

Accreditation policy

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1. Purpose

The purpose of this policy is to provide advice to rail transport operators, and direction to staff, on how the Office of the National Rail Safety Regulator (ONRSR) will determine applications for accreditation and variations to accreditation.

2. Background

The ONRSR has been established under the *Rail Safety National Law (RSNL)* to administer a national system of rail safety regulation including the effective management of rail safety risks through a national scheme for accreditation of rail transport operators in relation to rail operations.

Under the RSNL, a person must not carry out any railway operations unless the person is an accredited rail transport operator or undertakes railway operations for or on behalf of an accredited rail transport operator or is specifically excluded or exempt from the RSNL.

The ONRSR has the principal objective of facilitating the safe operation of rail transport services across Australia. This is achieved through regulation of the rail industry in accordance with the RSNL, supporting regulations, guidelines and policies, and promotion of safety as a fundamental objective in the delivery of rail transport services.

The RSNL also imposes a shared responsibility through general duties on all parties, including rail transport operators, rail safety workers, other persons involved in the rail industry, the ONRSR and the public to so far as is reasonably practicable, ensure the safety of railway operations.

Rail transport operators are accredited to operate a railway when they have demonstrated competence and capacity in identifying and managing the safety risks associated with a railway operation.

The accreditation process, administered by the ONRSR, is designed to ensure rail transport operators have systematically considered and managed the safety risks at their operation. An accredited rail transport operator will have a documented safety management system that illustrates how risks will be managed.

Penalties apply for persons or organisations who undertake rail operations without accreditation or without being exempt from accreditation. The penalties are outlined in s62 of the RSNL.

3. Scope

This policy defines the ONRSR's approach to managing the accreditation of rail transport operators conducting or intending to conduct railway operations in Australia.

This policy applies to the ONRSR and its officers, including staff operating under service level agreements, or any other such agreements or arrangements that require persons to act as an agent of the ONRSR.

The policy also provides information to persons or companies applying for or holding accreditation under the RSNL.

4. Definitions

Definitions provided by the RSNL and the National Regulations apply within this policy.

- > **RSNL** – means the *Rail Safety National Law* which has been enacted as a Schedule to the *Rail Safety National Law (South Australia) Act 2012 (SA)* as it applies in each state and

territory. In Western Australia, 'RSNL' means the Rail Safety National Law which has been enacted as mirror legislation in the *Rail Safety National Law (WA) Act 2015*.

- > **National Regulations** – means the *Rail Safety National Law National Regulations 2012*; or the *Rail Safety National Law (WA) Regulations 2015* in Western Australia,

Where terms are not defined within the legislation or regulations the *Macquarie Dictionary* definition applies.

Use of the word 'should' indicates a recommendation of the ONRSR. However, the rail transport operator is free to follow a different course of action provided it complies with the legislation. Use of the word 'must' indicates a legal requirement where compliance is necessary.

5. Legislative framework

The relevant sections of the RSNL in relation to Accreditation are Part 3, Division 4 and Division 6. The prescribed content of a safety management system is contained in the National Regulations.

6. Accreditation

6.1 Making an application for accreditation

Rail transport operators must apply for, and be granted, accreditation prior to commencing railway operations (refer to s64 - s67 of the RSNL). Assessment of the application will not commence until the applicable fee has been received by the ONRSR.

Applicants are encouraged to discuss their application and the application process with the ONRSR prior to lodging an application. Discussing the application with the ONRSR may reduce delays caused by incomplete or inadequate applications.

To commence the accreditation process a rail transport operator must submit a completed application form, supporting information and pay an application fee. The application fee may also be waived, as detailed in the *Fees policy*.

The *Application for accreditation or variation of accreditation* form and further information on applying for accreditation is available on the ONRSR website at:

<http://www.onrsr.com.au/operations/accreditation>.

Accreditation is not automatically granted. The ONRSR may refuse an application, or impose conditions or restrictions on what is granted. This may occur if the applicant has not demonstrated an appropriate level of competence and capacity to identify and manage the safety risks at the railway operation, or if they have not provided enough information to the ONRSR to make an accurate assessment.

6.2 Determination of applications

The ONRSR is required by the RSNL to determine an application within 6 months of receiving the application, or within 6 months of receiving any additional information requested by the ONRSR from the applicant.

The time taken to process an application for accreditation depends largely on the scope of the applicant's railway operations and the completeness of the documentation provided with the application.

The ONRSR will assess the application for accreditation in accordance with ONRSR assessment procedures. If required the ONRSR may conduct an inspection to determine whether the application meets the relevant requirements of the RSNL.

