

Transport (Rail Safety) Amendment Regulation (No.1) 2016

Explanatory notes for SL 2016 No. 114

made under the

Transport (Rail Safety) Act 2010

General Outline

Short title

Transport (Rail Safety) Amendment Regulation (No. 1) 2016

Authorising law

Sections 85 and 284 of the *Transport (Rail Safety) Act 2010*

Policy objectives and the reasons for them

The Queensland rail industry continues to undergo significant growth, resulting in an increasingly complex and competitive environment. These changes have resulted in rail transport operators advancing more cost efficient train crewing methods which may place increased safety risks on the rail network.

It is widely recognised that train driver fatigue is a significant risk associated with undertaking rail operations. The new requirements in the *Transport (Rail Safety) Regulation Amendment (No. 1) 2016* (Amendment Regulation) are considered a necessary and complementary risk mitigation control in conjunction with other fatigue management measures.

Achievement of policy objectives

The Amendment Regulation will require a rail transport operator's fatigue management program to state the standard or alternative work hours and rest periods applying to the operator's train drivers. The fatigue management program must also include measures to monitor, record and ensure train drivers comply with the standard or alternative work hours and rest periods.

The standard work hours and rest periods for train drivers will:

- complement existing fatigue management requirements
- provide the rail industry with clear boundaries and establish a fatigue safety net

- support the safe carrying out of railway operations while industry continues to undergo significant growth, resulting in an increasingly complex and competitive environment
- allow rail transport operators to operate above the maximum hours if they can demonstrate that they have adequate fatigue management processes in place to mitigate the risk of operating outside of these hours, and
- improve community confidence in the rail network.

The standard or alternative work hours and rest periods, when used in conjunction with the fatigue management program, combines prescription and performance based legislation to adequately manage fatigue risks for train drivers. Standard or alternative work hours and rest periods will complement existing processes and do not remove the general safety duties, or diminish the need for a risk management approach to fatigue management.

New South Wales (NSW) currently prescribes hours of work and rest periods for train drivers under the Rail Safety National Law. The proposed provisions for Queensland are similar to those contained within Schedule 2 of the *Rail Safety National Law National Regulations 2012*.

Standard work hours and rest periods

The Amendment Regulation will address risks relating to train driver fatigue by establishing minimum standard work hours and rest periods for train drivers comprising:

- for a two-driver operation, a maximum shift length of 12 hours
- for a one driver operation, a maximum shift length of 9 hours
- for suburban passenger rail operations, a maximum shift length of 9 hours but no more than 8 hours can be spent driving trains
- a break of at least 12 continuous hours between each shift where the driver's shift ends at the driver's home depot
- a break of at least 8 continuous hours between each shift where the driver's shift ends at an away depot
- no more than 12 shifts in any 14-day period and a maximum of 132 hours to be worked in any 14-day period.

The length of a shift is all time between signing on and signing off of a shift. However, the shift can be up to 16 hours in cases where the train driver, after completing their driving tasks, are provided transport (as a passenger) to the home depot or away depot by the rail transport operator. The rest period starts when the driver signs off at the home or away depot.

An exemption to operating under standard or alternative work hours and rest periods will be provided in the event of an unforeseeable emergency or accident, if the driver reasonably believes that his ability to carry out the rail safety work is not impaired.

Alternative hours of work hours and rest periods

The Amendment Regulation provides that an operator can apply to work outside the standard work hours and rest periods, provided they can demonstrate to the chief executive that they have adequate fatigue management processes in place to mitigate the risk of operating outside the standard hours.

An operator who intends to apply for approval to work under alternative work hours and rest periods must consult with rail safety workers who are likely to be affected by the plan, and their union and workplace health and safety representatives.

The chief executive can only approve the alternative work hours and rest periods if satisfied that the alternative hours are not likely to create risks greater than the risks of operating under the standard work hours and rest periods.

The chief executive can also vary, suspend or revoke an operator's alternative work hours and rest periods if the approval was granted because of

- false or misleading information
- the risks of the alternative hours are greater than the risks of the standard hours
- the risks of the alternative hours have increased
- the approval, including any conditions, for operating under alternative hours is not being complied with, or
- the operator is not complying with the *Transport (Rail Safety) Act 2010*.

Complying with the standard and alternative work hours and rest periods

To provide an opportunity for industry to comply with the standard work hours or rest periods, or receive approval to operate under the alternative work hours and rest periods, the rail transport operator will not be required to comply with the requirements until 12 months after the Amendment Regulation is made.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *Transport (Rail Safety) Act 2010* to—

- provide for improvement of the safe carrying out of railway operations
- provide for the management of risks and make special provision for the control of particular risks arising from railway operations, and
- promote public confidence in the safety of passengers or freight carried by rail.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

Currently, under the *Transport (Rail Safety) Act 2010*, a rail transport operator is required to have and implement a fatigue management program as part of their safety management system. The adoption of standard or alternative work hours and rest periods for train drivers in Queensland will establish an industry-wide minimum standard (or safety net) to form the basis for fatigue risk management.

These requirements will complement existing processes and do not remove in any way the general safety duties, nor diminish the need for a risk management approach to fatigue management.

The Amendment Regulation allow for an operator to work outside the mandated hours, provided they can demonstrate to the chief executive that they have adequate fatigue management processes in place to mitigate the risk of operating outside the standard hours.

In addition, to ensure adequate time for industry to comply, a 12-month transitional provision is proposed.

Therefore, it is expected that there will be minimal impost on industry to comply with the Amendment Regulation

Consistency with fundamental legislative principles

The Amendment Regulation raises no issues in regard to the fundamental legislative principles.

Consultation

The Department of Transport and Main Roads (TMR) consulted relevant stakeholders, including rail industry, unions, and key agencies on mandated train driver hours in November 2010.

In March 2016, TMR consulted with Queensland's 67 accredited rail transport operators, rail related unions, the Queensland Police Service, Department of Justice and Attorney-General and railway peak bodies to consider the impacts of standard work hours and rest periods on the current rail operating environment.

The majority of respondents during the 2016 consultation were not against prescribing standard train driver work hours and rest periods in the regulation. However, some stakeholder groups opposed the proposed changes on the basis that they deviated from national consistency, differed from the NSW provisions on mandated train driver hours, and would include the drivers of rolling stock other than freight or passenger trains.

In response to the consultation outcomes and after further analysis, the Amendment Regulation will apply only to the drivers of freight and passenger trains and will address standard hours for train drivers who are provided transport (as a passenger) to their home or away depot after their driving tasks.

The Queensland Rail Safety Regulator and the Rail Tram and Bus Union support the proposal.

The Queensland Productivity Commission has advised that a Regulatory Impact Statement is not required.