

Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018

Explanatory notes for SL 2018 No. 105

made under the

Statutory Instruments Act 1992
Transport Infrastructure Act 1994

General Outline

Short title

Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018

Authorising laws

Section 59 of the *Statutory Instruments Act 1992*
Section 442 of the *Transport Infrastructure Act 1994*

Policy objectives and the reasons for them

The policy objectives of the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018* (the Regulation) are:

- to prescribe the obligations of persons involved in the transport of dangerous goods by rail;
- to reduce as far as practicable the risks arising from the transport of dangerous goods by rail;
- to give effect to the standards, requirements and procedures of the Australian Code for the Transport of Dangerous Goods by Road and Rail (the ADG Code) as far as they apply to the transport of dangerous goods by rail; and
- to promote consistency between the standards, requirements and procedures applying to the transport of dangerous goods by rail and those applying to other modes of transport.

These policy objectives reflect the objectives of the national model legislation for the transport of dangerous goods by road and rail developed and maintained by the National Transport

Commission (NTC). Queensland has adopted the model legislation so far as it applies to the transport of dangerous goods by rail in the *Transport Infrastructure Act 1994* (the Act) and the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008* (2008 Regulation).

In accordance with Part 7 of the *Statutory Instruments Act 1992*, the 2008 Regulation will automatically expire on 1 September 2019. The Regulation repeals and replaces the 2008 Regulation.

Achievement of policy objectives

The Regulation will achieve the policy objectives listed above by continuing to regulate the matters currently regulated under the 2008 Regulation.

The Regulation also incorporates the 5th package of amendments to the national model legislation approved by the Transport and Infrastructure Council in May 2018, as well as a number of minor amendments to reflect current drafting practices.

An outline of the Regulation is provided below, which includes a description of the 5th package of amendments as well as other amendments that simplify and enhance the operation of the 2008 Regulation.

Part 1: Preliminary

Part 1 of the Regulation sets out preliminary matters for the Regulation, such as how certain terms and references are to be interpreted and the requirements applying to those persons transporting dangerous goods for private use or for a commercial purpose. Part 1 also sets out the requirements for the instruction and training of persons undertaking tasks involved in transporting dangerous goods by rail and allows for determinations with respect to dangerous goods and their transport to be made and recorded in a register by the chief executive.

Part 2: Key concepts

Part 2 contains provisions which define key concepts and terms used in the Regulation, such as what goods are dangerous goods and when goods are too dangerous to be transported. Part 2 adopts the 5th package of amendments to the model legislation, by replacing the term ‘subsidiary risk’ with the term ‘subsidiary hazard’ consistent with recent changes to terminology used internationally.

Part 3: Transport of dangerous goods to which special provisions apply

Part 3 contains offence provisions that apply where a special provision of chapter 3.3 of the ADG Code prohibits the transport of certain dangerous goods or imposes a restriction on the way those dangerous goods are to be transported.

Part 4: Packaging

Part 4 contains provisions setting out the requirements for the packaging of dangerous goods. For example, Part 4 sets out when packaging is unsuitable for the transport of dangerous goods by rail and allows the chief executive to approve the design of packaging and overpack

preparation methods. Part 4 also prohibits the sale or supply of non-compliant packaging and contains offence provisions which require persons involved in the transport of dangerous goods to comply with certain packaging and overpack requirements. The chief executive also has powers under Part 4 to require the production of packaging for testing and to require evidence that packaging has passed performance tests required under the ADG Code.

The requirements in Part 4 will remain the same as the requirements for the packaging of dangerous goods in the 2008 Regulation, except for a change in the maximum penalty imposed on a driver under section 65(2). Section 65(2) provides that a person must not drive a rail vehicle transporting dangerous goods in certain packaging if the person knows, or ought reasonably to know, that the packaging is unsuitable for the transport of dangerous goods or the goods have not been packed in the packaging in accordance with a relevant provision of part 4 of the ADG Code. The maximum penalty for this offence has been reduced from 40 penalty units to 20 penalty units to align with the penalties imposed for other similar driver offences in the Regulation.

Part 5: Consignment procedures

Part 5, Division 1 sets out the requirements for marking and labelling dangerous goods that are transported in a package and contains offence provisions requiring persons involved in transporting dangerous goods to comply with those marking and labelling requirements.

Part 5, Division 1 adopts the 5th package of amendments to the model legislation by accommodating the transportation of dangerous goods packed in *excepted quantities*. Goods packed in excepted quantities are goods contained in individual packages with a maximum permitted quantity per inner package of either 1g/ml or 30g/ml, depending on the substance, and a maximum quantity per outer package of between 300g/ml and 1kg/L.

