

Schedule 9—Transitional provisions

Part 1—Preliminary

1—Interpretation

- (1) In this Schedule—
revoked regulations means the *Road Traffic (Driving Hours) Regulations 1999*.
- (2) In this Schedule, the following terms have the same meaning as in the revoked regulations:
 - (a) *driver certification manual*;
 - (b) *driving time*;
 - (c) *logbook*;
 - (d) *TFMS*.

Part 2—Transitional class exemptions

Division 1—Transitional work/rest hours class exemption

2—Special provisions related to transitional work/rest hours class exemption

- (1) Despite regulation 58(8), the Authority may, for transitional purposes, grant a work/rest hours exemption under regulation 58(2) (a *transitional work/rest hours class exemption*) on any grounds the Authority thinks fit.
- (2) Without limiting regulation 58(3), a transitional work/rest hours class exemption is subject to the following conditions:
 - (a) the maximum work times and the minimum required rest times in relation to a driver working under the exemption are those set out in the notice in the Gazette in which the exemption is granted;
 - (b) subject to clause 11, a driver working under the exemption must record (in accordance with the instructions (if any) specified in the notice in the Gazette in which the exemption is granted) in his or her work diary the portion of any work time that is driving time;
 - (c) despite any other provision of these regulations, a driver working under the exemption must record (in accordance with the instructions (if any) in the notice in the Gazette in which the exemption is granted) in his or her work diary any change from work time that is driving time to work time that is not driving time, or from work time that is not driving time to work time that is driving time.

Note—

The notice in the Gazette in which the exemption is granted may set out further conditions that apply in relation to the exemption.

A driver who fails to comply with a condition of this exemption will not be covered by the exemption, and may be liable to prosecution under regulation 58(5) or 62 of the regulations.

- (3) For the purposes of classifying an offence against regulation 62 by a driver working under a transitional work/rest hours class exemption consisting of exceeding the maximum driving hours in a 24 hour period by a particular amount, the offence is to be classified as if the offence were an offence of exceeding the maximum work times by the amount.

Division 2—Other transitional class exemptions

3—Exemption in relation to the armed forces

- (1) This clause applies to a regulated heavy vehicle being driven in this State that is—
 - (a) owned by the Australian Defence Force; or
 - (b) being operated by, or under the direction or at the request of, an authorised officer of the Australian Defence Force.
- (2) The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies:
 - (a) Part 4 Division 1 Subdivision 3 (Work diary requirements);
 - (b) Part 4 Division 2 (Records relating to drivers).
- (3) This clause expires at the end of 28 September 2011.

4—Exemption in relation to transport of bees

- (1) This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours.
- (2) This clause only applies in the following circumstances:
 - (a) a regulated heavy vehicle to which this clause applies is being used to transport live bees in an area not more than 200 kilometres from the base of the driver driving the vehicle;
 - (b) a regulated heavy vehicle to which this clause applies is undertaking an unladen one way trip for a purpose directly related to the transportation of live bees in an area not more than 200 kilometres from the base of the driver driving the vehicle.
- (3) The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2):
 - (a) Part 3 Division 2 (Standard hours, BFM hours and AFM hours etc);
 - (b) Part 4 Division 1 Subdivision 3 (Work diary requirements);
 - (c) Part 4 Division 2 (Records relating to drivers).
- (4) This clause expires at the end of 28 September 2011.

5—Exemption in relation to regulated heavy vehicles used during emergencies

- (1) This clause applies to a regulated heavy vehicle being driven in this State that is—
 - (a) urgently required in response to an emergency; or
 - (b) under the direction of a supervisor of an emergency service who is controlling or assisting in the response to an emergency; or
 - (c) required in relation to the provision of an essential service, or for the repair or replacement of infrastructure related to an essential service.
- (2) This clause only applies in the following circumstances:
 - (a) if a regulated heavy vehicle to which this clause applies is travelling to an emergency;
 - (b) if a regulated heavy vehicle to which this clause applies is being used in the course of, or in relation to, an emergency;

