



Key issues raised in submissions received on the rail regulatory review position paper, and EPA responses

Operational rail

Category – Environmental concerns

Key issue	Raised by	EPA response
Concerns regarding noise and vibration impacts from rolling stock.	17 submissions from local residents and community/environment groups.	The EPA considers these important issues; having an effective mechanism to address them is the key driver of this review. The objective of the proposed amendment is to provide an overarching framework that will allow more effective regulation of the impacts of rail activities on the NSW environment and community. When an entity is directly licensed and where monitoring and/or scientific evidence shows that environmental standards are being breached, the EPA can directly place regulatory requirements on the licence(s) for this to be addressed. A key regulatory tool used by EPA are Pollution Reduction Programs which enable assessment and prioritisation of issues and, where reasonable and feasible, directing changes in the operations or equipment to occur. It is important to note that compared to some other licensed entities, rail-related transport issues are complex and require long lead times for change.
Concerns regarding air pollution impacts from locomotive diesel emissions.	12 submissions from local residents and community/environment groups.	
Concerns regarding coal dust emissions, particularly from uncovered coal loads.	7 submissions from local residents and community/environment groups.	
Rolling stock needs to be regularly inspected, maintained	1 submission from local residents and community/	The EPA agrees that rolling stock need to be adequately maintained in order to minimise impacts on the environment and community. Standard conditions on

and overhauled to ensure impacts on the environment and community are minimised.	environment groups.	EPA environment protection licences include the requirement that the licensee maintain and operate plant and equipment in a proper and efficient manner and carry out their activities in a competent manner.
Concerns regarding the Epping to Thornleigh Third Track project.	5 submissions from local residents and community/ environment groups.	The EPA is not the consent authority for the Epping to Thornleigh Third Track project. However, the EPA actively regulates the construction impacts of the project through its environment protection licence.
Concerns regarding the management of weeds within the rail corridor.	2 submissions from local residents and community/ environment groups.	Weeds are outside the jurisdiction of the EPA and therefore outside the scope of the amendment regulation.
Concerns raised regarding vegetation loss during track maintenance and construction.	1 submission from local residents and community/ environment groups.	Vegetation removal is outside the jurisdiction of the EPA and therefore outside the scope of the amendment regulation.
Category – Issues with the existing planning/regulations		
Agrees that the impacts of rail cannot be adequately addressed under the existing regulatory framework.	8 submissions from local residents and community/ environment groups. 1 submission from railway systems operators.	Noted.
Considers that the current regulatory framework is effective and should be retained because the access agreements between the railway system operators and rolling stock operators allow the system operators to impose the conditions of their licences onto rolling stock operators.	3 submissions from rolling stock operators.	As discussed in detail in the position paper, after more than a decade of experience with the current regulatory framework, the EPA has identified some serious limitations with it. It has not achieved the level of benefits for the environment and the community that were intended, and has created a range of administrative inefficiencies and concerns regarding liability. Following a detailed options analysis, the EPA considers that licensing both rolling stock operators and railway systems operators is the most effective regulatory framework for regulating the environmental impacts of the operational rail network as it will hold all key industry stakeholders directly accountable for environmental impacts under their respective management and control.
There should be consideration of the development and application of in-service noise standards and testing for rolling stock including wagons and locomotives.	6 submissions from local residents and community/ environment groups. Transport for NSW's submission.	The existing environment protection licences contain noise emission criteria that are required to be met by new or substantially modified locomotives prior to operating on the network. This criteria will be carried over to the rolling stock operators' licences under the proposal. Furthermore, the EPA is currently considering in-service noise standards and testing for rolling stock, including wagons and locomotives, as a means to

