable timeframe. If the proposed change is to be applied in multiple jurisdictions, the operator is required to submit the notification of change advice to all affected regulators.</p> <p>The operator is expected to follow the management of change procedures as outlined in its SMS when developing and implementing the proposed change.</p> <p>Unless otherwise specified by the applicable regulator, an operator may submit notification of change advice to the regulator either on a form developed by the operator or on the sample form (Appendix B).</p>

Step	References
<p>Step 3</p> <p>The regulator to review notification of change advice</p>	<p>Regulators will review the operator’s notification of change advice against the scope and nature of its railway operations as specified in its notice of accreditation and determine whether the proposed change is or is not within the scope and nature of its railway operations in that jurisdiction. The regulators may:</p> <ul style="list-style-type: none"> ● request additional information; ● undertake inspection and/or ● undertake audit. <p>These resultant actions may assist in determining whether the proposed change is within the scope and nature of the operator’s railway operations.</p> <p>The regulators may skip to Step 5 if the proposed change is specific to one jurisdiction.</p>
<p>Step 4</p> <p>The regulators to liaise, where appropriate.</p> <p>Discuss the outcome from the review of the operator’s scope and nature of railway operations as specified in its Notice of Accreditation, specific to each jurisdiction</p>	<p>Where a proposed change applies across multiple jurisdictions, the principal or lead regulator, where appropriate, will arrange for all affected regulators to discuss the outcome of each other’s review of the operator’s Notice of Accreditation.</p> <p>Usually the principal regulator will coordinate cross jurisdictional communication and administrative functions in relation to notification of change advice. However, the affected regulators may wish to consider appointing one of the regulators as the ‘lead regulator’ which will coordinate cross-jurisdictional communication and administrative functions in relation to notification of change advice. Additionally, a lead regulator should be appointed in those situations where a proposed change is not to be implemented in the jurisdiction where the principal regulator is located.</p> <p>Liaison between regulators should occur in the most efficient manner, (for example, via email or teleconference). In this way affected regulators can discuss the proposed determination and any related issues together at the same time.</p> <p>While joint consideration of notification of change advice may be undertaken, each regulator however still remains obliged to satisfy itself that the applicant’s proposed change is within the scope and nature of the railway operations it is permitted to undertake in the jurisdiction. This obligation cannot be undertaken by either the principal or lead regulator or a cross-jurisdictional committee.</p>

Step	References
<p>Step 5</p> <p>Determination of whether the proposed change is within the scope and nature of operation's the operator is permitted to perform</p>	<p>Unless the regulator affirms that the proposed change is outside of the scope and nature of permitted railway operations, the notification of change advice will be recorded and stored on the operator's accreditation file. Where the proposed change is to apply across multiple jurisdictions, a copy of the notification of change advice will be recorded on the operator's file in each affected jurisdiction. It will be at the discretion of each regulator as to whether or not the receipt of notification of change advice is acknowledged. The regulator(s) may review implementation of the change during audits and/or inspections.</p> <p>If a regulator affirms that proposed change is outside of the scope and nature of railway operations it is permitted to perform, the principal or lead regulator will contact the operator and advise that the proposed change cannot be implemented and direct it to submit an application for variation of accreditation for the proposed change. The principal or lead regulator must make a record of its determination and details of when and whom the advice was initially provided to and writing to the operator confirming its determination. The principal or lead regulator is responsible for making the record which must include the determination and details from each affected regulator. The principal or lead regulator is responsible for providing a copy of all related documentation, including the file note, to all affected regulators for inclusion on the operator's accreditation file.</p>

5 Rail Safety Regulators' contact details

Specific queries relevant to a particular State or Territory can be obtained directly from the applicable regulator.

