

# Suspending or Revoking 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.

The purpose of this policy is to detail the ITSRR's approach to implementing its powers to suspend or revoke accreditations, or parts of accreditations, under the Act.

## 2. Scope

This policy details the circumstances in which the ITSRR may suspend or revoke the accreditation of a rail transport operator under the Act, the factors it considers, and the notification process to affected rail transport operators.

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

This policy should be read in conjunction with the *National Guideline for Compliance and Enforcement for Rail Safety*.

## 3. Definitions

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

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

**rail safety officers** has the meaning given to it in the Act.

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

**Regulations** means the *Rail Safety (General) Regulations 2008* (NSW) and the *Rail Safety (Drug and Alcohol Testing) Regulations 2008* (NSW).

## 4. Legislative framework

The Act sets out the legal requirements for rail transport operators and other persons including:

- a duty to ensure public safety;
- establishing and reviewing safety management systems;
- applying for and complying with accreditation and any conditions or restrictions of that accreditation, except in specific circumstances such as an exemption under s60 (private sidings);

Under s53 of the Act, 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.

Under s54 of the Act, 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.

## **5. Policy statements**

### **5.1 Goals of suspending or revoking accreditation**

The ITSRR aims to support the improvement of rail safety outcomes by working with rail transport operators.

In this context, the ITSRR has the objectives of:

- Educating the rail community about their legislative obligations;
- Taking compliance and enforcement action against those who do not comply with the legislation; and
- Protecting the rail community and the public from those who do not operate in accordance with the mandatory safety obligations.

The purpose of accreditation is to attest that the accredited person has the competence and capacity to manage the risks to safety associated with the rail operations for which accreditation was granted.

The ITSRR regards suspension or revocation of accreditation as a severe penalty.

### **5.2 Reasons for suspending or revoking an accreditation**

The ITSRR exercises its powers of suspension or revocation of accreditation in accordance with s53 and s54 of the Act and the *National Guideline for Compliance and Enforcement for Rail Safety*, and as part of the overall strategic objective of improving rail safety outcomes.

Under s53 of Act the ITSRR may suspend or revoke an accreditation (or part of an accreditation) where the accredited person:

- can no longer satisfy the requirements for, or the conditions or restrictions of, that accreditation including where the accredited person is no longer considered to have the competence and capacity to manage the risks to safety associated with the rail operations for which accreditation was granted;
- 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.

Under s54 of the Act the ITSRR may suspend an accreditation (or part of an accreditation) where there is, or would be, an immediate and serious risk to safety unless the accreditation is immediately suspended. Under s54, the ITSRR may immediately suspend a person's accreditation for a period not exceeding six weeks.

It should be noted that revocation or suspension of part of an accreditation is achieved by the ITSRR initiating a variation of the accreditation and/or the conditions or

restrictions on the accreditation or by imposing new conditions or restrictions on the accreditation.

### **5.3 Who makes the decision?**

Decisions to suspend or revoke an accreditation can be made by the Chief Executive of the ITSRR. This decision is reached after objectively considering and assessing all the facts and issues at hand and ensuring that evidence is collected to substantiate the action under s53 or s54 of the Act.

This process of consideration will generally be conducted following an inspection or investigation and in consultation with:

- rail safety officer(s);
- rail safety officer's manager;
- Director, Rail Safety Regulation; and
- Deputy Executive Director or Executive Director, Transport Safety Regulation.

### **5.4 What does the ITSRR take into consideration?**

The ITSRR acknowledges the role that the rail industry performs in the community and the need to balance continued provision of rail services against the need to protect the safety of the public and the railway system.

The ITSRR acknowledges that the suspension or revocation of an accreditation, or part of an accreditation, may have serious consequences for the rail transport operator and may also have serious adverse 'flow on' effects for employees, the public, dependent businesses and so on.

In making a decision whether or not to take such action, the ITSRR may consider:

- the railway operator's history of compliance;
- whether railway operations are/are not conducted to an adequate standard of safety and the safety management system complies with the Act; and
- whether the accredited operator is temporarily or permanently unable or unwilling to undertake any relevant remedial action necessary to satisfy the requirements for accreditation.

In addition, consideration will be given to any written representations made by the accredited person in accordance with s53 of the Act.

### **5.5 Notification of the rail transport operator**

If the ITSRR is considering suspending or revoking an accreditation under s53 of the Act, the ITSRR must notify the accredited person in writing. The person may make written representations to the ITSRR to show cause why the decision should not be made within 28 days or any longer period stated in the notification.

### **5.6 Refund of annual accreditation fees**

Generally, no refund will be provided where the ITSRR has suspended or cancelled an accreditation due to breaches of legislative requirements. The ITSRR may consider a

refund or partial refund in extenuating circumstances where the reason for suspension or revocation is not related to a breach of the law. See the ITSRR *Accreditation and Late Payment Fees Policy* for further information on annual accreditation fee refunds.

### **5.7 Withdrawing, reducing or extending a suspension**

The ITSRR may withdraw a suspension of an accreditation by written notice.

Where the ITSRR has immediately suspended an accreditation the ITSRR may reduce or extend the period of suspension by written notice. Before the period of suspension is extended, the accredited person may make written representations to the ITSRR to show cause why the decision should not be made. Consideration will be given to any written representations made by the accredited person in accordance with s54 of the Act.

## **6. Rights of Review**

### **6.1 Review of Accreditation decisions**

Under s158 of the Act, accredited persons whose accreditation has been suspended or revoked 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.

Where an application for review 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 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 timeframe 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](http://www.lawlink.nsw.gov.au/adt)

### **6.2 The effect of an application for review of a decision**

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.

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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.

### 7. Supporting documentation

- *National Guideline for Compliance and Enforcement for Rail Safety and NSW Appendix*
- *Policy – Compliance and Prosecution*
- *Policy – Managing Compliance through Advice, Education and Training*
- *Policy – Managing Compliance through Audits*
- *Policy – Managing Compliance through Inspections*
- *Policy – Managing Compliance through Investigations*
- *Policy – Enforceable Voluntary Undertakings*
- *Policy – Application, Annual Accreditation and Late Payment Fees*

### 8. Approval/review/amendments history

Amendment/ Review No	Date	Version No.	Amended by	Description
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Approved

Carolyn Walsh

Chief Executive