

**Road Safety Amendment (Fatigue Management)
Act 2008
No. 56 of 2008**

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Victoria

Road Safety Amendment (Fatigue Management) Act 2008[†]

No. 56 of 2008

[Assented to 23 September 2008]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purposes

The purpose of this Act is to amend the **Road Legislation Further Amendment Act 2007** and **Road Safety Act 1986**—

- (a) to reflect changes to the Fatigue Management Scheme; and

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- (b) to provide for oversight of the Scheme by the Australian Transport Council; and
- (c) to make other miscellaneous amendments.

2 Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

**PART 2—AMENDMENT OF ROAD LEGISLATION
FURTHER AMENDMENT ACT 2007**

3 Definitions

- (1) In section 3(b) of the **Road Legislation Further Amendment Act 2007**, for subparagraph (i) of the proposed definition of *consignee substitute*—
 - "(i) with that person's authority, is named or otherwise identified as the intended consignee of the goods in the transport documentation for the consignment; or".
- (2) In section 3(c) of the **Road Legislation Further Amendment Act 2007**, in paragraph (d) of the proposed definition of *consignor*, after "held and that is" **insert** "usually".

4 Definitions for fatigue management

- (1) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191A, in the definition of *AFM standards and business rules*, for "specified by the Fatigue Authorities Panel" **substitute** "approved by the Australian Transport Council".
- (2) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191A, in the definition of *approved sleeper berth*—
 - (a) in paragraph (a) of that definition, for "standard for sleeper berths that is specified by the Fatigue Authorities Panel" **substitute** "prescribed standard for sleeper berths"; and
 - (b) in paragraph (b) of that definition, for "specified by the Fatigue Authorities Panel" **substitute** "approved by the Australian Transport Council".

- (3) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191A, **insert** the following definition—

"Australian Transport Council means the council of Commonwealth, New Zealand, State and Territory Ministers established on 11 June 1993 and known as the Australian Transport Council, but constituted so that it consists of only one Minister representing each of the Commonwealth, the States and the Territories when dealing with matters with which this Part is concerned;"

- (4) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191A, in the definition of *BFM standards and business rules*, for "specified by the Fatigue Authorities Panel" **substitute** "approved by the Australian Transport Council".

- (5) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191A, for the definition of *Fatigue Authorities Panel* **substitute**—

"Fatigue Authorities Panel means the panel established by the Fatigue Authorities Panel Rules made by the National Transport Commission and approved by the Australian Transport Council on 11 July 2008;"

- (6) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191A, in paragraph (c) of the definition of *unloader*, for "road;" **substitute** "road; or".

(7) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191A, in the definition of *unloader*, after paragraph (c) **insert—**

"(d) a person who supervises, manages or controls an activity set out in paragraph (a), (b) or (c);".

5 Duties on loading managers

In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191I(2) **substitute—**

"(2) 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 if the loading manager, or a person acting under the loading manager's supervision or control—

- (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.

Penalty: the penalty for a substantial risk offence.

Example

Providing a system of notifying the driver when the driver's vehicle can be loaded or unloaded that does not require the driver to be awake."

6 Offences

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed sections 191L(6), 191M(6), 191N(6), 191O(6), 191P(6), 191Q(6), 191R(6), 191W(7), 191Y(13) and 191ZG(5), for "against" **substitute** "under".

7 Removal of reference to the Fatigue Authorities Panel

- (1) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed sections 191W(2), 191ZI(2)(b), 191ZK(1) and 191ZR(2)(c), for "specified by the Fatigue Authorities Panel" **substitute** "approved by the Australian Transport Council".
- (2) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZT(1), for "prescribed form" **substitute** "form approved by the Australian Transport Council".

8 BFM hours—two-up drivers

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191P(1), **omit** "of a fatigue regulated heavy vehicle".

9 Duty on employers, prime contractors, operators and schedulers to ensure driver compliance

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191X(2), for "this section" **substitute** "subsection (1)".

10 Drivers working under AFM accreditation

(1) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191Q(2) **insert**—

"(2A) In any period mentioned in Column 1 in Schedule 4A, the driver—

(a) must not work for more than the maximum work time specified in Column 2 of that Schedule for that period; and

(b) must have at least the minimum rest time specified in Column 3 of that Schedule for that period."

(2) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191Q(3), after "(2)" **insert** "or (2A)".

(3) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191Q(4)—

(a) after "(2)" **insert** ", (2A)"; and

(b) for "subsection (7), (8), (9), or (10)" **substitute** "section 191QA(1), (2), (3) or (4)".