The ability to demonstrate competence and capacity is fundamental to a rail transport operator applying for accreditation. The RSNL (s65) provides that the ONRSR cannot accredit a person (including a natural person or corporate entity) unless that person has demonstrated that they are (or will be) a rail infrastructure manager or rolling stock operator in respect of the railway operations for which accreditation is sought; and they have:

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

Further explanation of what is meant by competency and capacity can be found in the *Competency and capacity guideline*, which is available on the ONRSR website.

After assessing the application for accreditation, the ONRSR may grant accreditation, in accordance with s67(1)(a), or refuse the application for accreditation, in accordance with s67(1)(b).

In addition to the standard conditions and restrictions specified in the National Regulations, the ONRSR may also impose other conditions or restrictions upon the accreditation, refer to s67(2)(b).

Following a decision on the application, notification in writing will be provided to the applicant informing them of the decision. If granted, the notice will include any conditions or restrictions placed on the accreditation. The letter will detail the reasons for the decision to impose conditions or restrictions. If the application has been refused, the letter will provide the reasons for the decision.

Where the application has been refused, or conditions or restrictions have been imposed, the letter will provide information about the applicant's right of review, refer to Part 7 of the RSNL.

6.3 Conditions and restrictions

All accreditations are subject to the prescribed conditions and restrictions as set out in regulation 9 of the National Regulations.

The ONRSR may impose additional conditions or restrictions on an accreditation, in order to clearly define or establish limits to the scope of the accreditation, and/or to further manage safety risks. The ONRSR will notify the applicant of the reasons for imposing additional conditions or restrictions.

A rail transport operator may apply to vary the conditions or restrictions of its accreditation. The ONRSR will treat this in the same way as an application for variation of accreditation.

In accordance with s72 of the RSNL, the ONRSR may also vary or cancel an existing condition or restriction, or impose a new condition or restriction on an existing accreditation. The ONRSR will provide written notification to the rail transport operator of the proposal to vary or cancel an existing condition or restriction, detail the reason for the change and inform the rail transport operator it has 28 days to make a written representation to the ONRSR regarding the proposed change. Upon

receipt of a representation, the ONRSR will consider the issues raised by the rail transport operator before making a final decision.

Where the ONRSR seeks to impose, vary or cancel a condition or restriction to accreditation, the ONRSR will discuss the reasons for the change to a condition or restriction with the rail transport operator prior to sending a letter.

6.4 Cost benefit analysis

The ONRSR will, before imposing a condition or restriction that is likely to cause a significant cost on the applicant or any other person, undertake a cost benefit analysis on the impact of imposing the condition or restriction, refer to s67(3) and s72(2)(d) of the RSNL. The analysis shall be conducted and reported in accordance with the *Application of cost benefit analysis requirement policy*.

6.5 Variation of accreditation

A variation of accreditation is required when an accredited operator seeks to undertake operations that are outside the scope and nature of their permitted railway operations, as detailed in the notice of accreditation (refer to section 68 of the RSNL for details of when a person must apply for a variation).

To apply for a variation of accreditation a rail transport operator must complete the *Application for accreditation or variation form*. This form must be submitted to the ONRSR with attached supporting documentation describing changes to the safety management system.

The application for variation of accreditation must include:

- > details of any consultation that has occurred with the parties who might be affected by the proposed variation
- > identification of the risks and how they will be controlled both during the implementation period and following implementation; and
- > evidence to demonstrate that the applicant has the competence and capacity to manage the risks to safety associated with the proposed variation.

An application for variation of accreditation must be lodged and approved before the rail transport operator is able to implement the proposed change, in accordance with s62 of the RSNL.

The ONRSR will process a variation of accreditation in the same manner as an application of accreditation, as detailed in section 6.2 *Determination of applications*.

If the variation of accreditation is approved, the ONRSR will re-issue the notice of accreditation and update the National Rail Safety Register.

6.6 Review of accreditation decisions

Applicants for accreditation who are not satisfied with the outcome of their applications, variation conditions or restrictions are entitled to an internal review of the decision by the ONRSR. If a satisfactory outcome is not reached from this review, the applicant can pursue the matter at the appropriate administrative appeals court, refer to s216 and s217 of the RSNL.

Applications for an internal review of decisions must be received by the ONRSR within 28 days of when the decision was made (or a longer period if allowed by the ONRSR), if the decision was made by the Regulator, and in the form approved by the ONRSR. The application must be

received within 28 days after the day on which the decision first came to the eligible person's notice if the decision was made by someone other than the Regulator (including a delegate).

