

ONRSR Policy

# Exemptions from the Rail Safety National Law



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## Policy changes to 4.0

- > Consequential amendments arising from publication of *The ONRSR Way*

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## 1 Purpose

The Office of the National Rail Safety Regulator (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 some circumstances, rail transport operators may seek an exemption from the relevant requirement (or requirements) of the RSNL.

The purpose of this document is to outline the ways by which a rail transport operator may be considered for an exemption from part of the RSNL. In particular, this document will focus on those exemptions that may be issued at the discretion of ONRSR, and will articulate how ONRSR will exercise its power to exempt.

## 2 Scope

This policy has relevance for ONRSR's determination of applications, submitted by rail transport operators, for exemption from requirements of the RSNL. The policy is intended to guide regulatory officers in their assessment and interpretation of the discretionary aspects of the RSNL.

This policy does not extend to railways that are wholly excluded from the legislation, meaning that no provisions of the RSNL apply and ONRSR oversight is therefore not required. Such railways are prescribed in section 7 of the RSNL National Regulations.

## 3 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.

Use of the word 'must' indicates a legal requirement where compliance is necessary.

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

## 4 Types of exemptions

There are various mechanisms by which rail transport operators may be exempt from part of the RSNL. While this document focuses on those exemptions that may be conferred by ONRSR upon application by a rail transport operator, for clarity, the following outlines options available through the RSNL:

- > Exemptions granted by the Regulator – refer sections 5 and 6.
- > Ministerial exemptions: the relevant state or territory Minister may, by Gazette, grant temporary exemptions (a maximum of 3 months) from all or part of the RSNL for rail operations carried out in the relevant jurisdiction. Unless a Ministerial exemption is granted from all provisions of the RSNL, ONRSR will have regulatory oversight of these railway operations. Rail transport operators seeking such an exemption would be required to seek the approval of the relevant

Minister. The Minister must consult with ONRSR in making a determination. ONRSR will provide advice to the Minister in accordance with this policy when requested. See Division 1 of Part 6 of the RSNL.

- > Exemptions for related bodies corporate- where a body corporate and a related bodies corporate are involved, an exemption may be given so that only one of the bodies need to be accredited (see note in section 62).
- > Exemptions relating to rail infrastructure managers of certain private sidings: due to the lower levels of risk presented by the majority of private sidings, a rail infrastructure manager of a private siding (as defined in the RSNL) is provided with an exemption from accreditation and is not required to comply with certain aspects of the RSNL, such as prescribed requirements for a safety management system. In place of accreditation, rail infrastructure managers of certain private sidings must be registered and comply with certain prescribed requirements for managing risks. See Subdivision 1 of Division 5 of Part 3 of the RSNL and the ONRSR Private Siding Registration Policy.

## 5 When exemption may be considered by the Regulator

*See Division 2 of Part 6 of the RSNL*

The RSNL contains the power for the Regulator to confer longer term exemptions from designated provisions of the legislation, being all or part of the following areas of the RSNL:

- > Accreditation (Division 4 of Part 3 of the RSNL)
- > Registration of rail infrastructure managers of private sidings (Division 5 of Part 3 of the RSNL)
- > The following elements of a safety management system (Subdivision 3 of Division 6 of Part 3 of the RSNL):
  - security management plan (s112 of the RSNL)
  - emergency management plan (s113 of the RSNL)
  - health and fitness management program (s114 of the RSNL)
  - drug and alcohol management program (s115 of the RSNL)
  - fatigue risk management program (s116 of the RSNL).

Unlike exclusions, when exemptions are granted the requirements of the RSNL are still applicable and regulatory oversight is still necessary.

While the Regulator is provided with the power to exempt, it is unlikely to exercise this power frequently and will not do so unless it is demonstrated by the rail transport operator that safety would not be compromised.

It is considered preferable for rail transport operators to develop a means of achieving compliance with the RSNL rather than to apply for an exemption from the requirements of the RSNL. The scalable nature of the RSNL allows most rail transport operators to find a means of compliance with the legislation.

The following matters are relevant when considering an exemption:

- > In relation to the requirement to be accredited to undertake railway operations: whether the railway or railway operations are not railways of a type intended to be regulated under the RSNL
- > In relation to specific elements of a safety management system:

- Where the rail transport operator presents sufficiently low risk that complying in full with the requirements of the RSNL imposes an excessive burden without a resultant safety benefit.

Whilst most requirements in the RSNL are scalable, certain areas of the legislation may place a disproportionate burden on some rail transport operators, imposing requirements that are not 'reasonably practicable' when considering the risks presented by the particular operations. This would most likely only apply to small scale rail transport operators.

- A rail transport operator can demonstrate an alternative means of complying with a duty under the law other than that which may be prescribed in the RSNL.

It may be the case that the risks presented by a particular operation are more efficiently managed through means other than those prescribed in the RSNL. In these cases, rail transport operators may present alternative means of compliance and be considered for exemption from the relevant provision, subject to a condition requiring the alternative means be complied with. Additionally, the Regulator may impose restrictions.

Exemptions from the requirement to be registered to undertake railway operations are unlikely to be granted as the registration process does not contain any requirement to demonstrate competency and capacity to manage risks to safety.

## 6 Scope of exemptions granted by the Regulator

In the limited circumstances described above, the Regulator may grant exemption from the designated provisions of the RSNL. Importantly, however, the Regulator cannot exempt rail transport operators from the general rail safety duties (Division 3 of Part 3 of the RSNL).

As such, while the Regulator may exempt a rail transport operator from complying with a designated provision of the RSNL, the rail transport operator must continue to comply with the overarching duty to ensure safety so far as is reasonably practicable, as well as other duties that may be applicable.

An exemption will most likely not be granted in an 'outright' manner (that is, where the risk to safety for a given area could be demonstrated to be negligible), rather it is more likely that only a reduced degree of risk would be demonstrated by a rail transport operator, that would still need to be managed in some form.

The granting of an exemption:

- > may be subject to conditions or restrictions and includes the authority for the Regulator to vary, cancel or suspend it.
- > does not obviate the need for rail transport operators to comply with other aspects of the RSNL. In determining the application, the Regulator will ensure that the extent of the exemption granted is clear and that rail transport operators do not neglect any other associated requirements of the RSNL.

Decisions on exemption applications made by the Regulator are reviewable (see ONRSR's Review of Decisions policy). Information on surrendering an exemption is available in *The ONRSR Way*.