



New South Wales

Road Transport (General) Amendment (Heavy Vehicle) Regulation 2011

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*.

DAVID BORGER, MP
Minister for Roads

Explanatory note

The object of this Regulation is to amend Part 6 (Heavy vehicle driver fatigue) and Part 7 (Heavy vehicle speeding compliance) of the *Road Transport (General) Regulation 2005*:

- (a) to include provisions generally consistent with the national heavy vehicle driver fatigue model legislation in relation to work undertaken within or outside a 100 kilometre radius of the driver's work base, and
- (b) to enable the undertaking of certain activities to be treated as part of rest time for the purposes of Part 6, and
- (c) to vary certain requirements relating to the calculation of work and rest time in relation to drivers of buses providing bus services in accordance with service contracts under the *Passenger Transport Act 1990*, and
- (d) to vary certain requirements relating to rest times for drivers working under Advanced Fatigue Management (AFM) accreditation, and
- (e) to provide certain exemptions from the provisions of those Parts for emergency services drivers, drivers attending emergencies, local council employees driving within the relevant local government area, drivers of buses (other than buses used to provide public passenger services), drivers of buses providing bus services in accordance with service contracts under the *Passenger Transport Act 1990*, drivers of private hire vehicles, drivers of vehicles used for the purposes of primary production and drivers of vehicles used in businesses the primary purpose of which is motor

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dealing, repair, inspection, maintenance or testing, the manufacturing of heavy vehicles or the hire and rental of heavy vehicles, and

(f) to prescribe new offences created by the Regulation as penalty notice offences.

This Regulation is made under the *Road Transport (General) Act 2005*, including Part 1.2 and section 183.

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1 Name of Regulation

This Regulation is the *Road Transport (General) Amendment (Heavy Vehicle) Regulation 2011*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

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Schedule 1 Amendment of Road Transport (General) Regulation 2005

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[1] Clauses 58A and 58B

Insert after clause 58:

58A Exception to work time

- (1) A period during which the driver of a regulated heavy vehicle is in the driver's seat of the vehicle while its engine is running counts as rest time if:
 - (a) the vehicle is stationary during that period, and
 - (b) the driver is not subject to work demands during that period, and
 - (c) the period is at least 15 minutes or forms part of a period of rest time of at least 15 minutes.
- (2) This clause has effect despite paragraph (a) of the definition of *driving* in clause 57 (2).

Note. Clause 60 provides for the manner in which periods of rest time are to be calculated.

58B Limited personal use on rest days

- (1) In this clause, *permitted activity* means cleaning or refuelling a regulated heavy vehicle or driving a regulated heavy vehicle.
- (2) A rest period of at least 24 continuous hours of stationary rest time that is required to be taken by a driver under this Regulation may include a period of up to one continuous hour of permitted activity that is to be treated as part of that rest time, but only if:
 - (a) the permitted activity is not done at the direction of the driver's employer or for fee or reward, and
 - (b) the beginning of the period of permitted activity occurs at least 3 hours after the beginning of the 24-hour rest period, and
 - (c) the end of the period of permitted activity occurs at least 3 hours before the end of the 24-hour rest period.
- (3) This clause has effect despite clauses 57 and 58.

[2] Clause 60 Counting time, including work and rest time

Insert after clause 60 (4):

- (5) Subclauses (1) and (2) do not apply to work time and rest time of a driver in relation to the driving of a bus on a journey undertaken

in accordance with a service contract entered into under Part 3 of the *Passenger Transport Act 1990*.

[3] Clause 72 AFM outer limits

Omit the matter relating to the period of 14 days (336 hrs) in Column 3 of the Table to clause 72 (1).

Insert instead:

2 × 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

[4] Clause 73A

Insert before clause 74:

73A What is 100 km work and 100+ km work?

- (1) The driver of a regulated heavy vehicle is engaged in **100 km work** if the driver is driving in an area that has a radius of 100 km or less from the driver's base.
- (2) The driver of a regulated heavy vehicle is engaged in **100+ km work** if the driver is driving in an area that has a radius of more than 100 km from the driver's base.

[5] Clause 75 Driver must carry work diary

Insert before clause 75 (1):

- (1A) This clause applies if a driver:
 - (a) is engaged in 100+ km work, or
 - (b) was engaged in 100+ km work in the last 28 days, or
 - (c) is driving under a work/rest hours exemption (whether or not granted in combination with an operator's BFM or AFM accreditation), or
 - (d) was driving under a work/rest hours exemption (whether or not granted in combination with an operator's BFM or AFM accreditation) in the last 28 days.

