

Policy

Fees

Current until 30 June 2017

Document reference number: A462795

Version No.	Approved by	Publication date
1.0	Chief Executive	9 September 2013
1.1	Chief Executive	16 April 2015
2.0	Chief Executive	26 June 2015
2.1	Format review	12 July 2016

Policy changes to version 2.1

- > Format review

Current until 30 June 2017

Copyright information

© Office of the National Rail Safety Regulator 2016

This material may be reproduced in whole or in part, provided the meaning is unchanged and the source is acknowledged.

Level 1, 75 Hindmarsh Square, ADELAIDE SA 5000

PO Box 3461, Rundle Mall, ADELAIDE SA 5000

Phone: 08 8406 1500

Fax: 08 8406 1501

E: contact@onrsr.com.au

W: www.onrsr.com.au

Table of contents

1. Purpose	4
2. Background	4
3. Scope	4
4. Definitions	4
5. Legislative framework	4
6. Annual fees	5
7. Reconciliation of annual accreditation fees	5
8. Entering into agreements	6
9. Waivers and refunds	6
9.1 Tourist and heritage railways	6
9.1 Transitional periods provided for in state and territory application laws	7
9.2 Surrender of accreditation or registration	8
9.3 Suspension or revocation of accreditation or registration	8
9.4 Waiver or refund of exemption application fees	8
10. Late payment of annual fees	8
11. Failure to pay the annual fee	8
12. Recovery of fees	8

1. Purpose

The purpose of this policy is to provide information on the fees payable by rail transport operators and how the Office of the National Rail Safety Regulator (ONRSR) will exercise its discretionary powers with respect to annual fees, waivers, refunds and payment arrangements for fees administered by the ONRSR.

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, rail transport operators must pay application fees for certain formal applications to the ONRSR and annual fees for accreditation and/ or registration. These fees cover, in part, the cost of regulatory services provided by the ONRSR.

3. Scope

This policy has relevance for the ONRSR officers responsible for exercising discretion with respect to fees paid by rail transport operators.

The document is intended to be read in conjunction with the legislation and other relevant ONRSR policies. The policy itself imposes no legal duty and where actions or requirements are described as mandatory these reflect requirements in the RSNL or National Regulations. It is not intended to replace the legislation, or to limit or expand the scope of the legislation. In the event of an inconsistency between this policy and the legislation, the legislation will prevail.

4. Definitions

Definitions provided by the RSNL and *the Rail Safety National Law National Regulations 2012* (National Regulations) apply within this guideline.

- > **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.
- > **National Regulations** – means the Rail Safety National Law National Regulations 2012.

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 RSNL requires that rail transport operators pay one-off fees for applications as prescribed in regulation 58 and listed in Schedule 3 to the National Regulations.

Sections 76 and 95 of the RSNL require accredited rail transport operators and registered rail infrastructure managers of private sidings to pay annual fees as prescribed in the National Regulations.

Sections 76 and 95 provide the power for the ONRSR to make agreements with rail transport operators regarding the payment of fees, and to suspend accredited operators for failing to pay annual fees.

Sections 77 and 96 contain provisions that allow for the ONRSR to waive or refund the whole or part of any fee payable under Division 4 and Division 5 of Part 3 of the RSNL, covering application fees for accreditation (including variation and variation of conditions/restrictions), registration (including variation and variation of condition/restrictions) and annual fees. Similarly, section 214A allows the ONRSR to waive or refund the whole or part of any exemption application fee payable.

Section 260 of the RSNL allows the ONRSR to recover amounts due as a debt to the ONRSR through court proceedings. This allows for dishonoured payments to be recovered by the ONRSR.

6. Annual fees

Annual accreditation fees comprise a fixed and variable component, to be calculated on a predictive model. The fixed fee amount and variable fee rates are published in the National Regulations and adjusted each year. The variable rate is applied to the track and train activity data supplied by accredited rail transport operators through the annual return (regulation 56) and coupled with the fixed fee.

Registered rail infrastructure managers of private sidings pay a fixed fee each year for registration, which covers all private sidings under that registration.

Annual fees are payable by the 31 October each year and a single invoice will be issued to accredited and registered rail transport operators for their operations under ONRSR jurisdiction (also see section 8.1 for tourist and heritage operators) in that financial year. The fee rates applied will be as current in the National Regulations for that financial year being 1 July to 30 June.

