

South Australia

# Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008

under the *Road Traffic Act 1961*

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Legislative history

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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*.

### 3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

**100 kilometre work**—a driver is engaged in 100 kilometre work if he or she is driving in an area not more than 100 kilometres from his or her base;

**100-plus kilometre work**—a driver is engaged in 100-plus kilometre work if he or she is driving in an area more than 100 kilometres from his or her base;

**Act** means the *Road Traffic Act 1961*;

**AFM accreditation** has the same meaning as in the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*;

**AFM hours**—see regulation 24;

**AFM outer limits** has the same meaning as in the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*;

**AFM Standards** has the same meaning as in the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*;

**another jurisdiction** means a State or Territory of the Commonwealth other than this jurisdiction;

**approved sleeper berth** means—

- (a) in relation to a regulated heavy vehicle that is a heavy truck—a driver's sleeper berth that complies with ADR 42 (as in force from time to time under the *Motor Vehicle Standards Act 1989* of the Commonwealth) and which is able to be used by a driver of the vehicle when taking rest; or
- (b) in relation to a regulated heavy vehicle that is a bus—a driver's sleeper berth that complies with the requirements (if any) determined by the Authority by notice in the Gazette and which is able to be used by a driver of the vehicle when taking rest;

**ATC** means the Australian Transport Council;

**Authority** means the Minister;

**base**—the base of a driver in relation to particular work means—

- (a) the place from which the driver usually does the work and which is recorded in his or her work diary; or

- (b) if that place is not recorded in the driver's work diary—the garage address of the regulated heavy vehicle being driven by the driver;

**BFM accreditation** has the same meaning as in the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*;

**BFM hours** means the BFM hours for solo drivers working under BFM accreditation (see regulation 21) or the BFM hours for two-up drivers working under BFM accreditation (see regulation 23) as the case requires;

**BFM Standards** has the same meaning as in the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*;

**compliance purposes** has the same meaning as in section 40F of the Act;

**corresponding fatigue law** means—

- (a) an Act or law in force in another jurisdiction regulating fatigue in drivers of regulated heavy vehicles (other than a law primarily related to occupational health and safety); and
- (b) any other Act or law declared by the Minister by notice in the Gazette to be a corresponding fatigue law;

**critical risk offence**—see regulation 72;

**daily sheet** means a daily sheet referred to in regulation 29(3)(b);

**drive** includes—

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

**driver** means a driver of a regulated heavy vehicle;

**driver's licence** means—

- (a) a driver's licence under the *Motor Vehicles Act 1959*; or
- (b) a licence issued under a law of another State or Territory of the Commonwealth that corresponds to such a driver's licence; or
- (c) a licence of a kind contemplated by section 97A(1)(a) of the *Motor Vehicles Act 1959*;

**Note—**

Section 97A of the *Motor Vehicles Act 1959* authorises visiting motorists to drive a motor vehicle on roads in this State without holding a licence under that Act.

**electronic work diary** means an electronic information recording system—

- (a) approved under regulation 31 for use as an electronic work diary and labelled in accordance with regulation 34; or
- (b) approved as an electronic work diary and labelled in accordance with a corresponding fatigue law;

**employed driver** means a driver who is employed by someone else to drive a regulated heavy vehicle;

**employer** means a person who employs persons under contracts of employment, apprenticeship or training, but does not include a person who employs persons under a contract for services;

**exemption** means a work/rest hours exemption or a work diary exemption, as varied from time to time, granted under Part 5;

**fatigue** includes tiredness, weariness, drowsiness, exhaustion and lack of energy;

**Fatigue Authorities Panel** means the body of that name established in accordance with the *Fatigue Authorities Panel Rules* made by the National Transport Commission and approved by the Australian Transport Council, as in force from time to time;

**garage address**, in relation to a regulated heavy vehicle, means—

- (a) if the vehicle is usually kept at a depot when not in use—the address of the depot at which the vehicle is usually kept; or
- (b) if the vehicle is usually kept at a particular place other than a depot when not in use—the home address of the registered operator of the vehicle whose home address is nearest that place; or
- (c) in any other case—the home address of the registered operator of the vehicle who is listed first on the registration certificate for the vehicle;

**heavy truck** means—

- (a) in the case of a combination—a motor vehicle (other than a bus or tram) that is part of the combination where the total of the GVM of the vehicles in the combination is more than 12 tonnes; or
- (b) in any other case—a motor vehicle (other than a bus or tram) with a GVM of more than 12 tonnes;

**loading manager** means—

- (a) a person who manages premises at which an average (calculated in accordance with subregulation (8)) of not less than 5 regulated heavy vehicles are loaded or unloaded on each day on which the premises are operating; or
- (b) a person who supervises, manages or controls (whether directly or indirectly) the loading or unloading of regulated heavy vehicles at such premises;

**long/night work time** means any work time—

- (a) in excess of 12 hours in any 24 hour period; or
- (b) between the hours of midnight and 6 am;

**major rest break** means rest time of not less than 5 continuous hours;

**minor risk offence**—see regulation 72;

**NHVAS business rules** has the same meaning as in the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*;

**night rest break** means a rest break consisting of—

- (a) 7 continuous hours of stationary rest time taken between the hours of 10 pm on one day and 8 am on the following day; or
- (b) 24 continuous hours of stationary rest time;

**night rest time** means rest time taken between the hours of 10 pm on one day and 8 am on the following day;

**non-participating zone** means all jurisdictions other than participating jurisdictions;

**occupational health and safety legislation** means the *Occupational Health, Safety and Welfare Act 1986*, or a law of the Commonwealth that relates to occupational health and safety declared by the Minister by notice in the Gazette to be within the ambit of this definition;

**participating jurisdiction**—a jurisdiction is a participating jurisdiction if it is—

- (a) this jurisdiction; or
- (b) another jurisdiction, if that jurisdiction has a corresponding fatigue law;

**participating zone** means all participating jurisdictions;

**prime contractor**, in relation to a driver, means a person who engages the driver to drive a regulated heavy vehicle under a contract for services;

**record keeper**, in relation to a driver, means—

- (a) if the driver is an employed driver working under standard hours, or under a work/rest hours exemption (not being an exemption granted in combination with a BFM or AFM accreditation)—the driver's employer; or
- (b) if the driver is a self-employed driver working under standard hours, or under a work/rest hours exemption (not being an exemption granted in combination with a BFM or AFM accreditation)—the driver; or
- (c) if the driver is working under the BFM or AFM accreditation of the operator of a regulated heavy vehicle, or under a work/rest hours exemption granted in combination with the BFM or AFM accreditation of the operator—the operator; or
- (d) if another person is engaged by a person referred to in a preceding paragraph to perform specified functions of a record keeper under these regulations under a contract for services—that other person (but only in relation to the specified functions);

**record location**, in relation to a driver, means—

- (a) the location that the record keeper for the driver has nominated as the record location for the driver; or
- (b) if the record keeper for the driver has not nominated such a location—the base of the driver;

**regulated heavy vehicle** means a motor vehicle that is declared to be a regulated heavy vehicle under regulation 4;



**relevant BFM or AFM accreditation**, in relation to a party in the chain of responsibility in relation to a regulated heavy vehicle, means the BFM or AFM accreditation granted to the operator of the regulated heavy vehicle;

**rest time**—see regulation 14(3);

**scheduler** means a person who schedules—

- (a) the work time or rest time of a driver; or
- (b) the transport of passengers or goods by road by regulated heavy vehicle;

**self-employed driver** means a driver who is not an employed driver;

**severe risk offence**—see regulation 72;

**solo driver** means a driver other than a two-up driver;

**standard hours** means—

- (a) the standard hours for solo drivers as specified in regulation 16;
- (b) the standard hours for solo drivers (buses) as specified in regulation 17;
- (c) the standard hours for two-up drivers as specified in regulation 19;

**stationary rest time** means any rest time spent by a driver—

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

**substantial risk offence**—see regulation 72;

**supplementary record** means a supplementary record made in accordance with regulation 41 or a corresponding fatigue law;

**this jurisdiction** means South Australia;

**two-up driver** means a driver working under 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 that have been transported by road means a person who—

- (a) unloads the goods from a vehicle that transported the goods by road; or
- (b) unloads a freight container (whether or not containing goods) from a vehicle that transported the freight container by road; or
- (c) without limiting the above, unloads the goods from a freight container in or on a vehicle that transported the goods 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 diary** means a written work diary or an electronic work diary;

**work diary exemption**—see regulation 59;

**work record** means a work diary, a supplementary record or any other record or document required to be kept under regulation 44;

**work/rest change**, in relation to a driver, means a change—

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

**work/rest hours exemption**—see regulation 58;

**work/rest hours option**—a work/rest hours option is 1 of the following:

- (a) standard hours for solo drivers (see regulation 16);
- (b) standard hours for solo drivers (buses) (see regulation 17);
- (c) standard hours for two-up drivers (see regulation 19);
- (d) BFM hours for solo drivers working under BFM accreditation (see regulation 21);
- (e) BFM hours for two-up drivers working under BFM accreditation (see regulation 23);
- (f) AFM hours for drivers working under AFM accreditation (see regulation 24);
- (g) the work and rest hours applicable to a driver as a condition of a work/rest hours exemption under Part 5 (whether or not the exemption was granted in combination with BFM or AFM accreditation);

**work time**—see regulation 14(1);

**written exemption** means a written exemption given to a person granted a work/rest hours exemption under regulation 58 or a work diary exemption under regulation 59 and includes—

- (a) a revised written exemption given under regulation 60; and
- (b) a replacement written exemption given under regulation 67;

**written work diary** means a written work diary issued to a driver under regulation 30 or under a corresponding fatigue law.

- (2) For the purposes of these regulations, the following persons are **parties in the chain of responsibility** in relation to a regulated heavy vehicle:
- (a) the employer of the driver of the vehicle;
  - (b) the prime contractor of the vehicle;
  - (c) the operator of the vehicle;
  - (d) a scheduler in relation to the driver of the vehicle, or the vehicle;
  - (e) the consignor of goods to be transported by the vehicle;
  - (f) the consignee of goods to be transported by the vehicle;
  - (g) the loading manager of goods to be transported by the vehicle;
  - (h) the loader of goods onto the vehicle;
  - (i) the unloader of goods from the vehicle.

- (3) To avoid doubt, a person may be a party in a chain of responsibility in more than 1 capacity.
- (4) For the purposes of these regulations, a driver who is at different times an employed driver and a self-employed driver may have a different base in each capacity.
- (5) For the purposes of these regulations, a driver who has 2 or more employers may have a different base in relation to each employer.
- (6) For the purposes of these regulations, a reference to the variation of an exemption includes a reference to a variation of a condition of the exemption.
- (7) The Authority must, in determining requirements for the purposes of paragraph (b) of the definition of *approved sleeper berth*, have regard to, and seek to give effect to, any recommendation made by the Fatigue Authorities Panel in relation to the approval of sleeper berths.
- (8) For the purposes of the definition of *loading manager*, an average of not less than 5 regulated heavy vehicles will be taken to be loaded or unloaded on each day the premises are operating if—
  - (a) in the case of premises that have been operating for not less than 12 months—during the previous 12 months, an average of not less than 5 regulated heavy vehicles were loaded or unloaded at the premises on each day the premises were operating; or
  - (b) in the case of premises that have been operating for less than 12 months—during the period the premises have been operating, an average of not less than 5 regulated heavy vehicles were loaded or unloaded at the premises on each day the premises were operating.

#### 4—Regulated heavy vehicles

- (1) For the purposes of section 110AA of the Act, a motor vehicle that is—
  - (a) a heavy truck; or
  - (b) a bus,(other than plant or a motor home) is declared to be a regulated heavy vehicle.
- (2) In this regulation—

*motor home* means a motor vehicle or combination, the primary purpose of which is to provide residential accommodation (but a motor vehicle is not a motor home merely because it has sleeping facilities);

*plant* means a motor vehicle or combination—

  - (a) that is intended to be used primarily—
    - (i) off-road; or
    - (ii) on a road-related area; or
    - (iii) on an area of road that is under construction,as a machine or implement in an industrial or primary production application; and
  - (b) that is not intended to carry goods or passengers by road.

## 5—Relationship between duties under these regulations and OHS legislation

- (1) Compliance with these regulations, or with any requirement imposed under these regulations, is not in itself a defence in any proceedings for an offence against occupational health and safety legislation.
- (2) Evidence of a relevant contravention of these regulations is admissible in any proceedings for an offence against the occupational health and safety legislation.

## Part 2—Duties to avoid and prevent driving while fatigued

### Division 1—Driving while fatigued

#### 6—Driving while fatigued

- (1) A person must not—
  - (a) drive a regulated heavy vehicle on a road; or
  - (b) attempt to put a regulated heavy vehicle in motion on a road,if he or she is impaired by fatigue.
- (2) An offence against subregulation (1) is a severe risk offence.
- (3) In proceedings for an offence against subregulation (1), a statement produced by the prosecution and purporting to be signed by a police officer or an authorised officer and stating that, at a specified time and place, he or she observed a specified driver of a specified regulated heavy vehicle behaving in a specified way is, in the absence of proof to the contrary, proof of the facts so stated.
- (4) Despite any other Act or law, if a person is found guilty of an offence against subregulation (1) in relation to particular conduct—
  - (a) if the person has been charged with a prescribed offence arising out of the same conduct—a court must discharge the person in relation to the charge of that prescribed offence; or
  - (b) in any other case—the person may not be charged with a prescribed offence arising out of the same conduct.
- (5) Despite any other Act or law, if a person is found guilty of a prescribed offence in relation to particular conduct—
  - (a) if the person has been charged with an offence against subregulation (1) arising out of the same conduct—a court must discharge the person in relation to the charge of that offence; or
  - (b) in any other case—the person may not be charged with an offence against subregulation (1) arising out of the same conduct.
- (6) In this regulation—

***impaired by fatigue***—a person is impaired by fatigue if the use of any mental or physical faculty of that person is lost or appreciably impaired by fatigue;

***prescribed offence*** means an offence against—
  - (a) section 45 or 46 of the Act; or

- (b) section 21 or 22 of the *Occupational Health, Safety and Welfare Act 1986*.

## **7—Duty to prevent person driving while fatigued**

- (1) A party in the chain of responsibility in relation to a regulated heavy vehicle must take all reasonable steps to ensure that a driver of the vehicle does not contravene regulation 6.
- (2) An offence against subregulation (1) is a critical risk offence.
- (3) If the defendant in proceedings for an offence against subregulation (1) is an operator of a regulated heavy vehicle and the defendant proves that he or she complied with the requirements of a relevant BFM accreditation or AFM accreditation, he or she will be taken to have taken all reasonable steps to ensure that a driver of the vehicle did not contravene regulation 6.
- (4) In proceedings for an offence against subregulation (1), it is not necessary to prove that a person did, in fact, contravene regulation 6.

## **Division 2—Additional duties on parties in chain of responsibility**

### **8—Additional duty of employers, prime contractors and operators**

- (1) The employer or prime contractor of a driver must take all reasonable steps to ensure that the business practices of the employer or prime contractor do not cause the driver—
  - (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (2) The operator of a regulated heavy vehicle must take all reasonable steps to ensure that the business practices of the operator do not cause a driver of the vehicle—
  - (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (3) An offence against subregulation (1) or (2) is a severe risk offence.
- (4) The employer or prime contractor of a driver must not cause the driver to drive a regulated heavy vehicle unless—
  - (a) the employer or prime contractor has complied with subregulation (1); and

- (b) the scheduler in relation to the driver or vehicle has complied with regulation 9.
- (5) The operator of a regulated heavy vehicle must not cause a driver to drive the vehicle unless—
  - (a) the operator has complied with subregulation (2); and
  - (b) the scheduler in relation to the driver or vehicle has complied with regulation 9.
- (6) An offence against subregulation (4) or (5) is a substantial risk offence.
- (7) In proceedings for an offence against subregulation (1) or (2), it is not necessary to prove that a driver did, in fact, contravene regulation 6, Part 3 Division 2, such a condition of a work/rest hours exemption or any other law.
- (8) In this regulation—

*business practices* includes—

  - (a) the operating policies and procedures; and
  - (b) the human resource and contract management arrangements; and
  - (c) the occupational health and safety arrangements,of the employer, prime contractor or operator (as the case requires).

## **9—Additional duty of schedulers**

- (1) A scheduler must take all reasonable steps to ensure that any schedule for the work time and rest time of the driver of a regulated heavy vehicle, or for the transport of goods or passengers by road by a regulated heavy vehicle, prepared by the scheduler does not cause the driver—
  - (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (2) An offence against subregulation (1) is a severe risk offence.
- (3) A scheduler must not cause a driver in relation to whom the scheduler has prepared a schedule to drive a regulated heavy vehicle unless—
  - (a) the scheduler has complied with subregulation (1); and
  - (b) any schedule for the work time and rest time of the driver of the vehicle, or for the transport of goods or passengers by the vehicle, prepared by the scheduler complies with subregulation (1).
- (4) An offence against subregulation (3) is a substantial risk offence.
- (5) In proceedings for an offence against subregulation (1), it is not necessary to prove that a driver did, in fact, contravene regulation 6, Part 3 Division 2, such a condition of a work/rest hours exemption or any other law.

## 10—Additional duty of consignors and consignees

- (1) The consignor and consignee of goods that are to be transported by road by a regulated heavy vehicle must each take all reasonable steps to ensure the terms of consignment do not cause the driver of the regulated heavy vehicle—
  - (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (2) The consignor and consignee of goods that are to be transported by road by a regulated heavy vehicle must each take all reasonable steps to ensure the terms of consignment do not encourage or provide an incentive to the employer or prime contractor of the driver of the vehicle, or to the operator of the vehicle, to cause the driver of the vehicle—
  - (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (3) The consignor or consignee of goods that are to be transported by road by a regulated heavy vehicle must not allow the goods to be so transported unless satisfied on reasonable grounds that—
  - (a) in the case of a vehicle driven by an employed driver—the employer of the driver, and the operator of the vehicle, have complied with regulation 8; or
  - (b) in the case of a vehicle driven by a self-employed driver—the prime contractor (if any) of the driver, and the operator of the vehicle, have complied with regulation 8,and, in any case, that the scheduler in relation to the driver or vehicle has complied with regulation 9.
- (4) An offence against subregulation (3) is a substantial risk offence.
- (5) The consignor or consignee of goods that are to be transported by road by a regulated heavy vehicle must not make a demand that affects, or that may affect, a time in a schedule for such transport and that may cause the driver of the vehicle—
  - (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or

- (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (6) It is a defence in proceedings for an offence against subregulation (5) if the person charged establishes that he or she—
  - (a) complied with subregulations (1) and (2); and
  - (b) was satisfied on reasonable grounds that the making of the demand would not cause the driver to contravene these regulations or any other law.
- (7) An offence against subregulation (1), (2) or (5) is a severe risk offence.
- (8) In proceedings for an offence against this regulation, it is not necessary to prove that a driver did, in fact, contravene regulation 6, Part 3 Division 2, such a condition of a work/rest hours exemption or any other law.

