

ONRSR Policy

Private Siding Registration



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- > Inclusion of section 6.7 and amendment in section 6.6 to reflect that a private siding may be surrendered, following legislative change

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1 Purpose

The purpose of this policy is to detail the Office of the National Rail Safety Regulator's (ONRSR) approach to registration and the responsibilities and obligations of rail infrastructure managers of private sidings (registered persons) under the Rail Safety National Law (RSNL).

2 Background

ONRSR has been established under the 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.

Registered persons are exempt from the need to hold accreditation. However, they are required by the RSNL to be registered with ONRSR.

3 Scope

This policy describes how ONRSR will administer the registration of rail infrastructure managers of private sidings in accordance with the RSNL and *Rail Safety National Law National Regulations* (National Regulations).

This policy applies to ONRSR and its officers including those staff operating under Service Agreements or any other such agreements or arrangements that requires persons to act as an agent of the ONRSR.

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

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. 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 RSNL was enacted as a Schedule to the application law of South Australia, as the host jurisdiction, with enabling legislation passed by each state and territory. In Western Australia, the RSNL was enacted as mirror legislation. This Law establishes ONRSR and the responsibilities and obligations of all persons undertaking work that affects or could affect rail safety in Australia.

The relevant section of the RSNL in relation to the registration of a rail infrastructure manager of a private siding is Part 3, Division 5.

6 Registration of rail infrastructure managers of private sidings

Rail infrastructure managers of private sidings are exempt from the requirement to be accredited. However, they must be registered with ONRSR or hold an exemption from registration.

The RSNL requires a rail infrastructure manager of a private siding (the registered person) to be registered, rather than the private siding itself. A registered person may manage multiple private sidings under their registration.

An accredited rolling stock operator may also be registered as a rail infrastructure manager of a private siding/s. Normally accredited rail infrastructure managers will not also hold separate registration to manage their private siding/s, rather any siding/s will form part of the scope of their accreditation.

There are prescribed conditions and requirements for registration. Rail infrastructure managers with private sidings that are or will be connected to a railway of an accredited person or another private siding must be registered (s83). There are ongoing conditions of registration prescribed by r13 in addition to any prescribed by ONRSR on the person's notice of registration.

Potential applicants are encouraged to contact ONRSR early for advice on their regulatory requirements and the application process. This will assist in reducing delays due to incomplete or inadequate applications.

An application for registration must be submitted using the Application for registration form, which is available on ONRSR website. The application must satisfy s84 and s85 of the RSNL.

ONRSR will assess an application for registration under s85 of the RSNL and in line with this policy. If the application for registration is approved, ONRSR will issue a Notice of Registration and a Certificate of Registration to the registered person. The details of the private siding/s to be managed will be recorded in the schedule to the Notice of Registration.

Where it is determined that one or more of the sidings in the application for registration is not a 'private siding' ONRSR will refuse the application, and provide the reasons for its decision. The applicant will need to apply for accreditation or an exemption from the requirement to be accredited, as appropriate. Any subsequent application for accreditation should be for the operator's entire railway operations, including any private siding/s.

Further information can be found in the ONRSR Accreditation Policy and Exemptions from the RSNL Policy.

6.1 What constitutes a private siding

The RSNL defines what a private siding does not include (s4). ONRSR applies the following meanings to the terms marshalling yard, crossing loop, freight terminal and passenger terminal (which are excluded from the definition of a private siding¹):

- > A marshalling yard is a yard consisting of a system of tracks, crossings, points etc., used for the purpose of receiving and dispatching trains, shunting and storing of wagons and marshalling wagons into trains;

¹ A freight terminal is considered to be a private siding in Victoria as per the Rail Safety National Law Application Act 2013 (Vic)

- > A crossing loop is a running line, secondary to the main line, with entry and exit points connected to the main line, provided primarily for the crossing or passing of trains;
- > A freight terminal is a yard, being a system of railway tracks within defined yard limits, used for the purpose of placing wagons for loading and unloading and for the delivery and receipt of freight or goods; and
- > A passenger terminal is one or more tracks where passenger trains commence or terminate for passengers to board or alight and where servicing, provisioning and marshalling of passenger coaches into trains may occur.