(4) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191Q(5), for "this section" **substitute** "subsection (4)".

- (5) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191Q, subsections (7), (8), (9) and (10) are **repealed**.

11 New section 191QA inserted

- (1) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191Q insert—

"191QA Offences for breaching limits set out in AFM accreditation or AFM outer limits

- (1) A contravention of section 191Q(2) or (3) is a minor risk offence if—
- (a) the driver's work time—
 - (i) in any period of less than 7 days, exceeds the maximum time specified in the AFM accreditation certificate by 45 minutes or less; or
 - (ii) in any period of 7 days or more, exceeds the maximum time specified in the AFM accreditation certificate by 1½ hours or less; or
 - (b) in any period of less than 7 days, the driver has a rest time that is not more than 45 minutes less than the minimum time specified in the AFM accreditation certificate.
- (2) A contravention of section 191Q(2), (2A) or (3) is a substantial risk offence if—
- (a) the driver's work time—
 - (i) in any period of less than 7 days, exceeds the maximum time specified in the AFM accreditation certificate by more than
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- 45 minutes but not more than
75 minutes; or
- (ii) in any period of less than 7 days,
exceeds the AFM outer limits by
15 minutes or less; or
- (iii) in any period of 7 days or more,
exceeds the maximum time
specified in the AFM accreditation
certificate by more than 1½ hours
but not more than 2½ hours; or
- (iv) in any period of 7 days or more,
exceeds the AFM outer limits by
30 minutes or less; or
- (b) in any period of less than 7 days, the
driver has a rest time that—
- (i) is less than the minimum time
specified in the AFM accreditation
certificate by more than
45 minutes but not more than
75 minutes; or
- (ii) is less than the minimum AFM
outer limits by 15 minutes or less.
- (3) A contravention of section 191Q(2), (2A)
or (3) is a severe risk offence if—
- (a) the driver's work time—
- (i) in any period of less than 7 days,
exceeds the maximum time
specified in the AFM accreditation
certificate by more than
75 minutes but not more than
90 minutes; or
- (ii) in any period of less than 7 days,
exceeds the AFM outer limits by
more than 15 minutes but not
more than 30 minutes; or
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- (iii) in any period of 7 days or more, exceeds the maximum time specified in the AFM accreditation certificate by more than 2½ hours but not more than 3 hours; or
 - (iv) in any period of 7 days or more, exceeds the AFM outer limits by more than 30 minutes but not more than 1 hour; or
 - (b) in any period of less than 7 days, the driver has a rest time that—
 - (i) is less than the minimum time specified in the AFM accreditation certificate by more than 75 minutes but not more than 90 minutes; or
 - (ii) is less than the minimum AFM outer limits by more than 15 minutes but not more than 30 minutes.
- (4) A contravention of section 191Q(2), (2A) or (3) is a critical risk offence if—
 - (a) the driver's work time—
 - (i) in any period of less than 7 days, exceeds the maximum time specified in the AFM accreditation certificate by more than 90 minutes; or
 - (ii) in any period of less than 7 days, exceeds the AFM outer limits by more than 30 minutes; or

- (iii) in any period of 7 days or more, exceeds the maximum time specified in the AFM accreditation certificate by more than 3 hours; or
- (iv) in any period of 7 days or more, exceeds the AFM outer limits by more than 1 hour; or
- (b) in any period of less than 7 days, the driver has a rest time that—
 - (i) is less than the minimum time specified in the AFM accreditation certificate by more than 90 minutes; or
 - (ii) is less than the minimum AFM outer limits by more than 30 minutes."

12 Driver must carry work diary

In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191S(2) insert—

- "(3) Subsection (2) does not apply if a driver is recording information in a supplementary record in accordance with section 191V."

13 Information that driver must record in work diary

- (1) In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191T(3)(f)(iii) substitute—

- "(iii) except in the case of a shared electronic work diary, the security or other identifying number of the other driver's work diary and the name of the participating jurisdiction that issued that diary."

(2) In section 20 of the **Road Legislation Further Amendment Act 2007**, omit proposed section 191T(3)(f)(iv).

(3) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191T(5), insert—

"(6) A two-up driver must, at the request of the other two-up driver, provide the other driver with any details the other driver needs to be able to comply with subsection (3)(f).

Penalty: 20 penalty units."