### **11—Additional duty of loading managers**

- (1) A loading manager must take all reasonable steps to ensure that the arrangements for loading and unloading regulated heavy vehicles at premises (of a kind referred to in paragraph (a) of the definition of *loading manager* in regulation 3) managed by the loading manager, or at which the loading manager supervises, manages or controls such loading or unloading, do not cause the driver of a regulated heavy vehicle—
  - (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (2) An offence against subregulation (1) is a severe risk offence.
- (3) A loading manager must—
  - (a) if—
    - (i) the loading manager, or a person under his or her supervision, has advised the driver of a regulated heavy vehicle of the time when loading or unloading of the vehicle is likely to commence or be completed (as the case requires); and
    - (ii) such loading or unloading is likely to commence, or be completed, more than 30 minutes later than that time; or
  - (b) if the loading manager, or a person under his or her supervision, is unable to advise the driver of a regulated heavy vehicle of the time when loading or unloading of the vehicle is likely to commence or be completed,  
take all reasonable steps to ensure that the driver is able to take rest while waiting for such loading or unloading to commence or be completed.
- (4) An offence against subregulation (3) is a substantial risk offence.



- (5) In proceedings for an offence against subregulation (1), it is not necessary to prove that a driver did, in fact, contravene regulation 6, Part 3 Division 2, such a condition of a work/rest hours exemption or any other law.

## **Division 3—Miscellaneous**

### **12—Certain requests etc prohibited**

- (1) A person must not request or direct (whether directly or indirectly) a driver, or a party in the chain of responsibility in relation to a regulated heavy vehicle, to do or not do anything that the person knows, or ought to know, may cause the driver—
- (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (2) An offence against subregulation (1) is a critical risk offence.
- (3) In proceedings for an offence against subregulation (1), it is not necessary to prove that a driver did, in fact, contravene regulation 6, Part 3 Division 2, such a condition of a work/rest hours exemption or any other law.

### **13—Certain contracts etc prohibited**

- (1) A person must not enter into a contract or agreement with a driver, or a party in the chain of responsibility in relation to a regulated heavy vehicle, to do or not do anything that the person knows, or ought to know, may cause the driver—
- (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.
- (2) A person must not enter into a contract or agreement with a party in the chain of responsibility in relation to a regulated heavy vehicle that would encourage or provide an incentive to the party in the chain of responsibility to cause the driver—
- (a) to contravene regulation 6; or
  - (b) to contravene Part 3 Division 2 (other than regulation 26); or
  - (c) to contravene a condition of a work/rest hours exemption setting out the work times and rest times applicable to the driver under the exemption; or
  - (d) to contravene any other law for the purpose of avoiding a contravention of regulation 6, Part 3 Division 2 (other than regulation 26) or such a condition of a work/rest hours exemption.

- (3) A term of a contract or agreement that contravenes this regulation is void and of no effect.
- (4) An offence against this regulation is a critical risk offence.
- (5) In proceedings for an offence against this regulation, it is not necessary to prove that a driver did, in fact, contravene regulation 6, Part 3 Division 2, such a condition of a work/rest hours exemption or any other law.

## Part 3—Work times and rest times

### Division 1—Work times and rest times etc

#### 14—Work times and rest times

- (1) For the purposes of these regulations, the following time will be taken to be the *work time* of a driver:
  - (a) any time spent driving a regulated heavy vehicle (whether on a road or otherwise);
  - (b) any time spent doing tasks related to the operation of a regulated heavy vehicle.
- (2) Without limiting subregulation (1)(b), the following will be taken to be tasks related to the operation of a regulated heavy vehicle:
  - (a) loading or unloading the vehicle;
  - (b) inspecting, servicing or repairing the vehicle;
  - (c) inspecting or attending to the load on the vehicle;
  - (d) cleaning the vehicle;
  - (e) refuelling the vehicle;
  - (f) performing marketing tasks in relation to the operation of the vehicle;
  - (g) in the case of a bus—attending to the passengers;
  - (h) assisting with or supervising a task referred to above;
  - (i) recording information, or completing a document, in accordance with a requirement of the Act or any other Act in relation to the vehicle.
- (3) For the purposes of these regulations, any time that is not work time of a driver will be taken to be *rest time*.
- (4) In this regulation—

*marketing tasks* include—

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

## 15—Calculation of time periods

- (1) The following provisions apply when calculating periods of work time and rest time of a driver:
  - (a) a period of work time that is less than 15 minutes in total will be taken to be 15 minutes work time;
  - (b) a period of work time that is greater than 15 minutes will be rounded up to the nearest 15 minutes;
  - (c) a period of rest time that is less than 15 minutes in total will be taken not to be rest time;
  - (d) a period of rest time that is greater than 15 minutes will be rounded down to the nearest 15 minutes;
  - (e) when determining whether a driver has had the required rest time within a particular period of time, the period of time under consideration cannot commence from within a period of rest time.
- (2) For the purposes of calculating whether a period of work time or rest time of a driver is night work time or night rest time, the period must be calculated by reference to the time zone in which the base of the driver is located (including, to avoid doubt, where the work time or rest time occurs in a different time zone to that of the base of the driver).
- (3) For the purposes of these regulations, any time spent by a driver in another jurisdiction of the participating zone is to be treated in the same way as if the time had been spent in this jurisdiction.
- (4) The following provisions apply in the case of a driver entering this jurisdiction from a non-participating jurisdiction:
  - (a) if, within the preceding 7 days, the driver has spent any period of work time in the participating zone—any time spent by the driver in the non-participating zone is to be treated in the same way as if the time had been spent in this jurisdiction;
  - (b) if, within the preceding 7 days, the driver has spent work time in the non-participating zone only—
    - (i) any time spent by the driver in a non-participating jurisdiction prior to his or her last major rest break is to be disregarded for the purposes of these regulations; and
    - (ii) any time spent by the driver in the non-participating jurisdiction after the commencement of his or her last major rest break is to be treated in the same way as if the time had been spent in this jurisdiction.

## Division 2—Standard hours, BFM hours and AFM hours etc

### 16—Standard hours—solo drivers

- (1) This regulation does not apply in relation to drivers working under—
  - (a) standard hours for a solo driver (buses) referred to in regulation 17; or
  - (b) BFM or AFM accreditation; or

- (c) a work/rest hours exemption.
- (2) The table in Schedule 1 sets out the standard hours for a solo driver.
- (3) During any period specified in column 1 of the table in Schedule 1, a solo driver—
  - (a) if a maximum work time is specified in column 2 of the table in relation to the period—must not work for more than that amount of work time; and
  - (b) must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 3 (if any),(and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with paragraphs (a) and (b) in relation to each of those lesser periods).
- (4) An offence against subregulation (3) is an offence of the kind specified in column 4 of the table in Schedule 1 in relation to the conduct constituting the offence.
- (5) A party in the chain of responsibility in relation to a regulated heavy vehicle must ensure that a solo driver of the vehicle does not contravene subregulation (3).
- (6) An offence against subregulation (5) is an offence of the kind specified in column 4 of the table in Schedule 1 in relation to the conduct constituting the offence against subregulation (3) by the driver.
- (7) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

### **17—Standard hours—solo drivers (buses)**

- (1) This regulation does not apply in relation to drivers working under—
  - (a) standard hours for a solo driver referred to in regulation 16; or
  - (b) BFM or AFM accreditation; or
  - (c) a work/rest hours exemption.
- (2) The table in Schedule 2 sets out the standard hours for a solo driver of a regulated heavy vehicle that is a bus.
- (3) During any period specified in column 1 of the table in Schedule 2, a solo driver of a regulated heavy vehicle that is a bus—
  - (a) if a maximum work time is specified in column 2 of the table in relation to the period—must not work for more than that amount of work time; and
  - (b) must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 3 (if any),(and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with paragraphs (a) and (b) in relation to each of those lesser periods).
- (4) An offence against subregulation (3) is an offence of the kind specified in column 4 of the table in Schedule 2 in relation to the conduct constituting the offence.

- (5) A party in the chain of responsibility in relation to a regulated heavy vehicle that is a bus must ensure that a solo driver of the vehicle does not contravene subregulation (3).
- (6) An offence against subregulation (5) is an offence of the kind specified in column 4 of the table in Schedule 2 in relation to the conduct constituting the offence against subregulation (3) by the driver.
- (7) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

### **18—Special provision for solo drivers of buses**

A solo driver of a regulated heavy vehicle that is a bus (other than a driver working under BFM or AFM accreditation or under a work/rest hours exemption) may choose to drive in accordance with—

- (a) the standard hours for a solo driver under regulation 16; or
  - (b) the standard hours for a solo driver (buses) under regulation 17,
- (but not both).

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

- (1) This regulation does not apply in relation to drivers working under—
  - (a) BFM or AFM accreditation; or
  - (b) a work/rest hours exemption.
- (2) The table in Schedule 3 sets out the standard hours for a two-up driver.
- (3) During any period specified in column 1 of the table in Schedule 3, a two-up driver—
  - (a) if a maximum work time is specified in column 2 of the table in relation to the period—must not work for more than that amount of work time; and
  - (b) must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 3 (if any),

(and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with paragraphs (a) and (b) in relation to each of those lesser periods).
- (4) Despite any other provision of these regulations, a required period of stationary rest time of not more than 5 hours may be taken in an approved sleeper berth of the regulated heavy vehicle being driven under the two-up driving arrangement (whether or not the vehicle is stationary at the time such rest is taken).
- (5) An offence against subregulation (3) is an offence of the kind specified in column 4 of the table in Schedule 3 in relation to the conduct constituting the offence.
- (6) A party in the chain of responsibility in relation to a regulated heavy vehicle must ensure that a driver of the vehicle does not contravene subregulation (3).
- (7) An offence against subregulation (6) is an offence of the kind specified in column 4 of the table in Schedule 3 in relation to the conduct constituting the offence against subregulation (3) by the driver.

- (8) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

## **20—Additional defence related to short rest breaks**

- (1) In proceedings for an offence against regulation 16, 17 or 19, it is a defence if the person charged establishes that—
- (a) the alleged offence could have been avoided if he or she had taken a short rest break; and
  - (b) at a time when he or she could have avoided committing the alleged offence by taking a short rest break there was no suitable rest place; and
  - (c) he or she took a short rest break at the next suitable rest place (and in any event took a short rest break within 45 minutes of the alleged commission of the offence).

- (2) In this regulation—

*short rest break* means rest time of not more than 1 hour;

*suitable rest place* means—

- (a) an area designated as a rest area for regulated heavy vehicles; or
- (b) an area in which a regulated heavy vehicle can lawfully be parked,

and in which the person charged could in fact lawfully park the regulated heavy vehicle at the relevant time.

## **21—BFM hours—solo drivers working under BFM accreditation**

- (1) This regulation applies in relation to solo drivers working under BFM accreditation, but does not apply to a solo driver working under a work/rest hours exemption granted in combination with BFM accreditation.
- (2) The table in Schedule 4 sets out the BFM hours for a solo driver.
- (3) During any period specified in column 1 of the table in Schedule 4, a solo driver—
- (a) if a maximum work time is specified in column 2 of the table in relation to the period—must not work for more than that amount of work time; and
  - (b) must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 3 (if any),
- (and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with paragraphs (a) and (b) in relation to each of those lesser periods).
- (4) An offence against subregulation (3) is an offence of the kind specified in column 4 of the table in Schedule 4 in relation to the conduct constituting the offence.
- (5) A party in the chain of responsibility in relation to a regulated heavy vehicle must ensure that a solo driver of the vehicle does not contravene subregulation (3).
- (6) An offence against subregulation (5) is an offence of the kind specified in column 4 of the table in Schedule 4 in relation to the conduct constituting the offence against subregulation (3) by the driver.

- (7) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

## 22—Additional defence related to split rest breaks

- (1) In proceedings for an offence against regulation 21(3), it is a defence if the person charged establishes that—
- (a) he or she was, at the relevant time, driving under BFM hours for solo drivers; and
  - (b) the alleged offence could have been avoided if he or she had taken continuous rest time of not less than 7 hours; and
  - (c) he or she had taken a split rest break within the 24 hours preceding the commission of the alleged offence; and
  - (d) he or she had not taken a split rest break within the 24 hours preceding the period referred to in paragraph (c).

- (2) In this regulation—

*split rest break*—a driver takes a split rest break if he or she has 2 periods of rest time within a period of 24 hours, with 1 such period consisting of not less than 6 continuous hours of rest time, and the other consisting of not less than 2 continuous hours of rest time.

## 23—BFM hours—two-up drivers working under BFM accreditation

- (1) This regulation applies in relation to two-up drivers working under BFM accreditation, but does not apply to a two-up driver working under a work/rest hours exemption granted in combination with BFM accreditation.
- (2) The table in Schedule 5 sets out the BFM hours for a two-up driver.
- (3) During any period specified in column 1 of the table in Schedule 5, a two-up driver—
- (a) if a maximum work time is specified in column 2 of the table in relation to the period—must not work for more than that amount of work time; and
  - (b) must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 3 (if any),
- (and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with paragraphs (a) and (b) in relation to each of those lesser periods).
- (4) An offence against subregulation (3) is an offence of the kind specified in column 4 of the table in Schedule 5 in relation to the conduct constituting the offence.
- (5) A party in the chain of responsibility in relation to a regulated heavy vehicle must ensure that a two-up driver of the vehicle does not contravene subregulation (3).
- (6) An offence against subregulation (5) is an offence of the kind specified in column 4 of the table in Schedule 5 in relation to the conduct constituting the offence against subregulation (3) by the driver.
- (7) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

## **24—AFM hours—driving hours for drivers working under AFM accreditation**

- (1) This regulation applies in relation to drivers working under AFM accreditation, but does not apply to a driver working under a work/rest hours exemption granted in combination with AFM accreditation.
- (2) The conditions of AFM accreditation set out the work times and rest times (the *AFM hours*) that apply to a driver working under the accreditation.
- (3) In relation to a period specified in the AFM accreditation, a driver working under the accreditation—
  - (a) must not work for more than the maximum work time specified in the AFM hours for that period; and
  - (b) must have an amount of rest time not less than the minimum rest time specified in the AFM hours for that period.
- (4) An offence against subregulation (3) is an offence of the kind specified in column 4 of the table in Schedule 6 Part 1 in relation to the conduct constituting the offence as specified in column 2 or 3 of that table (as the case requires).
- (5) A party in the chain of responsibility in relation to a regulated heavy vehicle must ensure that a driver of the vehicle does not contravene subregulation (3).
- (6) An offence against subregulation (5) is an offence of the kind specified in column 4 of the table in Schedule 6 Part 1 in relation to the conduct (as specified in column 2 or 3 of that table (as the case requires)) constituting the offence against subregulation (3) by the driver.
- (7) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

## **25—AFM hours—offences related to AFM outer limits**

- (1) This regulation applies in relation to drivers working under AFM accreditation, but does not apply to a driver working under a work/rest hours exemption granted in combination with AFM accreditation.
- (2) The table in Schedule 2 of the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008* (the *outer limits table*) sets out the AFM outer limits for the maximum permitted amount of work time, and minimum required amount of rest time, in relation to a driver working under AFM accreditation.
- (3) In relation to a period referred to in column 1 of the outer limits table, a driver working under AFM accreditation—
  - (a) must not exceed the amount of work time referred to in column 2 of the table; and
  - (b) must have the remainder of the period as rest time, including at least the period referred to in column 3 of the table which must be stationary rest time.
- (4) Despite subregulation (3), in the case of a two-up driver, a required period of stationary rest time of 6 continuous hours, or 8 hours taken in no more than 2 blocks, may be taken in an approved sleeper berth of the regulated heavy vehicle being driven under the two-up driving arrangement (whether or not the vehicle is stationary at the time such rest is taken).



- (5) An offence against subregulation (3) is an offence of the kind specified in column 4 of the table in Schedule 6 Part 2 in relation to the conduct constituting the offence as specified in column 2 or 3 of that table (as the case requires).
- (6) A party in the chain of responsibility in relation to a regulated heavy vehicle must ensure that a driver of the vehicle does not contravene subregulation (3).
- (7) An offence against subregulation (6) is an offence of the kind specified in column 4 of the table in Schedule 6 Part 2 in relation to the conduct (as specified in column 2 or 3 of that table (as the case requires)) constituting the offence against subregulation (3) by the driver.
- (8) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

## 26—Changing a work/rest hours option

- (1) A driver may only drive under 1 work/rest hours option at any particular time.
- (2) Subject to this regulation, a driver may change from a particular work/rest hours option to a different work/rest hours option.
- (3) A driver changing from 1 work/rest hours option to another must not drive a regulated heavy vehicle unless—
  - (a) in the case of a change from standard hours or from BFM hours—
    - (i) the driver has complied with any work time and rest time requirements of the work/rest hours option to which he or she has changed; or
    - (ii) the driver has had a reset rest break; or
  - (b) in the case of a change from AFM hours or the hours under a work/rest hours exemption—the driver has had a reset rest break,and, in any case, the driver has complied with any other requirement of the work/rest hours option to which he or she has changed.
- (4) An offence against subregulation (3) is a substantial risk offence.
- (5) The employer or prime contractor (if any) of a driver, the operator of a regulated heavy vehicle driven by the driver and the scheduler in relation to the driver or vehicle must ensure—
  - (a) that the driver, if he or she has changed work/rest hours options, does not drive a regulated heavy vehicle unless he or she has complied with subregulation (3); and
  - (b) that the driver can comply with all of his or her obligations in relation to the change.
- (6) An offence against subregulation (5) is a severe risk offence.
- (7) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.
- (8) For the purposes of these regulations, if a driver has had a reset rest break when changing work/rest hours options, the period to which the new work/rest hours option relates will be taken to have commenced at the end of the reset rest break.

