

## Interpretation of Queensland Specific Fatigue Requirements: FAQs

### 1. What is defined as driving a train?

The activity of 'driving' would be interpreted widely<sup>1</sup>, based on relevant case law, and would include activities well beyond time simply spent moving the train<sup>2</sup>. The interpretation would include any activity normally carried on by a person who is involved in any of the processes associated with the control or operation of a train as it relates to its movement, or potential movement<sup>3</sup>, including where a train happens to be stationary at any particular point in time<sup>4</sup>.

(Note that control in this context only applies to direct control of equipment within the driving cab. It does not refer to other people who may indirectly control train movements such as network controllers or flag persons etc).

The scheme for the fatigue management of drivers of trains intuitively seeks to guard against people who are involved in the operation of trains becoming overly tired. This leads to an approach that must adopt a very 'wide' meaning of the concept of 'driving' a train. It would certainly be considered that it goes beyond time simply 'moving' the train.

### 2. What is defined as not driving a train?

The answer very much depends on the circumstances. For example, a person who, while undertaking the duties of the driver of a train, alighted to couple or uncouple rolling stock, would still be subject to the rules about maximum shift length. However, by way of further example, a person who normally drives trains who attends work but spends the day coupling and uncoupling rolling stock (and not actually driving) would not be subject to the maximum shift length requirements.

### 3. Is there any difference between 'driving' a train (regarding fatigue management and shift lengths between) on the mainline versus in a yard or depot in relation to the fatigue requirements?

There is no legal distinction between driving on the mainline and driving in the confines of a railyard or depot. Shunting is simply another form of driving a train.

### 4. Is shunting with a driver on board, assisted by a shunter on the ground, considered a two-driver operation?

An activity such as shunting where a driver is assisted on the ground by his/her co-driver performing shunting duties could be considered 2 driver operation<sup>5</sup>, provided they both had the relevant driver qualifications. If they did not, then it would be considered a 1 driver operation - with the maximum of a 9 hour shift.

<sup>1</sup> Project Blue Sky Inc. and Others v Australian Broadcasting Authority (1998) 194 CLR 355 @ 381;

<sup>2</sup> *Mercorella v Page* (1975) 12 SASR 431 @433; *Bassell v McGuinness* (1981) 29 SASR 508; *Harvey v Police* [2009] SASC 302 @ 16 and 17.

<sup>3</sup> *Harvey v Police* [2009] SASC 302 @ 16 and 17 referring to the decision in *Saycell v Bool*.

<sup>4</sup> Decisions of courts on the meaning of a word or phrase in a different piece of legislation to the one under consideration is not conclusive, however may provide persuasive assistance, especially in a case such as this.

<sup>5</sup> *Insurance Australia Limited T/as NRMA Insurance Limited v Dickason* [2007] ACTCA 13 where it was found in the context of insurance, that a motor vehicle could have more than one driver (thus a driving instructor, sitting next to a learner driver who was at the wheel of a motor vehicle without dual controls, could nevertheless be said to be driving the vehicle for insurance purposes).

**5. Is sitting on a stationary train monitoring its operation, waiting for driver(s) to be deployed to move or drive the train, considered 'driving' a train?**

Sitting in a stationary train would still be considered as driving, and forms part of a person's shift. In the relevant case law<sup>6</sup>, it did not require that a person initially has the intention to act as the 'driver' to become a driver in certain circumstances.

Note that monitoring in this context does not apply to maintenance workers who may be required to sit in a driving cab and monitor gauges and equipment as part of maintenance and provisioning activities.

**6. Are maintenance workers who are required to move rolling stock deemed drivers?**

Maintenance workers who are required to move rolling stock for the purposes of performing maintenance activities are not deemed as drivers for the purposes of the application of the Queensland specific fatigue regulations. Such workers must be competent to perform the required movements and all such movements must occur within defined set limits such as a maintenance facility or provisioning centre, and directly related to the maintenance activity.

**7. If someone has completed a 9 hour shift driving a train as the only driver, how long can he/she remain on the train to monitor its operation or conduct other 'non-driving' duties?**

If a rail safety worker has undertaken **any** 'driving' of a train (in the wide context) that forms part of their shift, then the shift must be within the relevant limits (9 hours or 12 hours) even if they are performing other duties. It does not matter how long they were 'driving'. Shift length is all the time between signing on and signing off (excluding travel to home depot or barracks) – therefore, all time on the train is included.

