

South Australia

## **Heavy Vehicle National Law (South Australia) (Amendment of Law No 2) Regulations 2016**

under section 5 of the *Heavy Vehicle National Law (South Australia) Act 2013*

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## Preamble

- 1 Section 5 of the *Heavy Vehicle National Law (South Australia) Act 2013* provides that if—
- (a) the Parliament of Queensland enacts an amendment to the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland (the *Queensland Act*); and

- (b) the Governor is satisfied that an amendment that corresponds, or substantially corresponds, to the amendment made by the Parliament of Queensland should be made to the *Heavy Vehicle National Law (South Australia)*,

the Governor may, by regulation, amend the South Australian Heavy Vehicle National Law text.

- 2 The Parliament of Queensland has enacted the *Heavy Vehicle National Law Amendment Act 2015* to amend the Queensland Act and the Governor is satisfied that the amendments corresponding to the Queensland amendments set out in Part 2 of these regulations should be made to the South Australian Heavy Vehicle National Law text.
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## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Heavy Vehicle National Law (South Australia) (Amendment of Law No 2) Regulations 2016*.

### 2—Commencement

These regulations will come into operation on 6 February 2016.

### 3—Interpretation

In these regulations—

*Act* means the *Heavy Vehicle National Law (South Australia) Act 2013*.

### 4—Amendment provision

Pursuant to section 5 of the Act, the Heavy Vehicle National Law (South Australia) is amended as specified in Part 2 of these regulations.

## Part 2—Amendment of Heavy Vehicle National Law (South Australia)

### 5—Amendment of section 5—Definitions

- (1) Section 5, definition of *AFM accreditation*, (a)—delete paragraph (a) and substitute:

- (a) AFM accreditation granted under section 458; or

- (2) Section 5—after the definition of *B-double* insert:

*B-triple* means a combination consisting of a prime mover towing 3 semitrailers, with—

- (a) the first semitrailer being attached directly to the prime mover by a fifth wheel coupling; and
- (b) the second semitrailer being mounted on the rear of the first semitrailer by a fifth wheel coupling on the first semitrailer; and
- (c) the third semitrailer being mounted on the rear of the second semitrailer by a fifth wheel coupling on the second semitrailer;

Typical B—triple



- (3) Section 5, definition of *BFM accreditation*, (a)—delete paragraph (a) and substitute:
- (a) BFM accreditation granted under section 458; or
- (4) Section 5, definition of *component*, (a)—before "a component" insert:
- other than in Chapter 3 Part 3,
- (5) Section 5—after the definition of *driver* insert:
- driver fatigue compliance function*, for the purposes of Chapter 13 Part 4, has the meaning given by section 727(1);
- driver fatigue provision*, for the purposes of Chapter 13 Part 4, has the meaning given by section 727(1);
- (6) Section 5, definition of *electronic work diary label*—delete the definition and substitute:
- electronic work diary authorised use*, for the purposes of Chapter 13 Part 4, has the meaning given by section 727(1);
- electronic work diary information*, for the purposes of Chapter 13 Part 4, has the meaning given by section 727(1);
- electronic work diary protected information*, for the purposes of Chapter 13 Part 4, has the meaning given by section 727(1);
- (7) Section 5, definition of *maintenance management accreditation*, (a)—delete paragraph (a) and substitute:
- (a) maintenance management accreditation granted under section 458; or
- (8) Section 5, definition of *mass management accreditation*, (a)—delete paragraph (a) and substitute:
- (a) mass management accreditation granted under section 458; or
- (9) Section 5—after the definition of *mistake of fact defence* insert:
- modification*, for the purposes of Chapter 3 Part 3, has the meaning given by section 84;
- (10) Section 5—after the definition of *registration* insert:
- registration authority*, for the purposes of Chapter 9 Part 3 Division 6, has the meaning given by section 525;
- (11) Section 5—after the definition of *relevant tribunal or court* insert:
- residence*, for the purposes of Chapter 9 Part 2, has the meaning given by section 494(1);

- (12) Section 5, definition of *road train*—delete the words in the definition (without deleting the graphic depicting a typical triple road train) and substitute:
- road train* means—
- (a) a B-triple; or
  - (b) a combination, other than a B-double, consisting of a motor vehicle towing at least 2 trailers, excluding any converter dolly supporting a semitrailer;
- (13) Section 5, definition of *tamper*, (b) to (d)—redesignate paragraphs (b) to (d) as paragraphs (c) to (e) respectively
- (14) Section 5, definition of *tamper*—after paragraph (a) insert:
- (b) with a plate or label, for the purposes of section 87A, has the meaning given by that section; or
- (15) Section 5—after the definition of *vehicle defect notice* insert:
- vehicle identifier*, for the purposes of Chapter 9 Part 3 Division 6, has the meaning given by section 525;

## **6—Amendment of section 81—Contravening condition of vehicle standards exemption**

- (1) Section 81(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$4 000.
- (2) Section 81(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$4 000.
- (3) Section 81(3), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$4 000.

## **7—Substitution of section 84**

Section 84—delete the section and substitute:

### **84—Definition for Chapter 3 Part 3**

In this Part—

*modification*, of a heavy vehicle, means—

- (a) the addition of a component to, or the removal of a component from, the vehicle; or
- (b) a change to the vehicle from the manufacturer's specification for the vehicle,

but does not include a modification to the vehicle that has been approved under the *Motor Vehicle Standards Act 1989* of the Commonwealth.

## **8—Amendment of section 85—Modifying of heavy vehicle requires approval**

Section 85—after subsection (2) insert:

- (3) This section does not apply to a modification that complies with a code of practice prescribed by the national regulations for the purposes of this section, section 86 or 87 that expressly states that a modification of that type does not require approval.

## **9—Insertion of section 87A**

After section 87 insert:

### **87A—Person must not tamper with plate or label**

- (1) A person must not tamper with a plate or label fitted or affixed to a heavy vehicle under section 86(2) or 87(3).  
Maximum penalty: \$3 000.
- (2) In a proceeding for an offence against subsection (1), it is a defence for the person to prove that the tampering was done with the written approval of the Regulator.
- (3) In this section—

*tamper* means alter, damage, remove or otherwise interfere with.

