



New South Wales

Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008

under the

Road Transport (General) Act 2005

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (General) Act 2005*.

MICHAEL DALEY, M.P.,
Minister for Roads

Explanatory note

The object of this Regulation is to amend the *Road Transport (General) Regulation 2005* to put in place measures with respect to the prevention and management of driver fatigue, and speeding compliance, in relation to heavy vehicles and heavy combinations.

The National Transport Commission has prepared, and the Australian Transport Council has approved, model legislation for adoption by the States and Territories of Australia relating to heavy vehicle driver fatigue and heavy vehicle speeding compliance.

This Regulation inserts two new Parts, Part 6 (Heavy vehicle driver fatigue) and Part 7 (Heavy vehicle speeding compliance) into the *Road Transport (General) Regulation 2005* to substantially give effect to that model legislation.

New Part 6 contains provisions that deal with the following matters:

- (a) the duties of certain persons to avoid and prevent heavy vehicle driver fatigue (Division 2),
- (b) the regulation of work time and rest time for drivers of heavy vehicles, whether under a standard hours, Basic Fatigue Management (BFM) or Advanced Fatigue Management (AFM) regime (Division 3),
- (c) the keeping of driving records, including written and electronic work diaries, (Division 4),
- (d) the granting of BFM and AFM accreditation and of exemptions from certain requirements of the new Part (Division 5),
- (e) decision making in relation to the heavy vehicle driver fatigue regime, including referral and interstate mutual recognition of decisions and review and reconsideration of decisions (Division 6),

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(f) other minor, consequential and ancillary matters (Divisions 1 and 7).

New Part 7 contains provisions that deal with the following matters:

(a) specific duties of certain persons to ensure that a driver of a heavy vehicle will not exceed any speed limit relating to that vehicle (Division 2),

(b) other minor, consequential and ancillary matters (Divisions 1 and 3).

The Regulation also makes other consequential amendments to other provisions of the *Road Transport (General) Regulation 2005*.

This Regulation is made under the *Road Transport (General) Act 2005*, including sections 10 (the general regulation-making power), 11B and 11C.

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1 Name of Regulation

This Regulation is the *Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008*.

2 Commencement

This Regulation commences on 29 September 2008.

3 Amendment of Road Transport (General) Regulation 2005

The *Road Transport (General) Regulation 2005* is amended as set out in Schedule 1.

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Schedule 1 Amendments

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(Clause 3)

[1] **Clause 25 Appeals against revocation of interlock device approvals**

Omit clause 25 (1).

[2] **Clause 26, heading**

Omit the heading to clause 26. Insert instead:

26 Determination of appeals concerning revocation of interlock device approvals

[3] **Parts 6 and 7**

Insert after Part 5:

Part 6 Heavy vehicle driver fatigue

Division 1 General

39 Definitions

Note. Several terms used in this Part are defined in the Act, including *authorised officer*, *Authority*, *combination*, *driver licence*, *GVM*, *motor vehicle*, *road*, *road related area* and *transport documentation*.

In this Part:

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.

AFM accreditation—see clause 102.

AFM standards and business rules means the standards and business rules for AFM approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.

approved sleeper berth means:

- (a) for a heavy truck—a driver's sleeper berth that complies with ADR 42 or with a standard for sleeper berths that is approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette and is able to be used by the driver when taking rest, or
- (b) for a bus—a driver's sleeper berth that complies with a standard for sleeper berths that is approved by the Australian Transport Council by notice published in the

Commonwealth Government Gazette and is able to be used by the driver when taking rest.

associate has the same meaning as in section 23 of the Act.

Australian Transport Council means the Australian Transport Council referred to in section 4 of the *National Transport Commission Act 2003* of the Commonwealth or its successor and, in relation to any particular matter, includes a person who, or a body that, has been authorised by the Australian Transport Council to act as its delegate in relation to that matter.

base, in relation to a driver—see clause 74.

BFM accreditation—see clause 102.

BFM standards and business rules means the standards and business rules for BFM approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.

bus means a motor vehicle built mainly to carry people that seats over 12 adults (including the driver).

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

consignee of goods means:

- (a) a person who, with that person's authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the transport of the goods by road, or
- (b) a person who actually receives the goods after completion of their transport by road,

but does not include a person who merely unloads the goods.

consignor of goods means:

- (a) a person who, with that person's authority, is named or otherwise identified as the consignor of the goods in the transport documentation relating to the transport of the goods by road, or
- (b) a person who engages an operator of a vehicle or combination, either directly or indirectly or through an agent or other intermediary, to transport the goods by road, or
- (c) a person who has possession of, or control over, the goods immediately before the goods are transported by road, or
- (d) a person who loads a vehicle with the goods, for transport by road, at a place where goods in bulk are stored or temporarily held and that is usually unattended (except by

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a driver of the vehicle, a trainee driver or any person necessary for the normal operation of the vehicle) during loading, or

- (e) if paragraphs (a) to (d) do not apply to the person or anyone else, and the goods are imported into Australia—a person who imports the goods.

corresponding Authority, in relation to a participating jurisdiction, means the Authority as defined in the relevant corresponding fatigue law.

corresponding fatigue law, for this Part or a provision of this Part, means a law in force in another jurisdiction corresponding to this Part or a provision of this Part.

driver means a driver of a regulated heavy vehicle and includes an employed driver and a self-employed driver.

Note. **Driver** is defined in the Act.

duplicate daily sheet means the duplicate of a daily sheet in a work diary or corresponding work diary.

electronic work diary means a system of recording information electronically:

- (a) that has attached to each device that forms part of the system a label:
- (i) that indicates that the device is, or is part of, an electronic work diary that is the subject of a current approval of the Authority under Subdivision 6 of Division 4, and
 - (ii) that states the number of the certificate of approval issued by the Authority in respect of the approval, and
 - (iii) that is in a form approved by the Authority, and
- (b) that is the subject of a current approval of the Authority under Subdivision 6 of Division 4.

employed driver means a driver who is employed by another person to drive a regulated heavy vehicle.

employer means a person who engages someone else to drive a regulated heavy vehicle under a contract of employment, apprenticeship or training.

Note. Example of an employer—a labour hire company.

Fatigue Authorities Panel means the Panel established by the Fatigue Authorities Panel Rules made by the National Transport Commission, and approved by the Australian Transport Council on 18 July 2008, as amended from time to time.

fatigue management requirement means a requirement under this Part relating to:

- (a) a requirement that a person must not drive while impaired by fatigue, or
- (b) a driver keeping a work diary or another record, or
- (c) the minimum period a driver, or two-up driver, must rest to break up the period of time the driver, or two-up driver, drives or otherwise works, or
- (d) the maximum period a driver, or two-up driver, may drive, or otherwise work, without taking a rest.

heavy truck means:

- (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) that is part of a combination, if the total of the GVMs of the vehicles in the combination is over 12 tonnes.

IAP provisions means Part 6A (Intelligent access programs) of the *Road Transport (Mass, Loading and Access) Regulation 2005*.

impaired by fatigue—see clause 44.

loader has the same meaning as in section 20 of the Act.

loading manager means a person who:

- (a) manages, or is responsible for the operation of, premises at which usually on a business day at least 5 regulated heavy vehicles are loaded with goods for transport, or have goods that the vehicles have transported unloaded, or
- (b) directly or indirectly supervises, manages or controls the loading or unloading of regulated heavy vehicles at such premises.

Note. Examples of a loading manager—a company that runs, or a site manager for, a distribution centre.

long and night work time means any work time:

- (a) in excess of 12 hours in a 24 hour period, or
- (b) between 12 midnight and 6 am (or the equivalent hours in the time zone of the base of a driver who is on a journey in a regulated heavy vehicle).

major rest break means a rest break of at least 5 continuous hours.

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malfunction, in relation to an electronic work diary or an odometer, means:

- (a) the diary or odometer ceases to work at all, or works only intermittently, or
- (b) it does not perform one or more functions required under this Part, or
- (c) it performs those functions only intermittently, or
- (d) it performs those functions in a way that is inaccurate or unreliable (including intermittently inaccurate or unreliable).

Note. Examples of an electronic work diary malfunctioning:

- the data held in an electronic work diary is corrupted
- a software program fault
- physical damage that impairs the functioning of the electronic work diary
- data storage on the work diary becoming full

Note. Examples of an odometer malfunctioning:

- the odometer no longer keeps an accurate record of distance travelled

motor home means a rigid or articulated motor vehicle or combination that is built, or permanently modified, primarily for residential purposes, but does not include a motor vehicle only because it is constructed with a sleeper berth.

night rest break means:

- (a) 7 continuous hours stationary rest time taken between 10 pm on a day and 8 am on the next day, using the time zone of the base of the driver, or
- (b) 24 continuous hours stationary rest time.

non-participating zone means all jurisdictions that are not participating jurisdictions.

operator, in relation to a regulated heavy vehicle, means a person who is responsible for controlling or directing the operations of:

- (a) in the case of a vehicle (including a vehicle in a combination)—the vehicle, or
- (b) in the case of a combination—the towing vehicle in the combination,

but does not include a person merely because the person:

- (c) owns the vehicle or combination, or
- (d) drives the vehicle or combination, or

- (e) maintains, or arranges for the maintenance of, the vehicle or combination, or
- (f) arranges for the registration of the vehicle.

participating jurisdiction means:

- (a) this State, or
- (b) another jurisdiction, if that jurisdiction has a corresponding fatigue law that is in force.

participating zone means all participating jurisdictions.

party in the chain of responsibility, in relation to a regulated heavy vehicle, means any of the following persons:

- (a) the employer of the driver of the vehicle,
- (b) the prime contractor of the driver,
- (c) the operator of the vehicle,
- (d) the scheduler of goods or passengers for transport by the vehicle, and the scheduler of its driver,
- (e) the consignor of goods for transport by the vehicle,
- (f) the consignee of goods for transport by the vehicle,
- (g) the loading manager of goods for transport by the vehicle,
- (h) the loader of goods on to the vehicle,
- (i) the unloader of goods from the vehicle.

Note. A person may be a party in the chain of responsibility in more than 1 capacity. Example—a person may be an employer, operator and consignor at the same time in relation to a driver and be subject to duties in each of the capacities.

plant means a motor vehicle that:

- (a) is built, or permanently modified, primarily to operate as a machine or implement:
 - (i) off-road, or
 - (ii) on a road-related area, or
 - (iii) on an area of road that is under construction, and
- (b) is not capable of carrying goods or passengers by road.

Note. Example of what is plant:

- An agricultural machine, backhoe, bulldozer, excavator, forklift, front-end loader, grader, tractor or a motor vehicle that is registered as a type P plant-based special purpose vehicle.

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Note. Example of what is not plant:

- A truck-mounted crane or truck-mounted drilling rig.

prescribed business means business that falls within one or more of the following Divisions recognised in the *Australian and New Zealand Standard Industrial Classification (ANZSIC)*, 2006 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0):

- (a) Agriculture, Forestry and Fishing (Division A),
- (b) Mining (Division B),
- (c) Manufacturing (Division C),
- (d) Construction (Division E),
- (e) Wholesale Trade (Division F),
- (f) Retail Trade (Division G),
- (g) Accommodation and Food Services (Division H),
- (h) Transport, Postal and Warehousing (Division I),
- (i) Information, Media and Communications (Division J),
- (j) Renting, Hiring and Real Estate Services (Division L),
- (k) Arts and Recreation Services (Division P).

prime contractor means a person who engages someone else to drive a regulated heavy vehicle under a contract for services.

Note. Example of a prime contractor—a logistics business that engages a subcontractor to transport goods.

reasonable steps defence—see clause 41.

record keeper, in relation to a driver, means:

- (a) if the driver is an employed driver working under standard hours—the employer, or
- (b) if the driver is an employed driver working under a work and rest hours exemption that was not granted in combination with an operator's BFM or AFM accreditation—the employer, or
- (c) if the driver is a self-employed driver working under standard hours—the self-employed driver, or
- (d) if the driver is a self-employed driver working under a work and rest hours exemption that was not granted in combination with an operator's BFM or AFM accreditation—the self-employed driver, or
- (e) if the driver is an employed or self-employed driver working under an operator's BFM or AFM accreditation—the operator, or

- (f) if the driver is an employed or self-employed driver working under a work and rest hours exemption that was granted in combination with an operator's BFM or AFM accreditation—the operator.

record location, in relation to a driver, means:

- (a) the place which the record keeper has instructed the driver is the record location, or
- (b) if the record keeper has not instructed the driver under paragraph (a), the driver's base.

regulated heavy vehicle means:

- (a) a heavy truck, or
- (b) a bus,

but does not include:

- (c) plant, or
- (d) a motor home.

rest time—see clause 58.

scheduler means a person who:

- (a) schedules a driver's work or rest time, or
- (b) schedules the transport of passengers or goods by road.

Note. Example of a person who makes a demand that affects a time in a schedule—The distribution manager for a retail chain or a loading agent or freight forwarder who sets a deadline for a delivery.

Note. Example of a person who does not make a demand that affects a time in a schedule—A person who has arranged for goods to be couriered by a transport company as a "part load" who has no control over the deadline for the delivery of the goods.

self-employed driver means a driver who is not an employed driver.

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

stationary rest time means rest time that a driver spends:

- (a) out of a regulated heavy vehicle, or
- (b) in an approved sleeper berth of a stationary regulated heavy vehicle.

suitable rest place means:

- (a) a rest area designated for and able to be used by a regulated heavy vehicle, or
- (b) a place at which a regulated heavy vehicle may be safely and lawfully parked.

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supplementary record means a record that:

- (a) is not made in a written or electronic work diary, but
- (b) is at least as accurate and understandable as, and is made in a similar form to, a record made in a written or electronic work diary.

Note. As a supplementary record becomes part of a work diary once it is made, it must be kept by the driver of a regulated heavy vehicle in the vehicle for 28 days after it is made, and it must be kept by the record keeper for 3 years after it is made.

two-up driver means the driver of a regulated heavy vehicle 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 regulated heavy vehicle that has an approved sleeper berth.

unloader of goods means a person who:

- (a) unloads from a vehicle or combination goods that have been transported by road, or
- (b) unloads from a vehicle or combination a freight container (whether or not containing goods) that has been transported by road, or
- (c) without limiting the above, unloads from a freight container that is on a vehicle or combination goods that have been transported by road, or
- (d) supervises an activity mentioned in paragraph (a), (b) or (c), or
- (e) manages or controls an activity mentioned in paragraph (a), (b), (c) or (d).

work and rest change—see clause 59.

work and rest hours exemption—see clause 117.

work and rest hours option—see clause 56.

work diary—see clause 75.

work diary exemption—see clause 118.

work time—see clause 57.

written work diary means a written work diary issued to a driver under Subdivision 5 of Division 4 or under a corresponding fatigue law.

40 Matters court may consider for deciding whether person took all reasonable steps and other matters relating to offences

- (1) A court may have regard to anything that it considers to be relevant when it is deciding whether things that the person did, or did not do, were reasonable steps, including:
 - (a) the nature of the risk that the person was attempting to, or should have been attempting to, address, and
 - (b) the likelihood of that risk eventuating and the degree of harm that would result if it did eventuate, and
 - (c) if a driver has driven while impaired by fatigue or in breach of the work and rest hours—the circumstances of the offence (for example, the risk category that the offence belongs to), and
 - (d) the abilities, experience, expertise, knowledge, qualifications and training that the person, or the person's agent or employee, had or ought reasonably have had, and
 - (e) the availability and suitability of ways to eliminate, prevent or reduce the risk or to minimise the likelihood of the risk eventuating, and
 - (f) the body of fatigue knowledge.
- (2) In a prosecution for an offence under clause 46 (1), 50, 51, 52, 54 or 55, it is not necessary to prove that any particular person drove, or would or may have driven, the vehicle on a road while impaired by fatigue.
- (3) It is not of itself a defence to an offence under this Part that a person complied with an accreditation granted under this Part.

41 What is the “reasonable steps defence”

If a provision of this Part states that a person has the benefit of the *reasonable steps defence* for an offence, it is a defence to the offence for the person to prove that:

- (a) the person did not know, and could not reasonably be expected to have known, of the contravention concerned, and
- (b) either:
 - (i) the person had taken all reasonable steps to prevent the contravention concerned, or
 - (ii) the person could not reasonably be expected to have taken any steps to prevent the contravention concerned.

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42 Exclusion of mistake of fact defence

- (1) This clause applies if a provision of this Part states that a person does not have the benefit of the mistake of fact defence for an offence.
- (2) It is not a defence to the offence for the person to prove that, at or before the time of the act or omission constituting the offence, the person was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant that the act or omission would not have constituted an offence.

Division 2 Duties relating to fatigue

Subdivision 1 What is fatigue

43 What is "fatigue"

- (1) *Fatigue* includes (but is not limited to):
 - (a) feeling sleepy, and
 - (b) feeling physically or mentally tired, weary or drowsy, and
 - (c) feeling exhausted or lacking energy, and
 - (d) behaving in a way that is consistent with paragraph (a), (b) or (c).
- (2) When deciding whether a driver is fatigued, a court may take into account anything it considers is relevant, including (but not limited to) the following:
 - (a) what is commonly understood as being fatigued,
 - (b) the causes of fatigue,
 - (c) the signs of fatigue,
 - (d) the body of fatigue knowledge.
- (3) A *cause of fatigue* is any factor that causes or contributes to a person's fatigue while driving a regulated heavy vehicle on a road (whether or not the cause arises while the person is at work).

Note. Examples of causes of fatigue:

- physical or mental exertion
- long periods of time awake
- not enough sleep or not enough restorative sleep
- not enough rest breaks
- a person's circadian rhythm (ie the "body clock")
- environmental stress (eg heat, noise, vibrations)
- personal health

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- (4) A *sign of fatigue* is a sign that a person was, is, or will be fatigued while driving a regulated heavy vehicle on a road (whether the sign manifests itself before, during or after work).

Note. Examples of signs of fatigue:

- a lack of alertness
 - an inability to concentrate
 - a reduced ability to recognise or respond to external stimuli
 - poor judgement or memory
 - making more mistakes than usual
 - drowsiness, or falling asleep, at work (including micro sleeps)
 - finding it difficult to keep the eyes open
 - needing more frequent naps than usual
 - not feeling refreshed after sleep
 - excessive head nodding or yawning
 - blurred vision
 - mood changes, increased irritability or other changes to the person's mental health
 - changes to the person's health or fitness
- (5) The body of fatigue knowledge includes any accreditation scheme, scientific knowledge or expert opinion, guidelines, standards or other knowledge that is relevant to preventing or managing the exposure to risk of fatigue, either at a workplace or on a road.

44 What is "impaired by fatigue"

- (1) A driver is *impaired by fatigue* if the driver's ability to drive a vehicle safely is affected by fatigue.
- (2) When deciding whether a driver was impaired by fatigue, a court may take into account anything it considers is relevant, including (but not limited to) the following:
- (a) any relevant cause of fatigue or sign of fatigue that was evident, and the degree to which it may indicate that the driver was impaired by fatigue,
 - (b) any behaviour of the driver that may have resulted from being impaired by fatigue,

Note. Examples:

- the circumstances of any incident, crash or near miss
- poor driving judgement
- inattentive driving (eg drifting into other lanes or not changing gears smoothly)

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- (c) the nature and extent of any physical or mental exertion by the driver,
 - (d) whether the driver was in breach of his or her work and rest hours.
- (3) A court may consider a driver to be impaired by fatigue even if the driver has complied with any requirements under this Part (for example, the standard hours) or under any other legislation.

