



New South Wales

Motor Traffic Amendment (Driving Hours) Regulation 1998

under the
Traffic Act 1909

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Traffic Act 1909*.

CARL SCULLY. M.P.
Minister for Roads

Explanatory note

The object of this Regulation is to replace existing provisions of the *Motor Traffic Regulations 1935* that regulate the maximum driving hours and minimum rest periods of drivers of heavy motor vehicles and coaches with comprehensive provisions for the management of the fatigue of drivers of heavy trucks and coaches (referred to in the new provisions as commercial buses).

The new provisions provide for the following:

- (a) the maximum driving and work times, and minimum rest times, for drivers of heavy trucks and commercial buses.
- (b) the recording (by means of logbooks and other means) of the driving, work and rest times of drivers of heavy trucks and commercial buses,
- (c) a Transitional Fatigue Management Scheme (TFMS), registration under which entitles a driver or employer to conduct heavy truck driving in a way more suitable to the driver or employer than complying with provisions that would otherwise be applicable to them.

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- (d) special obligations on driver participants in a TFMS, such as recording changes of employment, medical examinations of drivers and fatigue management training,
- (e) the obligations of employer participants in a TFMS, including the management of drivers, the training of responsible employees and additional record keeping,
- (f) the keeping of driving records, including by means of logbooks, automatic recording devices and supplementary records,
- (g) various extended offences to prevent persons (in particular employers and consignors of goods or persons) from causing or permitting contraventions of the maximum driving and work time restrictions and minimum rest time requirements,
- (h) the issue of logbooks,
- (i) the administration of the Transitional Fatigue Management Scheme, including review and audit of participation,
- (j) the granting of various classes of exemptions from various requirements of the new provisions,
- (k) enforcement powers,
- (l) reconsideration and review of decisions of the RTA.

The Regulation also makes consequential amendments to Schedule A (Fees) and Schedule K (which lists those offences under the Regulations that can be dealt with by way of penalty notice and the penalties to be applicable to them when so dealt with).

This Regulation is made under the *Traffic Act 1909*, including section 3 (1) (t1).

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1 Name of Regulation

This Regulation is the *Motor Traffic Amendment (Driving Hours) Regulation 1998*.

2 Commencement

This Regulation commences on 30 November 1998.

3 Amendment of Motor Traffic Regulations 1935

The *Motor Traffic Regulations 1935* are amended as set out in Schedule 1.

4 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendments

(Clause 3)

[1] Regulation 56C Certain provisions not applicable to light rail vehicles

Omit Regulation 56C (2) and (3). Insert instead:

- (2) The following provisions of Schedule O (Fatigue management—drivers of heavy trucks and commercial buses (coaches)) apply to and in respect of a light rail vehicle as if the vehicle were a heavy truck:
 - (a) Part 2 (Regulated hours),
 - (b) Part 1 (Preliminary), in so far as it defines expressions used in Part 2,
 - (c) clause 129 (Limited jeopardy).

[2] Part 11A

Omit the Part. Insert instead:

Part 11A Fatigue management—drivers of heavy trucks and commercial buses (coaches)

125 Schedule O

Schedule O has effect.

[3] Regulation 129 Penalties

Insert at the end of the Regulation:

- (2) This Regulation does not apply in respect of a provision of Schedule O.

[4] Schedule A Fees and other charges

Omit item 7. Insert instead:

7	Issue of logbook—clause 81 of Schedule O	14
8	Registration as participant in TFMS—clause 82 of Schedule O	50
9	Issue of replacement driver certification manual—clause 88 of Schedule O	50

[5] Schedule K Prescribed offences and penalties for the purposes of section 18B of the Act

Omit from Table A of Part 2 the matter relating to Regulations 126A—126H.

[6] Schedule K. Part 2

Insert at the end of Table A of Part 2:

Any offence under any of the following provisions of Schedule 0 :

Clause	19	(3)	.....	149
Clause	20	(3)	.....	149
Clause	21	(3)	.....	149
Clause	2 I	(4)	.....	149
Clause	21	(5)	.....	149
Clause	28	(3)	.....	149
Clause	29	(2)	.....	149
Clause	30	(3)	.....	149
Clause	34	(1)	.....	149
Clause	35	(4)	.....	149
Clause	36	(4)	.....	149
Clause	37	(1)	.....	149
Clause	37	(2)	.....	149
Clause	40	(4)	.....	149
Clause	48	(1)	.....	149
Clause	48	(2)	.....	149
Clause	49	(2)	149
Clause	49	(3)	149
Clause	49	(4)	149
Clause	50	(2)	149
Clause	51	(2)	149
Clause	52		149

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Clause 54 (3)	149
Clause 56 (1)	149
Clause 57 (1)	149
Clause 58 (1)	149
Clause 58 (3)	149
Clause 60	149
Clause 61 (1)	149
Clause 61 (2)	149
Clause 62 (1)	149
Clause 62 (2)	149
Clause 63 (3)	149
Clause 64 (1)	149
Clause 64 (2)	149
Clause 65	149
Clause 66 (1)	149
Clause 67	149
Clause 69 (a)	149
Clause 69 (b)	149
Clause 70	149
Clause 71 (1)	149
Clause 72	149
Clause 73	149
Clause 75	149
Clause 76	149
Clause 77	149
Clause 78 (1)	149
Clause 78 (2)	149
Clause 93 (2)	149
Clause 95 (1)	149
Clause 96 (1)	149

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Amendments

Schedule 1

Clause 96 (4)	149
Clause 97 (4)	149
Clause 119 (2)	149
Clause 125	149
Clause 134 (2)	149
Clause 135	149
Clause 136 (3)	149
Clause 137 (2)	149
Clause 142 (3)	149

[7] Schedule O

Insert after Schedule N:

**Schedule O Fatigue management—drivers of heavy
trucks and commercial buses
(coaches)**

(Regulation 125)

Part 1 Preliminary**Division 1 Introductory****1 Name of Schedule**

This Schedule is Schedule O to the *Motor Traffic Regulations 1935*.

2 Commencement

This Schedule commences on the commencement of the *Motor Traffic Amendment (Driving Hours) Regulation 1998*.

3 Main object of Schedule

The main object of this Schedule is to provide for the suitable management of the fatigue of drivers of heavy trucks and commercial buses by regulating the periods that they spend driving, working and resting.

4 Outline of main features of Schedule

- (1) This Schedule applies mainly to:
 - (a) employed drivers of heavy trucks and commercial buses and their employers, and
 - (b) self-employed drivers of heavy trucks and commercial buses.

Note. Some provisions may apply to other persons eg Part 5 (Extended offences).

- (2) This Schedule provides, in Part 2 (Regulated hours), for maximum driving and work times, and minimum rest times, for drivers of heavy trucks and commercial buses.
- (3) This Schedule also provides, in Part 4 (Driving records), for recording the driving, work and rest times of drivers of heavy trucks and commercial buses.
- (4) A driver or employer may also seek exemption, including an FMS exemption, from various requirements of this Schedule.

Note. *FMS exemption* is defined in clause 102.

- (5) If a driver or employer wishes to conduct heavy truck driving in a way more suitable to the driver or employer than complying with Part 2, the driver or employer may apply for registration in the Transitional Fatigue Management Scheme established by Part 3.

5 Application of Schedule

- (1) This Schedule applies to heavy trucks and commercial buses, and their drivers, on roads and road-related areas.
- (2) *A road* is an area that is open to or used by the public and is developed for, or has as one of its main uses. the driving or riding of motor vehicles.
- (3) *A road-related area* is any of the following:
 - (a) an area that divides a road.
 - (b) a footpath or nature strip adjacent to a road.

- (c) an area that is not a road and that is open to the public and is designated for use by cyclists or animals,
- (d) an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles.
- (e) any other area that is open to or used by the public and that has been declared, under section 2A of the Act, to be an area to which this Schedule applies,

but does not include an area that has been declared, in accordance with another law of this jurisdiction, not to be a road-related area for the purposes of this Schedule.

Division 2 Interpretation

6 Definitions

Expressions used in this Schedule (or in any particular provision of this Schedule) that are defined in the Dictionary at the end of this Schedule have the meanings set out in the Dictionary.

Note. Some expressions used in this Schedule are also defined in section 2 of the Act.

7 References to exemptions etc

In this Schedule, a reference to:

- (a) an *exemption* includes a reference to the exemption as varied, and
- (b) a *variation* of an exemption includes a reference to a variation of a condition of the exemption by addition, omission or substitution.

Division 3 Some key concepts for this Schedule

Subdivision A Persons with special duties

8 What is a heavy truck, bus and commercial bus

- (1) A *heavy truck* is:
 - (a) a motor vehicle (except a bus or tram) with a GVM over 12 tonnes, or

- (b) a motor vehicle (except a bus or tram) forming part of a combination if the total of the GVMs of the vehicles in the combination is over 12 tonnes.
- (2) A **bus** is a motor vehicle built mainly to carry people that seats over 8 adults (including the driver).
- (3) A **commercial bus** is a coach as defined in the Act.

9 Driver definitions

- (1) A **driver** is a driver of a heavy truck or commercial bus.
- (2) An **employed driver** is a driver who is employed by someone else to drive a heavy truck or commercial bus.
- (3) A driver who is not an employed driver is a **self-employed driver**.

10 Who is an employer and responsible employee

- (1) An **employer** is a person who employs someone else to drive a heavy truck or commercial bus.
- (2) A **responsible employee** of an employer is an employee or agent of the employer who is responsible for:
 - (a) rostering driving, work or rest time of employed drivers, or
 - (b) scheduling the transport of people or goods by road.

and, if the employer is an individual, includes the employer.

11 Who is a consignor

A **consignor** is a person who:

- (a) engages someone, directly (whether as principal or as an agent or other intermediary) or through an agent or other intermediary, to transport goods or persons by road, and
- (b) in the case of the transportation of goods, has possession of, or control over, the goods before they are transported, and

- (c) is not the employer of the driver of a heavy truck or commercial bus that transports the goods or persons.

Subdivision B Driving, work and rest times

12 What is driving and driving time

- (1) *Driving* is driving a heavy truck or commercial bus, and includes:
 - (a) being in the driving seat of a stationary heavy truck or commercial bus while the engine is running. and
 - (b) being in a heavy truck or commercial bus and instructing or supervising someone else to drive the heavy truck or commercial bus.
- (2) *Driving time* of a driver is time spent by the driver driving, whether or not the time is spent on a road or road-related area.
- (3) For the purposes of this Schedule, a person is driving a commercial bus under a two-up driving arrangement if:
 - (a) the person is driving the commercial bus under such an arrangement. or
 - (b) although not driving the commercial bus under such an arrangement, the person has, within the previous 168 hours, spent an aggregate of 10 hours or more in one or more two-up driving arrangements on any commercial buses.
- (4) For the purposes of subclause (3), it does not matter that the person may also have driven motor vehicles to which this Schedule applies under other arrangements during that 168 hour period.

13 What is work time

- (1) *Work time* of a driver is the driver's driving time, and other time spent by the driver (whether or not the time is spent on a road or road-related area):

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- (a) loading or unloading a heavy truck or commercial bus, or
 - (b) inspecting, servicing or repairing a heavy truck or commercial bus. inspecting or attending to the load on a heavy truck or commercial bus, or attending to the passengers of a commercial bus, or
 - (c) cleaning or refuelling a heavy truck or commercial bus, or
 - (d) performing marketing tasks in relation to the operation of a heavy truck or commercial bus, or
 - (e) helping with, or supervising, an activity mentioned in paragraphs (a) to (d), or
 - (f) recording information, or completing a document, in accordance with this Schedule or otherwise in relation to the operation of a heavy truck or commercial bus, or
 - (g) performing any work connected with a journey by a heavy truck or commercial bus (such as driving another type of motor vehicle in connection with a journey by a heavy truck or commercial bus).
- (2) In this Schedule:
- marketing tasks* includes arranging for, or canvassing for orders for, the transport of people or goods.

