



Queensland

# Transport Operations (Road Use Management—Fatigue Management) Regulation 2008

## Subordinate Legislation 2008 No. 296

made under the

*State Penalties Enforcement Act 1999*

*Transport Operations (Road Use Management) Act 1995*

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[s 1]

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## **Part 1 Preliminary**

### **Division 1 Introductory matters**

#### **1 Short title**

This regulation may be cited as the *Transport Operations (Road Use Management—Fatigue Management) Regulation 2008*.

#### **2 Commencement**

This regulation commences on 29 September 2008, immediately after the *Transport Legislation Amendment Act 2007*, section 63 commences.

#### **3 Main purpose of this regulation**

The main purpose of this regulation is to provide for the safe management of the fatigue of drivers of fatigue regulated heavy vehicles while they are driving on a road.

#### **4 Outline of the main features of this regulation**

(1) This regulation applies to—

- (a) drivers of fatigue regulated heavy vehicles; and
- (b) particular persons whose activities influence the conduct of drivers of fatigue regulated heavy vehicles in a way that affects the drivers' fatigue when driving on a road.

*Examples for paragraph (b)—*

- employers of drivers of fatigue regulated heavy vehicles
- operators of fatigue regulated heavy vehicles
- schedulers for fatigue regulated heavy vehicles
- consignors and consignees of goods transported or to be transported by fatigue regulated heavy vehicles

- loaders and unloaders of goods in fatigue regulated heavy vehicles
- loading managers for goods in fatigue regulated heavy vehicles

(2) Part 2 imposes—

- (a) general duties directed at preventing persons driving fatigue regulated heavy vehicles on a road while impaired by fatigue, which are imposed on—
  - (i) the drivers of fatigue regulated heavy vehicles; and
  - (ii) parties in the chain of responsibility for fatigue regulated heavy vehicles; and
- (b) additional duties directed at helping drivers of fatigue regulated heavy vehicles to comply with this regulation, which are imposed on particular parties in the chain of responsibility.

(3) Part 3 provides for the maximum work requirements and minimum rest requirements applying to drivers of fatigue regulated heavy vehicles, which apply as follows—

- (a) standard work and rest arrangements, which—
  - (i) apply to drivers of fatigue regulated heavy vehicles operating other than under a BFM accreditation, AFM accreditation, work and rest hours exemption or work and rest hours alternative compliance scheme; and
  - (ii) are known as ‘standard hours’;
- (b) BFM work and rest arrangements, which—
  - (i) apply to drivers of fatigue regulated heavy vehicles operating under a BFM accreditation (which is an accreditation relating to the basic fatigue management scheme); and
  - (ii) are known as ‘BFM hours’;
- (c) AFM work and rest arrangements, which—

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- (i) apply to drivers of fatigue regulated heavy vehicles operating under an AFM accreditation (which is an accreditation relating to the advanced fatigue management scheme); and
  - (ii) are known as ‘AFM hours’.
- (4) Part 4 provides for recording the work times and rest times of drivers, amongst other things.
- (5) Part 5 enables—
  - (a) operators of fatigue regulated heavy vehicles to seek BFM accreditation or AFM accreditation; and
  - (b) drivers or operators of fatigue regulated heavy vehicles, or employers of or prime contractors for drivers of fatigue regulated heavy vehicles, to seek an exemption from particular requirements of this regulation.

## Division 2 Interpretation

### 5 Definitions

The dictionary in schedule 6 defines particular words used in this regulation.

### 6 Who is a *driver*

- (1) In this regulation, a reference to a ***driver*** of a fatigue regulated heavy vehicle is a reference to the driver of the vehicle whether the driver is an employed driver or self-employed driver.
- (2) The driver of a fatigue regulated heavy vehicle is an ***employed driver*** if the driver is employed by someone else to drive the vehicle under a contract of employment, apprenticeship or training.
- (3) The driver of a fatigue regulated heavy vehicle is a ***self-employed driver*** if the driver is not an employed driver of the vehicle under subsection (2).



## **7 Who is a *party in the chain of responsibility***

- (1) Each of the following persons is a *party in the chain of responsibility* for a fatigue regulated heavy vehicle—
  - (a) an employer of the driver of the vehicle;
  - (b) a prime contractor for the driver of the vehicle;
  - (c) an operator of the vehicle;
  - (d) a scheduler for the vehicle;
  - (e) a consignor of goods transported or to be transported by the vehicle;
  - (f) a consignee of goods transported or to be transported by the vehicle;
  - (g) a loading manager for goods in the vehicle;
  - (h) a loader of goods in the vehicle;
  - (i) an unloader of goods in the vehicle.
- (2) A person may be a party in the chain of responsibility in more than 1 capacity.

*Example—*

A person may be a driver's employer, operator and consignor of goods at the same time in relation to a fatigue regulated heavy vehicle and be subject to duties in each of the capacities.

## **Division 3 Reasonable steps**

### **Subdivision 1 Reasonable steps defence**

#### **8 What is the *reasonable steps defence***

If, under this regulation, a person has the benefit of the reasonable steps defence in relation to an offence against a provision of this regulation, it is a defence to a charge for an offence against the provision if the person charged establishes that—

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- (a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
- (b) either—
  - (i) the person took all reasonable steps to prevent the contravention; or
  - (ii) there were no steps the person could reasonably be expected to have taken to prevent the contravention.

## **Subdivision 2      Deciding whether person took reasonable steps**

### **9      Matters court may consider for deciding whether person took all reasonable steps**

- (1) This section applies in relation to—
  - (a) proceedings for an offence against a provision of part 2 that may be committed by a person failing to take all reasonable steps; and
  - (b) proceedings for an offence against a provision of this regulation if, under this regulation, the person charged has the benefit of the reasonable steps defence.
- (2) In deciding whether things done or omitted to be done by the person charged with the offence to which the proceedings relate constitute reasonable steps, the court may have regard to the matters mentioned in section 57DB(1)(a) to (k) of the Act.

*Note—*

See also sections 33 and 34.

- (3) For applying the matters mentioned in section 57DB(1)(a) to (k) of the Act to the proceedings, a reference in section 57DB(1)(a) to (k) of the Act to a contravention is taken to be a reference to the contravention constituting the offence to which the proceedings relate.

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**10 When person regarded to have taken all reasonable steps—pt 2 duties**

- (1) This section applies in relation to proceedings for an offence against a provision of part 2 that may be committed by a person failing to take all reasonable steps.
- (2) Without limiting the circumstances in which things done or omitted to be done by the person charged with the offence to which the proceedings relate constitute reasonable steps, the person is to be regarded as having taken all reasonable steps if the person did all of the things mentioned in section 57DC(1)(a) to (e) of the Act to prevent the act or omission that led to the contravention constituting the offence.
- (3) For applying the things mentioned in section 57DC(1)(a) to (e) of the Act to the proceedings—
  - (a) a reference in section 57DC(1)(a) to (e) of the Act to a relevant driver for the person charged is taken to be a reference to the driver of a fatigue regulated heavy vehicle in relation to which the person charged is a party in the chain of responsibility; and
  - (b) a reference in section 57DC(1)(a) to (e) of the Act to a contravention is taken to be a reference to the contravention constituting the offence to which the proceedings relate.

**11 When person regarded to have taken all reasonable steps—reasonable steps defence**

- (1) This section applies in relation to proceedings for an offence against a provision of this regulation if, under this regulation, the person charged has the benefit of the reasonable steps defence.
- (2) Without limiting the circumstances in which things done or omitted to be done by the person charged with the offence to which the proceedings relate constitute reasonable steps, the person is to be regarded as having taken all reasonable steps if the person did all of the following to prevent the act or

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omission that led to the contravention to which the offence relates—

- (a) identified and assessed—
  - (i) the risks that the contravention may occur; and
  - (ii) if there is a substantial risk that the contravention may occur—the measures the person may take to eliminate the risk or, if it is not reasonably possible to eliminate the risk, to minimise the risk;
- (b) carried out the identification and assessment mentioned in paragraph (a)—
  - (i) at least annually; and
  - (ii) after each event that may significantly increase the risk of the contravention occurring;
- (c) took the measures identified and assessed under paragraph (a)(ii);
- (d) documented each action the person has taken under this section—
  - (i) during the past 3 years; or
  - (ii) if 3 years have not passed since the commencement of this section—from the commencement of this section.

## **12 Application of s 57E of the Act to offences against this regulation**

Section 57E of the Act also applies to a provision of this regulation that provides that a person may avoid liability, or is not liable, for an offence if the person took all reasonable steps in relation to a matter.

## **13 Application of s 57F of the Act to offences against this regulation**

- (1) Section 57F(2) to (4) of the Act also applies for deciding whether a person charged with a following offence took all

reasonable steps to prevent the contravention constituting the offence—

- (a) an offence against a provision of part 2 that may be committed by a person failing to take all reasonable steps;
  - (b) an offence against a provision of this regulation if, under this regulation, the person charged has the benefit of the reasonable steps defence.
- (2) Section 57F(2) to (4) of the Act as applied to an offence against a provision of this regulation under subsection (1) does not limit the circumstances in which the person charged with the offence is to be regarded as having taken all reasonable steps.

### **Subdivision 3      Other provisions about taking reasonable steps**

#### **14      Examples for how to take reasonable steps—identifying and assessing aspects of activities that may lead to contraventions**

- (1) This section applies—
  - (a) for sections 57DB and 57DC of the Act; and
  - (b) for the application of sections 57DB and 57DC of the Act to offences against this regulation under sections 9 and 10.
- (2) The following are examples of ways a person may identify and assess the aspects of activities of the person, or a relevant driver for the person, that may lead to a contravention of a fatigue management requirement by a relevant driver for the person—
  - (a) consulting the relevant drivers, other parties in the chain of responsibility, unions and industry associations about ways of identifying and assessing the aspects;

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- (b) reviewing driving or work schedules and work records of the relevant drivers, including reviewing opportunities for rest time;

*Note—*

Section 33 provides for a duty of drivers of fatigue regulated heavy vehicles to give a party in the chain of responsibility particular information.

- (c) reviewing loading and unloading times and delays at loading and unloading places;
- (d) reviewing contractual arrangements and documentation relating to the consignment and delivery of goods;
- (e) regularly assessing and monitoring workplace health and safety practices;
- (f) regularly assessing fitness for duty of the relevant drivers;
- (g) analysing injury and incident reports.

*Note—*

For the meaning of *relevant driver* for a person, see—

- (a) in relation to sections 57DB and 57DC of the Act—section 57DC(2) of the Act; or
- (b) in relation to the application of sections 57DB and 57DC of the Act to this regulation under sections 9 and 10—section 10(3)(a).

## **15 Examples for how to take reasonable steps—eliminating or minimising risks of contraventions**

- (1) This section applies—
  - (a) for sections 57DB and 57DC of the Act; and
  - (b) for the application of sections 57DB and 57DC of the Act to offences against this regulation under sections 9 and 10.
- (2) The following are examples of measures a person may take to eliminate or minimise risks of aspects of activities of the person, or relevant drivers for the person, leading to a

contravention of a fatigue management requirement by a relevant driver for the person—

- (a) having workplace procedures and policies relating to fatigue and compliance with maximum work requirements and minimum rest requirements;
- (b) contingency planning in relation to fatigue and compliance with maximum work requirements and minimum rest requirements;
- (c) having a program to report and monitor fatigue-related incidents, risks and hazards;
- (d) having a program for assessing fitness for duty of the relevant drivers;
- (e) having training and information for the relevant drivers, staff and parties in the chain of responsibility about fatigue and compliance with maximum work requirements and minimum rest requirements;
- (f) having appropriate supervision and management of the relevant drivers, staff and parties in the chain of responsibility;

*Notes—*

- 1 Section 33 provides for a duty of drivers of fatigue regulated heavy vehicles to give a party in the chain of responsibility particular information.
  - 2 Section 34 provides for a duty of particular loading managers to ensure other loading managers are aware of their duties under the Act.
- (g) scheduling arrangements that have regard to fatigue risks and work and rest hours options;
  - (h) allowing for traffic or other delays in scheduling;
  - (i) having a system for giving the relevant drivers sufficient notice of schedule changes;
  - (j) having a system to maintain equipment, work systems and work records;

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- (k) having terms in commercial arrangements with other parties in the chain of responsibility designed to ensure compliance by the other party with laws about fatigue management applying to the other party;
- (l) avoiding incentives or demands in commercial arrangements that may cause fatigue or breaches of maximum work requirements and minimum rest requirements;
- (m) having a system for monitoring and remedying problems related to fatigue and compliance with maximum work requirements and minimum rest requirements.

*Note—*

For the meaning of *relevant driver* for a person, see—

- (a) in relation to sections 57DB and 57DC of the Act—section 57DC(2) of the Act; or
- (b) in relation to the application of sections 57DB and 57DC of the Act to this regulation under sections 9 and 10—section 10(3)(a).

## **Part 2                      Duties relating to fatigue**

### **Division 1                      Meaning of fatigue and impaired by fatigue**

#### **16              What is *fatigue***

*Fatigue* includes—

- (a) feeling sleepy; and
- (b) feeling physically or mentally tired, weary or drowsy; and
- (c) feeling exhausted or lacking energy; and



- (d) behaving in a manner consistent with paragraph (a), (b) or (c).

**17 Matters court may consider in deciding whether person is fatigued**

- (1) When deciding whether the person driving a fatigue regulated heavy vehicle (the *driver*) was fatigued, a court may consider the following—
  - (a) what is commonly understood as being fatigued;
  - (b) any cause of fatigue that may have caused or contributed to the driver's fatigue, whether or not the cause arose while the driver is at work;
  - (c) any sign of fatigue exhibited by the driver, whether or not the sign was exhibited before, during or after the driver drove the vehicle;
  - (d) any relevant body of fatigue knowledge.
- (2) Subsection (1) does not limit the matters the court may consider when deciding whether a driver was impaired by fatigue.

**18 What is *impaired by fatigue***

A person is *impaired by fatigue* if the person is fatigued to the extent that the person is incapable of driving a fatigue regulated heavy vehicle safely.

**19 Matters court may consider in deciding whether person is impaired by fatigue**

- (1) When deciding whether the person driving a fatigue regulated heavy vehicle (the *driver*) was impaired by fatigue, a court may consider the following—
  - (a) any cause of fatigue that may have caused or contributed to the driver's fatigue, whether or not the cause arose while the driver is at work;

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- (b) any sign of fatigue exhibited by the driver, whether or not the sign is exhibited before, during or after the driver drove the vehicle;
- (c) the degree to which a cause mentioned in paragraph (a) or a sign mentioned in paragraph (b) indicates the driver was impaired by fatigue;
- (d) any behaviour exhibited by the driver that may have resulted from the driver being impaired by fatigue;

*Examples for paragraph (d)—*

- the circumstances of any incident, crash or near miss
    - poor driving judgement
    - inattentive driving such as drifting into other lanes on a road or not changing gears smoothly
  - (e) the nature and extent of any physical or mental exertion by the driver;
  - (f) whether the driver was in breach of the driver's work and rest option.
- (2) Subsection (1) does not limit the matters the court may consider when deciding whether a driver was impaired by fatigue.
- (3) A court may consider the driver to be impaired by fatigue even if the driver has complied with—
- (a) the requirements under the Act, including, for example, the maximum work requirements and minimum rest requirements under standard hours; or
  - (b) any other law.

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## Division 2                      Causation

### 20            **Causing includes contributing to causing and encouraging**

In this part, a reference to causing a thing must be taken to include a reference to contributing to causing the thing, and to encouraging the thing.

## Division 3                      Duty to avoid and prevent fatigue

### 21            **Duty of driver to avoid driving while fatigued**

A person must not drive a fatigue regulated heavy vehicle on a road while the person is impaired by fatigue.

Maximum penalty—60 penalty units.

### 22            **Duty of party in the chain of responsibility to prevent driver driving while fatigued**

- (1) A party in the chain of responsibility (a *party*) for a fatigue regulated heavy vehicle must take all reasonable steps to ensure a person (the *other person*) does not drive the vehicle on a road while the person is impaired by fatigue.

Maximum penalty—80 penalty units.

- (2) A duty or obligation under a corresponding fatigue law that is the same or substantially the same as the duty under subsection (1) is prescribed for section 150C of the Act.
- (3) In relation to proof of whether a party took all reasonable steps to ensure the other person does not drive the vehicle on a road while impaired by fatigue, in proceedings for an offence against subsection (1)—
- (a) evidence that, at the relevant time, the party complied with a duty of obligation mentioned in subsection (2) is evidence that the party took the reasonable steps; and

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- (b) if the party is an operator of the fatigue regulated heavy vehicle—evidence that, at the relevant time, the operator complied with the conditions of a BFM accreditation or AFM accreditation granted to the operator under this regulation is evidence that the operator took the reasonable steps.
- (4) In proceedings for an offence against subsection (1), it is not necessary for the prosecution to prove that the other person drove, or would or may have driven, the vehicle while impaired by fatigue.

## **Division 4                      Additional duties of particular parties in the chain of responsibility**

### **Subdivision 1              Employers, prime contractors and operators**

#### **23              Duty of employer, prime contractor or operator to ensure business practices will not cause driver to drive while fatigued etc.**

- (1) A relevant party for the driver of a fatigue regulated heavy vehicle must take all reasonable steps to ensure the relevant party's business practices will not cause the driver to—
  - (a) drive while impaired by fatigue; or
  - (b) drive while in breach of the driver's work and rest hours option; or
  - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—60 penalty units.

- (2) In this section—  
*business practices*, of a relevant party for the driver of a fatigue regulated heavy vehicle, means the practices of the

relevant party in running the relevant party's business, and includes—

- (a) the operating policies and procedures of the business; and
- (b) the human resource and contract management arrangements of the business; and
- (c) arrangements for managing safety.

***relevant party***, for the driver of a fatigue regulated heavy vehicle, means—

- (a) an employer of the driver, if the driver is an employed driver; or
- (b) a prime contractor of the driver, if the driver is a self-employed driver; or
- (c) an operator of the vehicle if the driver of the vehicle is to make a journey for the operator.

## **24 Duty of employer not to cause driver to drive if particular requirements not complied with**

An employer of an employed driver of a fatigue regulated heavy vehicle must not cause the driver to drive the vehicle unless—

- (a) the employer has complied with section 23; and
- (b) the employer, after making reasonable inquiries, is satisfied each scheduler for the vehicle has complied with subdivision 2.

Maximum penalty—40 penalty units.

## **25 Duty of prime contractor or operator not to cause driver to drive if particular requirements not complied with**

(1) This section applies to—

- (a) a prime contractor of a self-employed driver (the ***driver***) of a fatigue regulated heavy vehicle; and

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- (b) an operator of a fatigue regulated heavy vehicle being driven by someone else (also the *driver*).
- (2) The prime contractor or operator must not cause the driver to drive the fatigue regulated heavy vehicle, or enter into a contract or other agreement with the driver to that effect, unless—
  - (a) the prime contractor or operator has complied with section 23; and
  - (b) the prime contractor or operator, after making reasonable inquiries, is satisfied each scheduler for the vehicle has complied with subdivision 2.

Maximum penalty—40 penalty units.

## **Subdivision 2      Schedulers**

### **26      Duty of scheduler to ensure driver's schedule will not cause driver to drive while fatigued etc.**

A scheduler for a fatigue regulated heavy vehicle must take all reasonable steps to ensure the schedule for the driver of the vehicle will not cause the driver to—

- (a) drive while impaired by fatigue; or
- (b) drive while in breach of the driver's work and rest hours option; or
- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—60 penalty units.

### **27      Duty of scheduler not to cause driver to drive if particular requirements not complied with**

A scheduler for a fatigue regulated heavy vehicle must not cause the driver of the vehicle to drive the vehicle unless—

- (a) the scheduler has complied with section 26; and
- (b) the schedule for the driver of the vehicle allows for—
  - (i) the driver to take rest time under the driver's work and rest hours option; and
  - (ii) traffic conditions and other delays that could reasonably be expected.

*Examples of traffic conditions and other delays that could reasonably be expected—*

- the actual average speed able to be travelled lawfully and safely by the driver on the route to be travelled by the vehicle
- known traffic conditions, for example, road works or traffic congestion on the route
- delays caused by loading, unloading or queuing

Maximum penalty—40 penalty units.

## Subdivision 3 Consignors and consignees

### 28 Duty of consignor or consignee to ensure terms of consignment will not cause driver to drive while fatigued etc.

- (1) A consignor or consignee of goods for transport by a fatigue regulated heavy vehicle must take all reasonable steps to ensure the terms of consignment, for example delivery times, will not result in, encourage or provide an incentive to the driver of the vehicle to—
  - (a) drive while impaired by fatigue; or
  - (b) drive while in breach of the driver's work and rest hours option; or
  - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—60 penalty units.

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- (2) A consignor or consignee of goods for transport by a fatigue regulated heavy vehicle must take all reasonable steps to ensure the terms of consignment, for example delivery times, will not result in, encourage or provide an incentive to a relevant party for the driver of the vehicle to cause the driver to—
- (a) drive while impaired by fatigue; or
  - (b) drive while in breach of the driver's work and rest hours option; or
  - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—60 penalty units.

- (3) In this section—

***relevant party***, for the driver of a fatigue regulated heavy vehicle, means—

- (a) an employer of the driver, if the driver is an employed driver; or
- (b) a prime contractor of the driver, if the driver is a self-employed driver; or
- (c) an operator of the vehicle.

## **29 Duty of consignor or consignee not to cause driver to drive if particular requirements not complied with**

- (1) A consignor or consignee of goods for transport by a fatigue regulated heavy vehicle must not cause the driver of the vehicle to drive the vehicle, or enter into a contract or agreement to that effect, unless—
- (a) the consignor or consignee has complied with section 28; and
  - (b) the consignor or consignee, after making reasonable inquiries, is satisfied—



- (i) each relevant party for the driver has complied with subdivision 1; and
- (ii) each scheduler for the vehicle has complied with subdivision 2.

Maximum penalty—40 penalty units.

- (2) In this section—

***relevant party***, for the driver of a fatigue regulated heavy vehicle, means—

- (a) an employer of the driver, if the driver is an employed driver; or
- (b) a prime contractor of the driver, if the driver is a self-employed driver; or
- (c) an operator of the vehicle.

### **30 Duty of consignor or consignee not to make a demand that may result in driver driving while fatigued etc.**

- (1) A consignor or consignee of goods for transport by a fatigue regulated heavy vehicle must not make a demand that affects, or may affect, a time in a schedule for the transport of the consigned goods and that may cause the driver of the vehicle to—
- (a) drive while impaired by fatigue; or
  - (b) drive while in breach of the driver's work and rest hours option; or
  - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty—60 penalty units.

- (2) Subsection (1) does not apply if the consignor or consignee, before making the demand—
- (a) has complied with section 28; and

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- (b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause a scheduler for the vehicle to fail to comply with subdivision 2.

## **Subdivision 4 Loading managers**

### **31 Duty of loading manager to ensure loading arrangements will not cause driver to drive while fatigued**

A loading manager must take all reasonable steps to ensure the arrangements for loading and unloading fatigue regulated heavy vehicles at the premises in relation to which the person is the loading manager will not cause the driver of a fatigue regulated heavy vehicle to—

- (a) drive while impaired by fatigue; or
- (b) drive while in breach of the driver's work and rest hours option; or
- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

*Examples of reasonable steps to comply with this section—*

- providing for necessary rest to be taken with adequate facilities
- providing for the reporting of travel delays and providing a mechanism for managing late arrivals
- allowing loading and unloading to happen at an agreed time
- having a system of setting and allocating loading and unloading times that the driver of a fatigue regulated heavy vehicle can reasonably rely on to comply with the maximum work requirements and minimum rest requirements applying to the driver

Maximum penalty—60 penalty units.

**32 Duty of loading manager to ensure drivers can take rest in particular circumstances**

If a loading manager for goods in a fatigue regulated heavy vehicle, or a person acting under the loading manager's supervision or control—

- (a) has advised the driver of the vehicle, either directly or indirectly, of when the loading or unloading of the vehicle is to start, and the loading manager or person becomes aware that the loading or unloading will, or is likely to, start more than 30 minutes late; or
- (b) has advised the driver of the vehicle, either directly or indirectly, of when the loading or unloading of the vehicle is to finish, and the loading manager or person becomes aware that the loading or unloading will, or is likely to, finish more than 30 minutes late; or
- (c) is unable to advise the driver of the vehicle of when the loading or unloading of the vehicle is to start; or
- (d) is unable to advise the driver of the vehicle of when the loading or unloading of the vehicle is to finish;

the loading manager must take all reasonable steps to ensure the driver is able to take rest while waiting for the vehicle to be loaded or unloaded.

*Example of reasonable steps that may be taken to ensure the driver of a fatigue regulated heavy vehicle is able to take rest—*

providing a system of notifying the driver when the driver's vehicle can be loaded or unloaded that does not require the driver to be awake or unreasonably alert

Maximum penalty—40 penalty units.

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## **Division 5                      Additional duties of particular persons for enabling other persons to comply with duties relating to fatigue**

### **33            Duty of driver to ensure party in the chain of responsibility has relevant information**

- (1) This section applies if a party in the chain of responsibility for a fatigue regulated heavy vehicle asks, for the purpose of complying with the party's duties under the Act, the driver of the vehicle to give the party any of the following details in a stated way—
  - (a) the work and rest hours option under which the driver is operating;
  - (b) the maximum work requirements and minimum rest requirements applying to the driver under the work and rest hours option under which the driver is operating;
  - (c) the details of the driver's work times and rest times during the previous 24 hours.
- (2) The driver must give the details to the party in the stated way.
- (3) For subsection (1)—
  - (a) the party's duties include—
    - (i) the duties under this part; and
    - (ii) duties or responsibilities for ensuring the person can avoid liability, or is not liable, under section 57B of the Act; and
  - (b) the way for giving the details may be only either of the following—
    - (i) showing the party the relevant part of the driver's written or electronic work diary;
    - (ii) another way that is reasonable in the circumstances.

- (4) If the party is charged with an offence against this part or section 57B of the Act in relation to the driver, the court may have regard to the following in deciding whether things done or omitted to be done by the party constitute reasonable steps—
- (a) whether or not the party made a request of the driver under this section;
  - (b) whether or not the driver complied with the request.

*Note—*

For other matters to which the court must or may have regard, see—

- (a) sections 57DB to 57F of the Act and sections 14 and 15 of this regulation, in relation to an offence against section 57B of the Act; or
- (b) sections 9 to 15 of this regulation, in relation to an offence against this part.

### **34 Duty of principal loading manager to ensure supervising loading manager aware of duties and responsibilities**

- (1) This section applies if a principal loading manager for goods in a fatigue regulated heavy vehicle assigns another person to be a supervising loading manager for goods in the vehicle.
- (2) The principal loading manager must give the supervising loading manager written notice of the following—
  - (a) the supervising loading manager's duties under this part;
  - (b) that, under section 57B of the Act, if the driver of the vehicle commits an offence relating to a contravention of a maximum work requirement or minimum rest requirement involving the vehicle, the supervising loading manager is taken to have also committed the offence subject to defences under that section.
- (3) If the principal loading manager or supervising manager is charged with an offence against this part or section 57B of the Act in relation to the driver of the vehicle, the court may have regard to whether or not the principal loading manager complied with this section in deciding whether things done or

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omitted to be done by the principal loading manager or supervising loading manager constitute reasonable steps.

*Note—*

For other matters to which the court must or may have regard, see—

- (a) sections 57DB to 57F of the Act and sections 14 and 15 of this regulation, in relation to an offence against section 57B of the Act; or
- (b) sections 9 to 15 of this regulation, in relation to an offence against this part.

(4) In this section—

***principal loading manager***, for goods in a fatigue regulated heavy vehicle, means a loading manager for the goods within the meaning given by the Act, schedule 4, definition *loading manager*, paragraph (a)(i).

***supervising loading manager***, for goods in a fatigue regulated heavy vehicle, means a loading manager for the goods within the meaning given by the Act, schedule 4, definition *loading manager*, paragraph (a)(ii).

## **Division 6                      Particular requests etc. and contracts etc. prohibited**

### **35            Particular requests etc. prohibited**

A person must not ask, direct or require, directly or indirectly, the driver of a fatigue regulated heavy vehicle, or a party in the chain of responsibility for a fatigue regulated heavy vehicle, to do something the person knows, or reasonably ought to know, would have the effect of causing the driver of the vehicle to—

- (a) drive while impaired by fatigue; or
- (b) drive while in breach of the driver's work and rest hours option; or

- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

*Example of a requirement that contravenes this section—*

a requirement that the driver complete a journey in a time the person knows or reasonably ought to know cannot be complied with unless the driver commits a speeding offence or does not take all the rest time the driver is required to take under this regulation

Maximum penalty—80 penalty units.