14 How driver must record information in work diary

In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191U(1)(c) substitute—

"(c) if the driver changes from one work/rest hours option to another work/rest hours option during a day, any information for that day that relates to the period after the change occurs must be recorded on a separate daily sheet;"

15 Destroyed, lost or malfunctioning work diaries

(1) In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed sections 191V(1) and (2) substitute—

"(1) This section applies if a driver's work diary has become filled up, destroyed, lost or stolen or, in the case of an electronic work diary, is malfunctioning.

(2) As soon as practicable, and within 2 business days after the driver becomes aware that the work diary has become filled up, destroyed, lost, stolen, or is malfunctioning, the driver must—

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- (a) give the Corporation written notice of that happening, in the prescribed form; or
- (b) apply for a replacement work diary.
- Penalty: 40 penalty units."
- (2) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191V(2) **insert**—
- "(2A) During any period in which the driver is unable to use the work diary, any information that is required to be recorded under section 191T must be recorded in a supplementary record.
- (2B) If a driver keeps a supplementary record under this section, the driver must keep the supplementary record in the relevant fatigue regulated heavy vehicle for 28 days.
- (2C) Subsection (2A) ceases to apply when the first of the following events occurs—
- (a) the driver is issued with a replacement work diary;
- (b) in the case of a malfunctioning electronic work diary—the electronic work diary is brought into working order;
- (c) the expiry of 7 business days after the day on which the period in which the driver is unable to use the work diary started."
- (3) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191V(3) **insert**—
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"(3A) If a driver gives a work diary to the Corporation under subsection (3), the Corporation must—

- (a) cancel any unused daily sheets in the diary; and
 - (b) return the diary to the driver."
- (4) In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191V(7), **substitute—**
- "(7) A person charged with an offence under this section does not have the benefit of the mistake of fact defence.
- (8) However, a person charged with an offence under subsection (5) or (6) has the benefit of the reasonable steps defence."

16 Information that record keeper must record

- (1) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191Y(1)(a), after "record" **insert** "as soon as practicable after receiving it, information about".
- (2) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191Y(2) **insert—**

"(2A) A record keeper may engage the services of another person to carry out some or all of the record keeper's functions as a record keeper under this Act.

(2B) If an engagement under subsection (2A) occurs—

- (a) the record keeper remains liable for all obligations imposed on the record keeper under this Act; and

- (b) the other person is also liable under this Act, in respect of any obligation imposed on the record keeper as a record keeper that is covered by the terms of the engagement as if the other person were the record keeper."
- (3) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191Y(7) **insert**—
- "(7A) A driver does not have to comply with subsection (7) for a specific day if the driver uses an electronic work diary and if the information recorded in that diary for that day has been transferred from the diary to the record keeper within 21 days after that day."
- (4) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191Y(8) **insert**—
- "(8A) A record keeper does not have to comply with subsection (8) for a specific day if the driver uses an electronic work diary and if the information recorded in that diary for that day has been transferred from the diary to the record keeper within 21 days after that day.
- (8B) If a driver uses an electronic work diary, the record keeper must ensure that the information recorded in the diary on a specific day is transferred, or otherwise given, to the record keeper within 21 days after that day.
- Penalty: 60 penalty units."

17 Making entries in someone else's work diary prohibited

In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191ZE(2)(c) **substitute**—

"(c) a person who enters any of the information required by section 191T(3)(f) in the person's fellow two-up driver's work record, or who signs that work record."

18 Tampering with electronic work diaries prohibited

(1) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZG(4) **insert**—

"(4A) A person charged with an offence under this section does not have the benefit of the mistake of fact defence."

(2) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZG(5) **insert**—

"(5A) Despite subsection (4A), if a person (other than a driver or a driver's record keeper) is charged with an offence under subsection (1) and the alleged offence involves tampering with any electronic signal that is sent to, or from, an electronic work diary, it is a defence to a charge for the offence if the person proves that the person was not aware, and could not reasonably be expected to have been aware, that the activity that constituted the alleged tampering would interfere with the electronic signal."

(3) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZG(6) in the definition of *tamper*—

(a) in paragraph (b), for "diary." **substitute** "diary; or"; and

(b) after paragraph (b) **insert**—

"(c) results, or may result, in inaccurate data being recorded by the diary; or

(d) otherwise interferes with any electronic signal that is sent to, or from, the work diary and that conduct has any of the effects listed in this subsection."

