



National Transport Commission (Model Amendments Act: Heavy Vehicle Driver Fatigue — Package No. 3) Regulations 2009¹

Select Legislative Instrument 2009 No. 239

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *National Transport Commission Act 2003*.

Dated 17 September 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

ANTHONY ALBANESE
Minister for Infrastructure, Transport, Regional Development
and Local Government

1 Name of Regulations

These Regulations are the *National Transport Commission (Model Amendments Act: Heavy Vehicle Driver Fatigue — Package No. 3) Regulations 2009*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Proposed amendments to model legislation

- (1) Under section 7 of the *National Transport Commission Act 2003*, Schedule 1 sets out model legislation (in the form of an Act) to amend the principal model legislation.
- (2) In subregulation (1), *principal model legislation* means the model legislation set out in Schedule 1 to the *National Transport Commission (Model Legislation — Heavy Vehicle Driver Fatigue) Regulations 2007* as if it had been amended by the model legislation set out in:
 - (a) Schedule 1 to the *National Transport Commission (Model Amendments Act: Heavy Vehicle Driver Fatigue — Package No. 1) Regulations 2008*; and
 - (b) Schedule 1 to the *National Transport Commission (Model Amendments Act: Heavy Vehicle Driver Fatigue — Package No. 2) Regulations 2009*.

Note 1 The model legislation does not have the force of law (see paragraph 7 (2) (a) of the *National Transport Commission Act 2003*).

Note 2 These Regulations are not subject to disallowance — see the *Legislative Instruments Act 2003*, subsection 44 (2) (table, item 44) and the *Legislative Instruments Regulations 2004*, regulation 8 and Schedule 2 item 7.

Note 3 These Regulations are not subject to sunseting — see the *Legislative Instruments Act 2003*, subsection 54 (2) (table, item 51) and the *Legislative Instruments Regulations 2004*, regulation 9 and Schedule 3 item 4.

Schedule 1 Model legislation for regulation 3

(regulation 3)

Model Amendments Act: Heavy Vehicle Driver Fatigue — Package No. 3

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Model Amendments Act: Heavy Vehicle Driver Fatigue — Package No. 3

The following provisions are intended to provide the basis for nationally consistent transport laws on the topics with which they deal. They do not, of themselves, have any legal effect.

1. Name

This Act is the *Model Amendments Act: Heavy Vehicle Driver Fatigue — Package No. 3*.

2. Purpose

The purpose of this Act is to make various minor amendments to improve the operation of the *Road Transport (Heavy Vehicle Driver Fatigue) Act 2006*.

3. Approval

This Act was approved by the Australian Transport Council on 11 July 2008.

4. Act being amended by this Act

This Act amends the *Road Transport (Heavy Vehicle Driver Fatigue) Act 2006*.

5. Substitution of section 36

For section 36 substitute –

"36. What is work/rest hours option

A driver's work/rest hours option at any particular time is 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 time exemption.

Note Section 43 explains what *standard hours* are. Section 48 explains what *BFM hours* are. Section 52 explains what *AFM hours* are. Section 91 explains what a work/rest hours exemption is."

6. Defence for solo drivers relating to split rest breaks

In section 50, in the example, omit "after 14 hours of work".

7. Consequential changes concerning work/rest hours option

- (1) In section 53(3)(b), after "AFM hours" insert "or the hours specified in a work/rest hours exemption".
- (2) For section 58(1)(b) substitute –
 - "(b) if the driver changes from one work/rest option to another work/rest option during a day, he or she must record any information for that day that relates to the period after the change occurs on a separate daily sheet; and"

8. Change to the way certain matters are to be determined

- (1) In sections 60(2), 72(1), 73(2), 74(2), 78(2)(c), 79(5), 83(2)(d), 84(6) and 104(1), for "specified by the Fatigue Authorities Panel" substitute "approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette".
- (2) For section 74(4) substitute –
 - "(4) In approving a type of electronic work diary, the Authority must have regard to any guidelines in relation to electronic diaries approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette."
- (3) For section 79(4) substitute –
 - "(4) In granting BFM accreditation to the operator of a regulated heavy vehicle, the Authority must have regard:
 - (a) to any relevant advice given to it by the Fatigue Authorities Panel; and
 - (b) to any guidelines in relation to BFM accreditation issued by the Fatigue Authorities Panel by notice published in the Commonwealth Government Gazette."
- (4) For section 84(4) substitute –
 - "(4) In granting AFM accreditation to the operator of a regulated heavy vehicle, the Authority must have regard:
 - (a) to any relevant advice given to it by the Fatigue Authorities Panel; and

-
- (b) to any guidelines in relation to AFM accreditation issued by the Fatigue Authorities Panel by notice published in the Commonwealth Government Gazette."
- (5) Omit section 114A.
- (6) In the Dictionary, in the definitions of *AFM standards and business rules* and *BFM standards and business rules*, for "specified by the Fatigue Authorities Panel" substitute "approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette".
- (7) In the Dictionary, in the definition of *approved sleeper berth*, in paragraph (b), for "specified by the Fatigue Authorities Panel" substitute "approved by the Australian Transport Council by notice published in the Commonwealth Government Gazette".
- (8) In the Dictionary, insert after the definition of *approved sleeper berth* –
- "Australian Transport Council* — in relation to any particular matter, includes a person who, or a body that, has been authorised by the Australian Transport Council to act as its delegate in relation to that matter."

[Drafting note: Most of the amendments made in this section involve provisions that were amended by section 31 of the Model Amendments Act: Heavy Vehicle Driver Fatigue – Package No. 1.]

9. Work/rest hours exemptions

For section 91(1) substitute –

"(1) A *work/rest hours exemption* is an exemption from complying with any restrictions imposed under this Act in relation to work time or rest time.

(1A) In granting a work/rest hours exemption, the Authority must specify the work and rest times that are to apply to a person to whom the exemption applies."

10. Transitional provision concerning TFMS

At the end of section 124 insert –

"[Drafting note: A jurisdiction may also wish to insert into this section a provision requiring employers to continue to comply during the transition period with some or all of the obligations they were under with respect to training courses, medical examinations and the management of the driving, work and rest times of drivers under the old Regulations.]"

11. Correction of minor error

In section 130(4)(b), omit "it".

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.