14 What is rest time

Rest time of a driver is a continuous period of at least 15 minutes that is not work time of the driver.

Subdivision C Jurisdictions and zones

15 Definitions—jurisdictions and zones

- (1) *This jurisdiction* is New South Wales.
- (2) *Another jurisdiction* is another State or a Territory.

- (3) A *relevant jurisdiction* is:
- (a) this jurisdiction. or
 - (b) another jurisdiction, if the law of the other jurisdiction includes provisions having the same, or substantially the same, effect as this Schedule.
- (4) The *regulated zone* is all relevant jurisdictions.
- (5) The *non-regulated zone* is all jurisdictions that are not relevant jurisdictions.

Part 2 Regulated hours

Division 1 Introductory

16 Application of Part 2

This Part applies to a driver unless:

- (a) the driver is a heavy truck driver. and
- (b) the driver is registered as a driver participant in TFMS or a corresponding TFMS, and
- (c) the driver is carrying his or her current driver certification manual or corresponding driver certification manual. and
- (d) if the driver is an employed driver—the driver's employer is registered as an employer participant in TFMS or a corresponding TFMS.

Note. See Division 1 of Part 7 for registration in TFMS.

17 Brief outline of Part 2

- (1) This Part sets the maximum driving and work times. and minimum rest times. for drivers to whom the Part applies.
- (2) These times are set by reference to 5 periods, which are called:
 - relevant period 1
 - relevant period 2
 - relevant period 2A
 - relevant period 3
 - relevant period 4.

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- (3) A driver must ensure that, for each relevant period 1, 2 or 3:
- (a) the driver's total driving time does not exceed the driver's maximum driving time, and
 - (b) the driver's total work time does not exceed the driver's maximum work time.
- (4) A driver must ensure that the driver's rest time complies with the driver's required minimum rest time for:
- (a) any relevant period 1, 2 or 3 in which the driver drives a heavy truck, and
 - (b) any relevant period 1, 2 or 4 in which the driver drives a commercial bus, and
 - (c) any relevant period 2A in which the driver drives a commercial bus under a two-up driving arrangement.

18 Regulated hours—relevant periods

For this Part:

- ***relevant period 1*** is any period of 5.5 hours
- ***relevant period 2*** is any period of 24 hours
- ***relevant period 2A*** is any period of 53 hours
- ***relevant period 3*** is any period of 168 hours
- ***relevant period 4*** is any period of 672 hours.

Examples of the beginning and end of the relevant periods for this Part

1 The relevant periods beginning at 9.00 am on 5 May are the periods ending as follows:

- relevant period 1 ends at 2.30 pm on 5 May (that is, 5.5 hours later)
- relevant period 2 ends at 9.00 am on 6 May (that is, 24 hours later)
- relevant period 2A ends at 2.00 pm on 7 May (that is, 53 hours later)
- relevant period 3 ends at 9.00 am on 12 May (that is, 168 hours later)
- relevant period 4 ends at 9.00 am on 2 June (that is, 672 hours later)

2 The relevant periods ending at 9.00 am on 12 May are the periods beginning as follows:

- e relevant period 1 begins at 3.30 am on 12 May (that is, 5.5 hours earlier)
- e relevant period 2 begins at 9.00 am on 11 May (that is, 24 hours earlier)
- e relevant period 2A begins at 4.00 am on 10 May (that is, 53 hours earlier)
- e relevant period 3 begins at 9.00 am on 5 May (that is, 168 hours earlier)
- e relevant period 4 begins at 9.00 am on 14 April (that is, 672 hours earlier).

Division 2 Driving, work and rest times of regulated hours drivers

19 Regulated hours—maximum driving times

- (1) For this Part, the *maximum driving times* of a driver for any period in which the driver drives a heavy truck, except a period in which the driver drives a commercial bus at any time, are:
 - (a) for any relevant period 1—5 hours. and
 - (b) for any relevant period 2—12 hours, and
 - (c) for any relevant period 3—72 hours.
- (2) For this Part, the *maximum driving times* of a driver for any period in which the driver drives a commercial bus at any time are:
 - (a) for any relevant period 1—5 hours, and
 - (b) for any relevant period 2, except a period in which the driver drives a commercial bus at any time under a two-up driving arrangement—12 hours, and
 - (c) for any relevant period 2 in which the driver drives a commercial bus at any time under a two-up driving arrangement—11 hours, and

- (d) for any relevant period 3, except a period in which the driver drives a commercial bus at any time under a two-up driving arrangement—72 hours, and
 - (e) for any relevant period 3 in which the driver drives a commercial bus at any time under a two-up driving arrangement—66 hours.
- (3) A driver commits an offence if, for any relevant period 1, 2 or 3 in which the driver drives a heavy truck or commercial bus on a road or road-related area, the driver's total driving time exceeds the driver's maximum driving time.

Maximum penalty: 20 penalty units.

Note. Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.

20 Regulated hours—maximum work times

- (1) For this Part, the *maximum work times* of a driver for any period in which the driver drives a heavy truck, except a period in which the driver drives a commercial bus at any time, are:
 - (a) for any relevant period 1—5 hours, and
 - (b) for any relevant period 2—14 hours, and
 - (c) for any relevant period 3—72 hours.
- (2) For this Part, the *maximum work times* of a driver for any period in which the driver drives a commercial bus at any time are:
 - (a) for any relevant period 1—5 hours, and
 - (b) for any relevant period 2, except a period in which the driver drives a commercial bus at any time under a two-up driving arrangement—12 hours, and
 - (c) for any relevant period 2 in which the driver drives a commercial bus at any time under a two-up driving arrangement—11 hours, and

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- (d) for any relevant period **3**, except a period in which the driver drives a commercial bus at any time under a two-up driving arrangement—72 hours, and
 - (e) for any relevant period 3 in which the driver drives a commercial bus at any time under a two-up driving arrangement—66 hours.
- (3) A driver commits an offence if, for any relevant period 1, 2 or 3 in which the driver drives a heavy truck or commercial bus on a road or road-related area, the driver's total work time exceeds the driver's maximum work time.

Maximum penalty: 20 penalty units.

Note. Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.

21 Regulated hours—required minimum rest times

- (1) For this Part, the *required minimum rest times* of a driver for any period in which the driver drives a heavy truck, except a period in which the driver drives a commercial bus at any time, are rest times of:
- (a) for any relevant period 1—30 minutes, which must be in a single period or 2 separate periods of 15 minutes, and
 - (b) for any relevant period 2—10 hours, which must include a single period of at least 6 hours not spent by the driver in or on:
 - (i) a heavy truck, except a heavy truck with a sleeper berth complying with ADR 42, or
 - (ii) a commercial bus, except a commercial bus with an approved sleeper berth, and
 - (c) for any relevant period 3—96 hours, which must include a single period of at least 24 hours not spent by the driver in or on a heavy truck or commercial bus.

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- (2) For this Part, the *required minimum rest times* of a driver for any period in which the driver drives a commercial bus at any time are rest times of:
- (a) for any relevant period 1—30 minutes, which must be in a single period or 2 separate periods of 15 minutes, and
 - (b) for any relevant period 2 in which the driver drives a commercial bus, except a period in which the driver drives a commercial bus at any time under a two-up driving arrangement—12 hours, including a single period of at least 8 hours not spent by the driver in or on:
 - (i) a heavy truck, except a heavy truck with a sleeper berth complying with ADR 42, or
 - (ii) a commercial bus, except a commercial bus with an approved sleeper berth, and
 - (c) for any relevant period 2 in which the driver drives a commercial bus at any time under a two-up driving arrangement—13 hours, including a single period of at least 5 hours 30 minutes not spent by the driver in or on:
 - (i) a heavy truck, except a heavy truck with a sleeper berth complying with ADR 42, or
 - (ii) a commercial bus, except a commercial bus with an approved sleeper berth, and
 - (d) for any relevant period 2A in which the driver drives a commercial bus at any time under a two-up driving arrangement—31 hours not spent by the driver in or on a heavy truck or commercial bus, and
 - (e) for any relevant period 3 in which the driver drives a commercial bus at any time under a two-up driving arrangement—102 hours not spent by the driver in or on:
 - (i) a heavy truck, except a heavy truck with a sleeper berth complying with ADR 42, or
 - (ii) a commercial bus, except a commercial bus with an approved sleeper berth, and

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- (f) for any relevant period 4—384 hours. which must include:
- (i) 4 separate periods of at least 24 hours each, or
 - (ii) a single period of at least 72 hours and a separate period of at least 24 hours, or
 - (iii) 2 separate periods of at least 48 hours each, or
 - (iv) a single period of at least 96 hours.
- not spent by the driver in or on a heavy truck or commercial bus.
- (3) A driver commits an offence if, for any relevant period 1, 2 or 3 in which the driver drives a heavy truck on a road or road-related area, the driver's rest time does not comply with the driver's required minimum rest time.
- Maximum penalty: 20 penalty units.
- Note.** Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.
- (4) A driver commits an offence if, for any relevant period 1, 2 or 4 in which the driver drives a commercial bus on a road or road-related area, except a period in which the driver drives a commercial bus at any time under a two-up driving arrangement, the driver's rest time does not comply with the driver's required minimum rest time.
- Maximum penalty: 20 penalty units.
- Note.** Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.
- (5) A driver commits an offence if, for any relevant period 1, 2, 2A, 3 or 4 in which the driver drives a commercial bus on a road or road-related area at any time under a two-up driving arrangement, the driver's rest time is less than the driver's required minimum rest time.
- Maximum penalty: 20 penalty units.
- Note.** Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.
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22 Application of Division to drivers from elsewhere in the regulated zone

In applying this Division to a driver, any time spent by the driver in another jurisdiction in the regulated zone is treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

Note. Regulated zone is defined in clause 15.

23 Application of Division to drivers from non-regulated zone

- (1) This clause applies to a driver if the driver drives a heavy truck or commercial bus into this jurisdiction from the non-regulated zone.

Note. *Non-regulated zone* is defined in clause 15.

- (2) In applying this Division to the driver:
- (a) any driving, work or rest time of the driver before the start of his or her last 6 hour rest break before entering this jurisdiction is disregarded, and
 - (b) any driving, work or rest time of the driver after the start of that rest break is taken into account, and
 - (c) any time spent by the driver in the non-regulated zone (or another jurisdiction in the regulated zone) after the start of that rest break is treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

Part 3 Transitional Fatigue Management Scheme

Division 1 Introductory

24 Brief outline of Part 3

- (1) This Part:
- (a) establishes the Transitional Fatigue Management Scheme (TFMS) for heavy truck drivers and the employers of heavy truck drivers, and

- (b) provides for other matters about TFMS.

Note. This Part applies only to the driving of heavy trucks. However, driving, work and rest time spent in relation to commercial buses is taken into account in working out the driving, work and rest times of heavy truck drivers.

- (2) This Part also sets maximum driving and work times, and minimum rest times, for heavy truck drivers to whom TFMS applies by reference to 3 periods. which are called:

- relevant period 1
- relevant period 2
- relevant period 3.

- (3) A heavy truck driver to whom TFMS applies must ensure that, for each relevant period applying to the driver:

- (a) the driver's total driving time does not exceed the driver's maximum driving time, and
- (b) the driver's total work time does not exceed the driver's maximum work time, and
- (c) the driver's rest time complies with the driver's required minimum rest time.

25 Registration of participants in TFMS

A person may be registered as a driver or employer participant in TFMS under Division 1 of Part 7.

Note. Part 7 deals with TFMS administration.

26 TFMS—relevant periods

For this Part:

- *relevant period 1* is any period of 5.5 hours
- *relevant period 2* is any period of 24 hours
- *relevant period 3* is any period of 336 hours.