[6] Clause 76 Information that driver must record in work diary

Omit clause 76 (1). Insert instead:

- (1) This clause lists the information that a driver must record in his or her work diary on each day on which the driver:
 - (a) engages in 100+ km work, or

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- (b) is working under the hours specified in a work/rest hours exemption (whether or not granted in combination with an operator's BFM or AFM accreditation).

[7] **Clause 76 (8)**

Insert after clause 76 (7):

- (8) However, if this clause requires a driver to record information before beginning to engage in 100+ km work on a day, it is a defence for the driver to prove that, at the time of the offence:
 - (a) he or she was unaware that he or she would be engaging in 100+ km work on the day, and
 - (b) he or she recorded the information in his or her work diary as soon as practicable after becoming aware that he or she would be engaging in 100+ km work on the day.

[8] **Clause 81 Information that record keeper must record**

Omit clause 81 (2). Insert instead:

- (2) If the driver is engaging in 100 km work, the record keeper:
 - (a) must record:
 - (i) the driver's name, driver licence number and contact details, and
 - (ii) the dates on which the driver drives a regulated heavy vehicle on a road, and
 - (iii) the registration number shown on the numberplate of each regulated heavy vehicle that the driver drives, and
 - (iv) the total of the driver's work and rest times on each day when the driver drives a regulated heavy vehicle, and
 - (v) the total of the driver's work and rest times for each week when the driver drives a regulated heavy vehicle, and
 - (vi) the driver's rosters and trip schedules, including details of driver changeovers, and
 - (b) 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.

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- (2A) If the driver is engaging in 100+ km work, the record keeper:
- (a) must record:
 - (i) the driver's name, driver licence number and contact details, and
 - (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 him or her 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.
- (2B) Subclause (2A) does not apply to 100+km work if the driver concerned is exempt under clause 115C from complying with the requirements of Subdivision 2 of Division 4 in relation to that work.
- (2C) If the driver is exempt under clause 115C from complying with the requirements of Subdivision 2 of Division 4 in relation to 100+km work, the record keeper must record the information referred to in subclause (2) in respect of that work.

Maximum penalty:

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

[9] Clause 106 Driver must carry BFM accreditation documents

Insert after clause 106 (1):

- (1A) Subclause (1) does not apply to a driver while the driver is engaged in 100 km work within the meaning of clause 73A.

[10] Clause 112 Driver must carry AFM accreditation details

Insert after clause 112 (1):

- (1A) Subclause (1) does not apply to a driver while the driver is engaged in 100 km work within the meaning of clause 73A.

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[11] Clauses 115–115E

Omit clause 115. Insert instead:

115 Exemptions for emergency services

- (1) A person who is an officer, member or member of staff of an emergency service is exempt from the provisions of this Part, but only in relation to the driving of a regulated heavy vehicle in the course of undertaking work for an emergency service.
- (2) An *emergency service* means the following:
 - (a) the State Emergency Service,
 - (b) the New South Wales Fire Brigades and any permanent fire brigade or volunteer fire brigade within the meaning of the *Fire Brigades Act 1989*,
 - (c) the NSW Rural Fire Service,
 - (d) the Ambulance Service of NSW,
 - (e) the NSW Police Force,
 - (f) New South Wales Volunteer Rescue Association Inc,
 - (g) a government agency of another jurisdiction, or a body authorised under the law of another jurisdiction, that has corresponding functions to the bodies referred to in the preceding paragraphs.

115A Exemptions in relation to emergencies

- (1) In this clause, *emergency* means an event (or an anticipated event) that:
 - (a) endangers, or may endanger, life, property or the environment, or
 - (b) has disrupted, or may disrupt, communications, energy, water supply or sewerage services, or
 - (c) is declared to be an emergency or disaster by:
 - (i) the Commonwealth or a State or Territory, or
 - (ii) a Commonwealth, State or Territory authority responsible for managing responses to emergencies or disasters.
- (2) A person who is attending an emergency and who is undertaking activities with respect to the control of the emergency in the course of his or her employment or usual business activities is exempt from the following provisions in relation to the driving of

a regulated heavy vehicle to and from the emergency so long as subclause (3) is complied with:

- (a) Division 3 (Duties relating to work and rest times),
 - (b) Subdivision 2 of Division 4 (Work diary requirements).
- (3) Any record that would be required to be made under Subdivision 2 of Division 4 (but for the exemption under subclause (2)):
- (a) must be made as soon as practicable after the journey from the emergency is completed, and
 - (b) must include a record of the following:
 - (i) the time, date, location and nature of the emergency,
 - (ii) if the person was asked by another person to attend the emergency, the name and contact details of that other person.

