

Accreditation Policy



INDEPENDENT
TRANSPORT
SAFETY AND
RELIABILITY
REGULATOR

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1. Purpose

The NSW Independent Transport Safety and Reliability Regulator (ITSRR) has the principal objective of facilitating the safe operation of transport services in New South Wales. This is achieved through regulation of the rail industry in accordance with the *Rail Safety Act 2008* and supporting regulations, guidelines and policies, and promotion of safety as a fundamental objective in the delivery of transport services.

Under the Act, a person must not carry out, or cause or permit to be carried out, any railway operations in NSW unless the person is a rail transport operator or does so for or on behalf of a rail transport operator.

Rail transport operators who undertake railway operations in NSW must be accredited by the Independent Transport Safety and Reliability Regulator (ITSRR) unless they are exempt from accreditation.

The purpose of this policy is to provide information about:

- the purpose of accreditation;
- making an application for accreditation; and
- determination of applications for accreditation.

2. Scope

This policy applies to the accreditation or exemption from accreditation of rail transport operators conducting or intending to conduct railway operations in NSW.

This policy applies to rail transport operators, and the ITSRR and its officers.

3. Definitions

Act means the *Rail Safety Act 2008* (NSW).

private siding has the meaning given to it in the Act.

rail infrastructure manager has the meaning given to it in the Act.

rail transport operator has the meaning given to it in the Act.

railway operations has the meaning given to it in the Act.

rolling stock operator has the meaning given to it in the Act.

Regulations means the *Rail Safety (General) Regulation 2008* (NSW).

4. Legislative framework

Part 3 of the Act provides for accreditation of rail transport operators.

Division 1 of Part 3 of the Act sets out the purpose of accreditation and requires railway operations to be undertaken by or on behalf of a rail transport operator who is accredited or exempt from accreditation.

Division 2 of Part 3 of the Act relates to the making of applications for accreditation by rail transport operators and the determination of applications for accreditation by the ITSRR.

Division 3 of Part 3 of the Act sets out requirements relating to annual accreditation and late payment fees payable by accredited rail transport operators. Division 3 of Part 3

also sets out requirements for documents which must be made available for public inspection by rail transport operators.

Division 4 of Part 3 of the Act relates to surrender, revocation and variation of accreditation.

Division 5 of Part 3 of the Act relates to private sidings.

5. Policy statement/s

5.1 Purpose of accreditation

The ITSRR accredits rail transport operators to attest that they have demonstrated the competence and capacity to manage the risks to safety associated with the railway operations for which they are accredited.

It is an offence for a person to carry out railway operations unless the person is:

- a rail transport operator who is accredited or exempt from accreditation,
- carrying out railway operations for or on behalf of a rail transport operator who is accredited or exempt from accreditation, or
- otherwise exempt.

5.2 Making an application for accreditation

Rail transport operators must apply for accreditation before they commence undertaking railway operations. Applicants for accreditation should discuss their application and the application process with the ITSRR before they lodge an application. This helps to reduce delays due to incomplete or inadequate applications.

To become accredited a rail transport operator must submit a completed application form, supporting information and application fee to the ITSRR. Information on applying for accreditation can be found in:

- *National Rail Safety Guideline for Accreditation of Rail Transport Operators*; and
- *Application for Accreditation Form*.

The application fee for heritage operators is \$1,000. The application fee for all other rail transport operators is \$10,000. Application fees will generally not be waived.

Further information on application fees can be found in the *ITSRR Application, Annual Accreditation and Late Payment Fees Policy*.

The ITSRR may waive some or all accreditation application requirements if a rail transport operator is:

- acquiring railway operations from another accredited rail transport operator or
- already accredited as a rail transport operator in another state or territory.

Further information can be found in the *ITSRR Waiving Compliance with Accreditation Application Requirements Policy*.

5.3 Determination of applications for accreditation

The time taken to process an accreditation application depends largely on the scope of railway operations and the completeness of the application. The ITSRR is required by legislation to determine an application for accreditation within 6 month of receiving an application, or within 6 months of receiving any additional information requested from the applicant.

The ITSRR will assess an application for accreditation and conduct an audit to determine whether the applicant meets the relevant requirements. Where an applicant is accredited or is seeking accreditation under a corresponding law of one or more other jurisdictions, the application for accreditation will be assessed in accordance with the *National Rail Safety Guideline for the Uniform Administration of Accreditation*.

For a rail transport operator to be granted accreditation, the ITSRR must be satisfied that the person:

- has the competence and capacity to manage risks to safety associated with the railway operations for which accreditation is sought;
- has the competence and capacity to implement its safety management system;
- has undertaken consultation in relation to its safety management system;
- has the financial capacity or public risk insurance arrangements to meet reasonable potential accident liabilities; and
- has or can comply with any other legislative requirements.

After assessing the application for accreditation, the ITSRR may grant accreditation with or without any conditions or restrictions, or refuse the application for accreditation. A notice refusing an application of accreditation, or imposing conditions or restrictions on a granted accreditation must include the reasons for the decision to refuse or impose conditions or restrictions and information about the right of review under the Act.