### **36 Particular contracts etc. prohibited**

- (1) A person must not enter into a contract or agreement with the driver of a fatigue regulated heavy vehicle or with a party in the chain of responsibility for a fatigue regulated heavy vehicle that the person knows, or reasonably ought to know, would have the effect of causing the driver of the vehicle to—
  - (a) drive while impaired by fatigue; or
  - (b) drive while in breach of the driver's work and rest hours option; or
  - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

*Note—*

See also section 168D of the Act for other prohibited contracts or agreements.

Maximum penalty—80 penalty units.

- (2) A person must not enter into a contract or agreement with the driver of a fatigue regulated heavy vehicle or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would encourage or provide an incentive for a party in the chain of responsibility to cause the driver to—
  - (a) drive while impaired by fatigue; or

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- (b) drive while in breach of the driver's work and rest hours option; or
- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

*Note—*

See also section 168D of the Act for other prohibited contracts or agreements.

Maximum penalty—80 penalty units.

## **Part 3                      Requirements relating to work time and rest time**

### **Division 1                Key concepts for this part**

#### **Subdivision 1        Concepts relating to work time and rest time**

##### **37        What is a driver's *work and rest hours option***

- (1) The *work and rest hours option* of a driver of a fatigue regulated heavy vehicle is the maximum work requirements and minimum rest requirements applying to the driver under this regulation.
- (2) The *work and rest hours option* may be—
  - (a) the standard work and rest arrangements, which—
    - (i) apply to drivers of fatigue regulated heavy vehicles operating other than under a BFM accreditation, AFM accreditation, work and rest hours exemption or work and rest hours alternative compliance scheme; and



- (ii) are known as ‘standard hours’; or
- (b) the BFM work and rest arrangements, which—
  - (i) apply to drivers of fatigue regulated heavy vehicles operating under a BFM accreditation; and
  - (ii) are known as ‘BFM hours’; or
- (c) the AFM work and rest arrangements, which—
  - (i) apply to drivers of fatigue regulated heavy vehicles operating under an AFM accreditation; and
  - (ii) are known as ‘AFM hours’; or
- (d) the maximum periods of work and minimum periods of rest applying to drivers of fatigue regulated heavy vehicles operating under a work and rest hours exemption; or
- (e) the maximum periods of work and minimum periods of rest applying to drivers of fatigue regulated heavy vehicles operating under a work and rest hours alternative compliance scheme.

### 38 What is *work time*

For the driver of a fatigue regulated heavy vehicle, *work time* is any time the driver spends working in relation to the vehicle.

*Note—*

See definition *work* in schedule 4 of the Act for the meaning of work in relation to a fatigue regulated heavy vehicle.

### 39 What is *rest time*

For the driver of a fatigue regulated heavy vehicle, *rest time* is any time that is not work time for the driver.

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#### **40 What is a *work and rest change***

A *work and rest change* for the driver of a fatigue regulated heavy vehicle is—

- (a) a change from work time to rest time; or
- (b) a change from rest time to work time; or
- (c) a change from being a solo driver to being a driver who is a party to a two-up driving arrangement; or
- (d) a change from being a driver who is a party to a two-up driving arrangement to being a solo driver.

### **Subdivision 2 Counting time**

#### **41 Counting periods of less than 15 minutes**

- (1) A period of work time of less than 15 minutes counts as 15 minutes work time.

*Examples for subsection (1)—*

- A period of working for 14 minutes counts as 15 minutes work time.
- A period of working for 17 minutes counts as 30 minutes work time.
- A period of working for 53 minutes counts as 1 hour work time.

- (2) A period of rest time is counted in blocks of time of no less than 15 minutes.

*Examples for subsection (2)—*

- A period of not working for only 14 minutes does not count as rest time, because 14 minutes is less than 15 minutes.
- A period of not working for 17 minutes counts as 15 minutes rest time, because 17 minutes is more than 15 minutes, but is less than 2 lots of 15 minutes (30 minutes).
- A period of not working for 53 minutes counts as 45 minutes rest time, because 53 minutes is more than 3 lots of 15 minutes (45 minutes), but is less than 4 lots of 15 minutes (60 minutes).

## **42 Time must be counted after rest time ends**

When counting time in a period, the time must not be counted from within rest time, but instead must be counted forward from—

- (a) if 1 or more major rest breaks are relevant to the period—the end of a relevant major rest break; or
- (b) in any other case—the end of a relevant period of rest time.

*Example—*

An authorised officer intercepts the driver of a fatigue regulated heavy vehicle on a Friday and inspects the driver's work diary. The driver works under standard hours. The officer examines the work diary entries for the previous Monday. The entries show that the driver completed 7 continuous hours of stationary rest time at 7a.m. on that day, started work at that time, worked until 12.15p.m. that day, had 1 hour of rest time, then worked until 7.15p.m. that day.

For the purposes of deciding the number of hours worked by the driver on the Monday, the officer must start counting from the rest period that finished at 7a.m. Adding the periods 7a.m. to 12.15p.m. and 1.15p.m. to 7.15p.m. results in a total of 11¼ hours worked that day.

The officer might also decide to calculate the number of continuous hours worked in the second work period that day. This requires the counting to start at the end of the rest period that finished at 1.15p.m. and results in a total of 6 continuous hours.

## **43 Period must be counted by reference to time zone of driver's base**

If the driver of a fatigue regulated heavy vehicle undertakes a journey and is in a different time zone from the time zone of the driver's base at the time when a period of time is relevant for the purposes of this regulation, the period must be counted by reference to the time zone of the driver's base.

*Example—*

If, for the driver of a fatigue regulated heavy vehicle with a base in Queensland, it is necessary to work out the hours of night work time while the driver is in Western Australia on a journey, the hours of night work time are the hours between midnight and 6a.m. in the Queensland time zone (being the time zone in which the driver's base is situated),

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even though the hours equate to 10p.m. and 4a.m. in Western Australia (Eastern Standard Time).

#### **44 Counting time spent within participating zone**

In applying this part to the driver of a fatigue regulated heavy vehicle, any time spent by the driver in another jurisdiction within the participating zone must be treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

#### **45 Counting time spent outside participating zone**

- (1) This section applies to the driver of a fatigue regulated heavy vehicle if the driver drives a fatigue regulated heavy vehicle into this jurisdiction from another jurisdiction within the non-participating zone.
- (2) If, within the last 7 days, the driver has spent any work time inside the participating zone, any time spent by the driver in the other jurisdiction within the non-participating zone must be treated in the same way as it would have been treated if the time had been spent in this jurisdiction.
- (3) If, within the last 7 days, the driver spent work time only in the non-participating zone—
  - (a) any time spent by the driver in the other jurisdiction within the non-participating zone before the start of the driver's last major rest break before entering this jurisdiction must be disregarded; and
  - (b) any time spent by the driver in the other jurisdiction within the non-participating zone after the start of the last major rest break mentioned in paragraph (a) must be—
    - (i) taken into account; and
    - (ii) treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

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## **Division 2                      Standard work and rest arrangements**

### **46            Purpose of div 2**

This division sets out the maximum work requirements and minimum rest requirements applying to the driver of a fatigue regulated heavy vehicle if the driver is not operating under a BFM accreditation, AFM accreditation, work and rest hours exemption or work and rest hours alternative compliance scheme (the *standard hours*).

### **47            Options about standard hours for solo driver of a bus**

The solo driver of a bus may operate under either, but not both, of the following—

- (a) the standard hours under section 48;
- (b) the standard hours under section 49.

### **48            Standard hours—solo drivers**

- (1) Schedule 1, table 1 sets out the standard hours for the solo driver of a fatigue regulated heavy vehicle.
- (2) In any period stated in column 1, the solo driver—
  - (a) must not work for more than the work time stated in column 2; and
  - (b) must have the rest of the period off work, with at least the rest time stated in column 3.

*Example—*

If the solo driver of a fatigue regulated heavy vehicle starts work at midday on Monday, after a 2 day break, the minimum rest times the driver might have to comply with under standard hours for the solo driver of a fatigue regulated heavy vehicle are as follows—

- 15 continuous minutes rest time before 5.30p.m.
- another 15 continuous minutes rest time before 8p.m. (making a total of 30 minutes rest time since midday)

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- another continuous 30 minutes rest time before 11p.m. (making a total of 60 minutes rest time since midday)
- another 7 continuous hours rest time before midday on Tuesday.

The driver could do the same hours through to Saturday, but would have to take a break from midday Sunday until midday Monday, that is 24 continuous hours stationary rest time.

The driver could continue the same pattern for a second week, through until the second Saturday, if the driver has had a night's rest time (that is 7 continuous hours rest time between 10p.m. and 8a.m.) on 4 nights, including 2 consecutive nights, during the fortnight ending on midday on the second Sunday.

This example assumes that the driver has remained in the same time zone during the entire period described.

Maximum penalty—

- (a) for a minor risk breach—20 penalty units; or
  - (b) for a substantial risk breach—40 penalty units; or
  - (c) for a severe risk breach—60 penalty units; or
  - (d) for a critical risk breach—80 penalty units.
- (3) A contravention of subsection (2) for any period stated in column 1 is a breach of the risk category stated in column 4 for the circumstances of the contravention.
- (4) In this section, a reference to a column by number is a reference to the column of that number in schedule 1, table 1.
- (5) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **49 Standard hours—solo drivers of buses**

- (1) Schedule 1, table 2 sets out the standard hours for the solo driver of a bus.
- (2) In any period stated in column 1, the solo driver of a bus—

- (a) must not work for more than the work time stated in column 2; and
- (b) must have the rest of the period off work, with at least the rest time stated in column 3.

Maximum penalty—

- (a) for a minor risk breach—20 penalty units; or
  - (b) for a substantial risk breach—40 penalty units; or
  - (c) for a severe risk breach—60 penalty units; or
  - (d) for a critical risk breach—80 penalty units.
- (3) A contravention of subsection (2) for any period stated in column 1 is a breach of the risk category stated in column 4 for the circumstances of the contravention.
  - (4) In this section, a reference to a column by number is a reference to the column of that number in schedule 1, table 2.
  - (5) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **50 Standard hours—two-up drivers**

- (1) Schedule 1, table 3 sets out the standard hours for the driver of a fatigue regulated heavy vehicle who is a party to a two-up driving arrangement.
- (2) In any period stated in column 1, the driver—
  - (a) must not work for more than the work time stated in column 2; and
  - (b) must have the rest of the period off work, with at least the rest time stated in column 3.

Maximum penalty—

- (a) for a minor risk breach—20 penalty units; or

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- (b) for a substantial risk breach—40 penalty units; or
  - (c) for a severe risk breach—60 penalty units; or
  - (d) for a critical risk breach—80 penalty units.
- (3) A contravention of subsection (2) for any period stated in column 1 is a breach of the risk category stated in column 4 for the circumstances of the contravention.
- (4) In this section, a reference to a column by number is a reference to the column of that number in schedule 1, table 3.
- (5) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **51 Defence relating to short rest breaks**

- (1) This section applies if, at a particular time, the driver of a fatigue regulated heavy vehicle is required, under section 48, 49 or 50, to take a short rest break.

*Examples of when this section applies—*

The driver is required to take 15 continuous minutes rest time because—

- (a) the driver has worked for 5¼ hours; or
  - (b) the driver has worked for 7½ hours and has only taken 15 continuous minutes rest time during that period; or
  - (c) the driver has worked for 10 hours and has only taken 3 lots of 15 continuous minutes rest time during that period.
- (2) For proceedings for an offence against section 48, 49 or 50 relating to the driver failing to take the short rest break, it is a defence for the driver to prove that—
- (a) at the time the driver was required to take the short rest break, there was no suitable rest place; and
  - (b) the driver took the short rest break—



- (i) at the next suitable rest place available after that time on the forward route of the driver's journey; and
- (ii) no later than 45 minutes after the time the driver was required to take the short rest break.

*Example of when the defence applies—*

The driver of a fatigue regulated heavy vehicle fails to take a short rest break after 5¼ hours of work time because there was no suitable rest place when the driver was scheduled to take the short rest break. Instead, the driver takes a short rest break after 5½ hours work at another place down the road.

- (3) In this section—

*short rest break* means rest time of less than 1 hour.

## Division 3                      BFM work and rest arrangements

### 52            Purpose of div 3

This division sets out the maximum work requirements and minimum rest requirements applying to the driver of a fatigue regulated heavy vehicle operating under and complying with a BFM accreditation (the *BFM hours*).

### 53            BFM hours—solo drivers

- (1) Schedule 2, table 1 sets out the BFM hours for a solo driver of a fatigue regulated heavy vehicle.
- (2) In any period stated in column 1, the solo driver—
  - (a) must not work for more than the work time stated in column 2; and
  - (b) must have the rest of the period off work, with at least the rest time stated in column 3.

Maximum penalty—

- (a) for a minor risk breach—20 penalty units; or

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- (b) for a substantial risk breach—40 penalty units; or
  - (c) for a severe risk breach—60 penalty units; or
  - (d) for a critical risk breach—80 penalty units.
- (3) A contravention of subsection (2) for any period stated in column 1 is a breach of the risk category stated in column 4 for the circumstances of the contravention.
- (4) In this section, a reference to a column by number is a reference to the column of that number in schedule 2, table 1.
- (5) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **54 Defence for solo drivers relating to split rest breaks**

- (1) This section applies if, at a particular time, the driver of a fatigue regulated heavy vehicle is required under section 53 to take 7 continuous hours of stationary rest time in a period of 24 hours.
- (2) For proceedings for an offence against section 53 relating to the driver failing to take the 7 continuous hours of stationary rest time, it is a defence for the driver to prove that—
- (a) at the time the driver was required to take the 7 continuous hours of stationary rest time, the driver was driving under BFM hours as a solo driver of a fatigue regulated heavy vehicle; and
  - (b) during the period of 24 hours for which the 7 continuous hours of stationary rest time was required to be taken, the driver took 6 continuous hours of stationary rest time and 2 continuous hours of stationary rest time (a *split rest break*); and
  - (c) the driver had not taken a split rest break in the previous 24 hour period.

*Example of when the defence applies—*

The driver of a fatigue regulated heavy vehicle stops work to take 7 continuous hours of stationary rest time, but cannot sleep, so the driver takes only 2 continuous hours of stationary rest time and then drives on for a further 2 hours and takes a further 6 continuous hours of stationary rest time at another place down the road.

**55 BFM hours—two-up drivers**

- (1) Schedule 2, table 2 sets out the BFM hours for the driver of a fatigue regulated heavy vehicle who is a party to a two-up driving arrangement.
- (2) In any period stated in column 1, the driver—
  - (a) must not work for more than the work time stated in column 2; and
  - (b) must have the rest of the period off work, with at least the rest time stated in column 3.

*Maximum penalty—*

- (a) for a minor risk breach—20 penalty units; or
  - (b) for a substantial risk breach—40 penalty units; or
  - (c) for a severe risk breach—60 penalty units; or
  - (d) for a critical risk breach—80 penalty units.
- (3) A contravention of subsection (2) for any period stated in column 1 is a breach of the risk category stated in column 4 for the circumstances of the contravention.
- (4) In this section, a reference to a column by number is a reference to the column of that number in schedule 2, table 2.
- (5) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

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## **Division 4                      AFM hours**

### **56            AFM hours**

- (1) The accreditation certificate for an AFM accreditation sets out the maximum work requirements and minimum rest requirements applying to the driver of a fatigue regulated heavy vehicle operating under and complying with the accreditation (the *AFM hours*).
- (2) In any period stated in the AFM accreditation, the driver—
  - (a) must not work for more than the maximum work time stated in the AFM hours; and
  - (b) must have at least the minimum rest time stated in the AFM hours.

Maximum penalty—

- (a) for a minor risk breach—20 penalty units; or
  - (b) for a substantial risk breach—40 penalty units; or
  - (c) for a severe risk breach—60 penalty units; or
  - (d) for a critical risk breach—80 penalty units.
- (3) A contravention of subsection (2) for any period stated in the AFM accreditation and stated in schedule 3, part 2, table 1, column 1 is a breach of the risk category stated in schedule 3, part 2, table 1, column 2 for the circumstances of the contravention.
- (4) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **57 AFM outer limits**

- (1) Schedule 3, part 1, table sets out the *AFM outer limits* for the driver of a fatigue regulated heavy vehicle operating under AFM hours.
- (2) In any period stated in schedule 3, part 1, table, column 1, the driver—
  - (a) must not work for more than the maximum work time stated in schedule 3, part 1, table, column 2 for the period; and
  - (b) must have at least the minimum rest time stated in schedule 3, part 1, table, column 3 for the period.

Maximum penalty—

- (a) for a minor risk breach—20 penalty units; or
  - (b) for a substantial risk breach—40 penalty units; or
  - (c) for a severe risk breach—60 penalty units; or
  - (d) for a critical risk breach—80 penalty units.
- (3) A contravention of subsection (2) for any period stated in schedule 3, part 2, table 2, column 1 is a breach of the risk category stated in schedule 3, part 2, table 2, column 2 for the circumstances of the contravention.
- (4) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **Division 5 Changing work and rest hours option**

### **58 Driver may change work and rest hours option**

- (1) The driver of a fatigue regulated heavy vehicle may drive under only 1 work and rest hours option at any 1 time.

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- (2) However, the driver of a fatigue regulated heavy vehicle may change from 1 work and rest hours option to a different work and rest hours option.

## **59 Driving under new work and rest hours option after change**

- (1) The driver of a fatigue regulated heavy vehicle must not drive the vehicle after changing from 1 work and rest hours option to a different work and rest hours option unless—
- (a) if the change is from standard hours or BFM hours, either the driver—
- (i) is in compliance with all the maximum work requirements and minimum rest requirements under the work and rest hours option to which the driver has changed; or
- (ii) has had a reset rest break; and

*Examples for paragraph (a)—*

- 1 If the driver of a fatigue regulated heavy vehicle is changing from BFM hours to standard hours and the minimum rest requirements applying under standard hours requires the driver to have longer rest time than is required under BFM hours, the driver may start driving under standard hours only if the driver has had the longer rest time or a reset rest break.
  - 2 If the driver of a fatigue regulated heavy vehicle is changing from BFM hours to standard hours and the minimum rest requirements applying under standard hours requires the driver to take rest time earlier than is required under BFM hours, the driver may start driving under standard hours only if the driver has had the earlier rest time or a reset rest break.
- (b) if the change is from AFM hours, a work and rest hours exemption or a work and rest hours alternative compliance scheme, the driver has had a reset rest break; and

- (c) the driver complies with all other requirements of the work and rest hours option to which the driver has changed.

*Example of other requirements for paragraph (c)—*

If the driver is changing to BFM hours or AFM hours, the driver must be inducted into the relevant operator's BFM or AFM fatigue management system.

Maximum penalty—40 penalty units.

- (2) If the driver of a fatigue regulated heavy vehicle has had a reset rest break between changing from 1 work and rest hours option to a different work and rest hours option, the period to which the new work and rest hours option applies must be counted forward from the end of the reset rest break.
- (3) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

- (4) In this section—

***reset rest break*** means a period of rest time of at least 48 hours continuous rest.

## Part 4 Requirements about record keeping

### Division 1 Key concepts for this part

#### 60 What is **200km work** and **200+km work**

- (1) The driver of a fatigue regulated heavy vehicle is engaged in **200km work** if the driver is driving in an area with a radius of 200km or less from the driver's base.

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- (2) The driver of a fatigue regulated heavy vehicle is engaged in **200+km work** if the driver is driving in an area with a radius of more than 200km from the driver's base.

## **61 What is a driver's *base* in particular circumstances**

- (1) This section applies if—
  - (a) under schedule 4 of the Act, definition *base*, paragraph (a)(ii), the base of the driver of a fatigue regulated heavy vehicle is the vehicle's garage address; and
  - (b) under schedule 4 of the Act, definition *garage address*, paragraph (b)(ii), the vehicle has more than 1 garage address because the vehicle has 2 or more registered operators.
- (2) For this regulation, the ***base*** of the driver is the home address of the vehicle's registered operator whose name is listed first on the registration certificate for the vehicle's registration.

## **62 Who is a driver's *record keeper***

The following person is the ***record keeper*** for the driver of a fatigue regulated heavy vehicle—

- (a) if the driver is operating under a BFM accreditation or AFM accreditation of an operator of the vehicle—the operator;
- (b) otherwise—
  - (i) for an employed driver of a fatigue regulated heavy vehicle—the driver's employer; or
  - (ii) for a self-employed driver of a fatigue regulated heavy vehicle—the driver.

## **63 Person engaged to undertake particular functions must be notified of offences**

- (1) This section applies if the record keeper for the driver of a fatigue regulated heavy vehicle engages or proposes to engage



another person to carry out, for the record keeper, any of the following functions of the record keeper under this regulation—

- (a) a function under any of the following provisions—
    - (i) section 85(2);
    - (ii) section 86(2);
    - (iii) section 87(2);
    - (iv) section 96(1);
    - (v) section 97(1) or (2);
    - (vi) section 98(1), (2) or (3);
    - (vii) section 99(4);
    - (viii) section 100(3);
    - (ix) section 101(2);
  - (b) the function of operating or maintaining an electronic work diary used or to be used by the driver.
- (2) The record keeper must, before or when the other person is engaged, give the other person written notification of the following—
- (a) the carrying out of the function is subject to a provision of this regulation that creates an offence;
  - (b) that if the engaged person carries out the function, the engaged person is liable for an offence against the provision;
  - (c) the provision that creates the offence and the maximum penalty for the offence.

Maximum penalty—80 penalty units.

- (3) The written notification required under subsection (2) may be included in the written agreement setting out the terms of the engagement.

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**64 Person engaged to operate or maintain electronic work diary must have appropriate systems and procedures**

- (1) The record keeper for the driver of a fatigue regulated heavy vehicle must not engage another person to operate or maintain an electronic work diary used or to be used by the driver unless the record keeper is satisfied the other person has appropriate systems and procedures for ensuring—
  - (a) the person can comply with sections 92 and 93; and
  - (b) the electronic work diary can not be tampered with while the work diary is being operated or maintained by the other person.

Maximum penalty—80 penalty units.

- (2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

**65 What is a driver's *record location***

The ***record location*** of the driver of a fatigue regulated heavy vehicle is—

- (a) if the driver's record keeper has advised the driver of the place that is the driver's record location—the place advised; or
- (b) otherwise—the driver's base.

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## Division 2                      Work diary requirements

### Subdivision 1              Requirement to carry work diary

#### 66              Application of sdiv 1

This subdivision applies if the driver of a fatigue regulated heavy vehicle—

- (a) is engaged in 200+km work; or
- (b) was engaged in 200+km work in the last 28 days; or
- (c) is driving under BFM hours or AFM hours; or
- (d) was driving under BFM hours or AFM hours in the last 28 days; or
- (e) is driving under a work and rest hours exemption; or
- (f) was driving under a work and rest hours exemption in the last 28 days.

#### 67              Meaning of *work diary* for sdiv 1

- (1) In this subdivision, a reference to a *work diary* in relation to the driver of a fatigue regulated heavy vehicle is a reference to the following—
  - (a) if the driver has used only 1 or more written work diaries in the last 28 days—
    - (i) the written work diary the driver is currently using; and
    - (ii) any filled up written work diary the driver has used during the last 28 days;
  - (b) if the driver has used only an electronic work diary in the last 28 days—
    - (i) the electronic work diary the driver is currently using; and

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- (ii) printouts of the information no longer stored in the electronic work diary the driver is currently using and relating to any period during the last 28 days; and
  - (iii) printouts of the information in any other electronic work diary the driver has used in the last 28 days that relates to any period during the last 28 days and is not recorded in the electronic work diary the driver is currently using;
- (c) if the driver has used a combination of a written work diary and an electronic work diary in the last 28 days—
  - (i) the written work diary, or electronic work diary, the driver is currently using; and
  - (ii) each written work diary the driver has used during the last 28 days; and
  - (iii) printouts of the information no longer stored in the electronic work diary the driver is currently using and relating to any period during the last 28 days; and
  - (iv) printouts of the information in any other electronic work diary the driver has used in the last 28 days that relates to any period during the last 28 days and is not recorded in the electronic work diary the driver is currently using.
- (2) If the driver has made a supplementary record in the last 28 days—
  - (a) a reference in this subdivision to the driver's work diary is taken to include a reference to the supplementary record; and
  - (b) for this subdivision, the supplementary record is taken to be a part of the work diary.

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**68 Driver of fatigue regulated heavy vehicle must carry work diary**

- (1) The driver of a fatigue regulated heavy vehicle must, while driving the vehicle, keep in the vehicle the driver's work diary containing, for the last 28 days, the information required to be recorded under subdivision 2.

*Notes—*

- 1 For the requirement to record particular information in a supplementary record if the work diary of the driver of a fatigue regulated heavy vehicle is filled up, destroyed, lost, stolen or, for an electronic diary, is malfunctioning, see section 80.
- 2 Under section 49 of the Act, an authorised officer may require the driver of a fatigue regulated heavy vehicle to produce for inspection the driver's work diary.

Maximum penalty—80 penalty units.

- (2) Subsection (1) applies irrespective of the number of days in the last 28 days on which the driver spent working in relation to a fatigue regulated heavy vehicle.
- (3) It is a defence to an offence against subsection (1) relating to the driver failing to keep a work diary containing particular information if the driver proves—
- (a) the information was recorded in a work diary that, at the time of the offence, has been destroyed, lost or stolen; or
  - (b) the information was—
    - (i) recorded in an electronic work diary; and
    - (ii) destroyed or lost as a result of a malfunction of the electronic work diary before the information was given to a record keeper or recorded in any other way.

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## **Subdivision 2      Information required to be included in work diary**

### **69      Purpose of sdiv 2**

This subdivision states the information the driver of a fatigue regulated heavy vehicle must record in the driver's written or electronic work diary for each day on which the driver—

- (a) engages in 200+km work; or
- (b) works under BFM hours or AFM hours; or
- (c) works under a work and rest hours exemption.

### **70      How information requirements apply to a day**

- (1) In this subdivision, the requirement to record information for a day continues to apply for each period of work time and rest time the driver has on that day.
- (2) However, if the driver stops working on a day and starts a major rest break that will continue until the end of the day, the driver may stop recording information for the day when the driver stops working and starts the major rest break.

### **71      Information to be recorded immediately after starting work**

- (1) Immediately after starting work on a day, the driver must record—
  - (a) the day of the week and date; and
  - (b) the driver's name; and
  - (c) the driver's current driver licence number, and the jurisdiction in which the licence was issued; and
  - (d) whether the driver is working under—
    - (i) standard hours (including whether the driver is working under standard hours for solo drivers of a bus); or

- (ii) BFM hours; or
- (iii) AFM hours; or
- (iv) a work and rest hours exemption; and
- (e) if the driver is working under BFM hours—the accreditation number for the BFM accreditation of the operator of the vehicle; and
- (f) if the driver is working under AFM hours—the accreditation number for the AFM accreditation of the operator of the vehicle; and
- (g) the address of the driver's base, unless the driver has previously recorded the address in relation to the work and it is still current; and
- (h) the address of the driver's record location, unless the driver has previously recorded the address and it is still current; and
- (i) the time zone of the driver's base.

Maximum penalty—80 penalty units.

- (2) For proceedings for an offence against this section relating to the driver of a fatigue regulated heavy vehicle failing to record information before starting to engage in 200+km work on a day, it is a defence for the driver to prove that at the time of the offence—
  - (a) the driver was unaware that the driver would be engaging in 200+km work on the day; and
  - (b) the driver recorded the information in the driver's written or electronic work diary as soon as practicable after becoming aware that the driver would be engaging in 200+km work on the day.
- (3) In this section—

***accreditation number***, for a BFM accreditation, means—

- (a) for a bus accreditation recognised (in whatever way) under a corresponding fatigue law as a BFM accreditation under the law—the number identifying the

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bus accreditation for the purposes of the law under which the bus accreditation was granted; or

- (b) for another BFM accreditation—the number identifying the accreditation given to the holder of the accreditation under section 137 or a corresponding fatigue law.

**accreditation number**, for an AFM accreditation, means the number identifying the accreditation given to the holder of the accreditation under section 146 or a corresponding fatigue law.

## **72 Information to be recorded immediately before or after work and rest change**

- (1) Immediately before or after each work and rest change on a day, the driver must record—
  - (a) the nature of the work and rest change; and
  - (b) the work time or rest time spent anywhere by the driver since the last work and rest change; and
  - (c) the time and place of the work and rest change; and
  - (d) the odometer reading at the time of the work and rest change; and
  - (e) the registration number for each fatigue regulated heavy vehicle that the driver drives; and
  - (f) if the driver is or becomes a party to a two-up driving arrangement on the day—the following information about the other driver in the two-up driving arrangement—
    - (i) the other driver's name;
    - (ii) the other driver's driver licence number;
    - (iii) unless the driver is recording information in an electronic work diary the driver shares with the other driver, the security or other identifying number of the other driver's work diary and the name of the participating jurisdiction that issued the work diary.



