



# Victoria Government Gazette

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BUS SAFETY REGULATIONS 2010

Regulation 22E

Exemptions Granted by the Director, Transport Safety

Notice of Issue of Exemption Guidelines

I, Terence Alan Osborne, Director, Transport Safety, hereby give notice of the issue of guidelines in accordance with the requirements of regulation 22E(3)(a) of the Bus Safety Regulations 2010.

The guidelines take effect on the day this notice is published in the Government Gazette.

Dated 17 July 2013

TERENCE ALAN OSBORNE  
Director, Transport Safety

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**SPECIAL**

**BUS SAFETY ACT 2009 (Vic.)**

**BUS OPERATOR EXEMPTIONS GUIDELINE**

Date: 15 July 2013

## 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.<sup>1</sup>

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.

<sup>1</sup> Section 4 **Bus Safety Act 2009** (Vic.)

#### 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
- It may also be the case that the risks presented by a particular operation are more efficiently managed through means other than those prescribed in the BSA.

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.

**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 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, Victoria 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, Victoria 3001

Attention: Manager Accreditation & 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](http://www.transportsafety.vic.gov.au)).

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

Transport Safety Victoria  
Level 8, 121 Exhibition Street, Melbourne, Victoria 3000  
PO Box 2797 Melbourne, Victoria 3001  
T: 1800 223 022  
E: [information@transportsafety.vic.gov.au](mailto:information@transportsafety.vic.gov.au)  
W: [www.transportsafety.vic.gov.au](http://www.transportsafety.vic.gov.au)



**Attachment A – Form BUS 5 – Application for Exemption**
**BUS 5**  
 17 July 2013
**Application for Bus Operator Exemption/s**
*Bus Safety Act 2009 (Vic), Bus Safety Regulations 2010 (Vic)*

TSV office use only

**Things to know before applying**

An applicant may be any of the following:

- an accredited or registered bus operator seeking a new exemption
- an accredited or registered bus operator seeking a variation to an existing exemption, condition or restriction
- a new applicant for bus operator accreditation or registration seeking an exemption.

Before completing this application you should:

- read the exemption guidelines published by the Safety Director on the Transport Safety Victoria (TSV) website
- determine whether the exemption/s you are seeking are in accordance with the *Bus Safety Act 2009 (Vic)* and the *Bus Safety Regulations 2010 (Vic)*
- determine that the requirement/s for which an exemption/s is/are sought impose a regulatory burden that is excessively onerous or unreasonable having regard to the purpose and objects of the Bus Safety Act and the principles of bus safety in the circumstances
- prepare and provide supporting documentation required as part of the application from the document checklist provided on page 5.

If, after reading the guidelines, you are unsure how exemptions relate to your bus service and circumstances, you should contact TSV on 1800 223 022 for advice.

There is no application fee.

**Section 1 Applicant details**

1. Are you the applicant...

- an accredited or registered bus operator seeking a new exemption? → Go to question 2.
- an accredited or registered bus operator seeking a variation to an existing exemption, condition or restriction? → Go to question 2.
- a new applicant for bus operator accreditation or registration seeking an exemption? → Go to question 2.

2. Name of applicant (This is the entity name. For example: John Smith, John &amp; Mary Smith, Smiths Bus Lines Pty Ltd)

3. Registration or accreditation number (if you are currently registered or accredited as a bus operator in Victoria)

4. Name and contact details of the person appointed by the applicant to deal with queries in relation to this application

Title (Mr, Mrs, Dr, etc)	Surname	Given names
<input type="text"/>	<input type="text"/>	<input type="text"/>

 Position title  


Telephone number	Mobile number	Fax number
( ) <input type="text"/>	<input type="text"/>	( ) <input type="text"/>

 Email  


5. Applicant address

Street number and name	Suburb	State	Postcode
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

 Country  Australia or specify other country 

 Postal address  Same as street address above

OR specify different street number and name/PO box

Street number and name/PO box	Suburb	State	Postcode
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