Examples of the beginning and end of the relevant periods for this Part

1 The relevant periods beginning at 9.00 am on 5 May are the periods ending as follows:

- e relevant period 1 ends at 2.30 pm on 5 May (that is, 5.5 hours later)
- relevant period 2 ends at 9.00 am on 6 May (that is, 24 hours later)
- relevant period 3 ends at 9.00 am on 19 May (that is, 336 hours later).

2 The relevant periods ending at 9.00 am on 19 May are the periods beginning as follows:

- relevant period 1 begins at 3.30 am on 19 May (that is, 5.5 hours earlier)
- relevant period 2 begins at 9.00 am on 18 May (that is, 24 hours earlier)
- e relevant period 3 begins at 9.00 am on 5 May (that is, 336 hours earlier).

Division 2 Driving, work and rest times of TFMS drivers

27 Application of Division 2

This Division applies to a driver only if:

- (a) the driver is a heavy truck driver. and
- (b) the driver is registered as a driver participant in TFMS or a corresponding TFMS. and
- (c) the driver is carrying his or her current driver certification manual or corresponding driver certification manual, and
- (d) if the driver is an employed driver—the driver's employer is also registered as an employer participant in TFMS or a corresponding TFMS.

Note 1. If this Division does not apply to the driver of a heavy truck, Part 2 applies to the driver—see clause 16.

Note 2. See Division 1 of Part 7 for registration in TFMS.

28 TFMS—maximum driving times

- (1) For this Division. the *maximum driving times* of a driver are:

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- (a) for any relevant period 1—5 hours, and
 - (b) for any relevant period 2—14 hours, and
 - (c) for any relevant period 3—144 hours.
- (2) However, if at any time in any relevant period 2 the driver is a two-up driver, the driver's maximum driving time for the period is 12 hours.
- (3) A driver commits an offence if, for any relevant period in which the driver drives a heavy truck on a road or road-related area, the driver's total driving time exceeds the driver's maximum driving time.

Maximum penalty: 20 penalty units.

Note. Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.

29 TFMS—maximum work times

- (1) For this Division, the *maximum work times* of a driver are:
- (a) for any relevant period 1—5 hours, and
 - (b) for any relevant period 2—14 hours, and
 - (c) for any relevant period 3—144 hours.
- (2) A driver commits an offence if, for any relevant period in which the driver drives a heavy truck on a road or road-related area, the driver's total work time exceeds the driver's maximum work time.

Maximum penalty: 20 penalty units.

Note. Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.

30 TFMS—required minimum rest times

- (1) For this Division, the *required minimum rest times* of a driver are rest times of:

- (a) for any relevant period 1—30 minutes, which must be in a single period or 2 separate periods of 15 minutes, and
 - (b) for any relevant period 2—10 hours, which must include a single period of at least 6 hours not spent by the driver in or on:
 - (i) a heavy truck, except a heavy truck with a sleeper berth complying with ADR 42, or
 - (ii) a commercial bus, except a commercial bus with an approved sleeper berth, and
 - (c) for any relevant period 3—192 hours, which must include 2 single periods of at least 24 hours each not spent by the driver in or on a heavy truck or commercial bus.
- (2) For a single period of at least 24 hours mentioned in subclause (1)(c), 1 continuous period of up to 1 hour spent in the period cleaning or refuelling a heavy truck or commercial bus (other than at the direction of his or her employer) is taken to be *rest time* of the driver if the beginning and end of the cleaning or refuelling are separated by at least 3 hours from the beginning and end of driving or work time.
- (3) A driver commits an offence if, for any relevant period in which the driver drives a heavy truck on a road or road-related area, the driver's rest time does not comply with the driver's required minimum rest time.

Maximum penalty: 20 penalty units.

Note. Clause 129 limits the number of times, in each relevant period, that a driver is liable for an offence.

31 Application of Division to heavy truck drivers from elsewhere in the regulated zone

In applying this Division to a heavy truck driver, any time spent by the driver in another jurisdiction in the regulated zone is treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

Note. *Regulated zone* is defined in clause 15.

32 Application of Division to heavy truck drivers from the non-regulated zone

- (1) This clause applies to a driver if the driver drives a heavy truck into this jurisdiction from the non-regulated zone.

Note. *Non-regulated zone* is defined in clause 15.

- (2) In applying this Division to the driver:
- (a) any driving, work or rest time of the driver before the start of his or her last 6 hour rest break before entering this jurisdiction is disregarded, and
 - (b) any driving, work or rest time of the driver after the start of that rest break is taken into account, and
 - (c) any time spent by the driver in the non-regulated zone (or another jurisdiction in the regulated zone) after the start of that rest break is treated in the same way as it would have been treated if the time had been spent in this jurisdiction.

Division 3 Other obligations of driver participants**33 Application of Division 3**

- (1) This Division applies to a driver who is registered as a driver participant in TFMS.
- (2) Clause 34 (1) also applies to a driver who is registered as a driver participant in a corresponding TFMS.

34 General obligations

- (1) If a driver becomes, or ceases to be, employed to drive a heavy truck, the driver must immediately record in his or her driver certification manual, as required by the instructions in the manual, the date and time when the driver became, or ceased to be, employed and, if the driver became employed:
- (a) the employer's name and the address of the place where the employer manages the employment of drivers, and

- (b) whether the employer is registered as an employer participant in TFMS, and
- (c) if so, the employer's TFMS registration number.

Maximum penalty: 20 penalty units.

- (2) A self-employed driver must:

- (a) manage the driver's driving, work and rest times so the driver can comply with this Part. and
- (b) keep complete and accurate records showing that the driver has complied with paragraph (a).

- (3) In this clause:

driver certification manual includes a corresponding driver certification manual.

TFMS includes a corresponding TFMS.

35 Medical examination requirements

- (1) The Authority may, by written notice given to a driver, ask the driver to:
 - (a) undergo a medical examination in accordance with the required medical standards, and
 - (b) give his or her driver certification manual to the examining doctor for inclusion of the certificate mentioned in subclause (2), and
 - (c) produce the manual containing the certificate to the Authority for inspection within the time stated in the notice.
- (2) The certificate must state:
 - (a) the name and address of the doctor, and
 - (b) that the doctor examined the driver in accordance with the required medical standards, and
 - (c) the date of the medical examination, and
 - (d) that the person met, or did not meet, the required medical standards.

(3) The time stated in the notice must be at least 7 days after the notice is given to the driver.

(4) The driver must comply with the notice.

Maximum penalty (subclause (4)): 10 penalty units.

36 Approved fatigue management training requirements

(1) The Authority may, by written notice given to a driver, ask the driver to:

(a) attend an approved fatigue management training course, and

(b) give his or her driver certification manual to the trainer conducting the course for inclusion of the certificate mentioned in subclause (2), and

(c) produce the manual containing the certificate to the Authority for inspection within the time stated in the notice.

(2) The certificate must state:

(a) the name and address of the trainer, and

(b) that the driver finished an approved fatigue management training course conducted by the trainer, and

(c) the date of the course.

(3) The time stated in the notice must be at least 28 days after the notice is given to the driver.

(4) The driver must comply with the notice.

Maximum penalty (subclause (4)): 10 penalty units.

37 Authority to be told if driver certification manual lost etc

(1) If a driver's driver certification manual is destroyed, lost or stolen, the driver must tell the Authority, in writing, as soon as practicable (but within 2 business days) after becoming aware that the manual has been destroyed, lost or stolen.

Maximum penalty: 10 penalty units.

- (2) If a lost or stolen driver certification manual (the *earlier manual*) is found or returned to the driver after a replacement driver certification manual has been issued to the driver, the driver must give the earlier manual to the Authority as soon as practicable (but within 3 business days) after the manual is found or returned.

Maximum penalty: 10 penalty units.

Division 4 Obligations of employer participants

38 Application of Division 4

This Division applies to an employer who is registered as an employer participant in TFMS.

39 General obligations

The employer must:

- (a) manage employed heavy truck drivers, including their driving, work and rest times, so that they are able to comply with this Part, and
- (b) ensure that each responsible employee of the employer attends any approved fatigue management training course required under this Division. and
- (c) keep complete and accurate records showing:
 - (i) that the employer has complied with paragraphs (a) and (b), and
 - (ii) the medical examinations undergone by the employer's employed truck drivers for this Schedule, and
 - (iii) the approved fatigue management training courses attended by the employer's employed truck drivers and responsible employees.

Note. Contravention of this Schedule is a ground for cancellation of any employer's registration as an employer participant in TFMS. See clause 90 (b).

40 Authority may ask employers to ensure attendance of responsible employees at training courses

- (1) The Authority may, by written notice given to the employer, ask the employer to:
 - (a) ensure that all or stated responsible employees of the employer attend an approved fatigue management training course (a *training course*), and
 - (b) obtain the certificate mentioned in subclause (2) for each person who finishes a training course from the trainer who conducted the course, and
 - (c) produce each certificate to the Authority for inspection within the time stated in the notice.
 - (2) The certificate must state:
 - (a) the name and address of the trainer, and
 - (b) that the person named in the certificate finished a training course conducted by the trainer, and
 - (c) the date of the course.
 - (3) The time stated in the notice must be at least 28 days after the notice is given to the employer.
 - (4) The employer must comply with the notice.
- Maximum penalty (subclause (4)): 10 penalty units.

Part 4 Driving records

Division 1 Key concepts for Part 4

44 What is a driver's 100 kilometre limit

For the driver of a heavy truck or commercial bus, the *100 kilometre limit* is the circumference of a notional circle of which:

- (a) the centre is the driver's base, and
- (b) the radius is 100 kilometres.

42 What is a driver's base and the garage address of a vehicle

- (1) The *base* of the driver of a heavy truck or commercial bus is the vehicle's garage address.
- (2) The vehicle's *garage address* is the principal depot or base of operations of the vehicle.
- (3) However, if the driver operates and receives instructions from another place that is recorded in the driver's logbook as the driver's base, the other place is the driver's *base*.
- (4) For this clause, if a driver is a self-employed driver and an employed driver at different times, the driver may have one base as a self-employed driver and another base as an employed driver.
- (5) For this clause, if a driver has 2 or more employers, the driver may have a different base in relation to each employer.

43 What is local area work

The driver of a heavy truck or commercial bus is engaged in *local area work* if the driver is driving the vehicle within the driver's 100 kilometre limit.

44 What is non-local area work

The driver of a heavy truck or commercial bus is engaged in *non-local area work* if the driver is driving the vehicle beyond the driver's 100 kilometre limit.

45 What is a driver's logbook

A driver's *logbook* is a logbook issued to the driver under clause 81, and, in this Part, includes a corresponding logbook.

46 What is an approved DSMD

An *approved DSMD* is an automatic recording device of a specification that is approved for a driver-specific monitoring device by the Ministerial Council.

Note. information about approved DSMDs can be obtained from the National Road Transport Commission, PO Box 13105, Law Courts, Melbourne Vic 3001 or through the National Road Transport Commission web site (URL: www.nrtc.gov.au).

47 Driving record definitions

- (1) A *driving record* is:
 - (a) a logbook, or
 - (b) a record made by an approved DSMD under clause 53 (b), or
 - (c) a supplementary record, or
 - (d) a local area management record.
- (2) A *supplementary record* is a record made under clause 54 (When and how supplementary records may be made by drivers).
- (3) A *local area management record* is a record made under Division 3 (Driving records for local area work).

Division 2 Driving records for non-local area work**48 Drivers to have logbooks etc**

- (1) A driver must not engage in non-local area work unless the driver has a logbook in which the driver can record information under this Division in accordance with clause 52 (How information is to be recorded in logbooks).

Maximum penalty: 20 penalty units.

- (2) The driver must carry the logbook while engaging in non-local area work.

Maximum penalty: 20 penalty units.

