

Queensland



Explanatory Notes for SL 1996 No. 173

Justices Act 1886

Transport Infrastructure Act 1994

Transport Operations (Passenger Transport) Act 1994

TRANSPORT INFRASTRUCTURE (RAIL) REGULATION 1996

The *Transport Infrastructure (Rail) Regulation 1996* has been drafted in a manner consistent with current legislative drafting practice and has been written in plain English. Consequently, certain sections require little or no further explanation and have been summarised in general terms only.

The regulation is a re-make of the current *Transport Infrastructure (Railways) Regulation 1994* which was drafted pursuant to the *Transport Infrastructure (Railways) Act 1991*. That Act has since been repealed and the current regulation has been continued in force, by the *Transport Infrastructure Act 1994*, section 225, to expire on 30 June 1996.

Short title

The short title of this regulation is the *Transport Infrastructure (Rail) Regulation 1996*.

Authorising law

The regulation is made pursuant to the *Transport Infrastructure Act 1994*, section 200, the *Transport Operations (Passenger Transport) Act 1994*, section 155 and the *Justices Act 1886*, section 266.

Policy objectives

The policy objectives of the regulation are to—

- provide for the safe carriage of certain goods and materials on railways;
- seek appropriate levels of safety and behaviour for people on railways;
- enable railway managers to deal with abandoned property;
- encourage safe vehicle usage on railways and minimise damage to infrastructure; and
- declare the activities of Queensland Rail that are conducted on a commercial basis.

These policy objectives relate directly to the broader policy objectives of the principal legislation which specify transport effectiveness, efficiency and safety. These policy objectives have also been developed to assist rail transport to become a more viable public transport option.

The policy objectives of the regulation will be achieved by—

- defining “codes” for the carriage of certain goods and materials;
- stating the obligations of persons on railways;
- establishing the means for railway managers to remove and dispose of abandoned property (including vehicles) and to recover incurred expenses;
- providing for the parking and use of vehicles on railways;
- detailing the parameters for safe use of over dimension vehicles on railway crossings and railways; and
- delineating between Queensland Rail’s commercial and non-commercial activities.

These targeted regulatory actions will be effective in achieving the policy objectives as they specifically address key concerns relating to passenger safety and the efficient use and management of infrastructure.

The *Transport Infrastructure (Rail) Regulation 1996* has been drafted with reference to the objectives of the authorising laws and is consistent

with the policy objectives of those Acts. Further detail on these objectives are provided in the attached Regulatory Impact Statement (RIS).

Benefits and costs

Possible alternative means of achieving the policy objectives are also described in the RIS. Similarly, the RIS includes a brief assessment of the benefits and costs of the regulation. The RIS concludes that the regulation is the most appropriate means of achieving the policy objectives.

Consistency with fundamental legislative principles

The *Transport Infrastructure (Rail) Regulation 1996* does not offend fundamental legislative principles and is consistent with the *Legislative Standards Act 1992*. The regulation is drafted in keeping with the policy objectives of the principal legislation and places further reliance on the provisions of that legislation. The regulation does not introduce any powers which have not been defined in the parent legislation.

Consultation

All relevant State Government Departments have been consulted in the drafting of the regulation. Importantly, considerable consultation with Queensland Rail was carried out and all matters have been satisfactorily resolved.

The public consultation process associated with the Regulatory Impact Statement was finalised on 3 June 1996. Following notification in the government gazette and the print media, copies of the RIS were circulated to interested parties. No significant issues were raised during this consultation period. No substantive issues remain unresolved.

PART 1—PRELIMINARY

Section 1 sets out the short title of the regulation (*Transport Infrastructure (Rail) Regulation 1996*).

Section 2 provides that all provisions of the regulation will commence on 1 July 1996.

Section 3 defines particular terms and words used in the regulation.

Section 4 prescribes the codes for the carriage of dangerous goods, explosives, and radioactive substances. Reference is made to section 138 (Carrying dangerous goods) of the principal Act.