Subdivision 2 Duties to avoid and prevent fatigue

45 Driver's duty to avoid driver fatigue

- (1) A person must not drive a regulated heavy vehicle on a road or road related area while he or she is impaired by fatigue.
Maximum penalty: 20 penalty units.
- (2) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

46 Duty of parties in the chain of responsibility to prevent driver fatigue

- (1) A party in the chain of responsibility in relation to a regulated heavy vehicle must take all reasonable steps to ensure that a person does not drive the vehicle on a road or road related area while the person is impaired by fatigue.
Maximum penalty:
 - (a) in the case of an individual—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—125 penalty units (in the case of a first offence) or 250 penalty units (in the case of a second or subsequent offence).
- (2) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

Subdivision 3 Additional duties on certain parties in the chain of responsibility

47 Intention irrelevant in determining causation

For the purposes of this Subdivision, a person can cause something to happen even though the person had no intention of causing that thing to happen.

48 Cause includes “contribute to causing” and “encourage”

For the purposes of this Subdivision, a reference to causing a thing includes a reference to contributing to causing the thing, and to encouraging the thing.

49 Duties on employers, prime contractors and operators

- (1) This clause applies to:
 - (a) the employer of an employed driver of a regulated heavy vehicle, and
 - (b) the prime contractor of a self-employed driver of a regulated heavy vehicle, and
 - (c) the operator of the regulated heavy vehicle if the driver is to make a journey for the operator.
- (2) The employer, prime contractor and operator each must take all reasonable steps to ensure that the employer’s, prime contractor’s or operator’s business practices will not cause, by act or omission, the driver:
 - (a) to drive on a road or road related area while impaired by fatigue, or
 - (b) to drive while in breach of his or her work and rest hours option, or
 - (c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).

Note. Examples of business practices that may cause a driver to drive while impaired by fatigue by omission:

- failing to provide for remuneration for time spent queuing,
- failing to provide rest breaks in a driver’s schedule,
- failing to provide for contingency plans for unexpected traffic delays,
- failing to provide for loading or unloading in schedule times.

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- (3) The employer must not cause the driver to drive the vehicle unless:
- (a) the employer has complied with subclause (2), and
 - (b) the employer, after making reasonable inquiries, is satisfied that the scheduler has complied with clause 50.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).
- (4) The prime contractor and operator each must not cause the driver to drive the vehicle, or enter into a contract or agreement with the driver to that effect, unless:
- (a) the prime contractor or operator has complied with subclause (2), and
 - (b) the prime contractor or operator, after making reasonable inquiries, is satisfied that the scheduler has complied with 50.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).
- (5) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.
- (6) In this clause, *business practices* of an employer, prime contractor or operator, means the practices of the employer, prime contractor or operator in running the business, and includes:
- (a) the operating policies and procedures of the business, and
 - (b) the human resource and contract management arrangements of the business (including the method by which driver remuneration is calculated), and
 - (c) arrangements for managing safety.

50 Duties of schedulers

- (1) This clause applies to the scheduler of:
 - (a) a regulated heavy vehicle, or
 - (b) a driver of a regulated heavy vehicle.
- (2) The scheduler must take all reasonable steps to ensure that a driver's schedule for driving the vehicle will not cause, by act or omission, the driver:
 - (a) to drive on a road or road related area while impaired by fatigue, or
 - (b) to drive while in breach of his or her work and rest hours option, or
 - (c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (3) The scheduler must not cause the driver to drive the vehicle unless:
 - (a) the scheduler has complied with subclause (2), and
 - (b) the driver's schedule for driving the vehicle allows for:
 - (i) the driver to take rest breaks in accordance with his or her work and rest hours option, and
 - (ii) traffic conditions and other delays that could reasonably be expected.

Maximum penalty:

- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).

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- (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

51 Duties on consignors and consignees

- (1) This clause applies to:
- (a) the consignor of goods for transport by a regulated heavy vehicle, and
 - (b) the consignee of goods for transport by a regulated heavy vehicle.
- (2) The consignor and consignee each must take all reasonable steps to ensure that the terms of consignment (such as delivery times) will not cause, by act or omission, the driver:
- (a) to drive on a road or road related area while impaired by fatigue, or
 - (b) to drive while in breach of his or her work and rest hours option, or
 - (c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (3) The consignor and consignee each must take all reasonable steps to ensure that the terms of consignment (such as delivery times) will not cause the employer of an employed driver, prime contractor of a self-employed driver or operator of the regulated heavy vehicle by act or omission to cause the driver:
- (a) to drive on a road or road related area while impaired by fatigue, or
 - (b) to drive while in breach of his or her work and rest hours option, or

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

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (4) The consignor and consignee each must not cause the driver to drive the vehicle, or enter into a contract or agreement to that effect, unless:
- (a) the consignor or consignee has complied with subclause (2) and (3), and
 - (b) in the case of an employed driver—the consignor or consignee, after making reasonable inquiries, is satisfied that:
 - (i) the driver's employer and the operator of the driver's vehicle have each complied with clause 49, and
 - (ii) the scheduler has complied with clause 50, and
 - (c) in the case of a self-employed driver—the consignor or consignee, after making reasonable inquiries, is satisfied that:
 - (i) if the driver has a prime contractor—the prime contractor of the driver has complied with clause 49, and
 - (ii) the scheduler has complied with clause 50.

Maximum penalty:

- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).

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- (5) The consignor or consignee must not make a demand that affects, or that may affect, a time in a schedule for the transport of the consigned goods and that may cause the driver:
- (a) to drive on a road or road related area while impaired by fatigue, or
 - (b) to drive while in breach of the driver's work and rest hours option, or
 - (c) to drive while in breach of another law in order to avoid driving while impaired by fatigue or while in breach of the driver's work and rest hours option.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (6) Subclause (5) does not apply if the consignor or consignee, before making the demand:
- (a) complies with subclauses (2) and (3), and
 - (b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause or permit a person to contravene clause 50.
- (7) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.
- (8) In this clause, ***terms of consignment*** includes (but is not limited to):
- (a) terms that are expressed, implied or established by custom or practice, and
 - (b) terms relating to pick-up or delivery times or driving or delivery schedules.

52 Duties of loading managers

- (1) A loading manager must take all reasonable steps to ensure that the arrangements for loading, unloading and waiting time of regulated heavy vehicles at the loading manager's premises will not cause, by act or omission, a driver of a regulated heavy vehicle:
- (a) to drive on a road or road related area while impaired by fatigue, or

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- (b) to drive while in breach of his or her work and rest hours option, or
 - (c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (2) If the loading manager or a person acting under his or her supervision or control:
- (a) has advised the driver, either directly or indirectly, of when the loading, unloading or waiting time of the vehicle is to start, and the loading manager or person becomes aware that the loading, unloading or waiting time will, or is likely to, start more than 30 minutes late, or
 - (b) has advised the driver, either directly or indirectly, of when the loading, unloading or waiting time of the vehicle is to finish, and the loading manager or person becomes aware that the loading, unloading or waiting time will, or is likely to, finish more than 30 minutes late, or
 - (c) is unable to advise the driver of when the loading, unloading or waiting time of the vehicle is to start, or
 - (d) is unable to advise the driver of when the loading, unloading or waiting time of the vehicle is to finish,

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

Maximum penalty:

- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).

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- (3) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

53 Duty to assess and manage fatigue of drivers

- (1) This clause applies to:
- (a) the employer of an employed driver of a regulated heavy vehicle, and
 - (b) the prime contractor of a self-employed driver of a regulated heavy vehicle, and
 - (c) the operator of the regulated heavy vehicle if the driver is to make a journey for the operator, and
 - (d) the scheduler of:
 - (i) a regulated heavy vehicle, or
 - (ii) a driver of a regulated heavy vehicle, and
 - (e) the consignor of goods for transport by a regulated heavy vehicle, who carries on business of which a substantial part is prescribed business, and
 - (f) the consignee of goods for transport by a regulated heavy vehicle, who carries on business of which a substantial part is prescribed business, and
 - (g) the loading manager of goods for transport by a regulated heavy vehicle, and
 - (h) the loader of goods for transport by a regulated heavy vehicle, who carries on business of which a substantial part is prescribed business, and
 - (i) the unloader for transport by a regulated heavy vehicle, who carries on business of which a substantial part is prescribed business.
- (2) A person to whom this clause applies must:
- (a) identify and assess the aspects of the activities of the person, and the driver, that may lead to a contravention of a fatigue management requirement by the driver, and
 - (b) for each aspect identified and assessed under paragraph (a), identify and assess:
 - (i) the risk of the aspect leading to a contravention of a fatigue management requirement by the driver, and

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- (ii) if there is a risk of the aspect leading to a contravention of a fatigue management requirement by the driver—the measures the person may take to eliminate the risk or, if it is not reasonably practicable to eliminate the risk, to control the risk, and
 - (c) carry out the identification and assessment referred to in paragraphs (a) and (b):
 - (i) at least annually, and
 - (ii) after each event that indicated the way the activities of the person or driver have led, or may lead, to a contravention of a fatigue management requirement by the driver, and
 - (d) take the measures identified and assessed under paragraph (b) (ii), and
 - (e) document the actions taken under paragraphs (a)–(d) and retain that documentation for at least 3 years.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (3) It is a defence to any proceedings against a person for an offence against subclause (2) if the person proves that:
- (a) it was not reasonably practicable for the person to comply with that subclause, or
 - (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

Subdivision 4 Certain requests, contracts etc prohibited

54 Certain requests etc prohibited

A person must not ask, direct or require (directly or indirectly) a driver or a party in the chain of responsibility to do something that the person knows, or reasonably ought to know, would have the effect of causing the driver:

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- (a) to drive on a road or road related area while impaired by fatigue, or
- (b) to drive while in breach of his or her work and rest hours option, or
- (c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.

Note. Example of a requirement that contravenes this clause—a requirement that the driver complete a journey in a time that the person knows or reasonably ought to know cannot be complied with unless the driver commits a speeding offence or does not take all the rest breaks that he or she is required to take.

Maximum penalty:

- (a) in the case of an individual—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) or 250 penalty units (in the case of a second or subsequent offence).

55 Certain contracts etc prohibited

- (1) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would have the effect of causing a driver:
 - (a) to drive on a road or road related area while impaired by fatigue, or
 - (b) to drive while in breach of his or her work and rest hours option, or
 - (c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.

Maximum penalty:

- (a) in the case of an individual—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) or 250 penalty units (in the case of a second or subsequent offence).

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- (2) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would encourage or provide an incentive for a party in the chain of responsibility to cause a driver:
- (a) to drive on a road or road related area while impaired by fatigue, or
 - (b) to drive while in breach of his or her work and rest hours option, or
 - (c) to drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work and rest hours option.

Maximum penalty:

- (a) in the case of an individual—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) or 250 penalty units (in the case of a second or subsequent offence).

Division 3 Duties relating to work and rest times

Subdivision 1 Key concepts for this Division

56 What is “work and rest hours option”

A driver’s *work and rest hours option* at any particular time is whichever one of the following applies to the driver at that time under this Part:

- (a) standard hours,
- (b) BFM hours,
- (c) AFM hours,
- (d) the hours specified in a work and rest hours exemption (whether or not granted in combination with an operator’s BFM or AFM accreditation).

57 What is “work time”

- (1) A driver’s *work time* is:
 - (a) the time that the driver spends driving a regulated heavy vehicle, whether or not it is on a road or road related area, and

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- (b) any other time that the driver spends doing tasks that are related to the operation of a regulated heavy vehicle, including (but not limited to) the following:
 - (i) loading or unloading the vehicle,
 - (ii) inspecting, servicing or repairing the vehicle,
 - (iii) inspecting or attending to the load on the vehicle,
 - (iv) attending to the passengers of a bus,
 - (v) cleaning or refuelling the vehicle,
 - (vi) performing marketing tasks in relation to the operation of the vehicle,
 - (vii) helping with, or supervising, an activity mentioned in subparagraphs (i)–(vi),
 - (viii) recording information, or completing a document, in accordance with this Part or otherwise, in relation to the operation of the vehicle.

(2) In this clause:

driving includes:

- (a) being in the driver's seat of a regulated heavy vehicle while its engine is running, and
- (b) being in a regulated heavy vehicle for the purpose of instructing or supervising the driver of the vehicle.

marketing tasks includes:

- (a) arranging for the transport of passengers or goods, and
- (b) canvassing for orders for the transport of passengers or goods.

58 What is "rest time"

Rest time of a driver is time that is not work time of the driver.

59 What is a "work and rest change"

A ***work and rest change*** for a driver is:

- (a) a change from work time to rest time, or
- (b) a change from rest time to work time, or
- (c) a change from being a solo driver to being a two-up driver, or
- (d) a change from being a two-up driver to being a solo driver.

60 Counting time, including work and rest time

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

Note. Examples:

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

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

Note. Examples:

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

- (3) When counting time in a period, the time must not be counted from within rest time, but instead must be counted forward:

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

- (4) If a driver undertakes a journey and is in a different time zone from the time zone of his or her base at the time when a period of time is relevant for the purposes of this Part, the period must be counted by reference to the time zone of the base.

Note. Example: If it is necessary to determine the night hours of a driver with a base in Western Australia while the driver is in New South Wales on a journey, those night hours are the period between 12 midnight and 6 am in the Western Australian time zone in which the driver's base is situated (even though those hours equate, for instance, to 3 am to 9 am Eastern Standard Summer Savings Time).

61 Counting time within the participating zone

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

62 Counting time from outside the participating zone

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

Subdivision 2 Standard hours

63 Application of Subdivision

- (1) This Subdivision applies to the work and rest times for the driver of a regulated heavy vehicle, if the driver is not working under a BFM or AFM accreditation (the *standard hours*).
- (2) The solo driver of a bus has the option to drive under either (but not both):
 - (a) the standard hours set out in clause 64, or
 - (b) the standard hours set out in clause 65.

64 Standard hours—solo drivers

- (1) The Table to this clause sets out the *standard hours for the solo driver of a regulated heavy vehicle* (including a bus).
- (2) In any period referred to in Column 1 of the Table to this clause, the solo driver:
 - (a) must not work for more than the work time mentioned in Column 2 of that Table, and

- (b) must have the rest of that period off work, with at least the rest time mentioned in Column 3 of that Table.

Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
 - (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (3) A contravention of subclause (2) in relation to a period referred to in Column 1 of the Table to this clause is an offence of the risk category determined in accordance with Column 4 of the Table.
 - (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

Standard hours—Solo drivers of a regulated heavy vehicle

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
5½ hrs	5¼ hrs work time	15 continuous mins rest time	> 5¼ hrs work time	minor risk
8 hrs	7½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 7½ hrs work time	minor risk

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Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
11 hrs	10 hrs work time	60 mins rest time, in blocks of 15 continuous mins	$\leq 10\frac{3}{4}$ hrs work time	minor risk
			$> 10\frac{3}{4}$ hrs work time	substantial risk
24 hrs	12 hrs work time		$\leq 12\frac{3}{4}$ hrs work time	minor risk
			$> 12\frac{3}{4}$ but not $> 13\frac{1}{4}$ hrs work time	substantial risk
			$> 13\frac{1}{4}$ but not $> 13\frac{1}{2}$ hrs work time	severe risk
			$> 13\frac{1}{2}$ hrs work time	critical risk
			< 7 but not $< 6\frac{1}{4}$ hrs stationary rest time	minor risk
			$< 6\frac{1}{4}$ but not $< 5\frac{3}{4}$ hrs stationary rest time	substantial risk

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			< 5¾ but not < 5½ continuous hrs stationary rest time severe risk
			< 5½ continuous hrs stationary rest time critical risk
7 days (168 hrs)	72 hrs work time		≤ 73½ hrs work time minor risk
			> 73½ but not > 74½ hrs work time substantial risk
			> 74½ but not > 75 hrs work time severe risk
			> 75 hrs work time critical risk

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Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
		24 continuous hrs stationary rest time	< 24 but not < 23¹/₄ continuous hrs stationary rest time minor risk < 23¹/₄ but not < 22³/₄ continuous hrs stationary rest time substantial risk < 22³/₄ but not < 22¹/₂ continuous hrs stationary rest time severe risk < 22¹/₂ continuous hrs stationary rest time critical risk
14 days (336 hrs)	144 hrs work time		≤ 145¹/₂ hrs work time minor risk > 145¹/₂ but not > 146¹/₂ hrs work time substantial risk > 146¹/₂ but not > 147 hrs work time severe risk

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			> 147 hrs work time critical risk
		2 x night rest breaks, and	< 7 but not < 6¼ hrs continuous stationary rest time per block minor risk
			< 6¼ but not < 5¾ hrs continuous stationary of that rest time per block substantial risk
			< 5¾ but not < 5½ hrs continuous stationary of that rest time per block severe risk
			< 5½ hrs continuous stationary of that rest time per block critical risk

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Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
		2 x night rest breaks taken on consecutive days	<p>< 7 but not < 6¹/₄ continuous hrs stationary of that rest time per block</p> <p>minor risk</p> <p>< 6¹/₄ but not < 5³/₄ continuous hrs stationary of that rest time per block</p> <p>substantial risk</p> <p>< 5³/₄ but not < 5¹/₂ continuous hrs stationary of that rest time per block</p> <p>severe risk</p> <p>< 5¹/₂ continuous hrs stationary of that rest time per block</p> <p>critical risk</p>

65 Standard hours—solo drivers of buses

- (1) The Table to this clause sets out the *standard hours for the solo driver of a bus*.
- (2) In any period mentioned in Column 1 of the Table to this clause, the solo driver of a bus:

- (a) must not work for more than the work time mentioned in Column 2 of that Table, and
- (b) must have the rest of that period off work, with at least the rest time mentioned in Column 3 of that Table.

Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
 - (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (3) A contravention of subclause (2) in relation to a period referred to in Column 1 of the Table to this clause is an offence of the risk category determined in accordance with Column 4 of the Table.
- (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

Standard hours—solo drivers of buses

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
5½ hrs	5¼ hrs work time	15 mins rest time	> 5¼ hrs work time	minor risk

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Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
8 hrs	7½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 7½ hrs work time	minor risk
11 hrs	10 hrs work time	60 mins rest time, in blocks of 15 continuous mins	≤ 10¾ hrs work time > 10¾ hrs work time	minor risk substantial risk
24 hrs	12 hrs work time		≤ 12¾ hrs work time > 12¾ but not > 13¼ hrs work time > 13¼ but not > 13½ hrs work time > 13½ hrs work time	minor risk substantial risk severe risk critical risk
		7 continuous hrs stationary rest time	< 7 but not < 6¼ continuous hrs stationary rest time	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time	substantial risk

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
			< 5 ³ / ₄ but not < 5 ¹ / ₂ continuous hrs stationary rest time	severe risk
			< 5 ¹ / ₂ continuous hrs stationary rest time	critical risk
7 days (168 hrs)		6 x night rest breaks	< 7 but not < 6 ¹ / ₄ continuous hrs stationary of that rest time per block	minor risk
			< 6 ¹ / ₄ but not < 5 ³ / ₄ continuous hrs stationary of that rest time per block	substantial risk
			< 5 ³ / ₄ but not < 5 ¹ / ₂ continuous hrs stationary of that rest time per block	severe risk

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Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
			< 5½ hrs continuous stationary of that rest time per block	critical risk
28 days (672 hrs)	288 hrs work time		≤ 289½ hrs work time	minor risk
			> 289½ hrs but not > 290½ hrs work time	substantial risk
			> 290½ hrs but not > 291 hrs work time	severe risk
			> 291 hrs work time	critical risk
			4 x 24 blocks continuous hrs stationary rest time	< 24 but not < 23¼ hrs continuous stationary rest time per block
		< 23¼ hrs but not < 22¾ hrs continuous stationary rest time per block	substantial risk	

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... ... severe risk
			< 22¾ but not < 22½ continuous hrs stationary rest time per block critical risk
			< 22½ continuous hrs stationary rest time per block

66 Standard hours—two-up drivers

- (1) The Table to this clause sets out the *standard hours for a two-up driver of a regulated heavy vehicle*, except when the two-up driver is working under a BFM or AFM accreditation.
- (2) In any period mentioned in Column 1 of the Table to this clause, the two-up driver:
 - (a) must not work for more than the work time mentioned in Column 2 of that Table, and
 - (b) must have the rest of that period off work, with at least the rest time mentioned in Column 3 of that Table.

Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
- (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or

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- (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence),
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (3) A contravention of subclause (2) in relation to a period referred to in Column 1 of the Table to this clause is an offence of the risk category determined in accordance with Column 4 of the Table.
- (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

Standard hours—Two-up drivers of a regulated heavy vehicle

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
5½ hrs	5¼ hrs work time	15 continuous mins stationary rest time	> 5¼ hrs work time	minor risk
8 hrs	7½ hrs work time	30 mins stationary rest time, in blocks of 15 continuous mins	> 7½ hrs work time	minor risk
11 hrs	10 hrs work time	60 mins stationary rest time, in blocks of 15 continuous mins	≤ 10¾ hrs work time > 10¾ hrs work time	minor risk substantial risk

Column 1	Column 2	Column 3	Column 4		
Total period	Maximum work time	Minimum rest time	Offence category		
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...		
24 hrs	12 hrs work time		≤ 12¾ hrs work time	minor risk	
			> 12¾ but not > 13¼ hrs work time	substantial risk	
			> 13¼ but not > 13½ hrs work time	severe risk	
			> 13½ hrs work time	critical risk	
			5 continuous hrs stationary rest time, or 5 continuous hrs rest time in an approved sleeper berth while the vehicle is moving	< 5 but not < 4¼ continuous hrs of that rest time	minor risk
			< 4¼ but not < 3¾ continuous hrs of that rest time	substantial risk	
			< 3¾ but not < 3½ continuous hrs of that rest time	severe risk	
		< 3½ continuous hrs of that rest time	critical risk		

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Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...	
52 hrs		10 continuous hrs stationary rest time	< 10 but not < 9 ¹ / ₄ continuous hrs stationary rest time	minor risk
			< 9 ¹ / ₄ but not < 8 ³ / ₄ continuous hrs stationary rest time	substantial risk
			< 8 ³ / ₄ but not < 8 ¹ / ₂ continuous hrs stationary rest time	severe risk
			< 8 ¹ / ₂ continuous hrs stationary rest time	critical risk
7 days (168 hrs)	60 hrs work time		> 60 but not > 61 ¹ / ₂ hrs work time	minor risk
			> 61 ¹ / ₂ but not > 62 ¹ / ₂ hrs work time	substantial risk
			> 62 ¹ / ₂ but not > 63 hrs work time	severe risk

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			> 63 hrs work time critical risk
		24 continuous hrs stationary rest time, and	< 24 but not < 23¼ hrs stationary rest time minor risk
			< 23¼ but not < 22¾ hrs stationary rest time substantial risk
			< 22¾ but not < 22½ hrs stationary rest time severe risk
			< 22½ hrs stationary rest time critical risk

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Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
		24 hrs stationary rest time in blocks of at least 7	< 24 but not < 23¼ hrs stationary rest time in total	minor risk
		continuous hrs stationary rest time	< 7 but not < 6¼ continuous hrs stationary rest time per block	
			< 23¼ but not < 22¾ hrs stationary rest time in total	substantial risk
			< 6¼ but not < 5¾ continuous hrs stationary rest time per block	
			< 22¾ but not < 22½ hrs stationary rest time in total	severe risk

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			< 5 ³ / ₄ but not < 5 ¹ / ₂ continuous hrs stationary rest time per block
			< 22 ¹ / ₂ hrs stationary rest time in total critical risk
			< 5 ¹ / ₂ continuous hrs stationary rest time per block
14 days (336 hrs)	120 hrs work time		> 120 but not > 121 ¹ / ₂ hrs work time minor risk
			> 121 ¹ / ₂ but not > 122 ¹ / ₂ hrs work time substantial risk
			> 122 ¹ / ₂ but not > 123 hrs work time severe risk
			> 123 hrs work time critical risk

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Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
		2 x night rest breaks, and	<p>< 7 but not < 6¹/₄ continuous hrs stationary rest time per break</p> <p>minor risk</p> <p>< 6¹/₄ but not < 5³/₄ continuous hrs stationary of that rest time per break</p> <p>substantial risk</p> <p>< 5³/₄ but not < 5¹/₂ continuous hrs stationary of that rest time per break</p> <p>severe risk</p> <p>< 5¹/₂ continuous hrs stationary of that rest time per break</p> <p>critical risk</p>

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
		2 x night rest breaks taken on consecutive days	<p>< 7 but not < 6¹/₄ continuous hrs stationary of that rest time per break</p> <p>minor risk</p> <p>< 6¹/₄ but not < 5³/₄ continuous hrs stationary of that rest time per break</p> <p>substantial risk</p> <p>< 5³/₄ but not < 5¹/₂ continuous hrs stationary of that rest time per break</p> <p>severe risk</p> <p>< 5¹/₂ continuous hrs stationary of that rest time per break</p> <p>critical risk</p>

Subdivision 3 BFM hours

67 What this Subdivision is about

This Subdivision sets out the work and rest times that apply to the driver of a regulated heavy vehicle, if the driver is working under, and complying with, a BFM accreditation (the *BFM hours*).

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68 BFM hours—solo drivers

- (1) The Table to this clause sets out the *BFM hours for a solo driver of a regulated heavy vehicle*.
- (2) In any period mentioned in Column 1 of the Table to this clause, the solo driver:
 - (a) must not work for more than the work time mentioned in Column 2 of that Table, and
 - (b) must have the rest of that period off work, with at least the rest time mentioned in Column 3 of that Table.

Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
 - (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (3) A contravention of subclause (2) in relation to a period referred to in Column 1 of the Table to this clause is an offence of the risk category determined in accordance with Column 4 of the Table.
 - (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

BFM hours—solo drivers of a regulated heavy vehicle

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
6¼ hrs	6 hrs work time	15 continuous mins rest time	> 6 hrs work time	minor risk
9 hrs	8½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 8½ hrs work time	minor risk
12 hrs	11 hrs work time	60 mins rest time, in blocks of 15 continuous mins	≤ 11¾ hrs work time > 11¾ hrs work time	minor risk substantial risk
24 hrs	14 hrs work time		≤ 14¾ hrs work time > 14¾ but not > 15¼ hrs work time > 15¼ but not > 15½ hrs work time > 15½ hrs work time	minor risk substantial risk severe risk critical risk
		7 continuous hrs stationary rest time	< 7 but not < 6¼ continuous hrs stationary rest time	minor risk

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Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			< 6 ¹ / ₄ but not < 5 ³ / ₄ continuous hrs stationary rest time
			< 5 ³ / ₄ but not < 5 ¹ / ₂ continuous hrs stationary rest time
			< 5 ¹ / ₂ continuous hrs stationary rest time
7 days (168 hrs)	36 hrs long and night work time		≤ 36 ³ / ₄ hrs long and night work time
			> 36 ³ / ₄ but not > 37 ¹ / ₄ hrs long and night work time
			substantial risk

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
			> 37¼ but not > 37½ hrs long and night work time	severe risk
			> 37½ hrs long and night work time	critical risk
14 days (336 hrs)	144 hrs work time		≤ 145½ hrs work time	minor risk
			> 145½ but not > 146½ hrs work time	substantial risk
			> 146½ but not > 147 hrs work time	severe risk
			> 147 hrs work time	critical risk
		24 continuous hrs stationary rest time taken after no more than 84 hrs work time, and	< 24 but not < 23¼ hrs stationary rest time	minor risk

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Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
			< 23 ¹ / ₄ but not < 22 ³ / ₄ continuous hrs stationary rest time	substantial risk
			< 22 ³ / ₄ but not < 22 ¹ / ₂ continuous hrs stationary rest time	severe risk
			< 22 ¹ / ₂ continuous hrs stationary rest time	critical risk
		24 continuous hrs stationary rest time, and	< 24 but not < 23 ¹ / ₄ continuous hrs stationary rest time	minor risk
			< 23 ¹ / ₄ but not < 22 ³ / ₄ continuous hrs stationary rest time	substantial risk
			< 22 ³ / ₄ but not < 22 ¹ / ₂ continuous hrs stationary rest time	severe risk

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
			< 22½ continuous hrs stationary rest time	critical risk
		2 x night rest breaks, and	< 7 but not < 6¼ continuous hrs stationary rest time per break	minor risk
			< 6¼ but not < 5¾ continuous hrs stationary of that rest time per break	substantial risk
			< 5¾ but not < 5½ continuous hrs stationary of that rest time per break	severe risk
			< 5½ continuous hrs stationary of that rest time per break	critical risk

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Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
		2 x night rest breaks taken on consecutive days	<p>< 7 but not < 6¹/₄ continuous hrs stationary of that rest time per break</p> <p>minor risk</p> <p>< 6¹/₄ but not < 5³/₄ continuous hrs stationary of that rest time per break</p> <p>substantial risk</p> <p>< 5³/₄ but not < 5¹/₂ continuous hrs stationary of that rest time per break</p> <p>severe risk</p> <p>< 5¹/₂ continuous hrs stationary of that rest time per break</p> <p>critical risk</p>

69 Defence for solo drivers relating to split rest breaks

If an offence under BFM hours could have been avoided if the driver had taken a 7 hours continuous rest break, it is a defence for the driver to prove:

- (a) that he or she was, at the relevant time, driving under BFM hours as a solo driver of a regulated heavy vehicle, and

- (b) that he or she took a 6 hour continuous rest break and a 2 hour continuous rest break within the same 24 hour period (a *split rest break*), and
- (c) that he or she had not taken a split rest break in the previous 24 hour period.

Note. Example—a driver stops work to take a 7 hour continuous rest break, but cannot sleep, so the driver takes only 2 hours continuous rest and then drives on for a further 2 hours and takes a further 6 hours continuous rest at another place down the road.

70 **BFM hours—two-up drivers**

- (1) The Table to this clause sets out the *BFM hours for a two-up driver of a regulated heavy vehicle*.
- (2) In any period mentioned in Column 1 of the Table to this clause, the two-up driver:
 - (a) must not work for more than the work time mentioned in Column 2 of that Table, and
 - (b) must have the rest of that period off work, with at least the rest time mentioned in Column 3 of that Table.

Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
 - (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (3) A contravention of subclause (2) in relation to a period referred to in Column 1 of the Table to this clause is an offence of the risk category determined in accordance with Column 4 of the Table.
 - (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

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BFM hours—two-up drivers of a regulated heavy vehicle

Column 1	Column 2	Column 3	Column 4	
Total period	Maximum work time	Minimum rest time	Offence category	
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has...	the following category of offence is committed ...
24 hrs	14 hrs work time		$\leq 14\frac{3}{4}$ hrs work time	minor risk
			$> 14\frac{3}{4}$ but not $> 15\frac{1}{4}$ hrs work time	substantial risk
			$> 15\frac{1}{4}$ but not $> 15\frac{1}{2}$ hrs work time	severe risk
			$> 15\frac{1}{2}$ hrs work time	critical risk
82 hrs		10 continuous hrs stationary rest time	< 10 but not $< 9\frac{1}{4}$ continuous hrs stationary rest time	minor risk
			$< 9\frac{1}{4}$ but not $< 8\frac{3}{4}$ continuous hrs stationary rest time	substantial risk
			$< 8\frac{3}{4}$ but not $< 8\frac{1}{2}$ continuous hrs stationary rest time	severe risk

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			< 8½ hrs stationary rest time critical risk
7 days (168 hrs)	70 hrs work time		> 70 but not > 71½ hrs work time minor risk
			> 71½ but not > 72½ hrs work time substantial risk
			> 72½ but not > 73 hrs work time severe risk
			> 73 hrs work time critical risk
		24 continuous hrs stationary rest time, and	< 24 but not < 23¼ continuous hrs stationary rest time minor risk
		< 23¼ but not < 22¾ continuous hrs stationary rest time substantial risk	

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Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			< 22 ³ / ₄ but not < 22 ¹ / ₂ continuous hrs stationary rest time severe risk
			< 22 ¹ / ₂ continuous hrs stationary rest time critical risk
		24 hrs stationary rest time in blocks of at least 7 continuous hrs	< 24 but not < 23 ¹ / ₄ hrs stationary rest time in total minor risk
			< 7 but not < 6 ¹ / ₄ continuous hrs stationary rest time per block
			< 23 ¹ / ₄ but not < 22 ³ / ₄ hrs stationary rest time in total substantial risk

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...
			< 6 ¹ / ₄ but not < 5 ³ / ₄ continuous hrs stationary rest time per block
			< 22 ³ / ₄ but not < 22 ¹ / ₂ hrs stationary rest time in total severe risk
			< 5 ³ / ₄ but not < 5 ¹ / ₂ continuous hrs stationary rest time per block
			< 22 ¹ / ₂ hrs stationary rest time in total critical risk
			< 5 ¹ / ₂ continuous hrs stationary rest time per block

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Column 1	Column 2	Column 3	Column 4		
Total period	Maximum work time	Minimum rest time	Offence category		
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... the following category of offence is committed ...		
14 days (336 hrs)	140 hrs work time		≤ 141½ hrs work time	minor risk	
			> 141½ but not > 142½ hrs work time	substantial risk	
			> 142½ but not > 143 hrs work time	severe risk	
			> 143 hrs work time	critical risk	
			4 x 7 continuous hrs stationary rest time between 10 pm on a day and 8 am on the next day, using the time zone of the base of the driver	< 7 but not < 6¼ hrs stationary rest time per block	minor risk
			< 6¼ but not < 5¾ hrs stationary of that rest time per block	substantial risk	
	< 5¾ but not < 5½ hrs stationary of that rest time per block	severe risk			

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work time	Minimum rest time	Offence category
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...	If in that period a driver has... ... < 5½ hrs stationary of that rest time per block
			critical risk

Subdivision 4 AFM hours

71 AFM hours

- (1) The accreditation certificate issued for an AFM accreditation sets out the work and rest times that apply to the driver of a regulated heavy vehicle, if the driver is working under, and complying with, the accreditation (the *AFM hours*).
- (2) In any period specified in the AFM accreditation, the driver:
 - (a) must not work for more than the maximum work time specified in the AFM hours, and
 - (b) must have at least the minimum rest time specified in the AFM hours.

Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
- (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
- (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
- (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).

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- (3) A contravention of subclause (2) in relation to a period referred to in Column 1 of the Table to this clause is an offence of the risk category determined in accordance with Column 4 of the Table.
- (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

AFM hours—Penalties

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work	Minimum rest time	Offence category
In any period of	If a driver has exceeded the maximum work time by...	If a driver had had less than the minimum rest time by...	...the following category of offence is committed...
Less than 7 days	≤ 45 mins work time	≤ 45 mins rest time	minor risk
	> 45 but ≤ 75 mins work time	> 45 but ≤ 75 mins rest time	substantial risk
	> 75 but ≤ 90 mins work time	> 75 but ≤ 90 mins rest time	severe risk
	> 90 mins work time	> 90 mins rest time	critical risk
7 days or more	≤ 1½ hours work time		minor risk
	> 1½ but ≤ 2½ hours work time		substantial risk
	> 2½ but ≤ 3 hours work time		severe risk
	> 3 hours work time		critical risk

72 AFM outer limits

- (1) The Table to this subclause sets out the *AFM outer limits* for a driver of a regulated heavy vehicle.

AFM outer limits

Column 1	Column 2	Column 3
Total period	Maximum work time	Minimum rest time
In any period of...	a driver must not work for more than...	and must have the rest of that period off work, with at least...
24 hrs	15 hrs work time	6 continuous hrs stationary rest time (or in the case of a two-up driver, rest in an approved sleeper berth), or 8 hrs stationary rest time (or in the case of a two-up driver, rest in an approved sleeper berth) taken in no more than 2 blocks
14 days (336 hrs)	154 hrs work time	2 x 7 continuous hrs stationary rest time between 10 pm on a day and 8 am on the next day, using the time zone of the base of the driver, or 24 continuous hrs stationary rest time taken after no more than 84 hrs work time
28 days (672 hrs)	288 hrs work time	4 x 24 continuous hrs stationary rest time

- (2) In any period listed in Column 1 of the Table to subclause (1), the driver:
- must not work for more than the maximum work time specified in Column 2 of that Table for that period, and
 - must have at least the minimum rest time specified in Column 3 of that Table for that period.

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Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
 - (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (3) In any period mentioned in Column 1 of the Table to this clause, the two-up driver:
- (a) must not work for more than the work time mentioned in Column 2 of that Table, and
 - (b) must have the rest of that period off work, with at least the rest time mentioned in Column 3 of that Table.

Maximum penalty:

- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
 - (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (4) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.
- (5) A contravention of subclause (2) or (3) in relation to a period referred to in Column 1 of the Table to this subclause is an offence of the risk category determined in accordance with Column 4 of that Table.

AFM outer limits—penalties

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work	Minimum rest time	Offence category
In any period of	If a driver has exceeded the maximum work time by...	If a driver had had less than the minimum rest time by...	...the following category of offence is committed...
Less than 7 days	≤ 15 mins work time	≤ 15 mins rest time	substantial risk
	> 15 but ≤ 30 mins work time	> 15 but ≤ 30 mins rest time	severe risk
	> 30 mins work time	> 30 mins rest time	critical risk
7 days or more	≤ 30 mins work time		substantial risk
	> 30 mins but ≤ 1 hour work time		severe risk
	> 3 hours work time		critical risk

Subdivision 5 Changing work and rest hours option**73 Changing work and rest hours option**

- (1) A driver of a regulated heavy vehicle may drive under only one work and rest hours option at any one time.
- (2) However, a driver may change from one work and rest hours option to a different work and rest hours option.
- (3) A driver must not drive a regulated heavy vehicle after changing from one work and rest hours option to a different work and rest hours option unless:
 - (a) if the change is from standard hours or BFM hours—either:
 - (i) the driver is in compliance with all the work and rest time requirements of the work and rest hours option to which he or she has changed, or

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- (ii) the driver has had a reset rest break, and
- (b) if the change is from AFM hours or the hours specified in a work and rest hours exemption—the driver has had a reset rest break, and
- (c) the driver complies with all other requirements of the work and rest hours option to which he or she has changed.

Maximum penalty:

- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).
- (4) If a driver has had a reset rest break between changing from one work and rest hours option to a different work and rest hours option, the period to which the new work and rest hours option applies must be counted forward from the end of the reset rest break.
- (5) The employer or prime contractor of a driver who changes from one work and rest hours option to a different work and rest hours option, the operator of any regulated heavy vehicle driven by the driver, and the driver's scheduler, each must:
- (a) ensure that the driver does not drive a regulated heavy vehicle after making the change unless the driver has complied with subclauses (3) and (4), and
 - (b) take whatever action is necessary to ensure that the driver can comply with his or her obligations in relation to the change.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (6) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.
- (7) A person accused of an offence under subclause (5) has the benefit of the reasonable steps defence.

