



Queensland

Transport Legislation Amendment Act 2008

Act No. 31 of 2008



Queensland

Transport Legislation Amendment Act 2008

Contents

		Page
Part 1	Preliminary	
1	Short title	8
2	Commencement	8
Part 2	Amendment of Maritime Safety Queensland Act 2002	
3	Act amended in pt 2	8
4	Amendment of long title	8
5	Amendment of s 4 (Purpose of Act)	8
6	Amendment of pt 2 (Maritime Safety Agency of Queensland)	9
7	Amendment of s 7 (Establishment of MSQ)	9
8	Amendment of s 10 (Appointment of general manager)	9
9	Insertion of pt 5, div 1 hdg	9
10	Insertion of new pt 5, div 2	9
	Division 2 Transitional provisions for Transport Legislation Amendment Act 2008, part 2	
16	Change of name does not affect legal personality etc.	10
17	References to Maritime Safety Agency of Queensland	10
18	Recording MSQ's changed name in register	10
11	Amendment of sch 2 (Dictionary)	11
Part 3	Amendment of Transport Infrastructure Act 1994	
Division 1	Act amended	
12	Act amended in pt 3	11
Division 2	Amendments for tolling purposes	
13	Amendment of s 92 (Definitions for pt 7)	11
14	Amendment of s 93 (Tolls)	12
15	Insertion of new ch 18, pt 9	12

Contents

	Part 9	Transitional provision for Transport Legislation Amendment Act 2008, part 3, division 2	
	546	Transitional provision for toll roads	12
Division 3		Amendments for rail purposes	
16		Insertion of new ss 240E and 240F	13
	240E	Access arrangements across proposed railway	13
	240F	Cancellation of right of access	16
17		Amendment of s 253 (Extending roads through or over rail corridor land)	17
18		Amendment of s 255 (Interfering with railway)	19
19		Amendment of sch 3 (Reviews and appeals)	19
Division 4		Amendments for busway and light rail purposes	
20		Amendment of s 302 (Declaration of land as busway land)	20
21		Amendment of s 353 (Declaration of land as light rail land)	20
22		Amendment of sch 6 (Dictionary)	21
Part 4		Amendment of Transport Legislation and Another Act Amendment Act 2007	
23		Act amended in pt 4	22
24		Omission of pt 2 (Amendment of Maritime and Other Legislation Amendment Act 2006)	22
25		Amendment of s 57 (Amendment of s 80 (Provisions with respect to breath tests and laboratory tests))	22
Part 5		Amendment of Transport Operations (Marine Pollution) Act 1995	
26		Act amended in pt 5	23
27		Insertion of new s 48A	23
	48A	Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage	23
28		Amendment of s 118 (Evidentiary provisions)	24
29		Insertion of new pt 15A	24
	Part 15A	Appointment of analysts	
	132B	Appointment and qualifications	24
	132C	Appointment conditions	24
	132D	When analyst stops holding office	24
	132E	Resignation	25
30		Insertion of new s 132F	25
	132F	Recovery of damages	25
31		Omission of s 135 (Review of Act)	26

32	Insertion of new pt 17, div 3	26
	Division 3 Provisions for Transport Legislation Amendment Act 2008, part 5	
	154 Appointments of analysts	27
	155 Actions done and documents made by analysts	27
	156 Recovery of damages	27
33	Amendment of schedule (Dictionary)	27
Part 6	Amendment of Transport Operations (Marine Safety) Act 1994	
34	Act amended in pt 6	28
35	Amendment of s 87A (Owner of ship lost, abandoned or stranded)	28
36	Insertion of new s 199B	28
	199B Court may make orders about apologies and other matters	29
37	Amendment of s 202K (Variation of restrictions)	30
38	Amendment of s 205 (False or misleading documents)	30
39	Insertion of new pt 19, div 4	31
	Division 4 Provision for Transport Legislation Amendment Act 2008, part 6	
	245 Making orders under s 199B	31
40	Amendment of schedule (Dictionary)	31
Part 7	Amendment of Transport Operations (Passenger Transport) Act 1994	
41	Act amended in pt 7	32
42	Insertion of new ch 13, pt 5	32
	Part 5 Provision for Transport Legislation Amendment Act 2008, part 7	
	180 Category C driver disqualifying offence	32
43	Amendment of sch 3 (Dictionary)	33
Part 8	Amendment of Transport Operations (Road Use Management) Act 1995	
Division 1	Act amended	
44	Act amended in pt 8	33
Division 2	Amendment to commence on assent	
45	Amendment of s 124 (Facilitation of proof)	34
Division 3	Amendments to commence by proclamation	
46	Amendment of s 18 (Grounds for amending, suspending or cancelling approvals)	34

Contents

47	Amendment of s 35 (Power to enter vehicles etc. other than for vehicle inspection)	35
48	Amendment of s 35B (Further powers to access stored information or to decide if anything found in a heavy vehicle may be seized)	35
49	Insertion of new ch 3, pt 3, div 2, sdiv 6	35
	Subdivision 6 Further powers in relation to fatigue regulated heavy vehicles	
	39I Application of sdiv 6	35
	39J Meaning of fatigue regulated heavy vehicle	36
	39K Requiring person to rest for contravention of maximum work requirement	37
	39L Requiring person to rest for contravention of minimum rest requirement	38
	39M Requiring person to stop working if impaired by fatigue	39
	39N Requiring person to stop working if work diary not produced or unreliable	40
	39O Compliance with requirement under this subdivision	41
50	Amendment of s 49 (Power to require documents to be produced)	41
51	Amendment of s 53B (False or misleading transport documentation for goods)	42
52	Insertion of new s 57AB	42
	57AB Definitions for sdiv 2	42
53	Amendment of s 57B (Further liability provisions for extended liability offences)	44
54	Amendment of s 57C (Liability for inducing breaches of mass, dimension or loading requirements—consignees)	44
55	Amendment of s 57D (Reasonable steps defence)	44
56	Insertion of new ss 57DA–57DD	45
	57DA Matters court may consider for deciding whether person took all reasonable steps—offences about mass, dimension or loading	45
	57DB Matters court may consider for deciding whether person took all reasonable steps—offences about heavy vehicle driver fatigue	46
	57DC When person regarded to have taken all reasonable steps—offences about heavy vehicle driver fatigue	48
	57DD Regulation for ss 57DB and 57DC	50
57	Amendment of s 57E (Inclusion of reasonable diligence)	50

58	Amendment of s 60 (Evidentiary aids)	50
59	Amendment of s 150 (Regulating driver management)	50
60	Renumbering of s 150AB (Driver Licensing regulation prevails over rules of court)	51
61	Insertion of new s 150AB	51
	150AB Regulating management of fatigue of drivers of heavy vehicles	51
62	Insertion of new s 150C	52
	150C Proceedings for particular offences involving requirements about fatigue regulated heavy vehicles	52
63	Insertion of new ch 6, pt 1, hdg	53
	Part 1 Provisions for mass, dimension or loading requirement'.	
64	Insertion of new ch 6, pt 2 and pt 3, hdg	53
	Part 2 Provision for offences about heavy vehicle driver fatigue	
	163D Deciding whether person knew or ought reasonably to have known something.	54
	Part 3 Other provisions'.	
65	Amendment of sch 4 (Dictionary)	54
Part 9	Amendment of Transport Planning and Coordination Act 1994	
66	Act amended in pt 9	63
67	Amendment of s 3 (Definitions)	63
68	Amendment of s 25 (General powers regarding property)	64
69	Amendment of s 27 (Power of chief executive to lease, sell or otherwise dispose of land)	65
70	Insertion of new s 28AA (Declaration of prescribed transit node)	65
	28AA Declaration of area used or to be used for particular purposes to be prescribed transit node	66
Part 10	Repeal and other minor amendments	
71	Repeal of National Rail Corporation (Agreement) Act 1991.	66
72	Schedule of minor amendments.	66
Schedule	Minor amendments	67
	Tow Truck Act 1973	67
	Transport Infrastructure Act 1994.	67
	Transport Operations (Marine Pollution) Act 1995	69
	Transport Operations (Passenger Transport Act) 1994	69
	Transport Operations (Road Use Management) Act 1995.	71

Contents

Transport Planning and Coordination Act 1994	71
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Queensland

Transport Legislation Amendment Act 2008

Act No. 31 of 2008

An Act to amend the *Transport Infrastructure Act 1994* and the *Transport Planning and Coordination Act 1994*, and to amend other Acts and repeal an Act administered by the Minister for Transport

[Assented to 21 May 2008]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Transport Legislation Amendment Act 2008*.

2 Commencement

Part 8, division 3 commences on a day to be fixed by proclamation.

Part 2 Amendment of Maritime Safety Queensland Act 2002

3 Act amended in pt 2

This part amends the *Maritime Safety Queensland Act 2002*.

4 Amendment of long title

Long title, ‘the Maritime Safety Agency of Queensland’—
omit, insert—

‘**Maritime Safety Queensland**’.

5 Amendment of s 4 (Purpose of Act)

Section 4, ‘the Maritime Safety Agency of Queensland’—

omit, insert—

‘Maritime Safety Queensland’.