- (3) It is a defence to an offence against this clause if the driver proves that, at the time of the offence:
 - (a) the driver's logbook had been completed, destroyed, lost or stolen. and
 - (b) the driver had not been issued with a replacement logbook, and
 - (c) not more than 2 days had elapsed since the logbook was completed, destroyed, lost or stolen, and
 - (d) the driver was making a supplementary record in the period.

49 Logbook records to be made by drivers engaged in non-local area work

- (1) This clause applies to a driver for a day on which the driver engages in non-local area work.
- (2) Before the driver's first period of driving or work time anywhere on the day, the driver must record the following information in the driver's logbook:
 - (a) the day of the week and date,
 - (b) the driver's name and current driver licence number,
 - (c) the State or Territory where the licence was issued,

Maximum penalty: 20 penalty units.

- (3) The driver must record the registration number of each heavy truck or commercial bus driven anywhere by the driver on the day in his or her logbook before the driver begins to drive the vehicle for the first time on the day.

Maximum penalty: 20 penalty units.

- (4) Immediately before or after each change of activity on the day, the driver must record the following information in the driver's logbook:

-
- (a) the change of activity,
 - (b) the driving time, other work time or rest time spent anywhere by the driver since the last change of activity,
 - (c) the time and place of the change of activity,
 - (d) if the driver is or becomes a two-up driver—the name and current driver licence number of the other driver in the two-up driving arrangement.

Maximum penalty: 20 penalty units.

- (5) A *change of activity* for the driver is a change from:
 - (a) driving time to other work time, or
 - (b) work time (except driving time) to driving time, or
 - (c) driving time to rest time, or
 - (d) rest time to driving time, or
 - (e) work time (except driving time) to rest time, or
 - (f) rest time to work time (except driving time), or
 - (g) being a solo driver to being a two-up driver, or
 - (h) being a two-up driver to being a solo driver.
- (6) However, if subclause (2), (3) or (4) requires the driver to record information in his or her logbook before beginning to engage in non-local area work on a day, it is a defence to an offence against the subclause if the driver proves that, at the time of the offence:
 - (a) the driver was unaware that the driver would be engaging in non-local area work on the day, and
 - (b) the driver recorded the information in his or her logbook as soon as practicable after becoming aware that the driver would be engaging in non-local area work on the day.
- (7) If this clause (or clause ~~50~~ or 51) applies to 2 drivers who are in a two-up driving arrangement, each driver must separately record information in his or her logbook.

50 Additional logbook records to be made before engaging in non-local area work

- (1) In this clause:

required information means the information mentioned in clause 49 (2), (3) and (4) for the period since the start of the driver's last 6 hour rest break (whether or not the rest break was spent in this jurisdiction), but does not include information for a day on which the driver engages in non-local area work.

Note. Clause 49 deals with information for a day on which the driver engages in non-local area work.

- (2) Before a driver begins to engage in non-local area work on a day, the driver must record the required information in his or her logbook.

Maximum penalty: 20 penalty units.

51 Additional logbook records to be made after engaging in non-local area work

- (1) In this clause:

cut-off time means the start of the driver's next 6 hour rest break, whether or not the rest break is spent in this jurisdiction.

required information means the information mentioned in clause 49 (2), (3) and (4), but does not include information for a day on which the driver engages in non-local area work.

Note. Clause 49 deals with information for a day on which the driver engages in non-local area work.

- (2) After a driver ceases to engage in non-local area work, the driver must continue to record the required information in his or her logbook until the cut-off time.

Maximum penalty: 20 penalty units.

52 How information is to be recorded in logbooks

A driver must make records in a logbook in the following way:

- (a) the information for each day must be written on a separate daily sheet in a logbook that has not been cancelled by the Authority,
- (b) information must be written on a daily sheet as required by the instructions in the logbook for recording information on daily sheets,
- (c) the daily sheets in the logbook must be used in turn from the front of the logbook.
- (d) each daily sheet must be signed and dated by the driver.
- (e) information must be written on a daily sheet with enough pressure to ensure that a readable record of the information appears on the duplicate daily sheet.
- (f) other information must be written in the logbook as required by the instructions in the logbook for the recording of the information.

Maximum penalty: 10 penalty units.

53 Exceptions to logbook record requirements

Clauses 48—52 do not apply to a driver in relation to information if:

- (a) clause 54 (When and how supplementary records may be made by drivers) applies to the driver and the driver records the information in accordance with the clause, or
- (b) the driver records the information using an approved DSMD that is operating as required by the manufacturer's instructions.

54 When and how supplementary records may be made by drivers

- (1) This clause applies to a driver if:
 - (a) the driver's logbook is completed, destroyed, lost or stolen, and
 - (b) the driver has not been issued with a replacement logbook, and
 - (c) 2 business days have not elapsed since the logbook was completed, destroyed, lost or stolen.
- (2) This clause also applies to a driver if:
 - (a) the driver is not carrying a logbook in which the driver can record information under this Division in accordance with clause 52 (How information is to be recorded in logbooks), and
 - (b) the driver is driving a heavy truck or commercial bus fitted with an approved DSMD that is not operating as required by the manufacturer's instructions, and
 - (c) 2 business days have not elapsed since the DSMD ceased to operate as required by those instructions.
- (3) The driver must record information required by clauses 49—51 in a way that is at least as accurate and understandable as, and in a similar form to, records made in a logbook.

Maximum penalty: 20 penalty units.

Division 3 Driving records for local area work

55 Application of Division 3

This Division applies in relation to a driver who is engaged in local area work.

56 Driving records to be made by employers of drivers

- (1) The employer of an employed driver must record the following information:
 - (a) the driver's name,
 - (b) the date of each day when the driver drives a heavy truck or commercial bus,
 - (c) an estimate of the total of the driver's driving, work and rest times on each day when the driver drives a heavy truck or commercial bus,
 - (d) an estimate of the total of the driver's driving, work and rest times for each week in which the driver drives a heavy truck or commercial bus.

Maximum penalty: 20 penalty units.

- (2) The records may be made as part of other records made by the employer.

57 Driving records to be made by self-employed drivers

- (1) A self-employed driver must record the following information:
 - (a) the date of each day when the driver drives a heavy truck or commercial bus.
 - (b) an estimate of the total of the driver's driving, work and rest times on each day when the driver drives a heavy truck or commercial bus.
 - (c) an estimate of the total of the driver's driving, work and rest times for each week in which the driver drives a heavy truck or commercial bus.

Maximum penalty: 20 penalty units.

- (2) The records may be made as part of other records made by the driver.

Division 4 Inspection of driving records**58 Driving records—non—local area work**

- (1) If a driver is engaged in non-local area work, or has been engaged in non-local area work at any time in the last 28 days, the driver must, while driving a heavy truck or commercial bus, carry his or her driving records for the

last 28 days, irrespective of the number of days in that period on which the driver drove a heavy truck or commercial bus.

Maximum penalty: 20 penalty units.

- (2) If an authorised person suspects on reasonable grounds that a driver is engaged in non-local area work, or has been engaged in non-local area work at any time in the last 28 days, the authorised person may ask the driver to produce for inspection his or her driving records for the last 28 days, irrespective of the number of days in that period on which the driver drove a heavy truck or commercial bus.
- (3) The driver must immediately produce his or her driving records for the last 28 days for inspection by the authorised person.

Maximum penalty: 20 penalty units.

- (4) It is a defence to an offence against this clause if, at the time of the offence, the driving records had been destroyed, lost or stolen.
- (5) The authorised person may annotate the driving records, and may sign and date an annotation.
- (6) In this clause:

driving record:

- (a) includes a corresponding driving record, but
- (h) does not include a local area management record.

Division 5 Driving records to be kept

59 Definitions for Division 5

In this Division

driving record includes a corresponding driving record.

local area management record includes a local area management record made under a corresponding law for Division 3.

60 Driving records made by employed drivers-non-local area work

An employed driver must give a copy of the driver's driving records for non-local area work on a day to the driver's employer (or, if the driver has 2 or more employers on the day, a copy of the records to each employer):

- (a) if the driver and employer are both registered participants in TFMS—within 28 days after that day, and
- (b) in any other case—within 21 days after that day.

Maximum penalty: 20 penalty units.

61 Driving records for non-local area work to be kept

- (1) An employer must keep the copy of a driver's driving records given to the employer for the driver's non-local area work on a day for at least 12 months after that day at the place where the employer manages the employment of the driver.

Maximum penalty: 20 penalty units.

- (2) A self-employed driver must keep the driver's driving records for non-local area work on a day for at least 12 months after that day at the driver's base.

Maximum penalty: 20 penalty units.

62 Local area management records to be kept

- (1) An employer must keep local area management records made in relation to a driver for a day for at least 12 months after that day at the place where the employer manages the employment of the driver.

Maximum penalty: 20 penalty units.

- (2) A self-employed driver must keep the driver's local area management records for a day for at least 12 months after that day at the driver's base.

Maximum penalty: 20 penalty units.

63 Authority may ask for driving records to be produced

- (1) The Authority may, by written notice given to a person who is required under this Division to keep driving records, ask the person to produce stated driving records to the Authority for inspection within the time stated in the notice.
- (2) The time stated in the notice must be at least 7 days after the notice is given to the person.
- (3) The person must comply with the notice.

Maximum penalty (subclause (3)): 20 penalty units.

Division 6 Other offences by drivers and employers

64 Authority to be told if logbook lost etc

- (1) If a logbook issued to a driver is destroyed, lost or stolen, the driver must tell the Authority, in writing, as soon as practicable (but within 2 business days) after becoming aware that the logbook has been destroyed, lost or stolen.

Maximum penalty: 10 penalty units.

- (2) If a lost or stolen driver's logbook (the *earlier logbook*) is found or returned to the driver after a replacement logbook has been issued to the driver, the driver must:
 - (a) immediately cancel any unused daily sheets in the earlier logbook by writing "cancelled" in large letters across each unused sheet, and
 - (b) give the earlier logbook to the Authority as soon as practicable (but within 3 business days) after the logbook is found or returned.

Maximum penalty: 10 penalty units.

65 Drivers must not have more than 1 logbook

A driver must not have in his or her possession more than 1 logbook in which information can be recorded on a daily sheet.

Maximum penalty: 20 penalty units

66 Possession of purported driving records etc prohibited

- (1) A driver or employer must not have in his or her possession something purporting to be a driving record or driver certification manual if the driver or employer knows, or reasonably ought to know, that it is not a driving record or driver certification manual.

Maximum penalty: 20 penalty units.

- (2) In this clause:

driver Certification manual includes a corresponding driver certification manual.

driving record includes a corresponding driving record.

67 Drivers to tell employers of incorrectly operating approved DSMDs etc

An employed driver must tell his or her employer as soon as practicable if the driver knows or suspects on reasonable grounds that an approved DSMD fitted in a heavy truck or commercial bus driven by the driver for the employer is not operating as required by the manufacturer's specifications.

Maximum penalty: 20 penalty units.

Note. *Approved DSMD* is defined in clause 46.

Division 7 General driving record offences**68 Definitions for Division 7**

In this Division:

driving record includes a corresponding driving record.

entry, in a driving record, includes an annotation made in the record by an authorised person.

69 False and misleading driving records etc prohibited

A person must not:

- (a) make an entry in a driving record that the person knows, or reasonably ought to know, is false or misleading in a material respect, or

- (b) deface or change an entry in a driving record that the person knows, or reasonably ought to know, is correct.

Maximum penalty: 20 penalty units.

70 False representation of driving records prohibited

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

Maximum penalty: 20 penalty units.

71 Making entries in someone else's driving records prohibited

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

Maximum penalty: 20 penalty units.

- (2) Subclause (1) does not apply if the person is the nominee of a driver and makes the entry in the driver's logbook as required by a logbook exemption applying to the driver.

72 Destruction of certain driving records prohibited

If a driving 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.

Maximum penalty: 20 penalty units.