Maximum penalty—80 penalty units.

- (2) It is a defence for an offence against subsection (1)(d) for the driver to prove that—
- (a) at the time of the offence, the odometer was malfunctioning; and
  - (b) the driver has complied with section 89.

**73 Information to be recorded immediately after change of base or record location**

- (1) Immediately after any change of the driver's base or record location, the driver must record—
- (a) for a change of the driver's base—
    - (i) the address of the new base; and
    - (ii) the time zone of the new base; or
  - (b) for a change of the driver's record location—the address of the new record location.

Maximum penalty—80 penalty units.

- (2) Subsection (1) does not require the driver to record the change of the driver's base or record location if, before the change, the driver was not—
- (a) engaging in 200+km work; or
  - (b) working under BFM hours or AFM hours; or
  - (c) working under a work and rest hours exemption.

**74 Information to be recorded immediately before finishing work**

Immediately before finishing work on a day, the driver must record the total of the work time and the total of the rest time the driver had that day.

Maximum penalty—80 penalty units.

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## **Subdivision 3      How information must be recorded in work diary**

### **75      Purpose of sdiv 3**

This subdivision states how the driver of a fatigue regulated heavy vehicle must record information in the driver's work diary.

### **76      Recording information in written work diary**

- (1) If the driver's work diary is a written work diary, the driver must record information in the work diary in the following way—
  - (a) the information for each day must be written on a separate daily sheet in a work diary that has not been cancelled under this regulation;
  - (b) if, on a day, the driver changes the work and rest hours option under which the driver is working, the information for the part of the day that is after the change must be written on a separate daily sheet in a work diary that has not been cancelled under this regulation;
  - (c) if, on a day, the driver's base changes, the information for the part of the day that is after the change must be written on a separate daily sheet in a work diary that has not been cancelled under this regulation;
  - (d) if, on a day, the driver changes the employer for which the driver is working, the information for the part of the day that is after the change must be written on a separate daily sheet in a work diary that has not been cancelled under this regulation;
  - (e) information must be written on a daily sheet in the way stated in the instructions in the work diary for recording information on daily sheets;

- (f) the daily sheets in the work diary must be used in turn from the front of the work diary;
- (g) each daily sheet must—
  - (i) be signed and dated by the driver; and
  - (ii) if the driver is driving under a two-up driving arrangement—signed by the other driver who is a party to the arrangement;
- (h) information must be written on a daily sheet with enough pressure to ensure a readable record of the information appears on the duplicate daily sheets;
- (i) information recorded other than on a daily sheet must be written in the work diary in the way stated in the instructions in the work diary for the recording of the information.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (2) If 2 or more changes mentioned in subsection (1)(b), (c) or (d) happen at the same time for the driver—
  - (a) the requirements under subsection (1)(b), (c) or (d) applying to the changes are taken to be 1 requirement that the driver record the information for the part of the day that is after the changes on a separate daily sheet; and
  - (b) the driver is required to change to a new daily sheet only once for the changes.

*Example for subsection (2)—*

If, on a day, the driver changes the employer for which the driver is working and at the same time the driver's base and the work and rest hours option under which the driver is working changes, subsections (1)(b), (c) and (d) amount to 1 requirement that the driver record the information after the changes on a separate daily sheet and requires the driver to change to a new daily sheet only once.

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## **77 Recording information in electronic work diary**

If the driver's work diary is an electronic work diary, the driver must record information in the work diary in a way complying with—

- (a) any conditions applying under this regulation in relation to the way information must be recorded in the electronic recording system constituting the work diary; and
- (b) the manufacturer's instructions for recording information in the electronic recording system constituting the work diary, to the extent the instructions are consistent with the conditions mentioned in paragraph (a).

*Note—*

The chief executive may impose conditions on the use of an electronic recording system under section 119 or 130.

Maximum penalty— $26\frac{2}{3}$  penalty units.

## **78 Time zone of driver's base must be used**

The driver must record time in the driver's work diary according to the time zone in the place where the driver's base is, rather than the time zone in the place where the driver is.

*Note—*

See also section 43.

Maximum penalty— $26\frac{2}{3}$  penalty units.

# **Subdivision 4 Requirements about work diaries that are filled up etc.**

## **79 Application of sdiv 4**

This subdivision applies if—

- (a) a written work diary of the driver of a fatigue regulated heavy vehicle has been filled up, destroyed, lost or stolen; or
- (b) an electronic work diary of the driver of a fatigue regulated heavy vehicle—
  - (i) has been filled up, destroyed, lost or stolen; or
  - (ii) is malfunctioning.

## **80 Driver must make supplementary records in particular circumstances**

- (1) During any period in which the driver is unable to use the driver's work diary (the *existing work diary*) because of circumstances mentioned in section 79(a) or (b), the driver must record in a supplementary record the information the driver is required under subdivision 2 to record for the period (the *required information*).

*Note—*

Under subdivision 1, the driver of a fatigue regulated heavy vehicle must keep a supplementary record for 28 days after it is made (see section 67(2) and section 68).

Also, under section 98, the driver's record keeper must keep the record for at least 3 years after it is received by the record keeper.

- (2) The required information must be recorded in the supplementary record in a way complying with the requirements of subdivision 3 to the greatest practicable extent.

*Examples for subsection (2)—*

- For complying with section 76(1)(a) for a supplementary record in a similar form to a written work diary, a separate page of the record must be used for each day information is recorded in the record.
- For complying with section 78, any time recorded in the supplementary record must be recorded according to the time zone in the place where the driver's base is.

- (3) Subsections (1) and (2) cease to apply when the first of the following happens—

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- (a) the driver is issued a new written work diary, or a new electronic work diary that is in working order;
- (b) if the existing work diary is an electronic work diary that is filled up—the work diary is made capable of recording new information;
- (c) if the existing work diary is an electronic work diary that is malfunctioning—the work diary is brought into working order;
- (d) the expiry of 7 business days after the day on which the driver starts recording information under this section.

*Note—*

If subsection (1) ceases to apply, the driver must, under subdivision 2, record the required information in a written or electronic work diary.

- (4) In this section—

***supplementary record*** means a record that—

- (a) is not made in a written or electronic work diary; but
- (b) is in a similar form to a written or electronic work diary.

## **81 Driver must notify chief executive if work diary filled up etc.**

- (1) Within 2 business days after the driver becomes aware that the driver's written or electronic work diary has been filled up, destroyed, lost or stolen, the driver must give the chief executive written notice, in the approved form, of that happening.

Maximum penalty—53<sup>1</sup>/<sub>3</sub> penalty units.

- (2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

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**82 What driver must do if lost or stolen written work diary found or returned**

- (1) If a lost or stolen written work diary (the *old work diary*) is found by or returned to the driver after a replacement work diary has been issued to the driver, the driver must do the following—
  - (a) immediately cancel any unused daily sheets in the old work diary;
  - (b) if the old work diary is found or returned within 28 days after it was lost or stolen—
    - (i) immediately notify the chief executive in writing that it has been found or returned; and
    - (ii) give it to the chief executive within 2 business days after the 28 day period ends;
  - (c) if the old work diary is found or returned later than 28 days after it was lost or stolen—give it to the chief executive as soon as practicable after it is found or returned.

Maximum penalty—53<sup>1</sup>/<sub>3</sub> penalty units.

- (2) If a driver gives a previously lost or stolen written work diary to the chief executive under subsection (1), the chief executive must—
  - (a) if the driver has not complied with subsection (1)(a), cancel any unused daily sheets in the work diary; and
  - (b) return the work diary to the driver.
- (3) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

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**83 Driver must notify record keeper if electronic work diary filled up etc.**

- (1) If the driver of a fatigue regulated heavy vehicle becomes aware that the driver's electronic work diary has been filled up, destroyed, lost or stolen, or becomes aware or reasonably suspects that the driver's electronic work diary is malfunctioning, the driver must inform the driver's record keeper of the matter within 2 business days.

Maximum penalty— $53\frac{1}{3}$  penalty units.

- (2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

**84 IAP reporting entity must notify record keeper if electronic work diary malfunctioning**

- (1) This section applies if—
- (a) the electronic work diary of the driver of a fatigue regulated heavy vehicle includes or forms part of an approved intelligent transport system; and
  - (b) an IAP reporting entity for the approved intelligent transport system becomes aware or reasonably suspects that the electronic work diary is malfunctioning.
- (2) The IAP reporting entity must inform the driver's record keeper of the malfunctioning or suspected malfunctioning within 2 business days.

Maximum penalty— $53\frac{1}{3}$  penalty units.

- (3) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.



**85 What record keeper must do if electronic work diary filled up**

- (1) This section applies if—
  - (a) the driver of a fatigue regulated heavy vehicle uses an electronic work diary supplied to the driver by the driver's record keeper; and
  - (b) the record keeper is informed, under section 83, that the driver's electronic work diary has been filled up.
- (2) The record keeper must, as soon as reasonably practicable after being informed of the matter—
  - (a) either—
    - (i) make the electronic work diary capable of recording new information; or
    - (ii) issue the driver with a new electronic work diary that is in working order; and
  - (b) if the record keeper removes any records relating to the last 28 days from the work diary to make it capable of recording new information—give the driver a printout of the removed records.

Maximum penalty—53 $\frac{1}{3}$  penalty units.

- (3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—
  - (a) the record keeper remains liable for an offence against subsection (2); and
  - (b) the other person is also liable for an offence against subsection (2) as if the other person was the record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (2) must give the engaged person written notification of the engaged person's liability under this subsection.

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- (4) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **86 What record keeper must do if electronic work diary destroyed, lost or stolen**

- (1) This section applies if—
- (a) the driver of a fatigue regulated heavy vehicle uses an electronic work diary supplied to the driver by the driver's record keeper; and
  - (b) the record keeper is informed, under section 83, that the driver's electronic work diary has been destroyed, lost or stolen.
- (2) The record keeper must, as soon as reasonably practicable after being informed of the matter—
- (a) issue the driver a new electronic work diary that is in working order; and
  - (b) give the driver a printout of any information that was in the destroyed, lost or stolen electronic work diary that has been given to the record keeper and relates to the last 28 days.

Maximum penalty— $53\frac{1}{3}$  penalty units.

- (3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—
- (a) the record keeper remains liable for an offence against subsection (2); and
  - (b) the other person is also liable for an offence against subsection (2) as if the other person was the record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (2) must give the engaged person written notification of the engaged person's liability under this subsection.

- (4) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **87 What record keeper must do if electronic work diary malfunctioning**

- (1) This section applies if—
- (a) the driver of a fatigue regulated heavy vehicle uses an electronic work diary supplied to the driver by the driver's record keeper; and
  - (b) the record keeper is informed, under section 83 or 84, of malfunctioning or suspected malfunctioning of the driver's electronic work diary.
- (2) The record keeper must, as soon as reasonably practicable after being informed of the matter—
- (a) either—
    - (i) ensure the electronic work diary is examined and brought into working order; or
    - (ii) issue the driver with a new electronic work diary; and
  - (b) give the driver a printout of any information that was in the electronic work diary that has been given to the record keeper and relates to the last 28 days.

Maximum penalty—53 $\frac{1}{3}$  penalty units.

- (3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—

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- (a) the record keeper remains liable for an offence against subsection (2); and
- (b) the other person is also liable for an offence against subsection (2) as if the other person was the record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (2) must give the engaged person written notification of the engaged person's liability under this subsection.

- (4) Subsection (3) does not apply if the other person is engaged only to repair or otherwise bring the electronic work diary into working order.

*Example for subsection (4)—*

a person in the business of repairing electronic recording systems is engaged to repair or otherwise bring the electronic work diary into working order on behalf of the record keeper

- (5) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **Subdivision 5      Requirements about odometers**

### **88      Owner must maintain odometer**

- (1) The owner of a fatigue regulated heavy vehicle must maintain an odometer fitted to the vehicle in a way complying with the *Vehicle Standard (Australian Design Rule 18/03—Instrumentation) 2006* (Cwlth).

Maximum penalty—53<sup>1</sup>/<sub>3</sub> penalty units.

- (2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

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*Note—*

See part 1, division 3 for the reasonable steps defence.

## **89 Driver must report malfunctioning odometer**

- (1) This section applies if the driver of a fatigue regulated heavy vehicle becomes aware or reasonably suspects that an odometer fitted to the vehicle is malfunctioning.
- (2) The driver must inform the following persons of the malfunctioning or suspected malfunctioning within 2 business days—
  - (a) each owner of the vehicle;
  - (b) if the driver is an employed driver—the driver's employer;
  - (c) each operator of the vehicle.

Maximum penalty— $53\frac{1}{3}$  penalty units.

- (3) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **90 What owner must do if odometer malfunctioning**

- (1) This section applies if the owner of a fatigue regulated heavy vehicle is informed under section 89 of malfunctioning or suspected malfunctioning of the vehicle's odometer.
- (2) The owner must, as soon as reasonably practicable after being informed of the matter, ensure the odometer is examined and either brought it into working order or replaced with a new odometer.

Maximum penalty— $53\frac{1}{3}$  penalty units.

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- (3) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **91 What employer or operator must do if odometer malfunctioning**

- (1) This section applies if an employer of the driver of a fatigue regulated heavy vehicle or an operator of a fatigue regulated heavy vehicle is informed under section 89 of malfunctioning or suspected malfunctioning of the vehicle's odometer.
- (2) The employer or operator must not drive, or permit another person to drive, the vehicle unless the owner of the vehicle has complied with section 90.

Maximum penalty— $53\frac{1}{3}$  penalty units.

- (3) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **Subdivision 6 Operation and maintenance of electronic work diaries**

### **92 How electronic work diary must be operated and maintained**

- (1) A person who operates or maintains an electronic work diary must operate or maintain the work diary in a way that complies with—
- (a) any conditions applying under this regulation in relation to the operation and maintenance of the electronic recording system constituting the work diary; and

- (b) the manufacturer's specifications for the electronic recording system constituting the work diary, to the extent the specifications are consistent with the conditions mentioned in paragraph (a).

*Note—*

The chief executive may impose conditions on the use of an electronic recording system under section 119 or 130.

Maximum penalty—80 penalty units.

- (2) Subsection (1)(a) does not apply in relation to non-compliance with a particular specification of the manufacturer if—
  - (a) the specification was not integral to the effective operation of the electronic recording system; or
  - (b) what was done or not done in relation to the specification was in accordance with industry practice in relation to the handling or maintenance of an electronic recording system of that type from that manufacturer.

### **93 Person who operates or maintains electronic work diary must ensure driver's compliance with s 92**

- (1) A person who operates or maintains an electronic work diary must not permit the driver of a fatigue regulated heavy vehicle who uses the work diary to fail to comply with section 92.

Maximum penalty—80 penalty units.

- (2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

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**94 Record keeper must ensure other person's compliance with s 92**

- (1) A record keeper for the driver of a fatigue regulated heavy vehicle who uses an electronic work diary must not permit the driver to fail to comply with section 92.

Maximum penalty—80 penalty units.

- (2) If a record keeper for the driver of a fatigue regulated heavy vehicle who uses an electronic work diary has engaged another person to operate or maintain the electronic work diary for the record keeper, the record keeper must not permit the other person to fail to comply with section 92.

Maximum penalty—80 penalty units.

- (3) In a proceeding for an offence against subsection (1) or (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **Division 3 Records relating to drivers**

**95 Application of div 3**

This division—

- (a) applies in relation to each record keeper for the driver of a fatigue regulated heavy vehicle; and
- (b) if there is more than 1 record keeper for the driver of a fatigue regulated heavy vehicle—applies only to the extent the driver is carrying out work in relation to which the record keeper is a record keeper for the driver.

*Example for paragraph (b)—*

The driver of a fatigue regulated heavy vehicle works for employer A and employer B. A's obligations to record information under this division apply only to the extent the information is about the work the driver carries out for A. Under section 96 or 97, A need only record the registration numbers of



the fatigue regulated heavy vehicles the driver drives for carrying out work for A and the work times and rest times of the driver while carrying out that work. A does not need to record the registration numbers for the fatigue regulated heavy vehicles the driver drives for carrying out work for B or the work times and rest times of the driver while carrying out that work.

**96 Records record keeper must have if driver engaging in 200km work under standard hours**

- (1) If the driver of a fatigue regulated heavy vehicle is engaging in 200km work under standard hours, the driver's record keeper must—
  - (a) record the following information as soon as possible after receiving it—
    - (i) the driver's name, driver licence number and contact details;
    - (ii) the dates on which the driver drives a fatigue regulated heavy vehicle on a road;
    - (iii) the registration number for each fatigue regulated heavy vehicle that the driver drives;
    - (iv) the total of the driver's work times and rest times on each day on which the driver drives a fatigue regulated heavy vehicle;
    - (v) the total of the driver's work times and rest times for each week during which the driver drives a fatigue regulated heavy vehicle;
    - (vi) the driver's rosters and trip schedules, including details of driver changeovers; and
  - (b) keep a copy of payment records relating to the driver, including time sheet records if the driver is paid according to time at work.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (2) If the record keeper has engaged another person to comply with subsection (1) for the record keeper—

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- (a) the record keeper remains liable for an offence against subsection (1); and
- (b) the other person is also liable for an offence against subsection (1) as if the other person was the record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (1) must give the engaged person written notification of the engaged person's liability under this subsection.

- (3) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **97 Records record keeper must have if driver engaging in 200+km work under standard hours or working under an accreditation or exemption**

- (1) If the driver of a fatigue regulated heavy vehicle is engaging in 200+km work under standard hours, or is working under a BFM accreditation, AFM accreditation or work and rest hours exemption, the driver's record keeper must—
  - (a) record the following information as soon as possible after receiving it—
    - (i) the driver's name, driver licence number and contact details;
    - (ii) the driver's rosters and trip schedules, including details of driver changeovers; and
  - (b) keep a copy of all duplicate pages and other copies of work diary entries given to the record keeper under section 99; and
  - (c) keep a copy of payment records relating to the driver, including time sheet records if the driver is paid according to time at work.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (2) If the driver is working under a BFM accreditation or AFM accreditation, the record keeper must also record the following information—
- (a) the information required to be kept by the record keeper as a condition of the BFM accreditation or AFM accreditation;
  - (b) the information required to be kept by the record keeper under BFM standards and business rules or AFM standards and business rules.

*Note—*

See also section 142 or 151 for other record keeping requirements applying to a record keeper who is an operator working under a BFM accreditation or AFM accreditation.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (3) If the record keeper has engaged another person to comply with subsection (1) or (2) for the record keeper—
- (a) the record keeper remains liable for an offence against subsection (1) or (2); and
  - (b) the other person is also liable for an offence against subsection (1) or (2) as if the other person was the record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (1) or (2) must give the engaged person written notification of the engaged person's liability under this subsection.

- (4) In a proceeding for an offence against subsection (1) or (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

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**98 Requirements about records record keeper must make or keep**

- (1) The record keeper of the driver of a fatigue regulated heavy vehicle must keep a record required to be made or kept under this division, or a copy of the record, for 3 years after—
  - (a) for a record made by the record keeper—the day the record keeper makes the record; or
  - (b) for another record—the day the record keeper receives the record.

Maximum penalty—80 penalty units.

- (2) The record keeper must keep the record or copy at the driver's record location in a way that ensures it is reasonably accessible to an authorised officer.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (3) The record keeper must keep the record or copy in a way that ensures it is—
  - (a) readable and reasonably capable of being understood; and
  - (b) capable of being used as evidence.

*Example—*

To ensure a record kept in a storage facility does not become unreadable, for example, by degrading, the record keeper could scan the hard copy of the record and keep it in an electronic format that is readable.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (4) If the record keeper has engaged another person to comply with subsection (1), (2) or (3) for the record keeper—
  - (a) the record keeper remains liable for an offence against subsection (1), (2) or (3); and
  - (b) the other person is also liable for an offence against subsection (1), (2) or (3) as if the other person was the record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (1), (2) or (3) must give the engaged person written notification of the engaged person's liability under this subsection.

- (5) In a proceeding for an offence against subsection (1), (2) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **99 General requirements about driver giving information to record keeper**

- (1) This section applies to the driver of a fatigue regulated heavy vehicle required to record information in the driver's written or electronic work diary under division 2.
- (2) The driver must within 21 days after the day on which the driver drove the vehicle give a copy of the work diary entry, including any entry made in a supplementary record, recording the information for that day to each person who was a record keeper for the driver on that day.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (3) For subsection (2), if the work diary entry is made in an electronic work diary, the driver may give a copy of the entry to the record keeper by ensuring the copy is electronically transferred to the record keeper.
- (4) The record keeper must obtain the copies mentioned in subsection (2) within the time required under subsection (2).

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (5) If the record keeper has engaged another person to comply with subsection (4) for the record keeper—
  - (a) the record keeper remains liable for an offence against subsection (4); and

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- (b) the other person is also liable for an offence against subsection (4) as if the other person was the record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (4) must give the engaged person written notification of the engaged person's liability under this subsection.

- (6) In a proceeding for an offence against subsection (2) or (4), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **100 Requirements about driver giving information to record keeper if driver changes record keeper**

- (1) This section applies if—
  - (a) the driver of a fatigue regulated heavy vehicle is required to record information in the driver's written or electronic work diary under division 2; and
  - (b) the driver changes record keepers.
- (2) The driver must, before driving a fatigue regulated heavy vehicle for the new record keeper, give the new record keeper a copy of information recorded in a work diary the driver was required to keep in the 28 days before the change happened that relates to that 28 day period.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (3) The new record keeper must obtain the information mentioned in subsection (2) before the driver starts driving a fatigue regulated heavy vehicle for the new record keeper.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (4) If the new record keeper has engaged another person to comply with subsection (3) for the new record keeper—

- (a) the new record keeper remains liable for an offence against subsection (3); and
- (b) the other person is also liable for an offence against subsection (3) as if the other person was the new record keeper mentioned in the subsection.

*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (3) must give the engaged person written notification of the engaged person's liability under this subsection.

- (5) In a proceeding for an offence against subsection (2) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **101 Record keeper must give printouts of information from electronic work diary**

- (1) This section applies if the driver of a fatigue regulated heavy vehicle required to record information in the driver's written or electronic work diary under division 2 is using an electronic work diary supplied to the driver by the driver's record keeper.
- (2) If the driver stops using the electronic work diary, the driver's record keeper must immediately give the driver a printout of the information recorded in the work diary for each day on which the driver was using the electronic work diary.

Maximum penalty—26<sup>2</sup>/<sub>3</sub> penalty units.

- (3) If the record keeper has engaged another person to comply with subsection (2) for the record keeper—
  - (a) the record keeper remains liable for an offence against subsection (2); and
  - (b) the other person is also liable for an offence against subsection (2) as if the other person was the record keeper mentioned in the subsection.

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*Note—*

Under section 63, a record keeper who engages another person to carry out the record keeper's function under subsection (2) must give the engaged person written notification of the engaged person's liability under this subsection.

- (4) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **Division 4                      Provisions about false representations relating to work records**

### **102      False or misleading entries**

A person must not record an entry in a work record that the person knows, or reasonably ought to know, is false or misleading in a material particular.

Maximum penalty—80 penalty units.

### **103      Possessing or using false or misleading work records prohibited**

A person must not possess or use a work record that contains information the person knows, or reasonably ought to know, is false or misleading in a material particular.

Maximum penalty—80 penalty units.

### **104      Keeping 2 work diaries simultaneously prohibited**

- (1) The driver of a fatigue regulated heavy vehicle must not have in the driver's possession more than 1 written work diary in which information can be recorded on a daily sheet.



*Note—*

The driver of a fatigue regulated heavy vehicle does not commit an offence against this subsection if the driver has another written work diary in the driver's possession in which information can not be recorded because all the daily sheets in the other work diary are either used up or cancelled.

Maximum penalty—80 penalty units.

- (2) The driver of a fatigue regulated heavy vehicle must not record information for the same period in—
- (a) a written work diary and an electronic work diary; or
  - (b) more than 1 electronic work diary.

*Example—*

The driver of a fatigue regulated heavy vehicle works for Mrs. A and Mr. B. The driver keeps a written work diary for work done for Mrs. A and an electronic work diary for work done for Mr. B. On a particular day, the driver works from 1p.m. to 5p.m. for Mrs. A and from 6p.m. to 11p.m. for Mr. B.

The driver must record the information about the period between 1p.m. and 5p.m. in the written work diary kept for Mrs. A, and the information for the period between 6p.m. and 11p.m. in the electronic work diary kept for Mr. B.

The driver must not record information about the period between 1p.m. and 5p.m., or the period between 6p.m. to 11p.m., in both the written work diary and electronic work diary.

Maximum penalty—80 penalty units.

- (3) For subsections (1) and (2), a reference to a written work diary includes a reference to a logbook issued under the repealed *Transport Operations (Road Use Management—Fatigue Management) Regulation 1998*.

## **105 Possession of purported work records etc. prohibited**

- (1) The driver of a fatigue regulated heavy vehicle or a record keeper for a driver of a fatigue regulated heavy vehicle must not have in the driver's or record keeper's possession a thing purporting to be a work record if the driver or record keeper

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knows, or reasonably ought to know, that it is not a work record.

Maximum penalty—80 penalty units.

- (2) If a record keeper for the driver of a fatigue regulated heavy vehicle has engaged another person (the *engaged person*) to keep, for the record keeper, a work record the record keeper is required to keep under this regulation, the reference to the record keeper in subsection (1) includes a reference to the engaged person.
- (3) If a record keeper for the driver of a fatigue regulated heavy vehicle has an engaged person as mentioned in subsection (2), the record keeper must not permit the engaged person to have in the engaged person's possession a thing purporting to be a work record if the record keeper knows, or reasonably ought to know, that it is not a work record.

Maximum penalty—80 penalty units.

- (4) In a proceeding for an offence against subsection (3), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **106 False representation about work records prohibited**

A person must not falsely represent that a work record, or an entry in a work record, was made by the person.

Maximum penalty—80 penalty units.

## **Division 5                      Interfering with work records**

### **Subdivision 1              Work records generally**

#### **107      Defacing or changing work records etc. prohibited**

A person must not deface or change an entry in a work record that the person knows, or reasonably ought to know, is correct.

*Notes—*

- 1 See section 53 of the Act for the prohibition on a person giving an official a work record that the person knows is false or misleading in a material particular.
- 2 See section 98 for the requirement that a record keeper for the driver of a fatigue regulated heavy vehicle keep particular records in a way that ensures they are readable and reasonably capable of being understood and capable of being used as evidence.

Maximum penalty—80 penalty units.

#### **108      Making entries in someone else's work records prohibited**

- (1) A person must not make an entry in someone else's work record.

Maximum penalty—80 penalty units.

- (2) Subsection (1) does not apply to—
  - (a) a person who—
    - (i) makes an entry in another person's work diary under a work diary exemption applying to the other person; and
    - (ii) is nominated by the other person to make the entry;  
or
  - (b) an authorised officer; or
  - (c) a party to a two-up driving arrangement—

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- (i) signing the written work diary of the other party to the arrangement; or
- (ii) making an entry in the other party's electronic work diary indicating the party's approval of the information recorded in the work diary.

## **109 Destruction of particular work records prohibited**

If a work record is required under this part to be kept for a particular period by a person, the person or someone else must not destroy the record before the end of the period.

*Note—*

See section 98 for the period for which record keepers for drivers of fatigue regulated heavy vehicles are required to keep particular work records.

Maximum penalty—80 penalty units.

## **Subdivision 2 Electronic work diaries**

### **110 Meaning of *tampers***

- (1) A person *tampers* with an electronic work diary if—
  - (a) the person engages in conduct that—
    - (i) results in the work diary malfunctioning; or
    - (ii) could result in the work diary malfunctioning; or
    - (iii) alters any of the data recorded by the work diary; or
    - (iv) could alter any of the data recorded by the work diary; or
    - (v) results in inaccurate information being recorded by the work diary; or
    - (vi) could result in inaccurate information being recorded by the work diary; and

- (b) the person either—
  - (i) engages in that conduct with the intention of causing an effect mentioned in paragraph (a)(i), (iii) or (v); or
  - (ii) is negligent or reckless as to whether that conduct would cause an effect mentioned in paragraph (a)(i), (iii) or (v).
- (2) A person also **tampers** with an electronic work diary if—
  - (a) the person engages in conduct that alters or otherwise interferes with an electronic signal sent to or from an electronic work diary; and
  - (b) the alteration or interference has or could have an effect mentioned in subsection (1)(a)(i), (iii) or (v); and
  - (c) the person either—
    - (i) engages in that conduct with the intention of causing an effect mentioned in subsection (1)(a)(i), (iii) or (v); or
    - (ii) is negligent or reckless as to whether that conduct would cause an effect mentioned in subsection (1)(a)(i), (iii) or (v).