New South Wales: Independent Transport Safety and Reliability Regulator – www.transportregulator.nsw.gov.au

Northern Territory: Department of Planning and Infrastructure, Rail Safety – transport.dpi@nt.gov.au

Queensland: Department of Transport and Main Roads – www.transport.qld.gov.au/Home/Safety/Rail

South Australia: Department for Transport, Energy and Infrastructure – www.transport.sa.gov.au/safety/rail

Tasmania: Department of Infrastructure, Energy and Resources – www.dier.tas.gov.au

Victoria: Public Transport Safety Victoria – www.ptsv.vic.gov.au

Western Australia: Department of Transport – www.dpi.wa.gov.au/rail

Appendix A – Legislative requirements

National Model Legislative provisions applicable to Notification of Change

National Model Rail Safety Bill 2006 – Associated provisions	
Provision No.	Provision Title
cl.30	Purpose of accreditation
cl.31	Accreditation required for railway operations
cl.32	Purpose for which accreditation may be granted
cl.33	Application for accreditation
cl.34	What applicant for accreditation must demonstrate
cl.35	Rail Safety Regulator may direct applicants to co-ordinate and co-operate in applications
cl.36	Co-ordination between Rail Safety Regulators
cl.37	Determination of application
cl.38	Prescribed conditions and restrictions
cl.39	Penalty for breach of condition or restriction
cl.47	Application for variation of accreditation
cl.48	Where application related to co-operative railway operations or operations in another jurisdiction
cl.49	Determination of application for variation
cl.50	Prescribed conditions and restrictions
cl.52	Variation of conditions and restrictions
cl.53	Rail Safety Regulator may make changes to conditions or restrictions
cl.72	Rail transport operators to provide information
National Model Rail Safety Regulations 2006	
r. 6	Prescribed conditions of, or restrictions on, accreditation
National Model Rail Safety Regulations 2006 – Associated provisions	
r.3	Application for accreditation
r.4	What the applicant must demonstrate
r.5	Prescribed details of accredited person

Appendix B – Notification of Change

Sample advice form

Office use only

Change Advice No: _____

APPLICANT DETAILS	
1 Person or company notifying a proposed change	
Name of applicant:	
Registered office address:	
Postcode:	
Postal address:	
Postcode:	
ACN/ABN:	
Telephone:	Facsimile:
Email:	Website:
2 Details of person(s) responsible for the notification	
Name:	Name:
Position:	Position:
Telephone:	Telephone:
Facsimile:	Facsimile:
Email:	Email:
EXISTING RAIL ACCREDITATION	
Rail Infrastructure Manager <input type="checkbox"/>	Rolling Stock Operator <input type="checkbox"/>
Is the rail transport operator currently accredited in another State or Territory?	
No <input type="checkbox"/>	
Yes <input type="checkbox"/>	
If Yes, please specify which jurisdictions:	
Does the proposed change impact on any other jurisdiction?	
No <input type="checkbox"/>	
Yes <input type="checkbox"/>	
If Yes, please specify which jurisdictions:	

Appendix B – Notification of Change (continued)

Office use only			
Was contact made with the rail safety regulator prior to lodgement of the proposed notification of change advice?			
No <input type="checkbox"/>			
Yes <input type="checkbox"/>			
DETAILS OF THE PROPOSED CHANGE WITHIN EXISTING ACCREDITATION			
3 Summary (include relevant details of existing restrictions and conditions)			
4 Complete description of the proposed change to railway operations permitted under accreditation			
5 Risk Mitigation			
	Yes	No	N/A
Risk assessment of proposed change conducted			
Risk control measures in place to manage risks			
SIGNATURE			
Name:	1.	2.	
Position(s):		2	
Date:			
Signature:			

Appendix C – Rail Transport Operator Notification of Change checklist

**CHECKLIST FOR APPLICATION FOR VARIATION OF ACCREDITATION or
NOTIFICATION OF CHANGE ADVICE SUBMISSION**

Rail Transport Operator reviewed applicable legislation:

Rail Transport Operator reviewed its Notice of Accreditation and determines whether the proposed change requires the submission of either a variation of accreditation application or notification of change advice. (If an application for Variation of Accreditation is required, refer to the National Rail Safety Guideline '*Uniform Administration and Accreditation*'):

If required, Rail Transport Operator contacted applicable regulator to discuss proposed change:

Consultation conducted, where applicable, with stakeholders:

Advice lodged: