

House of Assembly—No 121

As laid on the table and read a first time, 9 April 2008

South Australia

**Road Traffic (Heavy Vehicle Driver Fatigue)
Amendment Bill 2008**

A BILL FOR

An Act to amend the *Road Traffic Act 1961*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Road Traffic (Heavy Vehicle Driver Fatigue) Amendment Act 2008*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Road Traffic Act 1961*

4—Amendment of section 5—Interpretation

- (1) Section 5(1), definition of *consignee*—delete "that are transported by road"
- (2) Section 5(1), definition of *consignee*, (b)—delete "is to actually receive the goods after completion of their transport" and substitute:

15 actually receives the goods after the goods are transported

- (3) Section 5(1), definition of *consignee*—delete "is to merely unload" and substitute:
merely unloads

- (4) Section 5(1), definition of *consignor*—delete "that are transported by road"
- (5) Section 5(1), definition of *consignor*, (b)—delete "engaged the operator of the vehicle concerned" and substitute:
engages an operator of a vehicle
- 5 (6) Section 5(1), definition of *consignor*, (c)—delete "had" and substitute:
has
- (7) Section 5(1), definition of *consignor*, (c)—delete "their transport" and substitute:
the goods are transported
- (8) Section 5(1), definition of *consignor*, (d)—delete "loaded the" and substitute:
10 loads a
- (9) Section 5(1), definition of *consignor*, (d)—after "that is" insert:
usually
- (10) Section 5(1), definition of *consignor*, (e)—delete paragraph (e) and substitute:
15 (e) if paragraphs (a) to (d) do not apply and the goods are imported into
Australia—a person who imports the goods;
- (11) Section 5(1), definition of *loader*—delete "that are transported by road"
- (12) Section 5(1), definition of *loader*, (a)—delete "loaded the vehicle concerned" and
substitute:
loads a vehicle
- 20 (13) Section 5(1), definition of *loader*, (b)—delete "loaded the vehicle" and substitute:
loads a vehicle
- (14) Section 5(1), definition of *loader*, (c)—delete "loaded a freight container already in or
on the vehicle" and substitute:
loads a freight container already in or on a vehicle
- 25 (15) Section 5(1), definition of *loader*, (d)—delete "supervised" and substitute:
supervises
- (16) Section 5(1), definition of *loader*, (e)—delete "managed or controlled" and substitute:
manages or controls
- (17) Section 5(1), definition of *packer*—delete "that are transported by road"
- 30 (18) Section 5(1), definition of *packer*, (a)—delete "put" and substitute:
puts
- (19) Section 5(1), definition of *packer*, (b)—delete "assembled" and substitute:
assembles
- (20) Section 5(1), definition of *packer*, (c)—delete "supervised" and substitute:
35 supervises

(21) Section 5(1), definition of *packer*, (d)—delete "managed or controlled" and substitute:
manages or controls

(22) Section 5(1), definition of *reasonable steps defence*—delete "section 121" and substitute:

5 section 173AA

(23) Section 5—after subsection (3) insert:

(4) For the purposes of this Act, an act or omission of a person *causes* a thing to occur if the person's act or omission substantially contributes to the occurrence of the thing.

10 **5—Substitution of Part 3AA**

Part 3AA—delete the Part and substitute:

Part 3AA—Provisions related to management of heavy vehicles

110AA—Fatigue

15 (1) The Governor may make regulations to establish a scheme for the management of fatigue in drivers of regulated heavy vehicles.

(2) Without limiting the effect of subsection (1), the regulations under this section may make provision relating to—

20 (a) the periods that drivers of regulated heavy vehicles spend working and resting; and

(b) the keeping, production and inspection of records; and

(c) the specifying of, and obligations of, parties in the chain of responsibility in relation to a regulated heavy vehicle; and

25 (d) powers of police officers and authorised officers in relation to the enforcement of the regulations; and

(e) powers of police officers and authorised officers to give directions to drivers of regulated heavy vehicles; and

30 (f) the recognition of administrative decisions in other jurisdictions in relation to the management of fatigue in drivers of regulated heavy vehicles.

