

Application, Annual Accreditation and Late Payment Fees Policy



INDEPENDENT
TRANSPORT
SAFETY AND
RELIABILITY
REGULATOR

Contents

1. PURPOSE.....	3
2. SCOPE.....	3
3. DEFINITIONS	3
4. LEGISLATIVE FRAMEWORK	3
5. POLICY STATEMENT/S	4
5.1 Introduction.....	4
5.2 Agreements in relation to the payment of accreditation fees	4
5.3 Additional fees for late payment of accreditation fees	5
5.4 Waiver or refund of application fees	5
5.5 Waiver or refund of annual accreditation fees.....	5
5.6 Waiver or refund of late payment fees	6
6. ROLES AND RESPONSIBILITIES	7
7. SUPPORTING DOCUMENTATION	6
8. APPROVAL/REVIEW/AMENDMENTS HISTORY.....	7

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.

The purpose of this policy is to outline circumstances in which ITSRR may:

- make agreements in relation to the payment of annual accreditation fees;
- impose additional fees for late payment of annual accreditation fees; and
- waive or refund application, annual accreditation and/or late payment fees.

2. Scope

In NSW applicants for accreditation are required to pay an application fee which is prescribed in the Regulations. In addition, accredited rail transport operators are required to pay annual accreditation fees which are also prescribed in the Regulations.

The Act allows ITSRR to:

- make agreements in relation to the payment of annual accreditation fees;
- impose additional fees for late payment of annual accreditation fees; and
- waive or refund application, annual accreditation and/or late payment fees.

The application fee and the methodology for calculating annual accreditation fees are set out in the Regulations.

This policy relates to the payment of application fees, annual accreditation fees, additional fees for late payment of annual accreditation fees, and waiver or refund of application, annual accreditation and late payment fees.

The policy is applicable to rail transport operators and to the ITSRR.

3. Definitions

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

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

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

4. Legislative framework

Section 38 of the Act requires an application for accreditation to be accompanied by the application fee prescribed by the Regulations.

Section 46 of the Act requires accredited rail transport operators to pay annual accreditation fees which are prescribed by the Regulations.

Section 48 of the Act allows the ITSRR to make agreements in relation to the payment of annual accreditation fees.

Section 49 of the Act allows the ITSRR to impose additional fees for late payment of annual accreditation fees.

Section 50 of the Act allows the ITSRR to waive or refund the whole or part of any application, annual accreditation or late payment fee.

The Regulations set out the application fee and the method for calculating annual accreditation fees and late payment fees, and specify that annual accreditation fees must be paid on or before 30 September in each year unless the ITSRR otherwise approves in writing.

5. Policy statement/s

5.1 Introduction

Section 38 of the Act requires an application for accreditation to be accompanied by the application fee prescribed by the Regulations. All applicants for accreditation are required to pay the relevant application fee at the time they submit their application for accreditation. The application fee covers a portion of the costs which the ITSRR incurs in assessing the application for accreditation.

Section 46 of the Act requires accredited rail transport operators to pay annual accreditation fees which are prescribed by the Regulations. Annual accreditation fees are payable by 30 September each year. The annual accreditation fee covers three months in arrears (July to September) and nine months in advance (October to June).

Annual accreditation fees are a predictable expense of conducting railway operations. The ITSRR expects that, in accordance with good business practice, accredited rail transport operators will allow for these expenses within annual budgets and remit payment by the due date.

5.2 Agreements in relation to the payment of accreditation fees

Section 48 of the Act allows the ITSRR to make agreements in relation to the payment of annual accreditation fees including agreements for accredited rail transport operators to:

- pay annual accreditation fees by instalments; or
- defer payment of annual accreditation fees.

It should be noted that, because of the costs of raising invoices for small amounts, the ITSRR will not enter into agreements for the payment of annual accreditation fees by instalments with heritage operators, and for all other rail transport operators the ITSRR will generally not enter into an agreement for the payment of annual accreditation fees by more than four instalments.

The ITSRR requires accredited rail transport operators wishing to enter into an agreement in relation to the payment of annual accreditation fees to apply in writing to the ITSRR, providing the following information:

- the details of the proposed agreement including the number and timing of instalments, or the proposed date of payment; and
- evidence that the need to enter into an agreement was due to circumstances that could not reasonably have been foreseen or avoided.

The ITSRR will advise accredited rail transport operators in writing as to whether or not it will enter into an agreement in relation to the payment of annual accreditation fees.