- (c) if a regulated heavy vehicle to which this clause applies is returning from an emergency (the driver of the vehicle having ceased to be involved in the emergency).
- (3) These regulations (other than regulation 6) do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2)(a) or (b).
- (4) The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2)(c):
 - (a) Part 4 Division 1 Subdivision 3 (Work diary requirements);
 - (b) Part 4 Division 2 (Records relating to drivers).
- (5) However, this clause will only apply in respect of the circumstances set out in subclause (2)(c) if the driver of the regulated heavy vehicle—
 - (a) before commencing the return journey, has had not less than 10 hours of rest time (including not less than 6 continuous hours of stationary rest time) during the 24 hours preceding commencement of the return journey; and
 - (b) makes—
 - (i) the following written records, to be made before commencing the return journey:
 - (A) a description of the emergency;
 - (B) an estimate of the driver's work time and rest time during the 24 hours preceding commencement of the return journey;
 - (C) the driver's name and driver's licence number, and the State or Territory in which the licence was issued; and
 - (ii) the following written records, to be made at the end of each day on which the driver drove a regulated heavy vehicle during the return journey:
 - (A) the registration number of the regulated heavy vehicle;
 - (B) the date for that day;
 - (C) an estimate of the driver's work time and rest time during that day;
 - (D) an estimate of the distance travelled on that day; and
 - (c) keeps a record referred to in paragraph (b) for a period of not less than 3 years after it is created (however this condition will be taken to have been complied with if the record keeper for the driver keeps the record for that period).
- (6) This clause expires at the end of 28 September 2011.
- (7) In this clause—

emergency means—

- (a) an event that causes injury to any person; or
- (b) a flood, fire, explosion, natural disaster or similar event; or
- (c) a disruption to essential services;

emergency service has the same meaning as in regulation 57.

6—Exemption in relation to transport of fruit, vegetables and grain

- (1) This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours.
- (2) This clause only applies in circumstances where a regulated heavy vehicle to which this clause applies is being used to transport fresh fruit or vegetables, or grain, between a farm and a receiving point for the fruit, vegetables or grain in an area not more than 100 kilometres from the base of the driver driving the vehicle.
- (3) The following provisions of these regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2):
 - (a) Part 3 Division 2 (Standard hours, BFM hours and AFM hours etc);
 - (b) Part 4 Division 1 Subdivision 3 (Work diary requirements);
 - (c) Part 4 Division 2 (Records relating to drivers).
- (4) This clause expires at the end of 28 September 2011.

7—Exemption in relation to transport of livestock

- (1) This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours.
- (2) This clause only applies in circumstances where—
 - (a) the primary load of the regulated heavy vehicle to which this clause applies is live cattle, sheep, goats or pigs; and
 - (b) due to unforeseen delays, the welfare of those animals is at risk.
- (3) Regulation 16 does not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2).
- (4) However, this clause will only apply if the driver of the regulated heavy vehicle complies with the following provisions:
 - (a) the driver must record—
 - (i) if the driver is required to record information in a work diary in relation to the day on which the driver drove under this clause—in that work diary; or
 - (ii) in any other case—in writing,
the reason why it was necessary or desirable to exceed the work times and rest times set out in regulation 16;
 - (b) if a record is made in accordance with paragraph (a)(ii)—the driver must keep that record for a period of not less than 3 years after it is created (however this condition will be taken to have been complied with if the record keeper for the driver keeps the record for that period);
 - (c) during any period in column 1 of the following table, the driver—
 - (i) if a maximum work time is specified in column 2 of the table in relation to the period—must not work for more than that amount of work time; and
 - (ii) must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 3 (if any),

(and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with subparagraph (i) and (ii) in relation to each of those lesser periods):

Period	Max work time	Min rest time
5½ hours	5 hours	30 continuous minutes, or 2 blocks of 15 continuous minutes, of rest time
24 hours	16 hours	6 continuous hours of stationary rest time
48 hours	28½ hours	13.5 hours of stationary rest time in 2 blocks of not less than 6 continuous hours and 1 block of not less than 1.5 continuous hours

- (5) An exemption under this clause in respect of a particular load ceases to apply—
- (a) 48 hours after the relevant unforeseen delay occurs; or
 - (b) when the welfare of the animals comprising the load is no longer at risk,
- whichever is the earlier.
- (6) This clause expires at the end of 28 September 2011.

8—Exemption in relation to certain vehicles engaged construction or maintenance of infrastructure in remote area

- (1) This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours and that is—
 - (a) owned by the Department; or
 - (b) being operated by, or under the direction or at the request of, an officer of the Department.
- (2) This clause only applies in circumstances where a regulated heavy vehicle to which this clause applies is being used in relation to the construction or maintenance of infrastructure in a remote area.
- (3) Part 3 Division 2 of the regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2).
- (4) However, this clause will only apply if the driver of the regulated heavy vehicle, during any period in column 1 of the following table—
 - (a) if a maximum driving time is specified in column 2 of the table in relation to the period—does not drive for more than that amount of driving time; and
 - (b) if a maximum work time is specified in column 3 of the table in relation to the period—does not work for more than that amount of work time; and
 - (c) has the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 4 (if any),

(and if that specified period includes any lesser periods specified in column 1 of the table, he or she also complies with paragraphs (a), (b) and (c) in relation to each of those lesser periods):

Period	Max driving time	Max work time	Min rest time
5½ hours		5 hours	30 continuous minutes, or 2 blocks of 15 continuous minutes, of rest time
24 hours	12 hours	14 hours	6 continuous hours of stationary rest time

(5) This clause expires at the end of 31 December 2008.