- (9) In this regulation—

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

### Division 3—BFM and AFM documentation etc

#### 27—Driver working under BFM accreditation to carry certain documentation

- (1) A driver working under an operator's BFM accreditation must, while driving a regulated heavy vehicle under the accreditation, have in his or her possession—
- (a) a copy of the operator's current BFM accreditation certificate; and
  - (b) a statement signed by the operator stating—
    - (i) that the driver is working under the operator's BFM accreditation; and
    - (ii) that the driver has been inducted into the operator's BFM Fatigue Management System; and
    - (iii) that the driver meets any requirements relating to drivers under the accreditation.

Maximum penalty: \$2 500.

- (2) An operator granted BFM accreditation must take all reasonable steps to ensure that a driver working under the accreditation does not contravene subregulation (1).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
  - (b) if the offender is a body corporate—\$12 500.
- (3) A driver who has a document of a kind referred to in subregulation (1) in his or her possession must, as soon as is reasonably practicable, return the document to the operator if—
- (a) the driver ceases working under the operator's BFM accreditation; or
  - (b) the driver ceases to meet a requirement relating to drivers under the accreditation; or
  - (c) the driver is informed that the operator's BFM accreditation has been varied, suspended, revoked or has otherwise ceased to be in force.

Maximum penalty: \$2 500.

- (4) In this regulation—

*accreditation certificate* means an accreditation certificate (within the meaning of the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*) issued under those regulations in relation to an operator's BFM accreditation.

#### 28—Driver working under AFM accreditation to carry certain documentation

- (1) A driver who is working under an operator's AFM accreditation must, while driving a regulated heavy vehicle under the accreditation, have the following documents in his or her possession:
- (a) a copy of the operator's current AFM accreditation certificate;

- (b) a document setting out the AFM hours that apply under the operator's AFM accreditation;
- (c) a statement signed by the operator stating—
  - (i) that the driver is working under the operator's AFM accreditation; and
  - (ii) that the driver has been inducted into the operator's AFM Fatigue Management System; and
  - (iii) that the driver meets any requirements relating to drivers under the accreditation.

Maximum penalty: \$2 500.

- (2) An operator granted AFM accreditation must take all reasonable steps to ensure that a driver working under the accreditation does not contravene subregulation (1).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
  - (b) if the offender is a body corporate—\$12 500.
- (3) A driver who has a document of a kind referred to in subregulation (1) in his or her possession must, as soon as is reasonably practicable, return the document to the operator if—
    - (a) the driver ceases working under the operator's AFM accreditation; or
    - (b) the driver ceases to meet a requirement relating to drivers under the accreditation; or
    - (c) the driver is informed that the operator's AFM accreditation has been varied, suspended, revoked or has otherwise ceased to be in force.

Maximum penalty: \$2 500.

- (4) In this regulation—

*accreditation certificate* means an accreditation certificate (within the meaning of the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008*) issued under those regulations in relation to an operator's AFM accreditation.

## Part 4—Record keeping

### Division 1—Work diaries

#### Subdivision 1—Written work diaries

##### 29—Form of written work diaries

- (1) A written work diary must be in a form determined by the Authority.
- (2) The Authority must, in making a determination under subregulation (1), have regard to, and seek to give effect to, the format for written work diaries approved by the ATC by notice in the Commonwealth Government Gazette.

- (3) Without limiting this regulation, a written work diary must contain—
- (a) a unique identifying number for the written work diary; and
  - (b) sequentially numbered daily sheets for making daily records; and
  - (c) provision for recording information on the daily sheets; and
  - (d) 2 copies of each daily sheet (not including the original); and
  - (e) if an application form is contained in the diary—a duplicate of that form; and
  - (f) instructions for using the written work diary,
- and may contain any other information or form the Authority thinks fit.

### **30—Issue of written work diaries**

- (1) The Authority must, on application by a driver made in accordance with this regulation, issue a written work diary to the driver.
- (2) A driver making an application under subregulation (1) must identify himself or herself by producing his or her driver's licence to the Authority.
- (3) An application under subregulation (1)—
- (a) without limiting subregulation (2), must be made in a manner determined by the Authority and in a form approved by the ATC by notice in the Commonwealth Government Gazette; and
  - (b) must be accompanied by the fee set out in Schedule 8; and
  - (c) in the case of an application for a replacement written work diary (other than a replacement for a destroyed, lost or stolen diary)—must be accompanied by the previous diary; and
  - (d) in the case of an application for a replacement written work diary that is a replacement for a destroyed, lost or stolen diary—must be accompanied by a statement setting out the identifying number of the destroyed, lost or stolen diary and the circumstances surrounding its destruction, loss or theft; and
  - (e) must be accompanied by any other information reasonably required by the Authority.
- (4) The Authority must, on issuing a written work diary under this regulation, record in the diary the date, time and place of issue.
- (5) The Authority must, if an application under this regulation is accompanied by a previous diary in accordance with subregulation (3)(c), cancel any unused daily sheets in the diary by writing in large letters the word "cancelled" across each such sheet and return the diary to the applicant on issuing the new written work diary.
- (6) The Authority must, if a written work diary is issued under this regulation to a driver whose base is in another jurisdiction in the participating zone—
- (a) notify the corresponding Authority in that jurisdiction of the following:
    - (i) the identifying number of the diary;
    - (ii) the name and driver's licence number of the driver;
    - (iii) the date, time and place of issue; and

- (b) provide the corresponding Authority with—
  - (i) a statement setting out the reasons why the Authority issued the diary; or
  - (ii) a copy of the driver's application for the issue of a written work diary.

## **Subdivision 2—Electronic work diaries**

### **31—Approval of certain systems as electronic work diaries**

- (1) The Authority may, on application by a person, approve an electronic information recording system for use as an electronic work diary for the purposes of these regulations.
- (2) However, the Authority may only approve an electronic information recording system for use as an electronic work diary if the Authority is satisfied that—
  - (a) the system is suitable for fitting to, or use in, a regulated heavy vehicle; and
  - (b) the system is fitted with a device that indicates to a driver of the regulated heavy vehicle whether the system is functioning properly; and
  - (c) the information required to be entered by a driver in his or her work diary under regulation 40 can be stored in, and retrieved from, the system; and
  - (d) the information required to be entered by a driver in his or her work diary under regulation 40 can be retrieved from the system by an authorised officer or police officer, while the regulated heavy vehicle is on the road—
    - (i) in a manner that is reasonably accessible to the officer; and
    - (ii) in a form that is reasonably capable of being understood by the officer; and
    - (iii) in a form that is capable of being used as evidence; and
  - (e) if the system is fitted to a regulated heavy vehicle that is driven, or likely to be driven, by more than 1 driver—
    - (i) the name of the driver to which particular information relates is displayed whenever that information is accessed; and
    - (ii) information recorded by, or in relation to, a particular driver is distinguishable from information recorded by, or in relation to, any other driver;
    - (iii) the information required to be entered by a driver in his or her work diary under regulation 40 can be separately accessed in relation to each driver of the vehicle;
    - (iv) a driver cannot record the information required to be entered by a driver in his or her work diary under regulation 40 in relation to another driver; and
  - (f) the system is fitted with a device that prevents a person from altering information recorded on the system once the driver of the regulated heavy vehicle at the relevant time has confirmed the accuracy of the information; and

- (g) if the system is such as to allow information to be sent from the system to a record keeper of a driver of the regulated heavy vehicle—the system is fitted with a device that indicates to the driver whether particular information has in fact been sent.
- (3) An approval under subregulation (1) may be conditional or unconditional.
- (4) An approval under subregulation (1) will be taken to be an approval of any electronic information recording system that is identical to the approved system (and any condition imposed on the initial approval under this regulation, and any variation or revocation of the condition, will be taken to apply to any approval effected by the operation of this subregulation).
- (5) In determining whether to grant an approval under subregulation (1), the Authority must have regard to, and seek to give effect to, any recommendation of, or guidelines published by, the ATC by notice in the Commonwealth Government Gazette in relation to the approval of electronic work diaries.
- (6) The Authority must, on granting an approval under subregulation (1), issue a numbered certificate of approval to the person granted the approval (and, for the purposes of these regulations, the person to whom the certificate of approval is issued will be taken to be the person holding the approval).
- (7) An application under subregulation (1) must—
  - (a) be made in a manner determined by the Authority and in the form approved by the ATC by notice in the Commonwealth Government Gazette; and
  - (b) be accompanied by the fee set out in Schedule 8; and
  - (c) be accompanied by any other information reasonably required by the Authority.
- (8) If the Authority refuses to grant an application under subregulation (1), the Authority must, by notice in writing, inform the applicant of that fact.
- (9) A notice under subregulation (8) must state—
  - (a) the Authority's decision; and
  - (b) the reasons for the Authority's decision; and
  - (c) that the applicant may apply to have the decision reconsidered.

### **32—Variation or revocation of approval**

- (1) The Authority may—
  - (a) of its own motion; or
  - (b) on application by a person,vary or revoke an approval granted under regulation 31.
- (2) However, the Authority may only vary or revoke an approval under subregulation (1)(a) if the Authority is satisfied that—
  - (a) in the case of a variation—
    - (i) the application for approval was false or misleading in a material particular; or

- (ii) after the approval was granted, a change has occurred in relation to a matter that the Authority must consider in determining whether to grant such an approval (and the approval, as varied by the proposed variation, would have been granted had such change occurred before the approval was granted); or
  - (b) in the case of a revocation—
    - (i) the application for approval was false or misleading in a material particular; or
    - (ii) after the approval was granted, a change has occurred in relation to a matter that the Authority must consider in determining whether to grant such an approval (and the approval would not have been granted had such change occurred before the approval was granted).
- (3) Before varying or revoking an approval under subregulation (1)(a), the Authority must—
  - (a) give notice in writing of the proposed variation or revocation to the person holding the approval; and
  - (b) consider any submission provided by the person within the specified time in response to the notice.
- (4) A notice under subregulation (3) must—
  - (a) detail the proposed variation or state that the approval is to be revoked (as the case requires); and
  - (b) detail the ground for the proposed variation or revocation (including any information forming the basis for the ground); and
  - (c) invite the person to make a submission in writing to the Authority within a specified time (being not less than 14 days after the notice is given to the person) as to why the proposed variation or revocation should not be made.
- (5) An application under subregulation (1)(b) must—
  - (a) be made in a manner and form determined by the Authority; and
  - (b) be accompanied by the fee set out in Schedule 8; and
  - (c) be accompanied by any other information reasonably required by the Authority.
- (6) The Authority may, by notice in writing, require an applicant under subregulation (1)(b) to provide the Authority with additional information reasonably required to determine the application.
- (7) The Authority must determine an application made under subregulation (1)(b) as soon as is reasonably practicable after the application is received.
- (8) If the Authority varies or revokes an approval under this regulation, or refuses to vary or revoke an approval, the Authority must, by notice in writing, inform—
  - (a) in the case of a variation or revocation under subregulation (1)(a)—the person holding the approval; or
  - (b) in the case of a variation or revocation under subregulation (1)(b)—the applicant under that paragraph,

of that fact.

- (9) A notice under subregulation (8) must state—
  - (a) the Authority's decision; and
  - (b) the reasons for the Authority's decision; and
  - (c) that the person may apply to have the decision reconsidered.
- (10) A variation or revocation under this regulation has effect—
  - (a) when the notice under subregulation (8) is given to the relevant person; or
  - (b) at such later time as may be specified in that notice.

### **33—Notification of variation or revocation of approval**

- (1) The Authority—
  - (a) may, if the Authority varies an approval under regulation 32 and is of the opinion that the variation will, or is likely to, significantly affect the way an electronic work diary the subject of the approval is to be used; and
  - (b) must, if the Authority revokes an approval under that regulation,  
by notice in writing, direct the person holding the approval, or the person who held the approval immediately before it was varied or revoked, to notify in the specified manner and within the specified period each person to whom the person holding the approval has supplied an electronic work diary the subject of the approval of the variation or revocation (as the case requires).
- (2) A person who refuses or fails to comply with a direction under this regulation is guilty of an offence.  
Maximum penalty:
  - (a) if the offender is a natural person—\$5 000;
  - (b) if the offender is a body corporate—\$25 000.
- (3) Without limiting this regulation, a notification required to be given under subregulation (1) may, with the written consent of the Authority, be given by the person publishing details of the variation or revocation (and any other information specified by the Authority in the written consent) using at least 2 of the following methods:
  - (a) by notice published in a newspaper or newspapers determined by the Authority;
  - (b) by notice published in a publication determined by the Authority;
  - (c) on a website determined by the Authority.
- (4) Nothing in this regulation prevents the Authority from publishing details of a variation or revocation under regulation 32 in any manner it thinks fit.
- (5) A failure to comply with this regulation does not invalidate a variation or revocation.
- (6) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.



### 34—Labelling of electronic work diaries

- (1) A person holding an approval under regulation 31 may affix, or cause to be affixed, to each component of a system the subject of the approval, a label—
  - (a) that indicates that the component is, or forms part of, a system approved for use as an electronic work diary; and
  - (b) that states the number of the certificate of approval issued under that regulation in relation to the system.
- (2) A label affixed under this regulation must be in a form, and be affixed in a manner, determined by the Authority.
- (3) A person must not affix, or cause to be affixed, to a thing a label—
  - (a) that indicates that the thing is, or forms part of, an electronic work diary, or a system approved for use as an electronic work diary; or
  - (b) that purports to be the number of a certificate of approval issued under regulation 31,

if the person knows, or ought reasonably to have known, that the thing is not, in fact, a component of a system approved for use as an electronic work diary under regulation 31.

Maximum penalty: \$5 000.

- (4) For the purposes of these regulations, a person is entitled to rely on a label or labels apparently affixed in accordance with this regulation as proof that the system is an electronic work diary unless he or she knows, or ought reasonably to have known, that the system is not, in fact, the subject of an approval under regulation 31.

### 35—Removal of labels

- (1) If the Authority revokes an approval under regulation 32, the person holding the approval must, as soon as practicable after being notified of the revocation in accordance with that regulation—
  - (a) remove any labels affixed under regulation 34 from each component of each system the subject of the approval that is in his or her possession; and
  - (b) notify in writing each person to whom the person holding the approval has supplied an electronic work diary the subject of the approval of the revocation.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
  - (b) if the offender is a body corporate—\$25 000.
- (2) A person notified under subregulation (1)(b) must, as soon as practicable after being notified of the revocation in accordance with that paragraph, remove any labels affixed under regulation 34 from each component of each system the subject of the approval that is in his or her possession.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

### **36—How electronic work diary to be operated and maintained**

- (1) A driver using an electronic work diary must operate and maintain the diary—
  - (a) if the Authority has imposed conditions under these regulations in relation to the operation or maintenance of the diary—in accordance with those conditions; and
  - (b) to the extent that manufacturer's instructions relating to the operation or maintenance of the diary are not inconsistent with those conditions, or if there are no such conditions—in accordance with the manufacturer's instructions.

Maximum penalty: \$5 000.

- (2) A record keeper for a driver (not being the driver himself or herself) must ensure that the driver complies with subregulation (1).

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
  - (b) if the offender is a body corporate—\$25 000.
- (3) In proceedings for an offence against this regulation comprising, or related to, a failure to operate or maintain an electronic work diary in accordance with the manufacturer's instructions, it is a defence if the person charged establishes that—
    - (a) the instruction, or the activity related to the instruction, was not integral to the effective operation of the diary; or
    - (b) that what was done, or not done, in contravention of the manufacturer's instructions was in accordance with standard industry practice in relation to the operation or maintenance of a diary of that type from that manufacturer.

### **37—Authority may permit use of certain systems as electronic work diaries**

- (1) This regulation applies to a system approved for use as an electronic work diary under regulation 31 if the approval is subsequently revoked under regulation 32.
- (2) The Authority may, despite the revocation, by notice in the Gazette, permit a system to which this regulation applies to be used as an electronic work diary for the period specified in the notice (being a period of not more than 1 year).
- (3) A permission under this regulation may be conditional or unconditional.
- (4) For the purposes of these regulations, a system the subject of a permission under this regulation will be taken to be an electronic work diary.
- (5) The Authority may, by subsequent notice in the Gazette, vary or revoke a permission under this regulation.

### **Subdivision 3—Work diary requirements**

#### **38—Duty on certain persons to ensure compliance with Subdivision**

- (1) The following persons must ensure that a driver complies with the requirements under this Subdivision:
  - (a) if the driver is an employed driver—the driver's employer;
  - (b) the prime contractor of the driver;

- (c) the operator of a regulated heavy vehicle driven, or to be driven, by the driver;
- (d) the scheduler in relation to the driver or a regulated heavy vehicle driven, or to be driven, by the driver.

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
  - (b) if the offender is a body corporate—\$25 000.
- (2) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

### 39—Driver must carry work diary

- (1) A driver must, when driving a regulated heavy vehicle, keep in the vehicle a work diary containing the information required under regulation 40 for the preceding 28 days if he or she—
- (a) is, or was during the preceding 28 days, engaged in 100-plus kilometre work; or
  - (b) is, or was during the preceding 28 days, working under BFM or AFM hours; or
  - (c) is, or was during the preceding 28 days, working under a work/rest hours exemption (whether or not the exemption was granted in combination with BFM or AFM accreditation).

Maximum penalty: \$5 000.

- (2) For the purposes of this regulation, a reference to a work diary includes, in the case of a written work diary that has been filled during the relevant period, a reference to both that written work diary and any written work diary issued to replace it.
- (3) In this regulation—

*work diary* means—

- (a) if the driver has used only a written work diary during the relevant period—the written work diary; or
- (b) if the driver has used only 1 electronic work diary during the relevant period—the electronic work diary; or
- (c) if the driver has used more than 1 electronic work diary during the relevant period—
  - (i) the electronic work diary currently being used by the driver; and
  - (ii) a copy of any information related to the driver in respect of the relevant period that is contained in any other electronic work diary used by the driver during that period; or
- (d) if the driver has used both a written work diary and an electronic work diary or diaries during the relevant period—
  - (i) the written work diary; and
  - (ii) the electronic work diary currently being used by the driver (if any); and

- (iii) a copy of any information related to the driver in respect of the relevant period that is contained in any other electronic work diary used by the driver during that period,

and includes any supplementary record made during the relevant period.