 Country  Australia or specify other country 

**Telephone** 1800 223 022  
**Fax** 03 9655 8929  
**Email** [information@transportsafety.vic.gov.au](mailto:information@transportsafety.vic.gov.au)

PO Box 2797 Melbourne VIC 3001  
 121 Exhibition Street, Melbourne VIC 3000  
**Website** [www.transportsafety.vic.gov.au](http://www.transportsafety.vic.gov.au)



**Section 2 Bus service details**

6. What is the scope and nature of the bus service for which you are seeking the exemption/s?
- A commercial bus service (specify which type/s)  Route  Demand responsive  Tour and charter  Courtesy
- A local bus service
- Commercial minibus service
- Community and private bus service (specify which type/s below)
- Religious  Educational  Health  Welfare  Philanthropic  Sporting  Social body
- Courtesy bus service
- Non-commercial courtesy bus service
- Hire and drive bus service

7. Provide a description of the service to which the exemption/s relate, including days/hours of operation, geographical locations covered (suburbs), the type of patrons (general public, wedding parties, sporting groups etc.) and whether or not passengers are charged a fee to use the service.

8. Tick the box(es) which best describe the type of environment where the bus service generally operates. (You must choose at least one and can select more than one if applicable)

**Built-up areas.** A built-up area is where there are buildings and/or houses next to the road or there is street lighting at intervals not over 100 metres apart for a distance of 500 metres or more.

- Environment 1 (E1)** – Built-up areas characterised by high population density, low speeds, shorter journeys.
- Environment 2 (E2)** – Outside built-up areas characterised by lower population density, higher vehicle speeds, longer journeys, narrow and/or undivided roads, hazards such as livestock/wildlife/trees close to the road, heavy vehicle traffic at higher speeds.
- Environment 3 (E3)** – Outside built-up areas characterised by extreme risk factors such as long, steep roads with precipitous drop offs, high volumes of heavy vehicle traffic at high speeds, narrow or unsealed or winding or undivided roads, blackspots, climate conditions such as fog/snow/ice.

9. How many buses are operated/will be operated for the bus service?

**Section 3 Exemption details**

10. What exemption/s are you seeking or proposing to vary? Provide details of the specific designated provision/s, conditions or restrictions

11. How does the provision from which an exemption is sought impose a regulatory burden that is excessively onerous or unreasonable having regard to the purpose and objects of the Bus Safety Act and the principles of bus safety? List each provision separately.

12. Will any part of the bus service for which exemption is sought be carried out by another person or persons on behalf of the applicant?
- No → Go to question 13.
  - Yes → You must attach a separate document that lists the name and contact details (address, telephone and email) of each such person and provide details of the part of the bus service that the person will carry out on behalf of the applicant. → Go to question 13.

13. Are you applying for an exemption to be accredited as a bus operator?
- No → Go to question 17.
  - Yes → Go to question 14.

14. Provide details of how the exemption will not reduce the safe operation of the bus service in respect of which the exemption is sought?

15. Having regard to the scale and nature of the bus operations for which the exemption is sought, if the exemption is granted, how will you have sufficient competence and capacity to manage risks to safety associated with operating the bus service?

16. Specify the financial capacity or public risk insurance arrangements you intend to put in place to meet reasonable potential accident liabilities arising from the bus service in respect of which the exemption is sought?

**Section 4 Declaration and signature**

17. I declare that:

- the information provided in this application including any attachments is true and correct
- I understand it is an offence under section 66 of the *Bus Safety Act 2009* (Vic) to provide any false or misleading information and that penalties apply.

**Individual applicant**

Who must sign: the individual applicant.

Signature	Date
X	

**A body corporate applicant which is a company within the meaning of the *Corporations Act 2001* (Cth)**

Who must sign: two directors of the company, OR a director and company secretary, OR if a proprietary company that has a sole director who is also the sole company secretary, the sole director.

Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			

**A body corporate applicant other than a company within the meaning of the *Corporations Act 2001* (Cth)**

Who must sign: each director of the body corporate, OR each member of the management committee of the body corporate.

**An unincorporated body or association applicant**

Who must sign: each member of the management committee of the body corporate.

**Partnership applicant**

Who must sign: all partners of the partnership.

If space is insufficient to provide all signatures, photocopy this page as required or attach a separate document with all signatures and details.

Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			
Signature	Printed name	Position	Date
X			

**Attachment checklist**

You must provide the following attachments as part of your application. Failure to provide any of these attachments will result in delays to your application.

**All applicants**

- Evidence that the provision/s from which exemption/s is/are sought impose a regulatory burden that is excessively onerous or unreasonable having regard to the purpose and objects of the Bus Safety Act and the principles of bus safety.

**If applying for exemption from accreditation**

- Evidence of how the exemption will not reduce the safe operation of the bus service in respect of which the exemption is sought.
- Evidence of how you will have sufficient competence and capacity to manage risks to safety associated with operating the bus service.
- Evidence that you have the 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. If you hold public liability insurance, this includes a copy of the public liability insurance policy.
- Will any part of the bus service for which exemption is sought be carried out by another person or persons besides the applicant, you must attach a separate document that lists the name and contact details (address, telephone and email) of each such person and provide details of the activities that it is intended that the person will carry out on behalf of the applicant.

**Business documents (not applicable to individual applicants)****For a body corporate which is a company within the meaning of the Corporations Act 2001 (Cth)**

- A copy of the certificate of incorporation
- A list of the names of all directors of the company, current as at the date of application.

**For a body corporate other than a company within the meaning of the Corporations Act 2001 (Cth)**

- A copy of the certificate of incorporation or registration or a copy of the document creating or evidencing the existence of the body corporate or, for Government authorities or organisations incorporated under legislation, a letter on a letterhead stating the name of the legislation under which they are incorporated)
- A list of the names of all directors and/or office bearers of the body corporate, current as at the date of application.

**For an unincorporated association or body**

- A copy of the certificate of business name or other document creating or evidencing the existence of the unincorporated body or association. For example a certificate of registration, a printed extract from the Australian Securities and Investments Commission website [www.search.asic.gov.au](http://www.search.asic.gov.au)
- A list of the names of all members of the committee of management of the unincorporated association or body, current as at the date of application.

**For a partnership**

- A copy of the partnership agreement
- A list of the names of each of the partners of the partnership, current as at the date of application.

**How to lodge**

Send your completed application and attachments by post to PO Box 2797 Melbourne VIC 3001.

**What happens next**

TSV will send you acknowledgement that your application has been received.

You may be required to provide more information.

When all necessary information has been received, the Safety Director has up to six months to determine the application.

If your application is approved and exemptions granted, you will receive written notification of the exemptions and any conditions or restrictions placed on those exemptions.

If refused, you will be notified in writing, stating the reasons for refusal and your right to appeal the decision at the Victorian Civil and Administrative Tribunal.

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Transport Safety Victoria (TSV) collects and holds the personal information provided in this application to assist the Director, Transport Safety (Safety Director) to administer the *Bus Safety Act 2009 (Vic)* and *Bus Safety Regulations 2010 (Vic)*. TSV is committed to protecting personal information in accordance with its obligations under the *Bus Safety Act 2009 (Vic)*. The personal information provided in this application may be disclosed to other government agencies in accordance with the *Bus Safety Act 2009 (Vic)* and the *Transport Integration Act 2010 (Vic)*. It is an offence under the *Bus Safety Act 2009 (Vic)* to give information that is false or misleading in relation to an application. The individuals whose personal information is collected on this application have a right to seek access to this personal information and to seek correction of any error in the personal information held. All individuals whose personal information is included with this application should be informed of this fact. For more information on privacy please refer to TSV's privacy statement at [www.transportsafety.vic.gov.au/privacy](http://www.transportsafety.vic.gov.au/privacy).

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