

TASMANIA

HEAVY VEHICLE ROAD TRANSPORT AMENDMENT BILL 2009

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HEAVY VEHICLE ROAD TRANSPORT AMENDMENT BILL 2009

*(Brought in by the Minister for Infrastructure, the Honourable
Graeme Lindsay Sturges)*

A BILL FOR

An Act to amend the *Heavy Vehicle Road Transport Act 2009*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Heavy Vehicle Road Transport Amendment Act 2009*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Principal Act

In this Act, the *Heavy Vehicle Road Transport Act 2009** is referred to as the Principal Act.

*No. 19 of 2009

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4. Section 6 amended (Interpretation)

Section 6(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “run”:

“scheduler” means –

- (a) a person who schedules a driver’s work or rest time;
or
 - (b) a person who schedules the transport of passengers or goods by road;
- (b) by inserting the following definition after the definition of “unit load”:

“unloader”, in relation to goods, means –

- (a) a person who unloads from a vehicle or combination goods that have been transported by road; or
- (b) a person who unloads from a vehicle or combination a freight container (whether or not containing goods) that has

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been transported by road;
or

(c) without limiting
paragraph (a) or (b), a
person who unloads from
a freight container that is
on a vehicle or
combination goods that
have been transported by
road; or

(d) a person who supervises
an activity mentioned in
paragraph (a), (b) or (c);
or

(e) a person who manages or
controls an activity
mentioned in
paragraph (a), (b), (c) or
(d);

(c) by omitting “, rest time and driving time
required to be kept by a driver in
accordance with regulations under the
Vehicle and Traffic Act 1999.” from the
definition of “work record” and
substituting “and rest time required to be
kept by a driver under this Act or the
regulations.”.

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5. Section 93 amended (False or misleading transport documentation: liability of consignor, packer, loader, receiver and others)

Paragraph (a)(ii) of the penalty under section 93(5) of the Principal Act is amended by omitting “1 000” and substituting “100”.

6. Parts 4A and 4B inserted

After section 97 of the Principal Act, the following Parts are inserted:

PART 4A – FATIGUE MANAGEMENT
Division 1 – Preliminary

97A. Purpose of Part

- (1) The principal purpose of this Part is to provide for the safe management of the fatigue of drivers of regulated heavy vehicles while they are driving on a public street.
- (2) In outline, this Part provides –
 - (a) for general duties, to avoid or prevent drivers from driving regulated heavy vehicles on a public street while they are impaired by fatigue, and for extra duties on certain parties in the chain of responsibility to do certain things to help drivers comply with this Part; and

- (b) that parties in the chain of responsibility are liable for ensuring that a driver complies with his or her relevant work/rest hours option.

97B. Application of Part

This Part applies to –

- (a) drivers of regulated heavy vehicles; and
- (b) certain persons 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 paragraph (b)

- employers and prime contractors of drivers of regulated heavy vehicles
- operators of regulated heavy vehicles
- persons who schedule goods or passengers for transport by regulated heavy vehicles or who schedule drivers of regulated heavy vehicles
- consignors and consignees of goods for transport by regulated heavy vehicles
- loaders and unloaders of goods for transport by regulated heavy vehicles

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- persons who manage or operate premises where regulated heavy vehicles are loaded or unloaded or who supervise the activities of loaders and unloaders.

Note It is the performance of any of these functions, whether exclusively or occasionally, that determines whether a person falls within any of these definitions, rather than their job title or contractual description.

97C. Interpretation of Part 4A

In this Part –

“ADR 42” means the national standard described as ADR 42, as in force from time to time under the *Motor Vehicle Standards Act 1989* of the Commonwealth;

“AFM” is an acronym for Advanced Fatigue Management;

“AFM accreditation” means an AFM accreditation that is granted under the regulations, or a corresponding fatigue law, and is in force;

“AFM hours” means the work times and rest times set out in an AFM accreditation for a driver working under that accreditation;

“articulated” for a vehicle, means –

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- (a) the vehicle consists of a motor vehicle and a trailer; and
- (b) the trailer is pivoted to the motor vehicle; and
- (c) part of the trailer (not being a pole, drawbar or similar device) is superimposed on the motor vehicle;

“Australian Transport Council”
includes –

- (a) the Australian Transport Council comprising Commonwealth, State and Territory Ministers responsible for transport and road issues; and
- (b) in relation to a particular matter, includes a person who, or body that, has been authorised by the organisation referred to in paragraph (a) to act as its delegate in relation to that matter;

“BFM” is an acronym for Basic Fatigue Management;

“BFM accreditation” means a BFM accreditation, that is granted

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under the regulations, or a corresponding fatigue law, and is in force;

“BFM hours” means the prescribed work and rest times for a driver working under BFM accreditation;

“body of fatigue knowledge” – see section 97K(5);

“bus” means a motor vehicle built mainly to carry people that seats more than 12 adults (including the driver);

“business day” means a day that is not a Saturday or Sunday or a statutory holiday as defined in the *Statutory Holidays Act 2000*;

“cause of fatigue” – see section 97K(3);

“corresponding fatigue law”, for this Part or a provision of this Part, means –

- (a) a law in force in another jurisdiction corresponding to this Part or a provision of this Part; or
- (b) a law of another jurisdiction that is declared under the

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regulations to be a corresponding fatigue law, whether or not the law corresponds, or substantially corresponds, to this Part;

“critical risk offence” means an offence that is specified as a critical risk offence in Schedule 2 or the regulations;

“fatigue” – see section 97K;

“Fatigue Authorities Panel” means the body of that name established in accordance with the Fatigue Authorities Panel Rules made by the National Transport Commission, and approved by the Australian Transport Council on 18 July 2008, as amended from time to time;

“heavy truck” means –

- (a) a motor vehicle (except a bus or tram) with a GVM of more than 12 tonnes; or
- (b) a motor vehicle (except a bus or tram) that is part of a combination, if the total of the GVMs of the vehicles in the combination is of more than 12 tonnes;

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“impaired by fatigue” – see section 97L;

“loading manager” means –

- (a) a person who manages, or who is responsible for the operation of, a premises at which usually on a business day at least 5 regulated heavy vehicles –
 - (i) are loaded with goods for transport; or
 - (ii) have goods that the vehicles have transported unloaded; or
- (b) a person who directly or indirectly supervises, manages or controls the loading or unloading of regulated heavy vehicles at such a premises;

Examples of a loading manager

A company that runs, or a site manager for, a distribution centre.

Example of calculation of vehicle numbers

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At a premises on a usual business day, 3 regulated heavy vehicles are loaded with goods, and 3 other regulated heavy vehicles have goods that have been transported to the premises unloaded. The manager of the premises is a loading manager because at least 5 vehicles are usually loaded or unloaded at the premises on a business day.

“minor risk offence” means an offence that is specified as a minor risk offence in Schedule 2 or the regulations;

“motor home” means a rigid or articulated motor vehicle or combination that is built, or permanently modified, primarily for residential purposes, but does not include a motor vehicle only because it is constructed with a sleeper berth;

“parties in the chain of responsibility” – see section 97E;

“plant” means a motor vehicle that –

- (a) is built, or permanently modified, primarily to operate as a machine or implement –
 - (i) off-road; or
 - (ii) on an area that divides a road; or

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- (iii) on a footpath or nature strip adjacent to a road; or
 - (iv) on an area that is not a road and that is open to the public and designated for use by cyclists or animals; or
 - (v) on an area that is not a road and that is open to or used by the public for driving, riding or parking vehicles; or
 - (vi) on an area of road that is under construction; and
- (b) is not capable of carrying goods or passengers by road;

Example of what is plant

- an agricultural machine, backhoe, bulldozer, excavator, forklift, front-end loader, grader or tractor or a motor vehicle that is registered as a type P plant-based special-purpose vehicle.