#### **40—Information that driver must record in work diary**

- (1) A driver must, for each day that the driver is engaged in 100-plus kilometre work, is working under BFM or AFM hours or is working under a work/rest hours exemption (whether or not the exemption was granted in combination with BFM or AFM accreditation), record in his or her work diary in accordance with this regulation—
  - (a) the following information, which is to be recorded immediately on commencing work for that day or on commencing a separate daily sheet (as the case requires):
    - (i) the day of the week and date;
    - (ii) his or her name;
    - (iii) his or her driver's licence number and the jurisdiction in which it was issued;
    - (iv) the address and time zone of his or her base at the time he or she commenced work (unless the driver has previously recorded that information and it has not changed since it was recorded);
    - (v) the address of his or her record location at the time he or she commenced work (unless the driver has previously recorded that information and it has not changed since it was recorded);
    - (vi) the work/rest hours option that he or she is working under;
    - (vii) if he or she is working under BFM or AFM accreditation, or under a work/rest hours exemption granted in combination with BFM or AFM accreditation—the BFM or AFM accreditation number; and
  - (b) the following information, which is to be recorded immediately before or after each work/rest change made during that day:
    - (i) the nature of the work/rest change;
    - (ii) the amount of work time or rest time spent anywhere by the driver since the driver's last work/rest change;
    - (iii) the time and place of the work/rest change;
    - (iv) the odometer reading of the regulated heavy vehicle at the time of the work/rest change;
    - (v) the registration number of any regulated heavy vehicle driven by the driver during that day;
    - (vi) if the driver is, or becomes, a two-up driver—
      - (A) the other driver's name and driver's licence number;
      - (B) if the other driver's work diary is a written work diary—

- the identifying number of the other driver's written work diary; and
  - the jurisdiction in which the other driver's work diary was issued; and
- (c) if the base or record location of the driver changes during the course of that day—the following information, which is to be recorded immediately following such a change:
- (i) details of the new base or record location (as the case requires);
  - (ii) the time at which the change occurred; and
- (d) the following information, which is to be recorded immediately before completing work for that day:
- (i) the amount of work time spent by the driver for that day;
  - (ii) the amount of rest time spent by the driver for that day.

Maximum penalty: \$2 500.

- (2) However, a driver will only be taken to have complied with subregulation (1) if he or she complies with the following provisions in relation to the information required to be recorded under that subregulation:
- (a) in the case of information recorded in a written work diary—
    - (i) subject to these regulations, the information for each day must be recorded on a separate daily sheet (not being a daily sheet that has been cancelled by the Authority) in accordance with any instructions contained in the work diary; and
    - (ii) if the driver changes from 1 work/rest hours option to another during the course of a day, he or she must record the information for that day that relates to the period after the change on a separate daily sheet; and
    - (iii) the daily sheets must be used in sequence commencing with the first daily sheet; and
    - (iv) each daily sheet must, once completed, be signed by the driver (and, if the driver is a two-up driver, each daily sheet must also be signed by the other driver); and
    - (v) the information recorded on a daily sheet must be legibly duplicated on the 2 copies of the daily sheet;
  - (b) in the case of information recorded in an electronic work diary—the information must be recorded—
    - (i) if the Authority has imposed conditions under these regulations in relation to the way such information is to be recorded—in accordance with those conditions; or
    - (ii) to the extent that manufacturer's instructions relating to the recording of such information are not inconsistent with those conditions, or if there are no such conditions—in accordance with the manufacturer's instructions;

- (c) information consisting of, or related to, a particular time or times must be recorded by reference to the time zone in which the driver's base is located.
- (3) In proceedings for an offence against this regulation comprising a failure of a driver engaged in 100-plus kilometre work to record information in accordance with subregulation (1)(a), it is a defence if the person charged establishes that he or she—
- (a) was unaware at the time the information was required to be recorded that he or she would be engaged in 100-plus kilometre work on that day; and
  - (b) recorded the information in his or her work diary as soon as was reasonably practicable after becoming aware that he or she would be engaged in 100-plus kilometre work on that day.
- (4) In proceedings for an offence against this regulation comprising a failure to record information in accordance with subregulation (1)(b)(iv), it is a defence if the person charged establishes that—
- (a) at the time of the alleged offence the odometer was malfunctioning; and
  - (b) he or she complied with regulation 43(2).

#### **41—Supplementary records**

- (1) If a driver's work diary is full, destroyed, lost, stolen or malfunctioning, he or she must record the information required to be recorded under regulation 40 in a *supplementary record*.  
Maximum penalty: \$2 500.
- (2) A supplementary record under this regulation must be made in a similar form to a record made in a written work diary or electronic work diary.
- (3) However, a driver may only record the information required to be recorded under regulation 40 in a supplementary record until his or her work diary is replaced or repaired in accordance with these regulations.
- (4) For the purposes of this regulation, a reference to a work diary includes, in the case of an electronic work diary, a reference to a component of the electronic work diary.

#### **42—Notification of destruction etc of work diary**

- (1) A driver must, as soon as practicable (but in any case within 2 business days) after becoming aware that his or her work diary has been filled, destroyed, lost or stolen, give notice of that fact to the Authority in the manner and form determined by the Authority.  
Maximum penalty: \$2 500.
- (2) A driver must, as soon as practicable (but in any case within 2 business days) after becoming aware that his or her work diary has been filled, destroyed, lost or stolen, apply for a new work diary in accordance with these regulations.  
Maximum penalty: \$2 500.
- (3) In proceedings for an offence against subregulation (2), it is a defence if the person charged establishes that he or she did not intend to drive a regulated heavy vehicle within the next 12 months.

- (4) If a written work diary of a driver that was lost or stolen is subsequently found by, or recovered and returned to, the driver, the driver must—
- (a) cancel any unused daily sheets by writing in large letters the word "cancelled" across each such sheet; and
  - (b) —
    - (i) if the work diary comes into the possession of the driver not more than 28 days after it was lost or stolen—
      - (A) give notice of that fact to the Authority in the manner and form determined by the Authority as soon as practicable after the work diary comes into the possession of the driver; and
      - (B) give the work diary to the Authority as soon as practicable after the end of that 28 day period; or
    - (ii) if the work diary comes into the possession of the driver more than 28 days after it was lost or stolen—give the work diary to the Authority as soon as practicable after the work diary comes into the possession of the driver.

Maximum penalty: \$2 500.

- (5) The Authority must, if a driver gives the Authority a work diary in accordance with subregulation (4), ensure that any unused daily sheets in the diary are cancelled in accordance with that subregulation and return the diary to the applicant.
- (6) A driver of a regulated heavy vehicle must, as soon as practicable (but in any case within 2 business days) after becoming aware or reasonably suspecting that an electronic work diary fitted to the vehicle is malfunctioning, notify his or her record keeper of that fact.

Maximum penalty: \$2 500.

- (7) A record keeper must, as soon as practicable after being notified under subregulation (6)—
- (a) ensure that the electronic work diary is examined and repaired or replaced; or
  - (b) ensure that each driver of the regulated heavy vehicle applies for the issue of a written work diary.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
  - (b) if the offender is a body corporate—\$12 500.
- (8) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.
- (9) For the purposes of this regulation, a reference to a work diary includes, in the case of an electronic work diary, a reference to a component of the electronic work diary.

## **43—Odometers**

- (1) The owner of a regulated heavy vehicle must ensure that an odometer fitted to the vehicle is maintained to the standard approved by the ATC by notice published in the Commonwealth Government Gazette.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (2) A driver of a regulated heavy vehicle must, as soon as practicable (but in any case within 2 business days) after becoming aware or reasonably suspecting that an odometer fitted to the vehicle is malfunctioning, notify each of the following persons of that fact:

- (a) the owner of the vehicle;
- (b) if the driver is an employed driver—the driver's employer;
- (c) the operator of the vehicle.

Maximum penalty: \$2 500.

- (3) The owner of a regulated heavy vehicle must, as soon as practicable after being notified under subregulation (2), ensure that the odometer is examined and repaired or replaced.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (4) The employer of an employed driver and the operator of a regulated heavy vehicle notified under subregulation (2) must ensure that the owner of the vehicle complies with subregulation (3).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (5) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

## **Division 2—Records relating to drivers**

### **44—Information that record keeper must keep**

- (1) A record keeper for a driver engaged in 100 kilometre work under standard hours must—

- (a) make a record of the following information:
  - (i) the name, driver's licence number and contact details of the driver;
  - (ii) the dates on which the driver drives a regulated heavy vehicle on a road;
  - (iii) the registration number of each regulated heavy vehicle driven by the driver on those dates;



- (iv) the total work time and rest time of the driver on each day on which the driver drives a regulated heavy vehicle;
  - (v) the total work time and rest time for each week during which the driver drives a regulated heavy vehicle;
  - (vi) the driver's rosters and trip schedules (including details of any driver changeovers); and
- (b) keep a copy of any payment record relating to the driver (including timesheet records if the driver is paid according to time spent at work).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
  - (b) if the offender is a body corporate—\$12 500.
- (2) A record keeper for a driver engaged in 100-plus kilometre work under standard hours, working under BFM or AFM accreditation or working under a work/rest hours exemption (whether or not the exemption was granted in combination with BFM or AFM accreditation) must—
- (a) make a record of the following information:
    - (i) the name, driver's licence number and contact details of the driver;
    - (ii) the driver's rosters and trip schedules (including details of any driver changeovers);
    - (iii) in the case of a driver working under BFM or AFM accreditation—any information required to be kept—
      - (A) as a condition of BFM or AFM accreditation; and
      - (B) under the NHVAS business rules and the BFM or AFM Standards (as the case requires); and
  - (b) keep—
    - (i) if the driver used a written work diary—a copy of each used daily sheet from the written work diary given to the record keeper under regulation 45; and
    - (ii) if the driver used an electronic work diary on that day—a copy of the information given to the record keeper under regulation 45; and
    - (iii) a copy of any supplementary record made by the driver and given to the record keeper under regulation 45; and
    - (iv) a copy of any payment records relating to the driver (including timesheet records if the driver is paid according to time spent at work).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (3) A record keeper must make a record required to be made under subregulation (1)(a) or (2)(a) as soon as practicable after the record keeper is given the relevant information by the driver.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (4) A record keeper must keep a record or document required to be made or kept under this regulation for a period of not less than 3 years after the date on which the record is made by, or given to, the record keeper (as the case requires).

Maximum penalty:

- (a) if the offender is a natural person—\$5 000;
- (b) if the offender is a body corporate—\$25 000.

- (5) A record keeper must keep a record or document required to be kept under this regulation—

- (a) at the record location of the driver to whom the record or document relates; and
- (b) in a manner that ensures the record or document—
  - (i) is reasonably accessible to an authorised officer or police officer; and
  - (ii) remains legible and reasonably capable of being understood; and
  - (iii) is capable of being used as evidence.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (6) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

#### **45—Driver must give certain information to record keepers**

- (1) A driver must, within 21 days after a day that he or she engaged in 100 kilometre work under standard hours, give to each record keeper for the driver the information required to be recorded by the record keeper under regulation 44(1)(a) in relation to that day (other than the driver's rosters and trip schedules referred to in regulation 44(1)(a)(vi)).

Maximum penalty: \$2 500.

- (2) A driver must, within 21 days after a day that he or she engaged in 100-plus kilometre work under standard hours, worked under BFM or AFM accreditation or worked under a work/rest hours exemption (whether or not the exemption was granted in combination with BFM or AFM accreditation), give to each record keeper for the driver—

- (a) —
  - (i) if the driver used a written work diary on that day—a copy of the relevant daily sheet or sheets of the written work diary; or

- (ii) if the driver used an electronic work diary on that day—a copy of the information required to be recorded in the electronic work diary under regulation 40; or
- (iii) if the driver used both a written work diary and an electronic work diary or diaries on that day—
  - (A) a copy of the relevant daily sheet or sheets of the written work diary; and
  - (B) a copy of the information required to be recorded in the electronic work diary or diaries under regulation 40; and

(b) a copy of any supplementary record made,

in relation to that day.

Maximum penalty: \$ 2 500.

- (3) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.
- (4) For the purposes of this regulation, a requirement that a driver give a copy of information required to be recorded in the electronic work diary under regulation 40 to a record keeper will be satisfied if the information is transferred electronically from the electronic work diary to the record keeper.

#### **46—Further offences in relation to record keepers**

- (1) A record keeper for a driver (not being the driver himself or herself) must ensure that the driver complies with regulation 45.

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (2) If a driver gains a new record keeper (whether by changing from 1 record keeper to another or by gaining an additional record keeper), the driver must not drive a regulated heavy vehicle related to the new record keeper unless the driver has given the new record keeper a copy of any information required to be recorded in the driver's work diary under regulation 40 in relation to the 28 days prior to the new record keeper becoming a record keeper for the driver.

Maximum penalty: \$2 500.

- (3) A person who is a new record keeper for a driver must ensure that a driver complies with subregulation (2).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

- (4) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.
- (5) For the purposes of this regulation, a requirement that a driver give a copy of information required to be recorded in a work diary under regulation 40 to a record keeper will be satisfied if, in the case of an electronic work diary, the information is transferred electronically from the electronic work diary to the record keeper.

## **Division 3—Offences related to work records**

### **47—Interpretation**

For the purposes of this Division, a reference to an entry in a work record includes a reference to an entry in a work record made by an authorised officer or police officer.

### **48—Offence to keep multiple written work diaries**

A driver must not have in his or her possession more than 1 written work diary containing unused daily sheets (other than daily sheets that have been cancelled in accordance with regulation 30(5) or regulation 42(4)).

Maximum penalty: \$10 000.

### **49—Offence to record information in multiple work diaries**

- (1) Except as required under these regulations, and subject to subregulation (2), a driver must not record the information required to be kept under regulation 40 in relation to a particular day in more than 1 work diary.

Maximum penalty: \$10 000.

- (2) A driver who drives more than 1 regulated heavy vehicle on a particular day (at least 1 of which is fitted with an electronic work diary) may use any combination of his or her written work diary and the electronic work diary or diaries fitted to the vehicles, provided that information relating to a particular period during that day is not recorded in more than 1 work diary.

### **50—Offence to remove pages from written work diary**

A person must not remove a daily sheet, or the copies of a daily sheet, from a written work diary except as required or authorised under these regulations or any Act.

Maximum penalty: \$10 000.

### **51—Offence to tamper with electronic work diary**

- (1) A person must not tamper with an electronic work diary in a way that—
  - (a) results, or may result, in the electronic work diary malfunctioning; or
  - (b) alters, or may alter, any information recorded by the electronic work diary; or
  - (c) results, or may result, in the electronic work diary recording inaccurate information.

Maximum penalty: \$10 000.

- (2) For the purposes of this regulation, a person will be taken to tamper with an electronic work diary if the person tampers or otherwise interferes with an electronic signal being sent to, or from, the electronic work diary.

- (3) Subregulation (1) does not apply to—
  - (a) a person repairing or replacing an electronic work diary in accordance with regulation 42; or
  - (b) a person authorised by the Authority to tamper with electronic work diaries; or

- (c) an authorised officer or police officer.
- (4) In proceedings for an offence against subregulation (1) allegedly consisting of tampering or otherwise interfering with an electronic signal being sent to, or from, an electronic work diary, it is a defence for the defendant (not being a driver using the electronic work diary or a record keeper of the driver) to prove that he or she did not know, and could not reasonably have been expected to have known, that the activity allegedly constituting the tampering or interference would, in fact, tamper or interfere with the signal.
- (5) A driver—
- (a) who uses an electronic work diary; or
  - (b) who drives a regulated heavy vehicle fitted with an electronic work diary,
- and each record keeper for that driver must each ensure that a person does not tamper with the electronic work diary in contravention of subregulation (1).
- Maximum penalty:
- (a) if the offender is a natural person—\$10 000;
  - (b) if the offender is a body corporate—\$50 000.
- (6) A person charged has the benefit of the reasonable steps defence for an offence against subregulation (5).

## **52—Offence to change or deface entry in work record**

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

Maximum penalty: \$10 000.

## **53—Offence to possess certain documents**

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

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
- (b) if the offender is a body corporate—\$50 000.

## **54—Offence to make entry in work record of another**

Except as may be authorised or required under these regulations or any Act, a person must not make an entry in a work record of another person.

Maximum penalty: \$10 000.

## **55—Offence to hold out as having made entry**

A person must not hold out that he or she made an entry in a work record unless he or she did, in fact, make the entry.

Maximum penalty: \$10 000.

## 56—Offence to destroy certain documents

A person must not destroy a work record or other document required to be kept under this Part unless the period for which it must be kept under this Part has ended.

Maximum penalty: \$10 000.

## Part 5—Exemptions

### Division 1—Emergency services

#### 57—Exemption for emergency services

- (1) A person who is a member of an emergency service and who is acting in the course of, or in relation to, an emergency is exempt from Part 3, Part 4 Division 1 and Part 4 Division 2 in relation to the journey to the emergency and any work time spent during the course of the emergency (but nothing in this subregulation exempts the person from those provisions in respect of the return journey from the emergency).

- (2) In this regulation—

**emergency** means an event that causes, or threatens to cause—

- (a) the death of, or injury or other damage to the health of, any person; or
- (b) the destruction of, or damage to, any property; or
- (c) a disruption to essential services or to services usually enjoyed by the community; or
- (d) harm to the environment, or to flora or fauna;

**emergency service** means—

- (a) the South Australian Metropolitan Fire Service; or
- (b) the South Australian Country Fire Service; or
- (c) South Australia Police; or
- (d) SA Ambulance Service Inc; or
- (e) the South Australian State Emergency Service; or
- (f) an organisation in another jurisdiction corresponding to an organisation referred to in a preceding paragraph; or
- (g) any other organisation declared by the Minister by notice in the Gazette to be included in the ambit of this definition.

### Division 2—Other exemptions

#### 58—Work/rest hours exemptions

- (1) The Authority may, on application by an employer or prime contractor of a driver, an operator or by a self-employed driver, grant an exemption (a **work/rest hours exemption**) from a specified provision or provisions of Part 3 to a specified driver or class of drivers.