## **111 Person must not tamper with electronic work diary**

- (1) A person must not tamper with the operation of an electronic work diary.  
Maximum penalty—80 penalty units.
- (2) Subsection (1) does not apply to—
  - (a) a person who is repairing a malfunctioning electronic work diary; or
  - (b) an authorised officer; or
  - (c) a person performing a function under the Act for the chief executive.

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- (3) In a proceeding for an offence against subsection (1) involving a person altering or otherwise interfering with any electronic signal that is sent to or from an electronic work diary, it is a defence if the person charged proves that the person was not aware, and could not reasonably be expected to have been aware, that the activity constituting the alleged tampering or interfering would interfere with the electronic signal.
- (4) Subsection (3) does not apply to—
  - (a) the driver of a fatigue regulated vehicle who is using the electronic work diary; or
  - (b) a record keeper for the driver mentioned in paragraph (a); or
  - (c) a person engaged by a record keeper mentioned in paragraph (b) to carry out any of the following functions for the record keeper—
    - (i) keep records relating to the electronic work diary that the record keeper is required to keep under this regulation;
    - (ii) operate or maintain the electronic work diary.

## **112 Person operating or maintaining electronic work diary must ensure it is not tampered with**

- (1) A person who operates or maintains an electronic work diary must not permit another person to tamper with the operation of the electronic work diary.

Maximum penalty—80 penalty units.

- (2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

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**113 Driver's record keeper must ensure electronic work diary is not tampered with**

- (1) A record keeper for the driver of a fatigue regulated heavy vehicle who uses an electronic work diary must not permit another person to tamper with the operation of the electronic work diary.

Maximum penalty—80 penalty units.

- (2) In a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

**114 IAP reporting entity must ensure electronic work diary is not tampered with**

- (1) This section applies if an electronic work diary being used by the driver of a fatigue regulated heavy vehicle includes or forms part of an approved intelligent transport system.
- (2) An IAP reporting entity for the system must not permit another person to tamper with the operation of the electronic work diary.

Maximum penalty—80 penalty units.

- (3) In a proceeding for an offence against subsection (2), the person charged has the benefit of the reasonable steps defence for the offence.

*Note—*

See part 1, division 3 for the reasonable steps defence.

## **Division 6                      Obtaining written work diary**

### **115      Form of written work diary**

- (1) This section states the requirements for written work diaries issued by the chief executive under this division.
- (2) A written work diary must allow for information to be recorded in the format approved by the Australian Transport Council.

*Note—*

A copy of the approved format may be obtained from the department's website.

- (3) A written work diary must contain—
  - (a) a unique identifying number for the work diary; and
  - (b) sheets (*daily sheets*) that—
    - (i) provide for recording information daily; and
    - (ii) are sequentially numbered; and
  - (c) 2 duplicates of each daily sheet; and
  - (d) a duplicate of any application form contained in the work diary under subsection (4); and
  - (e) instructions for use of the work diary.
- (4) A written work diary may contain an application in the approved form for the issue of another work diary.
- (5) Each daily sheet of a written work diary must be in a form that ensures that if information is written on the daily sheet in the way stated in the instructions in the work diary or this regulation, the information should be automatically copied on to the duplicates for the sheet.
- (6) A written work diary must be in the approved form.
- (7) The approved form must be the same as the form approved by the Australian Transport Council for the purpose.



## **116 Application for written work diary**

- (1) The driver of a fatigue regulated heavy vehicle who wants to be issued with a written work diary (including a replacement work diary) must apply in person to the chief executive.
- (2) The application must be in the approved form.
- (3) The approved form must be the same as the form approved by the Australian Transport Council for the purpose.
- (4) If the application is for a written work diary to replace a written work diary that has been previously issued to the driver (the *existing written work diary*), the driver must give the existing written work diary to the chief executive with the application, unless the existing written work diary has been destroyed, lost or stolen.
- (5) If the driver gives the existing written work diary to the chief executive, the chief executive must—
  - (a) cancel any unused daily sheets in the written work diary; and
  - (b) return the written work diary to the driver when the chief executive issues the replacement written work diary to the driver.
- (6) If the application is for a written work diary to replace a written work diary that has been destroyed, lost or stolen, the application must—
  - (a) state the previous work diary's number and that it has been destroyed, lost or stolen; and
  - (b) briefly outline the circumstances of the destruction, loss or theft.
- (7) For subsections (4) to (6), a reference to a written work diary to be replaced under this section includes a reference to a logbook issued under the repealed *Transport Operations (Road Use Management—Fatigue Management) Regulation 1998*.

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## **117 Issue of written work diary**

- (1) The chief executive must issue a written work diary to the driver of a fatigue regulated heavy vehicle if the driver—
  - (a) identifies himself or herself by showing the driver's current driver licence to the chief executive; and
  - (b) pays the fee payable under this regulation for the issue of the work diary.
- (2) If the chief executive issues a written work diary to the driver of a fatigue regulated heavy vehicle, the chief executive must note the date, time and place of issue on the written work diary.
- (3) The chief executive may make other notes on the written work diary.
- (4) If the chief executive issues a written work diary to the driver of a fatigue regulated heavy vehicle from another jurisdiction in the participating zone—
  - (a) the chief executive must notify the corresponding authority for that jurisdiction of—
    - (i) the identifying number for the work diary; and
    - (ii) the driver's name and driver licence number; and
    - (iii) the date, time and place of the issue of the work diary; and
  - (b) the chief executive must include with the notification either—
    - (i) a statement of the reason why the chief executive issued the work diary; or
    - (ii) a copy of the application the chief executive received for the issue of the work diary.

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## **Division 7                      Electronic recording systems to become electronic work diary**

### **Subdivision 1              Approval of electronic recording systems**

#### **118      Application for approval of electronic recording system**

- (1) A person who wants to have an electronic recording system approved under this subdivision must apply to the chief executive for the approval.

*Examples of persons who may apply for an approval under this section—*

manufacturers of electronic recording systems, operators of fatigue regulated heavy vehicles, drivers of fatigue regulated heavy vehicles

- (2) The application must be in the approved form.
- (3) The approved form must be the same as the form approved by the Australian Transport Council for the purpose.

#### **119      Deciding application for approval**

- (1) The chief executive must, as soon as practicable after receiving an application for approval of an electronic recording system—
  - (a) grant the approval, with or without conditions about the operation and maintenance of the electronic recording system to which the approval relates; or
  - (b) refuse the application.
- (2) The chief executive may approve an electronic recording system only if the chief executive is satisfied that the system—
  - (a) is suitable for fitting to, or for use in, a fatigue regulated heavy vehicle; and
  - (b) has a mechanism that readily indicates to the driver of the fatigue regulated heavy vehicle to which it is fitted

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- or in which it is used that the system is or is not properly functioning; and
- (c) is capable of accurately monitoring and recording the work times and rest times of the driver of the fatigue regulated heavy vehicle to which it is fitted or in which it is used, and of recording any other information the driver is required under this regulation to record in a work diary; and
  - (d) if the system is to be fitted to a fatigue regulated heavy vehicle and is to be used by more than 1 driver of the vehicle, is capable of ensuring the following—
    - (i) all of the information mentioned in paragraph (c) can be accurately monitored or recorded for each of the drivers;
    - (ii) the details recorded by, or in relation to 1 of the drivers, are readily distinguishable from the details recorded by, or in relation to, the other drivers;
    - (iii) the name of the driver in relation to whom details are recorded is shown whenever the details are accessed;
    - (iv) 1 of the drivers cannot record any information, that the driver is required under this regulation to record in a work diary, in the system for any of the other drivers; and
  - (e) has a mechanism to ensure that the driver of the fatigue regulated heavy vehicle to which it is fitted or in which it is used cannot alter any information the driver records in the system once the driver has had an opportunity to confirm the accuracy of the information; and
  - (f) if the system is designed to enable the driver of the fatigue regulated heavy vehicle to which it is fitted or in which it is used to send information to the drivers' record keeper—has a mechanism that readily indicates to the driver that the information has, or has not, been sent to the record keeper; and

- (g) is capable of readily reproducing, on being accessed by the record keeper for the driver of the fatigue regulated heavy vehicle to which it is fitted or in which it is used, the information that it contains; and
- (h) is capable of readily reproducing, on being accessed by an authorised officer while the vehicle to which it is fitted or in which it is used is on a road, the information it contains in a form that—
  - (i) is readily accessible by the officer; and
  - (ii) is reasonably capable of being understood by the officer; and
  - (iii) can be used as evidence.

*Note—*

An approved electronic recording system may form part of an approved intelligent transport system.

- (3) In deciding whether or not to grant the approval, the chief executive must have regard to any guidelines for electronic recording systems for use under this regulation approved by the Australian Transport Council.

*Note—*

A copy of the approved guidelines may be obtained from the department's website.

## **120 Steps after decision to grant approval**

- (1) If the chief executive grants an approval under section 119, the chief executive must give the applicant—
  - (a) a numbered certificate of approval; and
  - (b) an electronic work diary label that the holder can use to create a copy for attaching to an electronic recording system the subject of the approval.
- (2) If the chief executive imposes conditions on the approval the certificate of approval given to the applicant must state the conditions.

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- (3) If the chief executive imposes conditions on the approval not sought by the applicant, the chief executive must give the applicant an information notice for the decision.

## **121 Steps after decision to refuse application**

If the chief executive decides not to grant an application for approval of an electronic recording system, the chief executive must give the applicant an information notice for the decision.

## **122 Effect of approval**

- (1) An approval of an electronic recording system granted under this subdivision covers any system that is identical to the system that was given to the chief executive for approval.
- (2) The conditions imposed on the approval under section 119 apply to each identical system that is covered by the approval.

## **123 Requirement to notify users of conditions of approval**

- (1) This section applies if the chief executive grants an approval for an electronic recording system subject to conditions.
- (2) The holder of the approval must give each person to whom the holder supplies an electronic recording system the subject of the approval a written notice stating the conditions.

Maximum penalty—80 penalty units.

- (3) If, under subsection (2), a person is given a written notice stating the conditions of the approval, the person must give a copy of the notice to each other person to whom the person supplies an electronic recording system the subject of the approval.

*Example for subsection (3)—*

The holder of an approval is a manufacturer and the manufacturer has supplied an electronic recording system the subject of the approval to an operator of a fatigue regulated heavy vehicle who has supplied the system to the driver of the vehicle. If, under subsection (2), the

manufacturer gives the operator a written notice stating the conditions of the approval, the operator must give the driver a copy of the notice.

Maximum penalty—80 penalty units.

## **Subdivision 2 Provisions about electronic work diary labels**

### **124 Placing electronic work diary label on device**

- (1) A person may place on any device that is, or forms part of, an approved electronic recording system an electronic work diary label relating to the approval.

*Note—*

Under the definition of *electronic work diary* in schedule 6, placing an electronic work diary label on an approved electronic recording system makes the approved electronic recording system an electronic work diary for this regulation.

See also section 125.

- (2) A person must not place on any device an electronic work diary label if the device is not, or does not form part of, an approved electronic recording system to which the label relates.

Maximum penalty—80 penalty units.

- (3) A person must not place on any device any other label indicating that the device is, or is part of, an approved electronic recording system, if the device is not, or does not form a part of, an approved electronic recording system.

Maximum penalty—80 penalty units.

### **125 Effect of electronic work diary label on device**

- (1) This section applies if a device has attached to it a label that is, or appears to be, an electronic work diary label.
- (2) For this regulation, a person is entitled to rely on the label as indicating the device is, or a part of, an approved electronic

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recording system unless the person knows, or reasonably ought to know, that the device is not, or is not a part of, an approved electronic recording system.

*Example for subsection (2)—*

A record keeper for the driver of a fatigue regulated heavy vehicle gives the driver a device to which an electronic work diary label is attached for recording information required to be included in the driver's work diary under this regulation. The driver may rely on the label as indicating the device is, or a part of, an approved electronic recording system meaning the driver may record the required information in the device on the basis that it is an electronic work diary. However, the driver may not rely on the label if the driver knows, or reasonably ought to know the device is not, or is not a part of, an approved electronic recording system.

## **126 Prohibition on using device as electronic work diary if it is not an approved electronic recording system**

- (1) A person must not use as an electronic work diary for this regulation any device that has attached to it an electronic work diary label if the person knows, or reasonably ought to know, that the device is not, or does not form part of, an approved electronic recording system to which the label relates.

Maximum penalty—80 penalty units.

- (2) A person must not use as an electronic work diary for this regulation any device that has attached to it any other label indicating that the device is, or is part of, an approved electronic recording system, if the person knows, or reasonably ought to know, that the device is not, or does not form part of, an approved electronic recording system.

Maximum penalty—80 penalty units.



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## **Subdivision 3      Amendment or cancellation of approval**

### **127      Amendment or cancellation of approval on application**

- (1) The holder of an approval of an electronic recording system may apply to the chief executive for an amendment or cancellation of the approval.
- (2) The application must—
  - (a) be in writing; and
  - (b) if it is for an amendment of the approval, state clearly the amendment sought and outline the reasons for the application.
- (3) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive any additional information the chief executive reasonably requires to decide the application.
- (4) The chief executive must decide the application as soon as practicable after the chief executive receives it.
- (5) If the chief executive decides to grant the application, the chief executive must give the applicant written notice of that decision.
- (6) The amendment or cancellation takes effect—
  - (a) when written notice of the decision is given to the applicant; or
  - (b) at a later time stated in the written notice.
- (7) If the chief executive decides not to amend or cancel the approval, the chief executive must give the applicant an information notice for the decision.

### **128      Amendment or cancellation of approval without application—grounds**

- (1) The chief executive may, by complying with section 129, amend an approval of an electronic recording system if the

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chief executive is reasonably satisfied any of the following grounds exists—

- (a) the application for the approval was false or misleading in a material particular, but the circumstances do not require its cancellation;
  - (b) that—
    - (i) since the approval was given, a change has happened in relation to something that the chief executive must consider in deciding whether to give an approval of that kind; and
    - (ii) the approval would have been given as it is proposed to be after the amendment if the change had happened before the approval was given.
- (2) The chief executive may, by complying with section 129, cancel an approval of an electronic recording system if the chief executive is reasonably satisfied any of the following grounds exists—
- (a) the application for the approval was false or misleading in a material particular;
  - (b) that—
    - (i) since the approval was given, a change has happened in relation to something that the chief executive must consider in deciding whether to give an approval of that kind; and
    - (ii) the approval would not have been given if the change had happened before the approval was given.

## **129 Amendment or cancellation of approval without application—procedure**

- (1) If, under section 128, the chief executive is reasonably satisfied a ground exists to amend or cancel an approval of an electronic recording system, the chief executive must give the holder of the approval a written notice that—

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- (a) states the proposed amendment or cancellation; and
    - (b) states the ground for the proposed amendment or cancellation; and
    - (c) outlines the facts and circumstances forming the basis for the ground; and
    - (d) invites the holder to state in writing, within a stated time of at least 14 days after the notice is given to the holder, why the approval should not be amended or cancelled.
  - (2) If, after considering any written statements made within the stated time, the chief executive is reasonably satisfied a ground exists to take the proposed action, the chief executive may—
    - (a) if the proposed action is to amend the approval in a stated way—amend the approval in that way; or
    - (b) if the proposed action is to cancel the approval—cancel the approval, or amend the approval.
  - (3) The chief executive must give the holder written notice of the chief executive's decision.
  - (4) If the chief executive decides to amend or cancel the approval, the chief executive must also give the holder an information notice for the decision.
  - (5) The amendment or cancellation takes effect—
    - (a) when written notice of the decision, and the reasons for the decision, is given to the holder; or
    - (b) at a later time stated in the written notice.

### **130 Alternative to cancelling approval**

- (1) This section applies if, under section 128, the chief executive is reasonably satisfied a ground exists to cancel an approval of an electronic recording system.
- (2) Instead of cancelling the approval, the chief executive may, by written notice to the holder of the approval, permit the

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continued use of an electronic recording system the subject of the approval—

- (a) for a stated period or indefinitely; and
  - (b) on stated conditions.
- (3) If the chief executive decides to permit the continued use only for a stated period or subject to stated conditions, the written notice under subsection (2) must be or include an information notice for the decision.
- (4) For subsection (2)—
- (a) the approval is taken to be continued under this section; and
  - (b) an electronic recording system the subject of the approval continues to be an approved electronic recording system.
- (5) However, only an electronic recording system the subject of the approval that is being used as an electronic work diary on the day the chief executive makes a decision under subsection (2) is covered by the approval.
- (6) Also, an electronic recording system covered by the approval is an approved electronic recording system only if it is being used in compliance with the conditions stated in the notice.

### **131 Requirements if approval amended**

- (1) This section applies if under this division the chief executive amends an approval of an electronic recording system to change the conditions about the operation and maintenance of the system.
- (2) The holder of the approval must give each person to whom the holder has supplied an electronic recording system the subject of the approval a written notice stating the amended conditions of the approval.

Maximum penalty—80 penalty units.

- (3) If, under subsection (2), a person is given a written notice stating the amended conditions of the approval, the person

must give a copy of the notice to each other person to whom the person has supplied an electronic recording system the subject of the approval.

*Example for subsection (3)—*

The holder of an approval is a manufacturer and the manufacturer has supplied an electronic recording system the subject of the approval to an operator of a fatigue regulated heavy vehicle who has supplied the system to the driver of the vehicle. If, under subsection (2), the manufacturer gives the operator a written notice stating the amended conditions of the approval, the operator must give the driver a copy of the notice.

Maximum penalty—80 penalty units.

(4) In this section—

***amended conditions***, of an approval of an electronic recording system that has been amended under this division, means the conditions of the approval as they apply after the amendment.

## 132 Requirements if approval cancelled

- (1) This section applies if under this division the chief executive cancels an approval of an electronic recording system.
- (2) The holder of the approval—
  - (a) must remove from any electronic recording system in the holder's possession any electronic work diary label relating to the approval; and
  - (b) must notify in writing each person to whom the holder has supplied an electronic recording system the subject of the approval that—
    - (i) the approval has been cancelled; and
    - (ii) any electronic work diary label relating to the approval on an electronic recording system still in the person's possession must be removed.

Maximum penalty—80 penalty units.

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- (3) If, under subsection (2)(b), a person is notified that the approval has been cancelled, the person must notify in writing each other person to whom the person has supplied an electronic recording system the subject of the approval that—
- (a) the approval has been cancelled; and
  - (b) any electronic work diary label relating to the approval on an electronic recording system still in the other person's possession must be removed.

*Example for subsection (3)—*

The holder of an approval is a manufacturer and the manufacturer has supplied an electronic recording system the subject of the approval to an operator of a fatigue regulated heavy vehicle who has supplied the system to the driver of the vehicle. If, under subsection (2)(b), the manufacturer notifies the operator of the approval's cancellation, the operator must notify the driver of the cancellation and the requirement to remove any electronic work diary label relating to the approval that is on an electronic recording system still in the driver's possession.

Maximum penalty—80 penalty units.

- (4) A person who is aware that the approval of an electronic recording system in the person's possession has been cancelled must remove from the system any electronic work diary label relating to the approval.

Maximum penalty—80 penalty units.

- (5) In this section—

***holder***, of an approval of an electronic recording system that has been cancelled, means the person who, immediately before the cancellation took effect, held the approval.

### **133 Requirements if effect of approval continued instead of cancelled**

- (1) This section applies if under section 130 the chief executive decides to permit the continued use of an electronic recording system the subject of an approval instead of cancelling the approval.

- (2) The holder of the approval must give each person to whom the holder has supplied an electronic recording system the subject of the approval a written notice stating the relevant matters for the approval.

Maximum penalty—80 penalty units.

- (3) If, under subsection (2), a person is given a written notice stating the relevant matters for the approval, the person must give a copy of the notice to each other person to whom the person has supplied an electronic recording system the subject of the approval.

*Example for subsection (3)—*

The holder of an approval is a manufacturer and the manufacturer has supplied an electronic recording system the subject of the approval to an operator of a fatigue regulated heavy vehicle who has supplied the system to the driver of the vehicle. If, under subsection (2), the manufacturer gives the operator a written notice stating the relevant matters for the approval, the operator must give the driver a copy of the notice.

Maximum penalty—80 penalty units.

- (4) In this section—

***relevant matters***, for an approval of an electronic recording system the subject of the chief executive's decision under section 130, means the following—

- (a) the date the chief executive made the decision;
- (b) that the approval permits the continued use of an electronic recording system the subject of the approval if the system was in existence when the chief executive made the decision and is used in compliance with the conditions of the continued use;
- (c) the period for which the approval permits the continued use of an electronic recording system the subject of the approval;
- (d) the conditions applying to the continued use of an electronic recording system the subject of the approval.

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## **Part 5                      Accreditation and exemptions**

### **Division 1                      Preliminary**

#### **134      Who is an *associate* of an operator of a fatigue regulated heavy vehicle**

For this part, a person is an *associate* of an operator of a fatigue regulated heavy vehicle if—

- (a) the person is a spouse, parent, brother, sister or child of the operator; or
- (b) the person and operator are members of the same household; or
- (c) the person and operator are partners; or
- (d) the person and operator are both trustees or beneficiaries of the same trust, or either the person or operator is a trustee and the other is a beneficiary of the same trust; or
- (e) either the person or operator is a body corporate and the other is a director or member of the governing body of the body corporate; or
- (f) either the person or operator is a body corporate (other than a public company whose shares are listed on a stock exchange) and the other is a shareholder in the body corporate; or
- (g) the person and operator are related bodies corporate within the meaning of the Corporations Act; or
- (h) a chain of relationships can be traced between the person and operator under any one or more of the above paragraphs.



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## **Division 2                      BFM accreditation**

### **Subdivision 1              Obtaining BFM accreditation**

#### **135      Applying for BFM accreditation**

- (1) An operator of a fatigue regulated heavy vehicle may apply to the chief executive for BFM accreditation.
- (2) The application must be made in the approved form and be accompanied by the following—
  - (a) a statement by the operator that the operator has a BFM fatigue management system for ensuring compliance with the BFM standards and business rules;
  - (b) a statement from an approved auditor that the auditor considers the operator's BFM fatigue management system will ensure compliance with the BFM standards and business rules;
  - (c) any other information required for the application under the BFM standards and business rules;
  - (d) if the operator does not have an interception book for each fatigue regulated heavy vehicle to be operated under the accreditation—
    - (i) a request for the interception book; and
    - (ii) any fee payable under this regulation for the interception book;
  - (e) the fee payable under this regulation for the application.
- (3) The application must also be accompanied by a declaration by the operator, declared to be made after having taken all reasonable steps to find out the following information, of the operator's knowledge of the following information—
  - (a) whether, in the 5 years immediately before the application was made, the operator or an associate of the operator has been convicted for a contravention of a law

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that is or was a transport Act or a corresponding law to a transport Act and, if so, details of the contravention;

- (b) whether the operator or an associate of the operator has had the operator's or associate's BFM accreditation or AFM accreditation amended, suspended or cancelled under the Act or a corresponding fatigue law and, if so, details of the amendment, suspension or cancellation.
- (4) Subsection (3)(b) does not require the operator to declare information about an amendment, suspension or cancellation of a BFM accreditation or AFM accreditation that happened because of a conviction, if the operator is not required to declare the information about the conviction under subsection (3)(a).
- (5) The applicant must also provide any other relevant information reasonably required by the chief executive to decide the application.
- (6) In this section—  
*transport Act* does not include—
  - (a) the Queensland Road Rules; or
  - (b) a regulation made under the Act applying to the transport of dangerous goods.

### **136 Deciding application for BFM accreditation**

- (1) The chief executive must, as soon as practicable after receiving an application for BFM accreditation—
  - (a) grant the accreditation, with or without conditions; or  
*Examples of conditions that may be imposed on a BFM accreditation—*
    - a condition that a named driver cannot drive under the operator's BFM accreditation for a stated period
    - a condition that a named employee or associate of the operator cannot be involved in the operator's BFM fatigue management system at all or for a stated period
  - (b) refuse the application.

- (2) The chief executive may grant the BFM accreditation only if the chief executive is satisfied—
  - (a) the applicant is able to comply with this regulation, having regard to—
    - (i) the information provided to the chief executive under section 135(2) and (5); and
    - (ii) the matters to which the chief executive may or must have had regard under subsection (3); and
  - (b) the applicant is a suitable person to be granted BFM accreditation, having regard to—
    - (i) the information provided to the chief executive under section 135(3) and (5); and
    - (ii) the matters to which the chief executive may or must have had regard under subsection (3).
- (3) In deciding the application, the chief executive—
  - (a) may have regard to anything the chief executive reasonably considers relevant including the results of any audits carried out on the operator's BFM fatigue management system, or proposed BFM fatigue management system; and
  - (b) must have regard to—
    - (i) any relevant advice given to the chief executive by the fatigue authorities panel; and
    - (ii) any guidelines in relation to BFM accreditation issued by the fatigue authorities panel by notice published in the Commonwealth gazette.

*Note—*

A copy of the guidelines may be obtained from the department's website.

### **137 Steps if BFM accreditation granted**

- (1) If the chief executive decides to grant a BFM accreditation, the chief executive must issue the applicant an accreditation

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certificate that is in the form approved by the Australian Transport Council.

*Note—*

A copy of the approved form may be obtained from the department's website.

- (2) The accreditation certificate must state the following—
  - (a) the operator has been granted BFM accreditation;
  - (b) the details of the accreditation, including—
    - (i) the number identifying the accreditation; and
    - (ii) any conditions imposed on the accreditation by the chief executive.
- (3) The BFM accreditation takes effect—
  - (a) when the accreditation certificate is issued to the applicant; or
  - (b) if a later time is stated in the certificate, at the later time.
- (4) The BFM accreditation applies for the period of not longer than 3 years stated in the accreditation certificate.
- (5) Subsection (6) applies if the chief executive decides—
  - (a) to impose a condition on the BFM accreditation that was not sought by the applicant; or
  - (b) to grant the BFM accreditation for a period of less than—
    - (i) 3 years; or
    - (ii) the period of not more than 3 years sought by the applicant.
- (6) The chief executive must give the applicant an information notice for the chief executive's decision.

### **138 Steps if BFM accreditation not granted**

If the chief executive decides to refuse an application for BFM accreditation, the chief executive must give the applicant an information notice for the decision.

## **Subdivision 2 Operating under BFM accreditation**

### **139 Chief executive must issue interception book for vehicle**

The chief executive must issue an operator of a fatigue regulated heavy vehicle who holds a BFM accreditation an interception book if the operator asks for an interception book and pays any fee payable under this regulation for the book.

### **140 Conditions of BFM accreditation**

- (1) A BFM accreditation is subject to the condition that the operator who holds the accreditation must comply with the BFM standards and business rules.
- (2) A BFM accreditation is also subject to any other conditions stated in the accreditation certificate for the accreditation.
- (3) The holder of a BFM accreditation must comply with the conditions of the accreditation.

Maximum penalty for subsection (3)—80 penalty units.

### **141 Driver must carry BFM accreditation details**

- (1) This section applies if the driver of a fatigue regulated heavy vehicle is working under a BFM accreditation.
- (2) The driver must keep in the driver's possession—
  - (a) a copy of the accreditation certificate for the BFM accreditation; and
  - (b) a document, signed by the operator of the vehicle who holds the BFM accreditation, stating that the driver—

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- (i) is working under the operator's BFM accreditation; and
- (ii) has been inducted into the operator's BFM fatigue management system; and
- (iii) meets the requirements relating to drivers under the operator's BFM accreditation.

*Note—*

This subsection applies even if the driver and operator are the same person.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (3) If the operator of the vehicle has given the driver a document for the purposes of subsection (2), the driver must, within 2 business days, return the document to the operator if the driver—
  - (a) stops operating under the operator's BFM accreditation; or
  - (b) no longer meets the requirements relating to drivers under the operator's BFM accreditation.

Maximum penalty— $26\frac{2}{3}$  penalty units.

## **142 General requirements applying to operator with BFM accreditation**

- (1) This section applies to an operator of a fatigue regulated heavy vehicle who holds a BFM accreditation.
- (2) The operator must ensure that each driver who works under the accreditation—
  - (a) is inducted into the operator's BFM fatigue management system; and
  - (b) at all times, meets the requirements relating to drivers under the BFM accreditation.

Maximum penalty—80 penalty units.

- (3) The operator must keep—

- (a) the accreditation certificate for the BFM accreditation; and
- (b) a current list of drivers operating under the operator's BFM accreditation; and
- (c) records demonstrating that each of the drivers—
  - (i) has been inducted into the operator's BFM fatigue management system; and
  - (ii) meets the requirements relating to drivers under the BFM accreditation.

Maximum penalty—80 penalty units.

- (4) The operator must keep a document required to be kept under subsection (3) for the following period—
  - (a) for an accreditation certificate—while the BFM accreditation is current;
  - (b) for each list made under subsection (3)(b)—at least 3 years after the list is made;
  - (c) for each record made under subsection (3)(c)—at least 3 years after the record is made.