		<p>minimise impacts on the community. This level of regulatory detail will not be included in the proposed amendment which is focused on the regulatory framework. However, one possible mechanism for implementing such standards could be through environment protection licence conditions.</p>
<p>There should be consideration of the development and application of diesel emissions standards for rolling locomotives.</p>	<p>8 submissions from local residents and community/ environment groups.</p>	<p>As part of its Non-road Diesel Strategy, the EPA is currently investigating imposing diesel emissions standards on new and existing locomotives operating in NSW. This project is ongoing and further information on it can be found on the EPA website at www.epa.nsw.gov.au/air/managenonroaddiesel.htm</p> <p>This level of regulatory detail will not be included in the proposed amendment which is focused on the regulatory framework. However, one possible mechanism for implementing such standards could be through environment protection licence conditions.</p>
<p>The railways are a State-wide operation that should, for licensing purposes, be divided into regions with a separate licence being issued for each region.</p>	<p>1 submission from local residents and community/ environment groups.</p>	<p>The <i>Protection of the Environment Operations Act 1997</i> requires the occupiers of premises to hold environment protection licences and defines 'occupier of premises' as the person who has the management or control of the premises. Therefore, for the purposes of licensing, it is appropriate that the rail network is segmented into different 'networks' depending on who has management or control of that part of the network. Geographical issues can be addressed by the inclusion of pollution reduction programs or other conditions on the licences of all licensees within the relevant area.</p>
<p>Concerns regarding noise assessment methodology for new rail infrastructure projects.</p>	<p>2 submissions from local residents and community/ environment groups.</p>	<p>This is outside the scope of the amendment regulation.</p>
<p>Consideration should be given to consulting with and keeping the community informed about pollution reduction programs.</p>	<p>1 submission from local residents and community/ environment groups.</p>	<p>The EPA will consider formal community involvement in the development of future pollution reduction programs relating to the rail industry.</p> <p>In terms of information, the pollution reduction programs can be viewed by accessing the relevant environment protection licence which is available on the EPA's public register on its website.</p>
<p>The government should consider enforcing a curfew and capacity restrictions for freight trains.</p>	<p>3 submissions from local residents and community/ environment groups.</p>	<p>This is a matter of government policy and therefore outside the scope of this amendment regulation.</p>
<p>Complaints need to result in action, and the affected community needs to be informed</p>	<p>2 submissions from local residents and community/ environment groups.</p>	<p>The EPA considers that the proposal, by providing a more effective regulatory framework, will lead to better resolution of community concerns. EPA Environment Line reporting of complaints enables complaint tracking and</p>

of the outcomes of complaints.	Transport for NSW's submission.	feedback, by quoting the unique reference number in any follow up. Direct licensing will remove one layer of complexity that exists in the current licensing arrangement. Transport for NSW will also continue to refine their complaints handling.
One government agency should be accountable for all public land used to conduct railway system activities.	1 submission from local residents and community/ environment groups.	This is a matter of government policy and therefore outside the jurisdiction of the EPA and the scope of this amendment regulation.
Concerns about the efficacy of using track lubrication to reduce wheel squeal.	3 submissions from local residents and community/ environment groups.	The proposed change of regulatory framework presents an opportunity to review the effectiveness of the environmental practices used by the rail industry.
The EPA may wish to consider an incentive regime that reduces network access charges according to environmental performance.	1 submission from local residents and community/ environment groups.	As outlined in the position paper, the use of economic incentives to improve environmental performance of the rail industry was considered as an option as part of the regulatory review. This sort of approach is considered to be a useful tool. The EPA is currently implementing a risk-based licensing system which specifically examines environmental performance in assessing risk and determining licensing fees. The EPA has no control over access charges between rolling stock operators and the system operators.
Raises concerns regarding urban development near the rail corridor.	1 submission from local residents and community/ environment groups. 1 submission from rolling stock operators.	Land use planning is outside the jurisdiction of the EPA and therefore outside of the scope of this review. The Department of Planning and Environment (DPE) and local government are the consent authorities for urban development near the rail corridor. DPE has a guideline on <i>Development near rail corridors and busy roads</i> .
Consideration should be given to removing rail freight from suburban areas and pursuing alternative routes.	3 submissions from local residents and community/ environment groups.	This is outside the jurisdiction of the EPA and therefore outside the scope of the amendment regulation.
Category – Issues with the proposed framework		
Concerns regarding potential duplication of environmental protection licences for track maintenance activities.	2 submissions from railway system operators. 1 submission from rolling stock operators. 1 submission from a rail industry peak body.	Under the current proposal, in the scenario where a railway system operator contracts an operator of a 'track machine' to assist with the on-site repair, on-site maintenance or on-site upgrading of a railway system, both the railway system operator and the rolling stock operator will have responsibilities under their respective environment protection licences for the same activity. Upon consideration of submissions received, the EPA agrees that the potential occurrence of two organisations being liable under two separate licences for the

		<p>same activity is not acceptable.</p> <p>Since track machine operators are contractors to the railway system operators it's appropriate that track machine operators come under the railway system operator's licence (as is standard practice with licensed construction activities) as the system operators have control over many aspects of the activity (scope, timing, community notification, etc.).</p> <p>The proposal will be amended so that the definition of rolling stock does not include 'railway vehicles used to maintain railway track and equipment' operation, thereby removing the requirement for track machine contractors to hold their own environment protection licence.</p>
Supports the proposal to require rolling stock operators to hold a licence.	<p>17 submissions from local residents and community/ environment groups.</p> <p>3 submissions from railway system operators.</p> <p>1 submission from industry.</p> <p>Transport for NSW's submission.</p>	Noted.
Supports alternative initiatives which work towards achieving enhanced environmental outcomes rather than imposing financial penalties or regulatory burden on the industry.	1 rail industry peak body.	As outlined in the position paper, the use of economic incentives to improve environmental performance of the rail industry was considered an option as part of the regulatory review. This sort of approach is considered to be a useful tool that could be considered for adoption in the future in conjunction with the proposed regulatory framework rather than a viable option on its own.
Concern that the requirement for rolling stock operators to hold environment protection licences will increase administrative burden, and that there has been no assessment made of the impact that the proposed regulatory framework may have on the rail industry and in	<p>3 submissions from rolling stock operators.</p> <p>1 submission from a rolling stock leasing company.</p> <p>1 submission from railway system operators.</p> <p>1 submission from a rail industry peak body.</p>	<p>The proposed regulatory framework is not expected to have a significant economic impact on the operational rail industry as a whole, because the activities of rolling stock operators are already indirectly subject to the current licensing framework through the railway system operators' environment protection licences.</p> <p>The proposed framework shifts legal accountability for rolling stock to meet environment protection licence requirements to the entity with effective management and control of the operation of the rolling stock (i.e. from the railway</p>