Example of what is not plant

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- a truck-mounted crane or truck-mounted drilling rig.

“prescribed driver offence under another law” – see section 97M(5);

“prescribed fatigue duty under another law” – see section 97N(4);

“prime contractor” means a person who engages someone else to drive a regulated heavy vehicle under a contract for services;

Example of a prime contractor

A logistics business that engages a subcontractor to transport goods.

“reasonable steps” – see section 97F;

“regulated heavy vehicle” means a heavy truck or a bus, but does not include –

(a) plant; or

(b) a motor home;

Note 1 A regulated heavy vehicle is a sub-category of heavy vehicle as defined in section 6.

“rest time” , for a driver, means the time that is not work time for the driver;

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“risk category”, for a contravention of a fatigue management requirement, means one of the following categories of offences:

- (a) minor risk offence;
- (b) substantial risk offence;
- (c) severe risk offence;
- (d) critical risk offence;

“severe risk offence” means an offence that is specified as a severe risk offence in Schedule 2 or the regulations;

“sign of fatigue” – see section 97K(4);

“standard hours” means the prescribed work times and rest times that apply to a driver if the driver is not working under a BFM accreditation or an AFM accreditation;

“substantial risk offence” means an offence that is specified as a substantial risk offence in Schedule 2 or the regulations;

“work diary” means a diary of work time and rest time required to be kept by a driver under the regulations;

“work/rest hours”, in relation to a driver, means the maximum work time and the minimum rest time that the driver must have under that driver’s work/rest hours option;

“work/rest hours exemption” is an exemption under the regulations from complying with restrictions imposed under this Act or the regulations in relation to work time or rest time;

“work/rest hours option”, in relation to a driver, means whichever one of the following applies to the driver at that time under this Act:

- (a) standard hours;
- (b) BFM hours;
- (c) AFM hours;
- (d) the hours specified in a work/rest hours exemption.

“work time” for a driver, means –

- (a) the time that the driver spends driving a regulated heavy vehicle, whether or not it is on a public street; and

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(b) any other time that the driver spends doing tasks that are related to the operation of a regulated heavy vehicle, including for example –

- (i) loading or unloading the vehicle; and
- (ii) inspecting, servicing or repairing the vehicle; and
- (iii) inspecting or attending to the load on the vehicle; and
- (iv) attending to the passengers of a bus; and
- (v) cleaning or refuelling the vehicle; and
- (vi) performing marketing tasks in relation to the operation of the vehicle; and
- (vii) helping with, or supervising an

activity mentioned
in subparagraphs
(i) to (vi); and

- (c) recording information, or completing a document, in accordance with the regulations or otherwise, in relation to the operation of the vehicle.

Division 2 – Who this Part applies to

97D. Who is a driver

For the purposes of this Part, a reference to a driver is a reference to the driver of a regulated heavy vehicle and includes an employed driver and a self-employed driver.

97E. Who are parties in chain of responsibility

- (1) For the purposes of this Part, the following people are parties in the chain of responsibility in relation to a regulated heavy vehicle:
 - (a) the employer of the driver of the vehicle;
 - (b) the prime contractor of the driver;
 - (c) the operator of the vehicle;

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- (d) the scheduler of –
 - (i) goods or passengers for transport by the vehicle;
and
 - (ii) the driver of the vehicle;
- (e) the consignor of goods for transport by the vehicle;
- (f) the consignee of goods for transport by the vehicle;
- (g) the loading manager of goods for transport by the vehicle;
- (h) the loader of goods on to the vehicle;
- (i) the unloader of goods from the vehicle.

Note It is the performance of any of these functions, whether exclusively or occasionally, that determines whether a person falls within any of these definitions, rather than their job title or contractual description.

- (2) A person may be a party in the chain of responsibility in more than one capacity.

Example

A person may be an employer, operator and consignor at the same time in relation to a driver and be subject to duties in each of those capacities.

Division 3 – Reasonable steps

97F. What are reasonable steps

- (1) If a provision of this Part requires a person to take all reasonable steps to ensure that a specified thing will not cause a particular outcome, without limiting the ways in which a person may take those steps, he or she is to be regarded as having taken those steps if he or she –
 - (a) identifies and assesses –
 - (i) what aspects of the specified thing might cause the particular outcome; and
 - (ii) the risks that those aspects might cause the particular outcome; and
 - (iii) if there is a substantial risk that an aspect might cause the particular outcome, what he or she can reasonably do to eliminate that risk, or if it is not reasonably possible to eliminate that risk, to minimise that risk; and
 - (b) repeats that identification and assessment –

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- (i) if anything occurs that may adversely affect, or that indicates that there may be a problem with, the specified thing; and
- (ii) in any event, at least annually; and
- (c) does the things identified under paragraph (a)(ii) as being things that he or she can reasonably do; and
- (d) documents the actions that he or she has taken under paragraphs (a), (b) and (c), and retains that documentation for at least 3 years.

Example of a specified thing and a particular outcome

Among other things, section 97P requires a scheduler to take all reasonable steps to ensure that a driver's schedule (the specified thing in this case) will not cause the driver to drive while impaired by fatigue (the particular outcome).

Examples of ways to identify and assess what aspects of specified things might cause drivers to commit fatigue-related offences

- consulting drivers, other parties in the chain of responsibility, unions and industry associations
- reviewing driving or work schedules and work records, including opportunities for rest breaks
- reviewing loading and unloading times and delays at loading and unloading places

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-
- reviewing contractual arrangements and documentation relating to the consignment and delivery of goods
 - regular health and safety audits
 - regularly assessing driver fitness for duty
 - analysing injury and incident reports.

Examples of things that can be done to eliminate or minimise risks arising from those aspects

- workplace procedures and policies that relate to fatigue and compliance with work/rest hours
- contingency planning in relation to fatigue and work/rest hours
- a program to report and monitor fatigue-related incidents, risks and hazards
- a program for assessing driver fitness for duty
- training and information for drivers, staff and parties in the chain of responsibility about fatigue and compliance with work/rest hours
- appropriate supervision and management of drivers, staff and parties in the chain of responsibility
- scheduling arrangements that take account of fatigue risks and work/rest hours
- allowing for traffic or other delays in scheduling
- a system for giving drivers sufficient notice of schedule changes
- a system to maintain equipment, work systems and work records
- compliance assurance conditions in relevant commercial arrangements with other parties in the chain of responsibility

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- avoiding incentives or demands in commercial arrangements that may cause fatigue or breaches of work/rest hours

- a system for monitoring and remedying problems related to fatigue and work/rest hours.

(2) A court may have regard to anything that it considers to be relevant when it is deciding whether things that the person did, or did not do, were reasonable steps, including –

- (a) the nature of the aspect or risk that the person was attempting to, or should have been attempting to, address; and
- (b) the likelihood of a risk eventuating; and
- (c) the degree of harm that would result if a risk did eventuate; and
- (d) the circumstances of the offence (e.g. the risk category that the relevant offence belongs to); and
- (e) the degree to which the person (either personally or through an agent or employee) had the ability to eliminate, prevent or reduce an aspect, or to eliminate a risk or to minimise the likelihood of a risk eventuating; and
- (f) the experience, expertise and knowledge that the person, or the

person's agent or employee, had or ought reasonably to have had; and

- (g) the availability and suitability of ways to eliminate, prevent or reduce an aspect, or to eliminate a risk or to minimise the likelihood of a risk eventuating; and
- (h) the cost of eliminating a risk or minimising the likelihood of a risk eventuating; and
- (i) the body of fatigue knowledge.

97G. Deciding whether persons ought reasonably to have known

If, in a prosecution for an offence against this Part, it is relevant to prove that someone ought reasonably to have known something, the issue must be decided having regard to –

- (a) the person's abilities, experience, expertise, knowledge, qualifications and training; and
- (b) the circumstances of the offence; and
- (c) any other matters prescribed by the regulations.