Maximum penalty—80 penalty units.

- (5) The operator must keep a document required to be kept under subsection (3) in a way that ensures it is—
  - (a) reasonably accessible to an authorised officer; and
  - (b) readable and reasonably capable of being understood; and
  - (c) capable of being used as evidence.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (6) The chief executive may require the operator to give the chief executive, in the form and within the time required by the chief executive—
  - (a) a copy of the list mentioned in subsection (3)(b); and
  - (b) details of any change to the list.

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- (7) The operator must comply with a requirement made under subsection (6).

Maximum penalty for subsection (7)— $26\frac{2}{3}$  penalty units.

### **143 Operator must give notice of amendment, suspension or ending of accreditation**

- (1) This section applies if—
- (a) an operator of a fatigue regulated heavy vehicle holds a BFM accreditation; and
  - (b) the BFM accreditation is amended or suspended, or the operator ceases to hold the BFM accreditation.
- (2) The operator must as soon as practicable after the amendment, suspension or cessation happens give notice of the amendment, suspension or cessation to any driver of, or scheduler for, a fatigue regulated heavy vehicle who may be affected by the amendment, suspension or cessation.

Maximum penalty—40 penalty units.

- (3) If the driver of a fatigue regulated heavy vehicle is given a notice under subsection (2), the driver must, within 2 business days, return to the operator any document given to the driver by the operator for the purposes of section 141(2).

Maximum penalty— $26\frac{2}{3}$  penalty units.

## **Division 3 AFM accreditation**

### **Subdivision 1 Obtaining AFM accreditation**

#### **144 Applying for AFM accreditation**

- (1) An operator of a fatigue regulated heavy vehicle may apply to the chief executive for AFM accreditation.



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- (2) The application must be made in the approved form and accompanied by the following—
- (a) the operator's AFM fatigue management proposal;
  - (b) a statement by the operator that the operator has an AFM fatigue management system for ensuring compliance with the AFM standards and business rules;
  - (c) a statement from an approved auditor that the auditor considers the operator's AFM fatigue management system will ensure compliance with the AFM standards and business rules;
  - (d) any other information required for the application under the AFM standards and business rules;
  - (e) if the operator does not have an interception book for each fatigue regulated heavy vehicle to be operated under the accreditation—
    - (i) a request for the interception book; and
    - (ii) any fee payable under this regulation for the interception book;
  - (f) the fee payable under this regulation for the application.
- (3) The application must also be accompanied by a declaration by the operator, declared to be made after having taken all reasonable steps to find out the following information, of the operator's knowledge of the following information—
- (a) whether, in the 5 years immediately before the application was made, the operator or an associate of the operator was convicted for a contravention of a law that is or was a transport Act or a corresponding law to a transport Act and, if so, details of the contravention;
  - (b) whether the operator or an associate of the operator has had the operator's or associate's BFM accreditation or AFM accreditation amended, suspended or cancelled under the Act or a corresponding fatigue law and, if so, details of the amendment, suspension or cancellation.

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- (4) Subsection (3)(b) does not require the operator to declare information about an amendment, suspension or cancellation of a BFM accreditation or AFM accreditation that happened because of a conviction, if the operator is not required to declare the information about the conviction under subsection (3)(a).
- (5) The applicant must also provide any other relevant information reasonably required by the chief executive to decide the application.
- (6) In this section—  
*transport Act* does not include—
  - (a) the Queensland Road Rules; or
  - (b) a regulation made under the Act applying to the transport of dangerous goods.

## 145 Deciding application for AFM accreditation

- (1) The chief executive must, as soon as practicable after receiving an application for AFM accreditation—
  - (a) grant the accreditation, with or without conditions; or  
*Examples of conditions that may be imposed on an AFM accreditation—*
    - a condition that a named driver cannot drive under the operator's AFM accreditation for a stated period
    - a condition that a named employee or associate of the operator cannot be involved in the operator's AFM fatigue management system at all or for a stated period
    - a condition requiring additional records to be kept, and audits to be performed, to ensure that the driver fatigue management practices applying under the accreditation are followed consistently and effectively
  - (b) refuse the application.
- (2) The chief executive may grant the AFM accreditation only if the chief executive is satisfied—

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- (a) the applicant is able to comply with this regulation, having regard to—
    - (i) the information provided to the chief executive under section 144(2) or (5); and
    - (ii) the matters to which the chief executive may or must have had regard under subsection (3); and
  - (b) the applicant is a suitable person to be granted AFM accreditation, having regard to—
    - (i) the information provided to the chief executive under section 144(3) or (5); and
    - (ii) the matters to which the chief executive may or must have had regard under subsection (3); and
  - (c) the driver fatigue management practices, including proposed work and rest hours limits, stated in the operator's AFM fatigue management proposal would, if followed, safely manage the risk of driver fatigue; and
  - (d) the operator and drivers operating under the accreditation are likely to follow the practices consistently and effectively.
- (3) In deciding the application, the chief executive—
- (a) may have regard to anything the chief executive considers relevant including—
    - (i) the results of any audits carried out on the operator's AFM fatigue management system, or proposed AFM fatigue management system; and
    - (ii) for assessing the operator's AFM fatigue management proposal—any relevant body of fatigue knowledge; and
  - (b) must have regard to—
    - (i) any relevant advice given to the chief executive by the fatigue authorities panel; and

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- (ii) any guidelines in relation to AFM accreditation issued by the fatigue authorities panel by notice published in the Commonwealth gazette.

*Note—*

A copy of the guidelines may be obtained from the department's website.

- (4) In approving the work and rest hours limits that are applicable to a particular AFM accreditation, the chief executive—
  - (a) must be satisfied that the limits appear to provide a safe balance between work, rest, risk management and fatigue countermeasures; and
  - (b) must not set limits—
    - (i) that allow a driver to work more than the work time allowed, or to have less than the rest time required, under the AFM outer limits; or
    - (ii) that the chief executive considers would be unsafe, having regard to the operator's AFM fatigue management proposal and any relevant body of fatigue knowledge.

*Note—*

See section 57 for the AFM outer limits for drivers of a fatigue regulated heavy vehicle operating under AFM hours.

## **146 Steps if AFM accreditation granted**

- (1) If the chief executive decides to grant an AFM accreditation, the chief executive must issue the applicant an accreditation certificate that is in the form approved by the Australian Transport Council.

*Note—*

A copy of the approved form may be obtained from the department's website.

- (2) The accreditation certificate must state the following—
  - (a) the operator has been granted AFM accreditation;

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- (b) the details of the AFM accreditation, including—
    - (i) the number identifying the accreditation; and
    - (ii) the work and rest hours limits applying under the accreditation; and
    - (iii) any conditions imposed on the accreditation by the chief executive.
  - (3) The AFM accreditation takes effect—
    - (a) when the accreditation certificate is issued to the applicant; or
    - (b) if a later time is stated in the certificate, at the later time.
  - (4) The AFM accreditation applies for the period of not longer than 3 years stated in the accreditation certificate.
  - (5) Subsection (6) applies if the chief executive decides—
    - (a) to impose a condition on the AFM accreditation that was not sought by the applicant; or
    - (b) to grant the AFM accreditation setting work and rest hours limits that are different to the work and rest hours limits sought by the applicant; or
    - (c) to grant the AFM accreditation for a period of less than—
      - (i) 3 years; or
      - (ii) the period of not more than 3 years sought by the applicant.
  - (6) The chief executive must give the applicant an information notice for the chief executive's decision.

## **147 Steps if AFM accreditation not granted**

If the chief executive decides to refuse an application for AFM accreditation, the chief executive must give the applicant an information notice for the decision.

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## **Subdivision 2      Operating under AFM accreditation**

### **148      Chief executive must issue interception book for vehicle**

The chief executive must issue an operator of a fatigue regulated heavy vehicle who holds an AFM accreditation an interception book if the operator asks for an interception book and pays any fee payable under this regulation for the book.

### **149      Conditions of AFM accreditation**

- (1) An AFM accreditation is subject to the condition that the operator who holds the accreditation must comply with the AFM standards and business rules.
- (2) An AFM accreditation is also subject to any other conditions stated in the accreditation certificate for the accreditation.
- (3) The holder of an AFM accreditation must comply with the conditions of the accreditation.

Maximum penalty for subsection (3)—80 penalty units.

### **150      Driver must carry AFM accreditation details**

- (1) This section applies if the driver of a fatigue regulated heavy vehicle is working under an AFM accreditation.
- (2) The driver must keep in the driver's possession—
  - (a) a copy of the accreditation certificate for the AFM accreditation; and
  - (b) a document, signed by the operator of the vehicle who holds the accreditation, stating that the driver—
    - (i) is working under the operator's AFM accreditation; and
    - (ii) has been inducted into the operator's AFM fatigue management system; and
    - (iii) meets the requirements relating to drivers under the operator's AFM accreditation; and

- (c) a document stating the AFM hours applying under the AFM accreditation.

*Example for paragraph (c)—*

The driver records a statement of the AFM hours applying under the AFM accreditation in the driver's electronic work diary (which is a document).

*Note—*

This subsection applies even if the driver and operator are the same person.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (3) If the operator has given the driver a document for the purposes of subsection (2), the driver must, within 2 business days, return the document to the operator if the driver—
  - (a) stops operating under the operator's AFM accreditation; or
  - (b) no longer meets the requirements relating to drivers under the operator's AFM accreditation.

Maximum penalty— $26\frac{2}{3}$  penalty units.

## **151 General requirements applying to operator with AFM accreditation**

- (1) This section applies to an operator of a fatigue regulated heavy vehicle who holds an AFM accreditation.
- (2) The operator must ensure that each driver who works under the accreditation—
  - (a) is inducted into the operator's AFM fatigue management system; and
  - (b) is informed of the AFM hours applying under the accreditation; and
  - (c) at all times, meets the requirements relating to drivers under the accreditation.

Maximum penalty—80 penalty units.

- (3) The operator must keep—

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- (a) the accreditation certificate for the operator's AFM accreditation; and
- (b) a current list of drivers operating under the operator's AFM accreditation; and
- (c) records demonstrating that each of the drivers—
  - (i) has been inducted into the operator's AFM fatigue management system; and
  - (ii) informed of the AFM hours applying under the operator's AFM accreditation; and
  - (iii) meets the requirements relating to drivers under the operator's AFM accreditation.

Maximum penalty—80 penalty units.

- (4) The operator must keep a document required to be kept under subsection (3) for the following period—
  - (a) for an accreditation certificate—while the AFM accreditation is current;
  - (b) for each list made under subsection (3)(b)—at least 3 years after the list is made;
  - (c) for each record made under subsection (3)(c)—at least 3 years after the record is made.

Maximum penalty—80 penalty units.

- (5) The operator must keep a document required to be kept under subsection (3) in a way that ensures it is—
  - (a) reasonably accessible to an authorised officer; and
  - (b) readable and reasonably capable of being understood; and
  - (c) capable of being used as evidence.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (6) The chief executive may require the operator to give the chief executive, in the form and within the time required by the chief executive—



- (a) a copy of the list mentioned in subsection (3)(b); and
  - (b) details of any change to the list.
- (7) The operator must comply with a requirement made under subsection (6).

Maximum penalty for subsection (7)— $26\frac{2}{3}$  penalty units.

## **152 Operator must give notice of amendment, suspension or ending of accreditation**

- (1) This section applies if—
- (a) an operator of a fatigue regulated heavy vehicle holds an AFM accreditation; and
  - (b) the AFM accreditation is amended or suspended, or the operator ceases to hold the AFM accreditation.
- (2) The operator must as soon as practicable after the amendment, suspension or cessation happens give notice of the amendment, suspension or cessation to any driver of, or scheduler for, a fatigue regulated heavy vehicle who may be affected by the amendment, suspension or cessation.

Maximum penalty—40 penalty units.

- (3) If the driver of a fatigue regulated heavy vehicle is given a notice under subsection (2), the driver must, within 2 business days, return to the operator any document given to the driver by the operator for the purposes of section 150(2).

Maximum penalty— $26\frac{2}{3}$  penalty units.

## **Division 4 Exemption for emergency services**

### **153 Emergency services exemption**

- (1) An approved person who has time-critical duties on the way to, or during, an emergency is exempted in the course of carrying out the duties from the following provisions—
- (a) part 3;

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(b) part 4 other than division 4 or 5.

(2) An approved person who is returning from attending an emergency is not exempted from the provisions mentioned in subsection (1).

(3) In this section—

***approved person*** means—

- (a) a person acting for an emergency service; or
- (b) another person approved by the chief executive to carry out duties under this section if an emergency arises.

***emergency*** means an event, or an anticipated event, that—

- (a) endangers, or may endanger, life, property or the environment; or
- (b) has disrupted, or may disrupt, communications, energy supply, water supply or sewerage services; or
- (c) is declared to be an emergency or disaster by—
  - (i) the Commonwealth or a State; or
  - (ii) a Commonwealth or State authority responsible for managing responses to emergencies or disasters.

*Examples of an emergency—*

fire, explosion or natural disaster

***emergency service*** means an entity that has a statutory responsibility to respond to an emergency and includes the following—

- (a) an ambulance service;
- (b) a fire brigade, including a volunteer fire brigade;
- (c) a police service or police force;
- (d) a disaster or emergency organisation of the Commonwealth or a State.

## **Division 5                      Exemption granted without an application**

### **154      Grant of class work and rest hours exemption**

- (1) The chief executive may, by gazette notice, grant an exemption, with or without conditions, to allow a class of persons to whom the exemption applies to work under the maximum periods of work and minimum periods of rest stated in the exemption (*a class work and rest hours exemption*).
- (2) The chief executive may grant a class work and rest hours exemption only if the chief executive is satisfied—
  - (a) compliance with the provision of this regulation in relation to which the exemption applies would be an unreasonable restriction on operations conducted by the class of persons; and
  - (b) the driver fatigue management practices that are to apply to the class of persons under the exemption would, if followed, safely manage fatigue risks; and
  - (c) the class of persons to which the exemption is to apply is likely to follow the practices consistently and effectively; and
  - (d) if the maximum periods of work and minimum periods of rest to apply under the exemption could be accommodated within BFM accreditation or AFM accreditation—the requirements applying to BFM accreditation or AFM accreditation would be unreasonable for the operations conducted by the class of persons, having regard to the nature of the operations.
- (3) An exemption takes effect—
  - (a) when the exemption is gazetted; or
  - (b) if a later time is stated in the gazette notice, at the later time.
- (4) An exemption applies for the period of not longer than 3 years stated in the gazette notice.

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- (5) The gazette notice is not subordinate legislation.
- (6) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the gazette notice as if it were subordinate legislation.

*Note—*

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

## **155 Amendment, suspension or cancellation of class work and rest hours exemption**

- (1) This section states how sections 18 to 19A of the Act apply in relation to a class work and rest hours exemption.

*Note—*

Sections 18 to 19A of the Act provide for the amendment, suspension or cancellation of an approval (including an exemption granted by the chief executive) by the chief executive.

- (2) Despite section 18 of the Act, the chief executive may—
  - (a) amend or cancel a class work and rest hours exemption only for a ground mentioned in section 18(1)(h), (i), (j) or (k) of the Act; or
  - (b) suspend a class work and rest hours exemption only for a ground mentioned in section 18(1)(h) or (k) of the Act.
- (3) Subject to subsection (4), section 19 of the Act applies to the amendment, suspension or cancellation with the following variations—
  - (a) the requirement to give a written notice to the holder of an approval under section 19(1), (3), (6) or (9) of the Act is taken to be a requirement to publish a notice in—
    - (i) the gazette; and
    - (ii) a newspaper circulating generally throughout Queensland; and
    - (iii) any other newspaper the chief executive considers appropriate;

*Example for subparagraph (iii)—*

If the exemption relates to a particular part of Queensland, the chief executive may consider it appropriate to publish the notice in a newspaper circulating generally in the part.

- (b) the requirement to state, in a written notice to the holder of an approval under section 19(1), (3), (6), (7) or (9) of the Act, information about the holder's ability to apply for the review and appeal of the chief executive's decision is taken to be a requirement to state the information in relation to a person whose interests may be affected by the chief executive's decision;
  - (c) a reference to a notice given to the holder under section 19 of the Act (including a notice mentioned in section 19(6)(a) of the Act informing the holder of the chief executive's decision) is taken to be a reference to a notice published in the gazette or a newspaper under section 19 of the Act as varied by this section.
- (4) Sections 19(2)(c)(ii), (4)(b) and (8)(b) and 19A of the Act do not apply in relation to a class work and rest hours exemption.

## **Division 6                      Exemptions granted upon application**

### **Subdivision 1              Preliminary**

#### **156      Definition for div 6**

In this division—

***exemption*** means—

- (a) a work and rest hours exemption granted under section 157; or
- (b) a work diary exemption.

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## **Subdivision 2      Exemptions that may be granted upon application**

### **157      Chief executive may grant work and rest hours exemption**

- (1) The chief executive may, upon application, grant an exemption to allow persons to whom the exemption applies to work under the maximum periods of work and minimum periods of rest stated in the exemption (a ***work and rest hours exemption***).
- (2) A work and rest hours exemption may be granted to any of the following—
  - (a) an employer of drivers of fatigue regulated heavy vehicles;
  - (b) a prime contractor for drivers of a fatigue regulated heavy vehicles;
  - (c) an operator of a fatigue regulated heavy vehicle;
  - (d) a self-employed driver of a fatigue regulated heavy vehicle.
- (3) The chief executive may grant a work and rest hours exemption only if the chief executive is satisfied—
  - (a) compliance with the provision of this regulation in relation to which the exemption is sought would be an unreasonable restriction on operations conducted by the persons to which the exemption is to apply; and
  - (b) the driver fatigue management practices that are to apply to persons under the exemption would, if followed, safely manage fatigue risks; and
  - (c) the persons to which the exemption is to apply are likely to follow the practices consistently and effectively; and
  - (d) if the maximum periods of work and minimum periods of rest to apply under the exemption could be accommodated within BFM accreditation or AFM accreditation—the requirements applying to BFM accreditation or AFM accreditation would be

unreasonable for the operations conducted by persons to which the exemption is to apply, having regard to the nature of the operations.

## **158 Chief executive may grant work diary exemption**

- (1) The chief executive may, upon application, grant an exemption that exempts the driver of a fatigue regulated heavy vehicle from complying with part 4, division 2 (a ***work diary exemption***).
- (2) A work diary exemption may be granted to any of the following persons—
  - (a) the driver of a fatigue regulated heavy vehicle;
  - (b) an employer of an employed driver of a fatigue regulated heavy vehicle.
- (3) The chief executive may grant a work diary exemption only if—
  - (a) the chief executive is satisfied—
    - (i) the driver cannot make records in the driver's work diary because of the driver's inadequate English literacy; and
    - (ii) the nominee for the driver will be able to make records that are no less complete or accurate than records made under part 4, division 2; or
  - (b) the chief executive is satisfied the driver—
    - (i) is working under standard hours; and
    - (ii) normally engages in only 200km work; and
    - (iii) engages in the 200+km work for which the exemption is sought on an infrequent basis.

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## **Subdivision 3      Obtaining exemption**

### **159      Applying for exemption generally**

- (1) An application for an exemption must be made in writing to the chief executive.
- (2) The application must state the following—
  - (a) the applicant's full name;
  - (b) whether the exemption sought is a work and rest hours exemption or a work diary exemption;
  - (c) if the applicant is the driver of a fatigue regulated heavy vehicle—the address of the driver's base and record location;
  - (d) if the applicant is an employer of drivers of fatigue regulated heavy vehicles—the address of the record locations for the drivers to be covered by the exemption;
  - (e) the period for which the exemption is sought;
  - (f) any conditions to which the exemption is sought to be subject.

### **160      Additional requirement for application for work and rest hours exemption**

An application for a work and rest hours exemption under section 157 must also—

- (a) name the drivers, or describe the class of drivers, of fatigue regulated heavy vehicles to be covered by the exemption; and
- (b) state the proposed maximum periods of work and minimum periods of rest that would be followed by the drivers operating under the exemption; and
- (c) if the proposed maximum periods of work and minimum periods of rest to apply under the exemption could be accommodated within a BFM accreditation or AFM accreditation—



- (i) state the driver fatigue management practices that would be followed by the applicant and the drivers operating under the exemption; and
  - (ii) show how the practices would safely manage fatigue risks; and
  - (iii) show how the requirements applying to BFM accreditation or AFM accreditation would be unreasonable for the operations conducted by persons to which the exemption is to apply, having regard to the nature of the operations; and
- (d) if the proposed maximum periods of work and minimum periods of rest to apply under the exemption exceed the maximum periods of work or are less than the minimum periods of rest under the AFM outer limits—
  - (i) state the driver fatigue management practices that would be followed by the applicant and the drivers operating under the exemption; and
  - (ii) show how the practices would safely manage fatigue risks.

**161 Additional requirement for application for work diary exemption based upon driver's illiteracy**

An application for a work diary exemption on the basis of the matters mentioned in section 158(3)(a) must also—

- (a) nominate a person (the *nominee*) to make written work records for the driver of a fatigue regulated heavy vehicle to which the exemption is to apply; and
- (b) must be accompanied by the nominee's written agreement to the nomination.

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**162 Additional requirement for application for work diary exemption based upon infrequency of 200+km work**

An application for a work diary exemption on the basis of the matters mentioned in section 158(3)(b) must also include details of the following—

- (a) the 200km work the driver of a fatigue regulated heavy vehicle to which the exemption is to apply (the *driver*) normally engages in;
- (b) the 200+km work to be engaged in by the driver for which the exemption is to apply, including the frequency with which the driver proposes to engage in that work;
- (c) the records the driver keeps for the 200km work mentioned in paragraph (a).

**163 Chief executive may request further information**

The chief executive may, by written notice given to the applicant for an exemption, require the applicant to give the chief executive any additional information the chief executive reasonably requires to decide the application.

**164 Deciding application for exemption**

The chief executive must as soon as practicable after receiving an application for an exemption—

- (a) grant the exemption, with or without conditions; or
- (b) refuse the application.

**165 Steps if exemption granted**

- (1) If the chief executive grants an exemption, the chief executive must give the applicant a written notice (*exemption notice*) stating the details of the exemption, including any conditions imposed on the exemption.
- (2) An exemption takes effect—
  - (a) when the exemption notice is given to the applicant; or

- (b) if a later time is stated in the exemption notice, at the later time.
- (3) An exemption applies for the period of not longer than 3 years stated in the exemption notice.
- (4) Subsection (5) applies if the chief executive decides—
  - (a) to impose a condition on the exemption that was not sought by the applicant; or
  - (b) to grant a work and rest hours exemption under section 157 in a way that does not cover all the persons sought by the applicant; or
  - (c) to grant an exemption for a period less than—
    - (i) 3 years; or
    - (ii) the period of not more than 3 years sought by the applicant.
- (5) The chief executive must give the applicant an information notice for the decision.

## **166 Steps if exemption not granted**

If the chief executive decides to refuse the application, the chief executive must give the applicant an information notice for the decision.

## **Subdivision 4 Operating under exemption**

### **167 Compliance with conditions of exemption**

- (1) A person to whom a work and rest hours exemption or work diary exemption applies must comply with the conditions of the exemption.

Maximum penalty—80 penalty units.

- (2) In this section—

*conditions* means—

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- (a) for a class work and rest hours exemption—the conditions stated in the gazette notice for the exemption; or
- (b) for a work and rest hours exemption granted under section 157 or a work diary exemption—the conditions stated in the exemption notice for the exemption.

**168 Driver must carry copy of gazette notice or exemption notice**

- (1) This section applies if the driver of a fatigue regulated heavy vehicle is working under a work and rest hours exemption or work diary exemption.
- (2) The driver must keep in the driver's possession the following document—
  - (a) if the driver is working under a class work and rest hours exemption—a copy of the gazette notice for the exemption;
  - (b) if the driver is working under a work and rest hours exemption granted under section 157 or a work diary exemption—the exemption notice for the exemption.

*Note—*

Under section 49 of the Act, an authorised officer may require the driver of a fatigue regulated heavy vehicle to produce for inspection the gazette notice or exemption notice required to be kept under this section.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (3) If the driver of a fatigue regulated heavy vehicle is operating under an exemption held by a relevant party for the driver and the relevant party has given the driver an exemption notice for the purpose of subsection (2), the driver must, within 2 business days, return the exemption notice to the relevant party if the driver—
  - (a) stops working for the relevant party; or
  - (b) stops operating under the relevant party's exemption; or

- (c) no longer meets the requirements relating to drivers under the relevant party's exemption.

Maximum penalty— $26\frac{2}{3}$  penalty units.

- (4) In this section—

***exemption notice***, for an exemption, includes a copy of the exemption notice for the exemption.

***relevant party***, for the driver of a fatigue regulated heavy vehicle, means—

- (a) an employer of the driver, if the driver is an employed driver; or
- (b) a prime contractor of the driver, if the driver is a self-employed driver; or
- (c) an operator of the vehicle if the driver of the vehicle is to make a journey for the operator.

## **Division 7                      Amendment or cancellation of accreditation or exemption upon application**

### **169      Definition for div 7**

In this division—

***exemption*** means—

- (a) a work and rest hours exemption granted under section 157; or
- (b) a work diary exemption.

### **170      Application for amendment or cancellation of accreditation or exemption**

- (1) A person may apply to the chief executive for an amendment or cancellation of the person's BFM accreditation, AFM accreditation or exemption.

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- (2) The application must—
  - (a) be in writing; and
  - (b) if the application is for an amendment—state clearly the amendment sought and the reasons for the amendment; and
  - (c) be accompanied by the accreditation certificate for the accreditation or exemption notice for the exemption.
- (3) The chief executive may, by written notice given to the applicant, require the applicant to give the chief executive any additional information the chief executive reasonably requires to decide the application.
- (4) The chief executive must decide the application as soon as practicable after receiving it.

#### **171 Steps if amendment or cancellation made**

- (1) If the chief executive decides to grant the application, the chief executive must give the applicant written notice of the decision.
- (2) The amendment or cancellation takes effect—
  - (a) when written notice of the decision is given to the applicant; or
  - (b) if a later time is stated in the written notice, at the later time.

#### **172 Steps if amendment or cancellation not made**

If the chief executive decides not to amend or cancel the accreditation or exemption, as sought by the applicant, the chief executive must give the applicant an information notice for the decision.

## **Division 8                      Other provisions about accreditations and exemptions**

### **173      Return of accreditation certificate or exemption notice**

- (1) If a person's BFM accreditation, AFM accreditation or exemption is amended or cancelled under the Act, the chief executive may, by written notice, require the person to return the person's accreditation certificate or exemption notice to the chief executive.
- (2) The person must comply with the notice within 7 days after the notice is given to the person or, if a longer period is stated in the notice, within the longer period.

Maximum penalty—80 penalty units.

- (3) If the accreditation or exemption has been amended, the chief executive must give the person a replacement accreditation certificate or exemption notice for the accreditation or exemption as amended.
- (4) In this section—  
*exemption* means—
  - (a) a work and rest hours exemption granted under section 157; or
  - (b) a work diary exemption.

### **174      Replacement of lost etc. accreditation certificate or exemption notice**

- (1) If a person's accreditation certificate for a BFM accreditation or AFM accreditation, or exemption notice for an exemption, is defaced, destroyed, lost or stolen, the person must, within 2 business days, apply to the chief executive for a replacement accreditation certificate or exemption notice.

*Note—*

See—

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- (a) section 142 for the requirement to keep an accreditation certificate for a BFM accreditation while the accreditation is current; and
- (b) section 151 for the requirement to keep an accreditation certificate for an AFM accreditation while the accreditation is current.

Maximum penalty—80 penalty units.

- (2) If the chief executive is satisfied that the accreditation certificate or exemption notice has been defaced, destroyed, lost or stolen, the chief executive must give the person a replacement accreditation certificate or exemption notice as soon as practicable.
- (3) If the chief executive decides not to give a replacement accreditation certificate or exemption notice to the person, the chief executive must give the person an information notice for the decision.

## **175 Offence to falsely represent that accreditation or exemption is held**

- (1) A person must not falsely represent—
  - (a) that the person holds a BFM accreditation, AFM accreditation or exemption that the person does not hold; or
  - (b) that the person is operating under a BFM accreditation, AFM accreditation or exemption that the person is not entitled to work under.

Maximum penalty—80 penalty units.

- (2) A person must not represent that the person is operating under a BFM accreditation, AFM accreditation or exemption if the accreditation or exemption is no longer in force.

Maximum penalty—80 penalty units.

- (3) A person must not possess a document that falsely purports to be—
  - (a) an accreditation certificate for a BFM accreditation or AFM accreditation; or



- (b) a gazette notice or exemption notice for an exemption;  
or
- (c) a copy of a document mentioned in paragraph (a) or (b);  
or
- (d) a document mentioned in section 141(2)(b) or 150(2)(b)  
or (c).