73 Interference with approved DSMDs prohibited

A person must not interfere with the operation of an approved DSMD.

Maximum penalty: 20 penalty units.

Note. *Approved DSMD* is defined in clause 46.

Part 5 Extended offences**74 Definitions for Part 5**

In this Part:

core driving hours offence means an offence against any of the following provisions or a corresponding law:

- clause 19 (Regulated hours—maximum driving times)
- clause 20 (Regulated hours—maximum work times)
- clause 21 (Regulated hours—required minimum rest times)
- clause 28 (TFMS—maximum driving times)
- clause 29 (TFMS—maximum work times)
- clause 30 (TFMS—required minimum rest times).

driving record offence means an offence against a provision of Part 4 (Driving records) or a corresponding law.

speeding offence means an offence against the law of this or another jurisdiction that involves driving a heavy truck or commercial bus at a speed over the speed-limit.

75 Certain requests etc prohibited

A person must not ask, direct or require, directly or indirectly, a driver to do something if the person knows, or reasonably ought to know, that by complying the driver would, or would be likely to, commit:

- (a) a core driving hours offence, or
- (b) a driving record offence, or
- (c) a speeding offence.

Maximum penalty: 20 penalty units.

Example of requirement

A requirement that is an express or implied condition of the driver's engagement.

76 Special obligation of consignors

A consignor must not engage someone to transport goods or persons by road if the consignor knows, or reasonably ought to know, that by complying with an express or implied condition of the engagement the driver of a heavy truck or commercial bus transporting the goods or persons would, or would be likely to, commit:

- (a) a core driving hours offence, or
- (b) a driving record offence, or
- (c) a speeding offence.

Maximum penalty: 20 penalty units.

Note. *Consignor* is defined in clause 11

77 Special obligation of employers

An employer must not allow an employed driver to drive a heavy truck or commercial bus for the employer if the employer knows, or reasonably ought to know, that by driving the vehicle the driver would, or would be likely to, commit a core driving hours offence.

Maximum penalty: 20 penalty units.

78 Special obligations—rostering and scheduling

- (1) An employer, or a responsible employee of an employer, must not roster driving, work or rest time of an employed driver if the employer or responsible employee knows, or reasonably ought to know, that by complying with the roster the driver would, or would be likely to, commit a core driving hours offence.

Maximum penalty: 20 penalty units.

Note. *Responsible employee* is defined in clause 10 (2)

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- (2) An employer, or a responsible employee of an employer, must not schedule the transport of goods or persons by road if the employer or employee knows, or reasonably ought to know, that by complying with the schedule the driver of the heavy truck or commercial bus transporting the goods or persons would, or would be likely to, commit:

- (a) a core driving hours offence, or
- (b) a speeding offence.

Maximum penalty: 20 penalty units.

Part 6 Issue of logbooks

79 Logbooks

- (1) A logbook is a logbook issued by the Authority that complies with this clause.
- (2) The logbook must contain:
 - (a) a unique identifying number for the logbook, and
 - (b) sequentially numbered sheets for making daily records, and
 - (c) provision for recording information on the daily sheets, and
 - (d) a duplicate of:
 - (i) each daily sheet, and
 - (ii) any application form in the logbook, and
 - (e) instructions for use of the logbook.
- (3) The logbook may contain an application form for the issue of a logbook.
- (4) When the logbook is used as required by the instructions in the logbook, information written on a daily sheet or application form must be automatically copied on the duplicate daily sheet or application form.
- (5) The logbook must be in the form that is approved by the Ministerial Council.

80 Applications for logbooks

- (1) A driver who wishes to be issued with a logbook (including a replacement logbook) must apply in person to the Authority using the application form provided by the Authority.
- (2) If the application is for a logbook to replace a logbook (the *existing logbook*) that has been previously issued to the driver, the driver must give the existing logbook to the Authority with the application unless the existing logbook has been destroyed, lost or stolen.
- (3) If the driver gives the existing logbook to the Authority, the Authority must:
 - (a) cancel any unused daily sheets in the logbook, and
 - (b) return the logbook to the driver when the Authority issues the replacement logbook to the driver.
- (4) If the application is for a logbook to replace a logbook that has been destroyed, lost or stolen, the application must:
 - (a) state the logbook's number and that it has been destroyed, lost or stolen, and
 - (b) briefly outline the circumstances of the destruction, loss or theft.
- (5) An application form provided by the Authority must be in the form that is approved by the Ministerial Council.

81 Issue of logbooks

- (1) The Authority may issue a logbook to a driver if the driver:
 - (a) applies to the Authority in accordance with clause 80, and
 - (b) identifies himself or herself by showing the driver's current driver licence to the Authority. and
 - (c) pays the fee prescribed in Schedule A for the issue of a logbook.

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- (2) If the Authority issues a logbook to a driver, it must annotate the logbook to show the date, time and place of issue.
 - (3) The Authority may also annotate the logbook in other ways.

Part 7 TFMS administration

Division 1 Registration of TFMS participants and issue of driver certification manuals

82 Applications for registration

- (1) If an employed or self-employed heavy truck driver wishes to be registered as a driver participant in TFMS, the driver may apply to the Authority using the application form in a driver certification manual issued by the Authority.
- (2) The application must include the required medical certificate and required training certificates and must be in duplicate.
- (3) If the employer of a heavy truck driver wishes to be registered as an employer participant in TFMS, the employer may apply to the Authority using the application form provided by the Authority.
- (4) An applicant must pay the fee prescribed in Schedule A for registration as a participant in TFMS.

83 Driver certification manuals

- (1) A *driver certification manual* is a manual issued by the Authority that complies with this clause.
- (2) The driver certification manual must contain:
 - (a) an application form for registration as a driver participant in TFMS, including provision for the required medical and training certificates, and
 - (b) provision for a unique identifying number for the manual, and

- (c) provision for other medical and training certificates, and
- (d) provision for recording employers' names and the addresses of places where the employers manage the employment of drivers, and
- (e) provision for recording whether an employer is registered as an employer participant in TFMS and, if so, for recording the employer's TFMS registration number, and
- (f) instructions for use of the manual.

84 What is a required medical certificate

- (1) For clause 82, the *required medical certificate* is a certificate of a doctor who examined the applicant in accordance with the required medical standards within 12 months before the making of the application.
- (2) The medical certificate must state:
 - (a) the name and address of the doctor, and
 - (b) that the doctor examined the applicant in accordance with the required medical standards, and
 - (c) that the applicant met the required medical standards, and
 - (d) the date of the medical examination.

85 What is a required training certificate

- (1) For clause 82, the *required training Certificate* is a certificate by the trainer who conducted an approved fatigue management training course finished by the applicant.
- (2) The training certificate must state:
 - (a) the name and address of the trainer, and
 - (b) that the applicant finished an approved fatigue management training course conducted by the trainer, and
 - (c) the date of the course.

86 TFMS registration and issue of driver certification manuals

- (1) The Authority may, on application made in accordance with clause 82:
 - (a) if the application is for registration as a driver participant in TFMS—register the applicant as a driver participant in TFMS, or
 - (b) if the application is for registration as an employer participant in TFMS—register the applicant as an employer participant in TFMS.
- (2) However, the Authority must not register the applicant if the applicant was previously registered as a participant in TFMS or a corresponding TFMS and the applicant's registration was cancelled less than 3 months before the applicant again applied for registration.
- (3) After registering an applicant as a driver participant in TFMS, the Authority must:
 - (a) give a unique identifying TFMS registration number to the applicant. and
 - (b) annotate the applicant's driver certification manual to show the TFMS registration number and the date and place of registration, and
 - (c) issue the manual to the applicant.
- (4) After registering an applicant as an employer participant in TFMS, the Authority must:
 - (a) give a TFMS registration number to the applicant. and
 - (b) tell the applicant in writing of the number.
- (5) If the Authority decides not to register an applicant. the Authority must give the applicant written reasons for the decision and tell the applicant in writing that the applicant may apply to have the decision reconsidered.

87 Applications for replacement driver certification manuals

- (1) If a driver who is registered as a driver participant in TFMS wishes to be issued with a replacement driver certification manual, the driver must apply to the Authority using the application form provided by the Authority.
- (2) If the application is for a driver certification manual to replace a driver certification manual that has been destroyed, lost or stolen. the application must:
 - (a) state that the manual has been destroyed. lost or stolen, and
 - (b) briefly outline the circumstances of the destruction, loss or theft.
- (3) The Authority may require the driver to give the driver's current driver certification manual to the Authority with the application unless the manual has been destroyed, lost or stolen.
- (4) If the driver gives the current driver certification manual to the Authority, the Authority must return the manual to the driver when the Authority issues a replacement driver certification manual to the driver.

88 Issue of replacement driver certification manuals

- (1) The Authority must issue a replacement driver certification manual to a driver if the driver:
 - (a) applies to the Authority in accordance with clause 87, and
 - (b) pays the fee prescribed in Schedule A for issue of a replacement driver certification manual.
- (2) If the Authority issues a replacement driver certification manual to a driver, the Authority must annotate the manual to show the driver's TFMS registration number and the date, time and place of the driver's TFMS registration.
- (3) The Authority may also annotate the driver certification manual in other ways.

Division 2 Cancellation of registration of TFMS participants**89 Cancellation of TFMS registration on application**

- (1) The Authority may cancel the registration of a person as a driver or employer participant in TFMS if the person applies in writing to the Authority for its cancellation.
- (2) The Authority must tell the person in writing of the Authority's decision.
- (3) If the Authority decides to cancel the registration, the cancellation takes effect on the day when the person is told of the decision by the Authority.
- (4) If the Authority decides not to cancel the registration, the Authority must give the applicant written reasons for the decision and tell the applicant in writing that the applicant may apply to have the decision reconsidered.

90 Grounds for cancellation of TFMS registration except on application

The grounds for cancellation of the registration of a person as a driver or employer participant in TFMS, except on application, are:

- (a) that the person's application for registration was false or misleading in a material respect, or
- (b) that the person has contravened the Act, the regulations under the Act, or a corresponding law, or
- (c) if the person is registered as a driver participant in TFMS—that the person no longer meets the required medical standards.

91 Cancellation of TFMS registration except on application

- (1) This clause applies if the Authority considers that a ground exists to cancel the registration of a person as a driver or employer participant, or as both a driver and employer participant, in TFMS, except on application.

- (2) The Authority must give a written notice to the person that:
 - (a) tells the person of the proposed cancellation, and
 - (b) states the ground for the proposed cancellation. and
 - (c) outlines the facts and other circumstances forming the basis for the ground, and
 - (d) invites the person to state in writing, within a stated time of at least 14 days after the notice is given to the person, why the registration should not be cancelled.
- (3) If, after considering any written statement made within the stated time, the Authority is reasonably satisfied that a ground exists to cancel the registration, the Authority may cancel the registration.
- (4) The Authority must tell the person in writing of the Authority's decision.
- (5) If the Authority decides to cancel the registration, the Authority must also give the person written reasons for the decision and tell the person in writing that the person may apply to have the decision reconsidered.
- (6) The cancellation takes effect:
 - (a) when the person is told by the Authority of the decision and given reasons for the decision, or
 - (b) if the Authority tells the person that the cancellation takes effect at a later time—that time.

92 Notice of cancellation of TFMS registration of employers

If the registration of a person as an employer participant in TFMS is cancelled, the Authority must give written notice of the cancellation to each employed driver of the employer who is registered as a driver participant in TFMS.

Note. TFMS driving, work and rest times apply to an employed driver only if the driver is registered as a driver participant and the driver's employer is registered as an employer participant—see clause 27.

93 Return of driver certification manuals

- (1) If the registration of a person as a driver participant in TFMS is cancelled, the Authority may, by written notice, ask the person to return his or her driver certification manual to the Authority.
- (2) The person must return the manual 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: 10 penalty units.