6 Amendment of pt 2 (Maritime Safety Agency of Queensland)

Part 2, heading, ‘Agency of’—

omit.

7 Amendment of s 7 (Establishment of MSQ)

Section 7(1), ‘The Maritime Safety Agency of Queensland’—

omit, insert—

‘Maritime Safety Queensland’.

8 Amendment of s 10 (Appointment of general manager)

Section 10(1), after ‘MSQ’—

insert—

‘(the *general manager*)’.

9 Insertion of pt 5, div 1 hdg

Part 5, before section 15—

insert—

‘Division 1 Transitional provisions for pilotage service contracts’.

10 Insertion of new pt 5, div 2

Part 5, after section 15—

insert—

[s 10]

**‘Division 2 Transitional provisions for
Transport Legislation Amendment
Act 2008, part 2**

**‘16 Change of name does not affect legal personality
etc.**

- ‘(1) The change of name of MSQ from ‘Maritime Safety Agency of Queensland’ to ‘Maritime Safety Queensland’ does not—
- (a) affect MSQ’s legal personality or identity; or
 - (b) affect a right, entitlement or liability of MSQ or anyone else; or
 - (c) make legal proceedings by or against MSQ defective.
- ‘(2) Without limiting subsection (1), the change of name of MSQ does not affect any right, entitlement, liability or benefit MSQ would have had or enjoyed apart from the change of name.
- ‘(3) In addition, but without limiting subsection (1), a legal proceeding that could have been started or continued by or against MSQ under its former name may be started or continued by or against it under its new name.

**‘17 References to Maritime Safety Agency of
Queensland**

‘A reference in an Act or document to the Maritime Safety Agency of Queensland may, if the context permits, be taken as a reference to Maritime Safety Queensland.

‘18 Recording MSQ’s changed name in register

- ‘(1) The registrar of titles or other person responsible for keeping a register for dealings in property must, if asked by MSQ in the appropriate form, and on payment of any fee, record in the register, for any property vested in MSQ, the change of name of MSQ from ‘Maritime Safety Agency of Queensland’ to ‘Maritime Safety Queensland’.
- ‘(2) In this section—

registrar of titles means a public official or authority responsible for registering title to land and dealings affecting land.’.

11 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *MSQ*—

omit.

(2) Schedule 2—

insert—

‘*general manager* see section 10(1).

MSQ see section 7.’.

Part 3 Amendment of Transport Infrastructure Act 1994

Division 1 Act amended

12 Act amended in pt 3

This part amends the *Transport Infrastructure Act 1994*.

Division 2 Amendments for tolling purposes

13 Amendment of s 92 (Definitions for pt 7)

Section 92, definition *toll road*—

omit, insert—

‘*toll road* means a road, or part of a road, in relation to which a toll has become payable for use of the road or part of the road, under a declaration under section 93.’.

[s 14]

14 Amendment of s 93 (Tolls)

- (1) Section 93(1), from ‘declare’ to ‘is a toll road’—
omit, insert—
‘declare a toll may be payable for use of any of the following’.
- (2) Section 93(1)(c)—
renumber as section 93(1)(d).
- (3) Section 93(1)—
insert—
‘(c) a road to be constructed under a road franchise agreement;’.

15 Insertion of new ch 18, pt 9

Chapter 18—

insert—

‘Part 9 Transitional provision for Transport Legislation Amendment Act 2008, part 3, division 2

‘546 Transitional provision for toll roads

- ‘(1) This section applies to a road that immediately before the commencement of this section continued, under section 543, to be a toll road as if it had been declared to be a toll road by gazette notice under section 93.
- ‘(2) Despite the amendment of section 93—
 - (a) the road continues to be a toll road as if, by gazette notice under section 93, the Minister had declared a toll may be payable for use of the road; and
 - (b) section 543 continues to apply to the road, including section 543(3), on the basis that a reference to the toll road being declared under section 93 were a reference to

the road being the subject of a declaration under section 93.

‘(3) In this section—

amendment of section 93 means the amendment of section 93 by the *Transport Legislation Amendment Act 2008*, part 3, division 2.’.

Division 3 Amendments for rail purposes

16 Insertion of new ss 240E and 240F

After section 240D—

insert—

‘240E Access arrangements across proposed railway

‘(1) This section applies if—

- (a) the chief executive enters into an agreement with a person about land (*relevant land*)—
 - (i) that the State proposes to acquire as mentioned in section 240(1)(a); or
 - (ii) that is non-rail corridor land mentioned in section 240(1)(b); and
- (b) the relevant land is, or is proposed to be, future railway land; and
- (c) the person is the railway manager for a proposed railway to be constructed on the relevant land; and
- (d) the owner of land adjacent to the relevant land (the *land-owner*)—
 - (i) owns the relevant land; or
 - (ii) has a right of access over the relevant land; and
- (e) the land-owner requires access across the proposed railway.

[s 16]

- ‘(2) The land-owner may ask the railway manager for a right of access across the proposed railway.
- ‘(3) The railway manager must—
 - (a) negotiate with the land-owner about a right of access across the proposed railway; and
 - (b) have regard to the relevant matters for the proposed railway; and
 - (c) either—
 - (i) provide a right of access across the proposed railway; or
 - (ii) refuse to provide a right of access across the proposed railway.
- ‘(4) Subsection (5) applies if—
 - (a) the railway manager and the land-owner do not agree on a right of access across the proposed railway, including about any conditions to which the right of access is subject; or
 - (b) the railway manager refuses to provide a right of access across the proposed railway.
- ‘(5) The railway manager or the land-owner may ask the chief executive to decide whether a right of access across the proposed railway should be granted.
- ‘(6) In deciding whether or not to grant a right of access across the proposed railway, the chief executive—
 - (a) must have regard to the relevant matters for the proposed railway; and
 - (b) must consult with the railway manager about what, if any, conditions should be imposed on the right of access; and
 - (c) may ask the railway manager or the land-owner for any other information the chief executive needs to make a decision.

-
- ‘(7) The railway manager or the land-owner must give the chief executive the information the chief executive asks for.
- ‘(8) The chief executive must decide—
- (a) to grant a right of access across the proposed railway; or
 - (b) not to grant a right of access across the proposed railway; or
 - (c) not to grant a right of access across the proposed railway and refer the matter of a right of access back to the railway manager for further negotiation with the land-owner.
- ‘(9) If the chief executive decides to grant a right of access under subsection (8)(a), or not to grant a right of access under subsection (8)(b), the chief executive must notify, in writing, the railway manager and the land-owner about the decision.
- ‘(10) The railway manager must meet the full cost of any works required for the purpose of a right of access granted by the chief executive across the proposed railway.
- ‘(11) A right of access across a proposed railway given or granted under this section may be given or granted with or without conditions.
- ‘(12) Without limiting the conditions the chief executive may impose on a right of access across a proposed railway, the chief executive may impose a condition that the right of access may be used only for a stated approved use.
- ‘(13) In this section—
- railway manager* includes a proposed railway manager.
- relevant matters*, for a proposed railway, means—
- (a) the safety and operational integrity of the proposed railway; and
 - (b) the need to limit the number of level crossings across the proposed railway; and
 - (c) the cost of providing a right of access across the proposed railway.

‘240F Cancellation of right of access

- ‘(1) This section applies if relevant land under section 240E becomes rail corridor land.
- ‘(2) Subject to subsection (3), a right of access granted by the chief executive under section 240E(8)(a) remains in force—
 - (a) while the relevant land is rail corridor land; or
 - (b) if the relevant land becomes non-rail corridor land—while the relevant land is non-rail corridor land.
- ‘(3) A right of access granted by the chief executive under section 240E(8)(a) may be cancelled—
 - (a) by written agreement between the relevant entity for the relevant land and the holder of the right of access; or
 - (b) by the chief executive if—
 - (i) the holder of the right of access does not comply with any conditions imposed by the chief executive under section 240A(8)(a) on the right of access; or
 - (ii) the chief executive considers that the use of the right of access would affect the safety or operational integrity of the railway on the relevant land or would adversely affect another transport purpose.
- ‘(4) If the chief executive cancels a right of access under subsection (3)(b)(ii), the owner of land affected by the decision is entitled to be paid reasonable compensation for the loss of the use of the right of access—
 - (a) as agreed between the owner and the relevant entity for the relevant land; or
 - (b) failing agreement under paragraph (a), as decided by the Land Court.
- ‘(5) For subsection (4), if the right of access was granted subject to a condition that it be used only for a stated approved use, the owner is entitled to be paid compensation only for the loss of the approved use of the right of access.

- ‘(6) Compensation may be claimed and ordered to be paid in a proceeding brought in the Land Court.
- ‘(7) In this section—
relevant entity means—
- (a) for relevant land that is rail corridor land—both the chief executive and the railway manager for the land; or
 - (b) for relevant land that becomes non-rail corridor land—the chief executive.’.

