

LEGISLATIVE COUNCIL

Rail Safety (Adoption of National Law) Bill 2012

First print

Proposed amendment

No. 1 Page 10, Schedule 1. Insert after line 23:

[5] Section 116A

Insert after section 116:

116A Special NSW fatigue management provisions

(1) Application

The requirements of this section are taken to be requirements that must be complied with as part of a rail transport operator's fatigue risk management program under section 116.

- (2) This section applies to work carried out in connection with railway operations in New South Wales in respect of which a rail transport operator is required to be accredited, including work during a shift that is carried out partly in New South Wales and partly in another jurisdiction, and so applies as if the whole of that shift were carried out in New South Wales.

(3) Interpretation

For the purposes of this section—

- (a) the length of a shift worked or to be worked by a rail safety worker includes all the time between the signing on time and the signing off time of a shift; and
- (b) a shift that exceeds 11 hours but is less than 12 hours is taken to be a 12 hour shift.

(4) Working hours for rail safety workers driving freight trains

The following work scheduling practices and procedures apply to a rail safety worker who drives a freight train:

- (a) in the case of a 2 person operation where the second driver is a qualified train driver (including a qualified train driver who is learning a route or

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- undergoing an assessment)—the maximum shift length to be worked is 12 hours;
 - (b) in the case of any other 2 person operation—the maximum shift length to be worked is 11 hours;
 - (c) in the case of a 1 person operation—
 - (i) the maximum shift length to be worked is 9 hours; and
 - (ii) there is to be a maximum rest opportunity of not less than 30 minutes scheduled at some time between the third and fifth hour of each shift;
 - (d) there is to be a break of at least 11 continuous hours between each shift worked by the rail safety worker if the worker ends a shift at the home depot;
 - (e) there is to be a break of at least 7 continuous hours between each shift worked by the rail safety worker if the worker ends a shift away from the home depot and the break is taken away from the home depot;
 - (f) in any 14 day period—the rail safety worker may work a maximum number of 12 shifts, but not more than 6 of those shifts may be 12 hour shifts.

(5) Working hours for rail safety worker driving passenger train—single manning operation

The following work scheduling practices and procedures apply to a rail safety worker who drives a passenger train in a single manning operation:

- (a) in the case of a long distance train—the maximum shift length to be worked is 10 hours;
- (b) in the case of a suburban train—the maximum shift length to be worked is 9 hours;
- (c) there is to be a break of at least 11 continuous hours between each shift worked by the rail safety worker, if the worker ends a shift at the home depot;
- (d) there is to be a break of at least 7 continuous hours between each shift worked by a rail safety worker if the worker ends a shift away from the home depot and the break is taken away from the home depot;
- (e) a maximum number of 12 shifts may be worked by the rail safety worker in any 14 day period.

(6) Working hours for rail safety worker driving passenger train—2 person operation

The following work scheduling practices and procedures apply to a rail safety worker who drives a passenger train in a 2 person operation:

- (a) in the case of a 2 person operation where the second driver is a qualified train driver (including a qualified train driver who is learning a route or undergoing an assessment)—the maximum shift length to be worked is 12 hours;
- (b) in the case of any other 2 person operation—the maximum shift length to be worked is 11 hours;

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- (c) there is to be a break of at least 11 continuous hours between each shift worked by the rail safety worker if the worker ends a shift at the home depot;
 - (d) there is to be a break of at least 7 continuous hours between each shift worked by the rail safety worker if the worker ends a shift away from the home depot and the break is taken away from the home depot;
 - (e) in any 14 day period—the rail safety worker may work a maximum number of 12 shifts, but not more than 6 of these shifts may be 12 hour shifts.

(7) Train drivers who are transported to home depot or rest place

The following work scheduling practices and procedures apply to a rail safety worker who drives a train and who travels to a home depot or to a place provided for rest between shifts (a *barracks*), as a passenger in a train or other vehicle provided by the rail transport operator:

- (a) the period between signing on for a shift and reaching the home depot or barracks must not exceed 16 hours,
 - (b) for the purposes of applying the requirements of subsections (4), (5) and (6) (and despite subclause (3))—
 - (i) in respect of the length and number of shifts—the time spent travelling to the home depot or barracks is not to be taken to be part of the shift worked; and
 - (ii) in respect of breaks between shifts—the break between a shift commences when the worker reaches the home depot or barracks;
 - (c) the rail safety worker must not undertake any rail safety work or drive a motor vehicle after commencing to travel to the home depot or barracks and before signing off at the home depot or barracks.
- (8) Despite subsection (7), the rail safety worker is for any other purpose taken to have been rostered on for a shift ending when the worker signs off at the home depot or the barracks.

(9) Emergencies and accidents

The requirements of this section do not apply in the event of—

- (a) an accident or emergency; or
 - (b) any urgent circumstances approved by the Regulator; or
 - (c) any other unforeseeable circumstances that make it necessary, in the absence of any reasonably practicable alternative, to contravene this section to avoid a serious dislocation of train services,
- provided that the driver or drivers concerned indicate their fitness to work the extended hours.
- (10) In subsection (9):

emergency means an emergency arising out of an actual or imminent event, such as fire, flood, storm, earthquake or explosion, that—

- (a) endangers, or may endanger, the safety of persons;
or
- (b) destroys or damages, or may destroy or damage, property.

Note— This section is an additional NSW provision.