Division 3 Review and audit of participation of employers and self-employed drivers**94 Application of Division 3**

This Division applies to a person (the *participant*) who is:

- (a) registered as an employer participant in TFMS, or
- (b) registered as a driver participant in TFMS and is, for at least part of the time spent as a driver, a self-employed driver.

95 Reviews of participation required

- (1) The participant must arrange for a review of the person's participation in TFMS as an employer or self-employed driver to be conducted:
 - (a) within 9 months after the participant's registration as a driver or employer participant in TFMS. and
 - (b) before the second and each later anniversary of the registration.

Maximum penalty: 20 penalty units.

- (2) The person conducting the review must report in writing to the participant whether the participant's management practices promote compliance with Part 3 and other relevant provisions of this Schedule by the participant and, if the participant is an employer participant in TFMS, by the participant's employed drivers and responsible employees.

96 Reports of reviews

- (1) The participant must keep the report of a review for at least 2 years after it is given to the participant.

Maximum penalty: 20 penalty units.

- (2) The Authority may, by written notice given to the participant within the 2 year period, ask the participant to give a copy of the report to the Authority within the time stated in the notice.

- (3) The time stated in the notice must be at least 7 days after the notice is given to the participant.

- (4) The participant must comply with the notice.

Maximum penalty (subclause (4)): 20 penalty units.

97 Authority may audit participation

- (1) The Authority may audit the management practices adopted by the participant to promote compliance with Part 3 and other relevant provisions of this Schedule by the participant and, if the participant is an employer participant in TFMS, by the participant's employed drivers and responsible employees.

- (2) For the audit, the Authority may, by written notice given to the participant, ask the participant to give to the Authority within the time stated in the notice:

- (a) for an employer participant—records about any of the following kept by the participant:

- (i) the receipt and storage of records given to the participant by employed drivers for this Schedule.
- (ii) the medical examinations undergone by the participant's employed drivers for this Schedule.
- (iii) the approved fatigue management training courses attended by the participant's employed drivers and responsible employees.

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- (iv) the management of the participant's employed drivers, including their driving, work and rest times, and
 - (b) for a driver participant—records about any of the following kept by the participant:
 - (i) the storage of records made by the participant for this Schedule,
 - (ii) the medical examinations undergone by the participant for this Schedule,
 - (iii) the approved fatigue management training courses attended by the participant,
 - (iv) the management of the driving, work and rest times of the participant,
 - (3) The time stated in the notice must be at least 7 days after the notice is given to the participant.
 - (4) The participant must comply with the notice.
Maximum penalty: 10 penalty units.
 - (5) After examining the records, the Authority:
 - (a) may copy some or all of the records, and
 - (b) must return the records to the participant.

Division 4 Recommendations about TFMS registration

98 Recommendations by Authority

- (1) This clause applies if the Authority considers that a ground exists for a corresponding authority to cancel the registration of a person as a driver or employer participant, or as both a driver and employer participant, in a corresponding TFMS.
- (2) The Authority may recommend in writing that the corresponding authority cancel the registration.
- (3) The Authority must give written reasons to the corresponding authority for the recommendation.

99 Recommendations by corresponding authorities

The Authority must have regard to a written recommendation by a corresponding authority that the Authority cancel the registration of a person as a driver or employer participant, or as both a driver and employer participant, in TFMS.

Part 8 Exemptions

Division 1 Key concepts for Part 8

100 What is an exemption

An *exemption* is an emergency, Fatigue Management Scheme (FMS), limited driving hours or logbook exemption.

101 What is an emergency exemption

- (1) The *emergency-related provisions* are:
 - Part 2 (Regulated hours)
 - Part 3 (Transitional fatigue management scheme), except Divisions 3 (Other obligations of driver participants) and 4 (Obligations of employer participants)
 - Part 4 (Driving records), except Division 7 (General driving record offences).
- (2) An *emergency exemption* is an exemption in force under clause 106 from the emergency-related provisions.

102 What is an FMS exemption

- (1) The *regulated hours provisions* are:
 - Part 2 (Regulated hours)
 - Part 4 (Driving records), except Division 7 (General driving record offences).
- (2) An *FMS exemption* is an exemption in force under clause 108 from the regulated hours provisions.

103 What is a limited driving hours exemption

- (1) A *maximum driving hours provision* is:
 - (a) clause 19 (Regulated hours—maximum driving times) so far as it relates to relevant period 1 or 2, or
 - (b) clause 28 (TFMS—maximum driving times) so far as it relates to relevant period 1 or 2.
- (2) A *limited driving hours exemption* is an exemption in force under clause 110 from a maximum driving hours provision.

104 What is a logbook exemption

- (1) The *logbook provisions* are Division 2 (Driving records for non-local area work) of Part 4 (Driving records).
- (2) A *logbook exemption* is an exemption in force under clause 112 or 113 from the logbook provisions.

Division 2 Emergency exemptions**105 Definitions for Division 2**

In this Division:

eligible person means a person who may drive, or permit someone else to drive, a heavy truck or commercial bus for an emergency service.

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, water supply or sewerage services, or
- (c) is declared to be an emergency or disaster by:
 - (i) the Commonwealth or a State or Territory, or
 - (ii) a Commonwealth, State or Territory authority responsible for managing responses to emergencies or disasters.

Examples of an emergency

Fire, explosion and natural disaster.

emergency service includes an ambulance service, fire brigade, police service or force or national disaster or emergency organisation, of the Commonwealth or a State or Territory.

106 Emergency exemptions

- (1) An eligible person may apply, in accordance with clause 120, for an exemption from the emergency-related provisions for the eligible person, or anyone else acting for an emergency service, in relation to an emergency.

Note. The *emergency-related provisions* are defined in clause 101.

- (2) The Authority may exempt a person from the emergency-related provisions in relation to the emergency.

107 Effect of emergency exemptions

If an emergency exemption applies to a person in relation to an emergency, the emergency-related provisions do not apply to the person in relation to the emergency.

Division 3 FMS exemptions

108 FMS exemptions

- (1) An employer or self-employed driver may apply, in accordance with subclause (2) and clause 120, for an exemption from the regulated hours provisions.

Note. *Regulated hours provisions* is defined in clause 102

- (2) The application must:
 - (a) name any employed drivers covered by the application, and
 - (h) state the driver fatigue management practices that would be followed by the applicant and the employed drivers if the exemption were given, and
 - (c) show that those practices would be at least as effective as the regulated hours provisions.

- (3) The Authority may exempt the applicant, and any or all of the employed drivers named in the application, from the regulated hours provisions if the Authority considers that:
- (a) the driver fatigue management practices stated in the application would, if followed, be at least as effective as the regulated hours provisions in managing driver fatigue, and
 - (b) the applicant and the employed drivers are likely to follow the stated practices effectively and consistently.

109 Effect of FMS exemptions

The regulated hours provisions do not apply to:

- (a) the employer or self-employed driver to whom an FMS exemption applies. and
- (b) if the FMS exemption is given to an employer—an employed driver named in the exemption.

Division 4 Limited driving hours exemptions

110 Limited driving hours exemptions

- (1) An employer or self-employed driver may apply, in accordance with subclause (2) and clause 120, for an exemption from a maximum driving hours provision.

Note. *Maximum driving hours provision* is defined in clause 103.

- (2) The application must:
- (a) name any employed drivers, or describe any class of employed drivers, covered by the application. and
 - (b) state the driver fatigue management practices that would be followed by the applicant and the employed drivers if the exemption were given, and
 - (c) show that the practices would be at least as effective as the maximum driving hours provision.

1998 No 649

Motor Traffic Amendment (Driving Hours) Regulation 1998

Schedule 1 Amendments

- (3) The Authority may exempt the applicant, and any or all employed drivers named, or included in a class of drivers described, in the application, from the maximum driving hours provision if the Authority considers that:
 - (a) compliance with the provision would be an unreasonable restriction on operations conducted by the applicant, and
 - (b) the driver fatigue management practices stated in the application would, if followed, be at least as effective as the provision in managing driver fatigue, and
 - (c) the applicant and the employed drivers are likely to follow the stated practices effectively and consistently.

111 Effect of limited driving hours exemptions

A maximum driving hours provision does not apply to:

- (a) the employer or self-employed driver to whom a limited driving hours exemption applies, and
- (b) if the limited driving hours exemption is given to an employer—anemployed driver named, or included in a class of drivers described, in the exemption.

Division 5 Logbook exemptions

112 Logbook exemptions—literacy

- (1) A driver may apply, in accordance with this clause and clause 120, for exemption from the logbook provisions.

Note. *Logbook provisions* is defined in clause 104.

- (2) The application must nominate a person (the *nominee*) to make written driving records for the driver.
- (3) The nominee must agree to the nomination in writing.
- (4) The nominee's agreement must accompany, or be included in, the application.

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- (5) The Authority may exempt the driver from the logbook provisions if the Authority considers that the driver cannot make the records in the driver's logbook because of an English literacy disability.

113 Other logbook exemptions

- (1) An employer may apply, in accordance with subclause (2) and clause 120, for an exemption from the logbook provisions for a driver or drivers employed by the employer.
- (2) An application must state how, if the exemption were given, the employer and the driver or drivers concerned would make records that are no less complete and accurate than records made in accordance with the logbook provisions.
- (3) The Authority may exempt a driver or drivers from the logbook provisions if the Authority considers that the driver or drivers and the employer will make records that are no less complete and accurate than records made in accordance with the logbook provisions.
- (4) An application for an exemption under this clause can be made, and the exemption granted, in respect of drivers designated by the employer from time to time as the drivers to whom the exemption is to apply.

114 Effect of logbook exemptions

The logbook provisions do not apply to a driver to whom a logbook exemption applies.

Division 6 Variation and cancellation of exemptions

115 Variation and cancellation of exemptions on application

- (1) The Authority may, on application made in accordance with clause 120, vary or cancel an exemption.
- (2) The variation or cancellation takes effect on the day when the applicant is told of the decision by the Authority.

116 Grounds for variation of exemptions except on application

The grounds for variation of an exemption, except on application, are:

- (a) that the application for the exemption was false or misleading in a material respect but the circumstances do not require its cancellation, or
- (b) that a person to whom the exemption applies is no longer suitable to be a person to whom the exemption applies without variation because the person has contravened the Act, the regulations under the Act, or a corresponding law. or
- (c) that:
 - (i) since the exemption was given, a change has happened in relation to something the Authority must consider in deciding whether to give an exemption of that kind. and
 - (ii) the exemption would have been given as it is proposed to be varied if the change had happened before the exemption was given.

117 Grounds for cancellation of exemptions except on application

The grounds for cancellation of an exemption. except on application, are:

- (a) that the application for the exemption was false or misleading in a material respect, or
- (b) that a person to whom the exemption applies is no longer suitable to be a person to whom the exemption applies because the person has contravened the Act, the regulations under the Act. or a corresponding law, or

- (c) that:
 - (i) since the exemption was given, a change has happened in relation to something the Authority must consider in deciding whether to give an exemption of that kind, and
 - (ii) the exemption would not have been given if the change had happened before the exemption was given.

118 Variation and cancellation of exemptions except on application

- (1) This clause applies if the Authority considers that a ground exists to vary or cancel an exemption, except on application.
- (2) The Authority must give the person to whom the exemption was given a written notice that:
 - (a) if the Authority proposes to vary the exemption—tells the person of the proposed variation, and
 - (b) if the Authority proposes to cancel the exemption—tells the person of the proposed cancellation, and
 - (c) states the ground for the proposed variation or cancellation, and
 - (d) outlines the facts and other circumstances forming the basis for the ground, and
 - (e) invites the person to state in writing, within a stated time of at least 14 days after the notice is given to the person, why the exemption should not be varied or cancelled.
- (3) If, after considering any written statement made within the stated time, the Authority is reasonably satisfied that a ground exists to take the proposed action, the Authority may:

1998 No 649

Motor Traffic Amendment (Driving Hours) Regulation 1998

Schedule 1 Amendments

- (a) if the proposed action is to vary the exemption in a stated way—vary the exemption in that way, and
 - (b) if the proposed action is to cancel the exemption—cancel the exemption or vary the exemption in any way.
- (4) The Authority must tell the person in writing of the Authority's decision.
- (5) If the Authority decides to vary or cancel the exemption, the Authority must also give the person written reasons for the decision and tell the person in writing that the person may apply to have the decision reconsidered.
- (6) The variation or cancellation takes effect:
 - (a) when the person is told by the Authority of the decision and given reasons for the decision, or
 - (b) if the Authority tells the person that the variation or cancellation takes effect at a later time—that time.