Rail transport operators and rail infrastructure managers of private sidings seeking new accreditation or registration must pay the annual fee at the time that accreditation or registration is granted. The fee will be calculated on an estimated level of activity provided by the rail transport operator. If this is part way through the financial year, rail transport operators will be expected to pay the fixed portion of the annual fee on a pro rata basis (i.e. proportionate to the time left in the financial year) and the variable as per the estimated level of activity for the remainder of the financial year, and from thereon adhere to the annual fee cycle.

Annual fees are adjusted each year consistent with the cost recovery model endorsed by the Standing Council of Transport Infrastructure (now the Transport and Infrastructure Council) in May 2012. Annual adjustment reflects change in the National Consumer Price Index and, from the 2014/15 financial year, an additional five per cent increase in those states/ territories not at full cost recovery.

7. Reconciliation of annual accreditation fees

At the end of each financial year, based on the data of actual activity supplied by accredited rail transport operators in monthly returns (refer to regulation 56(1)(a)), the ONRSR will reconcile accreditation fees for the prior fee cycle (ie against the forecast amount already paid for the year).

The reconciliation relies on robust estimates and accurate data reporting. The ONRSR recognises that actual track and train kilometres may vary from what was estimated by the rail transport operator, due to unforeseen changes in operations, such as loss of contracts or new contracts being obtained, changes in timetabling, natural disasters, or operations being suspended for other reasons.

The ONRSR may at any time seek evidence to verify that the data supplied each month accurately reflects the track and train kilometres managed or travelled during that month. Similarly, evidence may be sought that the operator has made the best efforts to provide an accurate estimate of activity, including through use of historic data and consideration of likely changes.

Rail transport operators are responsible for providing accurate data on time and the failure to do this could result in penalties of up to \$50,000 under section 120(3) of RSNL.

Where there has been an over or under-calculation in forecast activities, this may result in either a credit owing to the rail transport operator or a debit owing to the ONRSR.

Credits and debits will be carried into the next fee cycle. Reconciliation marks the end of the financial year and no changes to data reported for that financial year will be accepted after that.

8. Entering into agreements

The payment of annual fees is a requirement of accreditation. Only in exceptional circumstances may the ONRSR consider payment of an annual fee under an alternative agreement. There are two forms of payment agreement that the ONRSR may elect to reach with a rail transport operator:

- > payment of annual fees by quarterly instalments
- > deferral of payment of annual fees to a later date.

9. Waivers and refunds

The RSNL confers discretionary powers for the ONRSR to provide waivers or refunds of the fees payable under Division 4 and Division 5 of Part 3 of the RSNL, and exemption application fees payable under Division 2 of Part 6. The circumstances in which the ONRSR may exercise this power are outlined below.

9.1 Tourist and heritage railways

Tourist and heritage rail transport operators will be subject to discounted application fees and discounted annual accreditation fees, which will be given effect through the exercise of the ONRSR's power to determine and waive fees under sections 76 and 77 of the RSNL.

These fees may be paid by state and territory governments on behalf of selected tourist and heritage operators in that jurisdiction, as a Community Service Obligation. The ONRSR does not administer this process but will accept these operators as tourist and heritage operators and invoice state and territory governments for discounted fees on their behalf.

There may be other rail transport operators that may be eligible to receive discounted fees as a tourist and heritage operator but have not been nominated under the Community Service Obligation provision. When making a determination of whether a rail transport operator is a tourist and heritage operator for the purposes of discounted fees, the ONRSR will have regard to the following criteria:

- > the railway principally involves the restoration, preservation or operation of vintage rolling stock; and
- > the purpose of the railway is to recreate historical railway experiences; and
- > the railway is operated
 - solely for personal enjoyment; and/or
 - for enjoyment by the public on a not-for-profit basis.

The discounted accreditation application fees are outlined in Table 1 below.

Table 1: Tourist and heritage railways' discounted application fees

Type of fee	Section of the RSNL	Percentage of full fee payable ¹
Application for Accreditation	64(2)(d)	10%
Application for Variation of accreditation	68(3)(c)	10%
Application for Variation of conditions/restrictions of accreditation	71(2)	10%

¹ As listed in Schedule 3 to the National Regulations. Discounted fees apply only to those accreditations or registrations newly required due to RSNL replacing current jurisdictional rail safety law.

The fixed component of annual accreditation fees will be discounted for tourist and heritage operators but the variable rate will be as published in the National Regulations. The fixed component of the annual fee will be published on the ONRSR website.

