

South Australia

## **Road Traffic (Heavy Vehicle Speeding Compliance) Regulations 2009**

under the *Road Traffic Act 1961*

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### **Part 1—Preliminary**

#### **1—Short title**

These regulations may be cited as the *Road Traffic (Heavy Vehicle Speeding Compliance) Regulations 2009*.

#### **2—Commencement**

These regulations will come into operation on 1 February 2010.

#### **3—Interpretation**

- (1) In these regulations—

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

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**consignee** of goods means a person who, with the person's authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation relating to the transport of the goods by road;

**consignor** means a person who, for commercial purposes, engages an operator of a heavy vehicle, either directly or indirectly or through an agent or other intermediary, to transport the goods by road;

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

**employer**, in relation to a driver, means a person who employs the driver under a contract of employment, apprenticeship or training;

**loading manager** means—

- (a) a person who manages premises at which an average (calculated in accordance with subregulation (4)) of not less than 5 heavy vehicles are loaded or unloaded on each day the premises are operating; or
- (b) a person who supervises, manages or controls (whether directly or indirectly) such loading or unloading;

**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;

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

**rest time**, in relation to a driver, has the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*;

**scheduler**, in relation to a heavy vehicle, means a person who schedules—

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

**speed limit** includes—

- (a) a speed limit imposed by or under a law of this or another jurisdiction in relation to a particular road; and
- (b) a speed limit imposed by or under a law of this or another jurisdiction in relation to a particular heavy vehicle, or a heavy vehicle of a specified class; and
- (c) a speed limit comprising a minimum time imposed by or under a law of this or another jurisdiction for travelling between 2 specified places;

**work time**, in relation to a driver, has the same meaning as in the *Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008*.

(2) For the purposes of these regulations, the following persons are **parties in the chain of responsibility** in relation to a heavy vehicle:

- (a) the employer of the driver of the vehicle;
- (b) the prime contractor of the driver 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 transported, or to be transported, by the vehicle;
  - (f) the consignee of goods transported, or to be transported, by the vehicle;
  - (g) a loading manager of goods transported, or to be transported, by 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 the definition of *loading manager*, an average of not less than 5 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 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 heavy vehicles were loaded or unloaded at the premises on each day the premises were operating.

#### **4—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 etc of parties in chain of responsibility**

### **5—Duties of employers, prime contractors and operators—business practices**

- (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 to exceed a speed limit that applies to a heavy vehicle being driven by the driver.
- (2) The operator of a heavy vehicle must take all reasonable steps to ensure that the business practices of the operator do not cause a driver of the vehicle to exceed a speed limit that applies to the vehicle.
- (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 heavy vehicle unless the employer or prime contractor—
  - (a) has complied with subregulation (1); and
  - (b) is satisfied on reasonable grounds that the scheduler in relation to the driver or vehicle has complied with regulation 7.
- (5) The operator of a heavy vehicle must not cause a driver to drive the vehicle unless the operator—
  - (a) has complied with subregulation (2); and

- (b) is satisfied on reasonable grounds that the scheduler in relation to the driver or vehicle has complied with regulation 7.
- (6) An offence against subregulation (4) or (5) is a substantial risk offence.
- (7) In proceedings for an offence against this regulation, it is not necessary to prove that a driver did, in fact, exceed a speed limit that applies to the relevant heavy vehicle.
- (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).

## **6—Offence if driver found guilty etc of speeding offence**

- (1) If a driver is found guilty of, or expiates, a speeding offence then the relevant employer or prime contractor of the driver, and the operator of the heavy vehicle being driven by the driver at the time of the offence, are each guilty of an offence.
- (2) An offence against this regulation is—
  - (a) in the case of a speeding offence that was committed on a road with a speed limit of not more than 60 kilometres per hour—a minor risk offence;
  - (b) in the case of a speeding offence that was committed on a road with a speed limit of more than 60 kilometres per hour but less than 100 kilometres per hour—
    - (i) if the heavy vehicle was not a speed limited road train and the driver exceeded the speed limit by less than 15 kilometres per hour—a minor risk offence; or
    - (ii) if the heavy vehicle was not a speed limited road train and the driver exceeded the speed limit by 15 kilometres per hour or more—a substantial risk offence; or
    - (iii) if the heavy vehicle was a speed limited road train and the driver exceeded the speed limit by less than 15 kilometres per hour—a substantial risk offence; or
    - (iv) if the heavy vehicle was a speed limited road train and the driver exceeded the speed limit by 15 kilometres per hour or more—a severe risk offence;
  - (c) in the case of a speeding offence that was committed on a road with a speed limit of 100 kilometres per hour or more—
    - (i) if the driver exceeded the speed limit by less than 15 kilometres per hour—a substantial risk offence; or
    - (ii) if the driver exceeded the speed limit by 15 kilometres per hour or more—a severe risk offence.

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

***B-double*** means a combination consisting of a prime mover towing 2 semi-trailers where the first semi-trailer is connected to the prime mover by a fifth wheel coupling and the second semi-trailer is connected to the first semi-trailer by a fifth wheel coupling;

***road train*** means a combination, other than a B-double, consisting of a motor vehicle towing at least 2 trailers (counting as 1 trailer a converter dolly supporting a semi-trailer);

***speeding offence*** means an offence against a law of this or another jurisdiction that involves driving a heavy vehicle at a speed over a speed limit that applies to the vehicle;

***speed limited road train*** means a road train, the maximum speed of the towing vehicle of which is limited in accordance with Part 12 of the *Road Traffic (Vehicle Standards) Rules 1999*.