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Division 4 – Causation

97H. Intention irrelevant in determining causation

For the purposes of this Part, a person can cause something to happen even though he or she had no intention of causing that thing to happen.

97I. Cause includes “contributing to causing” and “encourage”

For the purposes of this Part, a reference to causing a thing is to be read as including a reference to contributing to causing the thing, and to encouraging the thing.

97J. Objective reasonableness test to be used in determining causation

- (1) This section applies if an act of, or a failure to act by, a duty holder causes a fatigue offence to occur.
- (2) If it is likely that a reasonable person would have foreseen that the act, or failure to act, would be reasonably likely to cause the occurrence of the fatigue offence, for the purposes of this Part there is created a rebuttable presumption

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that the duty holder caused the
occurrence of the fatigue offence.

(3) In this section –

“duty holder” means a person on
whom a duty is imposed by
section 97O, 97P, 97Q or 97R to
take reasonable steps to ensure
that a thing will not cause a
fatigue offence;

“fatigue offence” means an
occurrence in which the driver of
a regulated heavy vehicle drives
the vehicle –

- (a) while impaired by fatigue;
or
- (b) while in breach of his or
her work/rest hours
option; or
- (c) in breach of another law
in order to avoid driving
while impaired by fatigue
or while in breach of his
or her work/rest hours
option.

Note Section 97L explains what impaired by fatigue
means.

Division 5 – What is fatigue

97K. What is fatigue

- (1) Fatigue includes –
 - (a) feeling sleepy; and
 - (b) feeling physically or mentally tired, weary or drowsy; and
 - (c) feeling exhausted or lacking energy; and
 - (d) behaving in a way that is consistent with paragraph (a), (b) or (c).
- (2) When deciding whether a driver is fatigued, a court may take into account anything it considers is relevant, including for example –
 - (a) what is commonly understood as being fatigued; and
 - (b) the causes of fatigue; and
 - (c) the signs of fatigue; and
 - (d) the body of fatigue knowledge; and
 - (e) any matter prescribed by the regulations.
- (3) A “cause of fatigue” is any factor that causes or contributes to a person’s

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fatigue while driving a regulated heavy vehicle on a public street (whether or not the cause arises while the person is at work).

Examples of causes of fatigue

- physical or mental exertion
- long periods of time awake
- not enough sleep or not enough restorative sleep
- not enough rest breaks
- a person's circadian rhythm (i.e. the "body clock")
- environmental stress (e.g. heat, noise, vibrations)
- personal health.

- (4) A "sign of fatigue" is a sign that a person was, is or will be fatigued while driving a regulated heavy vehicle on a public street (whether the sign manifests itself before, during or after work).

Examples of signs of fatigue

- a lack of alertness
- an inability to concentrate
- a reduced ability to recognise or respond to external stimuli
- poor judgment or memory
- making more mistakes than usual
- drowsiness, or falling asleep, at work (including micro sleeps)

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- finding it difficult to keep the eyes open
- needing more frequent naps than usual
- not feeling refreshed after sleep
- excessive head nodding or yawning
- blurred vision
- mood changes, increased irritability or other changes to the person's mental health
- changes to the person's health or fitness.

(5) The “body of fatigue knowledge” includes any accreditation scheme, scientific knowledge or expert opinion, guidelines, standards or other knowledge that is relevant to preventing or managing the exposure to risk of fatigue, either at a workplace or on a road.

97L. What is impaired by fatigue

- (1) A driver is impaired by fatigue if the driver is fatigued to the extent that he or she cannot drive the vehicle without a risk to safety.
- (2) When deciding whether a driver was impaired by fatigue, a court may take into account anything it considers is relevant, including for example –
 - (a) any relevant cause of fatigue or sign of fatigue that was evident,

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and the degree to which it may indicate that the driver was impaired by fatigue; and

- (b) any behaviour of the driver that may have resulted from being impaired by fatigue; and

Examples

- the circumstances of any incident, crash or near miss
- poor driving judgment
- inattentive driving (e.g. drifting into other lanes or not changing gears smoothly).

- (c) the nature and extent of any physical or mental exertion by the driver; and

- (d) whether the driver was in breach of his or her work/rest hours.

- (3) A court may consider a driver to be impaired by fatigue even if the driver has complied with any requirements under this Act or under any other legislation.
- (4) In proceedings for an offence under this Part, a statement by the complainant that, at a specified time or during a specified period, the complainant observed a specified driver exhibiting specified behaviour is evidence of that.

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- (5) A “**statement by the complainant**” is a statement in a complaint or charge made by the person bringing the proceedings.

Division 6 – Duty to avoid and prevent driver fatigue

97M. Driver’s duty to avoid driver fatigue

- (1) A person must not drive a regulated heavy vehicle on a public street while he or she is impaired by fatigue.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 50 penalty units; or
- (b) a subsequent offence, a fine not exceeding 100 penalty units.

Note A driver may be impaired by fatigue even though he or she has complied with other requirements of this Act – see section 97L(3).

- (2) An offence against subsection (1) is an offence of absolute liability.
- (3) If, in relation to conduct at a particular time in relation to which a driver has been charged with an offence under subsection (1), the driver has been convicted of a prescribed driver offence under another law in relation to the same conduct, the court must discharge the proceedings against the driver.

- (4) If, in relation to conduct at a particular time in relation to which a driver has been charged with an offence under subsection (1), the driver has been convicted, the court must discharge any proceedings against the driver for a prescribed driver offence under another law in relation to the same conduct.
- (5) A “prescribed driver offence under another law” means an offence under another law of this jurisdiction prescribed by the regulations.

97N. Duty of party in chain of responsibility to prevent driver fatigue

- (1) A party in the chain of responsibility in relation to a regulated heavy vehicle 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.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

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- (2) An offence against subsection (1) is an offence of absolute liability.

Note 1 Section 97E explains who are parties in the chain of responsibility.

Note 2 Section 97F explains what reasonable steps are.

- (3) For the purposes of subsection (1), evidence –
- (a) that a party complied with a relevant prescribed fatigue duty under another law is evidence that the party took all the reasonable steps required by that subsection; and
 - (b) that an operator complied with the requirements of a BFM or AFM accreditation is evidence that the operator took all the reasonable steps required by that subsection.
- (4) A “prescribed fatigue duty under another law” means a duty under another law of this jurisdiction or of another participating jurisdiction prescribed by the regulations.
- (5) In a prosecution under subsection (1), it is not necessary to prove that any particular person drove, or would or may have driven, the vehicle on a public street while impaired by fatigue.

Division 7 – Additional duties of certain parties in the chain of responsibility

97O. Duty of employer, prime contractor and operator

- (1) This section applies to –
 - (a) the employer of an employed driver of a regulated heavy vehicle; and
 - (b) the prime contractor of a self-employed driver of a regulated heavy vehicle; and
 - (c) the operator of the regulated heavy vehicle if the driver of the vehicle is to make a journey for the operator.
- (2) The employer, prime contractor and operator each must take all reasonable steps to ensure that his or her business practices will not cause the driver to –
 - (a) drive while impaired by fatigue; or
 - (b) drive while in breach of his or her work/rest hours option; or
 - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

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Penalty: In the case of –

(a) an individual –

- (i) for a first offence,
a fine not
exceeding 50
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 100
penalty units; or

(b) a body corporate –

- (i) for a first offence,
a fine not
exceeding 250
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 500
penalty units.

Note 1 Section 97F explains what reasonable steps are.

Note 2 Section 97L explains what impaired by fatigue means.

(3) The employer must not cause the driver to drive the vehicle unless –

- (a) the employer has complied with subsection (2); and

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-
- (b) the employer, after making reasonable inquiries, is satisfied that the scheduler has complied with section 97P.

