

BUS SAFETY ACT 2009 (Vic)

Bus operator exemption guidelines

1. Introduction

Bus safety legislation applies to certain operators of bus services in Victoria. It is administered through a system of accreditation and registration under the **Bus Safety Act 2009** (Vic) (BSA) and the **Bus Safety Regulations 2010** (Vic) (BSR).

The purpose of the BSA is (among other things) to provide for safe operations of bus services in Victoria. The objectives of the BSA are to promote:

- a) the safety of bus services
- b) the effective management of safety risks in bus services
- c) continuous improvement in bus safety management
- d) public confidence in the safety of transport of passengers by bus
- e) the involvement of relevant stakeholders in bus safety
- f) a safety culture amongst persons who participate in the provision of bus services.

A binding principle of the BSA is that managing risks associated with the provision of bus services is the responsibility of the person best able to control the risk.

Section 15 of the BSA provides that an operator of a bus service must, so far as is reasonably practicable (SFAIRP), ensure the safety of their bus service. In addition, the BSA requires that operators who provide commercial or local bus services must demonstrate to the satisfaction of the Director, Transport Safety (Safety Director) and must continue to demonstrate, that the person operating the service has the competence and capacity to manage the risks to safety associated with the commercial or local bus service.

Division 7A of Part 4 of the BSA which came into effect on 24 April 2013 provides for:

1. the operator of a commercial bus service or a local bus service to apply to the Safety Director for an exemption from accreditation or a designated provision of accreditation in respect of a specified bus service carried out, by or on behalf of the operator
2. the operator of a community and private bus service or a hire and drive bus service or a commercial mini-bus service to apply to the Safety Director for an exemption from registration or a designated provision of registration in respect of a specified bus service carried out by, or on behalf of, the operator.

Regulation 22E(1) of the BSR provides that the Safety Director must make guidelines which explain how an application for exemption will be received, assessed and finalised by the Safety Director.

2. Purpose

The purpose of this document is to explain how the application for exemption will be received, assessed and finalised by the Safety Director.

3. Scope

This guideline applies to the Safety Director's assessment of applications submitted by bus operators for exemption from designated provisions pursuant to Division 7A of Part 4 of the BSA.

The guideline is intended to be read in conjunction with the legislation and other relevant policies and guidelines produced by Transport Safety Victoria (TSV). This guideline explains how an application for exemption will be received, assessed and finalised by the Safety Director. This guideline 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 guideline and the legislation, the legislation will prevail.

4. Legislative framework

Section 52B of the BSA provides that an operator of a bus service may apply to the Safety Director for an exemption from a designated provision in respect of a specified bus service carried out, or proposed to be carried out, by or on behalf of the operator.

Section 52A defines a designated provision as any or all provisions of Division 1 and Division 2 of the BSA and regulations made for the purposes of Division 1 and 2.

5. Parts of the bus service

Pursuant to section 52B(1) of the BSA and regulation 22A(2) of the BSR a person may seek an exemption from a designated provision in respect of 'any part of the bus service'. The Safety Director considers a bus service to include:

- the maintenance of the bus used to provide the bus service
- the scheduling or timetabling of the bus service
- the operation of the bus providing the bus service
- the location and maintenance of bus stopping points and bus stop infrastructure associated with the bus service
- the training and competencies of all persons involved in providing the bus service
- the maintenance of all records and documentation directly associated with the provision of the bus service.

6. Circumstances in which an application for exemption will be considered by the Safety Director

The BSA establishes processes by which bus operators assess the risks associated with their bus operations and then establish a system to manage those risks as identified. It provides flexibility that supports bus operators in aligning their risk management with the scope, nature and risk profile of their bus operations.

The requirements of the BSA generally accommodate a level of scalability that can be applied to both large and small bus operators. It is expected that the scalable nature of the BSA should allow most bus operators to find a means of compliance with the legislation without the need to seek an exemption.

However, having regard to the purpose and objects of the BSA and the principles of bus safety, certain areas of the legislation may place a regulatory burden that is excessively onerous or unreasonable with regard to the particular circumstances of an individual bus operator.

