

Rail Safety National Law (Queensland) (Transitional) Regulation 2017

Explanatory notes for SL 2017 No. 76

made under the

Rail Safety National Law (Queensland) Act 2017

General Outline

Short title

Rail Safety National Law (Queensland) (Transitional) Regulation 2017

Authorising law

Section 132 of the *Rail Safety National Law (Queensland) Act 2017*

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 *Rail Safety National Law (Queensland) (Transitional) Regulation 2017* (the transitional regulation) provides for transitional regulations under section 132 of the *Rail Safety National Law (Queensland) Act 2017* to:

- declare and remove any doubt that the provisions mentioned in section 52 of the *Transport (Rail Safety) Regulation 2010* came into force at the time of their commencement, despite their stated application from 1 July 2017; and
- ensure that the chief executive of the Department of Transport and Main Roads (TMR) can adjust the amounts of annual accreditation fees paid for the financial year preceding the repeal of the *Transport (Rail Safety) Act 2010* (through a final reconciliation process).

The purpose of section 132 of the *Rail Safety National Law (Queensland) Act 2017* is to provide a power to make a regulation of a saving or transitional nature which is necessary to facilitate the change from the operation of the *Transport (Rail Safety) Act 2010* to the operation of the *Rail Safety National Law (Queensland) Act 2017*.

Achievement of policy objectives

Maximum work hours and minimum rest periods for train drivers

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.

In order to give rail transport operators time to comply with the requirements, some of the provisions had a delayed application of 1 July 2017. Specifically, section 52 of the *Transport (Rail Safety) Regulation 2010* delayed the application of the following sections relating to maximum work hours and minimum rest periods for train drivers:

- section 19(2);
- part 3, division 7A, subdivision 2;
- part 3, division 8A; and
- section 27(2).

During that time, rail transport operators could utilise provisions (that both commenced and applied from 8 July 2016) to receive approval to operate under alternative work hours and rest periods.

A transitional regulation will remove any doubt that the provisions mentioned in section 52 of the *Transport (Rail Safety) Regulation 2010* came into force at the time of their commencement, despite their stated application from 1 July 2017.

The provisions were inserted by the *Transport (Rail Safety) Amendment Regulation (No. 1) 2016* and commenced on 8 July 2016. The provisions were amended by the *Transport (Rail Safety) (Fatigue Management) Amendment Regulation 2017*, which commenced on notification.

The transitional regulation makes it clear that the provisions mentioned in section 52 of the *Transport (Rail Safety) Regulation 2010*, as amended, are ‘repealed fatigue management provisions’ for the purposes of section 92 of the *Rail Safety National Law (Queensland) Act 2017*. Therefore, a rail transport operator’s fatigue management program must comply with all of the provisions mentioned in section 52 before the *Rail Safety National Law (Queensland) Act 2017* commences in order for the transitional period in section 92 to apply.

Given that the national regulations are commencing at the same time as the *Rail Safety National Law (Queensland) Act 2017*, it is important to put beyond doubt that section 92 cannot be used to preserve a fatigue management program that does not comply with all of the provisions in force in the *Transport (Rail Safety) Regulation 2010* immediately before the commencement of the *Rail Safety National Law (Queensland) Act 2017*, including the provisions that apply from 1 July 2017.

Further, this transitional provision makes it clear that the provisions mentioned in section 52 of the *Transport (Rail Safety) Regulation 2010* were in force on their commencement for the purposes of any other transitional provision in the *Rail Safety National Law (Queensland) Act 2017*, including in relation to section 79 of that Act (Compliant safety management system).

Annual accreditation fees for the 2016-17 financial year

Currently, rail transport operators pay their annual accreditation fee in advance. In accordance with the *Transport (Rail Safety) Regulation 2010*, operators pay the fee by 30 September each financial year based on estimated figures (such as estimated track and train kilometres).

After the financial year ends, the chief executive has power to require actual revenue figures be provided, and the operator must pay any difference between their estimate and the actual figures. Also, the chief executive refunds any overpayment made by the operator.

Once the *Transport (Rail Safety) Act 2010* and *Transport (Rail Safety) Regulation 2010* are repealed, reconciling the 2016-17 fees will not be able to happen unless particular provisions are preserved. The transitional regulation will ensure that the chief executive can collect the correct amount of the annual accreditation fees for the 2016-17 financial year. This transitional regulation also ensures rail transport operators have not over or underpaid their 2016-17 accreditation fees.

Consistency with policy objectives of authorising law

The transitional regulation is consistent with the policy objectives of the *Rail Safety National Law (Queensland) Act 2017*.

Inconsistency with policy objectives of other legislation

The transitional regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

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

Benefits and costs of implementation

Maximum work hours and minimum rest periods for train drivers

The transitional regulation will remove any argument that a rail transport operator could utilise provisions of the *Rail Safety National Law (Queensland) Act 2017* to continue to operate for a further two years after the commencement of that Act without compliance with the provisions mentioned in section 52 of the *Transport (Rail Safety) Regulation 2010*.

This will ensure that provisions regulating the maximum work hours and minimum rest periods for train drivers are complied with in recognition that train driver fatigue is a significant risk associated with undertaking rail operations.

Annual accreditation fees for the 2016-17 financial year

The transitional regulation ensures that the chief executive of TMR can adjust the amounts of annual accreditation fees paid for the financial year preceding the repeal of the *Transport (Rail Safety) Act 2010*.

As operators routinely overestimate their track and train kilometres, most operators that paid an annual accreditation fee for the 2016-17 period will be entitled to a refund.

Consistency with fundamental legislative principles

The transitional 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*.

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.

Regarding the transitional regulation relating to the annual accreditation fees for the 2016-17 financial year, no public consultation was undertaken as the regulation maintains the status quo until the *Transport (Rail Safety) Act 2010* is repealed. Maintaining the status quo will be beneficial to operators who have overestimated their track and train kilometres for the 2016-17 period as they will be entitled to a refund.

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 transitional regulation. TMR applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category A—Regulatory proposals that make consequential amendments; and Category E—Regulatory proposals that are of a transitional nature).