Penalty: In the case of –

- (a) an individual –

- (i) for a first offence,
a fine not
exceeding 20
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 50
penalty units; or

- (b) a body corporate –

- (i) for a first offence,
a fine not
exceeding 100
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 250
penalty units.

- (4) The prime contractor and operator each must not cause the driver to drive the vehicle, or enter into a contract or agreement with the driver to that effect, unless –

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- (a) the prime contractor or operator, as the case may be, has complied with subsection (2); and
- (b) the prime contractor or operator, after making reasonable inquiries, is satisfied that the scheduler has complied with section 97P.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 20 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 50 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 100 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 250 penalty units.

(5) In this section –

“business practices” means the practices of the employer, prime contractor or operator in running his or her business, and includes –

- (a) the operating policies and procedures of the business; and
 - (b) the human resource and contract management arrangements of the business; and
 - (c) arrangements for managing safety.
- (6) An offence against subsection (2), (3) or (4) is an offence of absolute liability.

97P. Duty of scheduler

- (1) This section applies to the scheduler of –
- (a) a regulated heavy vehicle; or
 - (b) a driver of a regulated heavy vehicle.
- (2) The scheduler must take all reasonable steps to ensure that a driver’s schedule for driving the vehicle will not cause the driver to –
- (a) drive while impaired by fatigue; or

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- (b) drive while in breach of his or her work/rest hours option; or
- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 100 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 250 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 500 penalty units.

Note 1 Section 97F explains what reasonable steps are.

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Note 2 Section 97L explains what impaired by fatigue means.

- (3) The scheduler must not cause the driver to drive the vehicle unless –
- (a) the scheduler has complied with subsection (2); and
 - (b) the driver's schedule for driving the vehicle allows for –
 - (i) the driver to take rest breaks in accordance with his or her work/rest hours option; and
 - (ii) traffic conditions and other delays that could reasonably be expected.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 20 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 50 penalty units; or
- (b) a body corporate –

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- (i) for a first offence,
a fine not
exceeding 100
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 250
penalty units.

Example of ways to take rest breaks

- ensuring that a driver is able to take a short rest break at an appropriate location
- ensuring that a driver is able to take a long rest break at a location where facilities that enable adequate rest to be taken are available.

Examples of traffic conditions and other delays that could reasonably be expected

- the actual average speed able to be travelled lawfully and safely by the driver on the route in question
- known traffic conditions such as road works or traffic congestion on the route in question
- delays caused by loading, unloading or queuing.

- (4) An offence against subsection (2) or (3) is an offence of absolute liability.

97Q. Duty of consignor and consignee

- (1) This section applies to –

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- (a) a consignor who engages a particular operator of a regulated heavy vehicle, either directly or indirectly or through an agent or other intermediary, to transport goods on his or her behalf by road for reward or other business purposes; and
 - (b) a consignee who –
 - (i) with his or her authority, has been named or otherwise identified in the relevant transport documentation as the intended consignee of goods that are transported by road by a particular operator of a regulated heavy vehicle; and
 - (ii) knows, or who ought reasonably to have known, that the goods were to be transported by road.
- (2) A consignor or consignee each must take all reasonable steps to ensure that the terms of consignment (e.g. delivery times) will not cause the driver of the vehicle that is to transport the goods to –
- (a) drive while impaired by fatigue;
or

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- (b) drive while in breach of his or her work/rest hours option; or
- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 50 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 100 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 250 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 500 penalty units.

Note 1 Section 97F explains what reasonable steps are.

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Note 2 Section 97L explains what impaired by fatigue means.

- (3) The consignor and consignee each must also take all reasonable steps to ensure that the terms of consignment (e.g. delivery times) will not cause the employer of an employed driver, the prime contractor of a self-employed driver or the operator of the regulated heavy vehicle to cause the driver to –
- (a) drive while impaired by fatigue; or
 - (b) drive while in breach of his or her work/rest hours option; or
 - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 100 penalty units; or

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(b) a body corporate –

(i) for a first offence,
a fine not
exceeding 250
penalty units; or

(ii) for a subsequent
offence, a fine not
exceeding 500
penalty units.

Note 1 Section 97F explains what reasonable steps are.

Note 2 Section 97L explains what impaired by fatigue means.

(4) A consignor or consignee each must not cause the driver to drive the vehicle, or enter into a contract or agreement to that effect, unless –

(a) the consignor or consignee has complied with subsections (2) and (3); and

(b) in the case of an employed driver, the consignor or consignee, after making reasonable inquiries, is satisfied that –

(i) the driver's employer and the operator of the driver's vehicle have each complied with section 97O; and

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-
- (ii) the scheduler has complied with section 97P; and
 - (c) in the case of a self-employed driver, the consignor or consignee, after making reasonable inquiries, is satisfied that –
 - (i) if the driver has a prime contractor, the prime contractor of the driver has complied with section 97O; and
 - (ii) the scheduler has complied with section 97P.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 20 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 50 penalty units; or
- (b) a body corporate –

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- (i) for a first offence,
a fine not
exceeding 100
penalty units; or
 - (ii) for a subsequent
offence, a fine not
exceeding 250
penalty units.
- (5) A consignor or consignee each must not
make a demand that affects, or that may
affect, a time in a schedule for the
transport of the consigned goods and that
may cause the driver to –
 - (a) drive while impaired by fatigue;
or
 - (b) drive while in breach of his or her
work/rest hours option; or
 - (c) drive in breach of another law in
order to avoid driving while
impaired by fatigue or while in
breach of his or her work/rest
hours option.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence,
a fine not
exceeding 50
penalty units; or

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- (ii) for a subsequent offence, a fine not exceeding 100 penalty units; or
- (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 250 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 500 penalty units.

Note 1 Section 97F explains what reasonable steps are.

Note 2 Section 97L explains what impaired by fatigue means.

- (6) Subsection (5) does not apply if the consignor or consignee, before making the demand –
 - (a) has complied with subsections (2) and (3); and
 - (b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause a person to fail to comply with section 97P.

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- (7) An offence against subsection (2), (3), (4) or (5) is an offence of absolute liability.

97R. Duty of loading manager

- (1) A loading manager must take all reasonable steps to ensure that the arrangements for loading and unloading regulated heavy vehicles at the premises in respect of which he or she is the loading manager will not cause a driver of a regulated heavy vehicle to –
- (a) drive while impaired by fatigue;
or
 - (b) drive while in breach of his or her work/rest hours option; or
 - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence,
a fine not
exceeding 50
penalty units; or

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-
- (ii) for a subsequent offence, a fine not exceeding 100 penalty units; or
 - (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 250 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 500 penalty units.

Examples of reasonable steps to comply with subsection (1)

- providing for rest to be taken with adequate facilities
- providing for the reporting of travel delays and providing a mechanism for managing late arrivals
- allowing loading and unloading to occur at an agreed time
- having a system of setting and allocating loading and unloading times that a driver can reasonably rely on to comply with the prescribed work and rest times.

Note 1 Section 97F explains what reasonable steps are.

Note 2 Section 97L explains what impaired by fatigue means.

- (2) If the loading manager or a person acting under his or her supervision or control –

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- (a) has advised the driver, either directly or indirectly, of when the loading or unloading of the vehicle is to start, and the loading manager or person becomes aware that the loading or unloading will, or is likely to, start more than 30 minutes late; or
- (b) has advised the driver, either directly or indirectly, of when the loading or unloading of the vehicle is to finish, and the loading manager or person becomes aware that the loading or unloading will, or is likely to, finish more than 30 minutes late; or
- (c) is unable to advise the driver of when the loading or unloading of the vehicle is to start; or
- (d) is unable to advise the driver of when the loading or unloading of the vehicle is to finish –

the loading manager must take all reasonable steps to ensure that the driver is able to take rest while waiting for the vehicle to be loaded or unloaded.