17 Amendment of s 253 (Extending roads through or over rail corridor land)

- (1) Section 253, heading, after ‘land’—
insert—
‘or non-rail corridor land’.
- (2) Section 253(1), after ‘land’—
insert—
‘or non-rail corridor land’.
- (3) Section 253(1)(a), ‘a railway’—
omit, insert—
‘relevant infrastructure on the land’.
- (4) Section 253(1)(b), ‘the railway’—
omit, insert—
‘relevant infrastructure on the land’.
- (5) Section 253(1)(c)—
omit, insert—
‘(c) a crossing at the same level as relevant infrastructure on the land.
Example for paragraph (c)—
a level crossing’.

[s 17]

(6) Section 253—

insert—

‘(1A) Without limiting subsection (1), a permission may be granted under the subsection in relation to relevant infrastructure that is proposed to be on the land—

(a) under a transport infrastructure strategy; or

(b) for non-rail corridor land that is subleased, under the relevant sublease.’.

(7) Section 253—

insert—

‘(2A) Without limiting subsection (2), a condition of a permission for rail corridor land may provide for the future expansion of the railway on the land.

Example—

A condition may provide that the length of a bridge over a railway be long enough to allow for an additional track to be laid in the future.’.

(8) Section 253(3), (4) and (5), ‘railway manager’—

omit, insert—

‘relevant person’.

(9) Section 253(3A)(b), after ‘corridor land’—

insert—

‘or non-rail corridor land’.

(10) Section 253(7)(a), ‘or level crossing’—

omit, insert—

‘, structure or crossing’.

(11) Section 253(7)(b), from ‘or level crossing’ to ‘railway’—

omit, insert—

‘, structure or crossing away and restoring the relevant infrastructure on the land’.

(12) Section 253(8), from ‘the rail corridor land’ to ‘manager’—

omit, insert—

‘rail corridor land or non-rail corridor land between the State and a relevant person for the land’.

(13) Section 253—

insert—

‘(9) In this section—

relevant infrastructure means—

- (a) for rail corridor land—a railway or part of a railway on the land; or
- (b) for non-rail corridor land—any infrastructure on the land.

relevant person means—

- (a) for rail corridor land—the railway manager for the land; or
- (b) for non-rail corridor land—any entity to whom the land is subleased.’.

18 Amendment of s 255 (Interfering with railway)

Section 255(1)(b), after ‘under’—

insert—

‘a right of access under section 240E.’.

19 Amendment of sch 3 (Reviews and appeals)

Schedule 3—

[s 20]

insert—

- | | | |
|-------------------------------|---|--------|
| ‘240E(8) | decision of chief executive to grant or not grant a right of access across a proposed railway, or impose conditions on a right of access across a proposed railway | Land |
| 240F(3)
(b)(i) and
(ii) | decision of chief executive to cancel a right of access across a railway or proposed railway, other than by agreement with the relevant railway manager and holder of the right of access | Land’. |

Division 4 Amendments for busway and light rail purposes

20 Amendment of s 302 (Declaration of land as busway land)

- (1) Section 302(2)(b), ‘necessary’—
omit.
- (2) Section 302(4)(a), from ‘, including’—
omit, insert—
‘or for a purpose, or combination of purposes, that includes busway purposes; or’.
- (3) Section 302—
insert—
- ‘(5) In this section—
busway purposes includes busway transport infrastructure.’.

21 Amendment of s 353 (Declaration of land as light rail land)

- (1) Section 353(2)(b), ‘necessary’—
omit.
- (2) Section 353(4)(a), from ‘, including’—

omit, insert—

‘or for a purpose, or combination of purposes, that includes light rail purposes; or’.

- (3) Section 353—

insert—

- ‘(5) In this section—

light rail purposes includes light rail transport infrastructure.’.

22 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *busway transport infrastructure*, paragraph (f)—

omit, insert—

‘(f) other facilities, or commercial or retail outlets or works, for the convenience of passengers and others who may use a busway, including, for example, automatic teller machines, lockers or showers for cyclists and others, newsagents and wheelchair hire or exchange centres;

(g) landscaping or associated works for a busway.’.

- (2) Schedule 6, definition *light rail transport infrastructure*, paragraph (f)—

omit, insert—

‘(f) other facilities, or commercial or retail outlets or works, for the convenience of passengers and others who may use a light rail, including, for example, automatic teller machines, lockers or showers for cyclists and others, newsagents and wheelchair hire or exchange centres;

(g) landscaping or associated works for a light rail.’.

Part 4

Amendment of Transport Legislation and Another Act Amendment Act 2007

23 Act amended in pt 4

This part amends the *Transport Legislation and Another Act Amendment Act 2007*.

24 Omission of pt 2 (Amendment of Maritime and Other Legislation Amendment Act 2006)

Part 2—

omit.

Editor's note—

The legislation ultimately amended is the *Transport Operations (Marine Safety) Act 1994*.

25 Amendment of s 57 (Amendment of s 80 (Provisions with respect to breath tests and laboratory tests))

Section 57(62) and (63)—

omit.

Editor's note—

The legislation ultimately amended is the *Transport Operations (Road Use Management) Act 1995*.

Part 5 Amendment of Transport Operations (Marine Pollution) Act 1995

26 Act amended in pt 5

This part amends the *Transport Operations (Marine Pollution) Act 1995*.

27 Insertion of new s 48A

After section 48—

insert—

‘48A Ship with fixed toilet operating in prescribed nil discharge waters to be able to hold or treat sewage

- ‘(1) The owner or master of a section 48A ship must not operate the ship in nil discharge waters for treated sewage or untreated sewage from a section 48A ship, unless the owner or master complies with the requirements prescribed under a regulation in relation to the holding or treating of sewage on the ship.

Maximum penalty—850 penalty units.

- ‘(2) The nil discharge waters for treated sewage or untreated sewage from a section 48A ship are the coastal waters prescribed under a regulation for this section.

- ‘(3) In this section—

fixed toilet, on a ship, means a toilet fixed permanently on board the ship.

operate, a ship, includes anchor, berth or moor the ship.

section 48A ship means a ship—

- (a) that is not a declared ship under section 49; and
(b) has a fixed toilet.’.

[s 28]

28 Amendment of s 118 (Evidentiary provisions)

Section 118(2) and (3), after ‘manager’—

insert—

‘, an analyst’.

29 Insertion of new pt 15A

After part 15—

insert—

‘Part 15A Appointment of analysts

‘132B Appointment and qualifications

- ‘(1) The general manager may appoint a person as an analyst.
- ‘(2) However, the general manager may appoint a person as an analyst only if satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

‘132C Appointment conditions

‘An analyst holds office on the conditions stated in the analyst’s instrument of appointment.

‘132D When analyst stops holding office

- ‘(1) An analyst stops holding office if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the analyst stops holding office;
 - (c) the analyst’s resignation under section 132E takes effect.
- ‘(2) Subsection (1) does not limit the ways an analyst may stop holding office.

‘(3) In this section—

condition of office means a condition on which the analyst holds office.

‘132E Resignation

‘An analyst may resign by signed notice given to the general manager.’.

30 Insertion of new s 132F

Part 16—

insert—

‘132F Recovery of damages

‘(1) This section applies if, because of a discharge prohibited by this Act, a person—

- (a) suffers loss of, or damage to, property; or
- (b) incurs costs or expenses in preventing or mitigating or in attempting to prevent or mitigate any loss of, or damage to, property, including the property of someone else.

‘(2) The person may recover the following amounts as a debt owing to the person—

- (a) the amount of the loss or damage mentioned in subsection (1)(a);
- (b) the amount of the costs or expenses, reasonably incurred, mentioned in subsection (1)(b).

‘(3) The following persons are jointly and severally liable for the amounts mentioned in subsection (2)—

- (a) any person whose act or omission caused the discharge;
- (b) if the discharge is from a ship—
 - (i) the owner of the ship;
 - (ii) the master of the ship.

[s 31]

- ‘(4) However, subsection (3) does not apply to a member of a ship’s crew whose act or omission caused the discharge if—
- (a) the member was complying with an instruction from the master or of someone authorised by the master to give the instruction; or
 - (b) the member was acting under the direct supervision of the master or of someone authorised by the master for the purpose.
- ‘(5) For subsection (1)—
- (a) a reference to a discharge prohibited by this Act is a reference to a discharge that constitutes a discharge offence in the absence of a lawful defence or excuse; and
 - (b) it is immaterial—
 - (i) whether or not there would be a lawful defence or excuse to a charge for a discharge offence; and
 - (ii) whether or not a person mentioned in subsection (3) is prosecuted for a discharge offence.’.

31 Omission of s 135 (Review of Act)

Section 135—
omit.

32 Insertion of new pt 17, div 3

Part 17—
insert—

**‘Division 3 Provisions for Transport Legislation
Amendment Act 2008, part 5**

‘154 Appointments of analysts

‘An appointment of a person as an analyst made by the general manager before the commencement of section 132B and in force immediately before the commencement—

- (a) continues in force according to its terms; and
- (b) is taken to have been made under that section.

‘155 Actions done and documents made by analysts

‘(1) This section applies to an action done or a document made by an analyst before the commencement of section 132B.

‘(2) The action or document—

- (a) continues in force or to have effect according to its terms; and
- (b) is taken to have been done or made as if the analyst had been appointed under that section.

