

## 11. Transport Offences

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## 11.1 Introduction

This chapter provides policies and procedures for officers dealing with transport related legislation and provides guidelines for officers detecting offences in core areas of concern to police.

## 11.2 Fatigue management

The National Heavy Vehicle Regulator (NHVR) is the administrative body for heavy vehicles under the *Heavy Vehicle National Law Act (Qld)* (HVNLA(Q)).

The HVNLA(Q) imposes duties on drivers and particular persons who influence the conduct of drivers, in relation to fatigue-regulated heavy vehicles.

### Work and rest arrangements

Drivers of fatigue-regulated heavy vehicles have strict maximum work times and minimum rest time requirements and drive under one of the following work and rest hours options:

- (i) Advanced Fatigue Management (AFM) hours;
- (ii) Basic Fatigue Management (BFM) hours;
- (iii) Standard hours; or
- (iv) Exemption hours.

Drivers may operate under one work and rest hours option only. However, drivers may change between such options providing they are compliant with the work and rest hour option they are changing to or/and have a reset rest break. A reset or rest break is a period of 48 hours (see s. 263: 'Operating under new work and rest hours option after change' of the HVNLA(Q)). Heavy vehicle drivers under the National Heavy Vehicle Work and Rest Hours Exemption (Personal Use) Notice 2020 (No. 1) (available on the National Heavy Vehicle Regulator website) are exempt for one hour of permitted personal activity in accordance with the conditions of this notice. The permitted personal activity should not be undertaken while the heavy vehicle in question is either carrying a load or towing a vehicle (see s. 12: 'Conditions - Limits on application of Permitted Personal Activity' of the National Heavy Vehicle Work and Rest Hours Exemption (Personal Use) Notice 2020 (No. 1)). An offence occurs where the driver works over the maximum work time or rests for less than the minimum rest time stated in the accreditation. Officers should be mindful of the defence provisions that apply under Chapter 6: 'Vehicle operations—driver fatigue' of the HVNLA(Q) for offences relating to non-compliance with work and rest hours as they apply under the work and rest hours options.

Drivers of fatigue-regulated heavy vehicles working under a BFM or AFM accreditation must keep in the driver's possession:

- (i) a copy of the accreditation certificate for the accreditation; and
- (ii) a document, signed by the operator of the vehicle who holds the accreditation, stating that the driver:
  - (a) is operating under the operator's heavy vehicle accreditation;
  - (b) has been inducted into the operator's relevant management system;
  - (c) meets the requirements relating to drivers under the operator's heavy vehicle accreditation (if any); and
  - (d) for a driver operating under AFM accreditation, a document stating the AFM hours applying under the accreditation.

Officers intercepting fatigue regulated heavy vehicles being driven by drivers working under a BFM or AFM accreditation should conduct inquiries to ensure the driver has in their possession the required documents in accordance with s. 468: 'Driver must carry accreditation details' of the HVNLA(Q). Where the driver does not have the required documentation officers should consider taking action for the offence.

### Diary requirements

Section 291: 'Application of Sdiv 1' of the HVNLA(Q) states drivers of fatigue-regulated heavy vehicles are required to possess a work diary if the driver:

- (i) is engaged in 100+km work under standard hours;
- (ii) was engaged in 100+km work under standard hours in the last 28 days;
- (iii) is working under BFM hours, AFM hours or exemption hours; or
- (iv) was working under BFM hours, AFM hours or exemption hours in the last 28 days.

See also s. 292: Meaning of work diary for Sdiv 1' of the HVNLA(Q).

Drivers must record information in the diary immediately after starting work and immediately before finishing work on each day the driver:

- (i) engages in 100+km work; or
- (ii) works under BFM hours, AFM hours or exemption hours.

See also s. 300: 'Purpose of Sdiv 3' of the HVNLA(Q) as to how information must be recorded in a work diary.

### Police officer requirements

A person must not drive a fatigue-regulated heavy vehicle on a road while impaired by fatigue. Additionally, a party in the chain of responsibility (see s. 227: 'Who is a party in the chain of responsibility' of the HVNLA(Q)) must take all reasonable steps to ensure a person does not drive a fatigue-regulated vehicle while impaired by fatigue. See also ss. 223: 'What is fatigue' and 225: 'What is impaired by fatigue' of the HVNLA(Q).

