

March 2020

POLICY CLARIFICATION

Public railways

Purpose

Under the Health and Safety at Work (Hazardous Substances) Regulations 2017 (the Regulations), a 'protected place' includes a 'public railway'. However, public railway isn't defined in the Regulations or other legislation, making it unclear what's meant by the term.

This policy clarification makes it clear what we mean by 'public railway' in the context of a 'protected place' under the Regulations.

You should read this policy clarification if you're a:

- person conducting a business or undertaking (PCBU) with management or control of hazardous substances located near a railway line
- PCBU that transports hazardous substances by rail
- PCBU that operates a rail vehicle on a railway line near a site that has hazardous substances
- compliance certifier
- WorkSafe inspector.

What does the law say?

The Railways Act 2005 defines 'railway'. It includes the rail infrastructure, rail vehicles, and other property (other than rail premises). This includes property and vehicles that together are used for the purposes of transporting people or goods by rail. A 'rail vehicle' is any vehicle that runs on, or uses, a railway line.

The Regulations are made under the Health and Safety at Work Act 2015 (HSWA). Section 3 of HSWA provides for the protection of workers and other persons against harm to their health, safety, and welfare by eliminating or minimising risks arising from work. This ensures a balanced framework that secures the health and safety of workers and workplaces.

Under the Regulations, a 'protected place' includes a 'public railway.' However, while 'railway' is defined in the Railways Act, 'public railway' isn't defined in the Regulations or other legislation.

What is a public railway?

We consider a public railway to be any railway line that a rail vehicle carrying members of the public may run on, or use. For the purpose of this policy clarification, 'railway line' means rails and sleepers.

A public railway includes:

- railway sidings that a rail vehicle carrying members of the public may run on, use, or be left on for any period of time.

A public railway does not include:

- any area outside the footprint of a railway line, or set of railway lines, that a rail vehicle carrying members of the public may run on, or use.
- railway sidings that are used solely for the movement of goods.

What does this mean in practice?

- As 'public railway' appears in the definition of protected place in the Regulations, all portions of any railway line that rail vehicles carrying members of the public may run on, or use, are considered a protected place.
- A PCBU with management or control of hazardous substances should consider the proximity of their hazardous substances to railway lines when calculating separation distance requirements under the Regulations. They may need to obtain a written agreement from the railway line owner under regulation 9 of the Regulations.

- PCBUs should consider the status of all nearby railway lines and the likelihood that any of those railway lines may be classified as a public railway in the future. The possibility of any new railway developments should also be considered.
- Regardless of whether a nearby railway line is a public railway, general duties under HSWA apply. PCBUs should identify and eliminate risks, so far as is reasonably practicable. If they can't eliminate the risk, then they must minimise it. Appropriately managing risk may involve sharing information with their neighbours, including owners and operators of railway lines.