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- (2) The Authority may, of its own motion, by notice in the Gazette, grant an exemption (a ***work/rest hours exemption***) from a specified provision or provisions of Part 3 to a specified class of persons.
- (3) An exemption under this regulation may be granted on conditions specified by the Authority.
- (4) Nothing in these regulations prevents an exemption under this regulation from being granted in combination with an operator's BFM or AFM accreditation (and, if an exemption is so granted, it is a condition of the exemption that a driver who is to be working under the exemption may only do so if the driver and the operator comply with—
- (a) any requirement under that accreditation; and
  - (b) any requirement under these regulations or a corresponding fatigue law relating to such accreditation,
- (not being a requirement that sets out the work times and rest times applicable under the accreditation)).
- (5) A person who contravenes or fails to comply with a condition of a work/rest hours exemption is guilty of an offence.  
Maximum penalty: \$5 000.
- (6) An exemption under this regulation must set out the work times and rest times that apply to a driver that is working under the exemption.
- (7) An application under subregulation (1) must—
- (a) be made in a manner and form determined by the Authority; and
  - (b) be accompanied by the fee set out in Schedule 8; and
  - (c) be accompanied by a statement setting out—
    - (i) the name of the applicant; and
    - (ii) the name of each driver, or a description of the class of drivers, to be covered by the exemption; and
    - (iii) the period for which the exemption is sought; and
    - (iv) the proposed work times and rest times that are to apply to a driver or class of drivers covered by the exemption; and
    - (v) in the case of an exemption seeking proposed work times and rest times that could be accommodated within BFM or AFM hours—
      - (A) the driver fatigue management practices that would be implemented by the applicant and any driver to be covered by the exemption; and
      - (B) an explanation of how those driver fatigue management practices would safely manage the fatigue risks; and
      - (C) the reasons why BFM or AFM accreditation would be unreasonable in the circumstances; and

- (vi) in the case of an exemption seeking work times that exceed the maximum, or rest times that are less than the minimum, permitted by the AFM outer limits—
  - (A) the driver fatigue management practices that would be implemented by the applicant and any driver to be covered by the exemption; and
  - (B) an explanation of how those driver fatigue management practices would safely manage the fatigue risks; and
- (d) be accompanied by any other information reasonably required by the Authority.
- (8) The Authority must not grant an exemption under this regulation unless the Authority is satisfied that—
  - (a) compliance with the relevant provision or provisions of Part 3 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 a person or class of persons under the exemption would, if implemented, safely manage the fatigue risks; and
  - (c) if the proposed work times and rest times under the exemption could be accommodated within BFM or AFM accreditation—such accreditation would be unreasonable in the circumstances.
- (9) The Authority must, if the Authority grants an exemption under subregulation (1), give to the person to whom the exemption is granted a written exemption that sets out the details of, and conditions (if any) applying to, the exemption.
- (10) A written exemption must be in a form determined by the Authority.
- (11) An exemption under subregulation (1) takes effect when the written exemption is given to the person to whom the exemption is granted (or on such later date as may be specified in the written exemption) and, subject to these regulations, remains in force for the period (not exceeding 3 years) stated in the written exemption.
- (12) An exemption under subregulation (2) takes effect on the day that the notice is published in the Gazette, or such later date as may be specified in the notice, and, subject to these regulations, remains in force for the period (not exceeding 3 years) stated in the notice.
- (13) If the Authority refuses to grant an exemption under subregulation (1), the Authority must, by notice in writing, inform the applicant of that fact.
- (14) A notice under subregulation (13) must state—
  - (a) the Authority's decision; and
  - (b) the reasons for the Authority's decision; and
  - (c) that the applicant may apply to have the decision reconsidered.
- (15) The Authority must determine an application made under subregulation (1) as soon as is reasonably practicable after the application is received.



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## 59—Work diary exemptions

- (1) The Authority may, on application by a driver working under standard hours or the employer of such a driver, grant to the driver an exemption (a *work diary exemption*) from a specified provision or provisions of Part 4 Division 1 of these regulations.
- (2) An exemption under subregulation (1) may be granted on conditions specified by the Authority.
- (3) A person who contravenes or fails to comply with a condition of a work diary exemption is guilty of an offence.  
Maximum penalty: \$5 000.
- (4) An application under subregulation (1) must—
  - (a) be made in a manner and form determined by the Authority; and
  - (b) be accompanied by the fee set out in Schedule 8; and
  - (c) be accompanied by a statement setting out—
    - (i) the name of the applicant; and
    - (ii) the name and base of the driver to be covered by the exemption; and
    - (iii) the address of the record location of the driver to be covered by the exemption; and
    - (iv) the period for which the exemption is sought; and
  - (d) nominate a person (the *nominee*) to make written work records for the driver, and be accompanied by the nominee's written agreement to the nomination; and
  - (e) be accompanied by any other information reasonably required by the Authority.
- (5) The Authority must not grant an exemption under subregulation (1) unless the Authority is satisfied that—
  - (a) the driver cannot make records in his or her work diary because of inadequate English literacy; and
  - (b) the nominee will make records at least as complete and accurate as those required under Part 4 Division 1.
- (6) The Authority must determine an application made under subregulation (1) as soon as is reasonably practicable after the application is received.
- (7) The Authority must, if the Authority grants an exemption under subregulation (1), give to the driver a written exemption that sets out the details of, and conditions (if any) applying to, the exemption.
- (8) A written exemption must be in a form determined by the Authority.
- (9) An exemption under this regulation—
  - (a) takes effect when the written exemption is given to the driver (or on such later date as may be specified in the written exemption); and
  - (b) subject to these regulations, remains in force for the period (not exceeding 3 years) stated in the written exemption.

- (10) If the Authority refuses to grant an exemption under subregulation (1), the Authority must, by notice in writing, inform the applicant of that fact.
- (11) A notice under subregulation (10) must state—
  - (a) the Authority's decision; and
  - (b) the reasons for the Authority's decision; and
  - (c) that the applicant may apply to have the decision reconsidered.

## **60—Variation or revocation of exemption**

- (1) The Authority may—
  - (a) of its own motion; or
  - (b) on application by a person granted an exemption under this Division,  
vary or revoke an exemption granted under this Division (not being an exemption under regulation 58(2)).
- (2) The Authority may, of its own motion, by subsequent notice in the Gazette, vary or revoke an exemption granted under regulation 58(2) if the Authority is satisfied the exemption is no longer necessary or appropriate.
- (3) However, the Authority may only vary or revoke an exemption under subregulation (1)(a) if the Authority is satisfied that—
  - (a) in the case of a variation of an exemption—
    - (i) the application for the exemption was false or misleading in a material particular; or
    - (ii) the person granted the exemption has contravened these regulations or a corresponding fatigue law; or
    - (iii) it is no longer appropriate that the person be covered by the exemption without variation; or
    - (iv) after the exemption was granted, a change has occurred in relation to a matter that the Authority must consider in determining whether to grant such an exemption (and the exemption, as varied by the proposed variation, would have been granted had such change occurred before the exemption was granted); or
  - (b) in the case of a revocation of an exemption—
    - (i) the application for the exemption was false or misleading in a material particular; or
    - (ii) the person granted the exemption has contravened these regulations or a corresponding fatigue law; or
    - (iii) it is no longer appropriate that the person be covered by the exemption; or

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- (iv) after the exemption was granted, a change has occurred in relation to a matter that the Authority must consider in determining whether to grant such an exemption (and the exemption would not have been granted had such change occurred before the exemption was granted).
- (4) Before varying or revoking an exemption under subregulation (1)(a), the Authority must—
- (a) give notice in writing of the proposed variation or revocation to the person granted the exemption; and
  - (b) consider any submission provided by the person within the specified time in response to the notice.
- (5) A notice under subregulation (4) must—
- (a) detail the proposed variation or state that the exemption is to be revoked (as the case requires); and
  - (b) detail the ground for the proposed variation or revocation (including any information forming the basis for the ground); and
  - (c) invite the person to make a submission in writing to the Authority within a specified time (being not less than 14 days after the notice is given to the person) as to why the proposed variation or revocation should not be made.
- (6) An application under subregulation (1)(b) must—
- (a) be made in a manner and form determined by the Authority; and
  - (b) be accompanied by the fee set out in Schedule 8; and
  - (c) be accompanied by the current written exemption issued to the applicant; and
  - (d) be accompanied by any other information reasonably required by the Authority.
- (7) The Authority may, by notice in writing, require an applicant under subregulation (1)(b) to provide the Authority with additional information reasonably required to determine the application.
- (8) The Authority must determine an application made under subregulation (1)(b) as soon as is reasonably practicable after the application is received.
- (9) If the Authority varies or revokes an exemption under subregulation (1), or refuses to vary or revoke an exemption under that subregulation, the Authority must, by notice in writing, inform the person to whom the exemption was granted of that fact.
- (10) A notice under subregulation (9) must state—
- (a) the Authority's decision; and
  - (b) the reasons for the Authority's decision; and
  - (c) that the applicant may apply to have the decision reconsidered.
- (11) The Authority must, if the Authority varies an exemption under subregulation (1), give to the person to whom the exemption was granted a revised written exemption that sets out the details of, and conditions (if any) applying to, the exemption as varied.

- (12) A variation or revocation under this regulation has effect—
- (a) in the case of a variation under subregulation (1)—when the revised written exemption is given to the person to whom the exemption was granted (or on such later date as may be specified in the revised written exemption); or
  - (b) in the case of a revocation under subregulation (1)—when the notice under subregulation (9) is given to the person to whom the exemption was granted (or on such later date as may be specified in the notice); or
  - (c) in the case of a variation or revocation under subregulation (2)—on the day that the notice is published in the Gazette (or on such later date as may be specified in the notice).

### **61—Variation of conditions of exemption**

- (1) A person granted an exemption under this Division may apply to the Authority for a variation of any condition to which the exemption is subject and that was imposed by the Authority.
- (2) An application for variation of a condition must be made as if it were an application for variation of an exemption and regulation 60 applies accordingly.

## **Division 3—Miscellaneous**

### **62—Offences relating to work time and rest time under work/rest hours exemption**

- (1) This regulation applies to a driver working under a work/rest hours exemption (whether or not the exemption was granted in combination with BFM or AFM accreditation).
- (2) In relation to a period specified in an exemption under this regulation, a driver that is working under the exemption—
  - (a) must not work for more than the maximum work time specified in the exemption for that period; and
  - (b) must have an amount of rest time not less than the minimum rest time specified in the exemption for that period, including at least the period or periods of continuous rest time and stationary rest time specified in the exemption (if any),

(and if that specified period includes any lesser periods specified in the exemption, he or she must also comply with paragraphs (a) and (b) in relation to each of those lesser periods).

- (3) An offence against subregulation (2) is an offence of the kind specified in column 4 of the table in Schedule 7 in relation to the conduct constituting the offence as specified in column 2 or 3 of that table (as the case requires).
- (4) A party in the chain of responsibility in relation to a regulated heavy vehicle must ensure that a driver of the vehicle does not contravene subregulation (2).
- (5) An offence against subregulation (4) is an offence of the kind specified in column 4 of the table in Schedule 7 in relation to the conduct (as specified in column 2 or 3 of that table (as the case requires)) constituting the offence against subregulation (2) by the driver.

- (6) A person charged has the benefit of the reasonable steps defence for an offence against this regulation.

### **63—Driver to carry written exemption**

- (1) A driver who is working under a work/rest hours exemption (whether or not the exemption was granted in combination with BFM or AFM accreditation), or a work diary exemption, must, while driving a regulated heavy vehicle, have in his or her possession a copy of—
- (a) in the case of an exemption granted under regulation 58(1) or regulation 59—the written exemption given to the person granted the exemption; or
  - (b) in the case of an exemption granted under regulation 58(2)—the Gazette notice by which the exemption was granted (and, if that notice is varied by subsequent notice in the Gazette in accordance with regulation 60(2), a copy of the variation notice).

Maximum penalty: \$2 500.

- (2) The employer or prime contractor (if any) of a driver, and the operator of a regulated heavy vehicle driven by the driver, must take all reasonable steps to ensure that the driver does not contravene subregulation (1).

Maximum penalty:

- (a) if the offender is a natural person—\$2 500;
- (b) if the offender is a body corporate—\$12 500.

### **64—Driver to return exemption**

A driver who has a copy of a written exemption in his or her possession must return the copy to the person to whom the exemption was granted if—

- (a) —
  - (i) in the case of an exemption granted to an employer—the driver ceases to be employed by the employer; or
  - (ii) in the case of an exemption granted to a prime contractor—the driver ceases to drive for the prime contractor under a contract for services; or
- (b) the driver ceases working under the exemption; or
- (c) the driver ceases to meet a requirement relating to drivers under the exemption.

Maximum penalty: \$2 500.

### **65—Immediate suspension of exemption in public interest**

- (1) Despite any other provision of these regulations, the Authority may, by notice in writing given to the person to whom the exemption was granted, suspend an exemption granted under this Part (other than a work/rest hours exemption granted to a class of persons under regulation 58(2)) if the Authority considers that it is necessary in the interest of public safety to do so.

- (2) The suspension of an exemption under subregulation (1) has effect—
  - (a) for the period specified in the notice (being a period of not more than 56 days after the notice under subregulation (1) is given to the person to whom the exemption was granted); or
  - (b) until the Authority varies or revokes the exemption under regulation 60, whichever is the earlier.
- (3) A suspension of an exemption under this regulation has effect when the notice under subregulation (1) is given to the person to whom the exemption was granted.

#### **66—Authority may require return of written exemptions**

- (1) The Authority may, by notice in writing, require a person to whom an exemption was granted under this Part to return a written exemption given to the person if the exemption to which the written exemption relates has been varied or revoked.
- (2) The person must comply with a notice under subregulation (1) within 7 days or such longer time as may be specified in the notice.  
Maximum penalty: \$5 000.

#### **67—Replacement of written exemptions**

- (1) A person to whom a written exemption is given may, if the written exemption is lost, destroyed, stolen or defaced, apply to the Authority for a replacement written exemption.
- (2) An application under subregulation (1) must—
  - (a) be made in a manner and form determined by the Authority; and
  - (b) be accompanied by the fee set out in Schedule 8; and
  - (c) be accompanied by any other information reasonably required by the Authority.
- (3) The Authority must, if satisfied that a person's written exemption has been lost, destroyed, stolen or defaced, give a replacement written exemption to the person as soon as is reasonably practicable.

#### **68—Additional offences relating to exemptions**

A person must not—

- (a) hold out that he or she has been granted a work/rest hours exemption or a work diary exemption under this Part when he or she has not, in fact, been granted such an exemption; or
- (b) have in his or her possession a document purporting to be an exemption or written exemption under this Part if the person knows, or ought to know, that the document is not, in fact, an exemption or written exemption (as the case requires) under this Part.

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
- (b) if the offender is a body corporate—\$50 000.

## Part 6—Compliance and enforcement

### Division 1—Additional enforcement powers etc

#### 69—Additional powers of authorised officers and police officers

- (1) The provisions of this regulation are in addition to, and do not derogate from, the powers conferred on an authorised officer or police officer under the Act or any other Act.
- (2) If a provision of these regulations, or a condition of a notice under these regulations, require a person to carry a particular document, or have a particular document in his or her possession, an authorised officer or police officer may require the person to produce the document.
- (3) A person who refuses or fails to comply with a requirement under subregulation (2) is guilty of an offence.  
Maximum penalty: \$5 000.
- (4) An authorised officer or police officer who reasonably suspects that a driver has committed an offence against these regulations—
  - (a) in the case of an offence that is a minor or substantial risk offence consisting of the driver not having had the minimum required amount of rest time—may direct the driver to immediately take such rest time as would, in the officer's opinion, be sufficient to enable the driver to complete the next stage of his or her journey unimpaired by fatigue; or
  - (b) in the case of an offence that is a minor or substantial risk offence consisting of the driver exceeding his or her permitted work time—may direct the driver to work reduced hours in the next relevant period sufficient to compensate for the excess; or
  - (c) in the case of an offence that is a severe or critical risk offence consisting of the driver not having had the minimum required amount of rest time—must direct the driver to take rest time immediately sufficient to compensate for the shortfall; or
  - (d) in the case of an offence that is a severe or critical risk offence consisting of the driver not having had the minimum amount of rest time required to constitute a required night rest break—must direct the driver to take the next night rest time sufficient to compensate for the shortfall; or
  - (e) in the case of an offence that is a severe or critical risk offence consisting of the driver exceeding his or her permitted work time—must direct the driver to work reduced hours in the next relevant period sufficient to compensate for the excess; or
  - (f) in the case of an offence against regulation 6—
    - (i) if the officer observed the driver driving in a way that the officer reasonably believes is dangerous—may move the vehicle, or authorise another person to move the vehicle, to a suitable rest place; and

- (ii) in any case—may direct the driver to not work for a specified period of time (not exceeding 24 hours) and, on giving such a direction, must record the direction in the driver's work diary; or
  - (g) in the case of an offence consisting of the driver failing or refusing to produce his or her work diary, or producing a work diary that the officer reasonably believes is not an accurate record of the recent work time or rest time of the driver—may direct the driver to not work for 24 hours.
- (5) A driver who refuses or fails to comply with a direction under this regulation is guilty of an offence.  
Maximum penalty: \$5 000.
- (6) Despite subregulation (4)(c) and (d), an authorised officer or police officer may allow a driver to delay complying with a direction under those paragraphs for a period not exceeding 1 hour if the officer reasonably believes that—
  - (a) there is no suitable rest place in the immediate vicinity and it would be safe to allow the driver to continue to drive during that period in order to reach a suitable rest place; or
  - (b) it is reasonably necessary for the driver to be given time to attend to the load on the regulated heavy vehicle before taking rest.
- (7) An authorised officer or police officer may, in exercising the power to inspect a vehicle for compliance purposes under section 40Q of the Act, access or download information stored in the vehicle's engine management system or any intelligent transport system fitted to the vehicle.
- (8) For the purposes of giving a direction under subregulation (4)(b) or (e), the *next relevant period* means the next period of the same duration as the period in relation to which the alleged offence giving rise to the direction occurred.
- (9) In this regulation—  
*suitable rest place* means—
  - (a) an area designated as a rest area for regulated heavy vehicles; or
  - (b) an area in which a regulated heavy vehicle can lawfully be parked,and in which the person charged could in fact lawfully park the regulated heavy vehicle at the relevant time.

## **70—Formal warnings**

- (1) An authorised officer or police officer may, instead of charging a person, or issuing an expiation notice to a person, for a minor risk offence against these regulations, formally warn the person if the officer believes—
  - (a) the person was unaware of the breach; and
  - (b) it is appropriate to deal with the breach by way of a formal warning under this regulation.
- (2) A formal warning must be in writing.
- (3) A formal warning may be withdrawn by the Minister or a police officer of or above the rank of sergeant by serving on the alleged offender a written notice of withdrawal within 21 days after the formal warning was given.



- (4) After the formal warning has been withdrawn, the person may be charged, or issued with an expiation notice, for the breach.