‘156 Recovery of damages

‘To remove any doubt, it is declared that section 132F applies only in relation to a discharge prohibited by this Act that happens after the commencement of that section.’.

33 Amendment of schedule (Dictionary)

(1) Schedule, definitions *analyst* and *authorised officer*—
omit.

(2) Schedule—
insert—

‘*analyst* means a person who is appointed as an analyst under section 132B.

authorised officer means a person who is appointed as an authorised officer under section 72.’.

‘199B Court may make orders about apologies and other matters

- ‘(1) If a person is convicted of an offence against this Act, the court dealing with the matter may make an order under this section in addition to—
- (a) any other penalty the court may impose under this Act, the *Penalties and Sentences Act 1992* or another Act; or
 - (b) any other order the court may make under this Act, the *Penalties and Sentences Act 1992* or another Act.

Editor’s note—

See section 245 if an offence was committed entirely before the commencement of section 245.

- ‘(2) The court may order the defendant—
- (a) on application only by the prosecution, to do 1 or more of the following—
 - (i) to conduct a stated advertising or education campaign to promote compliance with this Act;
 - (ii) to make a stated private apology or publish a stated public apology to persons affected by the contravention;
 - (iii) to operate a stated ship in a particular way, including putting a stated procedure or system in place for or on the ship to ensure compliance with this Act;
 - (iv) to repair, modify or replace a stated ship or part of a ship, or repair, modify, install or replace stated machinery or equipment on a stated ship, to ensure compliance with this Act;
 - (v) to start or stop a stated activity in relation to a stated ship;
 - (vi) not to own or operate any ship unless the general manager has given written consent for the ownership or operation; or

[s 37]

- (b) to comply with another order the court considers appropriate.
- ‘(3) An order under this section is subject to any limitation of liability that may apply under a law of the State or the Commonwealth.

Example—

Limitation of Liability for Maritime Claims Act 1989 (Cwlth)

- ‘(4) A person who contravenes an order under this section commits an offence against this Act.

Maximum penalty for subsection (4)—3500 penalty units or 2 years imprisonment.’.

37 Amendment of s 202K (Variation of restrictions)

Section 202K(7), ‘section 202D(4)’—

omit, insert—

‘section 202D(6)’.

38 Amendment of s 205 (False or misleading documents)

- (1) Section 205(1)—

omit, insert—

- ‘(1) A person must not—
- (a) for the purposes of this Act, give to the chief executive, the general manager or an officer or employee of the department or of MSQ a document containing information the person knows is false or misleading in a material particular; or
- (b) state in a document that the person knows will, for the purposes of this Act, be given to the chief executive, the general manager or an officer or employee of the department or of MSQ by someone else (the *other person*), information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- ‘(1A) For subsection (1)(b), it is immaterial whether the other person knows the information is false or misleading in a material particular.
- ‘(1B) Also, subsection (1)(b) does not limit the Criminal Code, section 7, 8 or 542, in its application to subsection (1)(a).’.
- (2) Section 205(2), after ‘the document’—
insert—
‘or making the statement’.
- (3) Section 205(1) to (3)—
renumber as section 205(1) to (5).

39 Insertion of new pt 19, div 4

Part 19—

insert—

‘Division 4 Provision for Transport Legislation Amendment Act 2008, part 6

‘245 Making orders under s 199B

‘An order may not be made under section 199B in relation to an offence committed entirely before the commencement of that section.’.

40 Amendment of schedule (Dictionary)

Schedule, definition *MSQ*, ‘the Maritime Safety Agency of Queensland’—

omit, insert—

‘Maritime Safety Queensland’.

43 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definition *category C driver disqualifying offence*—
insert—
'(ea) an offence against the *Summary Offences Act 2005*, section 9;'
- (2) Schedule 3, definition *category C driver disqualifying offence*, paragraph (f), 'or (e)'—
omit, insert—
' , (e) or (ea) '.
- (3) Schedule 3, definition *category C driver disqualifying offence*, paragraph (g), after '(e)'—
insert—
' , (ea) '.

Part 8 Amendment of Transport Operations (Road Use Management) Act 1995

Division 1 Act amended

44 Act amended in pt 8

This part amends the *Transport Operations (Road Use Management) Act 1995*.

[s 45]

Division 2 Amendment to commence on assent

45 Amendment of s 124 (Facilitation of proof)

- (1) Section 124(1)(l), ‘or the chief executive’s delegate’—
omit.
- (2) Section 124(1)(l), from ‘appointment,’ to ‘give it’—
omit.

Division 3 Amendments to commence by proclamation

46 Amendment of s 18 (Grounds for amending, suspending or cancelling approvals)

- (1) Section 18(1)(i)—
renumber as section 18(1)(k).
- (2) Section 18(1)—
insert—
 - ‘(i) for an approval that is an accreditation or exemption granted under a fatigue management regulation—the person to whom the accreditation or exemption is granted or applies no longer satisfies the criteria, however called, under the regulation for the grant of the accreditation or exemption;
 - ‘(j) for an approval that is an exemption granted under a fatigue management regulation—
 - (i) a change in circumstances has happened after the exemption was granted; and
 - (ii) had the changed circumstances existed when the exemption was granted, the exemption would not have been granted under the regulation because of

the requirements under the regulation applying to the grant.’.

47 Amendment of s 35 (Power to enter vehicles etc. other than for vehicle inspection)

Section 35(2)(e)—

insert—

‘Example—

download information contained on a disk, tape or other device in the vehicle’.

48 Amendment of s 35B (Further powers to access stored information or to decide if anything found in a heavy vehicle may be seized)

Section 35B, heading and subsection (1)(a), after ‘access’—

insert—

‘or download’.

49 Insertion of new ch 3, pt 3, div 2, sdiv 6

After section 39H—

insert—

‘Subdivision 6 Further powers in relation to fatigue regulated heavy vehicles

‘39I Application of sdiv 6

‘This subdivision applies to a fatigue regulated heavy vehicle regardless of whether the vehicle is, has been, or becomes the subject of a direction or requirement given or made by an authorised officer under another provision of this part.

[s 49]

‘39J Meaning of *fatigue regulated heavy vehicle*

- ‘(1) A heavy vehicle is a *fatigue regulated heavy vehicle* if it is any of the following—
- (a) a motor vehicle with a GVM of more than 12t;
 - (b) a combination with a GVM of more than 12t;
 - (c) a bus.
- ‘(2) However, subject to subsection (3), a heavy vehicle is not a *fatigue regulated heavy vehicle* if it is any of the following—
- (a) a tram;
 - (b) a motor vehicle that—
 - (i) is built, or has been modified, primarily to operate as a machine or implement off-road, on a road-related area, or on an area of road that is under construction; and
 - (ii) is not capable of carrying goods or passengers by road;

Examples for paragraph (b)—

agricultural machine, backhoe, bulldozer, excavator, forklift, front-end loader, grader, tractor, motor vehicle registered as a special purpose vehicle (type p)

- (c) a motor home.
- ‘(3) A truck, or a combination including a truck, that has a machine or implement attached to it is a *fatigue regulated heavy vehicle*—
- (a) if the GVM of the truck or combination with the attached machine or implement is more than 12t; and
 - (b) whether or not the truck or combination has been built or modified primarily to operate as a machine or implement off-road, on a road-related area, or on an area of road that is under construction.

Examples for subsection (3)—

truck-mounted crane, truck-mounted drilling rig

-
- ‘(4) For subsection (2)(c), a *motor home*—
- (a) is a rigid or articulated motor vehicle or combination that is built, or has been modified, primarily for residential purposes; and
 - (b) does not include a motor vehicle that is merely a motor vehicle constructed with a sleeper berth.

‘39K Requiring person to rest for contravention of maximum work requirement

- ‘(1) This section applies if an authorised officer reasonably believes the person in control of a fatigue regulated heavy vehicle has contravened a maximum work requirement by working for a period in excess of the maximum period allowed under the requirement.
- ‘(2) If the authorised officer reasonably believes the contravention is a critical risk breach or severe risk breach, the authorised officer must, by notice in the approved form, require the person—
- (a) to immediately take a stated period of rest in accordance with a minimum rest requirement applying to the person; and
 - (b) to work for a stated shorter period when the person next works to compensate for the excess period worked.
- ‘(3) If the authorised officer reasonably believes the contravention is a substantial risk breach or minor risk breach, the authorised officer may, by notice in the approved form, require the person—
- (a) to immediately take a stated period of rest in accordance with a minimum rest requirement applying to the person; and
 - (b) to work for a stated shorter period when the person next works to compensate for the excess period worked.