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- (8) A *reset rest break* means a rest break of at least 48 hours continuous rest.

Division 4 Duties relating to record keeping

Subdivision 1 Interpretation

74 What is a driver's base

- (1) The base of a driver of a regulated heavy vehicle, in relation to particular work, is the place from which he or she normally does the work.
- (2) Despite subclause (1), if a driver has not recorded a base in his or her work diary in relation to particular work, for the purposes of this Part the driver's base in relation to that work is the garage address of the vehicle.
- (3) The *garage address* of a vehicle is:
 - (a) if the vehicle is normally kept at a depot when not in use—the principal depot at which it is kept, or
 - (b) if the vehicle is normally kept on a particular road or at a particular place when not in use—the home address of the registered operator whose home address is nearest to that road or place, or
 - (c) in any other case—the home address of the registered operator whose name is first listed on the registration certificate for the vehicle.
- (4) 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) If a driver has 2 or more employers, the driver may have a different base in relation to each employer.

Subdivision 2 Work diary requirements

75 Driver must carry work diary

- (1) While driving a regulated heavy vehicle, the driver must keep in the vehicle a work diary that contains, for the last 28 days, the information required by this Subdivision.
Maximum penalty: 15 penalty units.

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- (2) A *work diary* is:
- (a) if the driver has used only a written work diary in the last 28 days—the written work diary, or
 - (b) if the driver was required to keep a supplementary record under this Subdivision in the last 28 days—the supplementary record and the written work diary, or
 - (c) if the driver has used only an electronic work diary in the last 28 days:
 - (i) the electronic work diary that the driver is currently using, and
 - (ii) printouts of the information in any other electronic work diary that the driver has used in the last 28 days that cover any periods during those 28 days that are not recorded in the electronic work diary that the driver is currently using, or
 - (d) if the driver has used a combination of a written work diary and an electronic work diary in the last 28 days:
 - (i) the written work diary, and
 - (ii) if the driver is currently using an electronic work diary—the electronic work diary, and
 - (iii) printouts of the information in any electronic work diary that the driver has used in the last 28 days that cover any periods during those 28 days that are not recorded in an electronic work diary that the driver is currently using.
- (3) If the driver has made any supplementary record in the last 28 days, as required by this Subdivision, for the purposes of subclause (2) the work diary includes the supplementary record.
- (4) For the purposes of this Part, a person is entitled to rely on a label attached to an electronic work diary unless he, she or it knows, or reasonably ought to know, that the thing is not the subject of a current approval of the Authority under Subdivision 6.
- (5) Subclause (1) applies irrespective of the number of days in the last 28 days on which the driver spent work time in relation to a regulated heavy vehicle.

76 Information that driver must record in work diary

- (1) This clause lists the information that a driver must record in his or her work diary on each day on which the driver drives a regulated heavy vehicle.

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- (2) The driver must continue to record the information until his or her next major rest break.
- (3) Immediately after starting work on each of those days, the driver must record:
- (a) the day of the week and date, and
 - (b) his or her name, and
 - (c) his or her current driver licence number, and the jurisdiction where the licence was issued, and
 - (d) whether he or she is working under standard hours (including whether the driver is working under standard hours for solo drivers of a bus), BFM hours, AFM hours or the hours specified in a work and rest hours exemption, and
 - (e) if the driver is working under BFM or AFM hours or the hours specified in a work and rest hours exemption that was granted in combination with an operator's BFM or AFM accreditation—the driver's operator's BFM or AFM accreditation number, and
 - (f) details of his or her base, unless he or she has previously recorded those details in relation to the work and they are still current, and
 - (g) details of the driver's record location, unless the driver has previously recorded those details and they are still current, and
 - (h) details of the time zone of the base.
- Maximum penalty: 15 penalty units.
- (4) Immediately before or after each work and rest change on each of those days, the driver must record:
- (a) the nature of the work and rest change, and
 - (b) the work time or rest time spent anywhere by the driver since the last work and rest change, and
 - (c) the time and place of the work and rest change, and
 - (d) the odometer reading at that time, and
 - (e) the registration number shown on the numberplate of each heavy motor vehicle that the driver drives, and
 - (f) if the driver is or becomes a two-up driver—the following information about the other driver in the two-up driving arrangement:
 - (i) the other driver's name,

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- (ii) the other driver's driver licence number,
- (iii) except in the case of a shared electronic work diary, the security or other identifying number of the other driver's work diary and the name of the participating jurisdiction that issued that diary.

Maximum penalty: 15 penalty units.

- (5) If the driver changes from one base or record location to another base or record location after starting work on one of those days, he or she must record the details of the other base or record location (as the case may be) immediately after the change occurs.

Maximum penalty: 15 penalty units.

- (6) Immediately before finishing work on each of those days, the driver must record the total of the work time and the total of the rest time that he or she has had that day.

Maximum penalty: 15 penalty units.

- (7) A driver in a two-up driving arrangement must, at the request of the other driver to the arrangement, provide the other driver with any details the other driver needs to be able to comply with subclause (4) (f).

Maximum penalty: 15 penalty units.

77 How driver must record information in work diary

- (1) A driver must record information in a written work diary in this way:
 - (a) the information for each day must be written on a separate daily sheet in a work diary that has not been cancelled by the Authority, and
 - (b) if the driver changes from one work and rest option to another work and rest option during a day, he or she must record any information for that day that relates to the period after the change occurs on a separate daily sheet, and,
 - (c) information must be written on a daily sheet as required by the instructions in the work diary for recording information on daily sheets, and
 - (d) the daily sheets in the work diary must be used in turn from the front of the work diary, and
 - (e) each daily sheet must:
 - (i) be signed and dated by the driver, and

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- (ii) if the driver is driving under a two-up arrangement—signed by the other two-up driver, and
 - (f) 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 sheets, and
 - (g) other information must be written in the work diary as required by the instructions in the work diary for the recording of the information.

Maximum penalty: 15 penalty units.
 - (2) A driver must record information in an electronic work diary in the way required by:
 - (a) the Authority, or
 - (b) if the Authority does not make a requirement—the manufacturer’s instructions for recording information in the work diary.

Maximum penalty: 15 penalty units.
 - (3) A driver must record time in a work diary according to the time zone in the place where the driver’s base is, rather than the time zone in the place where the driver is.

Maximum penalty: 15 penalty units.

78 Destroyed, lost, stolen or malfunctioning work diaries

- (1) This clause applies if a driver is unable to use a work diary because:
 - (a) it is filled up, destroyed, lost or stolen, or
 - (b) in the case of an electronic work diary:
 - (i) it is malfunctioning, or
 - (ii) a component of it is destroyed, lost or stolen.
- (2) During any period in which subclause (1) applies, the driver must record in a supplementary record any information that the driver is required by clause 76 to record.

Maximum penalty: 15 penalty units.
- (3) Subclause (2) ceases to apply when the first of the following events occurs:
 - (a) the driver is issued a replacement work diary under Subdivision 5,

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- (b) in the case of an electronic work diary that is malfunctioning—the diary is brought into working order, or
 - (c) in the case of an electronic work diary for which a component has been destroyed, lost or stolen—the driver is given a replacement component and the diary is brought into working order, or
 - (d) the expiry of 7 business days after the day on which the period in which the driver is unable to use the work diary started.
- (4) As soon as practicable (but within 2 business days) after the driver becomes aware that this clause applies, the driver must give the Authority written notice, in a form approved by the Authority, of the relevant event that caused this clause to apply.
Maximum penalty: 15 penalty units.
- (5) If a driver gives a work diary to the Authority under subclause (4), the Authority must:
 - (a) cancel any unused daily sheets in the diary, and
 - (b) return the diary to the driver.
- (6) If a lost or stolen written work diary (the *old work diary*) is found by, or returned to, the driver after a replacement work diary has been issued to the driver, the driver must:
 - (a) immediately cancel any unused daily sheets in the old work diary by writing “cancelled” in large letters across each unused sheet, and
 - (b) if the old work diary was found or returned:
 - (i) within 28 days after it was lost or stolen, immediately notify the Authority in writing that it has been found or returned, and must give it to the Authority as soon as is practicable after that 28 day period ends, or
 - (ii) in any other circumstances, give it to the Authority as soon as is practicable after obtaining it.
Maximum penalty: 15 penalty units.
- (7) If the driver of a regulated heavy vehicle becomes aware or reasonably suspects that an electronic work diary fitted to the vehicle is malfunctioning, the driver must inform his or her record keeper of that as soon as practicable (but within 2 business days).
Maximum penalty: 15 penalty units.

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- (8) If the Authority receives an application to replace the work diary of a driver from another jurisdiction in the participating zone, it must notify the corresponding Authority of that jurisdiction that it has received the application.
- (9) Also, in the case of an electronic work diary that includes or forms part of an intelligent transport system approved under the IAP provisions, if a person on whom an obligation to report a malfunction of or tampering with a system under those provisions becomes aware or reasonably suspects that the electronic work diary is malfunctioning, the person must inform the record keeper of that as soon as practicable (but within 2 business days).
Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (10) As soon as is practicable after being informed under subclause (6) or (8), the record keeper must ensure that the electronic work diary is examined and brought into working order.
Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (11) A person accused of an offence under subclause (2), (4), (6), (7), (9) or (10) does not have the benefit of the mistake of fact defence.
- (12) A person accused of an offence under this clause has the benefit of the reasonable steps defence.

79 Malfunctioning odometers

- (1) It is a defence for an offence against clause 76 (4) (d) for the driver to prove that:
- (a) at the time of the offence, the odometer was malfunctioning, and
 - (b) within 2 business days after the offence, the driver had complied with subclause (3).
- (2) The owner of a regulated heavy vehicle must ensure that an odometer that is fitted to the vehicle is maintained to the standard approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.
Maximum penalty:
- (a) in the case of an individual—15 penalty units, and

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- (b) in the case of a corporation—75 penalty units.
- (3) If the driver of a regulated heavy vehicle becomes aware or reasonably suspects that an odometer fitted to the vehicle is malfunctioning, the driver must inform the following persons of that as soon as practicable (but within 2 business days):
 - (a) the owner of the vehicle, and
 - (b) if the driver is an employed driver—the driver’s employer, and
 - (c) the operator of the vehicle.Maximum penalty:
 - (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (4) As soon as is practicable after being informed under subclause (3), the owner of the regulated heavy vehicle must ensure that the odometer is examined and brought into working order.
Maximum penalty:
 - (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (5) The driver’s employer and the operator of the vehicle must ensure that the owner complies with subclause (4).
Maximum penalty:
 - (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (6) A person accused of an offence under this clause has the benefit of the reasonable steps defence.

80 Duty of employers, prime contractors, operators and schedulers to ensure driver compliance

- (1) The following persons must ensure that a driver complies with the requirements of this Subdivision:
 - (a) the employer of an employed driver,
 - (b) the prime contractor of a self-employed driver,
 - (c) the operator of a regulated heavy vehicle that is being, or to be, driven by a driver,
 - (d) the scheduler of a driver of, or of the goods or passengers being or to be transported on, a regulated heavy vehicle that is being, or to be, driven by a driver.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (2) A person accused of an offence under this clause has the benefit of the reasonable steps defence.

Subdivision 3 Records relating to drivers

81 Information that record keeper must record

- (1) This clause applies to each record keeper in relation to a driver.
- (2) If the driver is working under standard hours or under a BFM or AFM accreditation or under a work and rest hours exemption (whether or not granted in combination with an operator's BFM or AFM accreditation), the record keeper:
 - (a) must record the following information as soon as possible after receiving it:
 - (i) the driver's name, driver licence number and contact details,
 - (ii) the driver's rosters and trip schedules, including details of driver changeovers, and
 - (b) must keep a copy of all duplicate pages and other copies of work diary entries given to the record keeper under subclause (7), and
 - (c) must keep a copy of payment records relating to the driver, including timesheet records if the driver is paid according to time at work.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (3) If the driver is working under a BFM or AFM accreditation, the record keeper must also record the following information:
- (a) any information required to be kept as a condition of the BFM or AFM accreditation,
 - (b) any information required to be kept under the BFM or AFM standards and business rules.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

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- (4) The record keeper must keep a record that is required to be kept under this clause for 3 years after it is created.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (5) The record keeper must keep the records at the record location so that they are reasonably accessible to an authorised officer.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (6) The record keeper must keep the records in a way that ensures:
- (a) they are readable and reasonably capable of being understood, and
 - (b) are capable of being used as evidence.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- Note.** Example—A record keeper should keep copies of records in storage facilities that will ensure the records do not degrade or could become unreadable. This could include scanning relevant hard copy records and retaining them in electronic format if they remain clearly readable.
- (7) Within 21 days after a day on which the driver drove a regulated heavy vehicle, he or she must give a copy of his or her work diary entries (including any entries made in any supplementary record) for that day to each person who was, or who was acting on behalf of, a record keeper for the driver on that day.
- Maximum penalty: 15 penalty units.
- (8) Subclause (7) does not apply with respect to any entries that are electronically transferred from an electronic work diary to the record keeper within the 21 day period referred to in that subclause.
- (9) The record keeper must ensure that the driver complies with subclause (7).
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.

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- (10) If a driver uses an electronic work diary, the record keeper must ensure:
- (a) that the information recorded in the diary on a specific day is electronically transferred to the record keeper within 21 days after that day, or
 - (b) that the driver complies with subclause (7).
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (11) If a driver changes record keepers, the driver must, before driving a regulated heavy vehicle for the new record keeper, give the new record keeper a copy of the information recorded in any work diary that the driver was required to keep in the 28 days before the change occurred that relates to that 28 day period.
- Maximum penalty: 15 penalty units.
- (12) If subclause (11) imposes a duty on a driver, the new record keeper must not require or allow the driver to drive a regulated heavy vehicle on the new record keeper's behalf unless the driver has complied with subclause (11).
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (13) If the driver's work diary is an electronic work diary, the record keeper must give the driver a printout of the information recorded in the work diary for any relevant day on which the driver was using the electronic work diary before the driver stops using the electronic work diary.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (14) A person accused of an offence under this clause has the benefit of the reasonable steps defence.

82 Record keeper may engage other person to keep records

- (1) A record keeper may engage the services of another person to carry out some or all of the record keeper's functions as a record keeper under this Part.

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- (2) If such an engagement occurs:
 - (a) the record keeper remains liable for all obligations imposed on the record keeper under this Part, and
 - (b) the other person is also liable under this Part, in respect of any obligation imposed on the record keeper as a record keeper that is covered by the terms of the engagement, as if he, she or it was the record keeper.

Subdivision 4 False work records etc

83 Definitions

In this Subdivision:

entry, in a work record, includes an annotation made in the record by an authorised officer or police officer.

work record means a work diary or a record required to be kept under Subdivision 3.

84 False entries

A person must not record an entry in a work record or a supplementary record that the person knows, or reasonably ought to know, is false or misleading in any significant respect.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

85 Keeping 2 work diaries simultaneously prohibited

- (1) A driver must not have in his or her possession more than one written work diary in which information can be recorded on a daily sheet.

Maximum penalty: 15 penalty units.

Note. A driver does not commit an offence against this subclause if the driver has another written work diary in his or her possession in which information can not be recorded because all the daily sheets are used up.

- (2) A driver must not record information for the same period in more than one work diary.

Maximum penalty: 15 penalty units.

86 Possession of purported work records etc prohibited

A driver or record keeper must not have in his or her possession something purporting to be a work record if the driver or record keeper knows, or reasonably ought to know, that it is not a work record.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

87 Defacing or changing work records etc prohibited

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

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

88 False representation of work records prohibited

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

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

89 Making entries in someone else's work records prohibited

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

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (2) Subclause (1) does not apply to:

- (a) a person who is the nominee of a driver and makes the entry in the driver's work diary as required by a work diary exemption applying to the driver, or
- (b) an authorised officer, or
- (c) a two-up driver who enters any of the information required by clause 76 (4) (f) in her or his fellow two-up driver's work record, or who signs that work record.

90 Destruction of certain work records prohibited

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

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

91 Tampering with electronic work diaries prohibited

- (1) A person must not tamper with the operation of an electronic work diary.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (2) A record keeper and a driver must ensure that a person does not tamper with the operation of an electronic work diary.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (3) If an electronic work diary being used by a driver includes or forms part of an intelligent transport system approved under the IAP provisions, a person on whom an obligation to report a malfunction of or tampering with the system under those provisions must ensure that a person does not tamper with the operation of an electronic work diary under this Part.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (4) A person *tampers* with an electronic work diary if the person engages in conduct that:

- (a) results in the diary malfunctioning, or
- (b) may result in the diary malfunctioning, or
- (c) alters any of the data recorded by the diary, or
- (d) may alter any of the data recorded by the diary, or
- (e) results in inaccurate data being recorded by the diary, or
- (f) may result in inaccurate data being recorded by the diary.

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- (5) A person also *tampers* with an electronic work diary if the person tampers or otherwise interferes with any electronic signal that is sent to, or from, the diary, and that conduct has any of the effects listed in subclause (4).
 - (6) Subclause (1) does not apply to:
 - (a) a person who is repairing a malfunctioning electronic work diary in accordance with Subdivision 2, or
 - (b) a person who is authorised by the Authority, or
 - (c) an authorised officer.
 - (7) A person accused of an offence under subclause (1), (2) or (3) does not have the benefit of the mistake of fact defence.
 - (8) A person accused of an offence under subclause (2) or (3) has the benefit of the reasonable steps defence.
 - (9) If a person is accused of an offence under subclause (1) and the alleged offence involves tampering or otherwise interfering with any electronic signal that is sent to, or from, an electronic work diary, it is a defence if the person proves that he or she was not aware, and could not reasonably be expected to have been aware, that the activity that constituted the alleged tampering or interfering would interfere with the electronic signal.
 - (10) Subclause (9) does not apply to a driver who was using the electronic work diary or to the driver's record keeper.

Subdivision 5 Written work diaries

92 Form of written work diaries

- (1) A written diary must be in a format that allows information to be recorded in the format approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.
- (2) A written work diary must contain:
 - (a) a unique identifying number for the work diary, and
 - (b) sequentially numbered sheets for making daily records, and
 - (c) provision for recording information on the daily sheets, and
 - (d) a duplicate of any application form in the work diary, and
 - (e) 2 duplicates of each daily sheet, and
 - (f) instructions for use of the work diary.

- (3) A written work diary may contain an application form for the issue of another work diary.
- (4) If a written work diary is used as required by the instructions in the work diary, information written on a daily sheet or application form must be automatically copied on to any duplicates of the sheet or form in the diary.

93 Issue of written work diaries

- (1) A driver who wants to be issued with a written work diary (including a replacement work diary) must apply in person to the Authority.
- (2) The application must be in the form that is approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.
- (3) If the application form is for a written work diary to replace a written work diary that has been previously issued to the driver (the *existing written work diary*), the driver must give the existing written work diary to the Authority with the application, unless the existing written work diary has been destroyed, lost or stolen.
- (4) If the driver gives the existing written work diary to the Authority, the Authority must:
 - (a) cancel any unused daily sheets in the written work diary, and
 - (b) return the written work diary to the driver when the Authority issues the replacement written work diary to the driver.
- (5) If the application is for a written work diary to replace an existing written work diary that has been destroyed, lost or stolen, the application must:
 - (a) state the work diary's number and that it has been destroyed, lost or stolen, and
 - (b) briefly outline the circumstances of the destruction, loss or theft.
- (6) The Authority must issue a written work diary to a driver if the driver:
 - (a) identifies himself or herself by showing the driver's current driver licence to the Authority, and
 - (b) pays an application fee approved by the Authority.