Where an officer reasonably believes a person in control of a fatigue-regulated heavy vehicle to be impaired by fatigue, or their work diary cannot be produced or relied upon, the officer should require the person to stop work and not work again for a stated period in accordance with ss. 538: 'Requiring driver to rest for contravention of maximum work requirement', 539: 'Requiring driver to rest for contravention of minimum rest requirement', 540: 'Requiring driver to stop working if impaired by fatigue' and 541: 'Requiring driver to stop working if work diary not produced or unreliable' of the HVNLA(Q).

Officers who intercept drivers of fatigue-regulated heavy vehicles are to require work diaries for inspection where such drivers are required to carry such work diaries (see s. 568: 'Power to require production of document etc. required to be in driver's possession' of HVNLA(Q)).

Where an inspection of a work diary reveals that the provisions of the HVNLA(Q) including any Heavy Vehicle Work and Rest Hours Exemption Notice or Permit, not been complied with, officers should consider taking action for the relevant offence.

Officers who detect an offence as a result of inspecting an authorised work diary, other than an electronic work diary, should:

- (i) endorse the relevant page with:
  - (a) time, date and place at which the offence was detected;
  - (b) sufficient notations to show that an offence was committed with respect to the information shown, or not shown, on the page; and
  - (c) their signature, name, rank, number and station;
- (ii) make notes in their official police notebook of:
  - (a) the particulars of the offender;
  - (b) the number of the offender's work diary;
  - (c) the number of the page of the offender's work diary which contains the information to substantiate the offence;
  - (d) any conversation with the offender; and
  - (e) any other particulars necessary;
- (iii) return the work diary to the offender.

Officers who inspect work diaries, other than electronic work diaries, that are correctly completed should endorse the last original page in use with their signature, name, rank, number and station together with the time, date and place at which the work diary was inspected.

The classification of breaches for fatigue management requirements is located in s. 222: 'Categories of breaches' of the HVNLA(Q) and are determined by the degree of time by which a driver of a fatigue-regulated heavy vehicle has exceeded their maximum work requirement or is deficient in their minimum rest requirement. See also the Heavy Vehicle (Fatigue Management) National Regulation. The risk categories are:

- (i) minor risk breach;
- (ii) substantial risk breach;
- (iii) severe risk breach; and
- (iv) critical risk breach.

### Exemptions

A person who is acting for an emergency service and who has time-critical duties on the way to, or during, an emergency is exempted from the restrictions placed on the maximum work time and minimum rest time requirements providing the non-compliance does not present an unreasonable danger to other road users.

The National Heavy Vehicle Regulator can also exempt a class of driver or fatigue-regulated heavy vehicle from particular maximum work requirements and minimum rest requirements, by Commonwealth Gazette notice or exemption permit.

### Chain of responsibility

Section 214: 'Who is a party in the chain of responsibility' of the HVNLA(Q) identifies each of the parties in the chain of responsibility for a heavy vehicle. A person can also be a party in more than one capacity. A party in the chain of responsibility must take all reasonable steps to ensure the driver does not drive the vehicle on a road while the driver is impaired by fatigue.

Officers commencing a proceeding for an offence against s. 228: 'Duty of driver to avoid driving while fatigued' or s. 199: 'Duty of party in the chain of responsibility to prevent driver driving while fatigued' of the HVNLA(Q) are to do so by way of notice to appear or where justified, arrest.

### Reasonable steps defence

A person has the right of a reasonable steps defence in accordance with s. 618: 'Reasonable steps defence' of the HVNLA(Q) if the person charged can prove:

- (i) the person did not know, and could not reasonably be expected to have known, of the contravention concerned; and
- (ii) either:
  - (a) the person took all reasonable steps to prevent the contravention; or
  - (b) there were no steps the person could reasonably be expected to have taken to prevent the contravention.

See also s. 622: 'Matters court may consider for deciding whether person took all reasonable steps – speeding or fatigue management offences' of the HVNLA(Q).

#### 11.2.1 Deleted

#### 11.2.2 Deleted

#### 11.2.3 Issuing work diaries

A number of stations, particularly in rural and remote areas are permitted to issue work diaries.