Penalty: In the case of –

- (a) an individual –

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- (i) for a first offence,
a fine not
exceeding 20
penalty units; or
 - (ii) for a subsequent
offence, a fine not
exceeding 50
penalty units; or
- (b) a body corporate –
 - (i) for a first offence,
a fine not
exceeding 100
penalty units; or
 - (ii) for a subsequent
offence, a fine not
exceeding 250
penalty units.

*Example of reasonable steps that may be taken to
ensure a driver is able to take rest*

- providing a system of notifying the driver when his or
her vehicle can be loaded or unloaded that does not
require the driver to be awake or unreasonably alert.

Note 1 Section 97F explains what reasonable steps are.

Note 2 Section 97L explains what impaired by fatigue
means.

- (3) An offence against subsection (1) or (2)
is an offence of absolute liability.

Division 8 – Certain requests, contracts &c. prohibited

97S. Certain requests &c. prohibited

A person must not ask, direct or require (directly or indirectly) a driver or a party in the chain of responsibility to do something that the person knows, or reasonably ought to know, would have the effect of causing the driver to –

- (a) drive while impaired by fatigue; or
- (b) drive while in breach of his or her work/rest hours option; or
- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

Example of a requirement that contravenes this section

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- requirement that the driver complete a journey in a time that the person knows or reasonably ought to know cannot be complied with unless the driver commits a speeding offence or does not take all the rest breaks that he or she is required to take.

Note Section 97L explains what impaired by fatigue means.

97T. Certain contracts &c. prohibited

(1) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would have the effect of causing a driver to –

- (a) drive while impaired by fatigue;
or
- (b) drive while in breach of his or her work/rest hours option; or
- (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or

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- (b) a body corporate, a fine not exceeding 500 penalty units.

Note Section 97L explains what impaired by fatigue means.

- (2) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would encourage or provide an incentive for a party in the chain of responsibility to cause the driver to –
 - (a) drive while impaired by fatigue; or
 - (b) drive while in breach of his or her work/rest hours option; or
 - (c) drive in breach of another law in order to avoid driving while impaired by fatigue or while in breach of his or her work/rest hours option.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

Note Section 97L explains what impaired by fatigue means.

Division 9 – Compliance and enforcement

97U. Extra-territorial offences

Proceedings may be taken against a person in respect of a possible offence under this Part or a corresponding fatigue law, and the person may be convicted of the offence, or be otherwise dealt with under this Part in relation to the offence, even if the offence was, or appears to have been, committed by the person while the person was not in this jurisdiction.

97V. Fatigue and work/rest hours breaches

- (1) This section applies if an authorised officer or police officer reasonably believes –
 - (a) that a driver has committed an offence against section 97M (Driver's duty to avoid driver fatigue) or a provision of the regulations imposing a duty on that driver in relation to his or her work/rest hours; and
 - (b) either –
 - (i) that the driver is impaired by fatigue that may have

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been caused by the
occurrence of the offence;
or

- (ii) that the commission of the
offence occurred
sufficiently recently that
there is a risk that the
driver may be impaired by
fatigue.

(2) The authorised officer or police officer –

- (a) in the case of a minor risk offence
or a substantial risk offence that
relates to work/rest hours –

- (i) if the driver has not had
the required rest break,
may direct the driver to
take rest immediately, or
to take additional rest at
his or her next required
rest break, to compensate
for the shortfall; or

- (ii) if the driver has worked
more than the permitted
work time, may direct the
driver to work reduced
hours in the next relevant
period to compensate for
the excess; or

- (b) in the case of a severe risk
offence or critical risk offence
that relates to work/rest hours –

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- (i) if the driver has not had the required rest time, must direct the driver to take rest immediately to compensate for the shortfall; or
 - (ii) if the driver has not had the required night rest time, must direct the driver to take the next night rest time to compensate for the shortfall; or
 - (iii) if the driver has worked more than the permitted work time, must direct the driver to work reduced hours in the next relevant period to compensate for the excess; or
- (c) if the officer believes, on reasonable grounds, that the driver is impaired by fatigue –
 - (i) may direct the driver not to work for a period of time that will be sufficient, in the reasonable opinion of the officer, to enable the driver to obtain sufficient rest to be able to complete the next stage of his or her

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journey unimpaired by
fatigue; or

- (ii) if the officer has observed the driver driving in a way that the officer believes, on reasonable grounds, is dangerous, may direct the driver to stop driving immediately, and may authorise a qualified person to move the vehicle to a suitable rest place; or

- (d) may direct the driver not to work for a 24-hour period if –

- (i) the driver fails to produce his or her work diary, or produces a document that the officer believes is a purported work diary; or

- (ii) the officer believes, on reasonable grounds, that the work diary produced by the driver for inspection cannot be relied on as an accurate record of the time spent recently by the driver working or resting.

- (3) If subsection (2)(c)(i) applies, the officer must specify a period of time and must

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record his or her direction in the driver's work diary.

- (4) In the case of a severe risk offence or critical risk offence, the authorised officer or police officer may allow the driver to delay complying with a direction under subsection (2)(b)(i) or (iii), for a period of up to one hour, if the officer reasonably believes that –
- (a) there is no suitable rest place nearby, and it would be reasonably safe to allow the driver to continue to drive for that period; or
 - (b) it is necessary for the driver to be given time to attend to, or to secure, the load on the vehicle, before taking rest.
- (5) For the purposes of section 151, a direction made by an authorised officer or police officer under this section is taken to be prescribed as an administrative action.

Example

If an enforcement officer from one jurisdiction gives a direction to a driver not to work for a specified period of time under this section, that direction continues to have effect even if the driver passes into another jurisdiction.

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(6) For the purposes of this section, a person is “qualified” to move a vehicle if the person –

- (a) holds an Australian driver licence of the appropriate class to drive it and the Australian driver licence is not suspended; and
- (b) is not prevented by or under a law (including, for example, by the conditions of the licence) from driving it at the relevant time.

(7) In this section –

“required rest break” means a rest break in accordance with all laws regulating the work and rest times of the driver;

“suitable rest place” means –

- (a) a rest area designated for and able to be used by a regulated heavy vehicle;
or
- (b) a place at which a regulated heavy vehicle may be safely and lawfully parked; or
- (c) a place declared by the regulations to be a suitable rest place –

but does not include a place declared by the regulations not to be a suitable rest place.

Example

- a designated rest area would not be able to be used if it was full or did not have sufficient capacity to accommodate the class of vehicle the driver was driving.

97W. Duty of officers to annotate driver's work diary

- (1) This section applies if an authorised officer or police officer stops a driver for compliance purposes using a power conferred on the officer under this Act.
- (2) If the officer detains the driver for a period of 5 minutes or longer, the driver may request the officer to record the following details in the driver's work diary:
 - (a) the officer's identifying details;
 - (b) the time, date and place at which the officer stopped the driver;
 - (c) the length of time that the driver was stopped while the officer exercised his or her enforcement powers.
- (3) An officer must comply with a request made under subsection (2).

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- (4) An officer may comply with subsection (2)(a) by recording either his or her name, or his or her identification number.
- (5) If more than one driver has been stopped at a place, and the drivers are spoken to by an officer in the order in which they were stopped, the counting of time for the purposes of subsection (2) only starts once the officer begins to speak to the driver for the purpose of pursuing any matter in respect of which the driver was stopped.

Note Essentially a power is exercised for compliance purposes if it is used to find out whether laws are being complied with or to investigate breaches or suspected breaches of laws. Thus, this section does not apply if an officer stops a vehicle, for instance, when there is a roadblock, an accident or a detour.