Section 73(5) indicates that the marking and labelling requirements for dangerous goods packed in excepted quantities are contained in chapter 3.5 of the ADG Code. The system of regulation contained in chapter 3.5 was originally designed to permit small quantities of dangerous goods to be transported safely by air. Applying the requirements in chapter 3.5 to the transport of excepted quantities by rail will better align the Regulation with international practices and assist those who transport goods in a multi-modal chain and overseas.

Part 5, Division 2 sets out when a load that contains dangerous goods must be placarded (that is, a warning sign placed on the outside of the vehicle) and contains a number of offence provisions imposing duties on persons involved in transporting placard loads.

Part 6: Safety standards for vehicles and equipment

Part 6 contains offence provisions requiring persons involved in transporting dangerous goods to comply with certain safety standards for rail vehicles and equipment set out in chapter 4.4 of the ADG Code.

Part 7: Transport operations for particular dangerous goods

Part 7, Division 1 sets out specific requirements for transport operations relating to self-reactive substances, organic peroxides and other substances listed in section 87 of that division.

Part 7, Division 1 adopts the 5th package of amendments to the model legislation by specifying the requirements applying to the transportation of empty dangerous goods packaging. In particular, amendments have been made to sections 87 to 90 to provide that the specific requirements in chapter 7.2 of the ADG Code apply to the transportation of empty dangerous goods packaging under this division.

Part 7, Division 2 contains offence provisions relating to the duties of persons involved in transporting goods where that person knows, or ought reasonably to know, that the goods are goods that are too dangerous to be transported.

Part 8: Stowage and restraint

Part 8 contains a number of offence provisions requiring persons involved in transporting dangerous goods to ensure that the goods and their packaging are loaded, stowed and restrained in accordance with chapters 8.1 and 8.2 of the ADG Code.

Part 9: Segregation, separation and marshalling

Part 9 sets out the segregation, separation and marshalling requirements that apply when certain dangerous goods are transported.

Part 9, Division 2 contains offence provisions requiring persons involved in transporting dangerous goods to ensure that where a rail vehicle is, in the same journey, transporting goods that are incompatible with dangerous goods, the dangerous goods are segregated from the incompatible goods in accordance with either part 9 of the ADG Code or an approval granted by the chief executive under Part 9. Division 2 also allows the chief executive to approve alternative methods of segregating dangerous goods and incompatible goods to that provided in the ADG Code, and to approve the design of type II segregation devices which are used to facilitate the transport of incompatible goods.

Part 9, Division 3 contains offence provisions requiring persons involved in transporting dangerous goods to ensure that the goods are separated and marshalled in accordance with either part 9 of the ADG Code or an approval granted by the chief executive under Part 9.

Part 10: Carriage of dangerous goods on passenger trains

Part 10 contains offence provisions imposing duties on prime contractors, rail operators and passengers who transport dangerous goods in or on a passenger train.

Part 11: Bulk transfer of dangerous goods

Part 11 contains offence provisions imposing duties on persons involved in the bulk transfer of dangerous goods.

Part 12: Documentation

Part 12 sets out the documentation required for the transportation of dangerous goods.

In particular, Part 12, Division 1 contains offence provisions requiring persons involved in transporting dangerous goods to ensure that accurate transport documentation complying with chapter 11.1 of the ADG Code is kept on rail vehicles transporting dangerous goods.

Part 12, Division 2 contains offence provisions requiring persons involved in transporting dangerous goods to ensure that required emergency information is kept on rail vehicles transporting placard loads of dangerous goods. Part 12, Division 2 also allows the chief executive to approve emergency information that does not comply with the requirements for emergency information in chapter 11.2 of the ADG Code if the chief executive considers that the information would be as accurate, and at least as convenient and efficient, as information complying with that chapter.

Part 12, Division 3 contains offence provisions requiring persons involved in transporting dangerous goods to give prior notice to the rail operator or the owner of the track before dangerous goods of UN class 1, UN division 6.2 or UN class 7 are transported.

Part 13: Procedures during transport

Part 13 sets out the procedures that must be complied with when transporting dangerous goods by rail.

In particular, Part 13, Division 1 contains offence provisions relating to the duties of persons involved in transporting dangerous goods in the event that a rail vehicle transporting a placard load has failed or has otherwise become immobilised.

Part 13, Division 2 also contains an offence which provides that a rail operator must not allow dangerous goods being transported to be delivered at a location that is not attended by railway personnel, except in specified circumstances.

Part 14: Emergencies

Part 14 sets out the duties and requirements that apply in the event of an emergency. For example, Part 14 requires persons involved in transporting dangerous goods to notify the chief executive and emergency services if a rail vehicle transporting dangerous goods is involved in an incident resulting in a dangerous situation or an incident resulting in the leakage, spillage or escape of dangerous goods. Part 14 also sets out the duties that will apply to emergencies involving placard loads, which include the requirement to have an emergency plan and access to a telephone advisory service when transporting placard loads.