## **10—Amendment of section 94—Main purposes of Chapter 4**

- (1) Section 94(2)(a)—delete "mass limits" and substitute:  
mass requirements
- (2) Section 94(2)(b)—delete paragraph (b) and substitute:
  - (b) imposing dimension requirements on heavy vehicles including on the vehicles (together with equipment), components or loads; and
- (3) Section 94(2)(d)—delete "mass limits, restrictions and requirements" and substitute:  
mass requirements, dimension requirements and other requirements
- (4) Section 94(3)—delete "mass limits, restrictions and requirements" and substitute:  
mass requirements, dimension requirements and other requirements

## **11—Amendment of section 119—Conditions of mass or dimension exemption (notice)**

- (1) Section 119(1)(c)—delete "by a relevant road manager for the exemption under section 160 or 161" and substitute:  
for the exemption
- (2) Section 119(2) to (6)—delete subsections (2) to (6) (inclusive) and substitute:
  - (2) Without limiting subsection (1)(a), the condition under the subsection about areas or routes may be imposed by—
    - (a) applying by reference a stated map or stated list, not in the notice, prepared and published by the relevant road authority or the Regulator; and

- (b) referring to the areas or routes shown on the stated map or stated list.
- (3) Without limiting subsection (1)(c), road conditions or travel conditions under the subsection may be imposed by referring to road conditions or travel conditions shown on a stated map or stated list applied under subsection (2)(a).
- (4) If the notice applies a stated map or stated list—
  - (a) the Regulator may amend the stated map or stated list prepared and published by it and the relevant road authority may amend the stated map or stated list prepared and published by it, but only by omitting, varying or extending—
    - (i) the areas or routes mentioned in subsection (2)(b); or
    - (ii) the road conditions or travel conditions mentioned in subsection (3),including by adding additional areas, routes, road conditions or travel conditions; and
  - (b) the Regulator must ensure a copy of the stated map or stated list as in force from time to time is—
    - (i) made available for inspection, without charge, during normal business hours at each office of the Regulator; and
    - (ii) published on the Regulator’s website or published by way of a reference or link published on the Regulator’s website.

**Note—**

The Regulator must publish a stated map or stated list whether the Regulator or a relevant road authority originally prepared and published it as mentioned in subsection (2).

- (5) Despite subsection (4)(a), a road authority may only amend a map or list in a way that affects a particular road if—
  - (a) the road authority is the road manager for the road; or
  - (b) the road authority is not the road manager for the road and has been advised by the Regulator that the Regulator has obtained the consent of the road manager for the amendment.
- (6) Without limiting the conditions that may be prescribed under subsection (1)(b), the national regulations may—
  - (a) prescribe conditions that are to apply only to particular areas or roads; and
  - (b) authorise the Regulator to decide the areas or roads to which the conditions are to apply.



(7) In this section—

*relevant road authority*, for a mass or dimension exemption (notice), means the road authority for the participating jurisdiction in which the road likely to be travelled under the exemption is situated;

*road conditions* means road conditions required by the relevant road manager under section 160;

*travel conditions* means travel conditions required by the relevant road manager under section 161.

## 12—Insertion of section 119A

After section 119 insert:

### 119A—Process for amending a stated map or stated list

- (1) This section applies to the amendment of a stated map or stated list mentioned in section 119.
- (2) For the purpose of an amendment by the Regulator only adding an additional area or route to a stated map or stated list—
  - (a) section 118 applies; and
  - (b) Division 2 of Chapter 4 Part 7 applies to the extent the Division relates to the grant of a mass or dimension exemption (notice); and
  - (c) Division 3 of Chapter 4 Part 7 does not apply.
- (3) For the purpose of subsection (2), section 118 and Division 2 of Chapter 4 Part 7 apply as if—
  - (a) a reference to the grant of a mass or dimension exemption (notice) or a mass or dimension authority were a reference to the adding of the additional area or route; and
  - (b) a reference to the relevant road manager for a mass or dimension exemption (notice) or a mass or dimension authority were a reference to the relevant road manager for the exemption or authority that applies the stated map or stated list.
- (4) For the purpose of an amendment by the relevant road authority only adding an additional area or route to, or only removing a road condition or travel condition from, a stated map or stated list, section 118 and Chapter 4 Part 7 do not apply.
- (5) For the purpose of an amendment by the Regulator or a relevant road authority if subsections (2) to (4) do not apply, Division 3 of Chapter 4 Part 7 applies to the extent the Division relates to the amendment of a mass or dimension exemption (notice).
- (6) For subsection (5), Division 3 of Chapter 4 Part 7 applies as if—
  - (a) a reference to the amendment of a mass or dimension authority were a reference to the amendment of the stated map or stated list; and

- (b) a reference to the Regulator were a reference to the Regulator or the relevant road authority, whichever is amending the stated map or stated list; and
- (c) a reference to the relevant road manager for a mass or dimension authority were a reference to the relevant road manager for the authority that applies the stated map or stated list.

### **13—Substitution of section 140**

Section 140—delete the section and substitute:

#### **140—Conditions of class 2 heavy vehicle authorisations (notice)**

A class 2 heavy vehicle authorisation (notice)—

- (a) must be subject to the road conditions or travel conditions required by a road manager for the authorisation under section 160 or 161; and

**Note—**

Under sections 160(1)(b) and (4), a road manager may only require road conditions of a type prescribed by the national regulations.

- (b) may be subject to other conditions the Regulator considers appropriate, including, for example, a condition that the driver of a class 2 heavy vehicle who is driving the vehicle under the authorisation must keep in the driver's possession a copy of—
  - (i) the Commonwealth Gazette notice for the authorisation; or
  - (ii) an information sheet about the authorisation published by the Regulator on the Regulator's website

### **14—Amendment of section 142—Requirements about Commonwealth Gazette notice etc**

Section 142(2) to (6)—delete subsections (2) to (6) (inclusive) and substitute:

- (2) Without limiting subsection (1)(b), the notice may state the areas or routes under the subsection by—
  - (a) applying by reference a stated map or stated list, not in the notice, prepared and published by the relevant road authority or the Regulator; and
  - (b) referring to the areas or routes shown on the stated map or list.
- (3) Without limiting subsection (1)(d), the notice may state road conditions or travel conditions under the subsection by referring to road conditions or travel conditions shown on a stated map or stated list applied under subsection (2)(a).

- (4) The Regulator must publish a copy of the notice on the Regulator’s website.
- (5) If the notice applies a stated map or stated list—
- (a) the Regulator may amend the stated map or stated list prepared and published by it and the relevant road authority may amend the stated map or stated list prepared and published by it, but only by omitting, varying or extending—
    - (i) the areas or routes mentioned in subsection (2)(b); or
    - (ii) the road conditions or travel conditions mentioned in subsection (3),including by adding additional areas, routes, road conditions or travel conditions; and
  - (b) the Regulator must ensure a copy of the stated map or stated list as in force from time to time is—
    - (i) made available for inspection, without charge, during normal business hours at each office of the Regulator; and
    - (ii) published on the Regulator’s website or published by way of a reference or link published on the Regulator’s website.
- Note—**

The Regulator must publish a stated map or stated list whether the Regulator or a relevant road authority originally prepared and published it as mentioned in subsection (2)

- (6) Despite subsection (5)(a), a road authority may only amend a map or list in a way that affects a particular road if—
- (a) the road authority is the road manager for the road; or
  - (b) the road authority is not the road manager for the road and has been advised by the Regulator that the Regulator has obtained the consent of the road manager for the amendment.

