

# Transport (Rail Safety) (Fatigue Management) Amendment Regulation 2017

Explanatory notes for SL 2017 No. 77

made under the

*Transport (Rail Safety) Act 2010*

## General Outline

### Short title

*Transport (Rail Safety) (Fatigue Management) Amendment Regulation 2017*

### Authorising law

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

### Policy objectives and the reasons for them

On 28 February 2017, the Queensland Parliament enacted the *Rail Safety National Law (Queensland) Act 2017*. The primary purpose of the Act is to repeal the *Transport (Rail Safety) Act 2010* and apply the Rail Safety National Law as a law of Queensland.

The policy objective of the *Transport (Rail Safety) (Fatigue Management) Amendment Regulation 2017* (the amendment regulation) is to ensure a smooth transition to the Rail Safety National Law by aligning the wording relating to maximum work hours and minimum rest periods for train drivers of freight and passenger trains with the national regulations and removing any doubt that they can be interpreted differently.

### Achievement of policy objectives

On 8 July 2016, amendments to the *Transport (Rail Safety) Regulation 2010* commenced, bringing into force maximum work hours and minimum rest periods for train drivers. These provisions were made in recognition that train driver fatigue is a significant risk associated with undertaking rail operations.

At the end of 30 June 2017, the *Rail Safety National Law (Queensland) Act 2017* will repeal the *Transport (Rail Safety) Act 2010* and apply the Rail Safety National Law as a law of Queensland. Under the Rail Safety National Law, national regulations will prescribe the maximum work hours and minimum rest periods for train drivers.

To ensure a smooth transition to the Rail Safety National Law, it is desirable to align the language of the *Transport (Rail Safety) Regulation 2010* (section 19B) with the language used in the national regulations (Schedule 2, Part 2, sections 8 and 9) relating to the maximum shift length allowed to be worked by one driver and two driver operations for freight and passenger trains.

In particular, this will remove any argument that the *Transport (Rail Safety) Regulation 2010* allows a 12 hour shift to be worked by a two driver operation that consists of a qualified train driver and another rail safety worker who is not a qualified train driver (such as a driver's assistant).

Transitional provisions in the *Rail Safety National Law (Queensland) Act 2017* (specifically sections 79 and 92) allow a rail transport operator that was complying with the provisions of the *Transport (Rail Safety) Act 2010* to continue to operate in compliance with those provisions for two years after commencement.

The transitional regulation makes it clear that a work scheduling practice where a maximum shift of 12 hours is to be worked by a qualified train driver and another rail safety worker (who is not a qualified train driver) will not comply with the *Transport (Rail Safety) Regulation 2010* and cannot be relied on as a method of compliance once the *Rail Safety National Law (Queensland) Act 2017* commences.

## **Consistency with policy objectives of authorising law**

The amendment regulation is consistent with the policy objectives of the *Transport (Rail Safety) Act 2010*.

## **Inconsistency with policy objectives of other legislation**

The amendment regulation is consistent with the policy objectives of other legislation, including the *Rail Safety National Law (Queensland) Act 2017*.

## **Alternative ways of achieving policy objectives**

The amendment regulation is the only effective means of achieving the policy objectives.

## **Benefits and costs of implementation**

These amendments will clarify existing requirements. They do not remove any general safety duties, nor diminish the need for a risk management approach to fatigue management.

The *Transport (Rail Safety) Regulation 2010* allows a rail transport operator to apply to the chief executive for approval of alternative work hours and rest periods for train drivers. This allows the operator to work outside the required hours, provided they can show that they have adequate fatigue management processes in place to mitigate the risk of operating outside the standard hours. Rail transport operators have been able to apply for approval of alternative work hours and rest periods for train drivers since 8 July 2016 when the provisions relating to maximum work hours and minimum rest periods for train drivers commenced.

## Consistency with fundamental legislative principles

The local regulation is consistent with fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*.

## Consultation

Stakeholders were extensively consulted in relation to the development of the *Rail Safety National Law (Queensland) Act 2017*.

On 19 and 20 April 2016, The Department of Transport and Main Roads (TMR), in conjunction with the Office of the National Rail Safety Regulator, conducted forums for rail transport operators, unions and rail representative bodies to discuss how the rail safety reforms will be applied in Queensland, the cost recovery methodology and how the transition to the National Rail Safety Regulator might impact their operations.

Before the amendments to the *Transport (Rail Safety) Regulation 2010* commenced, bringing into force maximum work hours and minimum rest periods for train drivers, 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, and railway peak bodies to consider the impacts of standard work hours and rest periods on the rail operating environment.

TMR has continued to keep stakeholders up to date during the transition process.

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation, Queensland Productivity Commission, was not consulted in relation to the local regulation. TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category A—Regulatory proposals that make consequential amendments).