## **7—Duties of schedulers**

- (1) A scheduler in relation to a heavy vehicle must take all reasonable steps to ensure that any schedule for the transport of goods or passengers by the vehicle, or for the work time and rest time of the driver of the vehicle, prepared by the scheduler does not cause the driver of the vehicle to exceed a speed limit that applies to the vehicle.
- (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 heavy vehicle unless—
  - (a) the scheduler has complied with subregulation (1); and
  - (b) the schedule prepared by the scheduler for the transport of goods or passengers by the vehicle, or for the work time and rest time of the driver of the vehicle, allows, in any reasonably foreseeable circumstances, the driver to undertake the relevant journey without exceeding a speed limit that applies to the vehicle.
- (4) An offence against subregulation (3) is a substantial risk offence.
- (5) In proceedings for an offence against this regulation, it is not necessary to prove that a driver did, in fact, exceed a speed limit that applies to the relevant heavy vehicle.

## **8—Duties of loading managers**

- (1) A loading manager must take all reasonable steps to ensure that the arrangements for loading and unloading a heavy vehicle at premises managed by the loading manager, or at which the loading manager supervises, manages or controls loading or unloading, do not cause a driver of the vehicle to exceed a speed limit that applies to the vehicle.
- (2) An offence against this regulation is a severe risk offence.
- (3) In proceedings for an offence against this regulation, it is not necessary to prove that a driver did, in fact, exceed a speed limit that applies to the relevant heavy vehicle.

## **9—Duties of consignors and consignees**

- (1) The consignor and consignee of goods that are to be transported by road by a heavy vehicle must each take all reasonable steps to ensure that—
  - (a) the terms of consignment do not cause the driver of the vehicle to exceed a speed limit that applies to the vehicle; and
  - (b) the terms of consignment do not encourage or provide an incentive to the employer or prime contractor of the driver of the vehicle, or the operator of the vehicle, to cause the driver of the vehicle to exceed a speed limit that applies to the vehicle.
- (2) An offence against subregulation (1) is a severe risk offence.
- (3) A consignor or consignee of goods that are to be transported by road by a 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 to exceed a speed limit that applies to the vehicle.
- (4) In proceedings for an offence against subregulation (3), it is a defence if the person charged establishes that he or she—
  - (a) complied with subregulation (1); and
  - (b) was satisfied on reasonable grounds that the making of the demand would not cause—
    - (i) the driver to exceed a speed limit that applies to the vehicle; or
    - (ii) a scheduler in relation to the driver or vehicle to contravene regulation 7.
- (5) An offence against subregulation (3) is a substantial risk offence.
- (6) In proceedings for an offence against this regulation, it is not necessary to prove that a driver did, in fact, exceed a speed limit that applies to the relevant heavy vehicle.

## **Part 3—Certain requests and contracts etc prohibited**

### **10—Certain requests etc prohibited**

- (1) A person must not request or direct (whether directly or indirectly) a driver of a heavy vehicle, or a party in the chain of responsibility in relation to a heavy vehicle, to do or not do anything that the person knows, or ought reasonably to know, may cause the driver of the vehicle to exceed a speed limit that applies to the vehicle.
- (2) An offence against this regulation is a critical risk offence.
- (3) In proceedings for an offence against this regulation, it is not necessary to prove that a driver did, in fact, exceed a speed limit that applies to the relevant heavy vehicle.

### **11—Certain contracts etc prohibited**

- (1) A person must not enter into a contract or agreement with a driver of a heavy vehicle, or a party in the chain of responsibility in relation to a heavy vehicle, to do or not do anything that the person knows, or ought reasonably to know, may cause the driver of the vehicle to exceed a speed limit that applies to the vehicle.

- (2) A person must not enter into a contract or agreement with a party in the chain of responsibility in relation to a heavy vehicle that would encourage or provide an incentive to the party in the chain of responsibility to cause the driver of the vehicle to exceed a speed limit that applies to the vehicle.
- (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, exceed a speed limit that applies to the relevant heavy vehicle.

## **Part 4—Miscellaneous**

### **12—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 the driver of a heavy vehicle to exceed a speed limit that applies to the vehicle will be satisfied if the person—
  - (a) identifies which aspects of the specified thing might cause the driver of a heavy vehicle to exceed a speed limit that applies to the vehicle; and
  - (b) assesses the level of risk that such aspects will cause the driver of a heavy vehicle to exceed a speed limit that applies to the vehicle; 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 driver of a heavy vehicle to exceed a speed limit that applies to the vehicle, 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.

### 13—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.

### 14—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) if the offender is a natural person—\$1 250;
    - (ii) 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 2—
    - (i) that Part (whether of the same risk category or otherwise); or
    - (ii) a similar provision of a corresponding speeding compliance law; or
  - (b) 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 speeding compliance 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.
- (3) In this regulation—
- corresponding speeding compliance law*** means—
- (a) an Act or law in force in another jurisdiction requiring parties in the chain of responsibility in relation to a heavy vehicle to manage speeding by a driver of the vehicle (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 speeding compliance law.

**Note—**

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

**Made by the Governor**

with the advice and consent of the Executive Council  
on 5 November 2009

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