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- (7) If the Authority issues a written work diary to a driver, it must note the date, time and place of issue on the written work diary.
 - (8) The Authority may make other notes on the written work diary.
 - (9) If the Authority issues a written work diary to a driver from another jurisdiction in the participating zone:
 - (a) it must notify the corresponding Authority of that jurisdiction of:
 - (i) the identifying number for the work diary, and
 - (ii) the driver's name and licence number, and
 - (iii) the time, date and place of issue, and
 - (b) it must include with that notification either:
 - (i) a statement of the reason why it issued the work diary, or
 - (ii) a copy of the application it received for the issue of the work diary.

Subdivision 6 Electronic work diaries

94 Approval of electronic work diaries

- (1) A person may apply to the Authority to have a particular type of electronic work diary approved by the Authority.
- (2) The application must be in the form that is approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.
- (3) The Authority may approve a system of recording information electronically for use as an electronic work diary for the purposes of this Part if it is satisfied that the system:
 - (a) is suitable for fitting to, or for use in, a regulated heavy vehicle, and
 - (b) has a mechanism that readily indicates to the driver of the vehicle that the system is, or is not, properly functioning, and
 - (c) is capable of accurately monitoring and recording the work and rest times of the driver of the vehicle, and of recording any other information that a driver is required, under this Part, to record in a work diary, and
 - (d) if the system is to be fitted to the vehicle and is to be used by more than one driver, is capable of ensuring:

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- (i) that all of the information referred to in paragraph (c) can be accurately monitored or recorded (as the case may be) for each driver, and
 - (ii) that the details recorded by, or in respect of, a driver are readily distinguishable from the details recorded by, or in respect of, any other driver, and
 - (iii) that the name of each driver in respect of which details are recorded is shown whenever the details are accessed, and
 - (iv) that a driver cannot record any information that a driver is required, under this Part, to record in a work diary in the system for, or on behalf of, another driver, and
- (e) has a mechanism to ensure that the driver cannot alter any information that the driver records in the system once the driver has had an opportunity to confirm the accuracy of that information, and
- (f) if the system is designed to enable the driver to send information to the driver's record keeper, has a mechanism that readily indicates to the driver that the information has, or has not, been sent to the record keeper, and
- (g) is capable of readily reproducing, on being accessed by the record keeper, the information it contains, and
- (h) is capable of readily reproducing, on being accessed by an authorised officer while the vehicle to which it is fitted is on the road, the information it contains in a form:
- (i) that is readily accessible by the officer, and
 - (ii) that is reasonably capable of being understood by the officer, and
 - (iii) that can be used as evidence.
- (4) In approving a type of electronic work diary, the Authority must have regard to any guidelines in relation to electronic diaries approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.
- (5) If the Authority grants an application under this clause, it must issue a numbered certificate of approval to the applicant.
- (6) In granting an application, the Authority may impose conditions in relation to the operation and maintenance of the diary.
- (7) An approval under this clause covers any system that is identical to the system that was submitted to the Authority for approval.

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- (8) Any identical system that is covered by an approval is also subject to any conditions that were imposed in relation to the approval.
 - (9) A document that purports to be a certificate of approval issued by the Authority under this clause is evidence that any system referred to in the document has been approved by the Authority as an electronic work diary under this clause.
 - (10) If the Authority does not make the decision sought by an applicant, the Authority must also give the applicant a written notice that states:
 - (a) the Authority's decision, and
 - (b) the reasons for the decision, and
 - (c) that the applicant may apply to have the decision reconsidered.

95 Labelling of electronic work diary devices

- (1) In this clause, approved electronic work diary means a system of recording information electronically that is the subject of a current approval of the Authority under this Subdivision for use as an electronic work diary for the purposes of this Part, or that is identical to such a system.
- (2) A person may place on any device that is, or that forms part of, an approved electronic work diary a label that indicates that the device is, or is part of, an approved electronic work diary.
- (3) A person must not place on any device a label that indicates that the device is, or is part of, an approved electronic work diary if the device is not, or does not form part of, an approved electronic work diary.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (4) A person must not use as an electronic work diary for the purposes of this Part any device that has a label that indicates that the device is, or is part of, an approved electronic work diary if the person knows, or reasonably ought to know, that the device is not, or does not form part of, an approved electronic work diary.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

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- (5) The existence of a label on a thing that indicates that the thing is, or forms part of, an approved electronic work diary, and that purports to show the number of a certificate of approval, is evidence that the thing is an approved electronic work diary.

96 Variation or cancellation of approval—on application

- (1) An application for variation or cancellation of the approval of an electronic work diary must be made to the Authority in writing.
- (2) An application for a variation must state clearly what variation is sought and outline the reasons for the application.
- (3) The Authority, by written notice given to the applicant, may require the applicant to give the Authority any necessary additional information.
- (4) The Authority must decide the application as soon as practicable after the Authority receives it.
- (5) If the Authority decides to grant the application, the Authority must give the applicant written notice of that decision.
- (6) The variation or cancellation takes effect:
 - (a) when written notice of the decision is given to the applicant, or
 - (b) at a later time stated in that written notice.
- (7) If the Authority does not make the decision sought by the applicant, the Authority must also give the applicant a written notice that states:
 - (a) the Authority's decision, and
 - (b) the reasons for the decision, and
 - (c) that the applicant may apply to have the decision reconsidered.

97 Removal of electronic work diary approval label

- (1) This clause applies if the Authority cancels the approval of an electronic work diary.
- (2) The person who held the approval immediately before the cancellation took effect must remove from any diaries in the person's possession any label that relates to the former approval.
Maximum penalty:
 - (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.

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- (3) The Authority may direct the person who held the approval immediately before the cancellation took effect to notify in writing each person to whom the person has supplied any diary under the approval that the approval has been cancelled and that any label on any such diary still in the other person's possession should be removed.
- (4) If the Authority gives a direction to a person under subclause (3), the person must comply with the direction.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (5) With the consent of the Authority, a person may comply with subclause (3) by publishing details of the cancellation, and any further details specified by the Authority, using at least 2 of the following methods:
- (a) by notice published in a newspaper specified by the Authority,
 - (b) by notice published in a journal or newsletter specified by the Authority,
 - (c) on a website specified by the Authority.
- (6) Nothing in this clause prevents the Authority from publishing details of the cancellation by whatever means it thinks appropriate.
- Note.** For example, the Authority may publish the cancellation by gazettal or on a website.
- (7) Any person who is aware that the approval of a diary in the person's possession has been cancelled must remove from the diary any label that relates to the former approval.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (8) A person (other than a person referred to in subclause (9)) accused of an offence under this clause does not have the benefit of the mistake of fact defence.
- (9) A party in the chain of responsibility accused of an offence under this clause has the benefit of the reasonable steps defence.

98 Authority may permit the use of diaries whose approval has been cancelled

- (1) The Authority may, by notice published in the Gazette, permit the use of diaries whose approval has been cancelled:
 - (a) for a specified period not exceeding 1 year, and
 - (b) on specified conditions.
- (2) Despite anything to the contrary in this Part, a diary that is the subject of a notice under this clause is to be treated as if it were an electronic work diary, unless it is being used contrary to any condition specified in the notice.
- (3) The Authority may, by notice published in the Gazette, vary or revoke a notice under this clause.

99 Variation or cancellation of approval—without application

- (1) The Authority may vary an approval of an electronic work diary, without receiving an application, if the Authority is reasonably satisfied that any of the following grounds exists:
 - (a) that the application for the approval was false or misleading in a material respect, but the circumstances do not require its cancellation,
 - (b) that:
 - (i) since the approval was given, a change has happened in relation to something that the Authority must consider in deciding whether to give an approval of that kind, and
 - (ii) the approval would have been given as it is proposed to be varied if the change had happened before the approval was given.
- (2) The Authority may cancel an approval of an electronic work diary, without receiving an application, if the Authority is reasonably satisfied that any of the following grounds exists:
 - (a) that the application for the approval was false or misleading in a material respect,
 - (b) that:
 - (i) since the approval was given, a change has happened in relation to something that the Authority must consider in deciding whether to give an approval of that kind, and

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- (ii) the approval would not have been given if the change had happened before the approval was given.
- (3) If the Authority is satisfied that a ground exists to vary or cancel an approval, the Authority must give the person who holds the approval a written notice that:
- (a) states the proposed variation or cancellation, and
 - (b) states the ground for the proposed variation or 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 specified time of at least 14 days after the notice is given to the person, why the approval should not be varied or cancelled.
- (4) If, after considering any written statement made within the specified time, the Authority is reasonably satisfied that a ground exists to take the proposed action, the Authority may:
- (a) if the proposed action is to vary the approval in a stated way—vary the approval in that way, and
 - (b) if the proposed action is to cancel the approval—cancel the approval, or vary the approval in any way.
- (5) The Authority must give the person written notice of the Authority's decision.
- (6) If the Authority decides to vary or cancel the approval, the Authority must also give the person a written notice that states:
- (a) the reasons for the decision, and
 - (b) that the person may apply to have the decision reconsidered.
- (7) The variation or cancellation takes effect:
- (a) when written notice of the decision, and the reasons for the decision, is given to the person, or
 - (b) at a later time stated in that written notice.
- (8) Subclauses (9)–(14) apply if:
- (a) the Authority varies the approval of an electronic work diary, and
 - (b) in the Authority's opinion, the variation will, or is likely to, significantly affect the way the diary is to be used.

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- (9) The Authority may direct the person who, immediately before the variation took effect, held the approval to notify in writing each person to whom the person has supplied any diary under the approval that the approval has been varied.
- (10) If the Authority gives a direction to a person under subclause (9), the person must comply with the direction.
Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (11) With the consent of the Authority, a person may comply with subclause (10) by publishing details of the variation, and any further details specified by the Authority, using at least 2 of the following methods:
- (a) by notice published in a newspaper specified by the Authority,
 - (b) by notice published in a journal or newsletter specified by the Authority,
 - (c) on a website specified by the Authority.
- (12) Nothing in this section prevents the Authority from publishing details of the cancellation by whatever means it thinks appropriate.
Note. For example, the Authority may publish the cancellation by gazettal or on a website.
- (13) A person (other than a person referred to in subclause (14)) accused of an offence under this clause does not have the benefit of the mistake of fact defence.
- (14) A party in the chain of responsibility accused of an offence under this clause has the benefit of the reasonable steps defence.

100 How electronic work diary to be operated

- (1) A driver using an electronic work diary must ensure that he or she operates and maintains the diary:
- (a) in accordance with the manufacturer's specifications, as varied by any conditions imposed by the Authority, and
 - (b) in compliance with any conditions imposed by the Authority that apply to the operation of the diary.
- Maximum penalty: 15 penalty units.

- (2) The record keeper of a driver using an electronic work diary must ensure that the driver complies with the requirements of subclause (1).

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.
- (3) It is a defence to an offence of failing to comply with a particular specification of the manufacturer for the accused person to prove either:
- (a) that the specification was not integral to the effective operation of the diary, or
- (b) that what was done or not done with respect to the specification was in accordance with industry practice in relation to the handling or maintenance of a diary of that type from that manufacturer.

101 Admissibility of documents produced by an electronic work diary

- (1) A document produced by an electronic work diary is evidence of the matters contained in the document.
- (2) A statement as to the operation of an electronic work diary made in a document purporting to be signed by a person purporting to be involved with the operation of the diary is evidence of any fact contained in the statement.

Note. Examples:

- A statement by a driver describing how the driver operated the electronic work diary
- A statement by the owner of an electronic work diary describing how the electronic work diary has been maintained
- A statement by the record keeper that certain data was transmitted to the record keeper by the electronic work diary

Division 5 Accreditation and exemptions

Subdivision 1 Accreditation

102 What is an accreditation

- (1) An *accreditation* is a BFM or AFM accreditation.
- (2) A reference to:
- (a) an *accreditation* includes a reference to the accreditation as varied, and

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

103 Applying for BFM accreditation

- (1) The operator of a regulated heavy vehicle may apply to the Authority for BFM accreditation.
- (2) The application must be made in the form approved by the Authority and include:
 - (a) the operator's name and contact details, and
 - (b) a statement by the operator that the operator has a BFM fatigue management system to ensure compliance with the BFM standards and business rules, and
 - (c) a statement from an auditor of a class approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette that the auditor considers that the operator's BFM fatigue management system will ensure compliance with the BFM standards and business rules, and
 - (d) any other information required by the Authority in accordance with the BFM standards and business rules.
- (3) A *BFM fatigue management system* is an operator's management system for ensuring compliance with the BFM standards and business rules, including by:
 - (a) recording the name, driver licence number and contact details of each driver who is currently under the operator's BFM accreditation, and
 - (b) ensuring that each of those drivers is in a fit state:
 - (i) to safely perform required duties, and
 - (ii) to meet any specified medical requirements, and
 - (c) ensuring that each of those drivers:
 - (i) has been inducted into the operator's BFM fatigue management system, and
 - (ii) has been informed of the BFM hours, and
 - (d) ensuring that anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of those drivers:
 - (i) has been inducted into the operator's BFM fatigue management system, and
 - (ii) has been informed of the BFM hours.

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- (4) The application must also be accompanied by a declaration, declared to be made by the operator after taking all reasonable steps to ascertain the following information, of the operator's knowledge of whether:
- (a) in the 5 years immediately before the application was made, any of the following persons has contravened this Part, a corresponding fatigue law, or an Australian applicable road law and, if so, details of the contravention:
 - (i) the operator,
 - (ii) an associate of the operator,
 - (b) any of the following persons has had their BFM or AFM accreditation varied or cancelled and, if so, details of the variation or cancellation:
 - (i) the operator,
 - (ii) an associate of the operator.
- (5) The application must also be accompanied by an application fee approved by the Authority.
- (6) The Authority, by written notice to the operator, may require the operator to give the Authority any necessary additional information.

104 Granting BFM accreditation

- (1) The Authority must decide an application for BFM accreditation as soon as practicable after the Authority receives the application.
- (2) The Authority may grant BFM accreditation to the operator of a regulated heavy vehicle if it is satisfied:
 - (a) the operator is able to comply with this Part, and
 - (b) the operator is a suitable person to be granted BFM accreditation.
- (3) For this purpose, the Authority may take into account anything it considers is relevant, including (but not limited to) the following:
 - (a) any details provided under this Subdivision,
 - (b) the results of any audits carried out on the operator's BFM fatigue management system, or proposed BFM fatigue management system.
- (4) In granting BFM accreditation to the operator of a regulated heavy vehicle, the Authority must have regard:
 - (a) to any relevant advice given to it by the Fatigue Authorities Panel, and

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- (b) to any guidelines in relation to BFM accreditation issued by the Fatigue Authorities Panel by notice published in the Commonwealth Government Gazette.
- (5) If the Authority grants the BFM accreditation, it must give the operator an accreditation certificate in the form approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette that certifies the operator has been granted BFM accreditation and sets out the details of that accreditation.
- (6) The accreditation takes effect:
 - (a) when the accreditation certificate is given to the applicant, or
 - (b) at a later time stated in the certificate.
- (7) The BFM accreditation applies for the period (not longer than 3 years) stated in the BFM accreditation certificate.
- (8) If the Authority refuses to grant a BFM accreditation, it must give the applicant a written notice that:
 - (a) states the reasons for the refusal, and
 - (b) tells the operator that the operator may apply to have the decision reconsidered.

105 Conditions of BFM accreditation

- (1) Every BFM accreditation is subject to the condition that the operator must comply with the BFM standards and business rules.
- (2) A BFM accreditation is also subject to any other conditions stated in the accreditation certificate.
- (3) A person who is granted a BFM accreditation must not contravene a condition of the BFM accreditation.
Maximum penalty:
 - (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.

106 Driver must carry BFM accreditation documents

- (1) At all times while working under an operator's BFM accreditation, a driver must have in his or her possession:
 - (a) a copy of the operator's accreditation certificate, and
 - (b) a document signed by the operator stating that the driver is working under the operator's accreditation, has been

inducted into the operator's BFM fatigue management system and meets the requirements relating to drivers under the accreditation.

Maximum penalty: 15 penalty units.

- (2) The operator must ensure that each of the drivers driving under the operator's BFM accreditation does not contravene subclause (1).

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (3) A driver must immediately return to an operator any document given to him or her by the operator for the purposes of subclause (1) if the driver:

- (a) ceases to work under an operator's BFM accreditation, or
- (b) ceases to meet the requirements relating to drivers under that accreditation.

Maximum penalty: 15 penalty units.

107 Information that operator must record

- (1) An operator must ensure that each driver who is to work under the operator's BFM accreditation is:

- (a) inducted into the operator's BFM fatigue management system, and
- (b) meets the requirements relating to drivers under the operator's BFM accreditation.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (2) An operator must keep:

- (a) a current list of the drivers under the operator's BFM accreditation, and
- (b) records demonstrating that any such driver:
 - (i) has been inducted into the operator's BFM fatigue management system, and
 - (ii) meets requirements relating to drivers under the operator's BFM accreditation.

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Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (3) The records must be kept in accordance with the requirements of Subdivision 3 of Division 4.
- (4) If required to do so by the Authority, the operator must give to the Authority, in the form and within the time specified by the Authority:
- (a) a copy of the list of drivers kept by the operator under subclause (2) (b), and
 - (b) details of any changes to that list.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

108 Operator must advise of change or end of accreditation

- (1) If an operator who has a BFM accreditation changes or ceases to hold that accreditation, the operator must inform any driver or scheduler who may be affected by that change or cessation of the fact that the change or cessation has happened, as soon as practicable after the change or cessation happens.

Maximum penalty:

- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
 - (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).
- (2) If a driver is informed that an operator's BFM accreditation has changed or ceased, he or she must immediately return to the operator any document given to him or her by the operator for the purposes of clause 106.

Maximum penalty: 15 penalty units.

109 Applying for AFM accreditation

- (1) The operator of a regulated heavy vehicle may apply to the Authority for AFM accreditation.