19 Granting BFM accreditation

In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191ZJ(4) **substitute**—

"(4) In granting BFM accreditation to the operator of a fatigue regulated heavy vehicle, the Corporation must have regard to—

(a) any relevant advice given to it by the Fatigue Authorities Panel; and

(b) any guidelines in relation to BFM accreditation issued by the Fatigue Authorities Panel and published in the Commonwealth Government Gazette."

20 BFM accreditation certificate and period of certification

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZK(2)(a), after "accreditation" **insert** "certificate".

21 Obligations of operator under BFM accreditation

In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZN(2) insert—

- "(3) If required to do so in writing by the Corporation, the operator must give to the Corporation, in the form and within the time specified by the Corporation—
- (a) a copy of the list of drivers kept under subsection (2)(a); and
 - (b) details of any changes to that list.

Penalty: 20 penalty units."

22 Operator must advise of change or end of accreditation

In section 20 of the **Road Legislation Further Amendment Act 2007**, at the end of proposed section 191ZO insert—

- "(2) If a driver is informed under subsection (1) that an operator's BFM accreditation has changed or ceased, the driver must immediately return to the operator any document given to the driver for the purposes of section 191ZOA.

Penalty: 20 penalty units."

23 New section 191ZOA inserted

In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZO insert—

"191ZOA Driver must carry BFM accreditation details

- (1) At all times while working under an operator's BFM accreditation, a driver must have in the driver's possession—
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- (a) a copy of the operator's accreditation certificate; and
- (b) a document signed by the operator stating that the driver is working under the operator's accreditation, and stating that the driver has been inducted into the operator's BFM system and meets the requirements relating to drivers under the accreditation.

Penalty: 20 penalty units.

Notes

- 1 A driver is already required to record the driver's operator's BFM accreditation number under section 191T(2)(e).
 - 2 An inspector may direct a driver to produce a record required to be kept by the driver—see section 132.
- (2) An operator must ensure that each driver driving under the operator's BFM accreditation does not contravene subsection (1).

Penalty: 20 penalty units.

- (3) A driver must immediately return to an operator any document given to the driver by the operator for the purposes of subsection (1)(a) or (1)(b) if the driver—
- (a) ceases to work under the operator's BFM accreditation; or
 - (b) ceases to meet the requirements relating to drivers under that accreditation.

Penalty: 20 penalty units."

24 Application for AFM accreditation

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZR(2)(b), for "fatigue management" substitute "AFM".

25 Granting AFM accreditation

(1) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZS(2), after "operator of a" insert "fatigue".

(2) In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191ZS(4) substitute—

"(4) In granting AFM accreditation to the operator of a fatigue regulated heavy vehicle, the Corporation must have regard to—

- (a) any relevant advice given to it by the Fatigue Authorities Panel; and
- (b) any guidelines in relation to AFM accreditation issued by the Fatigue Authorities Panel and published in the Commonwealth Government Gazette."

26 Driver must carry AFM accreditation details

(1) In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191ZW(1) substitute—

"(1) At all times while working under an operator's AFM accreditation, a driver must have in the driver's possession—

- (a) a copy of the operator's accreditation certificate; and

- (b) a document signed by the operator stating that the driver is working under the operator's accreditation, and stating that the driver has been inducted into the operator's AFM system and meets the requirements relating to drivers under the accreditation; and
- (c) a document that sets out the AFM hours allowed under the accreditation.

Penalty: 20 penalty units.

Example

A record of the AFM hours allowed under the accreditation stored in the driver's electronic work diary.

Notes

- 1 A driver is already required to record the driver's operator's AFM accreditation number under section 191T(2)(e).
- 2 An inspector may direct a driver to produce a record required to be kept by the driver—see section 132."

(2) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZW(2) insert—

- "(3) A driver must immediately return to an operator any document given to the driver by the operator for the purposes of subsection (1)(a) or (1)(b) if the driver—
- (a) ceases to work under the operator's AFM accreditation; or
 - (b) ceases to meet the requirements relating to drivers under that accreditation.

Penalty: 20 penalty units."

27 Obligations of operator under AFM accreditation

In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZX(2) **insert—**

- "(3) If required to do so in writing by the Corporation, the operator must give to the Corporation, in the form and within the time specified by the Corporation—
- (a) a copy of the list of drivers kept by the operator under subsection (2)(a); and
 - (b) details of any changes to that list.

Penalty: 20 penalty units."