(6) In this clause—

Department means the Department of Transport, Energy and Infrastructure.

9—Exemption in relation to certain ETSA Utilities vehicles

- (1) This clause applies to a regulated heavy vehicle being driven in this State by a solo driver who would, but for this clause, be working under standard hours and that is—
- owned by ETSA Utilities Pty Ltd; or
 - being operated by, or under the direction or at the request of, an officer or employee of ETSA Utilities Pty Ltd.
- (2) This clause only applies in circumstances where a regulated heavy vehicle to which this clause applies is being used in relation to the construction of electricity infrastructure.
- (3) Part 3 Division 2 of the regulations do not apply in relation to a regulated heavy vehicle to which this clause applies in the circumstances set out in subclause (2).
- (4) However, this clause will only apply if the driver of the regulated heavy vehicle complies with the following provisions:
- the driver of the regulated heavy vehicle must operate in accordance with the ETSA field instructions;
 - the driver of the regulated heavy vehicle must have a copy of the ETSA field instructions in his or her possession when working under this clause;
 - during any period in column 1 of the following table, the driver—
 - if a maximum driving time is specified in column 2 of the table in relation to the period—must not drive for more than that amount of driving time; and
 - if a maximum work time is specified in column 3 of the table in relation to the period—must not work for more than that amount of work time; and
 - must have the remainder of the period as rest time, including at least the period or periods of continuous rest time and stationary rest time specified in column 4 (if any),

(and if that specified period includes any lesser periods specified in column 1 of the table, he or she must also comply with subparagraphs (i), (ii) and (iii) in relation to each of those lesser periods):

Period	Max driving time	Max work time	Min rest time
5½ hours		5 hours	30 continuous minutes, or 2 blocks of 15 continuous minutes, of rest time
24 hours	12 hours	14 hours	6 continuous hours of stationary rest time

- (5) This clause expires at the end of 31 December 2008.
- (6) In this clause—

ETSA field instructions means the following documents published by ETSA Utilities PTY Ltd and in force as at 18 June 2008:

- (a) *Field Instruction—Working Hours Fatigue Management (Reference Number FI:B15)*;
- (b) *Heavy Truck Driving Hours (Reference Number FI:C15)*.

Part 3—Transitional TFMS

10—Transitional TFMS

- (1) This clause applies to a driver who, immediately before the commencement of the *Road Traffic (Driving Hours) Revocation Regulations 2008*, was registered as a driver participant in TFMS under the revoked regulations or a corresponding law.
- (2) The TFMS registration of—
 - (a) a driver to whom this clause applies; and
 - (b) a person who was registered as employer participant in TFMS immediately before the commencement of the *Road Traffic (Driving Hours) Revocation Regulations 2008*,

will be taken to continue until the first anniversary of the commencement of this clause (unless the registration is cancelled earlier in accordance with these regulations or the *Road Traffic (Driving Hours) Revocation Regulations 2008*).

- (3) Regulation 34, 35, 37, Part 3 Division 4, Part 7 Division 1 and Part 7 Division 2 of the revoked regulations continue to apply in relation to a driver to whom this clause applies as if those regulations had not been revoked (and a reference in regulations 34 and 39 to "this Part" will be taken to be a reference to BFM hours (within the meaning of these regulations)).
- (4) Subject to this clause, a driver to whom this clause applies may, during the prescribed period, drive at BFM hours (the *transitional TFMS*).
- (5) However, subclause (4) only applies to a driver if—
 - (a) the driver—
 - (i) carries his or her driver certification manual at all times while working under transitional TFMS (and such carriage will be taken to satisfy the requirements relating to the documents required to be carried under regulation 27(1)); and
 - (ii) complies with any requirement applicable to the driver under regulations 34 and 35 of the revoked regulations as if those regulations had not been revoked; and
 - (b) if the driver is an employed driver—the employer—
 - (i) is registered as an employer participant in TFMS; and
 - (ii) complies with any requirement applicable to the employer under regulation 39 of the revoked regulations as if those regulations had not been revoked.

- (6) For the purposes of these regulations, transitional TFMS will be taken to be a work/rest hours option.
- (7) For the purposes of Part 4 of these regulations—
 - (a) a driver working under transitional TFMS will be taken to be working under BFM accreditation; and
 - (b) a reference in that Part to an operator's BFM accreditation number will be taken to be a reference to the relevant TFMS registration number.
- (8) This clause ceases to apply to a driver if the driver commences working under BFM or AFM accreditation or under a work/rest hours exemption.
- (9) In this clause—

corresponding law has the same meaning as in the revoked regulations;

prescribed period means the period ending at the end of 28 September 2009.