115B Exemptions for certain buses and private hire vehicles

- (1) A person is exempt from the requirements of this Part (other than clauses 45 and 46) in relation to the driving of a private hire vehicle (within the meaning of the *Passenger Transport Act 1990*) or the driving of a bus.
- (2) Subclause (1) does not apply to the driving of a bus for the purpose of providing a public passenger service (within the meaning of the *Passenger Transport Act 1990*).

Note. Persons carrying on public passenger services by means of a bus are required to be accredited under the *Passenger Transport Act 1990*.

115C Certain exemptions for 100+ km work requirements

- (1) A person is exempt from the requirements of Subdivision 2 of Division 4 (Work diary requirements) with respect to 100+ km work in relation to the driving of a bus on a journey undertaken in accordance with a service contract entered into under Part 3 of the *Passenger Transport Act 1990*.
- (2) A person employed by a local council is exempt from the requirements of Subdivision 2 of Division 4 (Work diary requirements) with respect to 100+km work in relation to the driving of a regulated heavy vehicle if that driving:
 - (a) was undertaken in the course of that employment, and
 - (b) occurred only within the local government area of that council.

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- (3) It is a defence to proceedings for an offence against Subdivision 2 of Division 4 (Work diary requirements) in relation to the driving of a regulated heavy vehicle on a particular day, if the driver of the vehicle proves that:
 - (a) he or she reasonably believed before commencing that driving on that day that he or she would be engaging in work to which the exemption in subclause (2) would apply, and
 - (b) he or she recorded the information required to be recorded under that Subdivision in his or her work diary as soon as practicable after becoming aware that the exemption in subclause (2) did not apply.

115D Exemptions for certain vehicles used for primary production

- (1) A person is exempt from the requirements of Division 4 (Duties relating to record keeping) in relation to the driving of a regulated heavy vehicle on any day if:
 - (a) the vehicle is being driven on a journey for the purpose of primary production (including for the purpose of transporting animals or produce in connection with the sale of the animals or produce), and
 - (b) the vehicle is not driven outside a radius of 160 km from the driver's base.
- (2) It is a defence to proceedings for an offence against Subdivision 2 of Division 4 (Work diary requirements) in relation to the driving of a regulated heavy vehicle on a particular day, if the driver of the vehicle proves that:
 - (a) he or she reasonably believed before commencing that driving on that day that he or she would be engaging in work to which the exemption in subclause (1) would apply, and
 - (b) he or she recorded the information required to be recorded under that Subdivision in his or her work diary as soon as practicable after becoming aware that the exemption in subclause (1) did not apply.
- (3) In this clause, **primary production** means:
 - (a) the cultivation of land for the purpose of selling the produce of the land, or
 - (b) the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce, or

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- (c) the keeping of bees for the purpose of selling their honey or other apiary products.

115E Exemptions for vehicles used in motor dealing, repair, inspection, maintenance or testing businesses

- (1) This clause applies to businesses the primary purpose of which is:
 - (a) motor dealing, repair, inspection, maintenance or testing, or
 - (b) manufacturing heavy vehicles, or
 - (c) the hire and rental of heavy vehicles.
- (2) A person is exempt from the requirements of clause 81 (2) in relation to the driving of a regulated heavy vehicle on any day if:
 - (a) the vehicle is being driven in the course of the carrying on of a business to which this clause applies, and
 - (b) the vehicle is not driven outside a radius of 100 km from the driver's base.

[12] Part 7, Division 4

Insert after clause 167:

Division 4 Exemptions

167A Exemptions for emergency services staff

- (1) A person who is an officer, member or member of staff of an emergency service is exempt from the provisions of this Part, but only in relation to the driving of a vehicle in the course of undertaking work for an emergency service.
- (2) In this clause, *emergency service* has the same meaning as in clause 115.

167B Exemptions for certain buses and private hire vehicles

- (1) A person is exempt from the requirements of this Part (other than clause 156) in relation to the driving of a private hire vehicle (within the meaning of the *Passenger Transport Act 1990*) or the driving of a bus.
- (2) Subclause (1) does not apply to the driving of a bus for the purpose of providing a public passenger service (within the meaning of the *Passenger Transport Act 1990*).

Note. Persons carrying on public passenger services by means of a bus are required to be accredited under the *Passenger Transport Act 1990*.

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[13] Schedule 3 Penalty notice offences

Insert “(2A), (2C),” after “81 (2),” in Column 1 of the matter relating to the *Road Transport (General) Regulation 2005*”.