Prior to issuing work diaries, officers should ensure that applicants:

- (i) have the correct fee in their possession; and
- (ii) produce a current driver licence with the appropriate heavy vehicle class.

When issuing new work diaries, officers should:

- (i) obtain the previous work diary from the applicant prior to issuing a new work diary;
- (ii) cancel all remaining unused pages in the previous work diary by using a 'cancelled' stamp or printing the word 'cancelled' on each unused page;
- (iii) return the cancelled work diary to the applicant;
- (iv) if not working on-line with Transport Integrated Customer Access (TICA), contact the National Heavy Vehicle Regulator to record the relevant work diary details on behalf of the officer (see SMCD);
- (v) complete the application form page of the work diary;
- (vi) ensure that the applicant reads, or if unable to read has it read to them, the information and the declaration on the application form page prior to signing it; and
- (vii) remove the original of the application form page prior to issuing the work diary and forward this original to the National Heavy Vehicle Regulator.

Officers should issue new work diaries to applicants who are unable to produce their previous work diary or, where applicable, log book because it has been:

- (i) lost;
- (ii) stolen; or
- (iii) destroyed.

In such cases officers should ensure that the applicant signs the appropriate declaration on the application form page.

Officers who are advised by applicants for new work diaries that their previous work diary has been seized by an authorised officer should request that the applicant produce the seizure receipt which was issued when the previous work diary or log book was seized.

Where applicants are unable to produce a seizure receipt officers should seek verification of the seizure by:

- (i) requesting the applicant to provide details of the seizure (where seized, time and date seized, whether seized by police or DTMR); and
- (ii) providing such details to the National Heavy Vehicle Regulator.

Officers should not issue work diaries outside of office hours except under exceptional circumstances and are not, in any case, to issue work diaries between the hours of 0200 and 0400.

OICs of stations should ensure that fees collected for work diaries are managed through the TICA payment hub.

## 11.3 Registration offences

### 11.3.1 Seizing and disposing cancelled number plates

Where:

- (i) a vehicle number plate is recorded as:
  - (a) cancelled;
  - (b) lost;
  - (c) stolen;
  - (d) destroyed; or
  - (e) damaged; or
- (ii) it has been three months since the registration expired and a number plate has not been removed from the vehicle,

an officer can ask the person in charge of the vehicle to remove the number plate and deliver the plate to the officer. If the person in charge of the vehicle fails to comply with the request and the officer has warned the person that if they do not comply with the request, that the officer may remove the plate; the officer may remove the plate (see s. 212: 'Requirement to remove unlawful registration item' of the TO(RUM-VR)R).

#### Seizing number plates from unattended vehicles

Officers are not to remove number plates from any unattended vehicle under provisions of the TO(RUM-VR)R.

#### Surrender of number plates

Where a member of the public surrenders number plates at a station or establishment, the receiving officer should conduct a QPRIME check to identify if the number plates have been reported as lost or stolen.

If the number plates are reported as lost or stolen, they are to be dealt with as located property and lodged as an exhibit within the existing QPRIME occurrence (see Chapter 4: 'Property' of the OPM).

#### Ownership of number plates

A number plate remains the property of the State (see s. 128: 'Who owns number plates' of the TO(RUM-VR)R). In the case of personalised number plates, whilst a person may purchase the rights to a certain letter/number combination (see s. 132: 'Applying for personalised number plates' of the TO(RUM-VR)R), the physical number plate remains the property of the State.

#### Disposal of number plates

Officers should return seized number plates to DTMR once the plates are no longer required.

Seized number plates should not be held for longer than one month prior to disposal. An indemnity receipt should be prepared and a signature obtained from the DTMR employee receiving the number plates. Completed indemnity receipts should be filed at the station/establishment disposing the seized number plates.

### 11.3.2 Compulsory third party offences

Officers investigating registration offences may also detect offences against the MAIA, in particular the use of a motor vehicle for which the compulsory third party insurance policy is not current. Officers may issue infringement notices for breaches of the MAIA relating to a lapsed compulsory third party insurance policy. See Infringement Notice Codes page on the Service Intranet for infringement details.