[s 49]

‘39L Requiring person to rest for contravention of minimum rest requirement

- ‘(1) This section applies if an authorised officer reasonably believes the person in control of a fatigue regulated heavy vehicle has contravened a minimum rest requirement by taking a period of rest that is shorter than the minimum period of rest required under the requirement.
- ‘(2) If the authorised officer reasonably believes the contravention is a critical risk breach or severe risk breach, the authorised officer must, by notice in the approved form, require the person—
- (a) to immediately take a stated period of rest to compensate for the shortfall between the period of rest taken by the person and the minimum period of rest required under the minimum rest requirement; and
 - (b) if the person has failed to take 1 or more night rest breaks required under a minimum rest requirement—to take 1 or more night rest breaks to compensate for the shortfall between the number of night rest breaks taken by the person and the number of night rest breaks required under the minimum rest requirement.
- ‘(3) If the authorised officer reasonably believes the contravention is a substantial risk breach or minor risk breach, the authorised officer may, by notice in the approved form, require the person—
- (a) to immediately take a stated period of rest to compensate for the shortfall between the period of rest taken by the person and the minimum period of rest required under the minimum rest requirement; or
 - (b) to take a stated period of additional rest, at the next rest break the person is required to take under a fatigue management regulation, to compensate for the shortfall between the period of rest taken by the person and the minimum period of rest required under the minimum rest requirement; or

- (c) if the person has failed to take 1 or more night rest breaks required under a minimum rest requirement—to take 1 or more night rest breaks to compensate for the shortfall between the number of night rest breaks taken by the person and the number of night rest breaks required under the minimum rest requirement.

‘(4) In this section—

night rest break, in relation to a minimum rest requirement, has the meaning given by the fatigue management regulation prescribing the minimum rest requirement.

‘39M Requiring person to stop working if impaired by fatigue

- ‘(1) This section applies if an authorised officer reasonably believes the person in control of a fatigue regulated heavy vehicle is impaired by fatigue.
- ‘(2) The authorised officer may, by notice in the approved form—
 - (a) require the person to immediately stop work and not work again for a stated period; and
 - (b) if the officer has observed the person driving in a way the officer considers on reasonable grounds to be dangerous, require the person to also immediately stop being in control of the vehicle.
- ‘(3) A stated period under subsection (2)(a) must be a reasonable period having regard to the following—
 - (a) the periods of rest the person was required to take under minimum rest requirements applying to the person during the 24 hours leading up to the notice being given;
 - (b) the periods of rest the officer reasonably believes the person has taken during the 24 hours leading up to the notice being given;
 - (c) the periods the person was allowed to work under maximum work requirements applying to the person during the 24 hours leading up to the notice being given;

[s 49]

- (d) the periods the officer reasonably believes the person has worked during the 24 hours leading up to the notice being given;
 - (e) the degree to which the person appears to be fatigued to the authorised officer;
 - (f) any other relevant matters.
- ‘(4) If the authorised officer gives a notice under subsection (2)(b), the authorised officer may authorise a person to move the vehicle to a suitable rest place for fatigue regulated heavy vehicles but only if the person is qualified and fit to drive the vehicle.
- ‘(5) A fatigue management regulation may prescribe the matters to which the authorised officer, or a court, must or may have regard when deciding whether or not a person was impaired by fatigue for this section.

‘39N Requiring person to stop working if work diary not produced or unreliable

- ‘(1) This section applies if—
- (a) an authorised officer has, under section 49, asked the person in control of a fatigue regulated heavy vehicle to produce a work diary the person is required to keep under a fatigue management regulation; and
 - (b) either—
 - (i) the person has failed to produce the diary without a reasonable excuse; or
 - (ii) the person produces a document that the authorised officer reasonably believes is not the work diary the person is required to keep under a fatigue management regulation; or
 - (iii) the authorised officer reasonably believes the work diary, or purported work diary, produced by the person can not be relied on as an accurate record of

the time the person recently spent working or resting.

Examples for subparagraph (iii)—

- information in the work diary appears to be incorrect
 - particular information appears to be missing from the work diary
 - the work diary appears to have been tampered with
- ‘(2) The authorised officer may, by notice in the approved form, require the person to immediately stop work and to not work again for a stated period of up to 24 hours.

‘39O Compliance with requirement under this subdivision

- ‘(1) A person given a notice under this subdivision must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—120 penalty units.

- ‘(2) An authorised officer who gives a person a notice under section 39K, 39L or 39N may, by stating it in the notice, allow the person to delay complying with the notice for a period of up to 1 hour if the authorised officer reasonably believes—
- (a) the delay is necessary to allow the person time to drive the relevant fatigue regulated heavy vehicle to the nearest suitable rest place for fatigue regulated heavy vehicles and it is reasonably safe to allow the person to continue driving the vehicle to that place; or
 - (b) the delay is necessary to allow the person time to attend to, or to secure, the load on the relevant fatigue regulated heavy vehicle before taking a rest.’

50 Amendment of s 49 (Power to require documents to be produced)

Section 49(1), examples, ‘log book’—

omit, insert—

‘logbook or work diary’.

[s 51]

51 Amendment of s 53B (False or misleading transport documentation for goods)

Section 53B(4), after 'Each'—

insert—

'loading manager or'.

52 Insertion of new s 57AB

After section 57AA—

insert—

'57AB Definitions for sdiv 2

'In this subdivision—

extended liability offence means—

- (a) an offence against section 162D; or
- (b) an offence committed by the person in control of a heavy vehicle because there has been a contravention of a mass, dimension or loading requirement in relation to the vehicle; or
- (c) an offence committed by the person in control of a fatigue regulated heavy vehicle because there has been a contravention of a fatigue management requirement in relation to the vehicle.

influencing person—

- (a) in relation to a heavy vehicle generally, means any or all of the following persons—
 - (i) the owner of the heavy vehicle or, if the heavy vehicle is a combination, the owner of a vehicle forming part of the combination;
 - (ii) the registered operator of the heavy vehicle or, if the heavy vehicle is a combination, the registered operator of a vehicle forming part of the combination;

- (iii) a person, other than the owner or registered operator, who controls or directly influences the operation of the heavy vehicle; and

Example—

the operator of the heavy vehicle

- (b) for an offence against section 162D or relating to a contravention of a mass, dimension or loading requirement involving a heavy vehicle, includes any or all of the following persons—
 - (i) the consignor of any goods in the heavy vehicle;
 - (ii) the packer of any goods in the heavy vehicle;
 - (iii) the loading manager of any goods in the heavy vehicle;
 - (iv) the loader of any goods in the heavy vehicle; and
- (c) for an offence relating to a contravention of a maximum work requirement or minimum rest requirement involving a heavy vehicle, includes any or all of the following persons—
 - (i) the employer of the driver of the heavy vehicle;
 - (ii) a person who schedules the transport of any goods or passengers by the heavy vehicle;
 - (iii) a person who schedules the work and rest times of the driver of the heavy vehicle;
 - (iv) the consignor of any goods in the heavy vehicle;
 - (v) the consignee of any goods in the heavy vehicle;
 - (vi) the loading manager of any goods in the heavy vehicle; and
- (d) for an offence relating to a contravention of a work and rest hours option requirement involving a heavy vehicle, includes any or all of the following persons—
 - (i) the employer of the driver of the heavy vehicle;

[s 53]

- (ii) a person who schedules the transport of any goods or passengers by the heavy vehicle;
 - (iii) a person who schedules the work and rest times of the driver of the heavy vehicle; and
- (e) for an offence relating to a contravention of a work diary requirement involving a heavy vehicle, includes any or all of the following persons—
- (i) the employer of the driver of the heavy vehicle;
 - (ii) a person who schedules the transport of any goods or passengers by the heavy vehicle;
 - (iii) a person who schedules the work and rest times of the driver of the heavy vehicle.’.

53 Amendment of s 57B (Further liability provisions for extended liability offences)

- (1) Section 57B(3), definitions *associate*, *holding company*, *security interest* and *subsidiary*—
relocate to section 57AB.
- (2) Section 57B(3), as amended—
omit.

54 Amendment of s 57C (Liability for inducing breaches of mass, dimension or loading requirements—consignees)

Section 57C(3)—
omit.

55 Amendment of s 57D (Reasonable steps defence)

- (1) Section 57D(2)—
omit.
- (2) Section 57D(3)—
renumber as section 57D(2).

56 Insertion of new ss 57DA–57DD

After section 57D—

insert—

‘57DA Matters court may consider for deciding whether person took all reasonable steps—offences about mass, dimension or loading

- ‘(1) Without limiting section 57D, in deciding whether things done or omitted to be done by a person charged with a mass, dimension or loading offence constitute reasonable steps, the court may have regard to the following—
- (a) the circumstances of the alleged offence, including any risk category for the contravention constituting the offence;
 - (b) without limiting paragraph (a), the measures available and measures taken for any or all of the following—
 - (i) to accurately and safely weigh or measure the heavy vehicle or its load, or to safely restrain the load in the heavy vehicle;
 - (ii) to provide and obtain sufficient and reliable evidence from which the weight or measurement of the heavy vehicle or its load might be calculated;
 - (iii) to manage, reduce or eliminate a potential contravention arising from the location of the heavy vehicle, or from the location of the load in the heavy vehicle, or from the location of goods in the load;
 - (iv) to manage, reduce or eliminate a potential contravention arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;
 - (v) to exercise supervision or control over others involved in activities leading to the contravention;

[s 56]

- (c) the measures available and measures taken for any or all of the following—
 - (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons for heavy vehicles;
 - (ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
 - (iii) to maintain equipment and work systems to enable compliance with relevant laws;
 - (iv) to address and remedy similar compliance problems that may have happened in the past;
- (d) whether the person charged had, either personally or through an agent or employee, custody or control of the heavy vehicle, its load, or any goods included or to be included in the load;
- (e) the personal expertise and experience that the person charged had or ought to have had or that an agent or employee of the person charged had or ought to have had.