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- (2) The application must be made in the form approved by the Authority and include:
- (a) the operator's name and contact details, and
 - (b) the operator's AFM fatigue management proposal (which is explained in the next subclause), and
 - (c) a statement by the operator that the operator has an AFM fatigue management system to ensure compliance with the AFM standards and business rules, and
 - (d) a statement from an auditor of a class approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette that the auditor considers that the operator's AFM fatigue management system will ensure compliance with the AFM standards and business rules, and
 - (e) any other information required by the Authority in accordance with the AFM standards and business rules.
- (3) An *AFM fatigue management proposal* must set out:
- (a) the proposed work and rest hours limits for drivers of those vehicles, and
 - (b) the risks involved with working under the proposed work and rest hours limits, and the proposed countermeasures that are designed to manage those risks, and
 - (c) the other details required under the AFM standards and business rules.
- (4) An *AFM fatigue management system* is an operator's management system for ensuring compliance with the AFM standards and business rules, including by:
- (a) recording the name, driver licence number and contact details of each driver who is currently under the operator's AFM accreditation, and
 - (b) ensuring that each of those drivers is in a fit state:
 - (i) to safely perform required duties, and
 - (ii) to meet any specified medical requirements, and
 - (c) ensuring that each of those drivers:
 - (i) has been inducted into the operator's AFM fatigue management system, and
 - (ii) has been informed of the AFM hours under the operator's AFM accreditation, and

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- (d) ensuring that anyone employed in the operator's business, who has responsibilities relating to scheduling or managing the fatigue of those drivers:
 - (i) has been inducted into the operator's AFM fatigue management system, and
 - (ii) has been informed of the AFM hours under the operator's AFM accreditation.
- (5) The application must also be accompanied by a declaration, declared to be made by the operator after taking all reasonable steps to ascertain the following information, of the operator's knowledge of whether:
 - (a) in the 5 years immediately before the application was made, any of the following persons has contravened this Part, a corresponding fatigue law, or an Australian applicable road law and, if so, details of the contravention:
 - (i) the operator,
 - (ii) an associate of the operator, and
 - (b) any of the following persons has had their BFM or AFM accreditation varied or cancelled and, if so, details of the variation or cancellation:
 - (i) the operator,
 - (ii) an associate of the operator.
- (6) The application must also be accompanied by an application fee approved by the Authority.
- (7) The Authority, by written notice to the operator, may require the operator to give the Authority any necessary additional information.

110 Granting AFM accreditation

- (1) The Authority must decide an application for AFM accreditation as soon as practicable after the Authority receives the application.
- (2) The Authority may grant AFM accreditation to the operator of a regulated heavy vehicle if it is satisfied that:
 - (a) the operator is able to comply with this Part, and
 - (b) the operator is a suitable person to be granted AFM accreditation, and
 - (c) the driver fatigue management practices (including proposed work and rest hours) stated in the operator's AFM fatigue management proposal would, if followed, safely manage the risk of driver fatigue, and

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- (d) the operator and drivers are likely to follow those practices consistently and effectively.
- (3) For this purpose, the Authority may take into account anything it considers is relevant, including (but not limited to) the following:
- (a) any details provided under clause 109 (5),
 - (b) the results of any audits carried out on the operator's AFM fatigue management system, or proposed AFM fatigue management system,
 - (c) for the purposes of assessing the operator's AFM fatigue management proposal—any relevant body of fatigue knowledge.
- (4) In granting AFM accreditation to the operator of a regulated heavy vehicle, the Authority must have regard:
- (a) to any relevant advice given to it by the Fatigue Authorities Panel, and
 - (b) to any guidelines in relation to AFM accreditation issued by the Fatigue Authorities Panel by notice published in the Commonwealth Government Gazette.
- (5) In approving the work and rest hours limits that are applicable to a particular AFM accreditation, the Authority:
- (a) must be satisfied that the limits appear to provide a safe balance between work, rest, risk management and fatigue countermeasures, and
 - (b) must not set limits that:
 - (i) allow a driver to work more than the work time allowed, or to have less than the rest time required, in the AFM outer limits, or
 - (ii) the Authority considers would be unsafe, having regard to the operator's AFM fatigue management proposal and any relevant body of fatigue knowledge.
- (6) If the Authority grants the AFM accreditation, it must give the operator an accreditation certificate in the form approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette that:
- (a) certifies that the operator has been granted AFM accreditation, and
 - (b) sets out the details of that accreditation, including the work and rest hours limits that apply to the accreditation.

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- (7) The accreditation takes effect:
 - (a) when the accreditation certificate is given to the applicant, or
 - (b) at a later time stated in the certificate.
- (8) The AFM accreditation applies for the period (not longer than 3 years) stated in the AFM accreditation certificate.
- (9) If the Authority refuses to grant an AFM accreditation, it must give the applicant a written notice that:
 - (a) states the reasons for the refusal, and
 - (b) tells the operator that the operator may apply to have the decision reconsidered.

111 Conditions of AFM accreditation

- (1) Every AFM accreditation is subject to the condition that the operator must comply with the AFM standards and business rules.
- (2) An AFM accreditation is also subject to any other conditions stated in the accreditation certificate.
- (3) A person who is granted an AFM accreditation must not contravene a condition of the AFM accreditation.
Maximum penalty:
 - (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.

112 Driver must carry AFM accreditation details

- (1) At all times while working under an operator's AFM accreditation, a driver must have in his or her possession:
 - (a) a copy of the operator's accreditation certificate, and
 - (b) a document signed by the operator stating that the driver is working under the operator's accreditation, has been inducted into the operator's AFM fatigue management system and meets the requirements relating to drivers under the accreditation, and
 - (c) a document that sets out the AFM hours allowed under the accreditation.
Maximum penalty: 15 penalty units.
- (2) The operator must ensure each of the drivers driving under the operator's AFM accreditation do not contravene subclause (1).

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (3) A driver must immediately return to an operator any document given to him or her by the operator for the purposes of subclause (1) (a) or (b) if the driver:
- (a) ceases to work under an operator's AFM accreditation, or
 - (b) ceases to meet the requirements relating to drivers under that accreditation.

Maximum penalty: 15 penalty units.

113 Information that operator must record

- (1) An operator must ensure that each driver who is currently under the operator's AFM accreditation:
- (a) is inducted into the operator's AFM fatigue management system and informed of the AFM hours under the operator's AFM accreditation, and
 - (b) meets the requirements relating to drivers under the operator's AFM accreditation.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (2) An operator must keep:
- (a) a current list of the drivers under the operator's AFM accreditation, and
 - (b) records that demonstrate that any such driver:
 - (i) has been inducted into the operator's AFM fatigue management system and informed of the AFM hours under the operator's AFM accreditation, and
 - (ii) meets requirements relating to drivers under the particular accreditation.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (3) The records must be kept in accordance with the requirements of Subdivision 3 of Division 4.

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- (4) If required to do so by the Authority, the operator must give to the Authority, in the form and within the time specified by the Authority:
- (a) a copy of the list of drivers kept by the operator under subclause (2) (b), and
 - (b) details of any changes to that list.
- Maximum penalty:
- (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.

114 Operator must advise of change or end of accreditation

If an operator who has an AFM accreditation changes or ceases to hold that accreditation, the operator must inform any driver or scheduler who may be affected by that change or cessation of the fact that the change or cessation has happened, as soon as practicable after the change or cessation happens.

Maximum penalty:

- (a) in the case of an individual—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), and
- (b) in the case of a corporation—75 penalty units (in the case of a first offence) or 150 penalty units (in the case of a second or subsequent offence).

Subdivision 2 Exemptions

115 Exemptions for emergency services

- (1) This clause applies in an emergency.
- (2) An *emergency* is 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.

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- (3) A person who is acting for an emergency service and who has any time-critical duties on the way to, or during, an emergency is exempted from the following provisions:
 - (a) Division 3 (Duties relating to work and rest times),
 - (b) Division 4 (Duties relating to record keeping), except Subdivision 4 (False work records etc).
 - (4) A person who is returning from attending an emergency is not exempted from the provisions listed in subclause (3).
 - (5) An **emergency service** is any organisation that has a statutory responsibility to respond to an emergency and includes:
 - (a) an ambulance service, and
 - (b) an emergency auxiliary, and
 - (c) a fire brigade, including a volunteer fire brigade, and
 - (d) a police service or force, and
 - (e) a disaster or emergency organisation of the Commonwealth or a State or Territory.

116 What is an exemption

- (1) An **exemption** is a work and rest hours exemption or a work diary exemption.
- (2) 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.

117 Work and rest hours exemptions

- (1) A **work and rest hours exemption** is an exemption from complying with any restrictions imposed under this Part in relation to work time or rest time.
- (2) In granting a work and rest hours exemption, the Authority must specify the work and rest times that are to apply to a person to whom the exemption applies.
- (3) The Authority may grant a work and rest hours exemption to:
 - (a) an employer, prime contractor, operator or a self-employed driver who applies for the exemption, or

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- (b) a class of persons, without the need for anyone to apply for the exemption.
- (4) An employer, prime contractor, operator or self-employed driver may apply to the Authority in accordance with clause 119 for a work and rest hours exemption.
- (5) The application must also:
 - (a) name any drivers, or describe any class of drivers, to be covered by the exemption, and
 - (b) state the proposed work and rest times that would be followed by the applicant and the drivers working under the exemption, and
 - (c) if the proposed work and rest times could be accommodated within a BFM or AFM accreditation:
 - (i) state the driver fatigue management practices that would be followed by the applicant and the drivers working under the exemption if it were given, and
 - (ii) show that the practices would safely manage fatigue risks, and
 - (iii) show that a BFM or AFM accreditation would be unreasonable for the proposed operation in safely managing fatigue risks, and
 - (d) if the proposed work and rest times exceed the maximum work time or are less than the minimum rest time in the AFM outer limits:
 - (i) state the driver fatigue management practices that would be followed by the applicant and the drivers working under the exemption if it were given, and
 - (ii) show that the practices would safely manage the fatigue risks.
- (6) The Authority may grant a work and rest hours exemption in relation to a person or class of persons if the Authority considers that:
 - (a) compliance with the provision would be an unreasonable restriction on operations conducted by the person or class of persons, and
 - (b) the driver fatigue management practices that are to apply to the person or class of person under the exemption would, if followed, safely manage fatigue risks, and
 - (c) the person or class of persons, and drivers, are likely to follow those practices consistently and effectively, and

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- (d) if the proposed work and rest times could be accommodated within BFM or AFM hours—BFM or AFM accreditation would be unreasonable for the proposed operation in safely managing fatigue risks.
- (7) The Authority may grant a work and rest hours exemption in combination with an operator's BFM or AFM accreditation.
- (8) If the Authority grants a work and rest hours exemption in combination with an operator's BFM or AFM accreditation, it is a condition of the exemption that a driver must not work under the exemption unless the driver and the operator comply with all the requirements imposed on them under that accreditation.
- (9) In any period specified in a work and rest hours exemption, the driver to whom the exemption applies:
- (a) must not work for more than the maximum work time specified in the exemption, and
 - (b) must have at least the minimum rest time specified in the exemption.
- Maximum penalty:
- (a) in relation to a minor risk offence—10 penalty units (in the case of a first offence) or 20 penalty units (in the case of a second or subsequent offence), or
 - (b) in relation to a substantial risk offence—15 penalty units (in the case of a first offence) or 30 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a severe risk offence—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), or
 - (d) in relation to a critical risk offence—25 penalty units (in the case of a first offence) or 50 penalty units (in the case of a second or subsequent offence).
- (10) A contravention of subclause (9) in relation to a period referred to in Column 1 of the Table to this clause is an offence of the risk category determined in accordance with Column 4 of the Table.
- (11) A person accused of an offence under this clause does not have the benefit of the mistake of fact defence.

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Work and rest hours exemption—Penalties

Column 1	Column 2	Column 3	Column 4
Total period	Maximum work	Minimum rest time	Offence category
In any period of	If a driver has exceeded the maximum work time by...	If a driver had had less than the minimum rest time by...	...the following category of offence is committed...
Less than 7 days	≤ 45 mins work time	≤ 45 mins rest time	minor risk
	> 45 but ≤ 75 mins work time	> 45 but ≤ 75 mins rest time	substantial risk
	> 75 but ≤ 90 mins work time	> 75 but ≤ 90 mins rest time	severe risk
	> 90 mins work time	> 90 mins rest time	critical risk
7 days or more	≤ 1½ hours work time		minor risk
	> 1½ but ≤ 2½ hours work time		substantial risk
	> 2½ but ≤ 3 hours work time		severe risk
	> 3 hours work time		critical risk

118 Work diary exemptions

- (1) The Authority may grant a *work diary exemption* to exempt a driver from complying with Subdivision 2 (Work diary requirements) of Division 4.
- (2) The Authority may grant a work diary exemption to:
 - (a) a class of persons, without the need for anyone to apply for the exemption, or
 - (b) the following persons who apply for the exemption:
 - (i) a driver who is driving under standard hours,

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- (ii) the employer of an employed driver who is driving under standard hours.
 - (3) The application must be made to the Authority in accordance with this Subdivision.
 - (4) The application must also:
 - (a) nominate a person (the *nominee*) to make written work records for the driver, and
 - (b) must be accompanied by the nominee's written agreement to the nomination.
 - (5) The Authority may grant a work diary exemption on application if the Authority is satisfied:
 - (a) the driver cannot make records in the driver's work diary because of inadequate English literacy, and
 - (b) the nominee will be able to make records that are no less complete or accurate than records made in accordance with Subdivision 2 of Division 4.

119 Applying for an exemption

- (1) An application for an exemption must be made to the Authority in writing.
- (2) The application must state:
 - (a) the applicant's full name, and
 - (b) the type of exemption being sought, and
 - (c) if the applicant is a driver—the address of the driver's base and record location, and
 - (d) if the applicant is an employer—the address of the record location for the drivers to be covered by the application, and
 - (e) the period for which the exemption is sought, and
 - (f) any conditions to which the exemption is sought to be subject.
- (3) The Authority, by written notice to the applicant, may require the applicant to give the Authority any necessary additional information.

120 Granting an exemption

- (1) The Authority must decide an application for an exemption as soon as practicable after the Authority receives the application.

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- (2) If the Authority decides to grant an exemption, the Authority must:
 - (a) give the applicant a written exemption, or
 - (b) if the Authority grants the exemption to a class of persons—publish the exemption in the Gazette.
- (3) An exemption takes effect:
 - (a) when the exemption is given to the applicant, or
 - (b) at a later time stated in the exemption, or
 - (c) in the case of an exemption granted to a class of persons—on the date that the exemption is published in the Gazette.
- (4) The exemption applies for the period (not longer than 3 years) stated in the exemption.
- (5) If the Authority decides not to grant the exemption, the Authority must give the applicant a written notice that states:
 - (a) the Authority's decision, and
 - (b) the reasons for the decision, and
 - (c) that the applicant may apply to have the decision reconsidered.

121 Driver must carry exemption

- (1) At all times while working under an exemption, a driver must have in his or her possession a copy of the exemption.

Note. An authorised officer or police officer may direct a driver to produce a record required to be kept by the driver—see section 150 of the Act.
- (2) The employer of an employed driver, the prime contractor of a self-employed driver and the operator of a regulated heavy vehicle that is being, or is to be, driven by a driver must ensure the driver does not contravene subclause (1).
- (3) If the exemption has been granted to an employer, an employed driver working under the exemption must return the copy of the exemption to the employer if the driver:
 - (a) ceases to work for the employer or under the exemption, or
 - (b) ceases to meet the requirements relating to drivers under the exemption.

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- (4) If the exemption has been granted to a prime contractor, a self-employed driver working under the exemption must return the copy of the exemption to the prime contractor if the driver:
- (a) ceases to work for the prime contractor or under the exemption, or
 - (b) ceases to meet the requirements relating to drivers under the exemption.
- (5) If the exemption has been granted to an operator, a driver working under the exemption must return the copy of the exemption to the operator if the driver:
- (a) ceases to work under the exemption, or
 - (b) ceases to meet the requirements relating to drivers under the exemption.

Note. Clause 117 (7) provides that a work and rest hours exemption may be granted in combination with BFM or AFM accreditation.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

122 Conditions of exemptions

- (1) An exemption is subject to any conditions stated in the exemption or specified in this Part.
- (2) A person who is granted an exemption must not contravene a condition of the exemption.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

Subdivision 3 Variation, suspension or cancellation of accreditation or exemptions

123 Variation or cancellation of accreditation or exemption—on application

- (1) An application for variation or cancellation of an accreditation or exemption granted to an individual must be made to the Authority in writing.
- (2) The application must:
 - (a) if the application is for a variation—state clearly what variation is sought and outline the reasons for the application, and

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- (b) be accompanied by the accreditation certificate or exemption.
- (3) The Authority, by written notice given to the applicant, may require the applicant to give the Authority any necessary additional information.
- (4) The Authority must decide the application as soon as practicable after the Authority receives it.
- (5) If the Authority decides to grant the application, the Authority must give the applicant written notice of that decision.
- (6) The variation or cancellation takes effect:
 - (a) when written notice of the decision is given to the applicant, or
 - (b) at a later time stated in that written notice.
- (7) If the Authority does not make the decision sought by the applicant, the Authority must also give the applicant a written notice that states:
 - (a) the Authority's decision, and
 - (b) the reasons for the decision, and
 - (c) that the applicant may apply to have the decision reconsidered.

124 Grounds for variation—without application

- (1) The Authority may vary an accreditation or exemption granted to an individual, without receiving an application, if the Authority is reasonably satisfied that one of the following grounds exists:
 - (a) that the application for the accreditation or exemption was false or misleading in a material respect, but the circumstances do not require its cancellation,
 - (b) that a person to whom the accreditation or exemption applies is not suitable to be a person to whom the accreditation applies without variation,
 - (c) that the person has contravened this Part, a corresponding fatigue law or any regulations made under a corresponding fatigue law,
 - (d) in the case of an exemption, 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

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- (ii) the exemption would have been given as it is proposed to be varied if the change had happened before the exemption was given.

- (2) This clause does not apply to:
 - (a) an application for variation of an accreditation or exemption, or
 - (b) a work and rest hours exemption granted to a class of persons.

125 Grounds for cancellation—without application

- (1) The Authority may cancel an accreditation or exemption granted to an individual, without receiving an application, if the Authority is reasonably satisfied that 1 of the following grounds exists:
 - (a) that the application for the accreditation or exemption was false or misleading in a material respect,
 - (b) that a person to whom the accreditation or exemption applies is not suitable to be a person to whom the accreditation or exemption applies,
 - (c) that the person has contravened this Part, a corresponding fatigue law or any regulations made under a corresponding fatigue law,
 - (d) in the case of an exemption, 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.
- (2) This clause does not apply to:
 - (a) an application for variation of an accreditation or exemption, or
 - (b) a work and rest hours exemption granted to a class of persons.

126 Variation or cancellation of accreditation or individual exemption—without application

- (1) This clause applies if the Authority is satisfied that a ground exists to vary or cancel an accreditation or exemption under this Subdivision.

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- (2) The Authority must give the person who holds the accreditation or exemption a written notice that:
 - (a) states the proposed variation or cancellation, and
 - (b) states the ground for the proposed variation or 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 specified time of at least 14 days after the notice is given to the person, why the accreditation or exemption should not be varied or cancelled.
- (3) If, after considering any written statement made within the specified time, the Authority is reasonably satisfied that a ground exists to take the proposed action, the Authority may:
 - (a) if the proposed action is to vary the accreditation or exemption in a stated way—vary the accreditation or exemption in that way, and
 - (b) if the proposed action is to cancel the accreditation or exemption—cancel the accreditation or exemption or vary the accreditation or exemption in any way.
- (4) The Authority must give the person written notice of the Authority's decision.
- (5) If the Authority decides to vary or cancel the accreditation or exemption, the Authority must also give the person a written notice that states:
 - (a) the reasons for the decision, and
 - (b) that the person may apply to have the decision reconsidered.
- (6) The variation or cancellation takes effect:
 - (a) when written notice of the decision, and the reasons for the decision, is given to the person, or
 - (b) at a later time stated in that written notice.

127 Immediate suspension of accreditation or an individual exemption in public interest

- (1) The Authority may immediately suspend an accreditation or exemption granted to an individual, by giving a written notice to the holder of the accreditation or exemption, if the Authority considers it necessary in the interest of public safety.