<p>particular on rolling stock operators.</p>		<p>system operators to the rolling stock operators). This will allow the environmental performance of the NSW rail sector to be better managed, benefiting the environment and community.</p> <p>The EPA acknowledges that under the proposal rolling stock operators will have new regulatory requirements placed on them. These are outlined in detail in the position paper. The level of impact of these new requirements on rolling stock operators will depend on the standard of their current management systems and environmental performance. This information is best known by the operators themselves.</p> <p>The EPA is currently undertaking a cost-benefit analysis for the proposal which will be publicly released at the same time as the draft amendment regulation.</p>
<p>The proposal could create an uneven playing field between road and rail transport, making rail less competitive.</p>	<p>4 submissions from rolling stock operators. 1 submission from a rolling stock leasing company. 1 submission from railway system operators. 1 submission from a rail industry peak body.</p>	<p>The EPA acknowledges that the NSW rail industry brings many benefits to the environment and the wider community and supports its growth. However, there are adverse impacts of the operation of rail that need to be appropriately managed by the rail industry to protect the environment and the health and amenity of the community. Otherwise the relative benefit of rail to the community and environment may not be realised.</p> <p>Road transport has its own regulatory requirements. For example, Australia has had road vehicle emission standards for new vehicles in place since the early 1970s which have been progressively tightened over the years. Road transport is also subject to specific standards and regulations relating to noise emissions.</p> <p>In comparison to road transport, the environmental impacts of the rail industry can be reasonably considered to be under-regulated.</p>
<p>Considers that the proposed regulatory framework will not resolve the issues identified with the current framework and that the perceived benefits listed in the document will not come to fruition.</p>	<p>2 submissions from rolling stock operators. 1 submission from a rolling stock leasing company.</p>	<p>The proposed framework is expected to result in significantly better environmental outcomes than the current framework as it recognises that both rolling stock operators and railway system operators contribute to pollution impacts. Through this new approach to environment protection licensing, all parties responsible for environmental performance issues of rail operations will have responsibility for resolving those issues under their direct control. This framework also provides a more effective mechanism for addressing environmental issues that require joint management from railway system operators and rolling stock operators, such as wheel squeal.</p>

<p>Concerns regarding how the proposal will assist to deliver the objectives of the NSW Freights and Ports strategy.</p>	<p>2 submissions from rolling stock operators. 1 submission from a rail industry peak body.</p>	<p>The EPA has worked closely with Transport for NSW (TfNSW) in undertaking this regulatory review and TfNSW supports the proposal to license both rolling stock and railway systems operators. In its formal submission on the position paper, TFNSW noted that: 'The NSW Long Term Transport Master Plan and the NSW Freight and Ports Strategy commits the Government to addressing freight emissions and noise impacts. The intent of Part 1 of the position paper relating to the operational rail network complements this action.'</p>
<p>Concerns that the proposal does not fit with current government policy to reduce red tape.</p>	<p>1 submission from rolling stock operators. 1 submission from a rail industry peak body.</p>	<p>The NSW Government is committed to better regulation principles to reduce red-tape; this means the Government carefully assesses any proposed legislation to determine whether it is required, reasonable and responsive. This does not mean that new and improved regulation is not to be implemented where it is considered necessary to protect the environment and community.</p> <p>The proposal is not expected to have a significant impact on the operational rail industry as a whole, because the activities of rolling stock operators are already regulated under the current framework through the railway system operators' environment protection licences.</p> <p>The proposed framework shifts accountability for meeting environment protection licence requirements to the entity with effective management and control of the operation of rolling stock (i.e. from the railway system operators to the rolling stock operators). The proposal therefore reduces red tape for railway system operators.</p> <p>The proposed alternative regulatory framework will provide rolling stock operators with clarity and consistency regarding the required level of environmental performance because they will be directly regulated under one licence rather than indirectly by up to four railway system operators.</p>
<p>Considers that any approach to the reform of the licensing system should be carried out on a national level.</p>	<p>2 submissions from local residents and community/ environment groups. 1 submission from rolling stock operators.</p>	<p>As outlined in the position paper, regulation by the Commonwealth Government was considered as an option as part of the regulatory review, however it was not considered viable due to the absence of national legislation relating to the environmental performance of the rail industry. Therefore implementation of an effective regulatory framework needs to continue at State Government level.</p>
<p>Considers that national standards for air quality and noise emissions should be</p>	<p>1 submission from rolling stock operators.</p>	<p>The EPA acknowledges that the Rail Industry Safety and Standards Board (RISSB) is working towards an industry Rail Environment Standard, covering air and noise emissions. The NSW EPA is participating in this work and is hopeful</p>