28 New sections 191ZXA and 191ZXB inserted

In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZX **insert—**

"191ZXA How electronic work diary to be operated

- (1) A driver using an electronic work diary must ensure that the driver operates and maintains the diary—
- (a) in accordance with the manufacturer's specifications; and
 - (b) in compliance with any conditions that apply to the operation of the diary that the Corporation has imposed in writing.

Penalty: 60 penalty units.

- (2) The record keeper of a driver using an electronic work diary must ensure that the driver complies with subsection (1).

Penalty: 60 penalty units.

- (3) It is a defence to a charge of failing to operate or maintain an electronic work diary in accordance with a particular specification of the manufacturer if the person charged proves—
- (a) that the specification was not integral to the effective operation of the diary; or
 - (b) that the failure to operate or maintain the diary in accordance with the specification was in accordance with industry practice in relation to the operation or maintenance of a diary of that type from that manufacturer.

191ZXB Admissibility of documents produced by an electronic work diary

- (1) A document produced by an electronic work diary is evidence of the matters contained in the document.
- (2) A statement as to the operation of an electronic work diary made in a document signed by a person purporting to be involved with the operation of the diary is evidence of any fact contained in that statement."

29 Operator must advise of change or end of accreditation

In section 20 of the **Road Legislation Further Amendment Act 2007**, at the end of proposed section 191ZY insert—

- "(2) If a driver is informed that an operator's AFM accreditation has changed or ceased, the driver must immediately return to the operator any document given to the driver by the operator for the purposes of section 191ZW(1)(a) or (b)."

30 Work diary exemption

In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191ZZA(2) **substitute—**

"(2) An application for a work diary exemption may be made by a driver or driver's employer only if the driver is working under standard hours."

31 Grounds for cancellation—without application

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZZD(b), after "accreditation" (where second occurring), **insert** "or exemption".

32 Return of accreditation certificate or exemption

(1) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZZG(1)—

- (a) after "accreditation" (where first occurring) **insert** "or exemption"; and
- (b) after "accreditation certificate" **insert** "or exemption".

(2) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZZG(2) **insert—**

"(3) If a person's accreditation certificate or exemption has been varied, the Corporation must give the person a replacement accreditation certificate or exemption."

33 Replacement of lost etc. accreditation certificates and exemptions

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZZH(1), after "certificate" (where second occurring) **insert** "or exemption".

34 Offence to falsely represent that accreditation held

(1) In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191ZZI(2) substitute—

"(2) A person must not possess a document that falsely purports to be—

- (a) an accreditation certificate or exemption under this Act; or
- (b) a copy of an accreditation certificate or exemption under this Act; or
- (c) a document referred to in section 191ZOA(1)(b) or 191ZW(1)(b).

Penalty: 60 penalty units."

(2) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZZI(2) insert—

"(3) A person must not represent that the person is working under an accreditation or exemption if that accreditation or exemption is no longer in force.

Penalty: 100 penalty units."

35 Requiring driver to stop working if impaired by fatigue

In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZZL(3) insert—

"(3A) If an inspector has required a driver not to work under subsection (2)(a), the inspector must record details of the requirement in the driver's work diary."

36 What constitutes reasonable steps

- (1) In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZZO(2)(d), for "paragraph (b)(ii)." **substitute** "paragraph (b)(ii);".
- (2) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZZO(2)(d) **insert—**
 - "(e) documented the actions the person took under paragraphs (a), (b), (c) and (d) to prevent the act or omission that led to the contravention."
- (3) In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZZO(4) **insert—**
 - "(5) A person is not required to keep a document under subsection (2)(e) for longer than 3 years."

37 Proceedings for offences

In section 20 of the **Road Legislation Further Amendment Act 2007**, in proposed section 191ZZV(3)(a), for "law" **substitute** "obligation".

38 Division 8 heading amended

In section 20 of the **Road Legislation Further Amendment Act 2007**, for the proposed heading to Division 8 of Part 10A, **substitute—**

"Division 8—Australian Transport Council".