‘(2) In this section—

mass, dimension or loading offence means—

- (a) an offence against section 53B(2), (3), (4) or (5) or 53C(1) or (2); or
- (b) an offence against section 57B(2) relating to a contravention of a mass, dimension or loading requirement; or
- (c) an offence against section 162D(1).

‘57DB Matters court may consider for deciding whether person took all reasonable steps—offences about heavy vehicle driver fatigue

‘(1) Without limiting section 57D, in deciding whether things done or omitted to be done by a person charged with a fatigue

management offence constitute reasonable steps, the court may have regard to the following—

- (a) the nature of the activity to which the contravention constituting the offence relates;
- (b) the risks to safety associated with the activity mentioned in paragraph (a);
- (c) the likelihood of the risks to safety mentioned in paragraph (b) arising;
- (d) the degree of harm likely to result from the risks to safety mentioned in paragraph (b) arising;
- (e) the circumstances of the alleged offence, including any risk category for the contravention constituting the offence;
- (f) the measures available and measures taken—
 - (i) to prevent, eliminate or minimise the likelihood of a potential contravention happening; or
 - (ii) to eliminate or minimise the likelihood of a risk to safety arising from a potential contravention; or
 - (iii) to manage, minimise or eliminate a risk to safety arising from a potential contravention;
- (g) the measures available and measures taken for any or all of the following—
 - (i) to include compliance assurance conditions in relevant commercial arrangements with other responsible persons for fatigue regulated heavy vehicles;
 - (ii) to provide information, instruction, training and supervision to employees to enable compliance with relevant laws;
 - (iii) to maintain equipment and work systems to enable compliance with relevant laws;
 - (iv) to address and remedy similar compliance problems that may have happened in the past;

[s 56]

- (h) the personal expertise and experience that the person charged had or ought to have had or that an agent or employee of person had or ought to have had;
- (i) the costs of measures mentioned in paragraph (f);
- (j) any accreditation scheme, scientific knowledge, expert opinion, guidelines, standards or other knowledge about preventing or managing exposure to risks to safety arising from fatigue;
- (k) any other matter the court must or may consider when deciding whether or not a person has contravened the fatigue management requirement to which the offence relates.

‘(2) In this section—

risk category, for a contravention of a fatigue management requirement of a fatigue management regulation, means 1 of the following categories—

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

‘57DC When person regarded to have taken all reasonable steps—offences about heavy vehicle driver fatigue

‘(1) Without limiting the circumstances in which things done or omitted to be done by a person charged with a fatigue management offence constitute reasonable steps, the person is to be regarded as having taken all reasonable steps if the person did all of the following to prevent the act or omission that led to the contravention to which the offence relates—

- (a) identified and assessed the aspects of the activities of the person, and relevant drivers for the person, that may lead to the contravention of a fatigue management requirement by a relevant driver for the person;

-
- (b) for each aspect identified and assessed under paragraph (a), identified and assessed—
 - (i) the risk of the aspect leading to a contravention of a fatigue management requirement by a relevant driver for the person; and
 - (ii) if there is a substantial risk of the aspect leading to a contravention of a fatigue management requirement by a relevant driver for the person—the measures the person may take to eliminate the risk or, if it not reasonably possible to eliminate the risk, to minimise the risk;
 - (c) carried out the identification and assessment mentioned in paragraphs (a) and (b)—
 - (i) at least annually; and
 - (ii) after each event that indicated the way the activities of the person or relevant driver are being carried out have led, or may lead, to a contravention of a fatigue management requirement by the relevant driver;
 - (d) took the measures identified and assessed under paragraph (b)(ii);
 - (e) documented each action the person has taken under this section—
 - (i) during the past 3 years; or
 - (ii) if 3 years have not passed since the commencement of this section—from the commencement of this section.

‘(2) In this section—

driver means the person in control of a fatigue regulated heavy vehicle.

relevant driver, for a person charged with a fatigue management offence, means a driver of a fatigue regulated heavy vehicle in relation to which the person is an influencing person under section 57AB.

[s 57]

‘57DD Regulation for ss 57DB and 57DC

‘For sections 57DB and 57DC, a regulation may provide for—

- (a) the ways, or examples of ways, a person may identify and assess the aspects of activities of the person, or relevant drivers for the person, that may lead to a contravention of a fatigue management requirement by a relevant driver for the person; and
- (b) the measures, or examples of measures, a person may take to eliminate or minimise risks of aspects of activities of the person, or relevant drivers for the person, leading to a contravention of a fatigue management requirement by a relevant driver for the person.’.

57 Amendment of s 57E (Inclusion of reasonable diligence)

Section 57E, after ‘liability’—

insert—

‘, or is not liable.’.

58 Amendment of s 60 (Evidentiary aids)

Section 60(7), example, ‘log book’—

omit, insert—

‘logbook or work diary’.

59 Amendment of s 150 (Regulating driver management)

Section 150(1)(g)—

omit, insert—

‘(g) providing for the management of fatigue of drivers of heavy vehicles.’.

60 Renumbering of s 150AB (Driver Licensing regulation prevails over rules of court)

Section 150AB—

renumber as section 150AC.

61 Insertion of new s 150AB

After section 150AA—

insert—

‘150AB Regulating management of fatigue of drivers of heavy vehicles

- ‘(1) A regulation made under this part, to the extent that it is about the management of fatigue of drivers of heavy vehicles, may provide for the following—
- (a) rules requiring drivers of fatigue regulated heavy vehicles to take stated minimum periods of rest and to work no longer than stated maximum periods;
 - (b) rules requiring that drivers be in a fit state of health and wellbeing to drive fatigue regulated heavy vehicles safely;
 - (c) the keeping and production of work diaries and other records;
 - (d) rules requiring any or all of the following persons to ensure drivers of fatigue regulated heavy vehicles comply with a regulation under this part—
 - (i) employers of the drivers;
 - (ii) operators of the vehicles;
 - (iii) persons who schedule the transport of goods or passengers by the vehicles;
 - (iv) persons who schedule the work and rest times of the drivers;
 - (v) consignors or consignees of goods in the vehicles;
 - (vi) loading managers of goods in the vehicles;

[s 62]

- (e) rules for ensuring a person's activities do not cause or encourage drivers of fatigue regulated heavy vehicles to contravene a requirement under a regulation made under this part;
 - (f) matters to which the court must or may have regard when deciding whether or not a person has contravened a requirement under a regulation made under this part;
 - (g) the recognition of an entity whose members include the chief executive and corresponding authorities responsible for the administration of laws relating to the management of fatigue of drivers of heavy vehicles, and other matters in relation to the recognised entity and decisions made by it.
- ‘(2) The power to make a regulation providing for rules requiring a person to ensure something includes the power to provide for rules—
- (a) requiring a person to take all reasonable steps to ensure the thing; and
 - (b) otherwise encouraging the person to take action that will in effect ensure the thing.’.

62 Insertion of new s 150C

Chapter 5, part 10, after section 150B—

insert—

‘150C Proceedings for particular offences involving requirements about fatigue regulated heavy vehicles

- ‘(1) This section applies in relation to proceedings for an offence against a fatigue management regulation that may be committed by a person failing to take all reasonable steps to ensure that another person does not drive a fatigue regulated heavy vehicle while impaired by fatigue.
- ‘(2) In relation to proof of whether the person took all reasonable steps to ensure that another person did not drive a fatigue regulated heavy vehicle while impaired by fatigue, the fatigue

management regulation may prescribe either or both of the following—

- (a) evidence that, at the relevant time, the person complied with a prescribed corresponding obligation is evidence the person took the reasonable steps;
 - (b) evidence that, at the relevant time, the person complied with the conditions of an accreditation granted to the person under a fatigue management regulation is evidence the person took the reasonable steps.
- ‘(3) Also, the fatigue management regulation may provide that it is not necessary in proceedings mentioned in subsection (1) for the prosecution to prove that the other person drove, or would or may have driven, the vehicle while impaired by fatigue.

‘(4) In this section—

prescribed corresponding obligation means a duty or obligation under a corresponding law to a fatigue management regulation that is prescribed under the fatigue management regulation for subsection (2).’.

63 Insertion of new ch 6, pt 1, hdg

Before section 163B—

insert—

‘Part 1 Provisions for mass, dimension or loading requirement’.

64 Insertion of new ch 6, pt 2 and pt 3, hdg

After section 163C—

insert—

‘Part 2 Provision for offences about heavy vehicle driver fatigue

[s 65]

‘163D Deciding whether person knew or ought reasonably to have known something

- ‘(1) This section applies in relation to proceedings for an offence mentioned in paragraph (a) or (b) if it is relevant to prove that someone ought reasonably to have known something—
- (a) an offence against section 57B(2) relating to a contravention of a maximum work requirement, minimum rest requirement or work diary requirement;
 - (b) an offence against a fatigue management regulation.
- ‘(2) A court must consider the following when deciding whether the person ought reasonably to have known the thing—
- (a) the person’s abilities, experience, expertise, knowledge, qualifications and training;
 - (b) the circumstances of the offence;
 - (c) any other matter prescribed under a fatigue management regulation.