9.1 Transitional periods provided for in state and territory application laws

As the RSNL is enacted in states and territories a transitional period comes into effect for rail transport operators newly requiring accreditation or registration, those who will have their existing accreditation or registration recognised under the RSNL, and those no longer requiring accreditation or registration.

New accreditation or registration required

Rail transport operators that did not previously require accreditation or private sidings to be registered that are required to be accredited or registered under the RSNL, will be provided with a period of up to 3 years from the commencement of the RSNL in that jurisdiction² to seek accreditation, exemption from accreditation, or registration. The ONRSR will waive the annual fee for such rail transport operators seeking accreditation or registration in this period for the duration of the 3 year transition. Application fees will still be applicable, although the ONRSR will provide discounted application fees in accordance with Table 2 for each year that accreditation or registration is sought prior to the expiry of the transitional period.

Table 2: Discounted fees applicable during transitional periods – new accreditations and registrations triggered by the implementation of the RSNL only³

Year following commencement of the RSNL	Percentage of full fee payable ⁴		
	Application for accreditation fee s64(2)(d) of the RSNL	Application for registration fee s84(2)(b) of the RSNL	Annual fee
Year 1	50%	50%	0%
Year 2	75%	75%	0%
Year 3	90%	90%	0%

Transfer of accreditation or registration

The RSNL will recognise existing accreditations in a state/ territory as being accredited under the ONRSR from the enactment of the RSNL in that state/ territory. This process is automatic and no application fee is required. Accredited operators will be subject to annual fees from the ONRSR for the period of the financial year that the ONRSR is in effect, with the remaining portion being recovered from the relevant state/ territory regulator.

Similarly registered private sidings will be recognised, however under the RSNL (Division 5) rail infrastructure managers for private siding/s will be registered (rather than the private siding itself).

² Regulatory officers should confirm the transitional period provided for in the relevant state or territory application law.

³ Discounted fee with apply to the first application only. If the first application is refused, subsequent applications will attract fees as listed in Schedule 3 to the National Regulations without discount.

⁴ As listed in Schedule 3 to the National Regulations. Discounted fees apply only to those accreditations or registrations newly required due to RSNL replacing current jurisdictional rail safety law.

During the transition period previously registered sidings will be consolidated by the ONRSR under a new registration for the rail infrastructure manager (who is not otherwise accredited) or under the existing accreditation of a rail infrastructure manager. This process will not attract an application fee for either a new registration of previously registered private sidings or variation to an existing accreditation, however, annual fees will apply in full.

Accreditation or registration no longer required

A rail transport operator that was accredited or registered under previous rail safety laws that is not required by the RSNL to be accredited or registered (unless prescribed under regulation 7(2) of the National Regulations) will no longer be accredited or registered to operate railway operations. Any refund of annual fees already paid will be administered by the relevant state/ territory regulator.

9.2 Surrender of accreditation or registration

Refund of annual fees paid to the ONRSR will only be granted in exceptional circumstances, on a pro-rata basis for the remaining portion of the financial year for which annual fees have already been paid.

9.3 Suspension or revocation of accreditation or registration

Due to the regulatory effort associated with suspension and revocation of accreditation or registration, the ONRSR will not provide refunds of annual fees paid.

9.4 Waiver or refund of exemption application fees

Section 214A allows the ONRSR to waive or refund fees payable under Division 2 of Part 6 of the RSNL. This power provides for extenuating circumstances and will be exercised at the Regulator's discretion.

10. Late payment of annual fees

In the absence of an agreed alternate arrangement for the payment of an annual fee by a rail transport operator, the ONRSR may impose a late payment fee. The method of calculation for this fee is as prescribed in the National Regulations.

11. Failure to pay the annual fee

The ONRSR may suspend the accreditation of an operator where they have failed to pay the annual fee, consistent with Section 76 of the RNSL. Notice will be provided with 30 days for the operator to respond to the notice by paying the fee or negotiating an alternative payment agreement.

Once an operator has been suspended no railway operations may be undertaken until that suspension is withdrawn.

12. Recovery of fees

The ONRSR will make all reasonable efforts to enter into agreements with rail transport operators for alternative payment arrangements and will give due consideration to the possibility of providing waivers and refunds. However, it should be noted that these powers are discretionary and the ONRSR is not obligated to exercise these powers. In the event that a rail transport operator is recalcitrant and fails to comply with the requirements of the RSNL, the ONRSR may attempt to recover fees through court proceedings.