39 Australian Transport Council may approve standards

In section 20 of the **Road Legislation Further Amendment Act 2007**, for proposed section 191ZZZA **substitute—**

"191ZZZA Australian Transport Council may approve standards and other matters

- (1) For the purposes of this Act, the Australian Transport Council may, by notice published in the Commonwealth Government Gazette, approve the following—
 - (a) standards for a driver's sleeper berth for a bus;
 - (b) AFM standards and business rules;
 - (c) BFM standards and business rules;
 - (d) standards for the maintenance of odometers fitted to fatigue regulated heavy vehicles;
 - (e) types of electronic work diary that may be used;
 - (f) classes of auditors who may issue statements about whether an operator's AFM system will ensure compliance with AFM standards and business rules;
 - (g) classes of auditors who may issue statements about whether an operator's BFM system will ensure compliance with BFM standards and business rules;
 - (h) the form for AFM accreditation certificates;
 - (i) the form for BFM accreditation certificates;
 - (j) any other matter that the regulations prescribe for approval under this section.
 - (2) The Australian Transport Council may, by written instrument, delegate a power of the Australian Transport Council under this Act to the Corporation.
-

- (3) The Corporation may delegate any power delegated to the Corporation under subsection (2), other than this power of delegation, to—
- (a) an officer of the Corporation either by name or by reference to the officer's office only (and where the reference is to the office, the holder for the time being of the office is the delegate); or
 - (b) an employee in the Department of Transport either by name or by reference to the employee's position only."

40 Section 191ZZZB repealed

In section 20 of the **Road Legislation Further Amendment Act 2007**, omit proposed section 191ZZZB.

41 Decisions that may be considered and reviewed

In section 20 of the **Road Legislation Further Amendment Act 2007**, in Item 2 of the Table at the foot of proposed section 191ZZZC, for "191ZU" substitute "191ZT".

42 New section 191ZZZE inserted

In section 20 of the **Road Legislation Further Amendment Act 2007**, after proposed section 191ZZZD insert—

"191ZZZE Duty on officers to annotate driver's work diary

- (1) This section applies if an inspector stops a driver for compliance purposes using a power conferred on the inspector by this Act.

-
- (2) If the inspector detains the driver for a period of 5 minutes or longer, the driver may ask the inspector to record the following details in the driver's work diary—
 - (a) the inspector's identifying details;
 - (b) the time, date and place at which the inspector stopped the driver;
 - (c) the period of time for which the inspector has detained the driver.
 - (3) An inspector must comply with a request made under subsection (2).
 - (4) An inspector may comply with subsection (2)(a) by recording either the inspector's name or identification number.
 - (5) If more than one driver has been stopped at a place, and the drivers are spoken to by an inspector in the order in which they were stopped, the calculation of time for the purposes of subsection (2) only starts once the inspector begins to speak to the driver for the purpose for which the driver was stopped.
 - (6) In this section, *compliance purposes* has the same meaning as in section 110."

43 Schedule 3 amended

- (1) In section 29 of the **Road Legislation Further Amendment Act 2007**, in column 1 of Table 1 of proposed Schedule 3, for "day" (where first occurring) **substitute** "days".
- (2) In section 29 of the **Road Legislation Further Amendment Act 2007**, in column 3 of Table 1 of proposed Schedule 3, **omit** "stationary" (where first, second and third occurring).

- (3) In section 29 of the **Road Legislation Further Amendment Act 2007**, in column 4 of Table 1 of proposed Schedule 3, **omit** "of that" (wherever occurring).
- (4) In section 29 of the **Road Legislation Further Amendment Act 2007**, in column 3 of Table 2 of proposed Schedule 3, **omit** "stationary" (where first, second and third occurring).
- (5) In section 29 of the **Road Legislation Further Amendment Act 2007**, in column 4 of Table 2 of proposed Schedule 3, **omit** "of that" (wherever occurring).
- (6) In section 29 of the **Road Legislation Further Amendment Act 2007**, for Table 3 of proposed Schedule 3, **substitute**—