<p>developed in advance of a regulatory reform of this type, to assist with defining licence conditions and pollution reduction programs.</p>		<p>that such standards would be sufficiently stringent so as to allow consideration of their use in environment protection licences as a benchmark for noise and air emission standards for locomotives operating in NSW. However, until the industry develops suitably stringent standards, the emissions limits in environment protection licences will remain.</p>
<p>Concerns that the proposal exempts loading and unloading of rolling stock from the definitions of the proposed scheduled activities 'railway systems operation' and 'rolling stock operation'.</p>	<p>1 submission from local residents and community/environment groups. Transport for NSW's submission.</p>	<p>The entity regulated for the loading/unloading of freight should be the entity responsible for loading/unloading of freight. The rolling stock operators and railway systems operators only transport the freight and it is therefore not appropriate that they are regulated for this activity.</p> <p>The EPA already licences these activities for some goods such as coal (coal mines and coal loaders), quarries and bulk shipping goods. Loading/unloading activities undertaken at unscheduled facilities will be regulated by the local council under the general provisions of the <i>Protection of the Environment Operations Act 1997 Act</i>.</p>
<p>Concerns relating to the proposed exemption for networks of less than 30km and for rolling stock operators using these smaller networks.</p>	<p>2 submissions from local residents and community/environment groups.</p>	<p>The trigger of 30 kilometres is currently in place for licensing of railways systems activities. This means the operators of the multitude of small, private railway systems do not need to hold an environment protection licence.</p> <p>As part of this regulatory review, the EPA has undertaken an analysis of current and past environmental issues relating to operational rail in NSW to determine whether this network-size trigger needed to be amended. The review concluded that the proposed framework, with the existing trigger, captures all of the significant environmental issues and risks associated with rail.</p> <p>Under the proposed framework, there is a corresponding exemption for rolling stock operators so that there is no overlapping of regulatory authorities on small networks (i.e. the local council for the track and the EPA for the rolling stock)</p> <p>Nonetheless, it is expected that improved environmental performance of rolling stock operators achieved through the proposed regulatory framework will have a flow-on effect to all areas of the NSW railway system, including networks of less than 30 kilometres. For example, any improvements made to the noise and emissions performance of the rolling stock fleet as a result of direct licensing of rolling stock operators will result in benefits wherever they operate.</p>
<p>If spur tracks were held to form</p>	<p>1 submission from</p>	<p>Spur tracks are not required to be licensed under the proposed amendment</p>

<p>part of the network it would result in a situation where every landholder with land containing track connected to the network would need to hold a licence.</p>	<p>industry.</p>	<p>unless they comprise a continuous network of over 30 kilometres in length.</p>
<p>The <i>Protection of the Environment Operations Act 1997</i> should be amended to clarify which rail activities require a licence.</p>	<p>1 submission from industry. 1 submission from railway systems operators. Transport for NSW's submission.</p>	<p>As part of this proposed amendment process, the <i>Protection of the Environment Operations Act 1997</i> will be reviewed and, where necessary, amended to ensure clarity around which rail activities require an environment protection licence.</p>
<p>Concerned about the exemptions for heritage rolling stock operators as they consider that in relation to environmental management, heritage assets are by their very nature old and inefficient. Heritage rolling stock operators who perform commercial work as sub-contractors to other mainline operators or railway system operators should at a minimum be required to have a licence.</p>	<p>1 submission from rolling stock operators</p>	<p>The current exemptions for heritage operations are proposed to continue. That is, operators of rolling stock used solely for heritage purposes will be exempt from the requirement to hold an environment protection licence. Any operator of heritage rolling stock which is used to haul freight for commercial gain will lose this exemption and will therefore require an environment protection licence. This ensures that an even playing field for all freight operators is maintained.</p> <p>The overall contribution of heritage rail activities to noise and air emissions is considered low due to the relatively low scale of their use compared to freight and mainstream passenger serves (i.e. fewer in number, less frequent and shorter trips). Also, it is recognised that there is a level of community acceptance of the impacts of heritage rail activities due to the benefits that these activities provide to the community.</p> <p>The EPA will still remain the appropriate regulatory authority under the <i>Protection of the Environment Operations Act 1997</i> for the activities of heritage operators who do not undertake freight work but operate on a licensed railway system.</p>
<p>Supports the proposal to retain the current licensing exemptions for heritage operators.</p>	<p>1 submission from local residents and community/ environment groups.</p>	<p>Noted.</p>
<p>Concerns that the proposal will move noise requirements away from railway system operators' licences despite the key issue of railway system operators playing</p>	<p>1 submission from rolling stock operators. Submission from Transport for NSW.</p>	<p>Under the proposed framework the railway system operators will still be held responsible for noise impacts under their control. The environment protection licences will acknowledge shared responsibility for some environmental issues (such as wheel squeal and impacts from idling) and manage those issues accordingly. For example, this can be done through joint monitoring programs or</p>