Part 15: Administrative matters

Part 15 contains provisions relating to a number of administrative matters. Part 15, Division 1 sets out the requirements for keeping registers of determinations, exemptions, and approvals. Part 15, Divisions 2 and 3 provide for the mutual recognition of determinations, exemptions, and approvals between dangerous goods authorities in participating jurisdictions for the purposes of national consistency. These divisions also allow the chief executive or a dangerous goods authority to recommend to each other that a determination, exemption, or approval be amended, suspended or cancelled, depending on the circumstances.

Part 16: Exemptions

Part 16 sets out the procedural requirements for exemptions granted under section 443 of the Act, including the requirements for how applications for those exemptions must be made. Part 16 also provides for the keeping of a register of those exemptions and sets out the role of the competent authorities panel in relation to those exemptions.

Part 17: Administrative determinations and approvals

Part 17 sets out the procedural requirements relating to applying for and granting, replacing, amending, suspending or cancelling administrative determinations and approvals granted under the Regulation. Part 17 also provides for the keeping of a register of approvals and sets out the role of the competent authorities panel in relation to determinations and approvals.

Part 18: Review of decisions

Part 18 provides for the internal and external review of a decision mentioned in Schedule 1.

Part 19: Fees

Part 19 sets out the requirements for fees payable under the Regulation.

Part 20: Repeal and transitional provisions

Part 20 repeals the 2008 Regulation and provides for the transition from the 2008 Regulation to the Regulation, including, for example, the continuation of certain requirements and determinations, recommendations and approvals made or granted under the 2008 Regulation.

Part 21: Amendment of Statutory Instruments Regulation 2012

Part 21 makes consequential amendments to the *Statutory Instruments Regulation 2012* to refer to the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018*.

Schedule 1

Schedule 1 sets out the decisions that are reviewable decisions in accordance with Part 18 of the Regulation.

Schedule 2

Schedule 2 prescribes the fees payable under Part 19 of the Regulation.

Schedule 3

Schedule 3 defines various terms for the Regulation.

Consistency with policy objectives of authorising law

The Regulation is consistent with the objective of the *Transport Infrastructure Act 1994* to establish a regime that provides for the safety of railways and persons at, on or near railways.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The benefit of remaking the Regulation will be to continue to provide for the safe management of the transport of dangerous goods by rail in a manner consistent with the national model legislation and international practices.

The costs of implementing the Regulation will be minimal and will be met from existing resources.

Consistency with fundamental legislative principles

The Regulation is consistent with the fundamental legislative principles as required under the *Legislative Standards Act 1992*.

The Regulation references the ADG Code, which contains the detailed and technical requirements for classifying and transporting dangerous goods by road and rail and, where possible, gives effect to international requirements for transporting dangerous goods. The technical detail contained in the ADG Code would be inappropriate to incorporate into the Regulation and would have expanded the size of the Regulation considerably. Stakeholders support the use of the ADG Code as they have a high level of understanding and familiarity with it. The ADG Code has also been adopted in each jurisdiction in Australia and is developed and maintained by the NTC in consultation with each jurisdiction and industry. The latest version of the ADG Code, and any proposed amendments to the ADG Code, are also readily accessible by the public on the NTC's website. For these reasons, it is believed that referencing the ADG Code in the Regulation is appropriate and adequately takes into account fundamental legislative principle considerations.

The offences and penalty amounts contained in the Regulation are the same as the offences and penalty amounts contained in the 2008 Regulation, with the exception that the maximum penalty for the driver offence in section 65(2) has been reduced from 40 penalty units to 20 penalty units to align with the penalties imposed for other similar driver offences in the Regulation. The remaining offence provisions and corresponding maximum penalties have been reviewed and the penalties are proportionate to the seriousness of the offences.

Consultation

Consultation on the Regulation has been undertaken with rail transport operators accredited in Queensland, private siding owners and key industry stakeholders including Queensland Rail, the Australian Rail Track Corporation, the Australasian Railway Association, and the Australian Sugar Milling Council.

The 5th package of amendments to the model legislation was developed by the NTC in consultation with each jurisdiction and industry. The NTC also released the 5th package of

amendments for public comment and submissions in January and February 2018. In addition to the national consultation undertaken by the NTC, the Department of Transport and Main Roads also notified the key industry stakeholders listed above of the 5th package of amendments and invited those stakeholders to provide any comments or submissions on the amendments to either the Department or the NTC.

No submissions from industry or the broader public were received by the Department.

The Queensland Productivity Commission reviewed a *Preliminary Impact Assessment* of the remake of the 2008 Regulation and advised that no further regulatory analysis was required. The Commission has also advised that the 5th package of amendments is unlikely to result in significant adverse impacts on stakeholders and is excluded from further regulatory impact assessment under *The Queensland Government Guide to Better Regulation*.