- (7) In this section—

**relevant road authority**, for a class 2 heavy vehicle authorisation (notice), means the road authority for the participating jurisdiction in which the road likely to be travelled under the authorisation is situated;

**road conditions** means road conditions required by the relevant road manager under section 160;

**travel conditions** means travel conditions required by the relevant road manager under section 161.

## **15—Insertion of section 142A**

After section 142 insert:

### **142A—Process for amending stated map or stated list**

- (1) This section applies to the amendment of a stated map or stated list mentioned in section 142.
- (2) For the purpose of an amendment by the Regulator only adding an additional area or route to a stated map or stated list—
  - (a) section 139 applies; and
  - (b) Division 2 of Chapter 4 Part 7 applies to the extent the Division relates to the grant of a class 2 heavy vehicle authorisation (notice); and
  - (c) Division 3 of Chapter 4 Part 7 does not apply.
- (3) For the purpose of subsection (2), section 139 and Division 2 of Chapter 4 Part 7 apply as if—
  - (a) a reference to the grant of a class 2 heavy vehicle authorisation (notice) or a mass or dimension authority were a reference to the adding of the additional area or route; and
  - (b) a reference to the relevant road manager for a class 2 heavy vehicle authorisation (notice) or a mass or dimension authority were a reference to the relevant road manager for the authorisation or authority that applies the stated map or stated list.
- (4) For the purpose of an amendment by the relevant road authority only adding an additional area or route to, or only removing a road condition or travel condition from, a stated map or stated list, section 139 and Chapter 4 Part 7 do not apply.
- (5) For the purpose of an amendment by the Regulator or a relevant road authority if subsections (2) to (4) do not apply, Division 3 of Chapter 4 Part 7 applies to the extent the Division relates to the amendment of a class 2 heavy vehicle authorisation (notice).
- (6) For the purpose of subsection (5), Division 3 of Chapter 4 Part 7 applies as if—
  - (a) a reference to the amendment of a mass or dimension authority were a reference to the amendment of the stated map or stated list; and
  - (b) a reference to the Regulator were a reference to the Regulator or the relevant road authority, whichever is amending the stated map or stated list; and
  - (c) a reference to the relevant road manager for a mass or dimension authority were a reference to the relevant road manager for the authority that applies the stated map or stated list.

## 16—Insertion of Chapter 4 Part 6A

Chapter 4—after section 153 insert:

### Part 6A—Restricted access vehicles

#### 153A—Using restricted access vehicle

- (1) A person must not use a restricted access vehicle, or permit a restricted access vehicle to be used, on a road unless the road is one on which the vehicle is allowed to be used under a mass or dimension authority applying to the vehicle.

Maximum penalty: \$6 000.

- (2) In this section—

*restricted access vehicle* means a heavy vehicle that (together with its load) is—

- (a) higher than 4.3m; or
- (b) wider than 2.5m; or
- (c) longer than—
  - (i) if a single vehicle other than an articulated bus—12.5m; or
  - (ii) if an articulated bus—18m; or
  - (iii) if a combination—19m.

- (3) This section does not apply to a class 2 heavy vehicle.

## 17—Amendment of section 189—Meaning of complying container weight declaration

Section 189(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) it is written and easily legible.

## 18—Amendment of section 190—Duty of responsible entity

Section 190(1)—after "declaration for the freight container" insert:

containing information in the form required under section 192A

## 19—Amendment of section 191—Duty of operator

- (1) Section 191(1)—after "for the freight container" insert:

containing information in the form required under section 192A

- (2) Section 191(3)—delete subsection (3) and substitute:

- (3) If the freight container is to be transported by another carrier, an operator of a heavy vehicle must not give the freight container to the carrier unless the carrier has been provided with—

- (a) a complying container weight declaration for the freight container containing information in the form required under section 192A; or

- (b) the prescribed particulars contained in a complying container weight declaration for the freight container.

Maximum penalty: \$6 000.

- (3) Section 191(6)—before the definition of *prescribed particulars* insert:

*another carrier* means another operator of a heavy vehicle or another person who is to transport the freight container other than by road;

## **20—Amendment of section 192—Duty of driver**

Section 192(2)(b)—delete paragraph (b) and substitute:

- (b) in a way that ensures information in the declaration is in the form required under section 192A.

## **21—Insertion of section 192A**

After section 192 insert:

### **192A—Form of information in container weight declaration**

- (1) This section applies for the purposes of sections 190(1), 191(1) and (3)(a) and 192(2)(b).
- (2) The responsible entity, operator or driver must ensure the information in the container weight declaration is in a form readily available to an authorised officer who seeks to ascertain it while in the presence of the freight container, including, for example, by—
  - (a) examining documents located in the heavy vehicle on which the freight container is loaded or to be loaded; or
  - (b) obtaining information by radio or mobile telephone or by other means.

## **22—Amendment of section 208—Duty not to cause driver to drive if particular requirements not complied with**

Section 208(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$6 000.

## **23—Amendment of section 213—Duty not to make a demand that may result in driver exceeding the speed limit**

Section 213, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$10 000.

## **24—Amendment of section 221—Definitions for Chapter 6**

- (1) Section 221, definitions of *electronic work diary* and *electronic work diary label*—delete the definitions and substitute:

*electronic work diary*, in relation to a fatigue-regulated heavy vehicle, means all or part of an approved electronic recording system that is fitted to or used in relation to the vehicle to record information a driver of the vehicle is required by this Law to record in a work diary for the purposes of this Law;

- (2) Section 221, definition of *entry*—after "written" insert:  
or otherwise recorded

**25—Amendment of section 233—Duty to ensure driver's schedule will not cause driver to drive while fatigued etc**

Section 233(1), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$10 000.

**26—Amendment of section 246—Counting periods of less than 15 minutes—written work diaries**

- (1) Section 246(1) to (4)—re designate subsections (1) to (4) as subsections (2) to (5) respectively
- (2) Section 246—before subsection (2) (as redesignated under subregulation (1)) insert:
- (1) This section applies if a driver uses a written work diary.
- (3) Section 246(3) (as redesignated under subregulation (1)), heading to the examples—delete "subsection (2)" and substitute:
- subsection (3)
- (4) Section 246(5) (as redesignated under subregulation (1)), heading to the examples—delete "subsection (4)" and substitute:
- subsection (5)

**27—Insertion of section 246A**

After section 246 insert:

**246A—Counting periods of less than 15 minutes—electronic work diaries**

- (1) This section applies if a driver uses an electronic work diary.
- (2) Work time and rest time must be counted in 1 minute periods.
- (3) A period of work time or rest time of less than 1 minute must not be counted.
- (4) A period of rest time of less than 15 minutes does not count towards a minimum rest time.

**Examples for the purposes of subsection (4)—**

- 1 A period of not working for 10 minutes does not count towards a minimum rest time because 10 minutes is less than 15 minutes.
- 2 A period of not working on 3 separate occasions for 14 minutes, 24 minutes and 22 minutes does not count as 60 minutes rest time because the period of 14 minutes, being less than 15 minutes, is disregarded.

**Note—**

This section relates to calculating whether a driver has complied with maximum work requirements and minimum rest requirements applying to the driver. It does not matter if the technology used by an electronic work diary counts a period less than 1 minute mentioned in subsections (2) and (3) in the course of arriving at calculations that comply with the subsections.

**28—Amendment of section 249—Standard hours**

- (1) Section 249(2)—after paragraph (b) insert:
- and
- (c) that a minor risk breach of a maximum work requirement prescribed in the regulations is not to be treated as a minor risk breach.
- (2) Section 249—after subsection (2) insert:
- (3) A minor risk breach prescribed for the purposes of subsection (2)(c) is not a contravention of section 250 or 251.

