

Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018

Explanatory notes for SL 2018 No. 107

made under the

Explosives Act 1999

State Penalties Enforcement Act 1999

Statutory Instruments Act 1992

Transport Operations (Road Use Management) Act 1995

Transport Planning and Coordination Act 1994

General Outline

Short title

Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018

Authorising laws

Section 135 of the *Explosives Act 1999*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 59 of the *Statutory Instruments Act 1992*

Section 171 of the *Transport Operations (Road Use Management) Act 1995*

Section 38 of the *Transport Planning and Coordination Act 1994*

Policy objectives and the reasons for them

The policy objectives of the *Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018* (the Regulation) are:

- to prescribe the obligations of persons involved in the transport of dangerous goods by road;
- to reduce as far as practicable the risks arising from the transport of dangerous goods by road;

- 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 road; and
- to promote consistency between the standards, requirements and procedures applying to the transport of dangerous goods by road 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 road in the *Transport Operations (Road Use Management) Act 1995* (the Act) and the *Transport Operations (Road Use Management—Dangerous Goods) 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 road 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 road 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 70. Section 70 provides that a person must not drive a road 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 78(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 road 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 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 94 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 94 to 98 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

Part 9 contains offence provisions requiring persons involved in transporting dangerous goods to ensure that where a 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. Part 9 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 10: Bulk transfer of dangerous goods

Part 10 contains offence provisions imposing duties on persons involved in the bulk transfer of dangerous goods, for example, duties relating to the transfer of petroleum from a tank vehicle to an underground tank in a service station.

Part 11: Documentation

Part 11 sets out the documentation required for the transportation of dangerous goods.

In particular, Part 11, 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 vehicles transporting dangerous goods.

Part 11, Division 2 also contains offence provisions requiring persons involved in transporting dangerous goods to ensure that required emergency information is kept on vehicles transporting placard loads of dangerous goods. Part 11, 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: Safety equipment

Part 12 contains offence provisions requiring persons involved in transporting dangerous goods to ensure that vehicles transporting placard loads are equipped with fire extinguishers, portable warning devices and other equipment complying with part 12 of the ADG Code and to ensure that equipment is stowed, inspected and tested in accordance with part 12 of the ADG Code.

Part 13: Procedures during transport

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

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 vehicle transporting a placard load has broken down or has otherwise become immobilised on a road.

Part 13, Division 2 contains offence provisions imposing duties specifically applying to drivers of vehicles transporting placard loads, which include duties to comply with procedural requirements for driving, parking and unloading those vehicles and detaching trailers from those vehicles, and duties to control ignition sources and the operation of burners on those vehicles.

Part 13, Divisions 3 and 4 contain offence provisions which impose specific duties requiring prime contractors to ensure that vehicles transport placard loads in compliance with part 13 of the ADG Code, and general duties requiring prime contractors and drivers to prevent unauthorised access to dangerous goods on a vehicle.

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 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, approvals and licences. Part 15, Divisions 2 and 3 provide for the mutual recognition of determinations, exemptions, approvals and licences 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, approval or licence be amended, suspended or cancelled, depending on the circumstances.

Part 16: Exemptions

Part 16 sets out the procedural requirements for exemptions granted under section 153 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: Licences

Part 18 sets out the requirements for the licencing of drivers transporting dangerous goods by road and vehicles transporting dangerous goods by road. The requirements in Part 18 will remain the same as the requirements for the licencing of drivers and vehicles under the 2008 Regulation, except for the following changes.

Applications for dangerous goods driver licences under section 189 will no longer be required to be accompanied by two passport sized photographs of the licence applicant. These photographs were initially required for laminate products that are now obsolete, having been replaced with licences that utilise facial recognition technology.

The sections dealing with applications for the grant or renewal of dangerous goods driver licences and dangerous goods vehicle licences have been changed by removing the requirement for these applications to be made in the approved form (see sections 189, 194, 206 and 209). Instead, the requirements for applications in the new Subdivision 2 of Division 7 of Part 18 will apply. Under this new subdivision, the Department will be able to make available to customers more convenient ways of making an application in appropriate circumstances. Specifically, section 235 allows the chief executive to publish a notice on the Department's website approving the way in which a stated type of application may be made or requiring stated information to be given in or with a stated type of application. For example, the Department may allow a customer to make an application for a licence online or to verbally request the renewal of a licence provided the customer produces the relevant supporting information.

If there has been no approved way for making applications under section 235, section 236 provides that the application must be made in the approved form, or in writing if there is no approved form. Section 237 allows for the decision-maker for an application to seek further information from an applicant by written notice.

Similar amendments have been made to provisions that require a person to give a notice to the chief executive in relation to dangerous goods licences. Specifically, the requirement for notices to be given to the chief executive in writing under sections 224, 228 and 229 has been removed. Instead, the requirements for notices given to the chief executive under Part 18 are set out in the new Subdivision 3, Division 7 of Part 18 which also allows the chief executive to approve alternative ways for these notices to be given by publishing information on the Department's website.

New Subdivision 4, Division 7 of Part 18 also provides that where a licensee gives a notice or makes an application in relation to a dangerous goods driver licence under Part 18 by electronic communication, any driver authorising document other than a smartcard dangerous goods driver licence required to be issued must be issued electronically.

Part 19: Review of decisions

Part 19 provides for the internal and external review of a decision mentioned in Schedule 1.

Part 20: Insurance

Part 20 contains offence provisions requiring persons involved in transporting dangerous goods to ensure that vehicles used to transport placard loads are covered by insurance unless an approval has been issued by the chief executive allowing the vehicle to be used without the required insurance.

Part 21: Fees

Part 21 sets out the requirements for fees payable under the Regulation, and provides when those fees may be waived or refunded by the chief executive.

Part 22: Repeal and transitional provisions

Part 22 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 23: Legislation amended

Part 23 sets out consequential amendments to be made to other legislation resulting from making the Regulation.

In particular, Part 23, Divisions 1, 3, 4 and 5 make consequential amendments to the *Explosives Regulation 2017*, the *Statutory Instruments Regulation 2012*, the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, and the *Transport Planning and Coordination Regulation 2017* to refer to the *Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018*.

Part 23, Division 2 also amends the *State Penalties Enforcement Regulation 2014* by including in Schedule 1 the infringement notice penalties for the Regulation. These infringement notice penalties are the same as the 2008 Regulation, with the exception that the corporation penalty units for sections 128(1), 128(3), 132(1), 132(2), 132(4), 136(1), 137(2), 139, 140, 141(2), 141(3), 142, 143, 144, 148(2), 203, 214(1), 214(2), 216(2), and 229(5) of the Regulation have been removed as these offences are committed by an individual and not a corporation.

Schedule 1

Schedule 1 sets out the decisions that are reviewable decisions in accordance with Part 19 of the Regulation.

Schedule 2

Schedule 2 prescribes the fees payable under Part 21 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 policy objective of the *Transport Operations (Road Use Management) Act 1995* to provide a scheme for managing the use of the State's roads that will improve road safety and the environmental impact of road use in ways that contribute to overall transport effectiveness and efficiency.

All other consequential amendments are consistent with the policy objectives of the relevant authorising laws.

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 road 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 70 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 key industry stakeholders including the Queensland Trucking Association, Transport Workers Union Queensland, United Fire Fighters Union Queensland, and a number of Queensland Registered Training Organisations who deliver training pertaining to the transport of dangerous goods by road.

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*.