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- (2) The accreditation or exemption may be suspended until the earlier of the following:
 - (a) the end of 56 days after written notice is given under subclause (1),
 - (b) the Authority gives the operator a written notice under clause 126 (2).
 - (3) This clause applies despite clause 126.
 - (4) This clause does not apply to a work and rest hours exemption granted to a class of persons.

128 Variation or cancellation of an exemption granted to a class of persons

- (1) This clause applies to a work and rest hours exemption granted to a class of persons.
- (2) The Authority may vary or cancel the exemption by publishing a notice in the Gazette if the Authority considers that the exemption is no longer necessary or justified.

129 Return of accreditation certificate or exemption

- (1) If an accreditation certificate or exemption granted to an individual is varied or cancelled, the Authority may, by written notice, require the person to return the accreditation certificate or 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:

 - (a) in the case of an individual—15 penalty units, and
 - (b) in the case of a corporation—75 penalty units.
- (3) If the accreditation or exemption has been varied, the Authority must give the person a replacement accreditation certificate or exemption.

Subdivision 4 Replacement of lost etc accreditation certificates or exemptions

130 Replacement of lost etc accreditation certificates or exemptions

- (1) If an accreditation certificate or exemption is defaced, destroyed, lost or stolen, the person who is the holder of the certificate or

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exemption must apply to the Authority for a replacement accreditation certificate or exemption.

- (2) If the Authority is satisfied that the accreditation certificate or exemption given to the person has been defaced, destroyed, lost or stolen, the Authority must give the person a replacement accreditation certificate or exemption as soon as practicable.
- (3) If the Authority decides not to give a replacement accreditation certificate or exemption to the person, the Authority must give the person a written notice that states:
 - (a) the reasons for the decision, and
 - (b) that the person may apply to have the decision reconsidered.

Subdivision 5 Offences relating to accreditation etc**131 Offence to falsely represent that accreditation etc held**

- (1) A person must not falsely represent:
 - (a) that he or she holds an accreditation or exemption that he or she does not hold, or
 - (b) that he or she is working under an accreditation or exemption that he or she is not entitled to work under.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (2) A person must not represent that he or she is working under an accreditation or exemption if that accreditation or exemption is no longer in force.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

- (3) A person must not possess a document that falsely purports to be:
 - (a) an accreditation or exemption under this Part, or
 - (b) a copy of an accreditation or exemption under this Part, or
 - (c) a document of the sort required by clause 106 (1) (b) (Driver must carry BFM accreditation documents) or 112 (1) (b) (Driver must carry AFM accreditation details).

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

132 Offences relating to auditors

- (1) A person must not falsely represent that he or she is an auditor of a class approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette.

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

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

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

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

Maximum penalty:

- (a) in the case of an individual—15 penalty units, and
- (b) in the case of a corporation—75 penalty units.

Division 6 Decision-making provisions

Subdivision 1 Referral and mutual recognition of decisions

133 Referral of matters to Fatigue Authorities Panel

- (1) This clause applies if:
 - (a) the Authority proposes to make a decision that may, or is intended to, have application in:
 - (i) another participating jurisdiction, or
 - (ii) more than one other participating jurisdiction, and
 - (b) the decision relates to:
 - (i) the grant of an AFM accreditation or an exemption, or

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- (ii) the variation, suspension or cancellation of a BFM accreditation, AFM accreditation or an exemption, if the original grant of the accreditation or exemption was made by a corresponding Authority.
- (2) The Authority must inform the Fatigue Authorities Panel of the proposed decision.
- (3) The Panel may make a recommendation to the Authority about the proposed decision.
- (4) If the Panel gives the Authority written notice of the recommendation and the reasons for the recommendation, the Authority must take note of the recommendations of the Panel when making the decision.
- (5) The Authority may refer any other matter under this Part to the Panel for consideration.

134 Mutual recognition of certain decisions

- (1) This clause applies to a decision of a corresponding Authority that is in force, and was made:
 - (a) under a provision of a corresponding fatigue law that corresponds to a provision of the following clauses:
 - (i) clause 93 (Issue of written work diaries),
 - (ii) clause 94 (Approval of electronic work diaries),
 - (iii) clause 104 (Granting BFM accreditation), or
 - (b) about the variation or cancellation of the approval of an electronic work diary, or
 - (c) about the variation, suspension or cancellation of a BFM accreditation, AFM accreditation or exemption that was originally granted by the corresponding Authority.
- (2) Except for circumstances that do not exist in this jurisdiction, the decision has effect in this jurisdiction as if it were a decision made by the Authority.

135 Mutual recognition of other decisions

- (1) This clause applies to:
 - (a) a decision of a corresponding Authority to which clause 134 does not apply that is in force in the other jurisdiction, or
 - (b) a recommendation of the Panel in accordance with clause 133.

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- (2) Except for circumstances that do not exist in this jurisdiction, the Authority may decide whether the decision or recommendation is to have effect in this jurisdiction as if it were a decision made by the Authority.
 - (3) A decision by the Authority under subclause (2) must be made in writing and is subject to any variations or conditions specified by the Authority.

Subdivision 2 Notification and recording of decisions

136 Notifying other Authorities of decisions

- (1) This clause applies if the Authority makes a decision about:
 - (a) the grant, variation, suspension or cancellation of a BFM accreditation, AFM accreditation or exemption, or
 - (b) the approval, variation of an approval, or cancellation of an approval, of an electronic work diary.
- (2) The Authority must give written notice of the decision to every corresponding Authority in the participating zone.
- (3) If the Authority decides not to follow a recommendation of the Panel, or decides to apply a recommendation of the Panel subject to variations or conditions, the Authority must give written notice of the reasons for its decision to every corresponding Authority in the participating zone.

137 Register of decisions

- (1) The Authority must keep a register of decisions currently in force in this jurisdiction if the decision:
 - (a) was made by the Authority under this Part, or
 - (b) has effect in this jurisdiction under clause 134 and the Authority has received written notice of that decision under clause 136, or
 - (c) has effect in this jurisdiction under clause 135.
- (2) The Authority must record the cancellation or variation of any recorded decision in the register.

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Subdivision 3 Reconsideration and review of decisions

138 Decisions that may be reconsidered and reviewed

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

Item	Clause under which decision made	Brief description of decision
1	104	decision not to grant BFM accreditation
2	104, 110 or 120	decision to give an accreditation or exemption for less than 3 years or the period sought by the applicant
3	105	decision to give a BFM accreditation subject to a condition (other than a statutory condition) not sought by the applicant
4	110	decision not to grant AFM accreditation
5	111	decision to give AFM accreditation subject to a condition (other than a statutory condition) not sought by the applicant
6	120	decision not to give a work diary exemption
7	120	decision not to give a work and rest hours exemption (or not to give the exemption for an employed driver sought to be covered by the exemption)
8	120	decision to give an exemption subject to a condition not sought by the applicant
9	121	decision not to vary or cancel an accreditation or exemption on application
10	126	decision to vary or cancel an accreditation or exemption except on application
11	130	decision not to give a replacement accreditation certificate or exemption

139 Reconsideration of decisions

- (1) A person affected by a decision to which this Subdivision applies (an *initial decision*) may ask the Authority in writing to reconsider the decision.

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- (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.
 - (3) The request must state the decision sought by the person and outline why the decision should be made.
 - (4) 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) If the decision was made in accordance with a recommendation of the Fatigue Authorities Panel or another Authority, the Authority must inform the Panel or other Authority of the decision that the Authority proposes to make.
 - (6) The Panel or other Authority may make a recommendation to the Authority about the proposed decision.
 - (7) The Panel or other Authority must give the Authority written notice of the recommendation and the reasons for the recommendation within 21 days after being informed of the proposed decision.
 - (8) The Authority must take note of the recommendations of the Panel or other Authority when making the decision.
 - (9) Within 28 days after receiving the request, the Authority must give the person a written notice that states:
 - (a) the result of the reconsideration, and
 - (b) if the Authority does not make the decision sought by the person—the reasons for the reconsidered decision.

140 Appeal against decisions to Local Court

- (1) A person dissatisfied with a decision to which this Subdivision applies may appeal against the decision to the Local Court by lodging a notice of appeal with a registrar of the Court not later than 28 days after being notified of the decision.
- (2) A notice of appeal under this clause is to specify the grounds of the appeal.

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- (3) The registrar must give notice of the time and place of the hearing of any appeal under this clause to the Authority and to the appellant, and in the notice to the Authority is to inform the Authority of the grounds of the appeal.
- (4) The time of the hearing of an appeal under this clause must be not earlier than 21 days after the date on which the notice under subclause (3) is given to the Authority.
- (5) The hearing of an appeal under this clause may proceed despite any omission or error in a notice under subclause (4), or the failure to give any such notice, if the Court is satisfied that the appellant and the Authority had knowledge of the time and place of the hearing and were not prejudiced by any such omission or error or by the failure to give any such notice.
- (6) The Local Court is to hear and determine an appeal made to it under this clause and may confirm (with or without variation) or disallow the decision appealed against, or make such other order in the circumstances as to the Court seems just.
- (7) The decision of the Local Court in respect of an appeal made under this clause is final and is binding on the appellant and on the Authority.

Division 7 Miscellaneous

Subdivision 1 General

141 Duty of officers to annotate driver's work diary

- (1) This clause applies if an authorised officer stops a driver for compliance purposes using a power conferred on the officer by the Act.
- (2) If the officer detains the driver for a period of 5 minutes or longer, the driver may ask the officer to record the following details in the driver's work diary:
 - (a) if the officer is not a police officer—the officer's identification details as specified on the officer's identification card,
 - (b) if the officer is a police officer—either of the following (at the officer's choice):
 - (i) the officer's identification details as specified in the officer's police identification,
 - (ii) the police officer's name and place of duty,

- (c) the time, date and place at which the officer stopped the driver,
 - (d) the length of time that the driver was stopped while the officer exercised his or her enforcement powers.
- (3) An officer must comply with a request made under subclause (2).
 - (4) If more than one driver has been stopped at a place, and the drivers are spoken to by an officer in the order in which they were stopped, the counting of time for the purposes of subclause (2) only starts once the officer begins to speak to the driver for the purpose of pursuing any matter in respect of which the driver was stopped.
 - (5) In this clause, *compliance purposes* has the same meaning as it has in the Act.
- Note.** Essentially a power is exercised for compliance purposes if it is used to find out whether laws are being complied with or to investigate breaches or suspected breaches of laws. Thus this clause does not apply if an officer stops a vehicle, for instance, when there is a road block, an accident or a detour.

142 Provisions relating to first offences and second or subsequent offences

- (1) This clause determines whether, for the purposes of this Part, an offence is:
 - (a) a first offence, or
 - (b) a second or subsequent offence.
- (2) A person is found guilty of a second or subsequent offence if, and only if, the occasion when the second or subsequent offence occurred:
 - (a) was different from the occasion when the first offence for which the person was found guilty occurred, and
 - (b) was within 3 years of the occasion of the first offence.
- (3) The order in which the offences were committed is immaterial.
- (4) It is also immaterial whether or not the offences were subject to the same penalties.
- (5) If the court is satisfied that a person is guilty of an offence but cannot determine (from the information available to the court) whether the offence is a first offence for which the person was found guilty, the court may only impose a penalty for the offence as if it were a first offence.

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- (6) When determining whether a person has previously been found guilty of an offence under this Part, the court must have regard to a finding of guilt for an offence committed under corresponding provisions of a corresponding law.

Subdivision 2 Savings and transitional provisions

143 Definitions

In this Subdivision:

corresponding TFMS has the same meaning as it had in the repealed Regulation.

Fatigue Management Scheme exemption means a FMS exemption under the repealed Regulation.

repealed Regulation means the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999*.

TFMS means the Transitional Fatigue Management Scheme established under the repealed Regulation.

144 TFMS applications

- (1) This clause applies if, immediately before the commencement of this clause:
- (a) the Authority had an application for TFMS registration from a driver or employer, and
 - (b) the Authority had not yet decided the application.
- (2) The application is taken to have been withdrawn.

145 Period of grace for certain drivers

- (1) Despite anything to the contrary in this Part, until the expiry of the period ending 12 months after the commencement of this clause:
- (a) a driver who was registered as a participant in TFMS or a corresponding TFMS may drive at BFM hours, and
 - (b) a driver who was subject to a Fatigue Management Scheme exemption under the repealed Regulation may drive at the hours approved in the exemption.
- (2) Subclause (1) (a) does not apply at any time that the driver is in breach of any condition or requirement of the TFMS or a corresponding TFMS, as the case may be.

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- (3) Subclause (1) (b) does not apply at any time that the driver is in breach of any condition or requirement of the Fatigue Management Scheme exemption, or if the exemption is cancelled.
 - (4) For the purposes of this clause, a driver is not in breach of any condition or requirement referred to in subclause (2) or (3) if, instead of recording any entry the driver was required to record in a logbook, the driver records the entry in a work diary issued under this Part.
 - (5) For the purposes of this clause, if a driver's employer has yet to obtain BFM accreditation, it is sufficient compliance with any requirement of this Part to record a BFM accreditation number if the employer's TFMS or Fatigue Management Scheme exemption (as the case may be) registration number is recorded instead.

146 Applications for reconsideration by Authority

- (1) This clause applies if, immediately before the commencement of this clause:
 - (a) the Authority had an application for reconsideration of a decision, and
 - (b) the Authority had not yet decided the application.
- (2) The Authority may decide the application as if this Part had not commenced.

147 Exemption applications

- (1) This clause applies if, immediately before the commencement of this clause:
 - (a) the Authority had:
 - (i) an application for a limited driving hours exemption or logbook exemption, or
 - (ii) an application for variation or cancellation of a limited driving hours exemption or logbook exemption, and
 - (b) the Authority had not yet decided the application.
- (2) The application is taken to have been made, and may be decided, under this Part.

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148 Existing exemptions continue

- (1) This clause applies if, immediately before the commencement of this clause, a limited driving hours exemption or logbook exemption applied to a person under the repealed Regulation.
- (2) The exemption is taken to have been made under this Part, if it could have been made under this Part.
- (3) Unless cancelled sooner under subclause (4), the exemption continues to apply:
 - (a) for the period stated in the exemption, or
 - (b) if the exemption does not state a period, for 3 years after the exemption took effect.
- (4) The Authority may cancel an exemption to which this clause applies:
 - (a) in the case of an exemption granted to an individual, by giving the person holding the exemption a written notice stating that it has cancelled the exemption, or
 - (b) in any other case, by publishing a notice in the Gazette stating that the exemption is cancelled.

149 Existing logbooks

- (1) A driver may continue to use a logbook issued under the repealed Regulation as if it was a work diary for the purposes of this Part:
 - (a) if the driver is working under standard hours—for 90 days after the commencement of this clause or until the driver has obtained a work diary, whichever occurs first, or
 - (b) if the driver is working under BFM hours (as permitted by clause 145 (Period of grace for certain drivers))—for 90 days after the commencement of this clause or until the driver has obtained a work diary, whichever occurs first, or
 - (c) if the driver is working under BFM hours in any other circumstance or under AFM hours—for 14 days after the commencement of this clause or until the driver has obtained a work diary, whichever occurs first.
- (2) A driver who is using a logbook under subclause (1) must comply with Part 4 of the repealed Regulation as if that Part continued to apply.
- (3) If a driver is working under the hours specified in a Fatigue Management Scheme exemption under the repealed Regulation (as permitted by clause 145 (Period of grace for certain drivers)), the driver may continue to use a document specified in that

exemption as if it was a work diary for the purposes of this Part for the period specified in that clause or until the exemption is cancelled.

- (4) For the purposes of this section:
- (a) a reference in clause 81 (Information that record keeper must record) to a work diary is to be read as if it was a reference to the logbook, and
 - (b) if the driver is working under BFM hours (as permitted by clause 145 (Period of grace for certain drivers))—the driver's employer is the record keeper for the purposes of clause 81, and
 - (c) reference in clause 93 (Issue of written work diaries) to an existing written work diary is to be read as if it was a reference to the logbook.

150 Record keeping obligations continue

An obligation on an employer or a self-employed driver to keep copies of a driver's driving records made under the repealed Regulation continues for 12 months after the commencement of this clause as if clause 61 or 62 of the repealed Regulation continued to apply.

Part 7 Heavy vehicle speeding compliance

Division 1 Object

151 Object

- (1) The object of this Part is to improve road safety and compliance with road safety laws by imposing responsibility in relation to speeding by heavy vehicles on those whose business activities influence the conduct of the drivers of those vehicles.
- (2) For the purposes of that object, this Part:
 - (a) requires those who are most directly responsible for the operation of a heavy vehicle to take reasonable steps to ensure that their activities do not cause the driver to exceed speed limits, and
 - (b) requires anyone who schedules the activities of a heavy vehicle, or its driver, to take reasonable steps to ensure that the schedule of the vehicle and the driver does not cause the driver to exceed speed limits, and

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- (c) requires heavy vehicle loading managers to take reasonable steps to ensure that the loading or unloading arrangements for a vehicle do not cause the driver of the vehicle to exceed speed limits, and
- (d) requires certain persons who consign goods for transport by heavy vehicle, or who receive such goods, to take reasonable steps to ensure that the terms of consignment of those goods do not cause heavy vehicle drivers to exceed speed limits, and
- (e) forbids anyone from asking a heavy vehicle driver to exceed speed limits and from entering into any agreement that causes a heavy vehicle driver to exceed speed limits.

Note. This Part does not impose any obligations on employed drivers. Drivers of heavy vehicles are required to obey speed limits imposed under the Australian Road Rules, or as a condition of a permit or exemption that applies to a vehicle. Penalties on drivers for failing to comply with speed limits include demerit points, licence suspension, cancellation or disqualification, and fines.

152 Definitions

In this Part:

consignee has the same meaning as it has in section 20 of the Act.

consignor has the same meaning as it has in section 20 of the Act.

driver means the driver of a heavy vehicle and includes an employed driver and a self-employed driver.

Note. **Driver** is defined in the Act.

employed driver means a driver who is employed by someone else to drive a heavy vehicle.

employer means a person who engages someone else to drive a heavy vehicle under a contract of employment, apprenticeship or training.

Note. Example of an employer—A labour hire company.

Note. **Heavy vehicle** is defined in the Act.

loading manager means a person who:

- (a) manages, or who is responsible for the operation of, a premises at which usually on a business day at least 5 heavy vehicles are loaded with goods for transport, or have goods that the vehicles have transported unloaded, or
- (b) directly or indirectly supervises, manages or controls the loading or unloading of heavy vehicles at such a premises.

Note. Examples of a loading manager—A company that runs, or a site manager for, a distribution centre.