### 11.3.3 Permit to use intercepted unregistered vehicle on road

Where an officer intercepts an unregistered vehicle and takes enforcement action for use of the unregistered vehicle they may issue an F 3612: 'Permit to move an unregistered vehicle' (included in the PT 56: 'Infringement Notice' book) authorising the use of the vehicle on roads to move it to a stated place (see s. 17: 'Permit to use intercepted unregistered vehicle on road' of the TO(RUM–VR)R).

Prior to issuing an F 3612, the officer should ascertain from the owner or driver of the vehicle:

- (i) whether it is necessary to move the vehicle;
- (ii) the nearest safe place to which the vehicle can be driven; and
- (iii) the length of time required to drive the vehicle to that place.

The travel time should be estimated on the basis of taking the shortest practicable route and is not to exceed twenty-four hours.

Following the issue of an F 3612, the officer is to explain to the person to whom the permit is issued:

- (i) the terms, conditions and expiry date and time of the F 3612;
- (ii) to retain the F 3612 in the vehicle and produce it if required;
- (iii) that in the event of the vehicle being involved in a traffic crash, it is the vehicle driver's responsibility to keep the F 3612 in a safe place as proof that the vehicle was authorised to be used on a road; and
- (iv) that the F 3612 does not exempt the driver or vehicle from any of the provisions of the TO(RUM)A, TO(RUM–RR)R or TO(RUM–VSS)R.

The prosecution copy of the F 3612 is to be attached to the green copy of the infringement notice and forwarded to the Department of Transport and Main Roads.

Officers may issue an F 3612 for vehicles which are defective, but only when a self-clearance or minor defect is identified (see s. 8.9.4: 'Completing the Defect Notice and Defective Vehicle Label' of this Manual).

#### Failure to comply with conditions of permit to move an unregistered vehicle

Officers are not to issue a further F 3612 to a vehicle which when intercepted was already travelling under the authority of an F 3612.

Where a vehicle has been intercepted and the owner or driver is not moving the vehicle in accordance with the F 3612, the F 3612 becomes void and action should be taken against the owner or driver by:

- (i) infringement notice; or
- (ii) Notice to Appear,

for using an unregistered vehicle on a road.

### 11.3.4 Registration number plate offences

#### Positioning of number plates

The positioning, visibility and legibility of each number plate issued for a vehicle is outlined in s. 118: 'Position, visibility and legibility of number plate' of the TO(RUM–VR)R, which provides:

- (i) how and where the number plate is to be positioned;
- (ii) that the characters on the number plate are to be visible from 20 metres away;
- (iii) specific requirements in relation to any cover on the number plate; and
- (iv) that the number plate is to be in a clearly legible condition.

Officers who detect an offence under s. 118 of the TO(RUM–VR)R, may:

- (i) caution the owner or registered operator (see SMD);
- (ii) issue an F 4890: 'Defect notice' (available from Richlands Supply Services) as a minor defect, requiring either the owner or registered operator of the vehicle to have the vehicle inspected at a stated reasonable time and place (see s. 8.9.4: 'Completing the Defect Notice and Defective Vehicle Label' of this Manual);
- (iii) issue an infringement notice to the owner or registered operator of the vehicle; or
- (iv) issue an infringement notice to the owner or registered operator of the vehicle and issue an F 4890, requiring the owner or registered operator of the vehicle to have the vehicle inspected at a stated reasonable time and place.

Officers are to note that for the purposes of this section, the use of the F 4890 is not a notice of a defect offence but notice in the approved form to have the vehicle inspected at a stated reasonable time and place.

See s. 8.9.8: 'Processing and finalising defect notices' of this Manual for requirements for processing and finalising defect notices.

### Legibility of number plates

Section 211(d): 'Using, or permitting use of, vehicle for which registration certificate, number plate or permit altered etc.' of the TO(RUM–VR)R creates an offence for a person, without reasonable excuse, to use or permit to be used, on a road, a vehicle if any writing, mark or colour on a number plate for the vehicle is not clearly legible.

In accordance with s. 123: 'Damaged, destroyed, lost or stolen number plates' of the TO(RUM–VR)R, where a vehicle's number plate is damaged or dirty and not legible, an officer may, in relation to a:

- (i) damaged number plate, issue an F 3404: 'Notice to replace damaged number plates' (available from the Department of Transport and Main Roads (DTMR)) to the registered operator or a person in charge of the vehicle; or
- (ii) dirty number plate, issue an F 4890 as a minor defect to the registered operator or a person in charge of the vehicle, requiring the registered operator to clean the number plate and bring the vehicle to a DTMR Customer Service Centre (DTMR-CSC) to be inspected within the time stated in the notice.