**29—Amendment of section 253—BFM hours**

Section 253(2)—delete subsection (2) and substitute:

- (2) Without limiting subsection (1), the national regulations may prescribe—
- (a) different BFM hours for solo drivers and drivers who are a party to a two-up driving arrangement; and
- (b) that a minor risk breach of a maximum work requirement prescribed in the regulations is not to be treated as a minor risk breach.
- (3) A minor risk breach prescribed for the purposes of subsection (2)(b) is not a contravention of section 254 or 256.

**30—Amendment of section 292—Meaning of work diary for Subdivision 1**

Section 292(1)(b) and (c)—delete paragraphs (b) and (c) and substitute:

- (b) if the driver has used only 1 or more electronic work diaries in the last 28 days—information in each electronic work diary relating to any period during the last 28 days;
- (c) if the driver has used a combination of 1 or more written work diaries and 1 or more electronic work diaries in the last 28 days—
- (i) each of the written work diaries the driver is using or has used during the last 28 days; and
- (ii) the information in each of the electronic work diaries the driver is using or has used during the last 28 days that relates to any period during the last 28 days.



**31—Amendment of section 297—Information required to be recorded immediately after starting work**

Section 297(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$6 000.

**32—Amendment of section 302—Recording information in electronic work diary**

Section 302(b)—after "manufacturer's instructions" insert:  
, if any,

**33—Amendment of section 305—Driver must make supplementary records in particular circumstances**

Section 305(4)(b)(iii)—delete subparagraph (iii) and substitute:  
(iii) the expiry of 7 business days after the day on which the driver starts recording information under this section.

**34—Amendment of section 307—Driver who is record keeper must notify Regulator if electronic work diary filled up etc**

- (1) Section 307(1)—after "vehicle" insert:  
who is his or her own record keeper
- (2) Section 307—after subsection (2) insert:
  - (3) Within a period required by the Regulator, the driver must ensure the electronic work diary is examined and brought into working order.  
Maximum penalty: \$3 000.

**35—Amendment of section 309—Information required to be recorded immediately after starting work**

Section 309(2), penalty provision—delete the penalty provision and substitute:  
Maximum penalty: \$3 000.

**36—Amendment of section 311—What record keeper must do if electronic work diary filled up**

- (1) Section 311(1)(c)—delete paragraph (c) and substitute:
  - (c) the record keeper becomes aware or has reason to suspect that the electronic work diary has been filled up.
- (2) Section 311(2)—delete "after being informed of the matter" and substitute:  
after becoming aware of the matter or having reason to suspect the matter
- (3) Section 311(2)(b)—delete "a printout of the removed information." and substitute:  
the removed information in a way that makes the information readily available to the driver; and

- (4) Section 311(2)—after paragraph (b) insert:
- (c) notify the Regulator in the approved form that the electronic work diary has been filled up.

### **37—Substitution of sections 312 and 313**

Sections 312 and 313—delete the sections and substitute:

#### **312—What record keeper must do if electronic work diary destroyed, lost or stolen**

- (1) This section applies if—
  - (a) the record keeper for the driver of a fatigue-regulated heavy vehicle is a person other than the driver; and
  - (b) the driver uses an electronic work diary supplied to the driver by the record keeper; and
  - (c) the record keeper becomes aware or has reason to suspect that the electronic work diary has been destroyed, lost or stolen.
- (2) The record keeper must, as soon as reasonably practicable after becoming aware of the matter or having reason to suspect the matter—
  - (a) inform the driver that the electronic work diary has been destroyed, lost or stolen unless the driver informed the record keeper about the fault under section 309; and
  - (b) give the driver an electronic work diary that is in working order; and
  - (c) give the driver any information, in a way that makes the information readily available to the driver, that was in the destroyed, lost or stolen electronic work diary that—
    - (i) is accessible to the record keeper; and
    - (ii) relates to any period during the last 28 days; and
    - (iii) is not stored in the new electronic work diary.

Maximum penalty: \$6 000.

- (3) The record keeper must within 2 business days notify the Regulator in the approved form that the electronic work diary has been destroyed, lost or stolen.

Maximum penalty: \$6 000.

- (4) If the record keeper has engaged another person under a contract for services to comply with subsection (2) or (3) for the record keeper—
  - (a) the record keeper remains liable for an offence against subsection (2) or (3); and

- (b) the other person is also liable for an offence against subsection (2) or (3) as if the other person were the record keeper mentioned in the subsection.
- (5) A person charged with an offence against subsection (2) or (3) does not have the benefit of the mistake of fact defence for the offence.
- (6) However, in a proceeding for an offence against subsection (2) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

**Note—**

See Division 1 and Division 2 of Chapter 10 Part 4 for the reasonable steps defence.

**313—What record keeper must do if electronic work diary not in working order or malfunctioning**

- (1) This section applies if—
  - (a) the record keeper for the driver of a fatigue-regulated heavy vehicle is a person other than the driver; and
  - (b) the driver uses an electronic work diary supplied to the driver by the record keeper; and
  - (c) the record keeper becomes aware of, or has reason to suspect, either of the following matters:
    - (i) that the electronic work diary is not in working order;
    - (ii) that the electronic work diary is malfunctioning or has malfunctioned.

**Note—**

The record keeper may become aware as mentioned in paragraph (c) whether or not the record keeper has been informed by the driver under section 309 or an intelligent access reporting entity under section 310.

- (2) The record keeper must as soon as reasonably practicable after becoming aware of the matter or having reason to suspect the matter inform the driver about the matter unless the driver informed the record keeper about the matter under section 309.

Maximum penalty: \$6 000.

- (3) The record keeper must, after becoming aware of the matter or having reason to suspect the matter—
  - (a) as soon as reasonably practicable, direct the driver in the approved form to use a supplementary record in compliance with section 305; and
  - (b) as soon as reasonably practicable, give the driver information that was in the electronic work diary, in a way that makes the information readily available to the driver, that—

- (i) is accessible to the record keeper; and
  - (ii) relates to any period during the last 28 days; and
  - (iii) is not stored in the electronic work diary because the electronic work diary is not in working order or is malfunctioning or has malfunctioned; and
- (c) within 2 business days, notify the Regulator in the approved form that the electronic work diary is not in working order or is malfunctioning or has malfunctioned; and
- (d) within a period required by the Regulator, ensure the electronic work diary is examined and brought into working order and is not malfunctioning.

Maximum penalty: \$6 000.

- (4) Subsection (5) applies if the driver of the vehicle changes during any period that is relevant to the duties imposed on the record keeper by subsection (2) or (3).
- (5) Each reference to the driver in subsection (2) or (3) is a reference to the driver of the vehicle when the record keeper acts under the subsection.
- (6) If the record keeper has engaged another person under a contract for services to comply with subsection (2) or (3) for the record keeper—
- (a) the record keeper remains liable for an offence against subsection (2) or (3); and
  - (b) the other person is also liable for an offence against subsection (2) or (3) as if the other person were the record keeper mentioned in the subsection.
- (7) Subsection (6) does not apply if the other person is engaged under a contract for services only to repair or otherwise bring the electronic work diary into working order.