Bulk handling facilities (for example, coal, grain and mineral facilities) are not considered to be a freight terminal, and therefore are normally considered to be a private siding, within the meaning above. This does not however preclude such facilities requiring accreditation should an assessment by ONRSR deem it appropriate.

The determination of whether a private siding is a private siding for the purposes of registration will consider:

- > whether the facility constitutes a marshalling yard, crossing loop, passenger terminal, freight terminal or a siding of a class prescribed by regulation not to be a private siding;
- > activities to be undertaken and the scale and complexity of those activities having regard to the likelihood and/or consequence of possible incidents;
- > the risks involved to railway operations and other operations undertaken at the facility and the controls required to mitigate those risks;
- > who controls the movement of trains on the railway/private siding and how these movements are controlled;
- > the number and extent of level crossings, public / private roads, overbridges or underbridges that cross the railway;
- > the length of any track from the interface with an accredited rail infrastructure manager or another private siding owner; and
- > the operating speed, the number and size of the trains operating on the section track for which there is an application for registration.

Some private sidings are more complex than others. Where there are multiple entities managing a private siding the following applies:

- > Where there are multiple private sidings controlled by one rail infrastructure manager, each private siding begins at the point it connects to the other (interfacing) rail infrastructure manager's infrastructure; and
- > If there is more than one manager controlling a private siding that has multiple lines, each manager has to be registered for the lines they manage.

When considering complex operations involving interactions between multiple entities, ONRSR will also consider whether the scope of operations meets the requirements for registration, or whether an application for accreditation is more appropriate.

It should be noted that rolling stock operations on a private siding require the operator of that rolling stock to be accredited for that activity.

6.2 Construction of private sidings

Prior to commencing construction of a new private siding the infrastructure manager must be registered. Similarly, where that person is already registered the construction of a new siding should not begin until a variation of the existing registration, to include the proposed siding, has been approved by ONRSR. Notwithstanding these requirements, planning and design activities may be undertaken before registration or variation to registration are approved.

Where the person carrying out construction work in relation to the private siding is not the registered person (for example a contractor), they must comply with the safety systems of the registered person.

6.3 General duty applies to rail infrastructure managers of private sidings

The RSNL imposes a general duty obligation on rail transport operators, including registered persons, to ensure, so far as is reasonably practicable, the safety of their railway operations (s52). This general duty applies to operators whether or not they are accredited, registered or exempt from the requirement to be accredited.

There are significant penalties for both organisations and individuals that breach the general duty provisions of the RSNL.

6.4 Rolling stock operations on private sidings

The RSNL (s82) exempts a manager of a private siding from the requirement to be accredited in relation to railway operations carried out in the private siding, other than those involving the operation of rolling stock.

This means that any rolling stock operations carried out in a private siding must be undertaken by, or on behalf of, a rail transport operator who is accredited or otherwise exempt from accreditation. Further information on accreditation can be found in the Accreditation Policy and on the ONRSR website.

6.5 Conditions and restrictions

Registration is subject to conditions and restrictions as set out in the National Regulations (r13) with respect to the safe maintenance and operation of a private siding.

ONRSR may also consider imposing additional conditions and restrictions on the registration under RSNL (s91) and as per the Compliance and Enforcement Policy. In doing so, ONRSR must communicate the reasons for imposing the additional condition or restriction as well as informing the applicant they have a right to review the decision.

Through its compliance activities ONRSR will monitor operations of the registered person to ensure compliance with the RSNL and the conditions and restrictions of registration (as set out in the Notice of Registration).