‘Part 3 Other provisions’.

65 Amendment of sch 4 (Dictionary)

- (1) Schedule 4—

insert—

‘accreditation record requirement means a requirement of a fatigue management regulation relating to the person in control of a fatigue regulated vehicle keeping a record of the maximum work periods and minimum rest periods applying to the person under an AFM accreditation.

AFM accreditation means an accreditation granted, under a fatigue management regulation, to an operator of a fatigue regulated heavy vehicle that provides for the application of alternative maximum work periods and alternative minimum

rest periods to the person in control of the fatigue regulated heavy vehicle.

alternative maximum work period, in relation to the person in control of a fatigue regulated heavy vehicle, means the maximum period for which the person may work that is different to the maximum period of work that would apply to the person under the standard work and rest hours arrangements.

alternative minimum rest period, in relation to the person in control of a fatigue regulated heavy vehicle, means the minimum period for which the person must rest that is different to the minimum period of rest that would apply to the driver under the standard work and rest hours arrangements.

associate, for chapter 3, part 5, division 1, subdivision 2, see section 57AB.

consignee, in relation to goods transported or to be transported by a heavy vehicle—

- (a) means the person who—
 - (i) has consented to being, and is, named or otherwise identified as the intended consignee of the goods in the transport documentation for the consignment; or
 - (ii) actually receives the goods after they are transported by the heavy vehicle; but
- (b) does not include a person who merely unloads or unpacks the goods.

critical risk breach, for a maximum work requirement or minimum rest requirement, means a contravention of the requirement declared under a fatigue management regulation to be a critical risk breach.

extended liability offence, for chapter 3, part 5, division 1, subdivision 2, see section 57AB.

[s 65]

fatigue management offence means an offence against section 57B(2) relating to a contravention of a fatigue management requirement.

fatigue management regulation means a regulation made under chapter 5, part 10, about the management of fatigue of drivers of heavy vehicles.

fatigue management requirement means—

- (a) accreditation record requirement; or
- (b) maximum work requirement; or
- (c) minimum rest requirement; or
- (d) work and rest hours option requirement; or
- (e) work diary requirement.

fatigue regulated heavy vehicle see section 39J.

holding company, for chapter 3, part 5, division 1, subdivision 2, see section 57AB.

impaired by fatigue, in relation to a person in control of a fatigue regulated heavy vehicle—

- (a) for an offence against a fatigue management regulation—has the meaning given by the regulation; or
- (b) otherwise—means the person is fatigued to the extent that the person is incapable of driving the fatigue regulated heavy vehicle safely.

influencing person, for chapter 3, part 5, division 1, subdivision 2, see section 57AB.

loading manager means—

- (a) for goods in a fatigue regulated heavy vehicle—
 - (i) a person who manages, or is responsible for the operation of, premises, or part of premises, at which the goods are loaded onto the vehicle or unloaded from the vehicle; or
 - (ii) a person who has been assigned by a person mentioned in subparagraph (i) as responsible for

supervising, managing or controlling, directly or indirectly, activities carried out by a loader or unloader of the goods; and

- (b) for goods in another heavy vehicle—
- (i) a person who manages, or is responsible for the operation of, premises, or part of premises, at which the goods are loaded onto the vehicle; or
 - (ii) a person who has been assigned by a person mentioned in subparagraph (i) as responsible for supervising, managing or controlling, directly or indirectly, activities carried out by a loader of the goods.

maximum work requirement means a requirement of a fatigue management regulation relating to the maximum period a driver, or two-up driver, of a fatigue regulated heavy vehicle may drive a fatigue regulated heavy vehicle, or otherwise work, without taking a rest.

minimum rest requirement means a requirement of a fatigue management regulation relating to the minimum period a driver, or two-up driver, of a fatigue regulated heavy vehicle must rest to break up the period of time the driver, or two-up driver, drives a fatigue regulated heavy vehicle or otherwise works.

security interest, for chapter 3, part 5, division 1, subdivision 2, see section 57AB.

standard work and rest arrangements means the maximum periods of work and minimum periods of rest applying to persons in control of fatigue regulated heavy vehicles operating other than under an accreditation granted under a fatigue management regulation.

subsidiary, for chapter 3, part 5, division 1, subdivision 2, see section 57AB.

suitable rest place, for fatigue regulated heavy vehicles, means—

[s 65]

- (a) a rest area that is designated by the chief executive for use by a fatigue regulated heavy vehicle and able to be used by a fatigue regulated heavy vehicle; or
- (b) a place at which a fatigue regulated heavy vehicle may be safely parked; or
- (c) another place prescribed under a fatigue management regulation to be a suitable rest place for fatigue regulated heavy vehicles.

unloader, of goods in a heavy vehicle, means a person who—

- (a) unloads from the vehicle goods that have been transported by road; or
- (b) unloads from a bulk container or freight container on the vehicle, or a tank that is part of the vehicle, goods that have been transported by road; or
- (c) unloads from the vehicle a freight container, whether or not it contains goods, that has been transported by road.

work, in relation to a fatigue regulated heavy vehicle, means—

- (a) drive a fatigue regulated heavy vehicle; or
- (b) be in control of a fatigue regulated heavy vehicle; or
- (c) instruct or supervise another person to drive a fatigue regulated heavy vehicle; or
- (d) perform another task relating to the operation of a fatigue regulated heavy vehicle, including, for example—
 - (i) load things onto, or unload things from, the heavy vehicle; and
 - (ii) inspect, service or repair the heavy vehicle; and
 - (iii) inspect or attend to a load on the heavy vehicle; and
 - (iv) if the heavy vehicle is a bus, attend to passengers on the bus; and

- (v) clean or refuel the heavy vehicle; and
- (vi) perform marketing tasks in relation to the operation of the vehicle; and

Examples for subparagraph (vi)—

- arranging for the transport of goods or passengers by the heavy vehicle
- canvassing for orders for the transport of goods or passengers by the heavy vehicle

- (vii) help or supervise another person to perform a task mentioned in subparagraph (i) to (vi); and
- (viii) record information or complete a document, as required under this Act or otherwise, in relation to the operation of the vehicle.

work and rest hours option, in relation to a fatigue regulated heavy vehicle, means an arrangement under a fatigue management regulation that provides for the maximum work requirements and minimum rest requirements applying to the person in control of the heavy vehicle.

work and rest hours option requirement means a requirement of a fatigue management regulation that—

- (a) applies to a person in control of a fatigue regulated heavy vehicle who has changed the work and rest hours option under which the person is driving the heavy vehicle; and
- (b) provides for what the person must do or must not do in relation to the change.

work diary record means—

- (a) information, or a copy of information, included in a work diary kept by the driver, or other person in control, of a fatigue regulated heavy vehicle; or

Example for paragraph (a)—

a print-out of information included in an electronic work diary

- (b) a record kept by the driver, or other person in control, of a fatigue regulated heavy vehicle relating to a period for

[s 65]

which the driver or person can not use the driver's or person's work diary.

work diary requirement means any of the following requirements of a fatigue management regulation—

- (a) a requirement that the driver, or other person in control, of a fatigue regulated heavy vehicle must keep a work diary or a work diary record;
- (b) a requirement that the driver, or other person in control, of a fatigue regulated heavy vehicle must include particular information in a work diary or a work diary record kept under the regulation;
- (c) a requirement about the way in which the driver, or other person in control, of a fatigue regulated heavy vehicle must include particular information in a work diary or a work diary record kept under the regulation, other than a requirement that the information included must not be false or misleading in a material particular;

Examples of requirements about the way in which information must be included in a work diary or work diary record—

- a requirement that a separate page of the work diary or work diary record be used for each day's information
 - a requirement that each page of a work diary or work diary record relating to a day's information be signed and dated
 - a requirement about the time zone that must be used for information included in a work diary or work diary record
- (d) a requirement that the driver, or other person in control, of a fatigue regulated heavy vehicle, must report any of the following to the chief executive or another person—
 - (i) a malfunction of an electronic work diary or work diary record kept under the regulation;
 - (ii) the finding or return of a work diary or work diary record kept under the regulation after its reported loss or theft;
 - (iii) the destruction, loss or theft of a work diary or work diary record kept under the regulation;

- (iv) a malfunction of equipment used by the driver or person to include particular information in a work diary or work diary record kept under the regulation.

Examples of other persons to whom the person in control of a fatigue regulated heavy vehicle may be required to report information—

- the person's employer
- the operator of the fatigue regulated heavy vehicle.'

- (2) Schedule 4, definition *base*, 'log book'—

omit, insert—

'logbook or work diary'.

- (3) Schedule 4, definition *bus*, after 'section 79(2C)'—

insert—

'and the definition *fatigue regulated heavy vehicle*'.