Section 5 declares those activities of Queensland Rail which are taken to be activities conducted on a commercial basis and those activities that are not taken to be activities carried out on a commercial basis. This relates to the application of the *Freedom of Information Act 1992* and the *Judicial Review Act 1991* and reference is made to section 199 (Application of Freedom of Information Act and Judicial Review Act) of the principal Act.

Section 6 provides that exemptions may be given to provisions of the regulation by the railway manager (for part 4 vehicle provisions) or either the railway manager or railway operator (for other provisions). The exemption may be conditional and breach of any condition invalidates the permission.

PART 2—OBLIGATIONS OF PERSONS ON RAILWAYS

Section 7 establishes that alcohol must not be consumed on a railway. The section provides for exceptions where the railway operator provides the alcohol on rolling stock or the railway manager provides the alcohol elsewhere on the railway and the alcohol is consumed at places set aside for this consumption.

Section 8 establishes that a person is not to allow an animal under their control to go onto a railway except in circumstances where the person and

animals are crossing the railway line by a railway crossing. Exceptions are provided for guide dogs. It is envisaged that the exemption provisions of Section 6 would be utilised for animals to be transported by rail.

Section 9 provides that a person must not display a coloured light on or near a railway.

Section 10 defines types of behaviour which are not acceptable on a railway in the interest of personal safety.

Section 10(1) prohibits certain unsafe practices such as—

- entering or leaving moving rolling stock;
- opening the doors of moving rolling stock (other than connecting doors);
- putting part of the person's body out of a window or door of rolling stock unless getting off the rolling stock onto a platform; and
- entering or leaving the railway other than via a proper entrance or exit.

Section 10(2) specifies that a person must not enter non-passenger rolling stock (for example: freight wagons, locomotives etc) or ride on the outside of rolling stock.

Section 10(3) establishes that a person must not wilfully damage a railway and an example is provided. The definition of “damage” is provided in section 3 and includes: deface, destroy, injure, mark, put a notice on, remove and soil.

Section 10(4) does not limit the preceding sub-section but establishes 2 specific forms of damage which are not permitted, namely the soiling of a seat on rolling stock and the placing of graffiti on a railway.

Section 11 establishes that a person must not litter on a railway.

Section 12 establishes types of behaviour which are inappropriate on a railway and which are grouped under the heading of nuisance behaviour. The *Transport Operations (Passenger Transport) Act 1994*, section 141 provides a more general offence provision relating to creating a disturbance or nuisance.

Section 12(1) defines where a person must not smoke;

Section 12(2) defines where a person must not consume food or drink;

Section 12(3) restricts persons to the occupation of 1 seat and establishes that a person must not put their feet on a seat of the rolling stock;

Section 12(4) indicates that a person must not bring anything onto rolling stock likely to cause an obstruction because it cannot be adequately stowed.

Section 12(5) provides that a person must not place anything in the aisles of rolling stock that could cause an obstruction to safe access or that could cause an injury;

Section 12(6) provides that a person must not sell anything, seek business, or conduct surveys on a railway;

Section 12(7) limits the use of musical and sound equipment on a railway thereby ensuring the amenity of other persons on the railway; and

Section 12(8) defines “sound equipment” for the purposes of 12(7).

Section 13 relates to the safe and appropriate means of crossing railway tracks and using railway crossings.

Section 13(1) provides that a person must use a railway crossing to cross a railway track. The section also makes reference to animals in order to clarify that a person must not allow an animal under their control to cross a railway track except via a railway crossing.

Section 13(2) provides that a person must not use a railway crossing when a warning signal is operating or when it is not safe to do so.

Section 13(3) enables an authorised person for a railway to direct persons not to enter a railway crossing if it is not safe to do so.

Section 13(4) provides that a person must obey a direction given pursuant to section 13(3).

Section 13(5) establishes that a person must not remain on the crossing for longer than necessary and should proceed directly across the crossing.