Excessively onerous or unreasonable regulatory burden could include circumstances where:

- the risk to the safety of a bus operation is so low that implementing measures to comply with the more prescriptive areas of the BSA can be demonstrated to impose compliance costs without resultant safety benefits
- the risks presented by a particular operation are more efficiently managed through means other than those prescribed in the BSA.

Example 1

Regulation 14 of the BSR provides that a current certificate of roadworthiness for each bus to be used in the bus service must accompany an application for accreditation.

A person buys a new 46 seat bus with the intention of setting up a tour and charter bus service. The person applies to the Safety Director for accreditation under Part 4 of the BSA.

The person applies to be exempt from providing a current roadworthy certificate with their accreditation application (a requirement of regulation 14 of the BSR) on the grounds that the bus is brand new and therefore complies with all roadworthy requirements of the Road Safety Act and the Australian Design Rules.

The applicant for exemption includes a copy of the bus purchase documentation with their application for exemption.

Example 2

The Maintenance Management System requires an accredited bus operator to have an inspection regime which includes a specification that the maximum interval for vehicle safety inspections is three months or a specified distance – 20,000 kilometres for buses that are less than five years old and 10,000 kilometres of older buses.

An accredited bus operator provides a school bus service in a regional area. Their bus is less than five years old. The school bus service consists of the bus travelling a total distance of 30 kilometres each school day. Total annual kilometres travelled by the bus in the school year is 6,000 kilometres with 1,500 kilometres travelled per school term.

The bus operator applies to be exempt from mandated quarterly Vehicle Safety Inspections (Maintenance Management System section 2.4.2) on the grounds that their bus travels less than one third of the specified 20,000 kilometre travel distance for buses that are less than five years old.

The applicant for exemption provides written advice from the bus manufacturer concerning alternative inspection intervals, their defect records covering the last three years and annual distance travelled records.

In these cases, bus 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.

In summary, while the Safety Director is provided with the power to exempt, the Safety Director can only exercise the exemption power when satisfied that the applicant has:

- demonstrated that the applicant is, or is to be, an operator in relation to the bus service in respect of which the exemption is sought
- and that the applicant has complied with the requirements prescribed by regulation.

By reducing the degree of regulation for some bus operators commensurate to their level of risk, exemptions should not reduce the level of bus safety, but rather streamline regulatory arrangements and reduce unnecessary or excessive compliance burdens for business.

7. Limitations of Safety Director granted exemptions

When granting an exemption from the designated provisions of Division 1 and Division 2 of the BSA, the Safety Director cannot exempt bus operators from:

- the general safety duties under Part 3 of the BSA
- any obligations of bus operators provided in the BSA outside Division 1 and 2 of Part 4, and
- any BSR requirements not directly related to the designated provisions of Division 1 and 2.

As such, a bus operator exempted from complying with a designated provision of Division 1 and Division 2 must continue to comply with their overarching duty to manage the risks to safety, so far as is reasonably practicable, associated with providing the bus service, as well as other duties that may be applicable.

Example:

Section 22(5A) of the BSA allows that a registered bus operator providing a community and private bus service may only use probationary drivers to drive their bus with the Safety Director's permission.

An operator in this situation seeks exemption from the requirement to obtain the Safety Director's approval before using drivers who hold a probationary driver's licence.

Assuming the exemption application was granted, the bus operator would still need to meet their general safety duty for the safety of their bus service by ensuring that their probationary bus drivers have the competence and capacity to safely drive the bus.

8. Imposition of conditions or restrictions

In granting an exemption the Safety Director can impose conditions and restrictions around the exemption being granted. It is envisaged that these conditions and restrictions will (among other things) require alternative means of compliance based on the risk profile of the particular operator.

9. What the applicant must demonstrate

The requirements that an applicant seeking an exemption must demonstrate are clearly prescribed in section 52C of the BSA and regulation 22B of the BSR. Bus operators must provide sufficient information (i.e., risk analysis) to allow the Safety Director to assess these requirements. The Safety Director will also expect bus operators to demonstrate that the circumstances warrant an exemption and that there exist sufficient controls to manage risks to safety associated with the exemption sought.