### **71—Duty of authorised officers and police officers to annotate work diary**

- (1) If an authorised officer or police officer stops a regulated heavy vehicle for compliance purposes and detains the driver for not less than 5 minutes, the driver may request that the officer make an annotation in the driver's work diary stating—
  - (a) the officer's name or identification number; and
  - (b) the date, time and place the officer stopped the regulated heavy vehicle; and
  - (c) the length of time the driver was stopped in the course of the officer exercising a power under the Act.
- (2) An authorised officer or police officer must comply with a request under subregulation (1).
- (3) For the purpose of calculating the length of time an authorised officer or police officer has detained a driver, the time will be taken not to have commenced until the officer speaks to the driver, or takes some other action, in relation to the matter for which the officer stopped the regulated heavy vehicle.

## **Division 2—Penalties for offences against these regulations**

### **72—Meaning of minor, substantial, severe and critical risk offences**

- (1) For the purposes of these regulations, an offence against a particular regulation is a *minor risk offence* if the offence is categorised as a minor risk offence under the regulation.
- (2) For the purposes of these regulations, an offence against a particular regulation is a *substantial risk offence* if the offence is categorised as a substantial risk offence under the regulation.
- (3) For the purposes of these regulations, an offence against a particular regulation is a *severe risk offence* if the offence is categorised as a severe risk offence under the regulation.
- (4) For the purposes of these regulations, an offence against a particular regulation is a *critical risk offence* if the offence is categorised as a critical risk offence under the regulation.

### **73—Penalties for offences**

- (1) The following maximum penalties apply in relation to an offence against these regulations categorised as a minor, substantial, severe or critical risk offence:
  - (a) if the offence is a minor risk offence—
    - (i) for a first offence—
      - (A) if the offender is a natural person—\$1 250;
      - (B) if the offender is a body corporate—\$6 250;
    - (ii) for a second or subsequent offence—
      - (A) if the offender is a natural person—\$1 250;

- (B) if the offender is a body corporate—\$6 250;
  - (b) if the offence is a substantial risk offence—
    - (i) for a first offence—
      - (A) if the offender is a natural person—\$2 500;
      - (B) if the offender is a body corporate—\$12 500;
    - (ii) for a second or subsequent offence—
      - (A) if the offender is a natural person—\$5 000;
      - (B) if the offender is a body corporate—\$25 000;
  - (c) if the offence is a severe risk offence—
    - (i) for a first offence—
      - (A) if the offender is a natural person—\$5 000;
      - (B) if the offender is a body corporate—\$25 000;
    - (ii) for a second or subsequent offence—
      - (A) if the offender is a natural person—\$10 000;
      - (B) if the offender is a body corporate—\$50 000;
  - (d) if the offence is a critical risk offence—
    - (i) if the offender is a natural person—\$10 000;
    - (ii) if the offender is a body corporate—\$50 000.
- (2) In determining whether an offence is a first offence for the purposes of subregulation (1), any previous offence against—
- (a) in the case where the offence under consideration is an offence against Part 3 Division 2—
    - (i) regulation 6; or
    - (ii) that Division (whether of the same risk category or otherwise); or
    - (iii) a similar provision of a corresponding fatigue law; or
  - (b) in the case where the offence under consideration is an offence against regulation 62—
    - (i) regulation 6; or
    - (ii) that regulation (whether of the same risk category or otherwise); or
    - (iii) a similar provision of a corresponding fatigue law; or
  - (c) in any other case—
    - (i) the same provision as the offence under consideration (whether of the same risk category or otherwise); or
    - (ii) a similar provision of a corresponding fatigue law,

for which the defendant has been convicted, or that the defendant has expiated, will be taken into account, but only if the previous offence was committed or alleged to have been committed within the 3 years immediately preceding the date on which the offence under consideration was allegedly committed.

### **Division 3—Administrative decisions etc**

#### **74—Referral of matters to the Fatigue Authorities Panel**

- (1) The Authority must, if the Authority proposes to make a decision under these regulations that—
  - (a) will have, or may have, application in another participating jurisdiction; and
  - (b) is a decision related to—
    - (i) granting an exemption under Part 5, the variation, revocation or suspension of such an exemption or the variation or revocation of a condition of such an exemption; or
    - (ii) the variation, revocation or suspension of an exemption granted by a corresponding Authority,

inform the Fatigue Authorities Panel of the proposed decision by notice in writing, and specify a period within which the Fatigue Authorities Panel may make recommendations in relation to the proposed decision.

- (2) The Authority must have regard to any recommendation made by the Fatigue Authorities Panel within the period specified in the notice under subregulation (1) in relation to a proposed decision.
- (3) The Authority may refer any other matter under these regulations to the Fatigue Authorities Panel for consideration.

#### **75—Mutual recognition and corresponding fatigue laws**

- (1) For the purposes of section 41P of the Act, administrative actions of an administrative authority of the following kinds are prescribed:
  - (a) a decision related to the issue of written work diaries;
  - (b) a decision related to the approval of electronic work diaries;
  - (c) a decision related to the variation or revocation of an approval of an electronic work diary;
  - (d) a decision related to the variation, revocation or suspension of an exemption of a kind that corresponds to an exemption under Part 5.
- (2) Nothing in this regulation prevents the Authority from giving effect to or otherwise recognising any other decision or administrative action of an administrative authority.

#### **76—Effect of certain administrative actions of corresponding authorities**

- (1) Despite section 41P(4) of the Act, the Authority may, by notice in writing, determine that an administrative action, or a class of administrative actions—
  - (a) of a kind that may be made or done under these regulations or a corresponding fatigue law; and

- (b) that is made or done by a corresponding Authority,  
has the same effect in this State as it has in the other jurisdiction.
- (2) A determination under subregulation (1) may be conditional or unconditional.
- (3) The Authority may, by further notice in writing, vary or revoke a determination under subregulation (1).

### **77—Notification of corresponding Authorities about certain decisions**

- (1) The Authority must, if the Authority makes a decision of the following kind, give notice in writing of the decision to each corresponding Authority in the participating zone:
  - (a) a decision to grant, vary, revoke or suspend an exemption under Part 5;
  - (b) a decision to approve an electronic work diary, or to vary or revoke such an approval.
- (2) If the Authority decides not to follow a recommendation of the Fatigue Authorities Panel in acting under these regulations, or to only follow such a recommendation subject to conditions or other variations, the Authority must give notice in writing of the reasons for that decision to each corresponding Authority in the participating zone.

### **78—Register of decisions**

- (1) The Authority must keep a register of the following kinds of decisions:
  - (a) a decision of the Authority under these regulations;
  - (b) a decision that has effect in this jurisdiction under section 41P of the Act and of which the Authority was notified under a provision of a corresponding fatigue law equivalent to regulation 77;
  - (c) a decision that has effect in this jurisdiction under section 41P(2a) of the Act.
- (2) The register must contain details of any variation or revocation of a decision registered in the register.
- (3) The register may be combined with any other register required to be kept under the Act.

## **Part 7—Miscellaneous**

### **Division 1—Taking reasonable steps**

#### **79—Taking reasonable steps**

- (1) A requirement of these regulations that a person take all reasonable steps to ensure that a specified thing does not cause a specified outcome will be satisfied if the person—
  - (a) identifies which aspects of the specified thing might cause the specified outcome; and
  - (b) assesses the level of risk that such aspects will cause the specified outcome; and

- (c) identifies what he or she can reasonably do to eliminate or minimise that risk; and
  - (d) repeats the steps referred to in paragraphs (a), (b) and (c) on becoming aware of a new or changed risk that the specified thing may cause the specified outcome, or on an annual basis (whichever is the soonest); and
  - (e) does the things identified under paragraph (c); and
  - (f) documents the actions that he or she has taken under this subregulation.
- (2) In proceedings for an offence against these regulations a court may, in determining whether things done or omitted to be done by the person charged constitute reasonable steps, have regard to—
- (a) the nature of the risk that the person was purporting to address; and
  - (b) the likelihood of the risk eventuating and the degree of harm that might result if the risk did eventuate; and
  - (c) the degree to which the person could have minimised the risk; and
  - (d) the expertise and knowledge of the person in relation to the risk and the minimisation of the risk; and
  - (e) the ways in which the risk may in fact have been minimised; and
  - (f) the cost of minimising a risk; and
  - (g) any other matter the court thinks fit.
- (3) Nothing in this regulation limits the ways in which a person may take all reasonable steps in relation to a particular matter.

## **Division 2—Reconsideration of decision by Authority**

### **80—Application of Division**

This Division applies to decisions of the Authority under Part 4 or Part 5 of the following kinds:

- (a) a decision not to approve an electronic information recording system for use as electronic work diary;
- (b) a decision to vary or revoke, or to refuse to vary or revoke, the approval of an electronic information recording system for use as electronic work diary;
- (c) a decision not to grant an exemption;
- (d) a decision to grant an exemption for a period less than 3 years or less than the period sought by the applicant;
- (e) a decision to impose a condition on an exemption;
- (f) a decision to vary or revoke, or to refuse to vary or revoke, an exemption;
- (g) a decision to vary or revoke, or to refuse to vary or revoke, a condition of an exemption.

## 81—Review of decisions

- (1) A person affected by a decision to which this Division applies may, by notice in writing, ask the Authority to review the decision.
- (2) An application under subregulation (1)—
  - (a) must be made within 28 days after notice of the decision was given to the relevant person in accordance with these regulations; and
  - (b) must be made in a manner and form determined by the Authority; and
  - (c) must be accompanied by a statement—
    - (i) outlining the decision that the person requests be reviewed; and
    - (ii) setting out the outcome sought by the person as a result of the review; and
    - (iii) setting out any information the person wishes the Authority to take into account in reviewing the decision.
- (3) The Authority may, in the Authority's discretion, extend the time fixed for making an application for review of a decision, even if the time for making such an application has ended.
- (4) If the initial decision was made in accordance with a recommendation or guideline of the Fatigue Authorities Panel or a corresponding Authority, the Authority must—
  - (a) advise the Fatigue Authorities Panel or corresponding Authority of the application and the proposed decision of the Authority under subregulation (5); and
  - (b) have regard to any recommendation made in relation to the proposed decision, by notice in writing, by the Fatigue Authorities Panel or corresponding Authority within 21 days of being so advised.
- (5) The Authority must, within 28 days after receiving an application under subregulation (1), review the initial decision and—
  - (a) confirm the initial decision; or
  - (b) vary the initial decision; or
  - (c) set aside the initial decision and substitute a new decision.
- (6) If an application under subregulation (1) is not determined within that period, the Authority is to be taken to have confirmed the initial decision.
- (7) The Authority must, as soon as practicable after determining an application, by notice in writing, inform the applicant of, and give reasons for, the determination.
- (8) In this regulation—

*relevant person*, in relation to a decision, means a person that the Authority was required to notify of the decision under these regulations.

## 82—Appeal to District Court

- (1) An applicant for a review under regulation 81 who is not satisfied with the determination of the Authority on the review may appeal to the Administrative and Disciplinary Division of the District Court against the determination.

- (2) An appeal must be instituted—
- (a) if the review under regulation 81 was not determined within 28 days of the application being received by the Authority—within 28 days after the day on which the Authority is to be taken to have confirmed the initial decision; or
  - (b) in any other case—within 28 days of the applicant being notified in accordance with regulation 81(7) of the determination appealed against.

## **Division 3—Miscellaneous**

### **83—Confidentiality**

- (1) This regulation applies to a person engaged or previously engaged in the administration of these regulations and (without limiting the foregoing) to—
- (a) an authorised officer or a police officer;
  - (b) a person who is or was a delegate of the Authority of a power or function under these regulations;
  - (c) a person who is or was employed by, or engaged to provide services to or on behalf of, the Authority;
  - (d) a person who is or was employed by, or engaged to provide services to, a person or body engaged to provide services to the Authority.
- (2) A person to whom this regulation applies must not disclose or communicate information obtained (whether by that person or otherwise) in the administration of these regulations except—
- (a) as required or authorised by or under the Act or any other Act; or
  - (b) with the consent of the person from whom the information was obtained or to whom the information relates; or
  - (c) in connection with the administration of a road law, a corresponding road law or a corresponding fatigue law; or
  - (d) for law enforcement purposes or public safety; or
  - (e) to a court or in connection with any legal proceedings.

Maximum penalty:

- (a) if the offender is a natural person—\$10 000;
  - (b) if the offender is a body corporate—\$50 000.
- (3) Nothing in this regulation prevents information being used to enable the Authority to accumulate statistical information and to enable the Authority to authorise use of the statistical information for the purposes of research or education.

### **84—Evidentiary provision**

An apparently genuine document purporting to be a certificate of approval issued under regulation 31 in relation to a particular electronic work diary must, in the absence of proof to the contrary, be accepted by any court as proof that the electronic work diary was approved by the Authority under that regulation.

### 85—Authority may grant exemption for purposes of certain trials

- (1) The Authority may, on the application of a person or on the Authority's own motion, grant an exemption from a specified provision or provisions of these regulations to a specified person or class of persons for the purpose of conducting trials of equipment of a kind contemplated by, or to be used for a purpose associated with, these regulations.
- (2) An exemption under this regulation may be granted on conditions specified by the Authority.
- (3) An application under subregulation (1) must—
  - (a) be made in a manner and form determined by the Authority; and
  - (b) be accompanied by any information reasonably required by the Authority.
- (4) The Authority may, by notice in writing, vary or revoke an exemption under subregulation (1).

### 86—Minister may declare regulations not to apply

- (1) The Minister may, by notice in the Gazette, declare that these regulations, or specified provisions of these regulations, do not apply to, or in relation to, the use of vehicles of a specified class in the circumstances specified in the notice.
- (2) A notice under this regulation may be conditional or unconditional.
- (3) A person who contravenes or fails to comply with a condition specified in a notice under this regulation is guilty of an offence.  
 Maximum penalty: \$5 000.
- (4) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subregulation (1).

## Schedule 1—Standard hours—solo drivers

Period	Max work time	Min rest time	Offence category
5½ hours	5¼ hours	15 continuous minutes of rest time	if more than 5¼ hours work time—minor risk offence
8 hours	7½ hours	30 minutes rest time in blocks of not less than 15 continuous minutes	if more than 7½ hours work time—minor risk offence
11 hours	10 hours	60 minutes rest time in blocks of not less than 15 continuous minutes	if— <ol style="list-style-type: none"> <li>(a) not more than 10¾ hours work time—minor risk offence</li> <li>(b) more than 10¾ hours work time—substantial risk offence</li> </ol>
24 hours	12 hours	7 continuous hours of stationary rest time	if— <ol style="list-style-type: none"> <li>(a) not more than 12¾ hours work time—minor risk offence</li> </ol>



**1.7.2011 to 9.11.2011—Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008**  
Standard hours—solo drivers—Schedule 1

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			<ul style="list-style-type: none"> <li>(b) more than 12¾ but not more than 13¼ hours work time—substantial risk offence</li> <li>(c) more than 13¼ but not more than 13½ hours work time—severe risk offence</li> <li>(d) more than 13½ hours work time—critical risk offence</li> <li>(e) less than 7 but not less than 6¼ continuous hours of stationary rest time—minor risk offence</li> <li>(f) less than 6¼ but not less than 5¾ continuous hours of stationary rest time—substantial risk offence</li> <li>(g) less than 5¾ but not less than 5½ continuous hours of stationary rest time—severe risk offence</li> <li>(h) less than 5½ continuous hours of stationary rest time—critical risk offence</li> </ul>
168 hours or 7 days	72 hours	24 continuous hours of stationary rest time	if— <ul style="list-style-type: none"> <li>(a) not more than 73½ hours work time—minor risk offence</li> <li>(b) more than 73½ but not more than 74½ hours work time—substantial risk offence</li> <li>(c) more than 74½ but not more than 75 hours work time—severe risk offence</li> <li>(d) more than 75 hours work time—critical risk offence</li> <li>(e) less than 24 but not less than 23¼ continuous hours of stationary rest time—minor risk offence</li> <li>(f) less than 23¼ but not less than 22¾ continuous hours of stationary rest time—substantial risk offence</li> <li>(g) less than 22¾ but not less than 22½ continuous hours of stationary rest time—severe risk offence</li> <li>(h) less than 22½ continuous hours of stationary rest time—critical risk offence</li> </ul>
336 hours or 14 days	144 hours	4 night rest breaks (2 of which must be taken on consecutive days)	if— <ul style="list-style-type: none"> <li>(a) not more than 145½ hours work time—minor risk offence</li> </ul>

**Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008—1.7.2011 to 9.11.2011**

Schedule 1—Standard hours—solo drivers

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			(b) more than 14 $\frac{1}{2}$ but not more than 14 $\frac{1}{2}$ hours work time—substantial risk offence
			(c) more than 14 $\frac{1}{2}$ but not more than 147 hours work time—severe risk offence
			(d) more than 147 hours work time—critical risk offence
			(e) less than 7 but not less than 6 $\frac{1}{4}$ continuous hours of stationary rest time in any required night rest break—minor risk offence
			(f) less than 6 $\frac{1}{4}$ but not less than 5 $\frac{3}{4}$ continuous hours of stationary rest time in any required night rest break—substantial risk offence
			(g) less than 5 $\frac{3}{4}$ but not less than 5 $\frac{1}{2}$ continuous hours of stationary rest time in any required night rest break—severe risk offence
			(h) less than 5 $\frac{1}{2}$ continuous hours of stationary rest time in any required night rest break—critical risk offence

**Schedule 2—Standard hours—solo drivers (buses)**

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
5 $\frac{1}{2}$ hours	5 $\frac{1}{4}$ hours	15 continuous minutes of rest time	if more than 5 $\frac{1}{4}$ hours work time—minor risk offence
8 hours	7 $\frac{1}{2}$ hours	30 minutes of rest time in blocks of not less than 15 continuous minutes	if more than 7 $\frac{1}{2}$ hours work time—minor risk offence
11 hours	10 hours	60 minutes of rest time in blocks of not less than 15 continuous minutes	if— (a) not more than 10 $\frac{3}{4}$ hours work time—minor risk offence (b) more than 10 $\frac{3}{4}$ hours work time—substantial risk offence
24 hours	12 hours	7 continuous hours of stationary rest time	if— (a) not more than 12 $\frac{3}{4}$ hours work time—minor risk offence (b) more than 12 $\frac{3}{4}$ but not more than 13 $\frac{1}{4}$ hours work time—substantial risk offence

**1.7.2011 to 9.11.2011—Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008**  
Standard hours—solo drivers (buses)—Schedule 2