119 Return of exemptions etc

- (1) If a written exemption given to a person is varied or cancelled, the Authority may, by written notice, ask the person to return the exemption to the Authority.
- (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: 10 penalty units.
- (3) If the exemption has not been cancelled, the Authority must give the person a replacement exemption.

Division 7 Exemptions generally

120 Applications for exemption

- (1) An application for an exemption, or for variation or cancellation of an exemption, must be made to the Authority in writing.

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- (2) However, an application for an emergency exemption, or for variation of an emergency exemption given orally, may be made to the Authority orally in urgent circumstances.
- (3) A written application for an exemption (except an emergency exemption) must state:
- (a) the full name, and TFMS registration number (if any), of the applicant, and
 - (b) the exemption to which the application relates, and
 - (c) if the applicant is a driver—the address of the driver's base, and
 - (d) if the applicant is an employer—the address of the place where the employer manages the employment of drivers covered by the application.
- (4) In an application for an exemption, the applicant may state the period for which the exemption is sought and any conditions to which the exemption is sought to be subject.
- (5) If the application is a written application for variation or cancellation of a written exemption:
- (a) the applicant must give the exemption to the Authority with the application, and
 - (b) the application must:
 - (i) for an application for variation of an exemption—state clearly the variation sought, and
 - (ii) outline why the exemption should be varied or cancelled.
- (6) The Authority may require the applicant to give the Authority any necessary additional information.
- (7) If the application is made in writing, a requirement under subclause (6) must be made by written notice given to the applicant.
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121 Decisions by Authority on exemption applications

- (1) The Authority must decide an application for an exemption, or for variation or cancellation of an exemption, as soon as practicable after the Authority receives the application.
- (2) If the Authority decides to give the applicant an exemption, the Authority must give the applicant a written exemption.
- (3) If the Authority decides to vary an exemption on application, the Authority must give the applicant a written replacement exemption.
- (4) In any other case, the Authority must tell the applicant in writing of the Authority's decision.
- (5) If the Authority does not make the decision sought by the applicant, the Authority must also give the applicant written reasons for the decision and tell the applicant in writing that the applicant may apply to have the decision reconsidered.

122 Duration of exemptions

- (1) An exemption takes effect on the day when the applicant is told of the Authority's decision to give the exemption.
- (2) An exemption applies for the period (not longer than 3 years) stated in the exemption.

123 Conditions of exemptions

An exemption may be given subject to a condition stated in the exemption.

124 Replacement of lost etc exemptions

- (1) If the Authority is satisfied that a written exemption given to a person by the Authority has been defaced, destroyed, lost or stolen, the Authority must give the person a replacement exemption as soon as practicable.

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- (2) If the Authority decides not to give a replacement exemption to a person who applies to the Authority for a replacement exemption, the Authority must give the person written reasons for the decision and tell the person that the person may apply to have the decision reconsidered.

125 Failure to comply with conditions of exemptions

A person to whom an exemption (except an FMS exemption) is given must not contravene a condition of the exemption.

Maximum penalty: 20 penalty units.

126 Authority to tell corresponding authorities of certain decisions

- (1) If the Authority gives an exemption to a person, the Authority must tell each corresponding authority and give the corresponding authority details of the exemption.
- (2) If the Authority varies or cancels an exemption, the Authority must tell each corresponding authority.

Division 8 Special exemptions by order of the Minister

127 Minister's power to grant exemptions

- (1) The Minister may, by order published in the Gazette, exempt a specified class or description of heavy trucks or commercial buses, or a specified class or description of drivers of heavy trucks or commercial buses, from the operation of all or specified provisions of this Schedule.
- (2) Without limiting subclause (1), a class of vehicle or driver can be defined for the purposes of such an exemption by reference to the nature, circumstances or purpose of the journey undertaken or the nature, size or description of the load carried on the journey.

Part 9 Enforcement, review and other matters

Division 1 Provisions about offences

128 Deciding whether persons ought reasonably to have known

If, in a prosecution for an offence against a provision of this Schedule, it is relevant to prove that someone ought reasonably to have known something, the issue must be decided having regard to:

- (a) the person's abilities, experience, qualifications and training, and
- (b) the circumstances of the offence.

129 Limited jeopardy

- (1) In this clause:

day means a day of the week.

fortnight means a period of 14 days beginning on a Monday.

month means a period of 28 days beginning on a Monday.

regulated hours offence provision means any of the following provisions:

- clause 19 (Regulated hours—maximum driving times)
- a clause 20 (Regulated hours—maximum work times)
- a clause 21 (Regulated hours—required minimum rest times).

TFMS offence provision means any of the following provisions:

- a clause 28 (TFMS—maximum driving times)
- a clause 29 (TFMS—maximum work times)
- clause 30 (TFMS—required minimum rest times).

week means a period of 7 days beginning on a Monday.

- (2) A driver is not liable for more than:
- (a) 3 offences against a particular regulated hours offence provision for any relevant period 1 on the same day, or
 - (b) 2 offences against a particular regulated hours offence provision for any relevant period 2 on the same day, or
 - (c) 2 offences against a particular regulated hours offence provision for any relevant period 2A in the same week, or
 - (d) 2 offences against a particular regulated hours offence provision for any relevant period 3 in the same week, or
 - (e) 4 offences against clause 21 for any relevant period 4 in the same month.
- (3) A driver is not liable for more than:
- (a) 3 offences against a particular TFMS offence provision for any relevant period 1 on the same day, or
 - (b) 2 offences against a particular TFMS offence provision for any relevant period 2 on the same day, or
 - (c) 2 offences against a particular TFMS offence provision for any relevant period 3 in the same fortnight.
- (4) A reference in this clause to a *relevant period* is:
- (a) in relation to an offence against a regulated hours offence provision—a reference to a relevant period within the meaning given by clause 18, or
 - (b) in relation to an offence against a TFMS offence provision—a reference to a relevant period within the meaning given by clause 26.

Division 2 Additional enforcement powers

130 Driver to stop and provide information

- (1) An authorised person may direct the driver of a motor vehicle that appears to be a heavy truck or commercial bus to do any of the following:
 - (a) stop the vehicle and keep the vehicle stopped for such time as is necessary for the completion of any inquiries about compliance with this Schedule,
 - (b) move the vehicle to a place nearby, for the purpose of inspection or inquiries, being a place where the vehicle may lawfully stand without danger to the public and without causing undue traffic congestion or obstruction,
 - (c) produce for inspection that driver's driver licence and state his or her name and address.
 - (d) produce for inspection such consignment notes, bills of lading, receipts, orders or such other documents as relate to the journey being undertaken as are in the possession of the driver.
- (2) An authorised person who is not a police officer who gives a direction under subclause (1) requiring a driver to stop a vehicle must:
 - (a) wear a uniform issued by the Authority, and
 - (b) give the direction by means of a sign containing the word "STOP" and the matter "RTA" and the insignia of the Authority.
- (3) A person must not:
 - (a) fail to comply with a direction given under this clause, or
 - (b) obstruct or hinder an authorised person in the exercise of a power conferred by this clause.

131 Information about exemptions

- (1) An authorised person may ask the driver of a heavy truck or commercial bus whether an exemption applies to the driver.
- (2) If the driver claims that an exemption applies to the driver, the authorised person may ask the driver:
 - (a) what kind of exemption applies to the driver, and
 - (b) to produce the exemption, or an exact copy, for inspection.
- (3) Subclause (5) applies to the driver if:
 - (a) the driver does not immediately produce the exemption, or an exact copy, for inspection when asked to produce the exemption by the authorised person, or
 - (b) the driver does not answer a question that the authorised person asks the driver under subclause (1) or (2).
- (4) However, subclause (5) does not apply if the driver has not yet received the exemption or an exact copy of the exemption.
- (5) For the application of Part 2 (Regulated hours) or 3 (Transitional fatigue management scheme) to the driver, the driver is taken not to have been at any time in the last 336 hours a person to whom the exemption applies.

Example

If, for a relevant period under Part 2, the driver's total driving time exceeds the driver's maximum driving time, the driver can be dealt with for an offence against clause 19 (Regulated hours—maximum driving times), whether or not an FMS or limited driving hours exemption applies to the driver.

- (6) In this clause:

exact copy, of an exemption, means a copy that is identical in all material respects to the exemption.

132 Information about TFMS etc

- (1) An authorised person may ask the driver of a heavy truck whether the driver is registered as a driver participant in TFMS.
- (2) If the driver claims to be registered as a driver participant in TFMS, the authorised person may ask the driver:
 - (a) to produce his or her current driver certification manual for inspection, and
 - (b) whether the driver is an employed driver.
- (3) If the driver claims to be an employed driver, the authorised person may ask the driver:
 - (a) the employer's name and the address of the place where the employer manages the employment of drivers. and
 - (b) whether the employer is registered as an employer participant in TFMS. and
 - (c) if so, the employer's TFMS registration number.
- (4) Subclause (5) applies to the driver if:
 - (a) the driver does not immediately produce his or her driver certification manual for inspection when asked to produce it by the authorised person. or
 - (b) the driver does not answer a question that the authorised person asks him or her under this clause.
- (5) For the application of Part 2 (Regulated hours) to the driver. the driver is taken not to have been at any time in the last 336 hours registered as a driver participant in TFMS.

Example

f for a relevant period under Part 2, the driver's total driving time exceeds the driver's maximum driving time, the driver can be dealt with for an offence against clause 19 (Regulated hours—maximum driving times), whether or not the driver is registered as a driver participant in TFMS.

- (6) In this clause:

driver certification manual includes a corresponding driver certification manual.

TFMS includes a corresponding TFMS.

133 information about driver's base

- (1) An authorised person may ask the driver of a heavy truck or commercial bus to produce his or her logbook for inspection to see whether a place other than the vehicle's garage address is recorded in the logbook as the driver's base.
- (2) Subclause (3) applies if the driver does not immediately produce his or her logbook for inspection when asked to produce it by the authorised person.
- (3) For the application of Part 4 (Driving records) to the driver, the driver's base is taken to be the vehicle's garage address.
- (4) In this clause:
- logbook* includes a corresponding logbook.

134 Information about whether drivers engaged in non-local area work

- (1) An authorised person may ask the driver of a heavy truck or commercial bus whether:
- (a) the driver is engaged in local area work or non-local area work, or
- (b) the driver has engaged in non-local area work at any time in the last 28 days.
- (2) The driver must answer a question that the driver is asked under subclause (1)

Maximum penalty: 20 penalty units

135 False and misleading statements to Authority and authorised persons

A person must not make a statement or furnish information to the Authority or an authorised person in connection with the exercise of a function of the Authority or authorised person under this Schedule that the person knows, or reasonably ought to know, is false or misleading in a material respect.

Maximum penalty: 20 penalty units.

136 Authorised persons may enter certain places etc

- (1) An authorised person may, for monitoring or enforcing compliance with the provisions of this Schedule:
 - (a) enter a place where records are required to be kept under this Schedule, and
 - (b) inspect, and copy and take extracts from, any records kept at the place, and
 - (c) take into the place the persons who, and the equipment and materials that, the authorised person reasonably requires to exercise a power under paragraph (b), and
 - (d) require a person in the place to give the authorised person reasonable help to exercise a power under paragraph (b) or (c).
- (2) The entry may be made at any time during usual business hours or, with the consent of the occupier, at any other time.
- (3) A person must comply with a requirement under subclause (1) (d).