Reviewable decisions relating to accreditation include:

- > a refusal to grant accreditation, or imposition of conditions, or restrictions on an accreditation;
- > an extension of the period to determine an application for accreditation, or a variation of accreditation;
- > a variation of accreditation subject to conditions or restrictions;
- > a refusal to grant variation of an accreditation;
- > a refusal to grant variation of a condition, or restriction on an accreditation;
- > a variation, or revocation of a condition, or restriction, or imposition of a new condition, or restriction on an accreditation;
- > a suspension, or revocation of accreditation; and
- > an immediate suspension of accreditation, or an extension of an immediate suspension of accreditation.

All applications for review of a decision should use the *Application for review of a decision* form, which is available on the ONRSR website.

6.7 Accreditation fees

Application and annual fees apply to accreditation. The same fees apply to both rail infrastructure managers and rolling stock operators, and there is no additional fee for accreditation as both.

The fees payable for a new application for accreditation or variation of accreditation are set out in Schedule 3 to the RSNL.

Annual fees and application fees are applied as per the *Fees policy*.

6.8 Notices of accreditation or exemption

Upon granting accreditation or a variation to accreditation, a signed Notice of Accreditation will be issued. This document is the formal advice to the rail transport operator that they have been granted accreditation under the RSNL.

A Certificate of Accreditation signed by the ONRSR will also be issued to the applicant.

The Notice of Accreditation will contain the following information:

- > the name of the accredited person;
- > the registered business name or trading name of the accredited person;
- > the ACN (or ABN if the accredited person does not have an ACN);
- > the date on which the accreditation, variation or exemption is granted or when it comes into effect;
- > the scope and nature of the railway operations for which the rail transport operator is accredited;
- > standard conditions and/or restrictions (not prescribed in the RSNL or National Regulations; and

- > specific conditions and/or restrictions.

In accordance with s81 of the RSNL, an accredited rail transport operator must make its current notice of accreditation or notice of exemption from accreditation available for public inspection in the following way:

- > at the operator's registered office during ordinary business hours if the accredited person is a corporate body; or
- > at the operator's principal place of business during ordinary business hours, (or if the ONRSR approves another place and time, at that place and time), if the accredited person is not a corporate body.

While the ONRSR provides a Certificate of Accreditation that may be displayed by the accredited organisation, it is the Notice of Accreditation that must be produced if requested under s81 of the RSNL. The ONRSR is required under the RSNL to establish and maintain a public National Rail Safety Register. This includes information about the accreditation as per the *National rail safety register policy*.

6.9 Consolidation of notices

As state/territory jurisdictions enter the ONRSR regulatory scheme, all prior notices of accreditation will be transitioned to the ONRSR. Where a rail transport operator was accredited in multiple participating states, these notices will be consolidated into a single ONRSR notice of accreditation covering operations in all ONRSR jurisdictions.

6.10 Surrender

An accredited rail transport operator may surrender its accreditation by notifying the ONRSR in writing prior to the date of surrender (refer to s75 of the RSNL). It is preferable that the applicant gives the ONRSR at least 28 days' notice of intention to surrender. The rail transport operator must provide full details of the proposed arrangements in relation to the cessation of its railway operations.

While the ONRSR will not unreasonably withhold acceptance of the surrender of accreditation, the ONRSR must be satisfied that the proposed arrangements in regard to the surrendering of the accreditation do not present a safety risk to other rail transport operators or the public.

6.11 Suspension and cancellation of accreditation

As per s73 of the RSNL, the ONRSR may suspend or cancel all, or part of, a rail transport operator's accreditation, where the accredited person:

- > can no longer satisfy the requirements for, or the conditions or restrictions of, that accreditation;
- > has not managed the rail infrastructure or is not operating rolling stock in relation to the requirements of the accreditation for at least the preceding 12 months; or
- > contravenes the RSNL.

In addition, the ONRSR may suspend wholly or in part a rail transport operator's accreditation for up to six weeks where it is considered there is, or would be, an immediate and serious risk to safety, unless the accreditation is suspended immediately. This period may be extended.

The rail transport operator will be informed, in writing, of the proposed decision to suspend or cancel the accreditation with details of the reasons for the decision. The rail transport operator then

has 28 days to make a written representation to the ONRSR regarding the proposal to suspend or cancel the accreditation.

Further information on suspension, immediate suspension and cancellation can be found in the *Compliance and enforcement policy*. Provision for suspending a rail transport operator for failure to pay an annual fee is described in the *Fees policy*.

6.12 Exemptions from accreditation

As per s82 of the RSNL, a rail infrastructure manager of a private siding is not required to be accredited in respect of railway operations (other than those involving rolling stock) carried out on the private siding. However, the rail infrastructure manager of a private siding must be registered with the ONRSR.

Further information on the registration of rail infrastructure managers of private sidings can be found in the *Private siding registration policy* and on the ONRSR website.

All other rail transport operators, including rolling stock operators on private sidings, must be accredited or exempt from accreditation. Further information can also be found in the *Exemptions policy*.