5.4 Review of accreditation decisions

Applicants for accreditation who are not satisfied with the outcome of their application are entitled to a review of the decision by the ITSRR and, if still not satisfied, the Administrative Decisions Tribunal (ADT).

Applications for review of accreditation decisions must be received by the ITSRR within 28 days of when the decision was made.

Reviewable decisions relating to accreditation include:

- Extension of the period to determine an application for accreditation or variation of accreditation (s42, s56)
- A refusal to grant accreditation (s42(1))
- Imposition of conditions or restrictions on an accreditation (s42(1))
- Variation of accreditation subject to conditions or restrictions or refusal to grant variation of an accreditation (s56(1))
- Refusal to grant variation of a condition or restriction on an accreditation (s57(3))
- Variation or revocation of a condition or restriction, or imposition of a new condition or restriction on an accreditation (s58(1))
- Suspension or revocation of accreditation (s53)
- Immediate suspension of accreditation or an extension of immediate suspension of accreditation (s54, s54(1))

Where an application for review of the above types of decisions is received, the ITSRR must, within 14 days, provide the applicant with a written notice setting out:

- the ITSRR's decision as to whether the reviewable decision is affirmed, varied or set aside and substituted with an alternate decision
- the reasons for the decision, and
- the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based.

If an applicant for review is still not satisfied with the outcome after being notified of the ITSRR's decision, or if the ITSRR has not notified the applicant of a decision in the required time frame and manner, the applicant for review may apply to the ADT for review of the decision.

Further information on applying to the ADT for a review of a government decision is available at the ADT website www.lawlink.nsw.gov.au/adt .

An application for review of a decision does not affect the operation of the reviewable decision or prevent the taking of any action to implement it, unless the operation of the decision is stayed by the ITSRR pending the determination of the review.

The ITSRR may take a decision to stay the operation of the decision on the ITSRR's own initiative or on application for a stay of the decision by the applicant for review.

The ITSRR must make a decision on an application for a stay within 24 hours after the application is made. If the ITSRR fails to make a decision to stay within this period the ITSRR is taken to have granted a stay.

The ITSRR may attach any conditions to a stay of the operation of a reviewable decision that the ITSRR considers appropriate.

5.5 Annual accreditation fees

Accredited rail transport operators are required to pay annual accreditation fees which are prescribed in the Regulations. Additional fees may be imposed for late payment of annual accreditation fees. Information about annual accreditation and late payment fees can be found in the *ITSRR Application, Annual Accreditation and Late Payment Fees Policy*.

5.6 Inspection of notices of accreditation or exemption

An accredited rail transport operators must make its notice of accreditation or exemption available for inspection:

- at the operator's principal office in NSW during ordinary business hours if the accredited person is a corporate body.
- at the operator's principal place of business, or if the ITSRR approves at another place and time, if the accredited person is not a corporate body.

5.7 Surrender, revocation and variation of accreditation

An accredited rail transport operator may surrender its accreditation by notifying the ITSRR in writing and at least 28 days before the proposed surrender of the operator's

intention to surrender its accreditation and the proposed arrangements in relation to the cessation of railway operations.

The ITSRR may take action to suspend or revoke a rail transport operator's accreditation, or part of that accreditation, where the accredited person:

- can no longer satisfy the requirements for, or the conditions or restrictions of, that accreditation;
- has not managed the railway operations for which the accreditation was granted for at least the preceding 12 months; or
- contravenes the Act or the Regulations.

In addition, the ITSRR may suspend whole or part of a rail transport operator's accreditation for up to six weeks where the ITSRR considers there is, or would be, an immediate and serious risk to safety unless the accreditation is suspended immediately.

The *ITSRR Suspending or Revoking Accreditation Policy* details the ITSRR's approach to implementing its powers to suspend or revoke accreditations, or parts of accreditations.

An accredited rail transport operator who propose to make a change which is outside the scope and nature of the railway operations covered by their notice of accreditation must apply to the ITSRR for a variation to their accreditation. Information on applying for variation to accreditation can be found in:

- *National Rail Safety Guideline for Accreditation of Rail Transport Operators*; and
- *Application for Accreditation Form*.

5.8 Exemptions from accreditation

Rail infrastructure managers of private sidings are automatically exempt from the requirement to be accredited. However, private sidings must be registered with the ITSRR and rail infrastructure managers of private sidings must make their notices of registration available for public inspection.

Further information on the obligations of rail infrastructure managers of private sidings can be found on the ITSRR website.

All other rail transport operators, including rolling stock operators on private sidings, must be accredited or exempt from accreditation.

6. Supporting documentation

- *National Rail Safety Guideline for Accreditation of Rail Transport Operators*
- *National Rail Safety Guideline for the Uniform Administration of Accreditation and NSW Appendix*
- *Application for Accreditation Form*
- *Policy - Waiving Compliance with Accreditation Application Requirements*
- *Policy – Application, Annual Accreditation and Late Payment Fees*
- *Policy – Suspending or revoking accreditation*

7. Approval/review/amendments history

Accreditation Policy				
Amendment/Review No.		Version No.	Amended by	Description

Approved
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 Chief Executive