**Example for the purposes of subsection (7)—**

A person in the business of repairing electronic recording systems is engaged under a contract for services to repair or otherwise bring the electronic work diary into working order on behalf of the record keeper.

- (8) A person charged with an offence against subsection (2) or (3) does not have the benefit of the mistake of fact defence for the offence.
- (9) However, in a proceeding for an offence against subsection (2) or (3), the person charged has the benefit of the reasonable steps defence for the offence.

**Note—**

See Division 1 and Division 2 of Chapter 10 Part 4 for the reasonable steps defence.

**38—Amendment of section 319—Records record keeper must have**

- (1) Section 319(2) to (5)—re designate subsections (2) to (5) as subsections (3) to (6) respectively
- (2) Section 319—after subsection (1) insert:
  - (2) A requirement imposed on a record keeper by subsection (1)(a)(ii) to (vi) is taken to be satisfied if an electronic work diary used by the driver, the information in which is maintained by the record keeper, includes the information mentioned in the provisions.

**39—Amendment of section 321—Records record keeper must have**

- (1) Section 321(1)(b)—after "duplicate pages" insert:

, if any,
- (2) Section 321(2) to (7)—re designate subsections (2) to (7) as subsections (3) to (8) respectively
- (3) Section 321—after subsection (1) insert:
  - (2) The requirement imposed on the record keeper by subsection (1)(a)(ii) is taken to be satisfied if an electronic work diary used by the driver, the information in which is maintained by the record keeper, includes the information mentioned in the provision.
- (4) Section 321(4) to (6) (as re designated under subregulation (2))—delete "or (2)" wherever occurring and substitute in each case:

or (3)

**40—Amendment of section 322—General requirements about driver giving information to record keeper**

Section 322(3)—delete subsection (3) and substitute:

- (3) The requirement imposed on the driver by subsection (2) is taken to be satisfied if an electronic work diary used by the driver, the information in which is maintained by the record keeper, includes the information mentioned in the provision.

**41—Amendment of section 323—Requirements about driver giving information to record keeper if driver changes record keeper**

- (1) Section 323(4) to (6)—re designate subsections (4) to (6) as subsections (5) to (7) respectively
- (2) Section 323—after subsection (3) insert:
  - (4) The requirement imposed on the driver or the record keeper by subsection (2) or (3) is taken to be satisfied if an electronic work diary used by the driver, the information in which is maintained by the record keeper, includes the information mentioned in the subsection.

#### **42—Amendment of section 324—Record keeper must give information from electronic work diary**

Section 324(2)—delete "a printout of the information recorded in the work diary" and substitute:

, in a way that makes the information readily available to the driver, the information recorded in the work diary

#### **43—Insertion of section 324A**

After section 324 insert:

##### **324A—Record keeper must give record to driver if requested**

- (1) This section applies if—
  - (a) the driver of a fatigue-regulated heavy vehicle is required to record information in the driver's work diary under Division 2; and
  - (b) the driver's record keeper is a person other than the driver; and
  - (c) the driver requests a record held under this Division by the record keeper.
- (2) The driver's record keeper must, as soon as reasonably practicable—
  - (a) give the driver a copy of the record, or make the record available to the driver; or
  - (b) if the information is recorded in an electronic work diary—give the driver, in a way that makes the information readily available to the driver, the information recorded in the work diary.

Maximum penalty: \$1 500.

#### **44—Substitution of heading to section 326**

Heading to section 326—delete the heading and substitute:

**When possessing, or recording information in, more than 1 work diary relating to the same period is prohibited**

#### **45—Insertion of section 336A**

After section 336 insert:

##### **336A—Reporting tampering or suspected tampering with electronic work diary**

- (1) If the record keeper for the driver of a fatigue-regulated heavy vehicle knows, or has reasonable grounds to suspect, an electronic work diary has been tampered with, the record keeper must report the matter to the Regulator—
  - (a) within 2 business days; and

(b) in the approved form.

Maximum penalty: \$6 000.

- (2) If the record keeper has engaged another person under a contract for services to comply with subsection (1) for the record keeper—
- (a) the record keeper remains liable for an offence against subsection (1); and
- (b) the other person is also liable for an offence against subsection (1) as if the other person were the record keeper mentioned in the subsection.
- (3) A person charged with an offence against subsection (1) does not have the benefit of the mistake of fact defence for the offence.
- (4) However, in a proceeding for an offence against subsection (1), the person charged has the benefit of the reasonable steps defence for the offence.

**Note—**

See Division 1 and Division 2 of Chapter 10 Part 4 for the reasonable steps defence

#### **46—Amendment of section 341—Period for which, and way in which, records must be kept**

- (1) Section 341(6) to (8)—redesignate subsections (6) to (8) as subsections (8) to (10) respectively
- (2) Section 341—after subsection (5) insert:
- (6) A reference in subsection (1) to keeping a record of information required to be made or kept under Division 3 includes a reference to maintaining a record of the information that is in an electronic work diary, if that record is taken to have satisfied the requirement under Division 3.
- (7) If the driver’s work diary is an electronic work diary, the driver’s record keeper must maintain a record of the information that is recorded in the work diary in a way complying with—
- (a) if the Regulator has, when approving the electronic recording system constituting the work diary, or of which the work diary is a part, imposed any conditions in relation to the way information must be recorded in the work diary—those conditions; and
- (b) the manufacturer’s instructions, if any, for recording information in the electronic work diary, to the extent the instructions are consistent with the conditions mentioned in paragraph (a).

Maximum penalty: \$1 500.

**Note—**

The Regulator may impose conditions on the use of an electronic recording system under section 343.

- (3) Section 341(8) to (10) (as redesignated under subregulation (1))—delete "or (5)" wherever occurring and substitute in each case:

, (5) or (7)

**47—Amendment of section 343—Deciding application for approval**

- (1) Section 343(2)(g) and (h)—redesignate paragraphs (g) and (h) as paragraphs (h) and (i) respectively
- (2) Section 343(2)(f)—delete paragraph (f) and substitute:
- (f) is capable of enabling the driver of the fatigue-regulated heavy vehicle to which it or a part of it is fitted, or in which it or a part of it is used, to send information to the driver's record keeper; and
  - (g) has a mechanism that, at least once each day, readily indicates to the driver whether information has or has not been sent to the record keeper; and

**48—Amendment of section 344—Steps after decision to grant approval**

Section 344(1)—delete subsection (1) and substitute:

- (1) If the Regulator grants an approval under section 343, the Regulator must give the applicant a numbered certificate of approval.

**49—Substitution of Chapter 6 Part 4 Division 7 Subdivision 2**

Chapter 6, Part 4, Division 7, Subdivision 2—delete Subdivision 2 and substitute:

**Subdivision 2—Using unapproved electronic recording system**

**347—Prohibition on using electronic work diary if it is not, and is not a part of, an approved electronic recording system**

A person must not use as an electronic work diary for the purposes of this Law an electronic recording system constituting an electronic work diary, or of which an electronic work diary is a part, if the person knows, or ought reasonably to know, the electronic recording system is not an approved electronic recording system.