(3) The regulations under this section may—

(a) make provision for periods spent by drivers of regulated heavy vehicles driving, working or resting outside the State to be taken into account for the purposes of the regulations; and

35 (b) provide for the granting, variation, revocation and suspension of exemptions (whether conditional or otherwise) from any provision of the regulations; and

- (c) prescribe and provide for the payment of fees in respect of specified matters; and
- (d) make provisions of a savings or transitional nature; and
- (e) prescribe penalties, not exceeding \$50 000, for offences against the regulations; and
- (f) fix expiation fees, not exceeding \$750, for alleged offences against the regulations.

(4) In this section—

regulated heavy vehicle means a motor vehicle of a class declared by the regulations to be a regulated heavy vehicle.

6—Amendment of heading to Part 4 Division 3B Subdivision 2

Heading to Part 4 Division 3B Subdivision 2—delete the heading and substitute:

Subdivision 2—Reasonable steps defence—special provisions

7—Substitution of section 121

Section 121—delete the section and substitute:

121—Reasonable steps defence—taking reasonable steps

In determining whether things done or omitted to be done by a person charged with an offence against this Division constitute reasonable steps for the purposes of section 173AA, a court may have regard to—

- (a) the circumstances of the alleged offence, including (if relevant) the risk category to which the breach concerned belongs; and
- (b) without limiting paragraph (a), the measures available and measures taken for any or all of the following:
 - (i) to accurately and safely weigh or measure the vehicle or its load or to safely restrain the load in or on the vehicle;
 - (ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the vehicle or its load might be calculated;
 - (iii) to manage, reduce or eliminate a potential breach arising from the location of the vehicle, or from the location of the load in or on the vehicle, or from the location of goods in the load;
 - (iv) to manage, reduce or eliminate a potential breach arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;

- (v) to exercise supervision or control over others involved in activities leading to the breach; and
- (c) the measures available and measures taken for any or all of the following:
 - (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons;
 - (ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
 - (iii) to maintain equipment and work systems to enable compliance with relevant laws;
 - (iv) to address and remedy similar compliance problems that may have occurred in the past; and
- (d) whether the person charged had, either personally or through an agent or employee, custody or control of the vehicle, or of its load, or of any of the goods included or to be included in the load; and
- (e) the personal expertise and experience that the person charged had or ought to have had or that an agent or employee of the person charged had or ought to have had.

8—Amendment of section 165—False statements

Section 165—after subsection (3) insert:

- (4) To avoid doubt, a record compiled under this Act is not false or misleading for the purposes of this Act merely because the record contains a spelling error.

9—Insertion of section 173AA

After section 173 insert:

173AA—Reasonable steps defence

- (1) If a provision of this Act states that a person has the benefit of the *reasonable steps defence* for an offence, it is a defence to a charge for the offence concerned if the person charged establishes 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; or
 - (ii) there were no steps that the person could reasonably be expected to have taken to prevent the contravention.

5 (2) If the person charged establishes that the person had complied with all relevant standards and procedures under a registered industry code of practice with respect to matters to which the breach relates, proof of compliance (as so established by the person) constitutes *prima facie* evidence that the person charged had taken reasonable steps to prevent the contravention.

10 (3) Subsection (2) is not available unless the person charged has served notice of intention to establish the matters referred to in that subsection on the prosecution at least 28 days before the day on which the matter is set down for hearing.

10—Amendment of section 176—Regulations and rules

(1) Section 176(1a)—after paragraph (g) insert:

(ga) make provisions relating to the establishment and administration of approved road transport compliance schemes; and

15 (2) Section 176—after subsection (2) insert:

(2a) Regulations making provision relating to the establishment and administration of approved road transport compliance schemes may—

20 (a) impose penalties, not exceeding \$50 000, for offences against the regulations relating to approved road transport compliance schemes; and

(b) fix expiation fees, not exceeding \$750, for alleged offences against the regulations relating to approved road transport compliance schemes; and

25 (c) provide for and prescribe fees (including the waiving, remission or refund of such fees) in respect of approved road transport compliance schemes.