Maximum penalty—80 penalty units.

## **176 Offences relating to auditors**

- (1) A person must not falsely represent that the person is an approved auditor.

Maximum penalty—80 penalty units.

- (2) A person must not falsely represent that the person has audited an operator's BFM fatigue management system or AFM fatigue management system.

Maximum penalty—80 penalty units.

- (3) A person must not falsely represent the opinion of an auditor in relation to an operator's BFM fatigue management system or AFM fatigue management system.

Maximum penalty—80 penalty units.

# **Part 6 Compliance and enforcement**

## **177 Alternative ways of managing fatigue—Act, s 15**

- (1) Parts 3 and 4 are prescribed provisions for section 15(1) of the Act.

*Note—*

Under section 15 of the Act, a person who operates a vehicle may apply to the chief executive for approval of a scheme for an alternative way to comply with a prescribed provision.

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- (2) The purpose of the prescribed provisions is to manage the fatigue of drivers to help ensure they are in a fit state of health and wellbeing to drive fatigue regulated heavy vehicles safely.

## **178 Information offences**

An offence against this regulation involving a fatigue regulated heavy vehicle is an information offence for section 50 of the Act.

*Note—*

Section 50 of the Act gives authorised officers the power to require a person to give information about an information offence in particular circumstances.

# **Part 7 Provisions about decision making**

## **Division 1 Referral of particular decisions to fatigue authorities panel**

### **179 Fatigue authorities panel**

- (1) The *fatigue authorities panel* is the entity—
- (a) whose members include—
    - (i) the chief executive; and
    - (ii) each corresponding authority responsible for the administration of a corresponding fatigue law; and
  - (b) is established, and operates, in accordance with the Fatigue Authorities Panel Rules.
- (2) In this section—

*Fatigue Authorities Panel Rules* means the document called ‘Fatigue Authorities Panel Rules’ prepared by the National

Transport Commission and approved by the Australian Transport Council.

*Note—*

A copy of the Fatigue Authorities Panel Rules may be obtained from the National Transport Commission's website on the internet.

*Editor's note—*

At the commencement of this section, the National Transport Commission's website on the internet was at <www.ntc.gov.au>.

***National Transport Commission*** means the National Transport Commission established under the *National Transport Commission Act 2003* (Cwlth), section 5.

## **180 Referral of decisions relating to accreditation or exemption**

- (1) This section applies if—
  - (a) the chief executive proposes to make a decision that may, or is intended to, have application in—
    - (i) another participating jurisdiction; or
    - (ii) more than 1 other participating jurisdiction; and
  - (b) the decision relates to the grant of an AFM accreditation or exemption under this regulation.
- (2) The chief executive must inform the fatigue authorities panel of the proposed decision.
- (3) The fatigue authorities panel may make a recommendation to the chief executive about the proposed decision.
- (4) If the fatigue authorities panel gives the chief executive written notice of the recommendation and the reasons for the recommendation, the chief executive must have regard to the recommendation of the panel when making the decision.

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## **181 Referral of other decisions**

In addition to the matters mentioned in section 180(1), the chief executive may refer any other matter under the Act to the fatigue authorities panel for consideration.

*Example of a matter that may be referred to the panel—*

a suggested format for a written work diary to be adopted by all participating jurisdictions

## **Division 2 Mutual recognition of particular decisions**

### **182 Mutual recognition of particular decisions**

- (1) This section prescribes for section 168A(4), definition *corresponding administrative action*, paragraph (b) of the Act, the kinds of actions of an administrative nature taken by a corresponding authority that are actions to which section 168A of the Act applies.

*Note—*

Section 168A provides that particular actions of an administrative nature taken by corresponding authorities have effect in Queensland.

- (2) A decision of a corresponding authority that is of any of the following kinds is prescribed—
  - (a) a decision under a corresponding fatigue law for—
    - (i) section 117; or
    - (ii) section 119; or
    - (iii) section 136;
  - (b) a decision under a corresponding fatigue law to recognise (in whatever way) a bus accreditation as a BFM accreditation under the law;
  - (c) a decision—
    - (i) to amend or cancel an approval of an electronic recording system; or

- (ii) to permit the continued use of an electronic recording system instead of cancelling the approval of the system;
  - (d) a decision to amend, suspend or cancel a BFM accreditation, AFM accreditation or exemption granted by the corresponding authority.
- (3) In this section—  
*decision* means an action of an administrative nature.

## **Division 3                      Notification and recording of decisions**

### **183      Notifying particular corresponding authorities of decisions**

- (1) This section applies if the chief executive makes a decision about—
  - (a) the grant of a BFM accreditation, AFM accreditation or an exemption under this regulation; or
  - (b) the amendment, suspension or cancellation of a BFM accreditation, AFM accreditation or an exemption under this regulation; or
  - (c) the approval of an electronic recording system; or
  - (d) an amendment or cancellation of an approval of an electronic recording system, or permitting the continued use of an electronic recording system instead of cancelling the approval of the system.
- (2) The chief executive must give written notice of the decision to every corresponding authority in the participating zone.
- (3) If the chief executive decides not to follow a recommendation of the fatigue authorities panel, or decides to apply a recommendation of the fatigue authorities panel subject to variations or conditions, the chief executive must give written

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notice of the reasons for its decision to every corresponding authority in the participating zone.

## **184 Register of decisions**

- (1) The chief executive must keep a register of the following decisions that are currently in force in this jurisdiction—
  - (a) a decision of the chief executive under this regulation relating to any of the following—
    - (i) the issue of a written work diary or replacement written work diary;
    - (ii) the grant of an approval of an electronic recording system;
    - (iii) an amendment or cancellation of an approval of an electronic recording system, or permitting the continued use of an electronic recording system instead of cancelling the approval of the system;
    - (iv) the grant of an accreditation or exemption;
  - (b) a decision made by the chief executive under chapter 3, part 1A of the Act relating to an amendment, suspension or cancellation of an accreditation or exemption granted under this regulation;
  - (c) a decision that has effect in this jurisdiction under section 168A of the Act if the chief executive has received written notice of that decision under a corresponding fatigue law to section 183.
- (2) The chief executive must record in the register the cancellation or amendment of any decision recorded in the register.
- (3) In this section—

***decision*** means an action of an administrative nature.

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## Division 4                      Review and appeal of decisions

### 185      Review of original decision

- (1) A person whose interests are affected by a decision described in schedule 4 (the ***original decision***) may ask the chief executive to review the decision.
- (2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision of this regulation under which the decision is made requires that the person be given a statement of reasons for the decision.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
  - (a) applies to the review; and
  - (b) provides—
    - (i) for the procedure for applying for the review and the way it is to be carried out; and
    - (ii) that the original decision may be stayed by the person by applying to the Magistrates Court.

### 186      Appeal against reviewed decision

- (1) This section applies if the chief executive conducting a review under section 185 confirms or amends an original decision affecting a person or substitutes another decision.
- (2) The person may appeal against the confirmed, amended or substituted decision (the ***reviewed decision***) to the Magistrates Court.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
  - (a) applies to the appeal; and
  - (b) provides—
    - (i) for the procedure for the appeal and the way it is to be disposed of; and

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- (ii) that the reviewed decision may be stayed by the person by applying to the court that is to hear the appeal.

## **Part 8                      Fees**

### **187      Fees**

- (1) Fees payable under this regulation are stated in schedule 5.
- (2) However, a fee is not payable under this regulation for an interception book for a fatigue regulated heavy vehicle if—
  - (a) the vehicle is accredited to participate in an alternative compliance scheme for the *Transport Operations (Road Use Management—Mass Dimension and Loading) Regulation 2005*, sections 7 to 9 and any fee payable under that regulation for the vehicle's accreditation into the scheme has been paid; or
  - (b) the vehicle is accredited to participate in an alternative compliance scheme for the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 1999*, section 22 and any fee payable under that regulation for the vehicle's accreditation into the scheme has been paid.

## **Part 9                      Repeal**

### **188      Repeal of regulation**

The Transport Operations (Road Use Management—Fatigue Management) Regulation 1998, SL No. 293 is repealed.



## Part 10 Transitional provisions

### Division 1 Preliminary

#### 189 Definitions for pt 10

In this part—

**2008 regulation arrangement** means—

- (a) BFM accreditation; or
- (b) AFM accreditation; or
- (c) a work and rest hours exemption other than a transitioned work and rest hours exemption; or
- (d) a work and rest hours alternative compliance scheme.

**commencement** means the commencement of this section.

**corresponding TFMS** means a transitional fatigue management scheme established under a corresponding law to the repealed regulation.

**driving records exemption** means an exemption under the repealed regulation, section 95 applying in relation to the keeping of driving records.

**regulated hours exemption** means an exemption under the repealed regulation, section 95 applying in relation to maximum driving times, maximum work times or minimum rest times.

**repealed regulation** means the repealed *Transport Operations (Road Use Management—Fatigue Management) Regulation 1998* as in force before the commencement.

**TFMS** means the Transitional Fatigue Management Scheme established under the repealed regulation.

**transitioned work and rest hours exemption** means a regulated hours exemption under the repealed regulation taken, under section 216, to be a work and rest hours exemption granted under this regulation.

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**190 Acts Interpretation Act 1954, s 20 not limited**

This part does not limit the *Acts Interpretation Act 1954*, section 20.

**Division 2 Transitional provisions about work and rest hours option**

**Subdivision 1 Continuing particular work and rest hours arrangements**

**191 Exemption to apply to particular drivers**

- (1) The chief executive must, by gazette notice, grant an exemption complying with this section that allows drivers of fatigue regulated heavy vehicles to work under the maximum periods of work and minimum periods of rest stated in the exemption.
- (2) The maximum periods of work stated in the exemption must be the same as, or equivalent to, maximum driving times and maximum work times applying to drivers under the repealed regulation, part 2.
- (3) The exemption—
  - (a) must be granted for a period of 6 months starting at the commencement; and
  - (b) may be subject to conditions the chief executive considers appropriate.
- (4) The exemption may be granted before the commencement.
- (5) Despite subsection (4), the exemption takes effect at the commencement and applies for 6 months after the commencement.
- (6) The exemption is taken to be a class work and rest hours exemption for the provisions of this regulation other than section 59.

- (7) However, subsection (6) does not require the driver of a fatigue regulated heavy vehicle who does not engage in 200+km work to comply with part 4 of this regulation until 14 days after the commencement.
- (8) Also, the application of part 4 in relation to the driver of a fatigue regulated heavy vehicle driving under the exemption is subject to section 196.
- (9) The gazette notice is not subordinate legislation.
- (10) However, the *Statutory Instruments Act 1992*, sections 49 to 51 apply to the gazette notice as if it were subordinate legislation.

*Note—*

These provisions deal with the tabling in, and disallowance by, the Legislative Assembly of subordinate legislation.

## **192 BFM hours apply to particular drivers**

- (1) This section applies to the driver of a fatigue regulated heavy vehicle who is registered as a driver participant in the TFMS or a corresponding TFMS.

*Note—*

See—

- (a) section 207 for the continuation of registrations in the TFMS or a corresponding TFMS in existence at the commencement; and
  - (b) section 208, 225 or 227 for other provisions under which a person may be registered in the TFMS after the commencement.
- (2) Until the end of 28 September 2009, the driver may drive a fatigue regulated heavy vehicle under BFM hours if—
  - (a) the driver is carrying his or her driver's certification manual or corresponding certification manual as defined under the repealed regulation; and
  - (b) the driver complies with the driver TFMS requirements applicable to the driver; and
  - (c) if the driver is an employed driver—

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- (i) the driver's employer is registered as an employer participant in the TFMS; and
- (ii) the driver's employer complies with the employer TFMS requirements applicable to the employer.

*Notes—*

- 1 If the driver of a fatigue regulated heavy vehicle to which this section applies does not comply with this subsection, part 3 of this regulation applies to the driver (unless the driver is driving the vehicle under section 191 or 193).
  - 2 See section 209 for the continued application of particular provisions of the repealed regulation to a person registered as a participant in the TFMS after the commencement.
- (3) Subsection (2) stops applying to the driver if the driver starts operating under a 2008 regulation arrangement.
  - (4) For applying this regulation to the driver of a fatigue regulated heavy vehicle driving under subsection (2), other than for section 59, the driver is taken to be operating under the work and rest hours option known as BFM hours as if the driver was operating under a BFM accreditation.
  - (5) Part 4 applies in relation to the driver of a fatigue regulated heavy vehicle driving under subsection (2) as if—
    - (a) the driver was operating under a BFM accreditation; and
    - (b) the requirement under section 71(1)(e) to record the accreditation number of the BFM accreditation of the operator of the vehicle were a requirement to record—
      - (i) for an employed driver—the driver's employer's TFMS registration number; or
      - (ii) for a self-employed driver—the driver's TFMS registration number; and
    - (c) the driver's record keeper was—
      - (i) for an employed driver—the driver's employer; or
      - (ii) for a self-employed driver—the driver.
  - (6) However, subsection (5), does not require the driver of a fatigue regulated heavy vehicle who does not engage in

200+km work to comply with part 4 of this regulation until 14 days after the commencement.

(7) Also, the application of part 4 in relation to the driver of a fatigue regulated heavy vehicle driving under subsection (2) is subject to section 196.

(8) In this section—

***driver TFMS requirements*** means—

- (a) the requirement applying under the repealed regulation, section 29; and
- (b) the requirements applying under the repealed regulation, section 30 as if subsection (1)(a) of that section referred to the driver managing the driver's work time and rest time so the driver can comply with BFM hours.

***employer TFMS requirements*** means the requirements applying under the repealed regulation, section 35 as if—

- (a) subsection (1)(a) of that section referred to the employer managing the driver's work time and rest time so the driver is able to comply with BFM hours; and
- (b) subsection (1)(d)(ii) of that section included a reference to medical examinations undergone by the employer's employed truck drivers for this regulation.

### **193 Hours under alternative compliance scheme continue to apply to particular drivers**

- (1) This section applies if, immediately before the commencement, the driver of a fatigue regulated heavy vehicle was subject to an alternative compliance scheme for the repealed regulation, part 2.
- (2) Until the end of 28 September 2009, the driver may drive a fatigue regulated heavy vehicle under the alternative work and rest hours applying under the alternative compliance scheme if the driver complies with the conditions applying to the scheme under section 15(6) of the Act.

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*Note—*

If the driver of a fatigue regulated heavy vehicle to which this section applies does not comply with the conditions mentioned in this subsection, part 3 of this regulation applies to the driver (unless the driver is driving under section 191 or 192).

- (3) For applying this regulation to the driver of a fatigue regulated driver driving under subsection (2)—
  - (a) the driver's work and rest hours option is taken to be the alternative work and rest hours applying under the scheme; and
  - (b) other than for section 59, the driver is taken to be operating under maximum periods of work and minimum periods of rest applying to drivers of fatigue regulated heavy vehicles operating under a work and rest hours alternative compliance scheme.
- (4) Subsections (2) and (3) stop applying to the driver if the driver starts operating under a 2008 regulation arrangement.
- (5) In this section—

*alternative work and rest hours*, applying under an alternative compliance scheme for the repealed regulation, part 2, means the maximum driving times, maximum work times and minimum rest times applying to a person subject to the scheme that are different to the maximum driving times, maximum work times and minimum rest times that would otherwise apply to the person under the repealed regulation, part 2.

## **Subdivision 2      Transferring to new work and rest hours arrangements**

### **194      Transferring to new work and rest hours arrangements on commencement**

- (1) This section applies to the driver of a fatigue regulated heavy vehicle who on the commencement (*changeover day*) stops operating under an arrangement (*existing arrangement*)

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mentioned in column 1 of the following table and starts operating under an arrangement (*new arrangement*) mentioned in column 2 of the table opposite the existing arrangement—

column 1	column 2
existing arrangement	new arrangement
maximum driving times, maximum work times and minimum rest times under the repealed regulation, part 2	exemption under section 191
maximum work times, maximum driving times and minimum rest times under the repealed regulation, part 2	a work and rest hours option mentioned in section 37
TFMS under the repealed regulation	BFM hours under section 192
TFMS under the repealed regulation	a work and rest hours option mentioned in section 37

- (2) The driver must continue to operate under the existing arrangement until the end of the first period of rest taken, as required under the existing arrangement, by the driver on the changeover day (the *relevant rest period*).
- (3) From the end of the relevant rest period, the driver must start operating under the new arrangement.
- (4) For the changeover day, the driver is taken to have complied with the new arrangements for the day only if the driver has complied with—
  - (a) the existing arrangement until the end of the relevant rest period; and
  - (b) the new arrangement from the end of the relevant rest period; and
  - (c) the existing arrangement for any 24 hour period that includes any part of the changeover day.
- (5) In this section—

*arrangement* means arrangement to the extent it relates to the maximum periods of work and minimum periods of rest that

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apply to the driver of a fatigue regulated heavy vehicle operating under the arrangement.

## 195 Transferring to new work and rest hours arrangements after commencement

- (1) This section applies to the driver of a fatigue regulated heavy vehicle who, under this regulation, on a day after the commencement (*changeover day*) stops operating under an arrangement (*existing arrangement*) mentioned in column 1 of the following table and starts operating under an arrangement (*new arrangement*) mentioned in column 2 of the table opposite the existing arrangement—

column 1	column 2
existing arrangement	new arrangement
exemption under section 191	BFM hours under section 192
exemption under section 191	alternative work and rest hours under section 193
exemption under section 191	a work and rest hours option mentioned in section 37
BFM hours under section 192	exemption under section 191
BFM hours under section 192	alternative work and rest hours under section 193
BFM hours under section 192	a work and rest hours option mentioned in section 37
alternative work and rest hours under section 193	exemption under section 191
alternative work and rest hours under section 193	BFM hours under section 192
alternative work and rest hours under section 193	a work and rest hours option mentioned in section 37

- (2) The driver must continue to operate under the existing arrangement until the end of the first period of rest taken, required under the existing arrangement, by the driver on the changeover day (the *relevant rest period*).



- (3) From the end of the relevant rest period, the driver must start operating under the new arrangement.
- (4) For the changeover day, the driver is taken to have complied with the new arrangement for the day only if the driver has complied with—
  - (a) the existing arrangement until the end of the relevant rest period; and
  - (b) the new arrangement from the end of the relevant rest period; and
  - (c) the new arrangement for any 24 hour period that includes any part of the changeover day.
- (5) For the day immediately preceding the changeover day, the driver is taken to have complied with the existing arrangement for the day only if the driver has complied with—
  - (a) the existing arrangement until the end of the relevant rest period; and
  - (b) the new arrangement from the end of the relevant rest period; and
  - (c) the new arrangement for any 24 hour period that includes any part of the changeover day.
- (6) In this section—

***arrangement*** means arrangement to the extent it relates to the maximum periods of work and minimum periods of rest that apply to the driver of a fatigue regulated heavy vehicle operating under the arrangement.

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## **Division 3                      Transitional provisions about driving records**

### **Subdivision 1              Continuing existing record keeping requirements for a period**

#### **196      Existing logbook requirements continue to apply if using existing logbook or approved DSMD**

- (1) This section applies if, at the commencement, the driver of a fatigue regulated heavy vehicle—
  - (a) has a logbook issued under the repealed regulation that is not filled up; or
  - (b) is using an approved DSMD within the meaning of the repealed regulation.
- (2) The driver may continue to use the logbook or approved DSMD for the prescribed period if the driver complies with the repealed regulation, part 4 as if this regulation had not been made.
- (3) However, if the driver starts operating under a 2008 regulation arrangement, subsection (2) stops applying to the driver 14 days after the driver starts operating under the 2008 regulation arrangement.
- (4) For subsection (2)—
  - (a) the repealed regulation, part 4 continues to apply in relation to the driver as if this regulation had not been made; and
  - (b) the repealed regulation, sections 70 and 71 continue to apply, as if this regulation had not been made, in relation to the driver to the extent the sections relate to the driver committing a driving record offence as defined in the repealed regulation, section 69.

- (5) Part 4 of this regulation does not apply in relation to the driver of a fatigue regulated heavy vehicle who is using a logbook or approved DSMD under subsection (2).
- (6) Subsection (5) applies only for the prescribed period for the driver.

*Note—*

For this regulation, a logbook issued under the repealed regulation, and a record made by an approved DSMD within the meaning of the repealed regulation—

- (a) is a work record (see schedule 6, definition *work record*, paragraph (d)); and
  - (b) under section 206, is taken to be a part of the driver's work diary for part 4, division 2, subdivision 1.
- (7) In this section—
- prescribed period***, for the driver of a fatigue regulated heavy vehicle, means the period—
- (a) starting at the commencement; and
  - (b) ending when the first of the following happens—
    - (i) the driver obtains a written work diary under this regulation;
    - (ii) the driver starts using an electronic work diary under this regulation;
    - (iii) if the driver is using a logbook issued under the repealed regulation—the logbook is filled up;
    - (iv) 90 days after the commencement.

## **197 Requirements under alternative compliance scheme continue to apply**

- (1) This section applies if—
  - (a) immediately before the commencement, the driver of a fatigue regulated heavy vehicle was subject to an alternative compliance scheme for the repealed regulation, parts 4 and 6; and

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- (b) after the commencement, the driver drives a fatigue regulated heavy vehicle under section 193(2).
- (2) While the driver is driving a fatigue regulated heavy vehicle under section 193(2), the driver, and the driver's employer, may continue to make records under the alternative record requirements applying under the alternative compliance scheme if the driver complies with the conditions applying to the scheme under section 15(6) of the Act.

*Note—*

If the driver of a fatigue regulated heavy vehicle to which this section applies does not comply with the conditions mentioned in this subsection, the record keeping obligations under part 4 of this regulation apply in relation to the driver (subject to section 196).

- (3) Part 4 of this regulation does not apply in relation to the driver of a fatigue regulated heavy vehicle if the driver and the driver's employer make records under subsection (2).
- (4) Subsection (3) applies only for the period the driver drives a fatigue regulated heavy vehicle under section 193(2).
- (5) In this section—

***alternative record requirement***, applying under an alternative compliance scheme for the repealed regulation, parts 4 and 6, means the requirements about driving records applying to a person subject to the scheme that are different to the requirements about driving records and logbooks that would otherwise apply to the person under the repealed regulation, parts 4 and 6.

## **Subdivision 2      Continuing particular requirements after new record keeping requirements start applying**

### **198      Definition for sdiv 2**

In this subdivision—

**relevant day**, for the driver of a fatigue regulated heavy vehicle, means the day part 4 of this regulation starts applying in relation to the driver instead of the repealed regulation, part 4.

*Note—*

See subdivision 1 for the period for which the repealed regulation, part 4 continues to apply in relation to particular drivers of fatigue regulated heavy vehicles.

## **199 Particular information to be recorded by driver ceasing to engage in non-local area work**

- (1) This section applies if immediately before the relevant day for the driver of a fatigue regulated heavy vehicle—
  - (a) the driver was required to continue to record information in the driver's logbook until the cut-off time under the repealed regulation, section 47(1); and
  - (b) the cut-off time had not been reached.
- (2) The repealed regulation, section 47 continues to apply to the driver in relation to recording the information as if this regulation had not been made.
- (3) For subsection (2), the driver is taken to comply with the repealed regulation, section 47 if, instead of recording the information in the driver's logbook, the driver records the information in the driver's written or electronic work diary or a supplementary record.

## **200 Particular information to be recorded by employer of employed driver**

- (1) This section applies if immediately before the relevant day for the driver of a fatigue regulated heavy vehicle—
  - (a) an employer of the driver was required to record information under the repealed regulation, section 52(1); and

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- (b) the information had not been recorded because the period within which the information was required to be recorded had not passed.
- (2) The repealed regulation, section 52 continues to apply to the employer in relation to recording the information as if this regulation had not been made.

## **201 Particular information to be recorded by self-employed driver**

- (1) This section applies if immediately before the relevant day for a self-employed driver of a fatigue regulated heavy vehicle—
  - (a) the driver was required to record information under the repealed regulation, section 53(1); and
  - (b) the information had not been recorded because the period within which the information was required to be recorded had not passed.
- (2) The repealed regulation, section 53 continues to apply to the driver in relation to recording the information as if this regulation had not been made.

## **202 Particular driving records to be given to employers**

- (1) This section applies if immediately before the relevant day for an employed driver of a fatigue regulated heavy vehicle—
  - (a) the driver was required to give the driver's employer a copy of a record under the repealed regulation, section 55; and
  - (b) the copy had not been given to the driver's employer because the period within which the copy was required to be given had not passed.
- (2) The repealed regulation, sections 55 and 55A continue to apply in relation to the driver giving, and the employer obtaining, the copy as if this regulation had not been made.

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**203 Non-local area work records to be kept**

- (1) This section applies if immediately before the relevant day for the driver of a fatigue regulated heavy vehicle—
  - (a) a person was required to keep records, relating to the driver, under the repealed regulation, section 56(1) or (3); and
  - (b) the minimum time for keeping the records under that section had not expired.
- (2) The repealed regulation, section 56 continues to apply to the person in relation to keeping the records as if this regulation had not been made.

**204 Local area work records to be kept**

- (1) This section applies if immediately before the relevant day for the driver of a fatigue regulated heavy vehicle—
  - (a) a person was required to keep records, relating to the driver, under the repealed regulation, section 57(1) or (3); and
  - (b) the minimum time for keeping the records under that section had not expired.
- (2) The repealed regulation, section 57 continues to apply to the person in relation to keeping the records as if this regulation had not been made.

**205 Requirements about destroyed etc. logbook**

- (1) This section applies if—
  - (a) on the relevant day for the driver of a fatigue regulated heavy vehicle, the driver has a logbook issued under the repealed regulation; and
  - (b) the logbook, or an earlier logbook within the meaning of the repealed regulation, section 58(2), contains information relating to a day, within the 28 days before the relevant day, on which the driver was engaged in

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non-local area work as defined under the repealed regulation.

- (2) The repealed regulation, section 58 continues to apply to the person in relation to the logbook, or earlier logbook, as if this regulation had not been made.

### **Subdivision 3      Other transitional provision about record keeping requirements**

#### **206      Driving records for non-local area work taken to be part of work diary**

- (1) This section applies if, on any day within the 28 days before the relevant day for the driver of a fatigue regulated heavy vehicle, the driver was engaged in non-local area work as defined under the repealed regulation, section 39.

*Note—*

See the repealed regulation, section 54 for the requirement for the driver to carry driving records relating to the 28 days before the relevant day.

- (2) For part 4, division 2, subdivision 1 of this regulation, the driver's driving records, within the meaning of the repealed regulation, section 42 relating to the 28 days before the relevant day are taken to be a part of the driver's work diary.

### **Division 4              Transitional provisions about registration for TFMS**

#### **Subdivision 1      Continuing effect of TFMS registration**

##### **207      Existing TFMS registration continues for 12 months**

- (1) This section applies if, immediately before the commencement, a person is registered as a driver participant



or employer participant in the TFMS under the repealed regulation.

- (2) The person's registration continues to have effect until the end of 28 September 2009.
- (3) Subsection (2)—
  - (a) ceases to apply if—
    - (i) the person's registration is cancelled under the Act; or
    - (ii) the person's registration ends under section 210; and
  - (b) does not apply during any period for which the person's registration is suspended under the Act.

*Note—*

Under section 192, a person whose registration as a driver participant in the TFMS is continued under this section may drive under BFM hours until the end of 28 September 2009.

## **208 Existing applications for TFMS registration must be decided under repealed regulation**

- (1) An application for registration as a participant in the TFMS made under the repealed regulation, section 77 before the commencement and not finally decided before the commencement must be decided under the repealed regulation as if this regulation had not been made.
- (2) If, under the repealed regulation, the chief executive registers the applicant as a participant in the TFMS—
  - (a) the repealed regulation, section 81(3) and (4) continues in effect as if this regulation had not been made; and
  - (b) the person's registration continues to have effect until the end of 28 September 2009.

*Note—*

Under section 192, a person who is registered as a driver participant in the TFMS under this section may drive under BFM hours until the end of 28 September 2009.

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- (3) Subsection (2)(b)—
  - (a) ceases to apply if—
    - (i) the person's registration is cancelled under the Act;  
or
    - (ii) the person's registration ends under section 210;  
and
  - (b) does not apply during any period for which the person's registration is suspended under the Act.
- (4) If, under the repealed regulation, the chief executive decides not to register the applicant as a participant in the TFMS, the repealed regulation, section 81(5) and (6) continues in effect as if this regulation had not been made.

*Note—*

Section 222 provides for the review of a decision of the chief executive not to register the applicant as a participant in the TFMS under this section.