Maximum penalty: \$10 000.

**Note—**

See section 632 for the matters a court may consider when deciding whether a person ought reasonably to have known something.



## **50—Amendment of section 355—Requirements if approval cancelled**

- (1) Section 355(2) and (3)—delete subsections (2) and (3) and substitute:
  - (2) If the electronic recording system constitutes an electronic work diary, or if part of the electronic recording system is an electronic work diary, the holder of the approval must, within the period stated by the Regulator in the notification, remove any electronic message on the system’s visual display stating the system is or includes an electronic work diary.  
Maximum penalty: \$6 000.
  - (3) The Regulator may, by notice, direct the holder of the approval to give each person to whom the holder has supplied an electronic recording system the subject of the approval that constitutes an electronic work diary, or of which an electronic work diary is a part, a notice stating that the approval has been cancelled.

- (2) Section 355(6)—delete subsection (6) and substitute:

- (6) If, under subsection (4), the holder of the approval gives a person a notice that the approval has been cancelled, the person must give a notice to each other person to whom the person has supplied an electronic recording system the subject of the approval that constitutes an electronic work diary, or of which an electronic work diary is a part, stating that the approval has been cancelled.

### **Example for the purposes of subsection (6)—**

The holder of an approval is a service provider who has supplied to the operator of a fatigue-regulated heavy vehicle an approved electronic recording system constituting an electronic work diary or of which an electronic work diary is a part. If, under subsection (4), the service provider gives the operator a notice stating the approval has been cancelled, the operator must give the driver of the vehicle a notice stating the approval has been cancelled.

Maximum penalty: \$6 000.

- (3) Section 355(8)—delete subsection (8)
- (4) Section 355(9)—redesignate subsection (9) as subsection (8)

## **51—Amendment of section 412—Protecting intelligent access information**

Section 412, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

## **52—Amendment of section 416—General restriction on use and disclosure of intelligent access information**

Section 416, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

**53—Amendment of section 428—Protecting intelligent access information collected**

Section 428, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

**54—Amendment of section 432—General restriction on use and disclosure of intelligent access information**

Section 432, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

**55—Amendment of section 442—Protecting intelligent access information collected**

Section 442, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

**56—Amendment of section 446—General restriction on use and disclosure of intelligent access information**

Section 446, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$20 000.

**57—Substitution of section 458**

Section 458—delete the section and substitute:

**458—Regulator’s power to grant heavy vehicle accreditation**

The Regulator may grant heavy vehicle accreditation.

**58—Amendment of section 463—Period for which heavy vehicle accreditation applies**

Section 463—after subsection (2) insert:

- (3) The maximum period for which the Regulator may grant heavy vehicle accreditation is 3 years.

**59—Amendment of section 488—Return of identity card**

Section 488, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$4 000.

**60—Amendment of section 494—Definitions for Chapter 9 Part 2**

Section 494(1), definition of *relevant place*—delete the definition and substitute:

*relevant place* means—

- (a) a place of business of a responsible person for a heavy vehicle; or
- (b) the relevant garage address of a heavy vehicle; or
- (c) the base of the driver or drivers of a heavy vehicle; or

- (d) a place where records required to be kept under this Law or a heavy vehicle accreditation are located or are required to be located under this Law or a heavy vehicle accreditation;

*residence*, that is a relevant place, means a place or part of a place mentioned in the definition of *relevant place* used predominantly for residential purposes.

#### **61—Amendment of section 495—Power to enter relevant place**

Section 495(1)(b)—after "the place is" insert:

not a residence and is

#### **62—Amendment of section 497—General power to enter places**

Section 497(1)(d)—after "place" insert:

other than a residence

#### **63—Amendment of section 525—Definitions for Division 6**

- (1) Section 525, definition of *defective vehicle label*, (b)(i)—delete subparagraph (i) and substitute:

- (i) the vehicle's registration number or, if the vehicle is not registered, a vehicle identifier of the vehicle; and

- (2) Section 525—after the definition of *identification details* insert:

*registration authority* means an authority responsible for the registration of heavy vehicles;

*vehicle identifier* means—

- (a) a VIN; or  
(b) engine number; or  
(c) chassis number; or  
(d) another identifying number issued by a registration authority.

**Example—**

an unregistered vehicle permit number

#### **64—Amendment of section 526—Issue of vehicle defect notice**

- (1) Section 526(2)(a)—delete "a stated location in a stated way" and substitute:

one or more stated locations in one or more stated ways

- (2) Section 526(5) to (8)—delete subsections (5) to (8) (inclusive)

#### **65—Amendment of section 527—Requirements about vehicle defect notice**

- (1) Section 527(1)(b)—delete "a location stated in the notice in a way stated in the notice" and substitute:

one or more locations stated in the notice in one or more ways stated in the notice

(2) Section 527(1)(e)—delete paragraph (e) and substitute:

- (e) details to identify the vehicle, including, for example—
  - (i) the vehicle’s registration number, or if the vehicle is not registered, a vehicle identifier of the vehicle; or
  - (ii) the vehicle’s make and category;

#### **66—Amendment of section 528—Defective vehicle labels**

Section 528(4)—delete "section 531(4)" and substitute:

section 531(5)

#### **67—Insertion of section 528A**

After section 528 insert:

##### **528A—Information not included in notice or label**

- (1) This section applies to information required to be included—
  - (a) in a defective vehicle label under section 525 (see paragraph (b)(i) of the definition of *defective vehicle label*); or
  - (b) in a vehicle defect notice under section 527(1)(e).
- (2) The information need only be included if it is reasonably practicable and safe for the authorised officer to obtain the information.

#### **68—Amendment of section 529—Using defective heavy vehicles contrary to vehicle defect notice**

Section 529, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$6 000.

#### **69—Insertion of sections 529A and 529B**

After section 529 insert:

##### **529A—Permission by authorised officer to use vehicle the subject of a vehicle defect notice**

- (1) An authorised officer may, on request made by the operator of a heavy vehicle that is the subject of a vehicle defect notice, give written permission for the vehicle to be used on a road during a period stated in the permission.
- (2) The authorised officer may only give the permission if the officer—
  - (a) is satisfied—
    - (i) that the vehicle will be used only for the purpose of driving the vehicle to and from a place where repairs are to be carried out; or
    - (ii) that the relevant repairs have been carried out and the vehicle will be taken within the stated period to be inspected for the purpose of enabling the vehicle defect notice to be cleared under section 530; and

- (b) is satisfied that the request is necessary and reasonable; and
  - (c) is satisfied that the use of the vehicle will not pose a safety risk.
- (3) For the purposes of subsection (2)(c), an authorised officer may require evidence of adequate repairs or other measures.
- (4) The permission is subject to conditions that—
  - (a) the use of the vehicle will be as mentioned in subsection (2)(a) and (c); and
  - (b) in relation to the use of the vehicle mentioned in subsection (2)(a)(i)—the vehicle will not be used to carry goods or passengers.
- (5) The authorised officer may also impose other reasonable conditions on the permission.
- (6) The use of the vehicle under the permission is not a contravention of the vehicle defect notice.
- (7) The use of a vehicle in contravention of a condition under subsection (4) or (5) is a contravention of the vehicle defect notice.