When an F 3404 is issued, the registered operator of the vehicle is required to apply at a DTMR-CSC within 14 days for a replacement set of number plates. In areas where a DTMR-CSC does not operate, the registered operator should be directed to attend a QGAP Office or police station which performs business on behalf of the DTMR.

Section 123 of the TO(RUM–VR)R creates offences for the:

- (i) person to whom the notice is given, who is not the registered operator of the vehicle, who, without reasonable excuse, does not immediately give the notice to the registered operator of the vehicle; and
- (ii) registered operator who, without reasonable excuse, contravenes a requirement given in the written notice.

Officers who detect an offence under s. 211(d) of the TO(RUM–VR)R may:

- (i) caution the offender;
- (ii) issue an F 3404 to the registered operator; or
- (iii) issue an infringement notice to the offender; or
- (iv) issue an infringement notice to the offender and, in the case of damaged number plates, issue an F 3404 to the registered operator.

### Follow up action by DTMR

When an F 3404 is given, s. 123 of the TO(RUM–VR)R creates offences for the:

- (i) registered operator of a vehicle who, without reasonable excuse contravenes a requirement contained in the notice; or
- (ii) person in charge of a vehicle, where the notice is given to that person, who is not the registered operator of the vehicle, and who, without reasonable excuse, does not immediately give the notice to the registered operator of the vehicle.

DTMR has undertaken to follow up on any suspected offences committed once an F 3404 is given.

## 11.4 Loading offences

Persons in control of vehicles are required to ensure that any load on the vehicle complies with the relevant loading requirement contained within the *Heavy Vehicle National Law Act* and the Heavy Vehicle (Mass, Dimension and Loading) National Regulation.

Generally a load will comply with the relevant loading requirement if:

- (i) the load is not placed in such a way as to make the vehicle unstable or unsafe;
- (ii) the load is secured so that it is unlikely to fall or be dislodged from the vehicle; and
- (iii) an appropriate method is used to restrain the load.

When investigating possible loading offences, officers may exercise all of the powers available to them for investigating other offences against a transport Act (see s. 1.3: 'Police powers for traffic enforcement' of this Manual).

Officers who intercept vehicles which they reasonably believe to be unsafe because of the way in which the vehicles are loaded, in accordance with s. 66: 'Power to prohibit use of vehicles' of the PPRA, should require the owner of the particular vehicle not to use or permit the vehicle to be used on a road until the load is properly secured by issuing an F 3162: 'Vehicle Movement Prohibition Notice' (available from the DTMR and on QPS Forms Select).

Officers may issue a notice to appear, commence a proceeding by way of complaint and summons or, where justified, arrest an owner of a vehicle who fails to comply with a requirement not to use or permit the use of a vehicle.

#### ORDER

Officers who require the owner of a vehicle not to use, or permit the use of, a vehicle until the load is properly secured are to issue and serve an F 3162: 'Vehicle Movement Prohibition Notice'.

The original F 3162: 'Vehicle Movement Prohibition Notice' is to be retained by the officer who makes the requirement. The duplicate notice is to be served on the owner or person in control of the vehicle.

## 11.5 Vehicle registration procedures

At police stations which conduct business on behalf of the DTMR, officers should only conduct vehicle registration business or pre-registration inspections during office hours.

These functions are secondary to the role of officers and should not be performed at the expense of other police duties.

Members who are required to process vehicle registration applications on behalf of the DTMR or to inspect vehicles prior to registration should follow the instructions contained in the 'TMR Documentation' portal on the Service Intranet or on the relevant DTMR form as the case may be.

Members who are unsure of what action to take in a vehicle registration matter should contact the nearest DTMR Customer Service Centre for advice.

Members who receive requests from members of the public for information on vehicle registration matters should:

- (i) if attached to a station which conducts registration business, refer to the 'TMR Documentation' portal on the Service Intranet to obtain the required information; or
- (ii) in other cases, refer the inquirer to the nearest DTMR Customer Service Centre.