10. Submission and receipt of applications

An application for exemption must be made in writing on the form at Attachment 1. The completed application and any supporting documents must be mailed to the following address:

Transport Safety Victoria
PO Box 2797
Melbourne VIC 3001
Attention: Manager, Accreditation and Registration

TSV will acknowledge receipt of an application for exemption in writing.

11. Assessment of applications

The Safety Director will assess applications for exemption on a case by case basis, taking into consideration the nature and scope of the bus operator's operation, the exemption sought and the requirements prescribed under the BSA and BSR.

For the purposes of section 52C of the BSA, an applicant must provide evidence that the applicant is, or is to be, an operator in relation to the bus service in respect of which an exemption is sought.

For the purposes of regulation 22B the applicant must provide:

- a. evidence that the requirement or requirements for which an exemption is sought imposes a regulatory burden that is or are excessively onerous or unreasonable in the circumstances having regard to:
 - i. the purpose and objects of the BSA, and
 - ii. the principles of bus safety.

The applicant must also provide evidence that:

- a) the granting of the exemption will not reduce the safe operation of the bus service in respect of which the exemption is sought

- b) having regard to the scale and nature of the bus operations for which the exemption is sought, the applicant has sufficient competence and capacity to manage risks to safety associated with operating the bus service if the exemption is granted, and
- c) the applicant has sufficient financial capacity, or public risk insurance arrangements, to meet reasonable potential accident liabilities arising from the bus service in respect of which the exemption is sought.

The Safety Director must be satisfied that:

- the bus operator has, and will continue to have, the competence and capacity to manage the risks to safety to the bus service, and
- the granting of the exemption will not compromise safety.

12. Determination and finalisation of applications

Pursuant to section 52D of the BSA, an application for exemption must be determined by the Safety Director:

- a. 6 months after the application was received by the Safety Director, or
- b. if the Safety Director requests further information, 6 months, or such other period, as is agreed between the Safety Director and the applicant, after the Safety Director receives the last information so requested, or
- c. if the Safety Director, by written notice given to the applicant before the expiry of the relevant 6 months, specifies another period, that period, whichever is longer.

If an application for exemption is granted with or without conditions or restrictions, the Safety Director will notify the applicant of the decision in writing.

If a condition or restriction has been imposed on the exemption the Safety Director will specify:

- the reasons for imposing the conditions or restriction, and
- information about the right of review under Part 6 of the BSA.

If an application for exemption is refused, the Safety Director will notify the applicant that the application has been refused in writing and will specify:

- the reasons for the decision to refuse to grant the application, and
- information about the right of review under Part 6 of the BSA.

13. Applications for variation of an exemption

A bus operator granted an exemption may apply at any time for a variation of the exemption. Such an application must specify the details of the variations being sought and the matters specified under regulation 22D of the BSR. The application must be made in writing and submitted on the form at Attachment 1. The completed application and any supporting documents must be mailed to the following address:

Transport Safety Victoria
PO Box 2797
Melbourne VIC 3001
Attention: Manager, Accreditation and Registration

TSV will acknowledge receipt of an application for variation of an exemption in writing. An application for variation of an exemption will be received, assessed and finalised in the same way as an application for exemption having regard to the provisions of section 52F of the BSA. Please refer to paragraphs 10, 11 and 12.

14. Ensuring ongoing compliance

TSV will ensure ongoing compliance with an exemption granted by the Safety Director through normal compliance and enforcement activities, such as safety audits and inspections.

Pursuant to section 52J(1) of the BSA if at any time the Safety Director considers that the operator:

- a) is no longer able to demonstrate the matters referred to in section 52C of the BSA, or to satisfy the conditions or to comply with the restrictions for exemptions, or
- b) is not operating the bus service to which the exemption relates, or has not done so for at least the preceding 12 months, or
- c) the operator contravenes the BSA or the regulations

the Safety Director may suspend, revoke, impose conditions or restrictions on the exemption or vary the conditions or restrictions on which the exemption is sought.

In considering any compliance or enforcement action, regard will be had to TSV's **Regulatory Approach Policy** (available from www.transportsafety.vic.gov.au).

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Attachment A – Form BUS 5 - Application for exemption