**529B—Permitted use of vehicle the subject of a vehicle defect notice without permission of authorised officer**

- (1) A heavy vehicle that is the subject of a vehicle defect notice may be used on a road if—
  - (a) the relevant repairs have been carried out; and
  - (b) the vehicle is being taken to a place to be inspected for the purpose of enabling the vehicle defect notice to be cleared under section 530; and
  - (c) the vehicle is not carrying goods or passengers; and
  - (d) the use of the vehicle does not pose a safety risk.
- (2) An authorised officer may require a driver of the heavy vehicle to produce evidence of the relevant repairs to the authorised officer within a reasonable time, and in a reasonable way, stated by the officer.
- (3) Subsection (1) stops applying to the vehicle if the driver fails to comply with the requirement.
- (4) The use of the heavy vehicle under subsection (1) is not a contravention of the vehicle defect notice.

**70—Amendment of section 531—Amendment or withdrawal of vehicle defect notices**

- (1) Section 531(3)—delete "the Regulator and the person to whom the vehicle defect notice was issued" and substitute:  
  
—

- (a) the Regulator; and
- (b) one of the following:
  - (i) the person to whom the vehicle defect notice was given;
  - (ii) the person in charge of the vehicle;
  - (iii) the registered operator;
  - (iv) if the vehicle is not registered—an owner.
- (2) Section 531(4)—redesignate subsection (4) as subsection (5)
- (3) Section 531—after subsection (3) insert:
  - (4) If the person given the notice of amendment or withdrawal is not the operator of the vehicle, the person must, as soon as reasonably practicable, give the notice to the operator.  
Maximum penalty: \$3 000.

#### **71—Amendment of section 590—Formal warning**

Section 590(3)—delete subsection (3) and substitute:

- (3) However, a warning must not be given for—
  - (a) a contravention of a mass, dimension or loading requirement constituting a substantial risk breach or severe risk breach;  
or
  - (b) a contravention of a maximum work requirement or a minimum rest requirement constituting a substantial risk breach, severe risk breach or a critical risk breach.

#### **72—Amendment of section 704—Offence to falsely represent that heavy vehicle authority is held etc**

- (1) Section 704(1)—delete subsection (1) and substitute:
  - (1) A person must not represent—
    - (a) that the person has been granted a heavy vehicle authority the person has not been granted; or
    - (b) that a heavy vehicle authority has been granted in relation to a thing for which it has not been granted; or
    - (c) that the person is operating under a heavy vehicle authority that the person is not entitled to operate under; or
    - (d) that a thing is operating under a heavy vehicle authority that the thing is not authorised to operate under.  
Maximum penalty: \$10 000.
- (2) Section 704(2)—after "the person" insert:  
or a thing
- (3) Section 704(3)(c)—before "exemption" insert:  
electronic recording system approval,

- (4) Section 704(4), definition of *heavy vehicle authority*, (b)—before "exemption" insert:  
electronic recording system approval,

**73—Amendment of section 725—Documents produced by an electronic recording system**

- (1) Section 725(2)(a) and (b)—redesignate paragraphs (a) and (b) as paragraphs (b) and (c) respectively
- (2) Section 725—before paragraph (b) (as redesignated under subregulation (1)) insert:
- (a) is presumed, unless the contrary is proved—
    - (i) to have been properly made by the system; and
    - (ii) to be a correct representation of the information generated, recorded, stored, displayed, analysed, transmitted and reported by the system; and

**74—Amendment of section 727—Definitions for Chapter 13 Part 4**

- (1) Section 727(1)—after the definition of *authorised use* insert:

*driver fatigue compliance function* means a function exercised for the purpose of—

- (a) the administration or enforcement of a driver fatigue provision; or
- (b) education, evaluation and similar activities supporting administration or enforcement of a driver fatigue provision;

*driver fatigue provision* means any of the following:

- (a) Chapter 6;
- (b) Chapter 8 to the extent the Chapter relates to BFM accreditation or AFM accreditation;
- (c) Division 8 of Chapter 9 Part 3;
- (d) Chapter 9, other than Division 8 of Chapter 9 Part 3, to the extent the Chapter applies to the enforcement of provisions mentioned in paragraphs (a) and (b);

*electronic work diary authorised use*, for electronic work diary protected information, means—

- (a) use by a person—
  - (i) in the exercise of a driver fatigue compliance function; or
  - (ii) not in the exercise of a driver fatigue compliance function but authorised under a warrant mentioned in section 729B; or
- (b) use by a person in the exercise of a function under another law if a warrant issued by a judge or magistrate under the other law or a different law authorises or permits the use of the information by the person; or

- (c) use by a court or tribunal in a proceeding under an Australian road law; or
- (d) use by a court or tribunal if an order of the court or tribunal requires the disclosure of the information to the court or tribunal; or
- (e) research purposes if the information contains no personal information; or
- (f) use prescribed by the national regulations; or
- (g) use referred to in subsection (3);

***electronic work diary information*** means information generated, recorded, stored, displayed, analysed, transmitted or reported by an approved electronic recording system that constitutes an electronic work diary, or of which an electronic work diary is a part;

***electronic work diary protected information***—

- (a) means electronic work diary information; but
  - (b) does not include—
    - (i) information obtained, collected or recorded other than for the purposes of Chapter 6 of this Law, even if the information is—
      - (A) coincidentally relevant for a purpose under Chapter 6; and
      - (B) recorded in an electronic work diary; or
    - (ii) information relating to proceedings before a relevant tribunal or court that are or were open to the public;
- (2) Section 727(1), definition of ***protected information***, (b)—after subparagraph (iii) insert:
- or
- (iv) electronic work diary protected information;
- (3) Section 727(2)—delete subsection (2) and substitute:
- (2) It is also an authorised use, for protected information disclosed to or otherwise held by a police agency for any purpose or for a particular purpose, to disclose the information to another police agency authorised to hold protected information (whether or not for the same purpose).
- (4) Section 727(3)—redesignate subsection (3) as subsection (4)
- (5) Section 727—after subsection (2) insert:
- (3) It is also an authorised use, for electronic work diary protected information disclosed to or otherwise held by a police agency for the purpose of the exercise of a driver fatigue compliance function, to disclose the information to another police agency authorised to hold electronic work diary protected information for the purpose of the exercise of a driver fatigue compliance function.



- (6) Section 727(4) (as redesignated under subregulation (4))—after "protected information" insert:

or electronic work diary protected information

#### **75—Amendment of heading to section 728—Duty of confidentiality**

Heading to section 728—after "**confidentiality**" insert:

**for protected information**

#### **76—Insertion of section 728A**

After section 728 insert:

##### **728A—Duty of confidentiality for electronic work diary protected information**

- (1) A person who is, or has been, a person exercising functions under this Law must not disclose electronic work diary protected information to another person.  
Maximum penalty: \$20 000.
- (2) Subsection (1) does not apply if—
  - (a) the disclosure is to an entity for an electronic work diary authorised use; or
  - (b) the disclosure is to, or made with the agreement of, the person to whom the information relates.