<p>a significant role in the management of noise associated with wheel squeal (through design and maintenance of their network), use of train horns and idling of rolling stock (often determined through availability of pathing, etc.).</p>		<p>other collaborative pollution reduction programs imposed on both types of licences where necessary.</p> <p>For example, where rolling stock creates a noise issue from the sounding of horns but the operator can adequately demonstrate to the EPA that this has been undertaken in accordance with network safety rules as required by the access agreement with the railway system operator, the EPA will consider the rolling stock operator compliant with its environment protection licence. The EPA may however, if necessary, liaise with the system operator regarding its network rules to ensure noise impacts are minimised without compromising safety.</p> <p>If, for example, with environmental impacts created by idling locomotives, the rolling stock operator can adequately justify that they were required to wait due to network restrictions, the EPA will liaise with the railway system operator to determine whether network refinements can be made to minimise impacts. However, the rolling stock operator would be required to demonstrate to the EPA that they took all reasonable measures to minimise environmental impacts while they were required to wait due to network restrictions.</p>
<p>Concerns that the proposal means there would be multiple licences covering the same boundaries for potentially the same activity (being the railway system operator's environment protection licence and the rolling stock operator's environment protection licence). This would greatly increase compliance and enforcement related risks.</p>	<p>1 submission from rolling stock operators.</p>	<p>Under the proposal, railway system operation and operation of rolling stock are separate activities requiring environment protection licences. The rolling stock operator's licensed premises will exclusively be the rolling stock under its operation and control, and will specifically exclude the track. This means that the proposal will not result in multiple environment protection licences being issued for the same premises. Therefore it is not considered that there will be multiple licences for the same activity.</p> <p>Rolling stock operators and railway systems operators will only be responsible for environmental impacts of the activities within their respective control.</p>
<p>Concern regarding the potential for railway system operators to be liable for rolling stock operator non-compliance with their environment protection licences (and vice versa). Concern about rolling stock</p>	<p>1 submission from rolling stock operators. 1 submission from railway systems operators.</p>	<p>Rolling stock operators and railway systems operators will not have liability under their respective environment protection licences for each other's activities. Likewise, rolling stock operators will not be held responsible for activities outside of their control when operating on other premises such as mines, ports, etc.</p> <p>The activities of rolling stock operators will only be captured by their own licence when these activities are undertaken on a railway system that comprises a</p>

<p>operators being able to ensure that premises such as ports and mines comply with any rail operator environment protection licence conditions.</p>		<p>network of more than 30 kilometres of railway corridor operated by the same railway system operator. This would exclude the majority of industrial premises.</p> <p>Investigation of complaints or incidents where there is potential for joint and/or disputed responsibility between a rolling stock operator and the railway system operator will be undertaken on a case-by-case basis by the EPA. In those circumstances, the EPA will seek to identify the entity or entities with effective management and control over the activities causing the issue of concern.</p>
<p>Concerns regarding rolling stock operators being held responsible for leased rolling stock.</p>	<p>1 submission from rolling stock operators.</p>	<p>The entity with management and control of the locomotive is deemed to be the operator of the rolling stock as they have immediate control over things such as driver behaviour. Rolling stock operators choose who to lease rolling stock from and can therefore exert control over the performance of leased rolling stock.</p>
<p>Concerns regarding rolling stock operators having responsibility for the environmental impacts of wagons that they are sub-contracted by another rolling stock operator to pull (i.e. hook-and-pull service).</p>	<p>1 submission from railway system operators.</p>	<p>The entity with management and control of the locomotive is deemed to be the operator of the wagons, even where they are not the owner of those wagons, as they have immediate control over things such as driver behaviour.</p> <p>For issues requiring physical changes to the rolling stock, the responsible entity will be assessed by the EPA on a case by case basis.</p>
<p>Uncertainty relating to responsibility for wagons in sidings</p>	<p>1 rail industry peak body.</p>	<p>Wagons in sidings less than 30 kilometres in length will not be covered under the licensing system.</p> <p>Wagons on networks of more than 30 kilometres in length will be the responsibility of the entity which has management or control of the locomotives even where the entity operating the locomotives is not the owner of the wagons. This is consistent with the POEO Act which requires the occupiers of premises to hold environment protection licences and which defines 'occupier of premises' as the person who has the management or control of the premises.</p>
<p>Recommends the proposal needs to be responsive and balance the needs of industry and the community and that there should be an expectation that the environmental footprint of new rolling stock should be continuously improving.</p>	<p>Submission from Transport for NSW.</p>	<p>The EPA agrees with this statement.</p>

