

Clause 4

This Clause amends section 6(1) of the Principal Act by inserting definitions of “scheduler”, and “unloader” for the purposes of the new Parts 4A and 4B which are self explanatory and amending the definition of “work record” to reflect the fact the record will now be required to be kept under the Principal Act or the regulations rather than the *Vehicle and Traffic Act 1999* as is presently the case.

new section 97B

This section explains that Part 4A is intended to apply to drivers of 'regulated heavy vehicles' and to other parties "whose activities influence the conduct of drivers of regulated heavy vehicles in such a way as to affect the drivers' fatigue when driving on a road". Examples of such activities are provided.

new section 97C

This section provides definitions for certain words and terms used in Part 4A.

new section 97D

This section provides that for the purposes of Part 4A a reference to a driver of a regulated heavy vehicle includes both an employed and a self-employed driver.

new section 97E

This section specifies the parties in the “chain of responsibility” as; the employer of the driver; the prime contractor of the driver; the operator of the vehicle; the scheduler of goods or passengers for transport by the vehicle or the scheduler of the driver of the vehicle; the consignor of goods for transport by the vehicle; the consignee of goods for transport by the vehicle; the loading manager of goods for transport by the vehicle; ; the loader of goods on the vehicle and the unloader of goods from the vehicle.

new section 97F

This section specifies what is required where a provision of Part 4A requires a person to take all reasonable steps to do a specified thing or achieve a specified outcome. This includes:

- identifying and assessing, on a regular basis, risks to doing that thing or achieving that outcome; and
- taking reasonable steps to eliminate those risks; or
- if it is not reasonably practicable to eliminate those risks, taking reasonable steps to reduce the risk, or to minimise the likelihood of the risk eventuating.

Matters that a court may have regard to in deciding whether the person concerned did or did not take reasonable steps are listed.

new section 97G

Provides that if in a prosecution for an offence under Part 4A it is necessary to prove someone ought to have reasonably have known something the issue is to be decided by taking into account the persons abilities, experience, expertise, knowledge, qualifications and training together with the circumstances of the offence and any other matters specified by the regulations.

new section 97H

This Clause makes it clear that for Part 4A of the Act a person can cause something to happen even though the person had no intention of causing the thing to happen.

new section 97I

This clause provides that for the purposes of Part 4A the Act a reference to causing a thing includes contributing or causing the thing and encouraging the thing.

new section 97J

This section describes how a duty holder can cause a fatigue offence by their actions or failure to act. The section also defines the terms “duty holder” and “fatigue offence for the purposes of the section. It also provides that if a reasonable person would have foreseen that an action or failure to act would be likely to cause the occurrence of the fatigue offence there is created a rebuttable presumption that the duty holder caused the offence.

new section 97K

This section provides an inclusive definition of what constitutes fatigue.

Matters that a court may have regard to in deciding whether a driver is fatigued are listed including cause of fatigue, sign of fatigue and the body of fatigue knowledge (all defined terms).

new section 97L

This section defines impaired by fatigue as when a driver is fatigued to the extent that he or she is incapable of driving a vehicle safely.

Matters that a court may have regard to in deciding whether a driver is fatigued are listed including any relevant causes of fatigue or signs of fatigue and the body of fatigue knowledge.

The section also provides that a court may consider a driver to be impaired by fatigue even if the driver has complied with any other requirements of this or any other legislation (eg compliance with work/rest hours).

new section 97M

This section provides that a person must not drive a regulated heavy vehicle while impaired by fatigue.

The section also provides a capacity for a jurisdiction to provide a limited double jeopardy protection for drivers from being prosecuted for contemporaneous offences resulting from conduct at a particular time, but only where the jurisdiction chooses to prescribe those other offences by regulation. For instance, a person who drives while impaired by fatigue may be guilty of an offence of dangerous driving as well as an offence under this section. If a jurisdiction prescribes this offence, a person could not be convicted of both offences in relation to the same instance of fatigued driving.

new section 97N

This section provides that a party in the chain responsibility must take all reasonable steps to ensure that a person does not drive the vehicle on a public street while the person is impaired by fatigue.

It is not necessary to establish that a driver drove or would have driven the vehicle while impaired by fatigue in order to prove an offence under this section. The section also provides that evidence that a person is complying with a prescribed fatigue duty under another law is prima facie evidence that the defendant had taken all reasonable steps.