Division 10 – Regulations

97X. Regulations relating to fatigue management

The Governor may, in addition to any regulations which he or she is empowered to make under any other Part, make regulations providing for –

- (a) the number of hours for which a person may work in relation to a vehicle or combination, or class of vehicles or combinations, and the minimum rest periods required to be taken by that person; and

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- (b) the making, keeping, possession and inspection of written and electronic records in respect of heavy vehicles or heavy combinations and their drivers; and
- (c) duties of persons in the chain of responsibility to ensure drivers comply with provisions of the regulations; and
- (d) the accreditation and auditing of operator fatigue management systems; and
- (e) exemptions from the operation of this Act or any provision of this Act or the regulations, either conditionally and unconditionally; and
- (f) the granting of exemptions from the operation of this Act or any provision of this Act or the regulations; and
- (g) the recognition of decisions in other jurisdictions in relation to the management of fatigue in drivers of heavy vehicles or heavy combinations; and
- (h) the reconsideration and review of decisions; and

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- (i) the referral of matters to the Fatigue Authorities Panel and mutual recognition of decisions in other jurisdictions; and
- (j) the admissibility of documents produced by an electronic work diary; and
- (k) incidental and ancillary matters.

PART 4B – SPEEDING COMPLIANCE
Division 1 – Preliminary

97Y. Purpose of Part

- (1) The principal purpose of this Part is to improve road safety and compliance with road safety laws by imposing responsibility in relation to speeding by heavy vehicles on those whose business activities influence the conduct of the drivers of those vehicles.
- (2) In outline, this Part –
 - (a) requires those who are most directly responsible for the operation of a heavy vehicle to take reasonable steps to ensure that their activities do not cause the driver to exceed speed limits; and
 - (b) requires anyone who schedules the activities of a heavy vehicle, or its driver, to take reasonable steps to ensure that the schedule of the vehicle and the driver does not cause the driver to exceed speed limits; and
 - (c) requires heavy vehicle loading managers to take reasonable steps to ensure that the loading or unloading arrangements for a vehicle do not cause the driver of

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the vehicle to exceed speed limits; and

- (d) requires certain people who consign goods for transport by heavy vehicle, or who receive such goods, to take reasonable steps to ensure that the terms of consignment of those goods do not cause heavy vehicle drivers to exceed speed limits; and
- (e) forbids anyone from asking a heavy vehicle driver to exceed speed limits and from entering into any agreement that causes a heavy vehicle driver to exceed speed limits.

Note This Part does not impose any obligations on employed drivers. Drivers of heavy vehicles are required to obey speed limits imposed under the *Road Rules*, or as a condition of a permit or exemption that applies to a vehicle. Penalties on drivers for failing to comply with speed limits include demerit points, licence suspension, cancellation or disqualification, and fines.

97Z. Interpretation of Part 4B

In this Part –

“loading manager” means –

- (a) a person who manages, or who is responsible for the operation of, a premises at which usually on a

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business day at least 5
heavy vehicles –

- (i) are loaded with
goods for
transport; or
- (ii) have goods that
the vehicles have
transported
unloaded; or
- (b) a person who directly or
indirectly supervises,
manages or controls the
loading or unloading of
heavy vehicles at such a
premises;

Examples of a loading manager

A company that runs, or a site manager for, a distribution centre.

Example of calculation of vehicle numbers

At a premises on a usual business day, 3 heavy vehicles are loaded with goods, and 3 other heavy vehicles have goods that have been transported to the premises unloaded. The manager of the premises is a loading manager because at least 5 vehicles are usually loaded or unloaded at the premises on a business day.

“prime contractor” means a person
who engages someone else to
drive a heavy vehicle under a
contract for services;

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Example of a prime contractor

A logistics business that engages a subcontractor to transport goods.

“reasonable steps” – see
section 97ZL;

“speed limit” includes the following:

- (a) a sign-posted speed limit;
- (b) a speed limit specified by legislation;
- (c) a speed limit that applies to a particular vehicle;
- (d) a prohibition on travelling between 2 places in less than a specified time;

“speeding offence” means a speeding offence within the meaning of the *Vehicle and Traffic Act 1999*.

Division 2 – Causation

97ZA. Intention irrelevant in determining causation

For the purposes of this Part, a person can cause something to happen even though he or she had no intention of causing that thing to happen.

97ZB. Cause includes “contribute to causing” and “encourage”

For the purposes of this Part, a reference to causing a thing is to be read as including a reference to contributing to causing the thing, and to encouraging the thing.

97ZC. Objective reasonableness test to be used in determining causation

- (1) This section applies if an act of, or a failure to act by, a duty holder causes a speeding offence to occur.
- (2) If it is likely that a reasonable person would have foreseen that the act, or failure to act, would be reasonably likely to cause the occurrence of the speeding offence, for the purposes of this Part there is created a rebuttable presumption that the duty holder caused the occurrence of the speeding offence.
- (3) In this section –

“**duty holder**” means a person on whom a duty is imposed by this Part to take reasonable steps to ensure that a thing will not cause a speeding offence.

Division 3 – Specific duties and offences

97ZD. Duty concerning business practices

- (1) This section applies to –
- (a) the employer of an employed driver of a heavy vehicle; and
 - (b) the prime contractor of a self-employed driver of a heavy vehicle; and
 - (c) the operator of a heavy vehicle if the driver of the vehicle is to make a journey in the vehicle for the operator.
- (2) The employer, prime contractor and operator each must take all reasonable steps to ensure that his or her business practices will not cause the driver to exceed any speed limit that applies to the vehicle.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 50 penalty units; or
 - (ii) for a subsequent offence, a fine not

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exceeding 100
penalty units; or

(b) a body corporate –

(i) for a first offence,
a fine not
exceeding 250
penalty units; or

(ii) for a subsequent
offence, a fine not
exceeding 500
penalty units.

Examples of some reasonable steps that can be taken

- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues
- reviewing driving, work and trip records
- a program to report and monitor (for instance, by GPS tracking) incidents of speeding, and related risks and hazards
- training and information for drivers, staff and parties in the chain of responsibility about speeding
- regular maintenance of vehicle components that relate to complying with speed limits (for instance, speedometer, engine management system and speed limiters).

Note Section 97ZL(2) sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 97ZL(1) sets out one method by which an employer, prime contractor or operator can take all reasonable steps for the purposes of this subsection.

(3) The employer must not cause the driver to drive the vehicle unless –

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- (a) the employer has complied with subsection (2); and
- (b) the employer, after making reasonable inquiries, is satisfied that the scheduler has complied with section 97ZF.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 20 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 50 penalty units; or
 - (b) a body corporate –
 - (i) for a first offence, a fine not exceeding 100 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 250 penalty units.
- (4) The prime contractor and operator each must not cause the driver to drive the vehicle unless –

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- (a) the prime contractor or operator, as the case may be, has complied with subsection (2); and
- (b) the prime contractor or operator, after making reasonable inquiries, is satisfied that the scheduler has complied with section 97ZF.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence, a fine not exceeding 20 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 50 penalty units; or

(b) a body corporate –

- (i) for a first offence, a fine not exceeding 100 penalty units; or
- (ii) for a subsequent offence, a fine not exceeding 250 penalty units.

(5) In this section –

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“business practice” means the practices of the employer, prime contractor or operator in running his or her business, and includes –

- (a) the operating policies and procedures of the business; and
 - (b) the human resource and contract management arrangements of the business; and
 - (c) arrangements for managing safety.
- (6) An offence against subsection (2), (3) or (4) is an offence of absolute liability.

97ZE. Duty to ensure offences are not committed

- (1) This section applies to –
- (a) the employer of an employed driver of a heavy vehicle; and
 - (b) the prime contractor of a self-employed driver of a heavy vehicle; and
 - (c) the operator of a heavy vehicle if the driver of the vehicle is to make a journey in the vehicle for the operator.

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-
- (2) A person to whom this section applies commits an offence if, at any time that a driver of a vehicle, or a vehicle, is subject to the person's control, the driver commits a speeding offence while driving the vehicle.