6.6 Variation of registration

The RSNL (s87) requires a registered person to apply to ONRSR for a variation to their registration if they:

- > propose to vary the scale and complexity of the private siding/s in respect of which they are registered (including the addition of another private siding); or
- > propose to vary the railway operations to be carried out in the private siding/s in respect of which they are registered; or
- > propose any other changes, in relation to the private siding/s that should be reflected in the registration.

The application for variation must contain details of the proposed change and how it will be managed, including consultation processes and changes to the scheme for the management of risks as required by National Regulations (r15). The application should be submitted using the Application for variation of registration form.

An application for variation of registration must be lodged and approved before the registered person is able to carry out the proposed variation. It is recommended that applicants contact ONRSR as early as possible in relation to any upcoming change that may require a variation to their registration.

When assessing an application for variation to registration under s87 of the RSNL, the ONRSR must be satisfied:

- > that the applicant is the manager of the private siding;
- > that the railway operations to be carried out (or continue to be carried out) in the private siding are such that registration of the applicant (rather than accreditation) is, in the opinion of ONRSR, the appropriate action; and
- > that the applicant has provided the information set out in the National Regulations (r15) (and any other regulations that are prescribed)

In accordance with the RSNL, ONRSR is to make a decision within six months of receiving the application, or within six months of receiving any additional information. ONRSR will notify the registered person of the decision in writing.

6.7 Surrender of registration

A registered person may surrender their registration, or a private siding under that registration (RSNL s94). If a person intends to surrender all of their private sidings under their Notice of Registration, then this becomes a surrender of registration.

A person may surrender their registration or a private siding by notifying ONRSR in writing prior to the date of surrender (in accordance with RSNL s94). It is preferable that the applicant gives ONRSR at least 28 days' notice of intention to surrender. The registered person must provide full details of the proposed arrangements in relation to the cessation of its railway operations.

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

6.8 Review of registration decisions

Applicants who are not satisfied with the outcome of their application for registration, variation of registration, the conditions or restrictions imposed, or the decision to refuse a surrender are entitled to a review of the decision by the Regulator and, if still not satisfied, by application to the court.

Applications for review of decisions must be received by ONRSR within 28 days of when the decision was made and in the form approved by ONRSR (see ONRSR's Review of Decisions Policy).

6.9 Exemptions from registration

The RSNL (s82) notes that registered persons are automatically exempt from the requirement to be accredited. However, they must be registered with ONRSR or hold an exemption from being registered.

Exemptions from registration (under RSNL s205) will only be considered by ONRSR in exceptional circumstances. The consideration of exemptions will be undertaken in accordance with the ONRSR Exemptions from the RSNL policy.

6.10 Annual Activity Statements

Registered persons are required to provide an Annual Activity Statement (AAS).

The AAS must be submitted by the date set in the Notice of Registration, or within seven days of the end of the financial year if no date is designated. ONRSR will align this date with other reporting requirements (if separate accreditation is held) if possible. Penalties for failing to comply with the requirements of s96A will be administered as per the ONRSR Compliance and Enforcement Policy.

In meeting the requirements set out in s96A, the information required in the AAS is set out in the ONRSR Annual Activity Statement Guideline. The AAS should be submitted using the form available on the ONRSR website.

6.11 Registration fees

Application and annual fees are payable for registration. The Fees Policy provides further information on fees payable.

6.12 National Rail Safety Register

ONRSR is required to maintain a National Rail Safety Register, in accordance with s42(2)(c) and (d) of the RSNL. New registrations, surrenders, and variations to a Notice of Registration will be included on the Register, consistent with the ONRSR National Rail Safety Register Policy.

The National Rail Safety Register is published on the ONRSR website.

6.13 Compliance and enforcement

ONRSR monitors compliance with the requirements of the RSNL through audits, compliance inspections and investigations.

ONRSR will conduct audits and compliance inspections on registered persons in accordance with the ONRSR risk based audit and inspection program. Compliance investigations may be conducted by ONRSR following an incident occurring on the private siding or in response to issues raised with the ONRSR.

Refer to the ONRSR Compliance and Enforcement Policy.