"TABLE 3

Standard hours—Two-up drivers of a fatigue regulated heavy vehicle

<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>	
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of offence is committed...</i>
1	5½ hrs	5¼ hrs work time	15 continuous mins rest time	> 5¼ hrs work time	minor risk
2	8 hrs	7½ hrs work time	30 mins rest time, in blocks of 15 continuous mins	> 7½ hrs work time	minor risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>	
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of offence is committed...</i>
3	11 hrs	10 hrs work time	60 mins rest time, in blocks of 15 continuous mins	$\leq 10\frac{3}{4}$ hrs work time $> 10\frac{3}{4}$ hrs work time	minor risk substantial risk
4	24 hrs	12 hrs work time	5 continuous hrs stationary rest time, or 5 continuous hrs rest time in an approved sleeper berth while the vehicle is moving	$\leq 12\frac{3}{4}$ hrs work time $> 12\frac{3}{4}$ but not $> 13\frac{1}{4}$ hrs work time $> 13\frac{1}{4}$ but not $> 13\frac{1}{2}$ hrs work time $> 13\frac{1}{2}$ hrs work time	minor risk substantial risk severe risk critical risk minor risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>	
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of offence is committed...</i>
				< 4¼ but not < 3¾ continuous hrs of that rest time	substantial risk
				< 3¾ but not < 3½ continuous hrs of that rest time	severe risk
				< 3½ continuous hrs of that rest time	critical risk
5	52 hrs		10 continuous hrs stationary rest time	< 10 but not < 9¼ continuous hrs stationary rest time	minor risk
				< 9¼ but not < 8¾ continuous hrs stationary rest time	substantial risk
				< 8¾ but not < 8½ continuous hrs stationary rest time	severe risk
				< 8½ continuous hrs stationary rest time	critical risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>	
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of offence is committed...</i>
6	7 days (168 hrs)	60 hrs work time		>60 hrs but not >61½ hrs work time	minor risk
				> 61½ but not > 62½ hrs work time	substantial risk
				> 62½ but not > 63 hrs work time	severe risk
				> 63 hrs work time	critical risk
			24 continuous hrs stationary rest time, and	< 24 but not < 23¼ continuous hrs stationary rest time	minor risk
				< 23¼ but not < 22¾ continuous hrs stationary rest time	substantial risk
				< 22¾ but not < 22½ continuous hrs stationary rest time	severe risk
				< 22½ continuous hrs stationary rest time	critical risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>	
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of offence is committed...</i>
			24 hrs stationary rest time in blocks of at least 7 continuous hrs stationary	< 24 but not < 23¼ hrs stationary rest time in total < 7 but not < 6¼ continuous hrs stationary rest time per block	minor risk
				< 23¼ but not < 22¾ hrs stationary rest time in total < 6¼ but not < 5¾ continuous hrs stationary rest time per block	substantial risk
				< 22¾ but not < 22½ hrs stationary rest time in total < 5¾ but not < 5½ continuous hrs stationary rest time per block	severe risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>	
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of offence is committed...</i>
				< 22½ hrs stationary rest time in total	critical risk
				< 5½ hrs stationary rest time per block	
7	14 days (336 hrs)	120 hrs work time		>120 but not >121½ hrs work time	minor risk
				> 121½ but not > 122½ hrs work time	substantial risk
				> 122½ but not > 123 hrs work time	severe risk
				> 123 hrs work time	critical risk
			2 × night rest breaks, and	< 7 but not < 6¼ hrs stationary rest time per block	minor risk
				< 6¼ but not < 5¾ hrs stationary rest time per block	substantial risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>	
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>	<i>... the following category of offence is committed...</i>
				< 5¾ but not < 5½ continuous hrs stationary rest time per block	severe risk
				< 5½ continuous hrs stationary rest time per block	critical risk
			2 x night rest breaks taken on consecutive days	< 7 but not < 6¼ continuous hrs stationary rest time per block	minor risk
				< 6¼ but not < 5¾ continuous hrs stationary rest time per block	substantial risk
				< 5¾ but not < 5½ continuous hrs stationary rest time per block	severe risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>
				<i>... the following category of offence is committed...</i>
				< 5½ hrs stationary rest time per block
				critical risk

44 Schedule 4 amended

- (1) In section 29 of the **Road Legislation Further Amendment Act 2007**, in column 4 of Table 1 of proposed Schedule 4, **omit** "of that" (wherever occurring).
- (2) In section 29 of the **Road Legislation Further Amendment Act 2007**, in Column 3 of Table 1 of proposed Schedule 4, **omit** "stationary" (where first, second and third occurring).
- (3) In section 29 of the **Road Legislation Further Amendment Act 2007**, in Table 1 of proposed Schedule 4—
 - (a) at the end of column 1 **omit** "6¼ hrs";
 - (b) at the end of column 2 **omit** "6 hrs work time";
 - (c) at the end of column 3 **omit** "15 continuous mins stationary rest time";
 - (d) at the end of column 4 **omit**—

">6 hrs work time	minor risk".
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(4) In section 29 of the **Road Legislation Further Amendment Act 2007**, for Table 2 of proposed Schedule 4, **substitute—**