<p>The new regulatory arrangements need to be transparent.</p>	<p>1 submission from local residents and community/ environment groups.</p>	<p>The EPA agrees. All environment protection licences are publicly available on the EPA's public register at www.epa.nsw.gov.au/prpoeoapp/.</p>
<p>Active enforcement – through effective monitoring, imposition of penalties for breaches and requirements to rectify poorly performing rolling stock – is required in order for the proposal to work.</p>	<p>7 submissions from local residents and community/ environment groups.</p>	<p>The EPA agrees. Any environmental issues or non-compliances that are identified by the EPA are dealt with in accordance with the EPA's Compliance Policy which is available at www.epa.nsw.gov.au/resources/legislation/130251epacompol.pdf.</p> <p>Details of enforcement action taken by the EPA against a licensee, including penalty notices issued and successful prosecutions, are required by legislation to be detailed on the EPA's public licence register at www.epa.nsw.gov.au/prpoeoapp/.</p>
<p>How long will the proposed transitional period be and what will be the regulatory arrangement during that period?</p>	<p>1 submission from railway system operators. 1 submission from rolling stock operators. 1 submission from a rail industry peak body.</p>	<p>The length of the proposed transitional period is yet to be determined, but it is expected to be approximately 6–12 months. The length and nature of the intended transitional arrangements will be outlined in the draft amendment regulation.</p>
<p>Rolling stock operators should be fully consulted on the proposal to determine the likely practical impacts of the EPA's proposal.</p>	<p>1 submission from rolling stock operators. 1 rail industry peak body.</p>	<p>The EPA invited all identified rolling stock operators in August 2014 (along with other rail industry stakeholders) to a forum on 3 September 2014 to outline the proposed amendments and to provide rolling stock operators with the opportunity to provide preliminary feedback to the EPA.</p> <p>Concurrently the EPA published a position paper discussing the proposal and provided all stakeholders, including rolling stock operators, with five weeks to comment on the proposal. The EPA has carefully considered all submissions received on the position paper, and held individual meetings with interested rolling stock operators. The results of this consultation have culminated in this submissions report.</p> <p>Rolling stock operators and all other interested stakeholders will have another opportunity to comment on the proposal when the draft amendment regulation is put on public exhibition and the rolling stock operators will also be closely consulted on the detail of the licences following implementation of the amendment regulation.</p>
<p>More effort should have been made to consult with the affected</p>	<p>1 submission from local residents and community/</p>	<p>The EPA placed this proposal on public exhibition for five weeks. To advertise exhibition of the proposal, the EPA wrote to a range of known interested</p>

community regarding this proposal.	environment groups.	community and environment groups (as well as industry members) to inform them about the proposal; advertised it in the <i>Daily Telegraph</i> and <i>Sydney Morning Herald</i> ; published it on the EPA website; and issued a media release.
Category – Issues with the implementation of the proposed framework		
Concerns regarding accountability issues between rolling stock operators and railway systems operators relating to noise from the wheel/rail interface (e.g. wheel squeal).	2 submissions from local residents and community/ environment groups. 3 submissions from rolling stock operators. Transport for NSW's submission.	Under the proposed framework, the environment protection licences will acknowledge shared responsibility for some environmental issues (such as wheel squeal) and attempt to deal with these issues accordingly. For example, this may be done through joint monitoring programs or other collaborative pollution reduction programs imposed on both types of environment protection licences where necessary. Investigation of complaints or incidents where there is potential for joint and/or disputed responsibility between a rolling stock operator and the railway system operator will be undertaken on a case-by-case basis by the EPA.
Concerns that there is a lack of clarity as to the allocation of liability (i.e. does it lie with the railway system operator or the rolling stock operator) where environmental impacts are outside the control of the rolling stock operator due to the need to comply with rail safety legislation and network rules. For example, sounding of horns, use of detonators, unavoidable idling due to network restrictions.	2 submissions from rolling stock operators.	Rolling stock operators will only be responsible for environmental impacts within their control. For example, where rolling stock creates a noise issue from the sounding of horns but the operator can adequately demonstrate to the EPA that this has been undertaken in accordance with network safety rules as required by the access agreement with the railway system operator, the EPA will consider the rolling stock operator compliant with its environment protection licence. The EPA may, however, liaise with the system operator regarding its network rules if necessary to ensure noise impacts are minimised without compromising safety. Similarly, for environmental issues creating by idling locomotives, if the rolling stock operator can adequately justify that they were required to wait due to network restrictions, the EPA would liaise with the railway system operator to determine whether network refinements can be made to minimise impacts. However, the rolling stock operator would be required to demonstrate to the EPA that they took all reasonable measures to minimise environmental impacts while they were required to wait due to network restrictions.
As part of this regulatory review there is the opportunity to assess current and future pollution reduction programs to improve their effectiveness. The EPA	1 submission from local residents and community/ environment groups. Transport for NSW's submission.	The EPA monitors and regularly evaluates the progress of pollution reduction programs included on licensees' environment protection licences. The EPA agrees that the proposed change of regulatory framework presents an opportunity to review the effectiveness of the current pollution reduction programs