Where a jurisdiction considers there is an equivalent in the requirements of another legislative regime directed toward the management of fatigue risks, this can be given formal legal recognition using this provision. For instance, a workplace safety law that requires a party to manage fatigue risks could be recognised under this provision.

Finally, the section also provides that evidence of compliance with all the requirements of BFM or AFM accreditation is prima facie evidence that a person has taken all reasonable steps.

new section 97O

This section provides that an employer, prime contractor and operator must:

- take all reasonable steps to ensure that their 'business practices' will not cause or permit the driver to drive in breach of the Act or in breach of another law (such as speeding) in order to avoid driving while fatigued or in breach of his or her work/rest hours option; and
- not cause or permit a driver to drive, or enter into a contract or agreement to that effect, unless they have made reasonable inquiries to satisfy themselves that the scheduler has complied with the duties section 97P.

new section 97P

This section provides that a scheduler must:

- take all reasonable steps to ensure that the schedule for a driver will not cause or permit the driver to drive in breach of the Act or in breach of another law (such as speeding) in order to drive while fatigue or in breach of his or her work/rest hours option; and
- not cause or permit a driver to drive a vehicle unless the schedule allows for the driver to take rest breaks in accordance with his or her work/rest hours option and for traffic conditions and other delays that could reasonably be expected..

new section 97Q

This section provides that a consignor and consignee must take all reasonable steps to ensure that the terms of consignment will not result in, encourage or provide an incentive to:

- the driver to drive in breach of the Act or in breach of another law (such as speeding) in order to avoid driving while fatigued or in breach of his or her work/rest hours option; or
- the employer, prime contractor or operator to cause or permit the driver to drive in breach of the Act or in breach of another law (such as speeding) in order to drive while fatigued or in breach of his or her work/rest hours option.

Additionally, the section provides that a consignor and consignee must not cause or permit a driver to drive the vehicle or enter into a contract or agreement to that effect unless they have made reasonable inquiries to satisfy themselves that:

- the scheduler has complied with the duties under section 97P; and

the driver's employer or the driver's prime contractor and the operator of the driver's vehicle have complied with section 97O.

new section 97R

This section provides that a loading manager must take all reasonable steps to ensure that the arrangements for loading and unloading vehicles at the premises that they manage will not cause, or contribute to causing, a driver to drive in breach of the Act or in breach of another law (such as speeding) in order to avoid driving while fatigued or in breach of his or her work/rest hours option. Examples include managing loading queues to enable drivers to rely on time slots allocated.

In addition, the section provides that, if the loading manager is unable to nominate a loading time accurately, the loading manager must take all reasonable steps to ensure that a driver is able to take rest while waiting for their vehicle to be loaded or unloaded.

new section 97S

This section prohibits a person making requests or demands, either directly or indirectly, that would cause or contribute to breaches of the Act by drivers or parties in the chain of responsibility.

new section 97T

This section prohibits contracts or agreements with drivers or other parties in the chain of responsibility that would cause or contribute to breaches of the Act by drivers or parties in the chain of responsibility.

new section 97U

This section provides that proceedings may be taken against a person even if the offence was committed in another jurisdiction.

new section 97V

This section provides that an authorised officer or police officer may direct a driver who he or she considers to be impaired by fatigue:

- to take rest immediately;
- to take additional rest at their next required rest break;
- to work reduced hours in the next relevant period;
- to take the next night rest time;
- not to work for a specified period of time;
- to stop driving immediately, and authorise a qualified person to move the vehicle to a suitable rest place; or
- not to work for a 24-hour period, if the driver fails to produce his or her work diary.

The nature of these powers varies according to the risk category of the breach detected.

new section 97W

This section requires an authorised officer or police officer who stops a driver to make if requested to do so an annotation in the driver's work diary setting out certain particulars.

new section 97X

This section specifies the regulation making provisions for the purposes of Part 4A.