"TABLE 2

BFM hours—Two-up drivers of a fatigue regulated heavy vehicle

<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>If in that period a driver has ...</i>
				<i>... the following category of offence is committed...</i>
1	24 hrs	14 hrs work time		≤ 14¾ hrs work time > 14¾ but not > 15¼ hrs work time > 15¼ but not > 15½ hrs work time > 15½ hrs work time minor risk substantial risk severe risk critical risk
2	82 hrs		10 continuous hrs stationary rest time	< 10 but not < 9¼ continuous hrs stationary rest time < 9¼ but not < 8¾ continuous hrs stationary rest time minor risk substantial risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>... the following category of offence is committed...</i>
				$< 8\frac{3}{4}$ but not $< 8\frac{1}{2}$ continuous hrs stationary rest time severe risk
				$< 8\frac{1}{2}$ continuous hrs stationary rest time critical risk
3	7 days (168 hrs)	70 hrs work time		> 70 but not $> 71\frac{1}{2}$ hrs work time minor risk
				$> 71\frac{1}{2}$ but not $> 72\frac{1}{2}$ hrs work time substantial risk
				$> 72\frac{1}{2}$ but not > 73 hrs work time severe risk
				> 73 hrs work time critical risk
			24 continuous hrs stationary rest time, and	< 24 but not $< 23\frac{1}{4}$ continuous hrs stationary rest time minor risk
				$< 23\frac{1}{4}$ but not $< 22\frac{3}{4}$ continuous hrs stationary rest time substantial risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>... the following category of offence is committed...</i>
				$< 22\frac{3}{4}$ but not $< 22\frac{1}{2}$ continuous hrs stationary rest time severe risk
				$< 22\frac{1}{2}$ continuous hrs stationary rest time critical risk
			24 hrs stationary rest time in blocks of at least 7 continuous hrs	< 24 but not $< 23\frac{1}{4}$ hrs stationary rest time in total minor risk
				< 7 but not $< 6\frac{1}{4}$ continuous hrs stationary rest time per block substantial risk
				$< 23\frac{1}{4}$ but not $< 22\frac{3}{4}$ hrs stationary rest time in total risk
				$< 6\frac{1}{4}$ but not $< 5\frac{3}{4}$ continuous hrs stationary rest time per block

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>... the following category of offence is committed...</i>
				$< 22\frac{3}{4}$ but not $< 22\frac{1}{2}$ hrs stationary rest time in total $< 5\frac{3}{4}$ but not $< 5\frac{1}{2}$ hrs stationary rest time per block severe risk
				$< 22\frac{1}{2}$ hrs stationary rest time in total $< 5\frac{1}{2}$ hrs stationary rest time per block critical risk
4	14 days (336 hrs)	140 hrs work time		$\leq 141\frac{1}{2}$ hrs work time $> 141\frac{1}{2}$ but not $> 142\frac{1}{2}$ hrs work time $> 142\frac{1}{2}$ but not > 143 hrs work time > 143 hrs work time minor risk substantial risk severe risk critical risk

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<i>Item No.</i>	<i>Column 1 Total period</i>	<i>Column 2 Maximum work time</i>	<i>Column 3 Minimum rest time</i>	<i>Column 4 Offence category</i>
	<i>In any period of ...</i>	<i>... a driver must not work for more than ...</i>	<i>... and must have the rest of that period off work, with at least ...</i>	<i>... the following category of offence is committed...</i>
			4 × 7 continuous hrs stationary rest time between 10 p.m. on a day and 8 a.m. on the next day, using the time zone of the vehicle's driver base	< 7 but not < 6¼ continuous hrs stationary rest time per block
				< 6¼ but not < 5¾ continuous hrs stationary rest time per block
				< 5¾ but not < 5½ continuous hrs stationary rest time per block
				< 5½ continuous hrs stationary rest time per block

PART 3—AMENDMENT OF ROAD SAFETY ACT 1986

45 Section 77A amended

In section 77A of the **Road Safety Act 1986**, after "Part 10" **insert** "or under Part 10A".

46 Section 213 amended

In section 213(2) of the **Road Safety Act 1986**, for "relevant" **substitute** "corresponding".

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Part 4—Repeal of Act

PART 4—REPEAL OF ACT

47 Repeal of Act

This Act is **repealed** on the first anniversary of its commencement.

ENDNOTES

[†] *Minister's second reading speech—*

Legislative Assembly: 31 July 2008

Legislative Council: 21 August 2008

The long title for the Bill for this Act was "A Bill for an Act to amend the **Road Legislation Further Amendment Act 2007** and **Road Safety Act 1986** to reflect changes to the Fatigue Management Scheme, to provide for oversight of the Scheme by the Australian Transport Council and for other purposes."