## **209 Application of repealed regulation to TFMS registration**

- (1) This section applies to—
  - (a) a person whose registration as a driver participant or employer participant in the TFMS under the repealed regulation is continued under section 207; or
  - (b) a person who is registered as a driver participant or employer participant in the TFMS under section 208, 225 or 227.
- (2) Subject to subsection (3), until the end of 28 September 2009, the following provisions of the repealed regulation continue to apply in relation to the person, or the person's registration, as if this regulation had not been made—
  - (a) sections 31 to 33, 36, 82 and 83;
  - (b) part 7, divisions 2 to 4.
- (3) The repealed regulation, section 91 applies under subsection (2) with the following changes—

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- (a) the reference in the repealed regulation, section 91(1) to part 3 of the repealed regulation is taken to be a reference to the following—
    - (i) BFM hours under this regulation;
    - (ii) the requirements applying under section 192(2);
  - (b) the reference in the repealed regulation, section 91(1) or (2) to the repealed regulation is taken to include a reference to this regulation.
- (4) Without limiting subsection (2), a notice given by the chief executive under the repealed regulation, section 31, 32 or 36 before the commencement continues in force and the repealed regulation section 31, 32 or 36 continues to apply in relation to the notice as if this regulation had not been made.
- (5) Also, until the end of 28 September 2009, the repealed regulation, section 100 continues to apply to the person's registration as if—
- (a) this regulation had not been made; and
  - (b) the reference in the repealed regulation, section 100(6) to part 2 of the repealed regulation were a reference to section 192 of this regulation.

## **210 Participant may end TFMS registration**

A person's registration as a participant in the TFMS ends if the person gives the chief executive a written notice stating that—

- (a) the person wishes the person's registration to stop having effect under this regulation; and
- (b) for a person registered as a driver participant in the TFMS, the person has destroyed the person's driver certification manual as defined under the repealed regulation.

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## **Subdivision 2      Application of particular requirements after TFMS registration ends**

### **211      Definitions for sdiv 2**

In this subdivision—

*participant* means a person who, on or after the commencement, was registered as a driver participant or employer participant in the TFMS under subdivision 1.

*relevant day*, for a participant, means—

- (a) 29 September 2009; or
- (b) an earlier day after the commencement on which the participant's registration ends under the Act.

### **212      Obligation to comply with particular notices continue after registration ends**

- (1) This section applies if—
  - (a) the driver of a fatigue regulated heavy vehicle operates under section 192 after the commencement; and
  - (b) the chief executive gives the driver, or the driver's employer, a notice under the repealed regulation, section 31, 32 or 36, as continued under section 209 of this regulation, before the relevant day; and
  - (c) the notice has not been complied with by the relevant day.
- (2) The notice continues to have effect and the repealed regulation, section 31, 32 or 36 continues to apply in relation to the notice as if this regulation had not been made.

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**213 Application for replacement driver certification manuals taken to be withdrawn**

- (1) This section applies if a participant has made an application for a replacement driver certification manual under the repealed regulation, section 82 and the application has not been finally dealt with before the relevant day for the participant.
- (2) On the relevant day, the application is taken to be withdrawn.

**214 Requirement to return driver certification manual**

- (1) This section applies if the chief executive has given a participant a notice under the repealed regulation, section 87 before the relevant day for the participant.
- (2) The notice continues in force and the repealed regulation, section 87(2) continues to apply in relation to the notice as if this regulation had not been made.

**215 Reports of review to be kept**

- (1) This section applies if immediately before the relevant day for a participant—
  - (a) the participant was required to keep a report under the repealed regulation, section 90(1); and
  - (b) the minimum time for keeping the report under that section had not expired.
- (2) The repealed regulation, section 90 continues to apply to the participant in relation to the report as if this regulation had not been made.

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## **Division 5                      Transitional provisions about exemptions**

### **216      Existing exemptions continue**

- (1) At the commencement, an exemption (*existing exemption*) given under the repealed regulation, section 95 and in force immediately before the commencement is taken to be—
  - (a) if the existing exemption is a driving records exemption—a work diary exemption granted under this regulation; or
  - (b) if the existing exemption is a regulated hours exemption—a work and rest hours exemption granted under this regulation.
- (2) Unless the exemption is cancelled under the Act, the exemption continues to apply for the term for which it was given under the repealed regulation.

### **217      Existing applications for exemption**

- (1) This section applies to an application for an exemption (*existing application*) made under the repealed regulation, section 95 and not finally decided before the commencement.
- (2) At the commencement, the existing application is taken to be an application made under this regulation for—
  - (a) if the existing application is for a driving records exemption—a work diary exemption made under this regulation; or
  - (b) if the existing application is for a regulated hours exemption—a work and rest hours exemption made under this regulation.

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## **Division 6                      Transitional provisions about enforcement matters**

### **218      Offences against repealed regulation continue as information offences**

An offence against the repealed regulation involving a heavy vehicle is an information offence for section 50 of the Act, despite the repeal of the regulation.

### **219      Limited jeopardy continues**

The repealed regulation, section 97 continues in effect for offences or contraventions of a regulated hours offence provision, or TFMS offence provision, mentioned in the section.

### **220      Deferral on prohibition on driving continues**

- (1) This section applies if, before the commencement of this section, an authorised officer has, under the repealed regulation, section 98, deferred the start of a requirement made under section 38 of the Act.
- (2) The deferral continues in force and the repealed regulation, section 98(4) and (5) continue to apply in relation to the deferral as if this regulation had not been made.

### **221      Requirement to give particular information continues**

- (1) This section applies if, before the commencement of this section, an authorised officer has asked a person for particular information under the repealed regulation, section 100.
- (2) The request continues in force and the repealed regulation, section 100(5) and (6) continues to apply in relation to the request as if—
  - (a) this regulation had not been made; and

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- (b) the reference in the repealed regulation, section 100(6) to part 2 of the repealed regulation included a reference to section 192 of this regulation.

## **Division 7                      Transitional provisions about review and appeal**

### **Subdivision 1              Continuing review and appeal rights**

#### **222      Reviews about particular decisions**

- (1) Subsection (2) applies if—
  - (a) a person has made an application under the repealed regulation for a review of a decision mentioned in the repealed regulation, schedule 1; and
  - (b) a decision on the application for review has not been made before the commencement of this section.
- (2) A decision on the application for review must be made under the repealed regulation.
- (3) Subsection (5) applies if—
  - (a) immediately before the commencement, a person could have applied under the repealed regulation for a review of a decision mentioned in the repealed regulation, schedule 1; and
  - (b) the person has not made the application before the commencement of this section.
- (4) Subsection (5) also applies if the chief executive decides not to register an applicant as a participant in TFMS under section 208.
- (5) The person may apply to the chief executive for a review of the decision as provided under the repealed regulation, and the chief executive's decision on that application must be made under the repealed regulation.



- (6) For subsections (2) and (5), the repealed regulation continues to have effect as if this regulation had not been made.

## **223 Appeals about particular decisions**

- (1) Subsection (2) applies if—
- (a) a person has appealed to a court under the repealed regulation against a decision of the chief executive confirming a decision mentioned in the repealed regulation, schedule 1; and
  - (b) the appeal has not been decided before the commencement.
- (2) The court must hear, or continue to hear, and decide the appeal under the repealed regulation.
- (3) Subsection (5) applies if—
- (a) immediately before the commencement, a person could have appealed to a court under the repealed regulation against a decision mentioned in subsection (1)(a); and
  - (b) the person has not appealed before the commencement.
- (4) Subsection (5) also applies to a review decision mentioned in section 222(3)(a) or (4), 226(1)(c), 230(1)(c), 234(1)(c) or 238(1)(c).
- (5) The person may appeal to the court as provided under the repealed regulation, and the court must hear and decide the appeal under the repealed regulation.
- (6) For subsections (2) and (5), the repealed regulation continues to have effect as if this regulation had not been made.

## **Subdivision 2 Effect of decisions about refusal to register applicant in TFMS**

### **224 Application of sdiv 2**

- (1) This subdivision applies to the following—

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- (a) a decision made after the commencement (*review decision*) on an application for review of a registration decision;
  - (b) a decision made after the commencement (*appeal decision*) on an appeal against a decision of the chief executive confirming a registration decision.
- (2) In this section—

*registration decision* means a decision of the chief executive not to register an applicant as a driver participant or employer participant in TFMS under the repealed regulation, section 81, including a decision under section 208 of this regulation.

## **225 Effect of review or appeal decision that person should be registered in TFMS**

- (1) If the effect of the review decision or appeal decision is that the person to which the registration decision relates be registered as a driver participant or employer participant in TFMS under the repealed regulation—
- (a) the chief executive must register the person as a driver participant or employer participant in TFMS under the repealed regulation as if this regulation had not been made; and
  - (b) the repealed regulation, section 81(3) and (4) continues in effect in relation to the person's registration as if this regulation had not been made; and
  - (c) the person's registration continues to have effect until the end of 28 September 2009.

*Notes—*

- 1 Under section 192, a person who is registered as a driver participant in the TFMS under this section may drive under BFM hours until the end of 28 September 2009.
- 2 See section 209 for the continued application of particular provisions of the repealed regulation in relation to a person registered as a participant in the TFMS after the commencement.

- (2) Subsection (1)(c)—

- (a) ceases to apply if—
  - (i) the person's registration is cancelled under the Act; or
  - (ii) the person's registration ends under section 210; and
- (b) does not apply during any period for which the person's registration is suspended under the Act.

**226 Effect of review or appeal decision that applicant should not be registered in TFMS**

- (1) If the review decision or appeal decision is a confirmation of the registration decision, despite the repeal of the repealed regulation—
  - (a) the application for registration as a driver participant or employer participant in TFMS under the repealed regulation continues to be an application to be dealt with under the repealed regulation; and
  - (b) any further decision about the application must be made under the repealed regulation; and
  - (c) for a review decision—the person in relation to whom the review decision is made may appeal against the review decision under the repealed regulation.

*Note—*

Section 223(4) provides for the appeal of a review decision mentioned in paragraph (c).

- (2) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

**227 Effect of appeal decision returning matter to chief executive**

- (1) If the court making the appeal decision returns the application for registration to the chief executive with directions—
  - (a) the application must be dealt with under the repealed regulation; and

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- (b) the chief executive must follow the court's directions to the extent possible; and
- (c) if the chief executive decides that the applicant should be registered as a driver participant or employer participant in TFMS under the repealed regulation—
  - (i) the chief executive must register the applicant as a driver participant or employer participant in TFMS under the repealed regulation as if this regulation had not been made; and
  - (ii) the repealed regulation, section 81(3) and (4) continues in effect in relation to the registration as if this regulation had not been made; and
  - (iii) the applicant's registration continues to have effect until the end of 28 September 2009.

*Notes—*

- 1 Under section 192, a person who is registered as a driver participant in the TFMS under this section may drive under BFM hours until the end of 28 September 2009.
- 2 See section 209 for the continued application of particular provisions of the repealed regulation in relation to a person registered as a participant in the TFMS after the commencement.

(2) Subsection (1)(c)—

- (a) ceases to apply if—
  - (i) the applicant's registration is cancelled under the Act; or
  - (ii) the applicant's registration ends under section 210; and
- (b) does not apply during any period for which the applicant's registration is suspended under the Act.

(3) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

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## **Subdivision 3      Effect of decisions about refusal to cancel TFMS registration**

### **228      Application of sdiv 3**

- (1) This subdivision applies to the following—
  - (a) a decision made after the commencement (*review decision*) on an application for review of a cancellation decision;
  - (b) a decision made after the commencement (*appeal decision*) on an appeal against a decision of the chief executive confirming a cancellation decision.
- (2) In this section—

*cancellation decision* means a decision of the chief executive not to cancel a person's registration as a driver participant or employer participant in TFMS under the repealed regulation, section 84.

### **229      Effect of review or appeal decision that person's TFMS registration be cancelled**

If the effect of the review decision or appeal decision is that the registration to which the cancellation decision relates be cancelled, the chief executive must cancel the registration under the repealed regulation, section 84, as continued under section 209.

### **230      Effect of review or appeal decision that person's TFMS registration not be cancelled**

- (1) If the review decision or appeal decision is a confirmation of the cancellation decision, despite the repeal of the repealed regulation—
  - (a) the application for cancellation as a driver participant or employer participant in TFMS under the repealed regulation continues to be an application to be dealt with under the repealed regulation; and

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- (b) any further decision about the application must be made under the repealed regulation; and
- (c) for a review decision—the person in relation to whom the review decision is made may appeal against the review decision under the repealed regulation.

*Notes—*

- 1 Under section 207, a person's registration as a participant in the TFMS under the repealed regulation ceases to have effect at the end of 28 September 2009.
  - 2 Under section 210, a person's registration as a participant in the TFMS under the repealed regulation ends if the person gives the chief executive written notice to that effect.
  - 3 Section 223(4) provides for the appeal of a review decision mentioned in paragraph (c).
- (2) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

## **231 Effect of appeal decision returning matter to chief executive**

- (1) If the court making the appeal decision returns the application for cancellation of registration to the chief executive with directions—
- (a) the application must be dealt with under the repealed regulation; and
  - (b) the chief executive must follow the court's directions to the extent possible; and
  - (c) if the chief executive decides that the person's registration should be cancelled, the chief executive must cancel the person's registration under the repealed regulation, section 84, as continued under section 209.

*Notes—*

- 1 Under section 207, a person's registration as a participant in the TFMS under the repealed regulation ceases to have effect at the end of 28 September 2009.
- 2 Under section 210, a person's registration as a participant in the TFMS under the repealed regulation ends if the person gives the chief executive written notice to that effect.

- (2) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

## **Subdivision 4      Effect of decisions about refusal to grant exemption**

### **232      Application of sdiv 4**

- (1) This subdivision applies to the following—
- (a) a decision made after the commencement (*review decision*) on an application for review of an exemption decision;
  - (b) a decision made after the commencement (*appeal decision*) on an appeal against a decision of the chief executive confirming an exemption decision.
- (2) In this section—
- exemption decision* means a decision of the chief executive not to give a person an exemption under the repealed regulation, section 95.

### **233      Effect of review or appeal decision that person be given exemption**

If the effect of the review decision or appeal decision is that the person to whom the exemption decision relates be given the exemption, the chief executive must—

- (a) if the exemption is a regulated hours exemption—grant the person a work and rest hours exemption under part 5, division 6 of this regulation as if the application for the regulated hours exemption were an application for a work and rest hours exemption made under the part; or
- (b) if the exemption is a driving records exemption—grant the person a work diary exemption under part 5, division 6 of this regulation, as if the application for the driving records exemption were an application for a work diary exemption made under the part.

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**234 Effect of review or appeal decision that person not be given exemption**

- (1) If the review decision or appeal decision is a confirmation of the exemption decision, despite the repeal of the repealed regulation—
  - (a) the application for the exemption continues to be an application to be dealt with under the repealed regulation; and
  - (b) any further decision about the application must be made under the repealed regulation; and
  - (c) for a review decision—the person in relation to whom the review decision is made may appeal against the review decision under the repealed regulation.

*Note—*

Section 223(4) provides for the appeal of a review decision mentioned in paragraph (c).

- (2) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

**235 Effect of appeal decision returning matter to chief executive**

- (1) If the court making the appeal decision returns the application for exemption to the chief executive with directions—
  - (a) the application must be dealt with under the repealed regulation; and
  - (b) the chief executive must follow the court's directions to the extent possible; and
  - (c) if the chief executive decides that the person should be given the exemption, the chief executive must—
    - (i) if the exemption is a regulated hours exemption—grant the person a work and rest hours exemption under part 5, division 6 of this regulation, as if the application for the regulated hours exemption were an application for a work and rest hours exemption made under the part; or



- (ii) if the exemption is a driving records exemption—grant the person a work diary exemption under part 5, division 6 of this regulation, as if the application for the driving records exemption were an application for a work diary exemption made under the part.
- (2) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

## **Subdivision 5      Effect of decisions about imposition of condition on exemption**

### **236      Application of sdiv 5**

- (1) This subdivision applies to the following—
  - (a) a decision made after the commencement (*review decision*) on an application for review of an exemption condition decision;
  - (b) a decision made after the commencement (*appeal decision*) on an appeal against a decision of the chief executive confirming an exemption condition decision.
- (2) In this section—

*exemption condition decision* means a decision of the chief executive to impose a condition on an exemption given to a person under the repealed regulation, section 95.

### **237      Effect of review or appeal decision that condition not be imposed on exemption**

If the effect of the review decision or appeal decision is that the exemption to which the exemption condition decision relates must not be subject to the condition, or be subject to different conditions, the chief executive must, under this regulation, amend the exemption as continued under section 216 to remove the condition or amend the conditions imposed on the exemption in accordance with the review decision.

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**238 Effect of review or appeal decision that condition be imposed on exemption**

- (1) If the review decision or appeal decision is a confirmation of the exemption condition decision, despite the repeal of the repealed regulation—
  - (a) the decision to impose the condition continues to be a decision to be dealt with under the repealed regulation; and
  - (b) any further decision about the decision to impose the condition must be made under the repealed regulation; and
  - (c) for a review decision—the person in relation to whom the review decision is made may appeal against the review decision under the repealed regulation.

*Note—*

Section 223(4) provides for the appeal of a review decision mentioned in paragraph (c).

- (2) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

**239 Effect of appeal decision returning matter to chief executive**

- (1) If the court making the appeal decision returns the matter to the chief executive with directions—
  - (a) the matter must be dealt with under the repealed regulation; and
  - (b) the chief executive must follow the court's directions to the extent possible; and
  - (c) if the chief executive decides that the exemption should not be subject to the condition, or be subject to different conditions, the chief executive must, under this regulation, amend the exemption as continued under section 216 to remove the condition or amend the conditions imposed on the exemption in accordance with the appeal decision.

- (2) For subsection (1), the repealed regulation continues to have effect as if this regulation had not been made.

## **Division 8                      Other transitional provisions**

### **240      References to repealed regulation**

In a document, a reference to the repealed regulation is, if the context permits, taken to be a reference to this regulation.

## **Part 11                      Amendment of other regulations**

### **Division 1                      Amendment of State Penalties Enforcement Regulation 2000**

#### **241      Regulation amended in div 1**

This division amends the *State Penalties Enforcement Regulation 2000*.

#### **242      Amendment of sch 3 (Transport legislation)**

- (1) Schedule 3, entry for the *Transport Operations (Road Use Management) Act 1995*—

*insert—*

‘s 39O(1) ..... 20’.

- (2) Schedule 3, entry for the *Transport Operations (Road Use Management—Fatigue Management) Regulation 1998*—

*omit, insert—*

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## **‘Transport Operations (Road Use Management—Fatigue Management) Regulation 2008**

	<b>Column 1 Infringement notice offence</b>	<b>Column 2 Infringement notice fine (penalty units)</b>
s 48(2)	for a minor risk breach . . . . .	4
	for a substantial risk breach . . . . .	4
	for a severe risk breach . . . . .	6
	for a critical risk breach . . . . .	8
s 49(2)	for a minor risk breach . . . . .	4
	for a substantial risk breach . . . . .	4
	for a severe risk breach . . . . .	6
	for a critical risk breach . . . . .	8
s 50(2)	for a minor risk breach . . . . .	4
	for a substantial risk breach . . . . .	4
	for a severe risk breach . . . . .	6
	for a critical risk breach . . . . .	8
s 53(2)	for a minor risk breach . . . . .	4
	for a substantial risk breach . . . . .	4
	for a severe risk breach . . . . .	6
	for a critical risk breach . . . . .	8
s 55(2)	for a minor risk breach . . . . .	4
	for a substantial risk breach . . . . .	4
	for a severe risk breach . . . . .	6
	for a critical risk breach . . . . .	8
s 56(2)	for a minor risk breach . . . . .	4
	for a substantial risk breach . . . . .	4
	for a severe risk breach . . . . .	6
	for a critical risk breach . . . . .	8
s 57(2)	for a minor risk breach . . . . .	4
	for a substantial risk breach . . . . .	4
	for a severe risk breach . . . . .	6

for a critical risk breach .....	8
s 68(1) .....	8
s 71(1) .....	8
s 72(1) .....	8
s 73(1) .....	8
s 74.....	8
s 76(1) .....	8
s 77.....	8
s 78.....	8
s 81(1) .....	5 <sup>1</sup> / <sub>3</sub>
s 82(1) .....	5 <sup>1</sup> / <sub>3</sub>
s 83(1) .....	5 <sup>1</sup> / <sub>3</sub>
s 84(2) .....	5 <sup>1</sup> / <sub>3</sub>
s 88(1) .....	5 <sup>1</sup> / <sub>3</sub>
s 89(2) .....	5 <sup>1</sup> / <sub>3</sub>
s 91(2) .....	5 <sup>1</sup> / <sub>3</sub>
s 96(1) .....	8
s 97(1) .....	8
s 97(2) .....	8
s 99(2) .....	8
s 99(4) .....	8
s 100(2) .....	8
s 100(3) .....	8
s 101(2) .....	8
s 102.....	8
s 103.....	8
s 104(1) .....	8
s 104(2) .....	8
s 106.....	8
s 108(1) .....	8
s 109.....	8

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s 111(1) .....	8
s 112(1) .....	8
s 113(1) .....	8
s 114(2) .....	8
s 141(2) .....	8
s 141(3) .....	8
s 142(7) .....	8
s 143(3) .....	8
s 150(2) .....	8
s 150(3) .....	8
s 151(7) .....	8
s 152(3) .....	8
s 167(1) .....	8
s 168(2) .....	8
s 168(3) .....	8
s 173(2) .....	8
s 174(1) .....	8
s 175(1) .....	8
s 175(2) .....	8
s 175(3) .....	8

**Authorised person for service of infringement notices**—an authorised officer under the *Transport Operations (Road Use Management) Act 1995*, section 20’.

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**Division 2                      Amendment of Transport  
Operations (Road Use  
Management—Driver Licensing)  
Regulation 1999**

**243      Regulation amended in div 2**

This division amends the *Transport Operations (Road Use Management—Driver Licensing) Regulation 1999*.

**244      Insertion of new pt 10, div 6**

Part 10—

*insert—*

**‘Division 6                      Transitional provision for Transport  
Operations (Road Use  
Management—Fatigue  
Management) Regulation 2008**

**‘60      Convictions etc. under repealed Transport  
Operations (Road Use Management—Fatigue  
Management) Regulation 1998**

‘(1) This section applies if—

(a) either—

(i) a person is convicted of an offence against the repealed *Transport Operations (Road Use Management—Fatigue Management) Regulation 1998*; or

(ii) an order is made under the *State Penalties Enforcement Regulation 2000*, for an offence against that regulation; and

(b) demerit points have not been allocated under this regulation for the offence.

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- ‘(2) This regulation as in force immediately before the repeal of the *Transport Operations (Road Use Management—Fatigue Management) Regulation 1998* continues to apply in relation to the offence.’.

## **245 Amendment of sch 3 (Demerit points)**

- (1) Schedule 3, sections 14 to 14G and 22A to 22E—  
*omit.*
- (2) Schedule 3, part 4—  
*insert—*

### **‘14L Failing to comply with maximum work and minimum rest requirements—critical risk breach**

‘The number of points for a contravention, that is a critical risk breach, of the following provisions of the Fatigue Management Regulation is 3—

- section 48(2)
- section 49(2)
- section 50(2)
- section 53(2)
- section 55(2)
- section 56(2)
- section 57(2).

### **‘14M Failing to comply with requirements about work records**

- ‘(1) The number of points for a contravention of the following provisions of the Fatigue Management Regulation is 3—
- section 68(1)
  - section 71(1)
  - section 72(1)
  - section 73(1)



- 
- section 74
  - section 104(1)
  - section 104(2)
  - section 105(1).
- ‘(2) The number of points for a contravention of the following provisions of the Fatigue Management Regulation by the driver of a fatigue regulated heavy vehicle is 3—
- section 102
  - section 103
  - section 106
  - section 107
  - section 108(1)
  - section 109
  - section 111(1)
  - section 112(1).

**‘14N Contravening condition of exemption under Fatigue Management Regulation**

‘The number of points for a contravention the Fatigue Management Regulation, section 167(1) is 3.

**‘14O Contravention about returning or replacing accreditation certificate or exemption notice under Fatigue Management Regulation**

‘The number of points for a contravention of the following provisions of the Fatigue Management Regulation by the driver of a fatigue regulated heavy vehicle is 3—

- section 173(2)
- section 174(1).

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**‘14P False representations about accreditation or exemption under Fatigue Management Regulation**

‘The number of points for a contravention of the Fatigue Management Regulation, section 175(1), (2) or (3), by the driver of a fatigue regulated heavy vehicle is 3.’.

(3) Schedule 3, part 5—

*insert—*

**‘22I Driving fatigue regulated heavy vehicle while impaired by fatigue**

‘The number of points for a contravention of the Fatigue Management Regulation, section 21 is 2.

**‘22J Failing to comply with maximum work and minimum rest requirements—severe risk breach**

‘The number of points for a contravention, that is a severe risk breach, of the following provisions of the Fatigue Management Regulation is 2—

- section 48(2)
- section 49(2)
- section 50(2)
- section 53(2)
- section 55(2)
- section 56(2)
- section 57(2).’.

**246 Amendment of sch 7 (Dictionary)**

(1) Schedule 7—

*insert—*

‘**critical risk breach**, for a contravention of a provision of the Fatigue Management Regulation, means a contravention of

the provision declared in that regulation to be a critical risk breach.

***severe risk breach***, for a contravention of a provision of the Fatigue Management Regulation, means a contravention of the provision declared in that regulation to be a severe risk breach.’.

- (2) Schedule 7, definition *Fatigue Management Regulation*, ‘1998’—

*omit, insert—*

‘2008’.