Part 4—Miscellaneous transitional provisions

11—Provisions relating to logbooks

- (1) A driver to whom a logbook has been issued under the revoked regulations or a corresponding law and that has not been filled may—
 - (a) for a period—
 - (i) if the driver is working under standard hours, or a transitional work/rest hours class exemption or transitional TFMS, or is a driver working under an exemption under Part 2 Division 2 of this Schedule—of not more than 90 days after the commencement of this clause; or
 - (ii) if the driver is working under BFM or AFM accreditation, or a work/rest hours exemption (whether or not granted in combination with BFM or AFM accreditation)—of not more than 14 days after the day on which he or she first worked under the accreditation or exemption, or not more than 90 days after the commencement of this clause, whichever is the earlier; or
 - (b) until the logbook is filled; or
 - (c) until a written work diary is issued to the driver under these regulations or a corresponding fatigue law,

(whichever occurs first) use the logbook for the purpose of satisfying the requirements relating to written work diaries under these regulations as if the logbook were a written work diary (and the logbook will be taken to be a written work diary for the purposes of these regulations).
- (2) The following provisions apply in relation to a driver who, immediately before the commencement of this clause, was not required under the revoked regulations to have a logbook:
 - (a) the driver is, for the period ending—
 - (i) 14 days after the commencement of this clause; or

- (ii) when a written work diary is issued to the driver under these regulations or a corresponding fatigue law,
(whichever is the earlier) (the *relevant period*), exempt from a requirement of Part 4 Division 1 Subdivision 3;
 - (b) the driver must, within 21 days after a day on which he or she drove a regulated heavy vehicle during the relevant period, give to his or her record keeper the following information:
 - (i) the driver's name;
 - (ii) the date of each day during the relevant period on which the driver drove a regulated heavy vehicle;
 - (iii) an estimate of the driver's total driving time, total work time and total rest time for each day during the relevant period on which the driver drove a regulated heavy vehicle;
 - (iv) an estimate of the driver's total driving time, total work time and total rest time for each week during the relevant period in which the driver drove a regulated heavy vehicle,
(and compliance with this paragraph will be taken to satisfy the requirements under regulation 45 in relation to the relevant period);
 - (c) for the purposes of regulation 38, a reference in that regulation to "this Subdivision" will be taken to be a reference to this subclause;
 - (d) for the purposes of regulation 44, the information required to be given to a record keeper under paragraph (b) will, in relation to the relevant period, be taken to be the information required to be kept under regulation 44(1) or (2) (as the case requires);
 - (e) regulation 46 does not apply in relation to the driver in respect of the relevant period.
- (3) An application for a written work diary under regulation 30 must, if the driver has been issued a logbook under the revoked regulations or a corresponding law, be accompanied by the most recent logbook issued to the driver under those regulations.
 - (4) The Authority must, if an application for a written work diary is accompanied by a logbook in accordance with subclause (3), cancel any unused daily sheets in the logbook by writing in large letters the word "cancelled" across each such sheet and return the logbook to the applicant on issuing the written work diary.
 - (5) A requirement under subclause (3) or (4) is in addition to any requirement under regulation 30.
 - (6) A requirement under regulation 39(1) that a driver keep in a vehicle a work diary containing certain information for the preceding 28 days also applies to a driver who, during the preceding 28 days referred to in that subregulation, was required to record information in a logbook under the revoked regulations (and a reference in that subregulation to information required under regulation 40 will, in relation to the information required to be recorded in the logbook, be taken to be a reference to the information required to be kept under Part 4 Division 2 of the revoked regulations).
 - (7) For the purposes of regulation 39, a reference to a *work diary* includes, in the case of a driver who has used a logbook during the relevant period, a reference to the logbook.

- (8) Regulation 48 does not apply in relation to unused daily sheets in a logbook cancelled in accordance with subclause (4).
- (9) In this clause—
corresponding law has the same meaning as in the revoked regulations.

12—Compliance with transitional provision of corresponding fatigue law

For the purposes of these regulations, if a driver whose base is in another participating jurisdiction undertakes work in accordance with a provision of a transitional nature under a corresponding fatigue law of that jurisdiction, the driver, and any parties in the chain of responsibility in relation to the driver, will be taken to have complied with these regulations and the *Road Traffic (Approved Road Transport Compliance Schemes) Regulations 2008* in relation to such work.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 11 September 2008

No 250 of 2008

MTR07/045