

Exemptions 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.

The purpose of this policy is to outline exemptions which may be granted either a) by regulation, for example, exemptions from the Act or exemptions from accreditation, as provided for in the Act or b) at the discretion of ITSRR as provided for in the Regulations.

2. Scope

The policy sets out the matters which the ITSRR may consider in determining whether to grant exemptions listed in the Regulations, and provides general information about the process for applying to the ITSRR these types of exemptions and the obligations of persons granted such exemptions by the ITSRR. Exemptions which the ITSRR has the discretion to grant are listed in the Regulations and detailed in section 4 below.

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

This policy does not apply to rail infrastructure managers of private sidings who, under section 60 of the Act, are automatically exempt from the requirement to be accredited in relation to railway operations (other than those involving the operation of rolling stock) carried out in the private siding.

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) Regulations 2008* (NSW).

4. Legislative framework

Section 174(3) of the Act allows the Regulations to exempt a person, class of persons, siding, railway, part of a railway or railway operations from all or any of the provisions of the Act or the Regulations.

In addition, the Regulations provide that the ITSRR may grant exemptions from:

- the obligation to consult with a particular person or body about an emergency management plan (clause 7(2));
- the requirement to have conditions of work for certain rail safety workers in accordance with Schedule 2 of the Act (clause 14(1));
- for heritage operators only, some or all of the provisions of Part 3 and section 12 of the Act, and any associated Regulations (clause 45(1));
- for persons who carry out railway operations or cause railway operations to be carried out but who are not rail transport operators and related bodies corporate of

accredited persons, some or all of the provisions of Part 3 of the Act and any associated Regulations (clause 46(1)); and

- train communications systems requirements (clause 47(5)).

5. Policy statements

5.1 Applications for exemptions

An application for an exemption should be made in writing to the Chief Executive of the ITSRR.

Applicants should note that until an exemption is granted they must comply with the legislative requirements.

The ITSRR will generally complete its review of the application and provide a decision to the applicant within 40 business days. The ITSRR may, in some circumstances, require an additional period to assess the application. In such instances, the ITSRR will advise the applicant of the amount of additional time, and any additional information, required.

If the application is approved, the ITSRR will provide advice in writing to the applicant. Such advice will set out any conditions and/or restrictions that are attached to the exemption.

Should the ITSRR decline the application, the applicant will be notified in writing of the reasons.

5.2 Exemptions under section 174(3) of the Act

Applications for exemptions under section 174(3) of the Act that require a regulation to be made, for example exemptions from the Act or exemptions from accreditation, will be considered on a case by case basis. Applicants seeking an exemption from the Act or from accreditation should contact the ITSRR to discuss the process and circumstances in which this might be applicable to them.

5.3 Exemptions under clause 7(2) of the Regulations – Consultation on Emergency Management Plan

Clause 7(2) of the Regulations allows the ITSRR to exempt rail transport operators from the obligation to consult with a particular person or body in relation to their emergency management plans.

In determining whether to grant an exemption to a rail transport operator from the obligation to consult with a particular person or body in relation to its emergency management plan, the ITSRR may consider:

- the scope and nature of the railway operations conducted by the applicant;
- the particular person or persons with whom the applicant wishes to be exempt from consultation;
- the reasons why the applicant wishes to be exempt from the requirement to consult with the particular person or persons; and

- whether an exemption would reduce the effectiveness of the operator's emergency management plan.

5.4 Exemptions under clause 14(1) of the Regulations – Conditions of Work

Clause 14(1) of the Regulations allows the ITSRR to exempt rail transport operators from the requirements of section 20(2) of the Act relating to conditions of work for certain rail safety workers.

In determining whether to grant an exemption to a rail transport operator from the requirements of section 20(2) of the Act, the ITSRR may consider:

- whether the operator has, to the satisfaction of the ITSRR, identified and assessed the major fatigue-related safety risks associated with the operations for which exemption is sought, including any risks associated with any proposed operating standards;
- proposed controls to manage the risks, including operating standards to replace the requirements contained in Schedule 2 of the Act, and the evidence used to develop the operating standards;
- whether the operator has consulted with rail safety workers affected by the exemption in relation to the proposed operating standards;
- the proposed system to monitor and report on the operation of the controls to manage the risks including monitoring of actual hours worked against the operating standards;
- proposed arrangements for auditing and reviewing the system to monitor and report on the operation of the controls to manage the risks; and
- proposed arrangements to ensure that rail safety work is carried out in accordance with clause 14 of the Regulations and with any applicable industrial or other agreement or award.

5.5 Exemptions under clause 45(1) of the Regulations – Heritage Operators

Clause 45(1) of the Regulations allows the ITSRR to exempt heritage operators from some or all of the provisions of Part 3 (accreditation) and section 12 (safety management system) of the Act, and any associated Regulations.

In determining whether to grant an exemption to a heritage operator from some or all of the provisions of Part 3 and section 12 of the Act, and any associated Regulations, the ITSRR may consider:

- the nature and scope of the railway operations conducted by the heritage operator; and
- whether the heritage operator has in place safety management arrangements that are appropriate for the scope and nature of those railway operations including a risk register and relevant operational procedures.

The ITSRR may grant an exemption from some or all of the provisions of Part 3 and section 12 of the Act, and any associated Regulations, where the heritage operator carries out:

- no passenger services; and
- low speed rolling stock operations; and
- movement of rolling stock in daylight hours only; and
- no opposing train movements; and
- operation or movement of rolling stock on infrastructure which is not connected to the mainline; and
- no operation or movement of rolling stock while members of the public are on site.

5.6 Exemptions under clause 46(1) of the Regulations - Accreditation

Clause 46(1) of the Regulations allows the ITSRR to exempt the following persons from some or all of the provisions of Part 3 of the Act and any associated Regulations:

- persons who carry out railway operations or cause railway operations to be carried out but who are not rail transport operators; and
- related bodies corporate of accredited persons.

Part 3 of the Act relates to accreditation of rail transport operators.

Applications for exemption under clause 46(1) of the Regulations will be considered on a case by case basis.

5.7 Exemptions under clause 47(5) of the Regulations – Train Communications

Clause 47(5) of the Regulations allows the ITSRR to exempt rail transport operators from train communications systems requirements set out in clause 47 of the Regulations.

In determining whether to grant an exemption to a rail transport operator from the train communications systems requirements, the ITSRR may consider:

- the scope and nature of railway operations conducted by the rail transport operator;
- the particular train or class of trains in relation to which the exemption is sought; and
- the reasons why the rail transport operator wishes to be exempt from the train communications systems requirements.

5.8 Ongoing obligations of persons granted exemptions and how ITSRR monitors their compliance

If an exemption is granted, it may have conditions and/or restrictions placed upon it by the ITSRR. The ITSRR may conduct inspections to confirm that any conditions or restrictions are being complied with, and that the circumstances under which the exemption was granted still apply.

The granting of an exemption does not excuse a person from complying with

- other relevant provisions of the legislation, such as the general rail safety duties,
- the person's notice of accreditation including any conditions and/or restrictions, or

- improvement notices and/or prohibition notices issued by the ITSRR.

The ITSRR may conduct inspections to determine the person's compliance with the rail safety legislation, their notice of accreditation and any statutory notices.

6. Approval/review/amendments history

Amendment/ Review No	Date	Version No.	Amended by	Description
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Approved
Carolyn Walsh
Chief Executive