<p>should actively monitor the progress of pollution reduction programs.</p>		<p>and develop future programs in response to the modified regulatory framework to result from the proposed amendments.</p>
<p>Concerns about how a complaints management system for the rail network will operate under the proposal.</p>	<p>1 submission from local residents and community/ environment groups. 2 submissions from rolling stock operators.</p>	<p>An appropriate complaints management system will be developed in consultation with the railway systems operators and rolling stock operators. It is intended that the railway system operator will continue to have a role in identifying rolling stock subject to complaints, and for their licences to retain a condition to this effect.</p>
<p>The environmental issues currently faced by the rail freight sector are technically complex and the result of many factors, and the solutions need to be a collective industry effort using a collaborative approach. The industry is currently taking such an approach to tackling issues such as noise and diesel emissions. It is not clear how licensing rolling stock operators will support or build on this collective industry approach to tackling these issues.</p>	<p>3 submissions from rolling stock operators. 1 submission from railway systems operators.</p>	<p>The EPA acknowledges the collaborative approach currently being taken by a number of rolling stock operators with each other and with other organisations such as Transport for NSW, the EPA, Rail Industry Safety and Standards Board (RISSB), railway systems operators etc. and is very supportive of this continuing under the proposed alternative framework.</p> <p>The EPA considers that the proposal to license rolling stock operators, as well as railway system operators, will facilitate a collective whole-of-rail-industry effort to improve environmental performance, as it will hold all the relevant parties directly responsible for environmental issues under their control. This will create a more level playing field where all operators are directly obligated to improve environmental performance and are therefore incentivised to work collaboratively to solve complex technical problems.</p> <p>Environment protection licence conditions are generally outcome focused. Therefore in the majority of cases, it is left to the individual operators to determine the most effective way for them to meet the requirements of their licences. The industry may determine that in many instances it could be more effective and efficient to work together collaboratively to meet environment protection licence requirements or even to solve problems such as localised environmental issues prior to the need arising for the EPA to impose licence conditions specific to that problem. Alternatively the EPA may impose an identical pollution reduction program on each individual rolling stock operator's licence to undertake a certain monitoring program. In such a case, the various rolling stock operators may see a benefit in working collaboratively to undertake this monitoring collectively. The EPA would encourage the industry to take such an approach.</p>
<p>It is not clear how the existing requirements contained within</p>	<p>2 submissions from rolling stock operators.</p>	<p>The EPA has no role in this matter. This is a matter for the rolling stock operators and railway system operators to negotiate between themselves.</p>

<p>the Access Agreements between the railway system operators and rolling stock operators will be removed.</p>		
<p>All instructions for the issuing of environment protection licences to offending rolling stock operators should be at the directive of Transport for NSW.</p>	<p>1 submission from local residents and community/ environment groups.</p>	<p>The NSW EPA is the independent environmental regulator designated under the <i>Protection of the Environment Operations Act 1997</i> as the appropriate regulatory authority for all licensed premises in NSW. Therefore the EPA is legally responsible for all decisions relating to environment protection licensing functions. This role is a matter of government – not EPA – policy.</p> <p>Nonetheless, the EPA will continue to work closely with Transport for NSW (and other relevant stakeholders) on the management of the environmental impacts of the rail industry.</p>
<p>Concerns regarding the effects that any changes to management of noise and air quality emissions relating to in-service locomotives may have on rolling stock operators.</p>	<p>2 submissions from rolling stock operators.</p>	<p>The EPA will consider implementing noise and air emissions standards for in-service rolling stock, as a means to minimise impacts on the community, in the future. Under the proposed framework, the rolling stock operators, as licensees, will be directly involved in the development of and implementation timeframes for such standards.</p>
<p>In order to shine a transparent light on the activities and progress of the operators and network access provider, it is recommended that fulsome, regular, and meaningful data be published by EPA.</p>	<p>1 submission from local residents and community/ environment groups.</p>	<p>Licensees have a requirement under the <i>Protection of the Environment Operations Act 1997</i> to publish the results of monitoring which is undertaken in accordance with an environment protection licence condition. However, this same requirement does not extend to the results of monitoring which forms part of a study into any aspect of the environmental impact of the activity undertaken in accordance with a pollution reduction programs. The EPA, however, may require licensees to publish reports of monitoring undertaken in accordance with a pollution reduction programs. This was done for the coal dust studies, for example.</p>
<p>Considers that the paper is unclear as to how rolling stock operators' performance will be determined for the purpose of the future environment protection licence fee.</p>	<p>1 submission from rolling stock operators.</p>	<p>The calculation of licence administrative fees will incorporate a link between the environmental performance of a licensee and licence fees from 1 July 2016. This is through the introduction of the EPA's risk-based licensing regime. Operators who perform well and minimise their environmental risk will be rewarded with a reduction in their licence fees, while operators who perform poorly will need to pay licence fees that provide them with an incentive to improve their performance. Up-to-date information on the implementation of the risk-based licensing regime is available on the EPA's website at www.epa.nsw.gov.au/licensing/licenceintro.htm.</p>