PART 4B—SPEED COMPLIANCE

new section 97Y

States the purpose of Part 4B of the Act is to improve road safety and compliance by imposing responsibility in relation to speeding heavy vehicles on those whose 'business activities' influence the conduct of drivers of such vehicles.. In essence it requires: operators; schedulers; loading managers; and consignors, to take reasonable steps to ensure their activities do not cause a driver to exceed speed limits.

new section 97Z

Defines for the purposes of Part 4B the terms “loading manager” “prime contractor” “reasonable steps”, “speed limit” and “speeding offence”.

new section 97ZA

This section describes how a person can cause something to happen without any intention of causing that thing to happen.

new section 97ZB

This clause provides that for the purposes of Part 4B of the Act a reference to causing a thing includes contributing or causing the thing and encouraging the thing.

new section 97ZC

This section applies if an act of or failure to act by a duty holder causes a speeding offence to occur. The section defines the term “duty holder” for the purposes of the section. It also provides that if a reasonable person would have foreseen that an action or failure to act would be likely to cause the occurrence of the speeding offence there is created a rebuttable presumption that the duty holder caused the offence.

new section 97D

This section applies to an employer, prime contractor and operator and sets out the reasonable steps required to be taken to ensure their business practices will not cause a driver to exceed speed limits.

new section 97ZE

This section applies to an employer, prime contractor and operator and states their duty to take reasonable steps to ensure drivers of vehicles subject to their control do not commit speeding offences while driving the vehicle. It is to be noted that a person is not liable if the vehicle was a combination and neither the driver nor the towing vehicle was subject to the person’s control. The reasons for this exclusion is that trailers in a combination are often owned by persons who may have no control over the driver or the towing vehicle. This section includes a table which sets out the level of the offence according to the speed limit where the speeding offence occurred.

new section 97ZF

This section sets out the duty of a scheduler, to take reasonable steps to ensure a driver’s schedule will not cause the driver to exceed speed limits.

new section 97ZG	This section provides that the duty of a consignor and consignee is to take all reasonable steps to ensure the terms of a consignment (for example, delivery times), will not cause the driver of the vehicle transporting the goods to exceed speed limits, or cause the employer, prime contractor, or operator of the heavy vehicle to cause the driver to exceed speed limits.
new section 97ZH	This section provides that the duty of a loading manager is to take all reasonable steps to ensure arrangements for loading and unloading will not cause the driver of a vehicle to exceed speed limits.
new section 97ZI	<p>This section establishes the parties in the chain of responsibility to be the employer of the driver; the prime contractor of the driver; the operator of the vehicle; the scheduler of goods or passengers, or the driver of the vehicle; the consignor; the consignee; the loading manager; the loader and the unloader.</p> <p>The section also makes it clear that a person can be in the chain of responsibility in more than one capacity.</p>
new section 97ZJ	This section prohibits a person making requests or demands, either directly or indirectly that would have the effect causing or contributing to the driver exceeding any speed limit.
new section 97ZK	This section prohibits contracts or agreements being entered into with drivers or other parties in the chain of responsibility that would have the effect of causing or contributing to the driver exceeding any speed limit.
new section 97ZL	<p>This section defines what is required in Part 4B for a person to take all reasonable steps to ensure a specified thing will not cause a driver of a vehicle to exceed any speed limit that applies to that vehicle. This includes:</p> <ul style="list-style-type: none"> • identifying and assessing, on a regular basis, risks to doing that thing or achieving that outcome; and • taking reasonable steps to eliminate those risks; or • if it is not reasonably practicable to eliminate those risks, taking reasonable steps to reduce the risk, or to minimise the likelihood of the risk eventuating.

Matters that a court may have regard to are specified

new section 97ZM

Provides that if in a prosecution for an offence under Part 4B it is necessary to prove someone ought to have reasonably have known something the issue is to be decided by taking into account the persons abilities, experience, expertise, knowledge, qualifications and training together with the circumstances of the offence and any other matters specified by the regulations. In a prosecution under Part 4B it is not necessary to establish that a driver exceeded a speed limit..

Clause 7

Amends section 163(4)(b) of the Principal Act to increase the maximum penalty that may be fixed under the regulations to 200 penalty units.

Clause 8

Amends the Principal Act by inserting a new section 163A to provide for the making of regulations for the Intelligent Access Program..

Clause 9

Amends the Principal Act by inserting a new Schedule 2 which specifies the risk categories for Fatigue Management offences.

Clause 10

Clause 10 is a standard provision agreed to be included in Amendment Bills, the effect of which is to automatically repeal the Act after 90 days from the date of the commencement of all of the provisions of the Act. This will make it unnecessary for the Government to later repeal Act by a Legislation Repeal Act. Once the amendments are incorporated into the Principal Act the Amendment Act serves no practical purpose and can be safely repealed.