Maximum penalty: 20 penalty units.

137 Driver directed not to drive

- (1) If an authorised person suspects on reasonable grounds that the driver of a motor vehicle to which this Schedule applies is driving, or has driven, in contravention of a provision of this Schedule, an authorised person may

direct that person to cease driving until sufficient time has elapsed to enable that person to commence driving without contravening a provision of this Schedule.

- (2) A person must not fail to comply with a direction under this clause.

Maximum penalty: 20 penalty units.

Division 3 Reconsideration and review

138 Certain decisions may be reconsidered

The following decisions of the Authority are decisions to which this Division applies:

Column 1	Column 2	Column 3
Item	Clause under which decision is made	Brief description of decision
1	86	decision not to register applicant for TFMS
2	89	decision not to cancel TFMS registration on application
3	91	decision to cancel TFMS registration except on application
4	106	decision not to give an emergency exemption (or not to give the exemption for a person sought to be covered by the exemption)
5	108	decision not to give an FMS exemption (or not to give the exemption for an employed driver sought to be covered by the exemption)

1998 No 649

Motor Traffic Amendment (Driving Hours) Regulation 1998

Schedule 1 Amendments

Column 1	Column 2	Column 3
Item	Clause under which decision is made	Brief description of decision
6	110	decision not to give a limited driving hours exemption (or not to give the exemption for an employed driver sought to be covered by the exemption)
7	112 or 113	decision not to give a logbook exemption
8	115	decision not to vary or cancel an exemption on application
9	118	decision to vary or cancel an exemption except on application
10	112	decision to give an exemption for less than 3 years or the period sought by the applicant
11	123	decision to give an exemption subject to a condition not sought by the applicant
12	124	decision not to give a replacement exemption

139 Reconsideration of decisions

- (1) A person affected by a decision to which this Division applies (an *initial decision*) may ask the Authority in writing to reconsider the decision.
- (2) The request must be made within:
 - (a) 28 days after the person or someone else affected by the decision was told of the initial decision, and given reasons for the decision, by the Authority, or
 - (b) any longer period allowed by the Authority.

Note 1. Under clause 86 (5), an applicant for TFMS registration must be told of the Authority's decision not to register the applicant.

Note 2. Under clause 89 (4), an applicant for cancellation of TFMS registration must be told of the Authority's decision not to cancel the registration.

Note 3. Under clause 91 (4), a person whose TFMS registration is cancelled must be told of the Authority's decision to cancel the registration.

Note 4. Under clause 118 (4), a person whose exemption is varied or cancelled must be told of the Authority's decision.

Note 5. Under clause 121, a person who applies for an exemption, or for variation or cancellation of an exemption, must be told of the Authority's decision.

- (3) The request must state the decision sought by the person and outline why the decision should be made.
- (4) Within 28 days after receiving the request, the Authority must reconsider the initial decision and:
 - (a) confirm the decision, or
 - (b) vary the decision, or
 - (c) set the decision aside and substitute a new decision.
- (5) The Authority must tell the person in writing of the result of the reconsideration and, if the Authority does not make the decision sought by the person:
 - (a) give the person written reasons for the reconsidered decision, and
 - (b) (if clause 140 applies to the decision) tell the person in writing that the person may apply to the Administrative Decisions Tribunal to have the decision reviewed by the Tribunal.

140 Review of decisions

- (1) A person dissatisfied with a decision that has been reconsidered under clause 139 may apply to the Administrative Decisions Tribunal for a review of the decision.
- (2) This clause applies only to a decision reconsidered more than 6 months after the commencement of this clause.

Division 4 Miscellaneous

141 Authorised persons

- (1) The Authority may appoint a person to be an authorised person for this Schedule.
- (2) The Authority may appoint a person only if the Authority is satisfied that the person has the qualifications or experience to be an authorised person.

142 Identity cards

- (1) The Authority must give an identity card to each authorised person who is not a police officer.
- (2) The card must contain:
 - (a) a recent photograph of the person. and
 - (b) the person's name or, a unique identification number. and
 - (c) the date of issue of the card, and
 - (d) a date of expiry for the card.
- (3) If a person who is not a police officer ceases to be an authorised person, the person must return his or her identity card to the Authority within 7 days.

Maximum penalty: 2 penalty units.

143 Identification of authorised persons

- (1) An authorised person who is not a police officer. and is not in uniform. may exercise a power in relation to another person only if the authorised person:
 - (a) produces his or her identity card for the other person's inspection, or
 - (b) has his or her identity card displayed so it is clearly visible.
- (2) However, if for any reason it is not practicable to comply with subclause (1) before exercising the power and the other person requests the authorised person to produce evidence of the authorised person's authority, the authorised person must produce the identity card for inspection by the other person.

144 Savings and transitional

- (1) A logbook that is an authorised logbook for the purposes of Part 11A of these Regulations immediately before the repeal of that Part is taken to be a logbook for the purposes of this Schedule.
- (2) A logbook that is an authorised logbook (as referred to in subclause (1)) because of the operation of Regulation 126HA before its repeal ceases to be a logbook for the purposes of this Schedule on 5 April 1999.
- (3) An entry made in a logbook under and for the purposes of Part 11A of these Regulations as in force before the repeal of that Part is taken to have been made under and for the purposes of this Schedule.

Dictionary (Schedule O)

(Clause 6)

6 hour rest break means a rest time that is a single period of at least 6 hours.

100 kilometre limit see clause 41

ADR 42 means the national standard described as ADR 42 as in force from time to time under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

another jurisdiction see clause 15 (2).

approved DSMD see clause 46.

approved fatigue management training course means a fatigue management training course of a kind that is approved by the Ministerial Council.

Note. information about approved fatigue management training courses can be obtained from the National Road Transport Commission, PO Box 13105, Law Courts, Melbourne Vic 3001.

approved sleeper berth means a driver's sleeper berth complying with a standard for sleeper berths that is approved for commercial buses by the Ministerial Council.

authorised person means:

- (a) a police officer, or
- (b) a person appointed under clause 141.

base see clause 42.

business day means a day that is not a Saturday, Sunday or public holiday in this jurisdiction.

combination means a group of vehicles consisting of a motor vehicle connected to 1 or more vehicles.

commercial bus see clause 8 (3)

consignor see clause 11.

core driving hours offence see clause 74.

corresponding authority means the authority of another jurisdiction corresponding to the Authority.

corresponding driver certification manual. for a driver, means a manual issued to the driver under a corresponding law for clause 86 or 88.

corresponding driving record means:

- (a) a corresponding logbook, or
- (b) a record made by an approved DSMD under a corresponding law for clause 53 (b), or
- (c) a supplementary record under a corresponding law for clause 54 (When and how supplementary records may be made by drivers), or
- (d) a local area management record under a corresponding law for Division 3 (Driving records for local area work) of Part 4 (Driving records).

corresponding law, for this Schedule or a provision. or provisions, of this Schedule or of the Act as it applies to this Schedule. means the law in force in another jurisdiction corresponding to this Schedule or the provision or provisions.

corresponding logbook, for a driver, means a logbook issued to the driver under a corresponding law for clause 81.

corresponding TFMS means a transitional fatigue management scheme established under a corresponding law that includes provisions having the same. or substantially the same. effect as the following provisions:

- Part 3 (Transitional fatigue management scheme)
- Part 4 (Driving records), except Division 2 (Driving records for non-local area work), and clause 62 (Local area management records to be kept).
- Parts 6 (Issue of logbooks) and 7 (TFMS administration)
- clause 129 (Limited jeopardy)
- Division 2 (Additional enforcement powers) of Part 9 (Enforcement. review and other matters).

doctor means a person who is registered as a medical practitioner under a law of a State or Territory.

driver see clause 9 (1).

driver certification manual:

- (a) see clause 83 (1), and
- (b) for a driver, means a manual issued to the driver under clause 86 or 88.

driver licence ==

- (a) means a licence issued under a State or Territory law authorising the licensee to drive a motor vehicle, and
- (b) until the licence is issued, includes the receipt for the licence fee.

Note. See also definition of ***licence***.

driving see clause 12 (1).

driving record:

- (a) see clause 47 (1), and
- (b) for Division 5 of Part 4—see also clause 59, and
- (c) for Division 7 of Part 4—see also clause 68.

driving record offence see clause 74.

driving time see clause 12 (2).

duplicate daily sheet means the duplicate of a daily sheet in a logbook or corresponding logbook.

eligible person see clause 105.

emergency see clause 105.

emergency exemption see clause 101 (2).

emergency-related provisions see clause 101 (1).

emergency service see clause 105.

employed driver see clause 9 (2).

employer see clause 10 (1).

entry see clause 68.

exemption see clause 100 and also clause 7 (a).

FMS see clause 100.

FMS exemption see clause 102 (2).

garage address see clause 42 (2).

GVM, for a vehicle, means the maximum loaded mass of the vehicle:

- (a) specified by the manufacturer on an identification plate on the vehicle, or
- (b) if there is no specification by the manufacturer on an identification plate on the vehicle or if the specification is not appropriate because the vehicle has been modified—certified by the Authority or a corresponding authority.

heavy truck see clause 8 (1).

identity card, for an authorised person, means a card given to the authorised person under clause 142 (1).

licence includes a conditional, probationary or provisional licence, but does not include a learner licence.

limited driving hours exemption see clause 103 (2).

local area management record:

- (a) see clause 47 (3), and
- (b) for Division 5 of Part 4—see also clause 59.

local area work see clause 43.

logbook:

- (a) see clause 79 (1), and
- (b) for a driver—see clause 45

logbook exemption see clause 104 (2).

logbook provisions see clause 104 (1).

maximum driving hours provision see clause 103 (1).

maximum driving times see:

- (a) for Part 2—clause 19. and
- (b) for Part 3—clause 28 (1).

maximum work times see:

- (a) for Part 2—clause 20. and
- (b) for Part 3—clause 29 (1).

Ministerial Council means the Ministerial Council for Road Transport established by Part VI of the Heavy Vehicles Agreement set out in Schedule 1 to the *National Road Transport Commission Act 1991* of the Commonwealth.

nominee see clause 112 (2).

non-local area work see clause 44.

non-regulated zone see clause 15 (5).

participant see clause 94.

regulated hours provisions see clause 102 (1).

regulated zone see clause 15 (4).

relevant jurisdiction see clause 15 (3).

relevant period see:

(a) for Part 2—clause 18, and

(b) for Part 3—clause 26.

required medical certificate see clause 84 (1).

required medical standards means the standards for medical examinations in the edition of the publication, published by the Federal Office of Road Safety and the National Road Transport Commission, entitled *Medical Examinations of Commercial Vehicle Drivers* that is current at the commencement of this definition.

required minimum rest times see:

(a) for Part 2—clause 21, and

(b) for Part 3—clause 30 (1).

required training certificate see clause 85 (1).

responsible employee see clause 10 (2).

rest time see clause 14.

road see clause 5 (2).

road-related area see clause 5 (3).

self-employed driver see clause 9 (3).

solo driver means a driver who is not a party to a two-up driving arrangement.

speeding offence see clause 74.

supplementary record see clause 47 (2).

TFMS see clause 24 (1) (a).

this jurisdiction see clause 15 (1).

two-up driver means the driver of a heavy truck or commercial bus who is a party to a two-up driving arrangement.

two-up driving arrangement means an arrangement under which 2 drivers share the driving of:

- (a) a heavy truck with a sleeper berth complying with ADR 42, or
- (b) a commercial bus with an approved sleeper berth.

variation of an exemption. see clause 7 (b).

work time see clause 13 (1).