#### **77—Insertion of sections 729A and 729B**

After section 729 insert:

##### **729A—Electronic work diary protected information only to be used for electronic work diary authorised use**

- (1) A person who is, or has been, a person exercising functions under this Law must not use electronic work diary protected information other than for an electronic work diary authorised use.  
Maximum penalty: \$20 000.
- (2) A person to whom electronic work diary protected information is disclosed under section 728A(2)(a) must not use the information other than for the electronic work diary authorised use for which it was disclosed to the person.  
Maximum penalty: \$20 000.

##### **729B—Warrant authorising use of electronic work diary protected information**

- (1) A warrant issued under section 507 by an authorised warrant official who is a judge or magistrate may authorise electronic work diary protected information to be seized under the warrant.
- (2) The warrant must state the purpose for which the information may be used.

- (3) An authorised officer may apply for, and the authorised warrant official who is a judge or magistrate may issue, the warrant for entry of a vehicle at a place stated in the warrant or, despite sections 506(1) and 507(2)(a), wherever the vehicle is located.
- (4) Chapter 9 does not authorise an authorised officer to obtain electronic work diary protected information for a purpose other than the enforcement of a driver fatigue provision unless the information is authorised to be seized under a warrant mentioned in subsection (1).

### **78—Amendment of section 748—General savings and transitional provisions**

Section 748—after subsection (7) insert:

- (8) The national regulations may provide for, and from commencement day could always provide for—
  - (a) the issue of mass or dimension authorities or HML declarations in replacement of instruments or authorisations preserved under subsection (2), without further procedural requirements under the Law; and
  - (b) the further preservation of anything not covered by the replacement.
- (9) In this section—

*HML declarations* means HML declarations under the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*.

### **79—Insertion of Chapter 14 Part 3**

After section 755 insert:

## **Part 3—Heavy Vehicle National Law Amendment Act 2015 (Queensland)**

### **756—Application of section 87A to previously fitted plate or label**

Section 87A applies to tampering with a plate or label fitted or affixed to a heavy vehicle under section 86(2) or 87(3) before the commencement of section 87A.

### **757—Saving of stated map and other matters under section 119 or 142**

- (1) Subsections (2) to (5) apply to the following:
  - (a) a stated map applied under unamended section 119(2) in a mass or dimension exemption (notice) in existence immediately before the commencement;
  - (b) the areas or routes shown on the stated map immediately before the commencement;

- (c) a list of areas or routes applied, adopted or incorporated under Schedule 1, section 24(1) in a mass or dimension exemption (notice) in existence immediately before the commencement;
  - (d) road conditions or travel conditions shown on a stated map or list mentioned in paragraph (a) or (c).
- (2) The stated map is taken to be a stated map applied under amended section 119(2).
- (3) The list of areas or routes is taken to be a stated list applied under amended section 119(2).
- (4) The road conditions or travel conditions are taken to be imposed under amended section 119(3).
- (5) The areas, routes, road conditions and travel conditions shown on the stated map mentioned in subsection (2) or stated list mentioned in subsection (3) may only be amended under amended section 119 and section 119A.
- (6) Subsections (7) to (10) apply to the following:
  - (a) a stated map applied under unamended section 142(2) in a class 2 heavy vehicle authorisation (notice) in existence immediately before the commencement;
  - (b) the areas or routes shown on the stated map immediately before the commencement;
  - (c) a list of areas or routes applied, adopted or incorporated under Schedule 1, section 24(1) in a class 2 heavy vehicle authorisation (notice) in existence immediately before the commencement;
  - (d) road conditions or travel conditions shown on a stated map or list mentioned in paragraph (a) or (c).
- (7) The stated map is taken to be a stated map applied under amended section 142(2).
- (8) The list of areas or routes is taken to be a stated list applied under amended section 142(2).
- (9) The road conditions or travel conditions are taken to be imposed under amended section 142(3).
- (10) The areas, routes, road conditions and travel conditions shown on the stated map mentioned in subsection (7) or the stated list mentioned in subsection (8) may only be amended under amended section 142 and section 142A.
- (11) In this section—

*amended*, in relation to a section, means the section as amended by the amendment Act;

*amendment Act* means the *Heavy Vehicle National Law Amendment Act 2015* (Queensland);

**commencement** means—

- (a) for the purposes of subsection (1)—the commencement of the amendment of section 119 under the amendment Act; or
- (b) for the purposes of subsection (6)—the commencement of the amendment of section 142 under the amendment Act;

**road conditions** means road conditions required by the relevant road manager under section 160;

**travel conditions** means travel conditions required by the relevant road manager under section 161;

**unamended**, in relation to a section, means the section as it existed immediately before it was amended by the amendment Act.

### **758—Application of section 737 to a new penalty**

- (1) The repeal of an old penalty by the amendment Act repeals any increase, in force immediately before the repeal, in the amount of penalty applying under section 737.
- (2) The enactment of a new penalty includes the enactment of an increase, to take effect immediately on the commencement of the new penalty, in the amount of penalty applying under section 737.
- (3) For the purpose of applying section 737 under subsection (2) to a new penalty, the amount of penalty applying under section 737 is to be calculated as if—
  - (a) the new penalty had commenced before 1 July 2014; and
  - (b) the amount of penalty applying had been increased under section 737(2) on 1 July 2014 and any later 1 July happening before the new penalty actually commences.
- (4) Before the commencement of the new penalties, the Regulator must publish on the Regulator’s website the amounts of each penalty applying under subsections (2) and (3) and under section 737 on the commencement of the new penalties.

**Note—**

A list of all penalties to which section 737 applies must be published.

- (5) In this section—

**amendment Act** means the *Heavy Vehicle National Law Amendment Act 2015* (Queensland);

**old penalty** means a penalty that applied before the commencement of the amendment Act;

**new penalty** means a penalty that applies after the commencement of the amendment Act.

**80—Amendment of Schedule 4—Provisions specified for liability of executive officers for offences by corporations**

- (1) Schedule 4, table, entry relating to section 313, column 2—after "313(2)" insert:  
    , 313(3)
- (2) Schedule 4, table, entry relating to section 321, columns 2 and 3—delete "321(2)" wherever occurring and substitute in each case:  
    321(3)
- (3) Schedule 4, table, entry relating to section 347, column 2—delete "347(2), 347(3)" and substitute:  
    347
- (4) Schedule 4, table, entry relating to section 350—delete the entry
- (5) Schedule 4, table, entry relating to section 355, columns 2 and 3—delete "355(8)" wherever occurring
- (6) Schedule 4, table—before the entry relating to section 729 insert:  

728A	728A(1)	—
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- (7) Schedule 4, table—after the entry relating to section 729 insert:  

729A	729A(1), 729A(2)	—
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**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 14 January 2016

No 1 of 2016

MTR/15/071