Penalty: In the case of –

(a) a Level 1 offence –

- (i) for an individual,
a fine not
exceeding 10
penalty units; or
- (ii) for a body
corporate, a fine
not exceeding 50
penalty units; or

(b) a Level 2 offence –

- (i) for an individual,
a fine not
exceeding 20
penalty units; or
- (ii) for a body
corporate, a fine
not exceeding 100
penalty units; or

(c) a Level 3 offence –

- (i) for an individual,
a fine not

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exceeding 50
penalty units; or

- (ii) for a body
corporate, a fine
not exceeding 250
penalty units.

Note Subsection (6) sets out how the relevant level of the
offence is to be determined.

- (3) Despite subsection (2), a person is not
liable under that subsection if the vehicle
was a combination, and neither the driver
nor the towing vehicle was subject to the
person's control.
- (4) It is a defence in proceedings for an
offence under this section if the
defendant establishes that –
- (a) he or she did not know, and could
not reasonably be expected to
have known, of the conduct that
constituted the offence; and
- (b) either –
- (i) he or she took all
reasonable steps to
prevent that conduct from
occurring; or
- (ii) there were no steps that
he or she could
reasonably have been
expected to have taken to

prevent that conduct from occurring.

- (5) For the purposes of this section –
- (a) it is irrelevant whether the driver has been, or will be, charged with the speeding offence, or has been, or will be, convicted of the speeding offence; and
 - (b) evidence that the driver has been convicted of the speeding offence is evidence that the offence occurred at the time and place, and in the circumstances, specified in the charge that resulted in the conviction; and
 - (c) evidence that the driver has paid the infringement penalty sought by an infringement notice for a speeding offence is evidence that the offence occurred at the time and place, and in the circumstances, specified in the infringement notice.
- (6) For the purposes of subsection (2), the levels of offence are to be determined in accordance with the following table:

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	Speed limit at the place where the speeding offence occurs	Penalty level where recorded speed less than 15 km/h over limit	Penalty level where recorded speed equal to or more than 15 km/h over limit
1.	60 km/h or less	Level 1	Level 1
2.	More than 60km/h but less than 100 km/h	Level 1	Level 2
3.	100 km/h or more	Level 2	Level 3

(7) Subject to subsections (3) and (4), an offence against subsection (2) is an offence of absolute liability.

97ZF. Duty of scheduler

(1) This section applies to the scheduler of –

- (a) a heavy vehicle; or
- (b) the driver of a heavy vehicle.

(2) The scheduler must take all reasonable steps to ensure that a driver's schedule for driving the vehicle will not cause the driver to exceed any speed limit that applies to the vehicle.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 50 penalty units; or

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- (b) a subsequent offence, a fine not exceeding 100 penalty units.

Examples of some reasonable steps that can be taken

- consulting drivers about their schedules and work requirements
- taking account of the average speed that can be lawfully travelled on scheduled routes
- allowing for traffic conditions or other delays in schedules
- contingency planning in relation to schedules.

Note Section 97ZL(2) sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 97ZL(1) sets out one method by which a scheduler can take all reasonable steps for the purposes of this subsection.

- (3) The scheduler must not cause the driver to drive the vehicle unless –
- (a) the scheduler has complied with subsection (2); and
 - (b) the driver's schedule for driving the vehicle allows for –
 - (i) compliance with all speed limits applying to the vehicle; and
 - (ii) the driver to take all required rest breaks (in accordance with all laws regulating the work and

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rest hours of the driver);
and

- (iii) traffic conditions and other delays that could reasonably be expected.

Penalty: In the case of –

- (a) a first offence, a fine not exceeding 20 penalty units; or
- (b) a subsequent offence, a fine not exceeding 50 penalty units.

Examples of traffic conditions and other delays that could reasonably be expected

- the actual average speed able to be travelled lawfully and safely by the driver on the route in question
- known traffic conditions such as road works or traffic congestion on the route in question
- delays caused by loading, unloading or queuing.

- (4) An offence against subsection (2) or (3) is an offence of absolute liability.

97ZG. Duty of consignor and consignee

- (1) This section applies to –

- (a) a consignor who engages a particular operator of a heavy

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vehicle or heavy combination, either directly or indirectly or through an agent or other intermediary, to transport goods on his or her behalf by road for reward or other business purposes; and

(b) a consignee who –

(i) with his or her authority, has been named or otherwise identified in the relevant transport documentation as the intended consignee of goods that are transported by road by a particular operator of a heavy vehicle or heavy combination; and

(ii) knows, or who ought reasonably to have known, that the goods were to be transported by road.

(2) A consignor or consignee each must take all reasonable steps to ensure that the terms of consignment (e.g. delivery times) will not cause the driver of the vehicle that is to transport the goods to exceed any speed limit that applies to the vehicle.

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Penalty: In the case of –

(a) an individual –

- (i) for a first offence,
a fine not
exceeding 50
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 100
penalty units; or

(b) a body corporate –

- (i) for a first offence,
a fine not
exceeding 250
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 500
penalty units.

Examples of some reasonable steps that can be taken

- ensuring contractual arrangements and documentation relating to the consignment and delivery of goods enable speeding compliance
- contingency planning in relation to consignments and delivery times
- regular consultation with other parties in the chain of responsibility, unions and industry associations to address compliance issues.

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Note Section 97ZL(2) sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 97ZL(1) sets out one method by which a consignor or consignee can take all reasonable steps for the purposes of this subsection.

- (3) The consignor and consignee each must also take all reasonable steps to ensure that the terms of consignment (e.g. delivery times) will not cause the employer of an employed driver, the prime contractor of a self-employed driver or the operator of the heavy vehicle to cause the driver to exceed any speed limit that applies to the vehicle.

Penalty: In the case of –

(a) an individual –

- (i) for a first offence,
a fine not
exceeding 50
penalty units; or
- (ii) for a subsequent
offence, a fine not
exceeding 100
penalty units; or

(b) a body corporate –

- (i) for a first offence,
a fine not
exceeding 250
penalty units; or

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- (ii) for a subsequent offence, a fine not exceeding 500 penalty units.

Note See the examples and note under subsection (2).

- (4) A consignor or consignee each must not make a demand that affects, or that may affect, a time in a schedule for the transport of the consigned goods unless he or she –
 - (a) has complied with subsections (2) and (3); and
 - (b) is satisfied, after making reasonable inquiries, that the making of the demand will not cause a person to fail to comply with section 97ZF.

Penalty: In the case of –

- (a) an individual –
 - (i) for a first offence, a fine not exceeding 20 penalty units; or
 - (ii) for a subsequent offence, a fine not exceeding 50 penalty units; or
- (b) a body corporate –

- (i) for a first offence,
a fine not
exceeding 100
penalty units; or
 - (ii) for a subsequent
offence, a fine not
exceeding 250
penalty units.
- (5) An offence against subsection (2), (3) or
(4) is an offence of absolute liability.

97ZH. Duty of loading manager

- (1) A loading manager must take all
reasonable steps to ensure that the
arrangements for loading and unloading
heavy vehicles at the premises in respect
of which he or she is the loading
manager will not cause the driver of a
heavy vehicle to exceed any speed limit
that applies to the vehicle.

Penalty: In the case of –

- (a) a first offence, a fine not
exceeding 50 penalty
units; or
- (b) a subsequent offence, a
fine not exceeding 100
penalty units.

Examples of some reasonable steps that can be taken

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- reviewing loading and unloading times and delays at loading and unloading places
- identifying potential loading and unloading bottlenecks in consultation with drivers and other parties in the chain of responsibility
- ensuring that timeslots for loading or unloading can be relied upon.

Note Section 97ZL(2) sets out some of the factors a court may consider in determining whether a person has taken all reasonable steps. Section 97ZL(1) sets out one method by which a loading manager can take all reasonable steps for the purposes of this subsection.