Note. Example of calculation of vehicle numbers—At a premises on a usual business day, 3 heavy vehicles are loaded with goods, and 3 other heavy vehicles have goods that have been transported to the premises unloaded. The manager of the premises is a loading manager because at least 5 vehicles are usually loaded or unloaded at the premises on a business day.

operator, in relation to a regulated heavy vehicle, means a person who is responsible for controlling or directing the operations of:

- (a) in the case of a vehicle (including a vehicle in a combination)—the vehicle, or
- (b) in the case of a combination—the towing vehicle in the combination,

but does not include a person merely because the person:

- (c) owns the vehicle or combination, or
- (d) drives the vehicle or combination, or
- (e) maintains, or arranges for the maintenance of, the vehicle or combination, or
- (f) arranges for the registration of the vehicle.

party in the chain of responsibility in relation to a heavy vehicle, means any of the following persons:

- (a) the employer of the driver of the vehicle,
- (b) the prime contractor of the driver,
- (c) the operator of the vehicle,
- (d) each scheduler of goods or passengers for transport by the vehicle, and each scheduler of its driver,
- (e) each loading manager of goods for transport by the vehicle,
- (f) each consignor of goods for transport by the vehicle to whom Subdivision 4 of Division 2 applies,
- (g) each consignee of goods for transport by the vehicle to whom Subdivision 4 of Division 2 applies.

prescribed business means business that falls within one or more of the following Divisions recognised in the *Australian and New Zealand Standard Industrial Classification* (ANZSIC), 2006 edition (Australian Bureau of Statistics publication, Catalogue No 1292.0):

- (a) Agriculture, Forestry and Fishing (Division A),
- (b) Mining (Division B),
- (c) Manufacturing (Division C),
- (d) Construction (Division E),

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- (e) Wholesale Trade (Division F),
- (f) Retail Trade (Division G),
- (g) Accommodation and Food Services (Division H),
- (h) Transport, Postal and Warehousing (Division I),
- (i) Information, Media and Communications (Division J),
- (j) Renting, Hiring and Real Estate Services (Division L),
- (k) Arts and Recreation Services (Division P).

prime contractor means a person who engages someone else to drive a regulated heavy vehicle under a contract for services.

Note. Example of a prime contractor—A logistics business that engages a subcontractor to transport goods.

scheduler means a person who:

- (a) schedules a driver's work or rest time, or
- (b) schedules the transport of passengers or goods by road.

self-employed driver means a driver who is not an employed driver.

speed limit includes the following:

- (a) a sign-posted speed limit,
- (b) a speed limit specified by legislation,
- (c) a speed limit that applies to a particular vehicle,
- (d) a prohibition on travelling between 2 places in less than a specified time.

153 Intention irrelevant in determining causation

For the purposes of this Part, a person can cause something to happen even though the person had no intention of causing that thing to happen.

154 Cause includes "contribute to causing" and "encourage"

For the purposes of this Part, a reference to causing a thing includes a reference to contributing to causing the thing, and to encouraging the thing.

Division 2 Specific duties and offences**Subdivision 1 Duties on employers, prime contractors and operators****155 Duty concerning business practices**

- (1) This clause applies to:
 - (a) the employer of an employed driver of a vehicle, and
 - (b) the prime contractor of a self-employed driver of a vehicle, and
 - (c) the operator of a heavy vehicle if the driver of the vehicle is to make a journey in the vehicle for the operator.
- (2) The employer, prime contractor and operator each must take all reasonable steps to ensure that their business practices will not cause, by act or omission, the driver to exceed any speed limit that applies to the vehicle.

Maximum penalty:

- (a) in the case of an individual—50 penalty units (in the case of a first offence) and 100 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) and 250 penalty units (in the case of a second or subsequent offence).

Note. Examples of some reasonable steps that can be taken:

- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues
 - reviewing driving, work and trip records
 - a program to report and monitor (for instance, by GPS tracking) incidents of speeding, and related risks and hazards
 - training and information for drivers, staff and parties in the chain of responsibility about speeding
 - regular maintenance of vehicle components that relate to complying with speed limits (for instance, speedometer, engine management system and speed limiters).
- (3) In this clause, *business practices* means the practices of the employer, prime contractor or operator in running their businesses, and includes the following:
 - (a) the operating policies and procedures of the business,

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- (b) the human resource and contract management arrangements of the business (including the method that driver remuneration is calculated),
 - (c) arrangements for managing safety.
- (4) The employer must not cause the driver to drive the vehicle unless:
- (a) the employer has complied with subclause (2), and
 - (b) the employer, after making reasonable inquiries, is satisfied that the scheduler has complied with Subdivision 2.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) and 50 penalty units (in the case of a second or subsequent offence), or
 - (b) in the case of a corporation—75 penalty units (in the case of a first offence) and 125 penalty units (in the case of a second or subsequent offence).
- (5) The prime contractor and operator each must not cause the driver to drive the vehicle unless:
- (a) the prime contractor or operator, as the case may be, has complied with subclause (2), and
 - (b) the prime contractor or operator, after making reasonable inquiries, is satisfied that the scheduler has complied with Subdivision 2.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) and 50 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—75 penalty units (in the case of a first offence) and 125 penalty units (in the case of a second or subsequent offence).

156 Duty to ensure offences are not committed

- (1) In this clause:
- speeding offence*** means an occurrence in which the driver of a vehicle drives the vehicle in excess of any speed limit that applies to the vehicle.
- (2) This clause applies to:
- (a) the employer of an employed driver of a vehicle, and

- (b) the prime contractor of a self-employed driver of a vehicle, and
 - (c) the operator of a heavy vehicle if the driver of the vehicle is to make a journey in the vehicle for the operator.
- (3) A person to whom this clause applies commits an offence if, at any time that a driver of a vehicle, or a vehicle, is subject to the person's control, the driver commits a speeding offence while driving the vehicle.
- Maximum penalty:
- (a) in relation to a level 1 offence:
 - (i) in the case of an individual—10 penalty units, or
 - (ii) in the case of a corporation—50 penalty units, or
 - (b) in relation to a level 2 offence:
 - (i) in the case of an individual—20 penalty units (in the case of a first offence) and 50 penalty units (in the case of a second or subsequent offence), or
 - (ii) in the case of a corporation—75 penalty units (in the case of a first offence) and 125 penalty units (in the case of a second or subsequent offence), or
 - (c) in relation to a level 3 offence:
 - (i) in the case of an individual—50 penalty units (in the case of a first offence) and 100 penalty units (in the case of a second or subsequent offence), or
 - (ii) in the case of a corporation—125 penalty units (in the case of a first offence) and 250 penalty units (in the case of a second or subsequent offence).
- (4) Despite subclause (3), a person is not liable under that subclause if the vehicle was a combination, and neither the driver nor the towing vehicle was subject to the person's control.
- (5) The levels of offence referred to in subclause (3) are to be determined using the following table:

Speed limit at the place where the speeding offence occurred	Type of heavy vehicle	Penalty level	
		Recorded speed of <15 km/h above speed limit	Recorded speed of ≥ 15 km/h above speed limit
50–60 km/h	All	Level 1	Level 1

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Speed limit at the place where the speeding offence occurred	Type of heavy vehicle	Penalty level	
		Recorded speed of <15 km/h above speed limit	Recorded speed of ≥ 15 km/h above speed limit
70–80 km/h	All	Level 1	Level 2
90 km/h	Road trains (where speed limited to 90 km/h)	Level 2	Level 3
90 km/h	Non-road trains	Level 1	Level 2
100 km/h	Non-road train heavy combinations	Level 2	Level 3
>100 km/h	Non-combination heavy vehicles	Level 2	Level 3

- (6) It is a defence to an offence under this clause if the accused person establishes that:
- (a) the person did not know, and could not reasonably be expected to have known, of the conduct that constituted the offence, and
 - (b) either:
 - (i) the person took all reasonable steps to prevent that conduct from occurring, or
 - (ii) there were no steps that the person could reasonably have been expected to have taken to prevent that conduct from occurring.
- (7) For the purposes of this clause:
- (a) it is irrelevant whether the driver has been, or will be, charged with the speeding offence, or has been, or will be, convicted of the speeding offence, and
 - (b) evidence that the driver has been convicted of the speeding offence is evidence that the offence occurred at the time and place, and in the circumstances, specified in the charge that resulted in the conviction, and

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- (c) evidence that the driver has paid the infringement penalty sought by an infringement notice for a speeding offence is evidence that the offence occurred at the time and place, and in the circumstances, specified in the infringement notice.

Subdivision 2 Duties on schedulers

157 Duty concerning driver's schedule

- (1) This clause applies to the scheduler of transport by a heavy vehicle, or of a driver of a heavy vehicle.
- (2) The scheduler must take all reasonable steps to ensure that a driver's schedule for driving the vehicle will not cause, by act or omission, the driver to exceed any speed limit that applies to the vehicle.

Maximum penalty:

- (a) in the case of an individual—50 penalty units (in the case of a first offence) and 100 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) and 250 penalty units (in the case of a second or subsequent offence).

Note. Examples of some reasonable steps that can be taken:

- consulting drivers about their schedules and work requirements
- taking account of the average speed that can be lawfully travelled on scheduled routes
- allowing for traffic conditions or other delays in schedules
- contingency planning in relation to schedules.

- (3) The scheduler must not cause the driver to drive the vehicle unless:
- (a) the scheduler has complied with subclause (2), and
- (b) the driver's schedule for driving the vehicle allows:
- (i) for compliance with all speed limits applying to the vehicle, and
 - (ii) for the driver to take all required rest breaks (in accordance with all laws regulating the work and rest hours of the driver), and
 - (iii) for traffic conditions and other delays that could reasonably be expected.

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Note. Examples of traffic conditions and other delays that could reasonably be expected:

- the actual average speed able to be travelled lawfully and safely by the driver on the route in question
- known traffic conditions such as road works or traffic congestion on the route in question
- delays caused by loading, unloading or queuing.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) and 50 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—75 penalty units (in the case of a first offence) and 125 penalty units (in the case of a second or subsequent offence).

Subdivision 3 Duties on loading managers

158 Duty on loading managers

A loading manager must take all reasonable steps to ensure that the arrangements for loading and unloading heavy vehicles at the premises in respect of which the loading manager is the loading manager will not cause, by act or omission, the driver of a vehicle to exceed any speed limit that applies to the vehicle.

Maximum penalty:

- (a) in the case of an individual—50 penalty units (in the case of a first offence) and 100 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) and 250 penalty units (in the case of a second or subsequent offence).

Note. Examples of some reasonable steps that can be taken:

- reviewing loading and unloading times and delays at loading and unloading places
- identifying potential loading and unloading bottlenecks in consultation with drivers and other parties in the chain of responsibility
- ensuring that timeslots for loading or unloading can be relied upon.

Subdivision 4 Duties on certain consignors and consignees

159 Consignors to whom this Subdivision applies

This Subdivision applies only to a consignor who engages a particular operator of a vehicle or combination, either directly or indirectly or through an agent or other intermediary, to transport goods on the consignor's behalf by road for commercial purposes.

160 Consignees to whom this Subdivision applies

This Subdivision applies only to a consignee:

- (a) who, with the consignee's authority, has been named or otherwise identified in the relevant transport documentation as the intended consignee of goods that are transported by road by a particular operator of a heavy vehicle or combination, and
- (b) who knows, or who ought reasonably to have known, that the goods were to be transported by road.

161 Duties on consignors and consignees

- (1) A consignor or consignee to whom this Subdivision applies each must take all reasonable steps to ensure that the terms of consignment (such as delivery times) will not cause, by act or omission, the driver of the vehicle that is to transport the goods to exceed any speed limit that applies to the vehicle.

Maximum penalty:

- (a) in the case of an individual—50 penalty units (in the case of a first offence) and 100 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) and 250 penalty units (in the case of a second or subsequent offence).

Note. Examples of some reasonable steps that can be taken:

- ensuring contractual arrangements and documentation relating to the consignment and delivery of goods enable speeding compliance
- contingency planning in relation to consignments and delivery times
- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues.

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- (2) The consignor and consignee each must also take all reasonable steps to ensure that the terms of consignment (such as delivery times) will not cause, by act or omission, the employer of an employed driver, the prime contractor of a self-employed driver or the operator of the heavy vehicle to cause the driver to exceed any speed limit that applies to the vehicle.

Maximum penalty:

- (a) in the case of an individual—50 penalty units (in the case of a first offence) and 100 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—125 penalty units (in the case of a first offence) and 250 penalty units (in the case of a second or subsequent offence).
- (3) A consignor or consignee to whom this Subdivision applies each must not make a demand that affects, or that may affect, a time in a schedule for the transport of the consigned goods unless the consignor or consignee:
- (a) has complied with subclauses (1) and (2), and
- (b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause a person to fail to comply with Subdivision 2.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) and 50 penalty units (in the case of a second or subsequent offence), or
- (b) in the case of a corporation—75 penalty units (in the case of a first offence) and 125 penalty units (in the case of a second or subsequent offence).

Subdivision 5 Duty to assess and manage risk of speeding

162 Duty to assess and manage risk of speeding

- (1) This clause applies to:
- (a) the employer of an employed driver of a heavy vehicle, and
- (b) the prime contractor of a self-employed driver of a heavy vehicle, and
- (c) the operator of the heavy vehicle if the driver is to make a journey for the operator, and

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- (d) the scheduler of:
 - (i) transport by a heavy vehicle, or
 - (ii) a driver of a heavy vehicle, and
 - (e) the loading manager of goods for transport by a heavy vehicle, and
 - (f) the consignor of goods for transport by a regulated heavy vehicle, who carries on business of which a substantial part is prescribed business, and
 - (g) the consignee of goods for transport by a regulated heavy vehicle, who carries on business of which a substantial part is prescribed business.
- (2) A person to whom this clause applies must:
- (a) identify and assess the aspects of the activities of the person, and the driver, that may cause the driver to exceed a speed limit, and
 - (b) for each aspect identified and assessed under paragraph (a), identify and assess:
 - (i) the risk of the aspect causing the driver to exceed a speed limit, and
 - (ii) if there is a risk of the aspect causing the driver to exceed a speed limit,—the measures the person may take to eliminate the risk or, if it is not reasonably practicable to eliminate the risk, to control the risk, and
 - (c) carry out the identification and assessment referred to in paragraphs (a) and (b):
 - (i) at least annually, and
 - (ii) after each event that indicated the way the activities of the person or driver were being carried out have caused, or may cause, the driver to exceed a speed limit, and
 - (d) take the measures identified and assessed under paragraph (b) (ii), and
 - (e) document the actions taken under paragraphs (a)–(d) and retain that documentation for at least 3 years.

Maximum penalty:

- (a) in the case of an individual—20 penalty units (in the case of a first offence) or 40 penalty units (in the case of a second or subsequent offence), and

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- (b) in the case of a corporation—100 penalty units (in the case of a first offence) or 200 penalty units (in the case of a second or subsequent offence).
- (3) It is a defence to any proceedings against a person for an offence against subclause (2) if the person proves that:
 - (a) it was not reasonably practicable for the person to comply with that subclause, or
 - (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

Subdivision 6 Certain requests, contracts etc prohibited

163 Certain requests etc prohibited

A person must not ask, direct or require (directly or indirectly) a driver or a party in the chain of responsibility to do something that the person knows, or reasonably ought to know, would have the effect of causing the driver to exceed any speed limit while driving a heavy vehicle.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
- (b) in the case of a corporation—250 penalty units.

Note. Example of a requirement that contravenes this clause—A requirement that the driver complete a journey in a time that the person knows or reasonably ought to know cannot be complied with unless the driver commits a speeding offence or does not take all the rest breaks that the driver is required to take.

164 Certain contracts etc prohibited

- (1) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would have the effect of causing the driver or any other driver to exceed any speed limit while driving a heavy vehicle.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
- (b) in the case of a corporation—250 penalty units.

- (2) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would encourage or provide

an incentive for a party in the chain of responsibility to cause a driver to exceed any speed limit while driving a heavy vehicle.

Maximum penalty:

- (a) in the case of an individual—100 penalty units, or
- (b) in the case of a corporation—250 penalty units.

Division 3 Compliance and enforcement provisions

Subdivision 1 Reasonable steps

165 Matters court may consider for deciding whether person took all reasonable steps

A court may have regard to anything that it considers to be relevant when it is deciding whether things that the person did, or did not do, were reasonable steps, including:

- (a) the nature of the aspect or risk that the person was attempting to, or should have been attempting to, address, and
- (b) the likelihood of a risk eventuating, and
- (c) the degree of harm that would result if a risk did eventuate, and
- (d) if a driver has been speeding—the circumstances of the offence (for example, the risk category that the offence belongs to), and
- (e) the abilities, experience, expertise, knowledge, qualifications and training that the person, or the person's agent or employee, had or ought reasonably to have had, and
- (f) the availability and suitability of ways to eliminate, prevent or reduce an aspect, or to eliminate a risk or to minimise the likelihood of a risk eventuating, and
- (g) the cost of eliminating a risk or minimising the likelihood of a risk eventuating.

Subdivision 2 Evidential matters

166 Commission of speeding offence is irrelevant to Division 2 prosecutions

In a prosecution under Division 2, it is not necessary to prove that a driver exceeded a speed limit.

2008 No 429

Road Transport (General) Amendment (Heavy Vehicle Driver Fatigue and Speeding Compliance) Regulation 2008

Schedule 1 Amendments

167 Provisions relating to first offences and second or subsequent offences

- (1) This clause determines whether, for the purposes of this Part, an offence is:
 - (a) a first offence, or
 - (b) a second or subsequent offence.
- (2) A person is found guilty of a second or subsequent offence if, and only if, the occasion when the second or subsequent offence occurred:
 - (a) was different from the occasion when the first offence for which the person was found guilty occurred, and
 - (b) was within 3 years of the occasion of the first offence.
- (3) The order in which the offences were committed is irrelevant.
- (4) It is also irrelevant whether or not the offences were subject to the same penalties.
- (5) If the court is satisfied that a person is guilty of an offence but cannot determine (from the information available to the court) whether the offence is a first offence for which the person was found guilty, the court may only impose a penalty for the offence as if it were a first offence.
- (6) When determining whether a person has previously been found guilty of an offence under this Part, the court must have regard to a finding of guilt for an offence committed under corresponding provisions of a corresponding law.

[4] Existing Parts 6 and 7

Renumber existing Parts 6 and 7 as Parts 8 and 9, respectively, and existing clauses 39–42 as clauses 168–171, respectively, and clauses 44–52 as clauses 172–181, respectively.

[5] Schedule 1 Fees

Omit “and 47” and “clause 47”.

Insert instead “and 175” and “clause 175”, respectively.

[6] Schedule 2 Authorised officers

Omit “(clause 39)”. Insert instead “(clause 168)”.

[7] Schedule 3 Penalty notice offences

Omit “(clause 40)”. Insert instead “(clause 171)”.

[8] Schedule 3

Omit the matter relating to the *Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999*.

[9] Schedule 3

Insert in appropriate order:

Road Transport (General) Regulation 2005

Column 1	Column 2	Column 3
Provision	Authorised officer	Penalty
Clauses 49 (3) and (4), 50 (3), 51 (4), 52 (2), 73 (3), 76–79, 81 (2), (3), (5)–(7) and (9)–(13), 106, 107 (4), 108, 112, 113 (4), 114 and 121:		
(a) in relation to an individual:	Class 1, 2, 4	Level 5
(b) in relation to a corporation:	Class 1, 2, 4	Level 13
Clauses 64–66, 68, 70–72 and 117:		
(a) in relation to a minor risk offence:	Class 1, 2, 4	Level 4
(b) in relation to a substantial risk offence:	Class 1, 2, 4	Level 7
Clauses 155 (4) and (5), 157 (3) and 161 (3):		
(a) in relation to an individual:	Class 1, 2, 4	Level 9
(b) in relation to a corporation:	Class 1, 2, 4	Level 17
Clause 156 (3):		
(a) in relation to an individual:		
(i) in relation to a Level 1 offence:	Class 1, 2, 4	Level 6
(ii) in relation to a Level 2 offence:	Class 1, 2, 4	Level 9
(b) in relation to a corporation:		
(i) in relation to a Level 1 offence:	Class 1, 2, 4	Level 13
(ii) in relation to a Level 2 offence:	Class 1, 2, 4	Level 17