Signing off at home depot means signing off at the depot (but does not include the travel from the home depot to your residential home); and signing off at 'barracks' means when you arrive at the hotel or other accommodation provided for rest between shifts.

**8. If someone drives a train as the only driver and then is a passenger in a vehicle so as to return to his/her home depot, what is their maximum shift length?**

If a train driver is a passenger in a vehicle being driven back to home depot, that time is not counted in their shift length, but they must not have more than 16 hours between sign on and sign off.

**9. If someone drives a train and then personally drives a vehicle so as to return to his/her home depot, what is their maximum shift length?**

If a train driver is required to drive themselves back to home depot after a shift, then that time must be included in and not exceed the original shift length time i.e. 9 or 12 hours.

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<sup>6</sup> *Mercorella v Page* (1975) 12 SASR 431 @433; *Bassell v McGuinness* (1981) 29 SASR 508; *Harvey v Police* [2009] SASC 302 @ 16 and 17.

**10. If someone drives a train as the only driver and then drives another train as part of a two-driver operation, what is his/her maximum allowable shift length?**

If a train driver commences a shift undertaking a driver only operation, and then undertakes a 2 driver operation for the latter part of his or her shift (or vice versa), **then the one driver limit applies** (i.e. 9 hours). The court would likely take the 'precautionary' approach, and apply the shorter shift length to this scenario.<sup>7 8</sup>

In essence, 'A legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions.'<sup>9</sup>

The cases of *Springall* and of *F, BV* (cited at footnote 8) are examples where the relevant courts were required to provide for an interpretation of particular provisions where the statutes did not expressly provide for the scenarios under consideration.

**11. If a driver completes their driver only component of driving a train, what is the maximum shift length they can do if they are doing non-train-driving work including rail safety work or non-rail safety work?**

By commencing work as a train driver, the person has driven a train and so the shift length periods under the regulations apply. There is no minimum amount of driving specified in order for the shift lengths to apply or not

**12. How many shifts is a rail safety worker (who undertakes the duties of a driver) allowed to work in a 14 day period? What if they only do a 5 hour shift on some days?**

In any 14 day period, a rail safety worker (who undertakes the duties of a driver) can only work a maximum of **12 shifts**.

A 'shift' is all the time between sign on and sign off time (excluding travel time as a passenger to a home depot or barracks), regardless of how many hours worked. Therefore, even if a person does a 5 hour shift on some days, they may still only do a **maximum of 12 shifts in that 14 day period**. Additionally, there is a maximum of **132 hours** in that 14 day period in any event. This is a rolling 14 day period - it does not reset or restart at the start/finish of rosters.

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<sup>7</sup> Project Blue Sky Inc. and Others v Australian Broadcasting Authority (1998) 194 CLR 355;

<sup>8</sup> Springall v Police (2007) 98 SASR 493; F, BV v Magistrates Court of South Australia & Anor [2013] SASCFC 1; R v Di Maria (1996) 67 SASR 466.

<sup>9</sup>Project Blue Sky Inc. and Others v Australian Broadcasting Authority (1998) 194 CLR 355 @ 381-382;

### 13. What competencies does a rail safety worker have to hold to be defined as a qualified driver?

To be a qualified driver a person must be competent as per section 117 of the RSNL including:

- > classroom training (completion of the core competencies of TLI42615 Certificate IV in Train Driving or other as per the ONRSR Application of the AQF to Rail Safety Worker Competence Assessment Policy; and
- > practical training in traction and safe working.

Note- A second driver would still be recognised as being qualified provided the above training had been completed but may still be learning a route or undergoing an assessment.

### 14. In many situations shunting activities within yards can result in the rolling stock being traversed on the mainline to facilitate the number of wagons being placed into sidings or to marshal trains. This is sometimes undertaken within defined yard limits and sometimes on mainline track section. Are shunting activities in these situations defined as yard operations for the purpose of determining shift lengths for rail safety workers undertaking driving activities?

There is no distinction between driving on the mainline and driving in the confines of a railyard or depot.