5.3 Additional fees for late payment of accreditation fees

Section 49 of the Act allows the ITSRR to impose additional fees for late payment of annual accreditation fees.

The ITSRR expects accredited persons to pay the annual accreditation fee on or before 30 September each year.

Where payment is not received in full by the due date, a late fee of 15 per cent may be charged on the outstanding amount. Where the accredited rail transport operator has paid part of the amount due, late payment fees may be charged on the balance outstanding.

The ITSRR will issue an invoice for the late payment fee.

5.4 Waiver or refund of application fees

Section 50 of the Act allows the ITSRR to waive or refund the whole or part of any application fee. Whether a waiver or refund will be provided will be at the ITSRR's discretion.

The ITSRR will generally not waive the application fee.

The ITSRR will not refund the application fee where an application for accreditation is refused.

The ITSRR may refund the whole or part of the application fee where:

- requirements of Division 2 of Part 3 of the Act are waived because the person is accredited under a corresponding law of one or more other jurisdictions or is a proposed transferee of railway operations;
- the applicant withdraws the application for accreditation before the ITSRR makes a determination under section 42 of the Act.

In determining whether to refund the whole or part of the application fee, the ITSRR will consider the activity undertaken to date to assess the application for accreditation.

5.5 Waiver or refund of annual accreditation fees

Section 50 of the Act allows the ITSRR to waive or refund the whole or part of any annual accreditation fee. Whether a waiver or refund will be provided will be at the ITSRR's discretion.

5.5.1 Accredited rail transport operator not operating

The ITSRR may waive or refund annual accreditation fees of accredited rail transport operators which do not operate in a year.

The ITSRR requires applications for waiver or refund of annual accreditation fees on the basis that the accredited rail transport operator did not operate in a year to be made in writing to the ITSRR.

The ITSRR will advise the accredited rail transport operator in writing as to whether or not annual accreditation fees will be waived or refunded.

5.5.2 Capacity to pay

The ITSRR may waive annual accreditation fees on the basis of capacity to pay.

The ITSRR requires applications for waiver of annual accreditation fees on the basis of capacity to pay to be made in writing to the ITSRR, accompanied by evidence that:

- the inability to pay was due to circumstances that could not reasonably have been foreseen or avoided; and
- the applicant's capacity to pay cannot be improved by alternate payment arrangements, such as deferred payment or payment by instalments.

The ITSRR will advise the accredited rail transport operator in writing as to whether or not annual accreditation fees will be waived.

5.5.3 Surrender of accreditation

If a rail transport operator surrenders accreditation, the ITSRR may refund the whole or part of the annual accreditation fee. In making this decision, the ITSRR will consider the regulatory activity undertaken up to the final date of operations. For example, whether the annual audit has been performed or whether there has been other significant regulatory intervention in relation to that rail transport operator to date during that year.

The ITSRR requires applications for refund of annual accreditation fees on the basis of surrender of accreditation to be made in writing to the ITSRR, accompanied by a declaration of actual freight kilometres, and/or passenger kilometres and/or track under the management of the rail transport operator.

The ITSRR will advise the accredited rail transport operator in writing as to whether or not annual accreditation fees will be refunded.

5.5.4 Accreditation suspended or revoked due to breaches of legislation

Annual accreditation fees will not be refunded where the ITSRR has suspended or revoked an accreditation due to breaches of legislative requirements.

5.6 Waiver or refund of late payment fees

Section 50 of the Act allows the ITSRR to waive or refund the whole or part of any late payment fee. Whether a waiver or refund will be provided will be at the ITSRR's discretion.

The ITSRR requires requests for late payment fees to be waived or refunded to be made to the ITSRR in writing, providing evidence that:

- failure to pay by the due date resulted from matters beyond the accredited rail transport operator's control; and
- the accredited rail transport operator did not have an opportunity to make alternate payment arrangements with the ITSRR prior to the due date.

The ITSRR will advise the accredited rail transport operator in writing as to whether or not late payment fees will be waived or refunded.

6. Roles and responsibilities

Decisions relating to the payment of accreditation and late payment fees may be made by the Executive Director, Corporate Services and Planning.

7. Supporting documentation

- *National Guideline for Accreditation of Rail Transport Operators*
- *Policy – Accreditation*

- *Policy – Suspending or revoking accreditation*

8. Approval/review/amendments history

Amendment/Review No.		Version No.	Amended by	Description

Approved
Carolyn Walsh
Chief Executive