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			(c) more than 13¼ but not more than 13½ hours work time—severe risk offence
			(d) more than 13½ hours work time—critical risk offence
			(e) less than 7 but not less than 6¼ continuous hours of stationary rest time—minor risk offence
			(f) less than 6¼ but not less than 5¾ continuous hours of stationary rest time—substantial risk offence
			(g) less than 5¾ but not less than 5½ continuous hours of stationary rest time—severe risk offence
			(h) less than 5½ continuous hours of stationary rest time—critical risk offence
168 hours or 7 days		6 night rest breaks	if—
			(a) less than 7 but not less than 6¼ continuous hours of stationary rest time in any required night rest break—minor risk offence
			(b) less than 6¼ but not less than 5¾ continuous hours of stationary rest time in any required night rest break—substantial risk offence
			(c) less than 5¾ but not less than 5½ continuous hours of stationary rest time in any required night rest break—severe risk offence
			(d) less than 5½ continuous hours of stationary rest time in any required night rest break—critical risk offence
672 hours or 28 days	288 hours	4 blocks of 24 continuous hours of stationary rest time	if—
			(a) not more than 289½ hours work time—minor risk offence
			(b) more than 289½ but not more than 290½ hours work time—substantial risk offence
			(c) more than 290½ but not more than 291 hours work time—severe risk offence
			(d) more than 291 hours work time—critical risk offence

**Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008—1.7.2011 to 9.11.2011**  
 Schedule 2—Standard hours—solo drivers (buses)

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			(e) less than 24 but not less than 23¼ continuous hours of stationary rest time in any required block of rest time—minor risk offence
			(f) less than 23¼ but not less than 22¾ continuous hours of stationary rest time in any required block of rest time—substantial risk offence
			(g) less than 22¾ but not less than 22½ continuous hours of stationary rest time in any required block of rest time—severe risk offence
			(h) less than 22½ continuous hours of stationary rest time in any required block of rest time—critical risk offence

**Schedule 3—Standard hours—two-up drivers**

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
5½ hours	5¼ hours	15 continuous minutes of rest time	if more than 5¼ hours work time—minor risk offence
8 hours	7½ hours	30 minutes of rest time in blocks of not less than 15 continuous minutes	if more than 7½ hours work time—minor risk offence
11 hours	10 hours	60 minutes of rest time in blocks of not less than 15 continuous minutes	if— (a) not more than 10¾ hours work time—minor risk offence (b) more than 10¾ hours work time—substantial risk offence
24 hours	12 hours	5 continuous hours of stationary rest time	if— (a) not more than 12¾ hours work time—minor risk offence (b) more than 12¾ but not more than 13¼ hours work time—substantial risk offence (c) more than 13¼ but not more than 13½ hours work time—severe risk offence (d) more than 13½ hours work time—critical risk offence (e) less than 5 but not less than 4¼ continuous hours of stationary rest time—minor risk offence

**1.7.2011 to 9.11.2011—Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008**  
Standard hours—two-up drivers—Schedule 3

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			(f) less than 4¼ but not less than 3¾ continuous hours of stationary rest time—substantial risk offence
			(g) less than 3¾ but not less than 3½ continuous hours of stationary rest time—severe risk offence
			(h) less than 3½ continuous hours of stationary rest time—critical risk offence
52 hours		10 continuous hours of stationary rest time	if—
			(a) less than 10 but not less than 9¼ continuous hours of stationary rest time—minor risk offence
			(b) less than 9¼ but not less than 8¾ continuous hours of stationary rest time—substantial risk offence
			(c) less than 8¾ but not less than 8½ continuous hours of stationary rest time—severe risk offence
			(d) less than 8½ continuous hours of stationary rest time—critical risk offence
168 hours or 7 days	60 hours	24 continuous hours of stationary rest time; plus	if—
		24 hours of stationary rest time in blocks of not less than 7 continuous hours	(a) not more than 61½ hours work time—minor risk offence
			(b) more than 61½ but not more than 62½ hours work time—substantial risk offence
			(c) more than 62½ but not more than 63 hours work time—severe risk offence
			(d) more than 63 hours work time—critical risk offence
			(e) less than 24 but not less than 23¼ continuous hours of stationary rest time—minor risk offence
			(f) less than 23¼ but not less than 22¾ continuous hours of stationary rest time—substantial risk offence
			(g) less than 22¾ but not less than 22½ continuous hours of stationary rest time—severe risk offence
			(h) less than 22½ continuous hours of stationary rest time—critical risk offence

**Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008—1.7.2011 to 9.11.2011**

Schedule 3—Standard hours—two-up drivers

Period	Max work time	Min rest time	Offence category
			(i) less than 7 but not less than 6¼ continuous hours of stationary rest time in any required 7 hour block of rest time—minor risk offence
			(j) less than 6¼ but not less than 5¾ continuous hours of stationary rest time in any required 7 hour block of rest time—substantial risk offence
			(k) less than 5¾ but not less than 5½ continuous hours of stationary rest time in any required 7 hour block of rest time—severe risk offence
			(l) less than 5½ continuous hours of stationary rest time in any required 7 hour block of rest time—critical risk offence
			(m) less than 24 but not less than 23¼ hours of stationary rest time in total (not being a 24 continuous hour period)—minor risk offence
			(n) less than 23¼ but not less than 22¾ hours of stationary rest time in total (not being a 24 continuous hour period)—substantial risk offence
			(o) less than 22¾ but not less than 22½ hours of stationary rest time in total (not being a 24 continuous hour period)—severe risk offence
			(p) less than 22½ hours of stationary rest time in total (not being a 24 continuous hour period)—critical risk offence
336 hours or 14 days	120 hours	4 night rest breaks (2 of which must be taken on consecutive days)	if—
			(a) not more than 121½ hours work time—minor risk offence
			(b) more than 121½ but not more than 122½ hours work time—substantial risk offence
			(c) more than 122½ but not more than 123 hours work time—severe risk offence
			(d) more than 123 hours work time—critical risk offence

Period	Max work time	Min rest time	Offence category
			(e) less than 7 but not less than 6¼ continuous hours of stationary rest time in any required night rest break—minor risk offence
			(f) less than 6¼ but not less than 5¾ continuous hours of stationary rest time in any required night rest break—substantial risk offence
			(g) less than 5¾ but not less than 5½ continuous hours of stationary rest time in any required night rest break—severe risk offence
			(h) less than 5½ continuous hours of stationary rest time in any required night rest break—critical risk offence

#### Schedule 4—BFM hours—solo drivers working under BFM accreditation

Period	Max work time	Min rest time	Offence category
6¼ hours	6 hours	15 continuous minutes of rest time	if more than 6 hours work time—minor risk offence
9 hours	8½ hours	30 minutes of rest time in blocks of not less than 15 continuous minutes	if more than 8½ hours work time—minor risk offence
12 hours	11 hours	60 minutes of rest time in blocks of not less than 15 continuous minutes	if— (a) not more than 11¾ hours work time—minor risk offence (b) more than 11¾ hours work time—substantial risk offence
24 hours	14 hours	7 continuous hours of stationary rest time	if— (a) not more than 14¾ hours work time—minor risk offence (b) more than 14¾ but not more than 15¼ hours work time—substantial risk offence (c) more than 15¼ but not more than 15½ hours work time—severe risk offence (d) more than 15½ hours work time—critical risk offence

**Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008—1.7.2011 to 9.11.2011**

Schedule 4—BFM hours—solo drivers working under BFM accreditation

Period	Max work time	Min rest time	Offence category
			(e) less than 7 but not less than 6¼ continuous hours of stationary rest time—minor risk offence
			(f) less than 6¼ but not less than 5¾ continuous hours of stationary rest time—substantial risk offence
			(g) less than 5¾ but not less than 5½ continuous hours of stationary rest time—severe risk offence
			(h) less than 5½ continuous hours of stationary rest time—critical risk offence
168 hours or 7 days	36 hours long/night work time		if—
			(a) not more than 36¾ hours long/night work time—minor risk offence
			(b) more than 36¾ but not more than 37¼ hours long/night work time—substantial risk offence
			(c) more than 37¼ but not more than 37½ hours long/night work time—severe risk offence
			(d) more than 37½ hours long/night work time—critical risk offence
336 hours or 14 days	144 hours	24 continuous hours of stationary rest time taken after not more than 84 hours of work time; plus 24 continuous hours of stationary rest time; plus 4 night rest breaks (2 of which must be taken on consecutive days)	if—
			(a) not more than 145½ hours work time—minor risk offence
			(b) more than 145½ but not more than 146½ hours work time—substantial risk offence
			(c) more than 146½ but not more than 147 hours work time—severe risk offence
			(d) more than 147 hours work time—critical risk offence
			(e) less than 24 but not less than 23¼ continuous hours of stationary rest time in any required block—minor risk offence



**1.7.2011 to 9.11.2011—Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008**  
 BFM hours—solo drivers working under BFM accreditation—Schedule 4

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			(f) less than 23¼ but not less than 22¾ continuous hours of stationary rest time in any required block—substantial risk offence
			(g) less than 22¾ but not less than 22½ continuous hours of stationary rest time in any required block—severe risk offence
			(h) less than 22½ continuous hours of stationary rest time in any required block—critical risk offence
			(i) less than 7 but not less than 6¼ continuous hours of stationary rest time in any required night rest break—minor risk offence
			(j) less than 6¼ but not less than 5¾ continuous hours of stationary rest time in any required night rest break—substantial risk offence
			(k) less than 5¾ but not less than 5½ continuous hours of stationary rest time in any required night rest break—severe risk offence
			(l) less than 5½ continuous hours of stationary rest time in any required night rest break—critical risk offence

**Schedule 5—BFM hours—two-up drivers working under BFM accreditation**

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
24 hours	14 hours		if—
			(a) not more than 14¾ hours work time—minor risk offence
			(b) more than 14¾ but not more than 15¼ hours work time—substantial risk offence
			(c) more than 15¼ but not more than 15½ hours work time—severe risk offence

**Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008—1.7.2011 to 9.11.2011**

Schedule 5—BFM hours—two-up drivers working under BFM accreditation

Period	Max work time	Min rest time	Offence category
82 hours		10 continuous hours of stationary rest time	<p>(d) more than 15½ hours work time—critical risk offence</p> <p>if—</p> <p>(a) less than 10 but not less than 9¼ continuous hours of stationary rest time—minor risk offence</p> <p>(b) less than 9¼ but not less than 8¾ continuous hours of stationary rest time—substantial risk offence</p> <p>(c) less than 8¾ but not less than 8½ continuous hours of stationary rest time—severe risk offence</p> <p>(d) less than 8½ continuous hours of stationary rest time—critical risk offence</p>
168 hours or 7 days	70 hours	<p>24 continuous hours of stationary rest time; plus</p> <p>24 hours of stationary rest time in blocks of not less than 7 continuous hours</p>	<p>if—</p> <p>(a) not more than 71½ hours work time—minor risk offence</p> <p>(b) more than 71½ but not more than 72½ hours work time—substantial risk offence</p> <p>(c) more than 72½ but not more than 73 hours work time—severe risk offence</p> <p>(d) more than 73 hours work time—critical risk offence</p> <p>(e) less than 24 but not less than 23¼ continuous hours of stationary rest time—minor risk offence</p> <p>(f) less than 23¼ but not less than 22¾ continuous hours of stationary rest time—substantial risk offence</p> <p>(g) less than 22¾ but not less than 22½ continuous hours of stationary rest time—severe risk offence</p> <p>(h) less than 22½ continuous hours of stationary rest time—critical risk offence</p>

**1.7.2011 to 9.11.2011—Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008**  
 BFM hours—two-up drivers working under BFM accreditation—Schedule 5

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			(i) less than 7 but not less than 6¼ continuous hours of stationary rest time in any required 7 hour block of stationary rest time—minor risk offence
			(j) less than 6¼ but not less than 5¾ continuous hours of stationary rest time in any required 7 hour block of stationary rest time—substantial risk offence
			(k) less than 5¾ but not less than 5½ continuous hours of stationary rest time in any required 7 hour block of stationary rest time—severe risk offence
			(l) less than 5½ continuous hours of stationary rest time in any required 7 hour block of stationary rest time—critical risk offence
			(m) less than 24 but not less than 23¼ hours of stationary rest time in total (not being a 24 continuous hour period)—minor risk offence
			(n) less than 23¼ but not less than 22¾ hours of stationary rest time in total (not being a 24 continuous hour period)—substantial risk offence
			(o) less than 22¾ but not less than 22½ hours of stationary rest time in total (not being a 24 continuous hour period)—severe risk offence
			(p) less than 22½ hours of stationary rest time in total (not being a 24 continuous hour period)—critical risk offence
336 hours or 14 days	140 hours	4 night rest breaks	if—
			(a) not more than 141½ hours work time—minor risk offence
			(b) more than 141½ but not more than 142½ hours work time—substantial risk offence

**Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008—1.7.2011 to 9.11.2011**

Schedule 5—BFM hours—two-up drivers working under BFM accreditation

<b>Period</b>	<b>Max work time</b>	<b>Min rest time</b>	<b>Offence category</b>
			(c) more than 142½ but not more than 143 hours work time—severe risk offence
			(d) more than 143 hours work time—critical risk offence
			(e) less than 7 but not less than 6¼ continuous hours of stationary rest time in any required night rest break—minor risk offence
			(f) less than 6¼ but not less than 5¾ continuous hours of stationary rest time in any required night rest break—substantial risk offence
			(g) less than 5¾ but not less than 5½ continuous hours of stationary rest time in any required night rest break—severe risk offence
			(h) less than 5½ continuous hours of stationary rest time in any required night rest break—critical risk offence

**Schedule 6—Offence categories in relation to AFM accreditation**

**Part 1—Offences against regulation 24 (driving hours for drivers working under AFM accreditation)**

<b>Period</b>	<b>Maximum work time</b>	<b>Minimum rest time</b>	<b>Offence category</b>
less than 7 days	exceeds work time by not more than 45 minutes	has not more than 45 minutes less rest time than required	minor risk offence
	exceeds work time by more than 45 minutes but not more than 75 minutes	has more than 45 minutes but not more than 75 minutes less rest time than required	substantial risk offence
	exceeds work time by more than 75 minutes but not more than 90 minutes	has more than 75 minutes but not more than 90 minutes less rest time than required	severe risk offence
	exceeds work time by more than 90 minutes	has more than 90 minutes less rest time than required	critical risk offence

Period	Maximum work time	Minimum rest time	Offence category
not less than 7 days	exceeds work time by not more than 1½ hours		minor risk offence
	exceeds work time by more than 1½ hours but not more than 2½ hours		substantial risk offence
	exceeds work time by more than 2½ but not more than 3 hours		severe risk offence
	exceeds work time by more than 3 hours		critical risk offence

## Part 2—Offences against regulation 25 (offences related to AFM outer limits)

Period	Maximum work time	Minimum rest time	Offence category
less than 7 days	exceeds work time by not more than 15 minutes	has not more than 15 minutes less rest time than required	substantial risk offence
	exceeds work time by more than 15 minutes but not more than 30 minutes	has more than 15 minutes but not more than 30 minutes less rest time than required	severe risk offence
	exceeds work time by more than 30 minutes	has more than 30 minutes less rest time than required	critical risk offence
not less than 7 days	exceeds work time by not more than 30 minutes		substantial risk offence
	exceeds work time by more than 30 minutes but not more than 1 hour		severe risk offence
	exceeds work time by more than 1 hour		critical risk offence

## Schedule 7—Offences against regulation 62 (offences relating to work time and rest time under work/rest hours exemption)

Period	Maximum work time	Minimum rest time	Offence category
less than 7 days	exceeds work time by not more than 45 minutes	has not more than 45 minutes less rest time than required	minor risk offence
	exceeds work time by more than 45 minutes but not more than 75 minutes	has more than 45 minutes but not more than 75 minutes less rest time than required	substantial risk offence

## Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008—1.7.2011 to 9.11.2011

Schedule 7—Offences against regulation 62 (offences relating to work time and rest time under work/rest hours exemption)

Period	Maximum work time	Minimum rest time	Offence category
	exceeds work time by more than 75 minutes but not more than 90 minutes	has more than 75 minutes but not more than 90 minutes less rest time than required	severe risk offence
	exceeds work time by more than 90 minutes	has more than 90 minutes less rest time than required	critical risk offence
not less than 7 days	exceeds work time by more than 1½ hours		minor risk offence
	exceeds work time by more than 1½ hours but not more than 2½ hours		substantial risk offence
	exceeds work time by more than 2½ but not more than 3 hours		severe risk offence
	exceeds work time by more than 3 hours		critical risk offence

## Schedule 8—Fees

	Description	Fee
1	Application for issue of written work diary	\$20
2	Application for approval of electronic work diary	\$0
3	Application for variation or revocation of approval of electronic work diary	\$0
4	Application for work/rest hours exemption	\$0
5	Application for work diary exemption	\$0
6	Application for variation or revocation of exemption	\$0
7	Application for replacement written exemption	\$0

## Schedule 9—Transitional provisions

### Part 1—Preliminary

#### 1—Interpretation

- (1) In this Schedule—  
*revoked regulations* means the *Road Traffic (Driving Hours) Regulations 1999*.
- (2) In this Schedule, the following terms have the same meaning as in the revoked regulations:
  - (a) *driver certification manual*;
  - (b) *driving time*;
  - (c) *logbook*;
  - (d) *TFMS*.

## Part 2—Transitional class exemptions

### Division 1—Transitional work/rest hours class exemption

#### 2—Special provisions related to transitional work/rest hours class exemption

- (1) Despite regulation 58(8), the Authority may, for transitional purposes, grant a work/rest hours exemption under regulation 58(2) (a *transitional work/rest hours class exemption*) on any grounds the Authority thinks fit.
- (2) Without limiting regulation 58(3), a transitional work/rest hours class exemption is subject to the following conditions:
  - (a) the maximum work times and the minimum required rest times in relation to a driver working under the exemption are those set out in the notice in the Gazette in which the exemption is granted;
  - (b) subject to clause 11, a driver working under the exemption must record (in accordance with the instructions (if any) specified in the notice in the Gazette in which the exemption is granted) in his or her work diary the portion of any work time that is driving time;
  - (c) despite any other provision of these regulations, a driver working under the exemption must record (in accordance with the instructions (if any) in the notice in the Gazette in which the exemption is granted) in his or her work diary any change from work time that is driving time to work time that is not driving time, or from work time that is not driving time to work time that is driving time.

**Note—**

The notice in the Gazette in which the exemption is granted may set out further conditions that apply in relation to the exemption.

A driver who fails to comply with a condition of this exemption will not be covered by the exemption, and may be liable to prosecution under regulation 58(5) or 62 of the regulations.