- (4) Schedule 4, definition *consignor*, paragraph (b)(iii)(B), after 'that is'—

insert—

'usually'.

- (5) Schedule 4, definition *journey documentation*, paragraph (b)(iv), examples, second dot point—

omit, insert—

- an entry in a logbook or work diary'.

- (6) Schedule 4, definition *loader*, paragraphs (d) and (e)—

omit.

- (7) Schedule 4, definition *minor risk breach*—

insert—

'(c) for a maximum work requirement or minimum rest requirement—a contravention of the requirement declared under a fatigue management regulation to be a minor risk breach.'

[s 65]

- (8) Schedule 4, definition *responsible person*, paragraphs (q) and (r)—

omit, insert—

‘(q) a loading manager for goods for transport by use of the heavy vehicle or another person who controls or directly influences the loading of the heavy vehicle;

(r) a person who schedules the transport of goods or passengers by the heavy vehicle;

(s) a person who schedules the work and rest times of the driver of the heavy vehicle;

(t) an agent, employer, employee or subcontractor of a person referred to in any of paragraphs (a) to (s).’.

- (9) Schedule 4, definition *severe risk breach*—

insert—

‘(d) for a maximum work requirement or minimum rest requirement—means a contravention of the requirement declared under a fatigue management regulation to be a severe risk breach.’.

- (10) Schedule 4, definition *substantial risk breach*—

insert—

‘(c) for a maximum work requirement or minimum rest requirement—a contravention of the requirement declared under a fatigue management regulation to be a substantial risk breach.’.

Part 9 Amendment of Transport Planning and Coordination Act 1994

66 Act amended in pt 9

This part amends the *Transport Planning And Coordination Act 1994*.

67 Amendment of s 3 (Definitions)

(1) Section 3—

insert—

‘complementary purposes, for the purposes of transport land, includes purposes for a transport associated development.

prescribed transit node means an area declared under a regulation to be a prescribed transit node.

transport associated development means a development that—

- (a) primarily is or, when constructed, will be a development that supports the object of part 2A and the integration of a prescribed transit node into the community within which it is to operate in a way that contributes to the economic and social wellbeing of the community; and
- (b) includes, or will include, commercial, community, educational, government, high or medium density residential, medical, retail or recreational facilities, places of worship or open or recreational spaces.

Editor’s notes—

- 1 See section 8A for the object of part 2A.
- 2 See sections 25 and 27 for use of transport associated development.
- 3 See section 28AA for a prescribed transit node.’

(2) Section 3, definition *transport land*, paragraph (b)—

[s 68]

insert—

‘(vi) a transport associated development.’.

68 Amendment of s 25 (General powers regarding property)

(1) Section 25(1), ‘or for an incidental purpose.’—

omit, insert—

‘, for an incidental purpose, for the purpose of a transport associated development or for a combination of these purposes.’

Note—

See subsections (2) and (2A) if land is to be acquired by resumption.’.

(2) Section 25(2), ‘or for an incidental purpose’—

omit, insert—

‘, for an incidental purpose, for the purpose of a transport associated development or for a combination of these purposes’.

(3) Section 25—

insert—

‘(2A) If land is acquired by resumption for the purpose of a transport associated development as mentioned in subsection (1) or (2), at the time of acquisition the land must also be acquired for the purposes of transport or for an incidental purpose.’.

(4) Section 25(3), ‘In particular’—

omit, insert—

‘Without limiting subsection (1) or (2)’.

(5) Section 25(8)—

omit, insert—

‘(8) For the *Acquisition of Land Act 1967*—

(a) the chief executive is a constructing authority within the meaning of that Act; and

- (b) without limiting the chief executive's powers to take land under that Act, the chief executive, as a constructing authority under that Act, may take land for purposes mentioned in subsections (1), (2) and (3).'

69 Amendment of s 27 (Power of chief executive to lease, sell or otherwise dispose of land)

- (1) Section 27(1)—

insert—

'(ba) if the land is for a combination of purposes (*combined purposes*) including the purpose of a transport associated development (*relevant purpose*)—to any person for a relevant purpose, whether or not the person is going to deal with the land for any other purpose included in the combined purposes; or'.

- (2) Section 27(1)(c), '(aa), (a) or (b)'—

omit, insert—

'(a), (aa), (b) or (ba)'.

- (3) Section 27(2)—

insert—

'*Note—*

Subsection (1) would operate, for example, despite any implication in the *Acquisition of Land Act 1967* that the chief executive must carry out the development for which land is acquired and despite the requirements of section 41 of that Act.'

- (4) Section 27(3)(b), '(1)(aa) to (c)'—

omit, insert—

'(aa), (b) or (c)'.

70 Insertion of new s 28AA (Declaration of prescribed transit node)

Part 4—

[s 71]

insert—

‘28AA Declaration of area used or to be used for particular purposes to be prescribed transit node

- ‘(1) A regulation may declare an area that is used, or is proposed to be used, as any of the following to be a prescribed transit node—
- (a) a busway station;
 - (b) railway station;
 - (c) a station for operating a light rail;
 - (d) another transport facility.
- ‘(2) For a declaration under subsection (1), the Minister may have regard to planning documents the Minister considers appropriate in relation to the region or local area within which the prescribed transit node is or is to be located.

Examples of planning documents—

- South East Queensland Regional Plan
- South East Queensland Infrastructure Plan and Program
- local growth management strategy.’

Part 10 Repeal and other minor amendments

71 Repeal of National Rail Corporation (Agreement) Act 1991

The National Rail Corporation (Agreement) Act 1991, No. 86 is repealed.

72 Schedule of minor amendments

The schedule amends the Acts mentioned in it.

Schedule Minor amendments

section 72

Tow Truck Act 1973

- 1 **Section 7(1)(b) to (d), at the end—**
insert—
‘and’.

- 2 **Section 7(1)(b) to (e)—**
renumber as section 7(1)(a) to (d).

- 3 **Section 11(2)(b) and (c), at the end—**
insert—
‘and’.

- 4 **Section 11(2)(b) to (d)—**
renumber as section 11(2)(a) to (c).

Transport Infrastructure Act 1994

- 1 **Section 2(2)(f), ‘infrastructure;’—**
omit, insert—
‘infrastructure; and’.

- 2 **Section 47(3)—**
renumber as section 47(2).

- 3 Section 74(1), '(Compensation)'—**
omit.
- 4 Sections 74(4)(a)(i) and (4)(b)(i)(A), 'a reconfiguration of'—**
omit, insert—
'reconfiguring'.
- 5 Section 74(6) 'reconfiguration of'—**
omit, insert—
'reconfiguring'.
- 6 Section 77, 'This part does not apply to not apply to'—**
omit, insert—
'This division does not apply to'.
- 7 Section 272(2)(c)—**
renumber as section 272(2)(b).
- 8 Section 456(1)(b)(ii), 'or', second mention—**
omit.
- 9 Section 460(3)(a)(i), before 'section 236'—**
insert—
'repealed'.
- 10 Schedule 6, definition *ancillary works and encroachments*, 'chapters 6 and 9'—**
omit.

-
- 11** **Schedule 6, definition *road access works*, ‘chapters 6 and 9’—**
omit.

Transport Operations (Marine Pollution) Act 1995

- 1** **Section 127, heading, ‘, etc.’—**
omit, insert—
‘etc.’.

- 2** **Section 136, ‘part’—**
omit, insert—
‘division’.

Transport Operations (Passenger Transport Act) 1994

- 1** **Section 17(2)(c), ‘the person’—**
omit, insert—
‘the corporation’.
- 2** **Sections 20(2)(c) and (3)(c) and 21(1)(c) ‘person, or an executive officer of the person’—**
omit, insert—
‘corporation, or an executive officer of the corporation’.
- 3** **Section 22(3) and (4), ‘the operator’—**
omit, insert—
‘the corporation’.

- 4 Section 22B(5)(b)(ii), before ‘is not’—**
insert—
‘the accredited operator’.
- 5 Section 42A, ‘on specified’—**
omit, insert—
‘on a specified’.
- 6 Section 155(3)(i)(i) and (j)(i), ‘and’—**
omit.
- 7 Schedule 2, entry for section 172C(5)—**
omit.
- 8 Schedule 3, definition *category C driver disqualifying offence*, paragraph (e), ‘1994’—**
omit, insert—
‘2005’.
- 9 Schedule 3, definition *unscheduled long distance passenger service*, paragraph (c), before ‘no passengers’—**
insert—
‘in relation to which’.

Transport Operations (Road Use Management) Act 1995

- 1 **Section 80(3)(a), before ‘officer’—**
insert—
‘police’.

- 2 **Section 80(3)(c), ‘police does’—**
omit, insert—
‘police officer does’.

- 3 **Section 206, heading, ‘Definitions’—**
omit, insert—
‘Definition’.

Transport Planning and Coordination Act 1994

- 1 **Section 28A, definition *taking of land*, paragraph (b), ‘section 15(6A)’—**
omit, insert—
‘section 15(12)’.

- 2 **Section 28B(2)(b), ‘section 9(2)’—**
omit, insert—
‘section 9(1)’.