Transport for NSW encourages the EPA to ensure that any mechanism for testing avoids unnecessary delay or cost in bringing new rolling stock into operation.	Submission from Transport for NSW.	Noted and agreed.
--	------------------------------------	-------------------

Rail construction

Support separation of railway construction and operational railway activities.	Submission from Transport for NSW. 3 submissions from railway systems operators. 1 submission from community group. 2 submissions from industry.	Noted.
Support consistent regulation of construction of rail and road infrastructure.	1 submission from community group. 1 submission from industry.	Noted.
Vibration impacts, as well as noise and air emissions, from construction activities need to be regulated.	2 submissions from community group.	The environmental impacts of construction, including vibration, will be regulated through the environment protection licences.
Support consistent regulation across construction of infrastructure for light, heavy and passenger rail.	Submission from 1 community group.	Noted.
Concern that rail maintenance projects will require licensing.	1 submission from industry.	Rail maintenance is a separate activity to rail construction. Rail maintenance works are covered under the rail system operators' environment protection licences for the rail network and do not need to be licensed separately.
Concern about whether the quantitative triggers proposed	2 submissions from local residents and community/	In determining the trigger for licensing rail construction projects, a range of possible triggers were considered, including:

<p>are a good surrogate for environmental impacts of a construction project and if the threshold is correct.</p>	<p>environment groups. 1 submission from railway systems operators.</p>	<ul style="list-style-type: none"> • significant impacts on receiving environment and sensitive receivers (as determined by an environment assessment) • surrounding land use • length of construction • nature of construction (number of tracks, whether it includes tunnels or bridges, whether it involves high noise generating works etc.) • duration of project, and • a combination of the above. <p>It was considered important that the trigger be simple and definite so that on reading the legislation, what required regulation could be clearly understood by the industry, community and the EPA.</p> <p>A quantitative threshold was proposed to overcome difficulties experienced with the previous use of a qualitative trigger in the operational rail environment protection licences and for consistency with other activities in the schedule.</p> <p>It was considered appropriate to align rail construction with the scheduled activity 'road construction' as both activities have similar impacts on sensitive receivers and the receiving environment. Road construction has the quantitative triggers of: 1 kilometre in the metropolitan area and 5 kilometres in rural areas for specific private tollways and freeways; and 3 kilometres in the metropolitan area and 5 kilometres in rural areas for main roads.</p> <p>A review of previous and current rail construction projects undertaken in the metropolitan area indicated that construction projects of 1–3 kilometres comprise loops, junctions, turnbacks and stabling yards. The EPA considers that the environmental risk associated with these projects does not warrant individual environment protection licensing.</p> <p>A quantitative trigger of 3 kilometres in the metropolitan area and 5 kilometres in rural areas is therefore proposed.</p>
<p>Concerns regarding dust from rail construction.</p>	<p>1 submission from community/ environment group.</p>	<p>Particulate emissions, including dust, from rail construction sites are regulated through the individual environment protection licences for those sites.</p>
<p>Need to define 'construction' and</p>	<p>Submission from</p>	<p>This level of detail will sit in the amendment Regulation. There will be further</p>

'rail infrastructure projects', including what works are excluded and what the threshold covers.	Transport for NSW. 1 railway systems operator. 1 rolling stock operator.	opportunity for stakeholders to comment on the draft amendment regulation and therefore raise any concerns about clarity in the proposal.
Clarification of what construction works could be covered by track manager's licence, what requires separate licensing and when the licence is no longer required.	Submission from Transport for NSW. 1 railway systems operator.	This level of detail will not be included in the definition of the scheduled activity of rail construction. However, the EPA can draft a companion policy document that provides guidance on these aspects.
Consider increased fees for larger projects should align with increased resources and responsiveness from EPA.	1 rolling stock operator.	Noted.

NSW Environment Protection Authority (EPA)
59–61 Goulburn Street, Sydney
PO Box A290
Sydney South NSW 1232

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au

See also www.epa.nsw.gov.au/pollution

Phone: +61 2 9995 5000 (switchboard)

Phone: 131 555 (NSW only – environment information and publication requests)

Fax: +61 2 9995 5999

TTY users: phone 133 677, then ask for 131 555

Speak and listen users: phone 1300 555 727, then ask for 131 555

Email: info@environment.nsw.gov.au

Website: www.epa.nsw.gov.au

EPA 2015/0051

February 2015