

Waiving compliance with accreditation application requirements 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 set out the matters which the ITSRR may consider in determining whether to waive compliance with any or all of the requirements of Division 2 of Part 3 of the Act in relation to applications for accreditation from persons accredited in one or more other jurisdictions or from proposed transferees of railway operations.

2. Scope

This policy details the matters which the ITSRR may consider in determining whether to waive compliance with any or all of the requirements of Division 2 of Part 3 of the Act in relation to applications for accreditation from persons accredited in one or more other jurisdictions or from proposed transferees of railway operations.

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

3. Definitions

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

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

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

4. Legislative framework

Section 41(5) of the Act provides that:

“The ITSRR may grant accreditation to a person who is accredited under a corresponding law of one or more other jurisdictions, without requiring the person to comply with any or all of the requirements of this Division, if the ITSRR is satisfied that:

- (a) the requirements for that accreditation are of a satisfactory standard in relation to the safe carrying out of railway operations; and
- (b) the carrying out of railway operations is likely to achieve a level of safety that, in the opinion of the ITSRR, is appropriate for the railway operations concerned.”

Section 45 of the Act provides that:

“(1) If an accredited person proposes to sell or otherwise transfer any railway operations for which the person is accredited, the ITSRR may, on an application for accreditation under this Part being made by the proposed transferee, waive compliance by the proposed transferee with any one or more of the requirements of this Division;

- (2) The ITSRR is not to waive compliance with any such requirements unless the proposed transferee demonstrates, to the satisfaction of the ITSRR, that the proposed transferee has the competence and capacity to comply with the relevant requirements of this Division that apply to applicants for accreditation of the appropriate kind.
- (3) A waiver of compliance with requirements may be given subject to such conditions and restrictions (if any) as appear to the ITSRR to be necessary.”

The requirements of Division 2 of Part 3 of the Act include:

- information that must be included in an application for accreditation (s38); and
- what an applicant for accreditation must demonstrate in order for accreditation to be granted (s39).

An applicant for accreditation should specify which requirements of Division 2 of Part 3 of the Act the applicant wishes to have waived by the ITSRR.

5. Policy statements

5.1 Waiver under s41(5) of the Act

Under s41(5) of the Act, the ITSRR may waive compliance with any one or more of the requirements of Division 2 of Part 3 of the Act where a person is accredited under a corresponding law of one or more other jurisdictions. Compliance with any one or more of the requirements of Division 2 of Part 3 of the Act may be waived if the ITSRR is satisfied that:

- the requirements for accreditation in the other jurisdiction are of a satisfactory standard in relation to the safe carrying out of railway operations; and
- the carrying out of railway operations in NSW is likely to achieve a level of safety that, in the opinion of the ITSRR, is appropriate for the railway operations concerned.

In determining whether to waive compliance with any or all of the requirements of Division 2 of Part 3 of the Act the ITSRR may consider:

- (a) whether the proposed railway operations in NSW are equivalent to the railway operations for which the applicant is accredited in one or more other jurisdictions;
- (b) whether the applicant is accredited under a corresponding law of one or more other jurisdictions ie whether the requirements of rail safety legislation in the jurisdiction in which the applicant is accredited are equivalent to the requirements of the NSW Act and regulations;
- (c) whether the applicant has adequately addressed (for example through the safety management system) any NSW-specific legislative requirements;
- (d) whether the applicant is the rail infrastructure manager or rolling stock operator in relation to the proposed railway operations in NSW;
- (e) whether the applicant has the competence and capacity to manage risks to safety relating to carrying out the proposed railway operations in NSW; and
- (f) whether the applicant’s safety management system adequately addresses any risks to safety relating to carrying out the proposed railway operations in NSW.

5.2 Waiver under s45 of the Act

Under s45 of the Act, the ITSRR may waive compliance with any one or more of the requirements of Division 2 of Part 3 of the Rail Safety Act 2008 where the applicant for accreditation is a proposed transferee of railway operations. The ITSRR is not to waive compliance with any of the requirements unless the proposed transferee demonstrates the competence and capacity to comply with those requirements.

In determining whether to waive compliance with any or all of the requirements of Division 2 of Part 3 of the Act the ITSRR may consider whether:

- (a) the safety management system applying to the railway operations of the transferor has been reviewed and amended by the applicant so that it is appropriate to the applicant's proposed railway operations, and the safety management system will apply in full to the applicant's railway operations from the commencement date of the accreditation;
- (b) the applicant has the competence and capacity to implement and comply with the amended safety management system, including demonstrating that:
 - (i) all assets and infrastructure associated with the railway operations (including all rights to access or use such assets and infrastructure) owned or controlled by the transferor have been transferred to the applicant or will be transferred by the commencement date of the accreditation;
 - (ii) the management and staff of the transferor with the relevant competence and capacity to implement the safety management system have commenced employment with the applicant or will commence employment with the applicant by the commencement date of the accreditation;
 - (iii) any other management or staff of the applicant have the competence and capacity to comply with and carry out the safety management system;
- (c) all assets and infrastructure associated with the railway operations (including all rights to access or use such assets and infrastructure) owned or controlled by the transferor have been transferred to the applicant or will be transferred by the commencement date of the accreditation;
- (d) the applicant has full legal entitlement to control and manage such assets and infrastructure;
- (e) all rolling stock associated with the railway operations (including all rights to access or use such rolling stock) owned or controlled by the transferor have been transferred to the applicant;
- (f) the applicant has the competence and capacity to safely maintain the rolling stock, including demonstrating that:
 - (i) the management and staff of the transferor with the relevant competence and capacity to maintain the rolling stock have commenced employment with the applicant or will commence employment with the applicant by the commencement date of the accreditation;

- (ii) any other management or staff of the applicant have the competence and capacity to maintain the rolling stock;
- (g) arrangements applying to the transferor for the carrying out of rolling stock maintenance will continue to apply to the applicant; and
- (h) public liability insurance arrangements to meet reasonable potential accident liabilities arising from the proposed railway operations will be maintained in the same quantum and on the same terms and conditions as were in place for the transferor.

6. Supporting documentation

- *National Guideline for Accreditation of Rail Transport Operators*
- *Application for Accreditation Form*
- *Policy – Accreditation*
- *Policy – Accreditation and Late Payment Fees*

7. Approval/review/amendments history

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