- (3) For the purposes of classifying an offence against regulation 62 by a driver working under a transitional work/rest hours class exemption consisting of exceeding the maximum driving hours in a 24 hour period by a particular amount, the offence is to be classified as if the offence were an offence of exceeding the maximum work times by the amount.

### Division 2—Other transitional class exemptions

#### 3—*Exemption in relation to the armed forces*

- (1) *This clause applies to a regulated heavy vehicle being driven in this State that is—*
  - (a) *owned by the Australian Defence Force; or*
  - (b) *being operated by, or under the direction or at the request of, an authorised officer of the Australian Defence Force.*

- (2) *The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies:*
- (a) *Part 4 Division 1 Subdivision 3 (Work diary requirements);*
  - (b) *Part 4 Division 2 (Records relating to drivers).*
- (3) *This clause expires at the end of 28 September 2011.*

*Note—*

*Clause 3 has expired.*

#### **4—Exemption in relation to transport of bees**

- (1) *This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours.*
- (2) *This clause only applies in the following circumstances:*
- (a) *a regulated heavy vehicle to which this clause applies is being used to transport live bees in an area not more than 200 kilometres from the base of the driver driving the vehicle;*
  - (b) *a regulated heavy vehicle to which this clause applies is undertaking an unladen one way trip for a purpose directly related to the transportation of live bees in an area not more than 200 kilometres from the base of the driver driving the vehicle.*
- (3) *The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2):*
- (a) *Part 3 Division 2 (Standard hours, BFM hours and AFM hours etc);*
  - (b) *Part 4 Division 1 Subdivision 3 (Work diary requirements);*
  - (c) *Part 4 Division 2 (Records relating to drivers).*
- (4) *This clause expires at the end of 28 September 2011.*

*Note—*

*Clause 4 has expired.*

#### **5—Exemption in relation to regulated heavy vehicles used during emergencies**

- (1) *This clause applies to a regulated heavy vehicle being driven in this State that is—*
- (a) *urgently required in response to an emergency; or*
  - (b) *under the direction of a supervisor of an emergency service who is controlling or assisting in the response to an emergency; or*
  - (c) *required in relation to the provision of an essential service, or for the repair or replacement of infrastructure related to an essential service.*
- (2) *This clause only applies in the following circumstances:*
- (a) *if a regulated heavy vehicle to which this clause applies is travelling to an emergency;*
  - (b) *if a regulated heavy vehicle to which this clause applies is being used in the course of, or in relation to, an emergency;*



- (c) *if a regulated heavy vehicle to which this clause applies is returning from an emergency (the driver of the vehicle having ceased to be involved in the emergency).*
- (3) *These regulations (other than regulation 6) do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2)(a) or (b).*
- (4) *The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2)(c):*
- (a) *Part 4 Division 1 Subdivision 3 (Work diary requirements);*
- (b) *Part 4 Division 2 (Records relating to drivers).*
- (5) *However, this clause will only apply in respect of the circumstances set out in subclause (2)(c) if the driver of the regulated heavy vehicle—*
- (a) *before commencing the return journey, has had not less than 10 hours of rest time (including not less than 6 continuous hours of stationary rest time) during the 24 hours preceding commencement of the return journey; and*
- (b) *makes—*
- (i) *the following written records, to be made before commencing the return journey:*
- (A) *a description of the emergency;*
- (B) *an estimate of the driver's work time and rest time during the 24 hours preceding commencement of the return journey;*
- (C) *the driver's name and driver's licence number, and the State or Territory in which the licence was issued; and*
- (ii) *the following written records, to be made at the end of each day on which the driver drove a regulated heavy vehicle during the return journey:*
- (A) *the registration number of the regulated heavy vehicle;*
- (B) *the date for that day;*
- (C) *an estimate of the driver's work time and rest time during that day;*
- (D) *an estimate of the distance travelled on that day; and*
- (c) *keeps a record referred to in paragraph (b) for a period of not less than 3 years after it is created (however this condition will be taken to have been complied with if the record keeper for the driver keeps the record for that period).*
- (6) *This clause expires at the end of 28 September 2011.*
- (7) *In this clause—*
- emergency means—**
- (a) *an event that causes injury to any person; or*

- (b) a flood, fire, explosion, natural disaster or similar event; or
- (c) a disruption to essential services;

*emergency service* has the same meaning as in regulation 57.

*Note—*

Clause 5 has expired.

### **6—Exemption in relation to transport of fruit, vegetables and grain**

- (1) This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours.
- (2) This clause only applies in circumstances where a regulated heavy vehicle to which this clause applies is being used to transport fresh fruit or vegetables, or grain, between a farm and a receiving point for the fruit, vegetables or grain in an area not more than 100 kilometres from the base of the driver driving the vehicle.
- (3) The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2):
  - (a) Part 3 Division 2 (Standard hours, BFM hours and AFM hours etc);
  - (b) Part 4 Division 1 Subdivision 3 (Work diary requirements);
  - (c) Part 4 Division 2 (Records relating to drivers).
- (4) This clause expires at the end of 28 September 2011.

*Note—*

Clause 6 has expired.

### **7—Exemption in relation to transport of livestock**

- (1) This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours.
  - (2) This clause only applies in circumstances where—
    - (a) the primary load of the regulated heavy vehicle to which this clause applies is live cattle, sheep, goats or pigs; and
    - (b) due to unforeseen delays, the welfare of those animals is at risk.
  - (3) Regulation 16 does not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2).
  - (4) However, this clause will only apply if the driver of the regulated heavy vehicle complies with the following provisions:
    - (a) the driver must record—
      - (i) if the driver is required to record information in a work diary in relation to the day on which the driver drove under this clause—in that work diary; or
      - (ii) in any other case—in writing,
- the reason why it was necessary or desirable to exceed the work times and rest times set out in regulation 16;

- (b) *if a record is made in accordance with paragraph (a)(ii)—the driver must keep that record for a period of not less than 3 years after it is created (however this condition will be taken to have been complied with if the record keeper for the driver keeps the record for that period);*
- (c) *during any period in column 1 of the following table, the driver—*
- (i) *if a maximum work time is specified in column 2 of the table in relation to the period—must not work for more than that amount of work time; and*
  - (ii) *must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 3 (if any),*

*(and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with subparagraph (i) and (ii) in relation to each of those lesser periods):*

<i>Period</i>	<i>Max work time</i>	<i>Min rest time</i>
<i>5½ hours</i>	<i>5 hours</i>	<i>30 continuous minutes, or 2 blocks of 15 continuous minutes, of rest time</i>
<i>24 hours</i>	<i>16 hours</i>	<i>6 continuous hours of stationary rest time</i>
<i>48 hours</i>	<i>28½ hours</i>	<i>13.5 hours of stationary rest time in 2 blocks of not less than 6 continuous hours and 1 block of not less than 1.5 continuous hours</i>

- (5) *An exemption under this clause in respect of a particular load ceases to apply—*
- (a) *48 hours after the relevant unforeseen delay occurs; or*
  - (b) *when the welfare of the animals comprising the load is no longer at risk, whichever is the earlier.*
- (6) *This clause expires at the end of 28 September 2011.*

*Note—*

*Clause 7 has expired.*

## **Part 3—Transitional TFMS**

### **10—Transitional TFMS**

- (1) This clause applies to a driver who, immediately before the commencement of the *Road Traffic (Driving Hours) Revocation Regulations 2008*, was registered as a driver participant in TFMS under the revoked regulations or a corresponding law.
- (2) The TFMS registration of—
- (a) a driver to whom this clause applies; and
  - (b) a person who was registered as employer participant in TFMS immediately before the commencement of the *Road Traffic (Driving Hours) Revocation Regulations 2008*,

will be taken to continue until the first anniversary of the commencement of this clause (unless the registration is cancelled earlier in accordance with these regulations or the *Road Traffic (Driving Hours) Revocation Regulations 2008*).

- (3) Regulation 34, 35, 37, Part 3 Division 4, Part 7 Division 1 and Part 7 Division 2 of the revoked regulations continue to apply in relation to a driver to whom this clause applies as if those regulations had not been revoked (and a reference in regulations 34 and 39 to "this Part" will be taken to be a reference to BFM hours (within the meaning of these regulations)).
- (4) Subject to this clause, a driver to whom this clause applies may, during the prescribed period, drive at BFM hours (the *transitional TFMS*).
- (5) However, subclause (4) only applies to a driver if—
  - (a) the driver—
    - (i) carries his or her driver certification manual at all times while working under transitional TFMS (and such carriage will be taken to satisfy the requirements relating to the documents required to be carried under regulation 27(1)); and
    - (ii) complies with any requirement applicable to the driver under regulations 34 and 35 of the revoked regulations as if those regulations had not been revoked; and
  - (b) if the driver is an employed driver—the employer—
    - (i) is registered as an employer participant in TFMS; and
    - (ii) complies with any requirement applicable to the employer under regulation 39 of the revoked regulations as if those regulations had not been revoked.
- (6) For the purposes of these regulations, transitional TFMS will be taken to be a work/rest hours option.
- (7) For the purposes of Part 4 of these regulations—
  - (a) a driver working under transitional TFMS will be taken to be working under BFM accreditation; and
  - (b) a reference in that Part to an operator's BFM accreditation number will be taken to be a reference to the relevant TFMS registration number.
- (8) This clause ceases to apply to a driver if the driver commences working under BFM or AFM accreditation or under a work/rest hours exemption.
- (9) In this clause—

*corresponding law* has the same meaning as in the revoked regulations;  
*prescribed period* means the period ending at the end of 28 September 2009.

## Part 4—Miscellaneous transitional provisions

### 11—Provisions relating to logbooks

- (1) A driver to whom a logbook has been issued under the revoked regulations or a corresponding law and that has not been filled may—
  - (a) for a period—
    - (i) if the driver is working under standard hours, or a transitional work/rest hours class exemption or transitional TFMS, or is a driver working under an exemption under Part 2 Division 2 of this Schedule—of not more than 90 days after the commencement of this clause; or
    - (ii) if the driver is working under BFM or AFM accreditation, or a work/rest hours exemption (whether or not granted in combination with BFM or AFM accreditation)—of not more than 14 days after the day on which he or she first worked under the accreditation or exemption, or not more 90 days after the commencement of this clause, whichever is the earlier; or
  - (b) until the logbook is filled; or
  - (c) until a written work diary is issued to the driver under these regulations or a corresponding fatigue law,

(whichever occurs first) use the logbook for the purpose of satisfying the requirements relating to written work diaries under these regulations as if the logbook were a written work diary (and the logbook will be taken to be a written work diary for the purposes of these regulations).

- (2) The following provisions apply in relation to a driver who, immediately before the commencement of this clause, was not required under the revoked regulations to have a logbook:
  - (a) the driver is, for the period ending—
    - (i) 14 days after the commencement of this clause; or
    - (ii) when a written work diary is issued to the driver under these regulations or a corresponding fatigue law,(whichever is the earlier) (the *relevant period*), exempt from a requirement of Part 4 Division 1 Subdivision 3;
  - (b) the driver must, within 21 days after a day on which he or she drove a regulated heavy vehicle during the relevant period, give to his or her record keeper the following information:
    - (i) the driver's name;
    - (ii) the date of each day during the relevant period on which the driver drove a regulated heavy vehicle;
    - (iii) an estimate of the driver's total driving time, total work time and total rest time for each day during the relevant period on which the driver drove a regulated heavy vehicle;

- (iv) an estimate of the driver's total driving time, total work time and total rest time for each week during the relevant period in which the driver drove a regulated heavy vehicle,  
(and compliance with this paragraph will be taken to satisfy the requirements under regulation 45 in relation to the relevant period);
  - (c) for the purposes of regulation 38, a reference in that regulation to "this Subdivision" will be taken to be a reference to this subclause;
  - (d) for the purposes of regulation 44, the information required to be given to a record keeper under paragraph (b) will, in relation to the relevant period, be taken to be the information required to be kept under regulation 44(1) or (2) (as the case requires);
  - (e) regulation 46 does not apply in relation to the driver in respect of the relevant period.
- (3) An application for a written work diary under regulation 30 must, if the driver has been issued a logbook under the revoked regulations or a corresponding law, be accompanied by the most recent logbook issued to the driver under those regulations.
  - (4) The Authority must, if an application for a written work diary is accompanied by a logbook in accordance with subclause (3), cancel any unused daily sheets in the logbook by writing in large letters the word "cancelled" across each such sheet and return the logbook to the applicant on issuing the written work diary.
  - (5) A requirement under subclause (3) or (4) is in addition to any requirement under regulation 30.
  - (6) A requirement under regulation 39(1) that a driver keep in a vehicle a work diary containing certain information for the preceding 28 days also applies to a driver who, during the preceding 28 days referred to in that subregulation, was required to record information in a logbook under the revoked regulations (and a reference in that subregulation to information required under regulation 40 will, in relation to the information required to be recorded in the logbook, be taken to be a reference to the information required to be kept under Part 4 Division 2 of the revoked regulations).
  - (7) For the purposes of regulation 39, a reference to a *work diary* includes, in the case of a driver who has used a logbook during the relevant period, a reference to the logbook.
  - (8) Regulation 48 does not apply in relation to unused daily sheets in a logbook cancelled in accordance with subclause (4).
  - (9) In this clause—  
*corresponding law* has the same meaning as in the revoked regulations.

## 12—Compliance with transitional provision of corresponding fatigue law

For the purposes of these regulations, if a driver whose base is in another participating jurisdiction undertakes work in accordance with a provision of a transitional nature under a corresponding fatigue law of that jurisdiction, the driver, and any parties in the chain of responsibility in relation to the driver, will be taken to have complied with these regulations and the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008* in relation to such work.

## Legislative history

### Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of these regulations (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal regulations and variations

New entries appear in bold.

Year	No	Reference	Commencement
2008	250	<i>Gazette 11.9.2008 p4305</i>	29.9.2008: r 2
2010	98	<i>Gazette 10.6.2010 p2844</i>	1.7.2010: r 2
<b>2011</b>	<b>120</b>	<b><i>Gazette 9.6.2011 p2271</i></b>	<b>1.7.2011: r 2</b>
2011	231	<i>Gazette 27.10.2011 p4357</i>	10.11.2011: r 2

### Provisions varied

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
r 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.7.2010</i>
Sch 8	substituted by 98/2010 r 4 <b>substituted by 120/2011 r 4</b>	1.7.2010 <b>1.7.2011</b>
Sch 9		
cl 3	expired: cl 3(3)	(28.9.2011)
cl 4	expired: cl 4(4)	(28.9.2011)
cl 5	expired: cl 5(6)	(28.9.2011)
cl 6	expired: cl 6(4)	(28.9.2011)
cl 7	expired: cl 7(6)	(28.9.2011)
cl 8	<i>expired: cl 8(5)—omitted under Legislation Revision and Publication Act 2002</i>	<i>(31.12.2008)</i>
cl 9	<i>expired: cl 9(5) omitted under Legislation Revision and Publication Act 2002</i>	<i>(31.12.2008)</i>

## Transitional etc provisions associated with regulations or variations

### *Road Traffic (Driving Hours) Revocation Regulations 2008 (No 254 of 2008), Sch 1—Transitional provisions*

#### 1—Interpretation

- (1) In this Schedule—  
*revoked regulations* means the *Road Traffic (Driving Hours) Regulations 1999*.
- (2) In this Schedule, the following terms have the same meaning as in the revoked regulations:
  - (a) *driving record*;
  - (b) *exemption*;
  - (c) *TFMS*.

#### 2—Applications for TFMS registration

Despite regulation 3, the Minister may register a person as a driver participant, or as an employer participant, in TFMS if—

- (a) the application for registration was made before the commencement of that regulation but had not been determined at that time; or
- (b) following a review of a decision not to register an applicant for TFMS under regulation 136 of the revoked regulations, or an appeal in relation to such a decision under regulation 137 of the revoked regulations, the Minister decides to register the applicant for TFMS,

(and, if the Minister so registers a person, Part 7 Divisions 1 and 2 of the revoked regulations continue to apply in relation to the registration as if those regulations had not been revoked).

#### 3—Exemptions

- (1) An exemption granted under the revoked regulations (other than an exemption under regulation 106 of those regulations) and in force immediately before the commencement of regulation 3 continues to have effect according to its terms—
  - (a) until the expiry date specified in the exemption; or
  - (b) if no such expiry date is specified—for a period of 3 years after the date on which this clause comes into operation,whichever is the earlier.
- (2) For the purposes of these regulations and the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*—
  - (a) an exemption referred to in subclause (1) will be taken to be an exemption granted under Part 5 Division 2 of the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*; and



- (b) a written exemption issued under the revoked regulations in relation to such an exemption and in force immediately before the commencement of regulation 3 will be taken to be a written exemption (within the meaning of the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*).
- (3) Subject to subclause (4), if—
- (a) a person has made an application for an exemption in accordance with Part 8 of the revoked regulations before the commencement of regulation 3; and
- (b) the Minister has not yet decided the application in accordance with the revoked regulations; and
- (c) the application is for the grant of an exemption corresponding to the kind that may be granted under Part 5 Division 2 of the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*,
- the application will, for the purposes of the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*, be taken to be an application for an exemption made to the Authority in accordance with Part 5 Division 2 of those regulations.
- (4) The Authority may, by notice in writing, require an applicant under subclause (3) to provide the Authority with additional information reasonably required to determine the application.

#### 4—Record keeping

- (1) Despite regulation 3, Part 4 Divisions 4, 5 (other than regulation 60), 6 and 7 of the revoked regulations continue to apply to a driving record required to be made or kept under those Divisions as if the provisions had not been revoked.
- (2) Despite a provision of Part 4 Divisions 4, 5 (other than regulation 60), 6 and 7 of the revoked regulations, a requirement under those Divisions that a driving record be kept by a driver or employer for a specified period will be satisfied if the driving record is kept by a driver's record keeper (within the meaning of the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*) for the specified period.

**Note—**

The specified period is a period of not less than 12 months for driving records for non-local area work and local area management records—see regulations 61 and 62 of the revoked regulations.

#### 5—Review of decisions

- (1) Despite regulation 3, regulation 136 of the revoked regulations continues to apply in relation to a decision of the Minister referred to in regulation 135 of those regulations as if the provisions had not been revoked.
- (2) Despite regulation 3, regulation 137 of the revoked regulations continues to apply in relation to a decision that has been reviewed under regulation 136 of those regulations as if the provisions had not been revoked.

#### Historical versions

1.7.2010