- (2) An offence against subsection (1) is an offence of absolute liability.

Division 4 – Certain requests, contracts &c., prohibited

97ZI. Who are parties in chain of responsibility

- (1) For the purposes of this Part, the following people 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;
 - (c) the operator of the vehicle;
 - (d) the scheduler of –

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- (i) goods or passengers for transport by the vehicle;
and
- (ii) the driver of the vehicle;
- (e) the consignor of goods for transport by the vehicle;
- (f) the consignee of goods for transport by the vehicle;
- (g) the loading manager of goods for transport by the vehicle;
- (h) the loader of goods on to the vehicle;
- (i) the unloader of goods from the vehicle.

Note It is the performance of any of these functions, whether exclusively or occasionally, that determines whether a person falls within any of these definitions, rather than their job title or contractual description.

- (2) A person may be a party in the chain of responsibility in more than one capacity.

Example

A person may be an employer, operator and consignor at the same time in relation to a driver and be subject to duties in each of those capacities.

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97ZJ. Certain requests prohibited

A person must not ask, direct or require (directly or indirectly) a driver or a party in the chain of responsibility to do something that the person knows, or reasonably ought to know, would have the effect of causing the driver to exceed any speed limit while driving a heavy vehicle.

Penalty: Fine not exceeding 100 penalty units.

Example of a requirement that contravenes this section

A requirement that the driver complete a journey in a time that the person knows or reasonably ought to know cannot be complied with unless the driver commits a speeding offence or does not take all the rest breaks that he or she is required to take.

Note Section 97ZI sets out who are the parties in the chain of responsibility.

97ZK. Certain contracts and agreements prohibited

- (1) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would have the effect of causing the driver or any other driver to exceed any speed limit while driving a heavy vehicle.

Penalty: In the case of –

-
- (a) an individual, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
 - (2) A person must not enter into a contract or agreement with a driver or with a party in the chain of responsibility that the person knows, or reasonably ought to know, would encourage or provide an incentive for a party in the chain of responsibility to cause the driver to exceed any speed limit while driving a heavy vehicle.

Penalty: In the case of –

- (a) an individual, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

Note Section 97ZI sets out who are the parties in the chain of responsibility.

Division 5 – Compliance and enforcement

97ZL. Reasonable steps

- (1) Without limiting the ways in which a person may take all reasonable steps for the purposes of this Part, a person is to be regarded as having taken all reasonable

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steps to ensure that a specified thing will not cause a driver of a heavy vehicle to exceed any speed limit that applies to that vehicle if the person –

(a) identifies and assesses –

- (i) what aspects of the specified thing might cause the driver to exceed a speed limit; and
- (ii) the risks that those aspects might cause the driver to exceed a speed limit; and
- (iii) if there is a substantial risk that an aspect might cause the driver to exceed a speed limit, what the person can reasonably do to eliminate that risk, or if it is not reasonably possible to eliminate that risk, to minimise that risk; and

(b) repeats that identification and assessment –

- (i) if anything occurs that may adversely affect, or that indicates that there may be a problem with, the specified thing; and

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- (ii) in any event, at least annually; and
 - (c) does the things identified under paragraph (a)(iii) as being things that he or she can reasonably do; and
 - (d) documents the actions that he or she has taken under paragraphs (a), (b) and (c), and retains that documentation for at least 3 years.
- (2) A court may have regard to anything that it considers to be relevant when deciding whether things that the person did, or did not do, were reasonable steps, including –
 - (a) the nature of the aspect or risk that the person was attempting to, or should have been attempting to, address; and
 - (b) the likelihood of a risk eventuating; and
 - (c) the degree of harm that would result if a risk did eventuate; and
 - (d) if a driver has been speeding, the circumstances of the offence (e.g. the risk category that the offence belongs to); and

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- (e) the degree to which the person (either personally or through an agent or employee) had the ability to eliminate, prevent or reduce an aspect, or to eliminate a risk or to minimise the likelihood of a risk eventuating; and
- (f) the experience, expertise and knowledge that the person, or the person's agent or employee, had or ought reasonably to have had; and
- (g) the availability and suitability of ways to eliminate, prevent or reduce an aspect, or to eliminate a risk or to minimise the likelihood of a risk eventuating; and
- (h) the cost of eliminating a risk or minimising the likelihood of a risk eventuating.

97ZM. Evidential matters

- (1) If, in a prosecution for an offence against this Part, it is relevant to prove that someone ought reasonably to have known something, the issue must be decided having regard to –
 - (a) the person's abilities, experience, expertise, knowledge, qualifications and training; and

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- (b) the circumstances of the offence;
and
 - (c) any other matters specified by the
regulations for the purposes of
this section.
- (2) In a prosecution under this Part, it is not
necessary to prove that a driver exceeded
a speed limit.

7. Section 163 amended (Regulations)

Section 163 of the Principal Act is amended as
follows:

- (a) by omitting from subsection (4)(b) “100”
and substituting “200”;
- (b) by inserting in subsection (5) “granted,”
after “determined,”;
- (c) by omitting from subsection (5) “the
Authority” and substituting “any person
or body specified in the regulations”.

8. Section 163A inserted

After section 163 of the Principal Act, the
following section is inserted in Division 3:

163A. Regulations relating to intelligent transport systems

- (1) The Governor may, in addition to any regulations that he or she is empowered to make under this Part, make regulations providing for matters relating to the operation of intelligent transport systems.
- (2) In particular, the regulations may provide for the following:
 - (a) conditions relating to the use of intelligent transport systems;
 - (b) the collection, storage, use and disclosure of information obtained by the use of an intelligent transport system, or obtained for the purposes of such a system or a proposed system;
 - (c) the records to be kept in relation to information obtained by the use of an intelligent transport system;
 - (d) the reports to be made in relation to the operation of, or any other matter relating to, an intelligent transport system;
 - (e) regulating or prohibiting tampering with intelligent transport systems;

- (f) notification of persons about whom or in respect of whom information is obtained by the use of an intelligent transport system;
- (g) certification of intelligent transport systems or providers of intelligent transport systems;
- (h) the functions, powers and obligations of service providers, the Transport Certification Australia Ltd (ACN 113 379 936) and auditors of intelligent transport systems;
- (i) monitoring and auditing of intelligent transport systems, providers of intelligent transport systems and persons required or permitted to use intelligent transport systems;
- (j) the use of certificates, reports and other documents relating to various matters as evidence in any proceedings before a court or tribunal;
- (k) evidentiary presumptions as to the correct operation and functioning of an intelligent transport system, other matters relating to the operation of an intelligent transport system and

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information obtained by using
such a system;

(l) incidental and ancillary matters.

9. Schedule 2 inserted

After Schedule 1 to the Principal Act, the
following Schedule is inserted:

**SCHEDULE 2 – FATIGUE MANAGEMENT RISK
CATEGORIES**

Section 97C

Provision of Act	Risk category
1. Section 97M(1)	Severe risk offence
2. Section 97N(1)	Critical risk offence
3. Section 97O(2)	Severe risk offence
4. Section 97O(3)	Substantial risk offence
5. Section 97O(4)	Substantial risk offence
6. Section 97P(2)	Severe risk offence
7. Section 97P(3)	Substantial risk offence
8. Section 97Q(2)	Severe risk offence
9. Section 97Q(3)	Severe risk offence
10. Section 97Q(4)	Substantial risk offence
11. Section 97Q(5)	Severe risk offence

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Provision of Act	Risk category
12. Section 97R(1)	Severe risk offence
13. Section 97R(2)	Substantial risk offence
14. Section 97S	Critical risk offence
15. Section 97T(1)	Critical risk offence
16. Section 97T(2)	Critical risk offence

10. Repeal of Act

This Act is repealed on the ninetieth day from
the day on which all of the provisions of this Act
commence.