Section 13(6) provides that a person must not drive a vehicle or a toy

vehicle on a railway in those areas designed for pedestrians such as platforms, passenger bridges, pedestrian subways etc.

Section 13(7) provides that a person must close a gate at a railway crossing as soon as practicable after opening it.

Section 13(8) defines toy vehicles for the purposes of section 13(6) by reference to the definition in the *Traffic Regulation 1962*. The definition includes skateboards and roller blades.

PART 3—MOVING PROPERTY ABANDONED OR LEFT ON RAILWAYS

Section 14 provides that a railway manager may move (including remove) property that is abandoned or left on a railway against the railway manager's directions. These directions are defined to include the direction of an employee of a railway manager and a direction indicated on a sign displayed on the railway.

Section 15 provides that a railway manager must (within 14 days) notify the owner of relevant details as specified and if the owner cannot be identified, these details are to be published in a newspaper available generally in the State. This notification is not required when the property has insufficient value to justify giving the notice or it is impracticable to give the notice.

Section 16 provides that railway manager may recover moving expenses (as defined).

Section 17 requires that the railway manager release the property on payment of the moving expenses.

Section 18 provides that the railway manager may dispose of the property if the moving expenses are not paid within 2 months or, if no notice was given, after 2 months has passed. If the railway manager sells the property the proceeds are to pay firstly for sale expenses, secondly for moving expenses with any balance to be paid to the owner. Alternatively if the sale proceeds is less than the sale and moving expenses the difference is

a debt payable to the railway manager. The section indicates that the railway manager may waive expenses.

PART 4—VEHICLES

Section 19 specifies driving and parking requirements for the use of vehicles on a railway.

Section 19(1) provides that the section does not apply to roads within the meaning of the *Transport Infrastructure Act 1994*, chapter 5.

Section 19(2) limits the speed a person may drive a vehicle on a railway to that indicated on a sign or otherwise 20 km/h.

Section 19(3) provides that a person can only park vehicles on a railway in designated parking spaces.

Section 19(4) establishes that a person must comply with a direction indicated on a sign regarding parking or driving on the railway.

Section 19(5) establishes that a person must comply with a direction given by an employee about driving or parking the vehicle.

Section 19(6) defines “employee” for the purposes of section 19(5).

Section 20 provides that a person must not use a vehicle in a way likely to damage or obstruct a railway.

Section 21 specifies mass restrictions for vehicles using railway crossings.

Section 22 specifies height restrictions for vehicles using railway crossings.

Section 23 specifies length restrictions for vehicles using railway crossings.

Section 24 specifies width restrictions for vehicles using railway crossings.

Section 25 specifies requirements relating to written permissions to act contrary to part 4.

Section 25(1) provides that written permission from a railway manager is required to act contrary to part 4.

Section 25(2) specifies the matters which a railway manager must have regard to when giving consideration to the application.

Section 26 describes the conditions which may apply to a written permission granted pursuant to section 25. Breach of any condition invalidates the permission.

PART 5—EVIDENCE

Section 27 provides that for a person to buy or use a concessionary ticket the person must be entitled to the concession. A person must not buy or use a concessionary ticket unless carrying evidence of their entitlement to the concession. This evidence must be produced on the demand of an authorised person.

Section 28 provides that evidence that a sign was displayed on a railway is evidence that the sign was displayed with the authority of the railway manager or the railway operator.

Section 29 specifies that part 6 amends the *Justices Regulation 1993*.

Section 30 amends the *Justices Regulation 1993* by replacing part 41 of schedule 1 with a revised part 41 of the schedule indicating those provisions of the *Transport Infrastructure (Rail) Regulation 1996* which are infringement notice offences. The revised schedule also provides the associated Infringement notice penalty units for the offences indicated. Further, the schedule specifies that a person authorised under the *Transport Operations (Passenger Transport) Act 1994*, (section 116) is authorised to serve an infringement notice.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Transport.