# Schedule 1      Standard work and rest arrangements and risk categories for breaches

sections 48, 49 and 50

**Table 1      Standard hours—solo driver of fatigue regulated heavy vehicle**

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of breach is committed...</i>
5½ hrs	5¼ hrs work time	15 continuous mins rest time	> 5¼ hrs work time	minor risk
8 hrs	7½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 7½ hrs work time	minor risk
11 hrs	10 hrs work time	60 mins rest time, in blocks of 15 continuous mins	≤ 10¾ hrs work time	minor risk
			> 10¾ hrs work time	substantial risk
24 hrs	12 hrs work time		≤ 12¾ hrs work time	minor risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		7 continuous hrs stationary rest time	> 12¾ but not > 13¼ hrs work time	substantial risk
			> 13¼ but not > 13½ hrs work time	severe risk
			> 13½ hrs work time	critical risk
			< 7 but not < 6¼ continuous hrs stationary rest time	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time	severe risk
			< 5½ continuous hrs stationary rest time	critical risk
7 day (168 hrs)	72 hrs work time		≤ 73½ hrs work time	minor risk
			> 73½ but not > 74½ hrs work time	substantial risk
			> 74½ but not > 75 hrs work time	severe risk

## Schedule 1

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		24 continuous hrs stationary rest time	> 75 hrs work time	critical risk
			< 24 but not < 23¼ continuous hrs stationary rest time	minor risk
			< 23¼ but not < 22¾ continuous hrs stationary rest time	substantial risk
			< 22¾ but not < 22½ continuous hrs stationary rest time	severe risk
			< 22½ continuous hrs stationary rest time	critical risk
14 days (336 hrs)	144 hrs work time		≤ 145½ hrs work time	minor risk
			> 145½ but not > 146½ hrs work time	substantial risk
			> 146½ but not > 147 hrs work time	severe risk
			> 147 hrs work time	critical risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		2 x night rest breaks, and	< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk
		2 x night rest breaks taken on consecutive days	< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk

## Schedule 1

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk

Table 2 Standard hours—solo driver of a bus

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of breach is committed...</i>
5½ hrs	5¼ hrs work time	15 continuous mins rest time	> 5¼ hrs work time	minor risk
8 hrs	7½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 7½ hrs work time	minor risk



Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
11 hrs	10 hrs work time	60 mins rest time, in blocks of 15 continuous mins	$\leq 10\frac{3}{4}$ hrs work time	minor risk
			$> 10\frac{3}{4}$ hrs work time	substantial risk
24 hrs	12 hrs work time	7 continuous hrs stationary rest time	$\leq 12\frac{3}{4}$ hrs work time	minor risk
			$> 12\frac{3}{4}$ but not $> 13\frac{1}{4}$ hrs work time	substantial risk
			$> 13\frac{1}{4}$ but not $> 13\frac{1}{2}$ hrs work time	severe risk
			$> 13\frac{1}{2}$ hrs work time	critical risk
			$< 7$ but not $< 6\frac{1}{4}$ continuous hrs stationary rest time	minor risk
			$< 6\frac{1}{4}$ but not $< 5\frac{3}{4}$ continuous hrs stationary rest time	substantial risk
			$< 5\frac{3}{4}$ but not $< 5\frac{1}{2}$ continuous hrs stationary rest time	severe risk
			$< 5\frac{1}{2}$ continuous hrs stationary rest time	critical risk

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Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
7 days (168 hrs)		6 x night rest breaks	< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk
28 days (672 hrs)	288 hrs work time		≤ 289½ hrs work time	minor risk
			> 289½ but not > 290½ hrs work time	substantial risk
			> 290½ but not > 291 hrs work time	severe risk
			> 291 hrs work time	critical risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		4 x 24 continuous hrs stationary rest time	< 24 but not < 23¼ continuous hrs stationary rest time for each block	minor risk
			< 23¼ but not < 22¾ continuous hrs stationary rest time for each block	substantial risk
			< 22¾ but not < 22½ continuous hrs stationary rest time for each block	severe risk
			< 22½ continuous hrs stationary rest time for each block	critical risk

**Table 3 Standard hours—two-up driver of fatigue regulated heavy vehicle**

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of breach is committed...</i>
5½ hrs	5¼ hrs work time	15 continuous mins rest time	> 5¼ hrs work time	minor risk
8 hrs	7½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 7½ hrs work time	minor risk
11 hrs	10 hrs work time	60 mins rest time, in blocks of 15 continuous mins	≤ 10¾ hrs work time	minor risk
			> 10¾ hrs work time	substantial risk
24 hrs	12 hrs work time		≤ 12¾ hrs work time	minor risk
			> 12¾ but not > 13¼ hrs work time	substantial risk
			> 13¼ but not > 13½ hrs work time	severe risk
			> 13½ hrs work time	critical risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
52 hrs		5 continuous hrs stationary rest time, or 5 continuous hrs rest time in an approved sleeper berth while the vehicle is moving	< 5 but not < 4¼ continuous hrs of the relevant rest time	minor risk
		10 continuous hrs stationary rest time	< 4¼ but not < 3¾ continuous hrs of the relevant rest time	substantial risk
			< 3¾ but not < 3½ continuous hrs of the relevant rest time	severe risk
			< 3½ continuous hrs of the rele- vant rest time	critical risk
			< 10 but not < 9¼ continuous hrs stationary rest time	minor risk
			< 9¼ but not < 8¾ continuous hrs stationary rest time	substantial risk

Schedule 1

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
			< 8¾ but not < 8½ continuous hrs stationary rest time	severe risk
			< 8½ continuous hrs stationary rest time	critical risk
7 days (168 hrs)	60 hrs work time	24 continuous hrs stationary rest time, and	> 60 hrs but not > 61½ hrs work time	minor risk
			> 61½ hrs but not > 62½ hrs work time	substantial risk
			> 62½ hrs but not > 63 hrs work time	severe risk
			> 63 hrs work time	critical risk
			< 24 but not < 23¼ continuous hrs stationary rest time	minor risk
			< 23¼ but not < 22¾ continuous hrs stationary rest time	substantial risk
			< 22¾ but not < 22½ continuous hrs stationary rest time	severe risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		24 hrs stationary rest time in blocks of at least 7 continuous hrs stationary	< 22½ continuous hrs stationary rest time	critical risk
			< 24 but not < 23¼ hrs stationary rest time in total	minor risk
			<7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 23¼ but not < 22¾ hrs stationary rest time in total	substantial risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 22¾ but not < 22½ hrs stationary rest time in total	severe risk
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk

## Schedule 1

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
			< 22½ hrs stationary rest time in total	critical risk
			< 5½ continuous hrs stationary rest time for each block	critical risk
14 days (336 hrs)	120 hrs work time	2 x night rest breaks, and	> 120 hrs but not > 121½ hrs work time	minor risk
			> 121½ hrs but not > 122½ hrs work time	substantial risk
			> 122½ hrs but not > 123 hrs work time	severe risk
			> 123 hrs work time	critical risk
			< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk



Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		2 x night rest breaks taken on consecutive days	< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk
			< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk

## Schedule 2      BFM work and rest arrangements and risk categories for breaches

sections 53 and 55

**Table 1      BFM hours—solo driver of fatigue regulated heavy vehicle**

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of breach is committed...</i>
6¼ hrs	6 hrs work time	15 continuous mins rest time	> 6 hrs work time	minor risk
9 hrs	8½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 8½ hrs work time	minor risk
12 hrs	11 hrs work time	60 mins rest time, in blocks of 15 continuous mins	≤ 11¾ hrs work time	minor risk
			> 11¾ hrs work time	substantial risk
24 hrs	14 hrs work time		≤ 14¾ hrs work time	minor risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		7 continuous hrs stationary rest time	> 14¾ but not > 15¼ hrs work time	substantial risk
			> 15¼ but not > 15½ hrs work time	severe risk
			> 15½ hrs work time	critical risk
			< 7 but not < 6¼ continuous hrs stationary rest time	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time	severe risk
			< 5½ continuous hrs stationary rest time	critical risk
7 days (168 hrs)	36 hrs long/night work time		≤ 36¾ hrs long/night work time	minor risk
			> 36¾ but not > 37¼ hrs long/night work time	substantial risk

## Schedule 2

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
			> 37¼ but not > 37½ hrs long/night work time	severe risk
			> 37½ hrs long/night work time	critical risk
14 days (336 hrs)	144 hrs work time	24 continuous hrs stationary rest time taken after no more than 84 hrs work time, and	≤ 145½ hrs work time	minor risk
			> 145½ but not > 146½ hrs work time	substantial risk
			> 146½ but not > 147 hrs work time	severe risk
			> 147 hrs work time	critical risk
			< 24 but not < 23¼ continuous hrs stationary rest time	minor risk
			< 23¼ but not < 22¾ continuous hrs stationary rest time	substantial risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		24 continuous hrs stationary rest time, and	< 22¾ but not < 22½ continuous hrs stationary rest time	severe risk
			< 22½ continuous hrs stationary rest time	critical risk
			< 24 but not < 23¼ continuous hrs stationary rest time	minor risk
			< 23¼ but not < 22¾ continuous hrs stationary rest time	substantial risk
		2 x night rest breaks, and	< 22¾ but not < 22½ continuous hrs stationary rest time	severe risk
			< 22½ continuous hrs stationary rest time	critical risk
			< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk

## Schedule 2

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		2 x night rest breaks taken on consecutive days	< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk
			< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk

**Table 2 BFM hours—two-up driver of fatigue regulated heavy vehicle**

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of breach is committed...</i>
24 hrs	14 hrs work time	10 hrs total rest time that is stationary rest time or rest time in an approved sleeper berth while the vehicle is moving	≤ 14¾ hrs work time	minor risk
			> 14¾ but not > 15¼ hrs work time	substantial risk
			> 15¼ but not > 15½ hrs work time	severe risk
			> 15½ hrs work time	critical risk
82 hrs		10 continuous hrs stationary rest time	< 10 but not < 9¼ continuous hrs stationary rest time	minor risk

## Schedule 2

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
			< 9¼ but not < 8¾ continuous hrs stationary rest time	substantial risk
			< 8¾ but not < 8½ continuous hrs stationary rest time	severe risk
			< 8½ continuous hrs stationary rest time	critical risk
7 days (168 hrs)	70 hrs work time	24 continuous hrs stationary rest time, and	> 70 hrs but not > 71½ hrs work time	minor risk
			> 71½ hrs but not > 72½ hrs work time	substantial risk
			> 72½ hrs but not > 73 hrs work time	severe risk
			> 73 hrs work time	critical risk
			< 24 but not < 23¼ continuous hrs stationary rest time	minor risk
			< 23¼ but not < 22¾ continuous hrs stationary rest time	substantial risk



Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		24 hrs stationary rest time in blocks of at least 7 continuous hrs	< 22¾ but not < 22½ continuous hrs stationary rest time	severe risk
			< 22½ continuous hrs stationary rest time	critical risk
			< 24 but not < 23¼ hrs stationary rest time in total	minor risk
			< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 23¼ but not < 22¾ hrs stationary rest time in total	substantial risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 22¾ but not < 22½ hrs stationary rest time in total	severe risk

## Schedule 2

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 22½ hrs stationary rest time in total	critical risk
			< 5½ continuous hrs stationary rest time for each block	critical risk
14 days (336 hrs)	140 hrs work time		≤ 141½ hrs work time	minor risk
			> 141½ but not > 142½ hrs work time	substantial risk
			> 142½ but not > 143 hrs work time	severe risk
			> 143 hrs work time	critical risk

Column 1 Total period	Column 2 Maximum work time	Column 3 Minimum rest time	Column 4 Category of breach	
			circumstance of contravention	risk category
		4 x 7 continuous hrs stationary rest time between 10p.m. on a day and 8a.m. on the next day, using the time zone of the base of the driver	< 7 but not < 6¼ continuous hrs stationary rest time for each block	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time for each block	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary rest time for each block	severe risk
			< 5½ continuous hrs stationary rest time for each block	critical risk

**Schedule 3      AFM work and rest hours  
arrangements and risk  
categories for breaches**

sections 56 and 57

**Part 1                      AFM outer limits**

**Table              AFM outer limits—hours**

<b>Column 1 Total period</b>	<b>Column 2 Maximum work time</b>	<b>Column 3 Minimum rest time</b>
<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>
24 hrs	16 hrs work time	6 continuous hrs stationary rest time (or in the case of a driver who is a party to a two-up driving arrangement, 6 continuous hrs of stationary rest time or rest time in an approved sleeper berth while the vehicle is moving)  OR  8 hrs stationary rest time taken in no more than 2 blocks (or in the case of a driver who is a party to a two-up driving arrangement, 8 hrs stationary rest time or rest time in an approved sleeper berth while the vehicle is moving, taken in no more than 2 blocks)

<b>Column 1 Total period</b>	<b>Column 2 Maximum work time</b>	<b>Column 3 Minimum rest time</b>
14 days (336 hrs)	154 hrs work time	2 x 7 continuous hrs stationary rest time between 10p.m. on a day and 8a.m. on the next day, using the time zone of the driver's base
28 days (672 hrs)	288 hrs work time	4 x 24 continuous hrs stationary rest time

## Part 2 Categories of breaches for AFM hours

**Table 1 AFM hours—categories of breaches**

<b>Column 1 Total period</b>	<b>Column 2 Category of breach</b>		
	<b>circumstance of contravention relating to work time</b>	<b>circumstance of contravention relating to rest time</b>	<b>risk category</b>
<i>In any period of ...</i>	<i>If a driver has exceeded the maximum work time by ...</i>	<i>If a driver had had less than the minimum rest time by ...</i>	<i>... the following category of breach is committed ...</i>
Less than 7 days	≤ 45 mins work time	≤ 45 mins rest time	minor risk
	> 45 but ≤ 75 mins work time	> 45 but ≤ 75 mins rest time	substantial risk
	> 75 but ≤ 90 mins work time	> 75 but ≤ 90 mins rest time	severe risk
	> 90 mins work time	> 90 mins rest time	critical risk
7 days or more	≤ 1½ hours work time		minor risk
	> 1½ but ≤ 2½ hours work time		substantial risk

## Schedule 3

Column 1 Total period	Column 2 Category of breach		
	circumstance of contravention relating to work time	circumstance of contravention relating to rest time	risk category
	> 2½ but ≤ 3 hours work time		severe risk
	> 3 hours work time		critical risk

Table 2 AFM outer limits—categories of breaches

Column 1 Total period	Column 2 Category of breach		
	circumstance of contravention relating to work time	circumstance of contravention relating to rest time	risk category
<i>In any period of ...</i>	<i>If a driver has exceeded the maximum work time by ...</i>	<i>If a driver had had less than the minimum rest time by ...</i>	<i>... the following category of breach is committed ...</i>
Less than 7 days	≤ 15 mins work time	≤ 15 mins rest time	substantial risk
	> 15 mins but ≤ 30 mins work time	> 15 mins but ≤ 30 mins rest time	severe risk
	> 30 mins work time	> 30 mins rest time	critical risk
7 days or more	≤ 30 mins work time		substantial risk
	> 30 mins but ≤ 1 hour work time		severe risk
	> 1 hour work time		critical risk

## Schedule 4      Review and appeal

sections 185 and 186

Section under which decision made	Description of decision
section 119(1)	decision of chief executive not to grant an application for an approval of an electronic recording system
section 119(1)	decision of chief executive to impose a condition on an approval of an electronic recording system
section 127(4)	decision of chief executive not to make decision sought for an application for amendment or cancellation of an approval of an electronic recording system
section 128	decision of chief executive to amend or cancel an approval of an electronic recording system, without an application
section 130	decision of chief executive to permit the continued use of an electronic recording system only for a stated period or subject to stated conditions
section 136(1)(a)	decision of chief executive to impose on a BFM accreditation a condition not sought by the applicant
section 136(1)(a)	decision of chief executive to grant a BFM accreditation for a period that is less than 3 years or less than the period of not more than 3 years sought by the applicant
section 136(1)(b)	decision of chief executive not to grant a BFM accreditation
section 145(1)(a)	decision of chief executive to impose on an AFM accreditation a condition not sought by the applicant
section 145(1)(a)	decision of chief executive to grant an AFM accreditation for a period that is less than 3 years or less than the period of not more than 3 years sought by the applicant
section 145(1)(b)	decision of chief executive not to grant an AFM accreditation
section 164(a)	decision of chief executive to impose on a work and rest hours exemption or work diary exemption a condition not sought by the applicant

Schedule 4

<b>Section under which decision made</b>	<b>Description of decision</b>
section 164(a)	decision of chief executive to grant a work and rest hours exemption that does not apply to a person sought by the applicant to be covered by the exemption
section 164(a)	decision of chief executive to grant a work and rest hours exemption or work diary exemption for a period that is less than 3 years or less than the period of not more than 3 years sought by the applicant
section 164(b)	decision of chief executive not to grant a work and rest hours exemption
section 164(b)	decision of chief executive not to grant a work diary exemption
section 170(4)	decision of chief executive not to make decision sought in an application for amendment or cancellation of an accreditation or exemption
section 174	decision of chief executive not to give a replacement accreditation certificate or exemption notice



**Schedule 5      Fees**

section 187

		\$
1	Issue of work diary (section 117) . . . . .	18.50
2	Issue of interception book (section 139 or 148) . . . . .	14.35
3	Application for BFM accreditation (section 135) . . . . .	73.85
4	Application for AFM accreditation (section 144) . . . . .	132.70

## Schedule 6 Dictionary

### section 5

**200km work** see section 60(1).

**200+km work** see section 60(2).

**accreditation certificate**, for a BFM accreditation, means—

- (a) for a bus accreditation recognised (in whatever way) under a corresponding fatigue law as a BFM accreditation under the law—the certificate (however called) issued for the bus accreditation under the law under which the bus accreditation was granted; or
- (b) for another BFM accreditation—the accreditation certificate issued for the accreditation under section 137 or a corresponding fatigue law.

**accreditation certificate**, for an AFM accreditation, means the accreditation certificate issued for the accreditation under section 146 or a corresponding fatigue law.

**ADR** means a national standard under the *Motor Vehicle Standards Act 1989* (Cwlth), section 7.

**AFM accreditation**, other than for part 5, division 3, subdivision 1, means an accreditation granted under section 145 that is in force.

**AFM fatigue management proposal**, for an operator of a fatigue regulated heavy vehicle, means a proposal by the operator stating—

- (a) the proposed work and rest hours limits for drivers of the vehicle; and
- (b) the risks involved with operating under the proposed work and rest hours limits, and the proposed countermeasures that are designed to manage the risks; and
- (c) the other details required under the AFM standards and business rules.

*Note—*

An AFM fatigue management proposal may be based on a specific company operation, on a template developed by an industry group, or on a commercial basis.

***AFM fatigue management system***, for an operator of a fatigue regulated heavy vehicle, means the operator's management system for ensuring compliance with the AFM standards and business rules, including by—

- (a) recording the name, driver licence number and contact details of each driver who is currently operating under the operator's AFM accreditation; and
- (b) ensuring that each of the drivers is in a fit state—
  - (i) to safely perform required duties; and
  - (ii) to meet any specified medical requirements; and
- (c) ensuring that each of the drivers—
  - (i) has been inducted into the system; and
  - (ii) has been informed of the AFM hours applying under the operator's AFM accreditation; and
- (d) ensuring that anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of the drivers—
  - (i) has been inducted into the system; and
  - (ii) has been informed of the AFM hours applying under the operator's AFM accreditation.

***AFM hours*** see section 56.

***AFM outer limits*** see section 57(1).

***AFM standards and business rules*** means the standards and business rules for advanced fatigue management approved by the Australian Transport Council.

*Note—*

A copy of the AFM standards and business rules may be obtained from the department's website.

***another jurisdiction*** means a State other than this jurisdiction.

***approved***, by the Australian Transport Council, means—

- (a) approved by the Australian Transport Council by notice published in the Commonwealth gazette; or
- (b) approved by another entity on behalf of the Australian Transport Council by notice published in the Commonwealth gazette.

***approved auditor*** means an auditor of a class approved by the Australian Transport Council.

*Note—*

Details of the approved classes may be obtained from the department's website.

***approved electronic recording system*** means an electronic recording system that is the subject of a current approval under section 119 or a corresponding fatigue law.

***approved sleeper berth*** means—

- (a) for a fatigue regulated heavy vehicle other than a bus—a driver's sleeper berth that complies with ADR 42/04 and is able to be used by the driver when taking rest; or
- (b) for a bus—a driver's sleeper berth that—
  - (i) complies with a standard for sleeper berths that is approved by the Australian Transport Council; and

*Note—*

A copy of approved standard may be obtained from the department's website.

- (ii) is able to be used by the driver when taking rest.

***associate***, for part 5, see section 134.

***Australian Transport Council*** means the Australian Transport Council comprising Commonwealth, State and Territory Ministers responsible for transport and road issues.

*Editor's note—*

For more information about the Australian Transport Council, see its website at <[www.atcouncil.gov.au](http://www.atcouncil.gov.au)>.

***base*** see section 61.

**BFM accreditation**, other than for part 5, division 2, subdivision 1, means—

- (a) an accreditation granted under section 136 that is in force; or
- (b) a corresponding BFM accreditation that is in force.

**BFM fatigue management system**, for an operator of a fatigue regulated heavy vehicle, means the operator's management system for ensuring compliance with the BFM standards and business rules, including by—

- (a) recording the name, driver licence number and contact details of each driver who is currently operating under the operator's BFM accreditation; and
- (b) ensuring that each of the drivers is in a fit state—
  - (i) to safely perform required duties; and
  - (ii) to meet any specified medical requirements; and
- (c) ensuring that each of the drivers—
  - (i) has been inducted into the system; and
  - (ii) has been informed of the BFM hours; and
- (d) ensuring that anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of the drivers—
  - (i) has been inducted into the system; and
  - (ii) has been informed of the BFM hours.

**BFM hours** see section 52.

**BFM standards and business rules** means the standards and business rules for basic fatigue management approved by the Australian Transport Council.

*Note—*

A copy of the BFM standards and business rules may be obtained from the department's website.

**body of fatigue knowledge** means any accreditation scheme, scientific knowledge, expert opinion, guidelines, standards or other knowledge about preventing or managing exposure to

risks to safety either on a road or in a workplace, arising from fatigue.

**bus** means a fatigue regulated heavy vehicle that is a bus.

**bus accreditation** means an accreditation relating to a bus, granted under an accreditation scheme applying under an Act or law of another State, that is in force.

**cancel**, in relation to an unused daily sheet in a written work diary, means cancel by writing ‘cancelled’ in large letters across the sheet.

**cause of fatigue** means any factor that could cause or contribute to a person being fatigued while driving a fatigue regulated heavy vehicle on a road.

*Examples—*

- physical or mental exertion
- long periods of time awake
- not enough sleep or not enough restorative sleep
- not enough rest time
- a person’s circadian rhythm (or body clock)
- environmental stress factors, including heat, noise, vibrations
- personal health

**class work and rest hours exemption** see section 154.

**Commonwealth gazette** means the Commonwealth of Australia gazette.

**corresponding BFM accreditation** means—

- (a) an accreditation granted under a corresponding fatigue law for section 136; or
- (b) a bus accreditation recognised (in whatever way) under a corresponding fatigue law as a BFM accreditation under the law.

*Note—*

Under section 168A of the Act (and section 182 of this regulation), the decision of a corresponding authority to grant a BFM accreditation under a corresponding fatigue law, or recognise a bus accreditation, has the same effect in Queensland.

***corresponding fatigue law—***

- 1 A *corresponding fatigue law* is a law of the Commonwealth or another jurisdiction that provides for the same, or substantially the same, matters as the provisions of the *National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007* (Cwlth).

***Editor's note—***

The *National Transport Commission (Model Legislation—Heavy Vehicle Driver Fatigue) Regulations 2007* (Cwlth) were made on 26 September 2007 as Select Legislative Instrument 2007 No. 318.

- 2 A *corresponding fatigue law* for a provision of this regulation is a provision of a corresponding fatigue law within the meaning of paragraph 1 that corresponds, or substantially corresponds, to the provision of this regulation.
- 3 For paragraph 1, it is irrelevant whether the law of the Commonwealth or another jurisdiction is in 1 instrument or 2 or more instruments.

***critical risk breach*** means a contravention of a requirement of this regulation declared in this regulation to be a critical risk breach.

***daily sheet***, for a written work diary, see section 115(3)(b).

***department's website*** means the website of the department on the internet.

***Editor's note—***

At the commencement of this definition, the department's website was at <www.transport.qld.gov.au>.

***driver*** see section 6(1).

***electronic recording system*** means a system of recording information electronically.

***electronic work diary*** means an electronic recording system that—

- (a) is an approved electronic recording system; and

Schedule 6

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- (b) has attached to each device that forms part of the system an electronic work diary label relating to the approval.

***electronic work diary label*** means a label that—

- (a) indicates that the device to which it is attached is, or is a part of, an approved electronic recording system; and
- (b) states the number of the certificate of approval issued by the chief executive for the approved electronic recording system; and
- (c) is in the approved form.

*Note—*

A copy of a label in the approved form can be obtained from the department's website.

***employed driver*** see section 6(2).

***employer*** does not include a prime contractor.

***engage***, when used in the context of a person carrying out a function for another person, means engage under a contract for services.

***entry***, in a work record, means anything written in the work record.

***exemption—***

- (a) for part 5, division 6, see section 156; or
- (b) for part 5, division 7, see section 169.

***exemption notice*** see section 165.

***fatigue*** see section 16.

***fatigue authorities panel*** see section 179.

***IAP reporting entity***, for an approved intelligent transport system, means a person on whom there is an obligation to report a malfunction of or tampering with the system under the *Transport Operations (Road Use Management—Mass, Dimensions and Loading) Regulation 2005*.



*Note—*

See the *Transport Operations (Road Use Management—Mass Dimension and Loading) Regulation 2005*, sections 55K, 55L, 55U, 55V, 55ZH and 55ZR.

***impaired by fatigue*** see section 18.

***information notice***, for a decision made in relation to a person, means a written notice stating—

- (a) the reasons for the decision; and
- (b) that the person may—
  - (i) under part 7, division 4—ask for the decision to be reviewed and appeal against the reviewed decision; and
  - (ii) under the *Transport and Planning Coordination Act 1994*, part 5—ask for the decision or the reviewed decision to be stayed.

***interception book*** means a document for recording compliance activities carried out under the Act by authorised officers.

***long/night work time*** means work time that is long work time or night work time.

*Examples of long/night work time—*

- a period spent working for 141 minutes between 12 midnight and 3a.m. counts as 2½ hours of long/night work time
- a period spent working for 53 minutes in excess of 12 hours in a 24 hour period counts as 1 hour of long/night work time

***long work time*** means work time in excess of 12 hours in a 24 hour period.

***major rest break*** means rest time of at least 5 continuous hours.

***malfunction***, of an electronic work diary or an odometer, means the work diary or odometer—

- (a) ceases to work at all, or works only intermittently; or
- (b) does not perform 1 or more functions required under this regulation; or

- (c) performs the functions mentioned in paragraph (b) only intermittently; or
- (d) performs the functions mentioned in paragraph (b) in a way that is inaccurate or unreliable, including intermittently inaccurate or unreliable.

*Examples of an electronic work diary malfunctioning—*

- the data held in an electronic work diary is corrupted
- a software program fault
- physical damage that impairs the functioning of the electronic work diary

*Examples of an odometer malfunctioning—*

- the odometer no longer keeps an accurate record of distance travelled

**minor risk breach** means a contravention of a requirement of this regulation declared in this regulation to be a minor risk breach.

**night rest break** means—

- (a) 7 continuous hours stationary rest time taken between 10p.m. on a day and 8a.m. on the next day; or

*Note—*

Under sections 43 and 78, the period must be based on the time zone of the driver's base for drivers on a journey in a different time zone to the driver's base.

- (b) 24 continuous hours stationary rest time.

**night work time** means work time between midnight and 6a.m.

*Note—*

Under sections 43 and 78, the time must be based on the time zone of the driver's base for drivers on a journey in a different time zone to the driver's base.

**nominee**, for the driver of a fatigue regulated heavy vehicle, see section 161(a).

**non-participating zone** means all jurisdictions that are not participating jurisdictions.

***participating jurisdiction*** means—

- (a) this jurisdiction; or
- (b) another jurisdiction, if that jurisdiction has a corresponding fatigue law.

***participating zone*** means all participating jurisdictions.

***party in the chain of responsibility***, for a fatigue regulated heavy vehicle, see section 7.

***prime contractor*** means a person who employs someone else under a contract for services.

***reasonable steps defence*** see section 8.

***record keeper*** see section 62.

***record location***, for the driver of a fatigue regulated heavy vehicle, see section 65.

***registration certificate*** see the *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, schedule 4.

***registration number*** means—

- (a) for a fatigue regulated heavy vehicle that is a combination—the registration number shown on the numberplate of the towing vehicle for the combination; or
- (b) for another fatigue regulated heavy vehicle—the registration number shown on the numberplate of the vehicle.

***rest time*** see section 39.

***road*** includes a road-related area.

***schedule***, for the driver of a fatigue regulated heavy vehicle, means—

- (a) the schedule for the transport of any goods or passengers by the vehicle; or
- (b) the schedule of the driver's work and rest times.

***scheduler***, for a fatigue regulated heavy vehicle, means—

- (a) a person who schedules the transport of any goods or passengers by the vehicle; or
- (b) a person who schedules the work and rest times of the driver of the vehicle.

***self-employed driver*** see section 6(3).

***severe risk breach*** means a contravention of a requirement of this regulation declared in his regulation to be a severe risk breach.

***sign of fatigue*** means any sign that a person was, is, or will be fatigued while driving a fatigue regulated heavy vehicle on a road.

*Examples—*

- lack of alertness
- inability to concentrate
- reduced ability to recognise or respond to external stimuli
- poor judgement or memory
- making more mistakes than usual
- drowsiness, or falling asleep, at work (including micro sleeps)
- finding it difficult to keep eyes open
- needing more frequent naps than usual
- not feeling refreshed after sleep
- excessive head nodding or yawning
- blurred vision
- mood changes, increased irritability or other changes to the person's mental health
- changes to the person's health or fitness

***solo driver*** means a driver who is not a party to a two-up driving arrangement.

***standard hours*** see section 46.

***stationary rest time*** means rest time that a driver spends—

- (a) out of a fatigue regulated heavy vehicle; or

- (b) in an approved sleeper berth of a stationary fatigue regulated heavy vehicle.

***substantial risk breach*** means a contravention of a requirement of this regulation declared in this regulation to be a substantial risk breach.

***supplementary record*** means a supplementary record made under section 80.

***tampers*** see section 110.

***this jurisdiction*** means this State.

***two-up driving arrangement*** means an arrangement under which 2 persons share the driving of a fatigue regulated heavy vehicle that has an approved sleeper berth.

***work and rest change*** see section 40.

***work and rest hours alternative compliance scheme*** means an alternative compliance scheme for part 3.

***work and rest hours exemption*** means—

- (a) a class work and rest hours exemption; or
- (b) a work and rest hours exemption granted under section 157.

***work and rest hours limits***, in relation to an AFM accreditation or an application for an AFM accreditation, means the maximum periods of work and minimum periods of rest applying under the accreditation or to apply under the accreditation.

***work and rest hours option*** see section 37.

***work diary***, for part 4, division 2, subdivision 1, see section 67.

***work diary exemption*** see section 158.

***work record*** means—

- (a) a written or electronic work diary of the driver of a fatigue regulated heavy vehicle; or
- (b) a supplementary record; or

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- (c) a record required to be made or kept under part 4, division 3; or
- (d) a driving record within the meaning of the repealed *Transport Operations (Road Use Management—Fatigue Management) Regulation 1998*, section 42; or
- (e) a copy of a document, or an entry in a document, mentioned in paragraph (a), (b), (c) or (d).

**work time** see section 38.

**written work diary** means a written work diary issued to the driver of a fatigue regulated heavy vehicle under section 117 or a corresponding fatigue law.

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ENDNOTES

- 1 Made by the Governor in Council on 4 September 2008.
- 2 Notified in the gazette on 5 September 2008.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Transport.

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