

Heavy Vehicle (General) National Regulation

Explanatory Notes for SL 2013 No. 79

made under the

Heavy Vehicle National Law as applied by the *Heavy Vehicle National Law Act 2012* (Qld) and by the law of States and Territories

General outline

Short title

Heavy Vehicle (General) National Regulation.

Authorising Law

Section 730 of the *Heavy Vehicle National Law* contained in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld)

Policy objectives and the reasons for them

The Regulation achieves various objectives necessary for management of heavy vehicles at a national level, including:

1. Recognising current Performance Based Standard arrangements under a national framework that includes:
 - procedures for design and vehicle approvals;
 - procedures for cancelling and modifying approvals;
 - Performance Based Standards (PBS);

- assessor accreditation and vehicle certification rules; and
 - procedure for appointment of PBS Assessors and Vehicle Certifiers.
2. Providing processes for dealing with seized property including:
 - procedure for returning seized number plates;
 - the circumstances in which the Regulator must apply to the Registrar under the *Personal Property Securities Act 2009* (Cth) to register, amend or cancel an instrument in relation to a seized thing or sample; and
 - the priority of interests in the proceeds of disposal of a seized thing or sample.
 3. Providing how the Annual Report must be prepared and audited.
 4. Setting out how the Regulator must manage information.
 - The *Heavy Vehicle National Law* places obligations on the Regulator for information management in accordance with Queensland laws such as the *Information Privacy Act 2009* (Qld) (IP Act); *Right to Information Act 2009* (Qld) (RTI Act); and *Public Records Act 2002* (Qld) (PR Act). The Regulation modifies how the Queensland laws apply to the Regulator.
 - The Regulation clarifies that liability for actions of the Regulator under the modified laws rests with the Regulator rather than being switched to the Crown in right of Queensland. Liability of the Office of the Information Commissioner will be switched to the Crown in right of Queensland, as per the ordinary position under those laws.
 5. Providing further savings and transitional arrangements for existing accreditations and approvals, including:
 - recognition of existing State and Territory accreditations under the National Heavy Vehicle Accreditation Scheme and their ongoing management;
 - allowing for the continued use of current work diaries for six months;
 - recognition of Approved Vehicle Examiners (AVEs) for approval of heavy vehicle modifications and off road testing for compliance with heavy vehicle standards;

- recognition of existing PBS approvals; and
 - ongoing management of PBS approvals by the Regulator.
6. Providing transitional arrangements allowing the Regulator to make harmonised national notices that are substantially the same as State and Territory notices. This avoids the requirement to gain road manager consent where it has previously been given. The approach minimises the administrative burden placed on the Regulator and road managers.
 7. Prescribing fees and the formula for fee increases in accordance with CPI.

Achievement of policy objectives

Although ‘harmonisation’ approaches adopted over the last two decades have improved efficiency, jurisdictions have adapted model laws to reflect jurisdictional concerns, creating contradictory and inconsistent laws that stifle productivity and hamper the promotion of safety. The Regulation will contribute to a nationally consistent approach, maximising productivity and safety outcomes.

Consistency with policy objectives of authorising law

The Regulation is consistent with the objectives of the *Heavy Vehicle National Law*, that is to establish a national scheme for facilitating and regulating the use of heavy vehicles on roads in a way that:

- (a) promotes public safety; and
- (b) manages the impact of heavy vehicles on the environment, road infrastructure and public amenity; and
- (c) promotes industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles; and
- (d) encourages and promotes productive, efficient, innovative and safe business practices.

Inconsistency with policy objectives of other legislation

The Regulation is not inconsistent with the policy objectives of the other legislation.

Benefits and costs of implementation

The provisions of the Regulation were subject to rigorous cost benefit analysis in the regulatory impact statement for the *Heavy Vehicle National Law*. The outcomes of this analysis are summarised in the explanatory notes for the *Heavy Vehicle National Law*.

There are no additional appreciable costs associated with implementing this regulation.

Consistency with fundamental legislative principles

Generally the Regulation has sufficient regard to the rights and liberties of individuals as required by s 4(2) of the *Legislative Standards Act 1992* (Qld). A number of issues have been raised and are explained below.

Individuals' Rights and Liberties

Penalty indexation

Section 737 (Increase of penalty amounts) of the *Heavy Vehicle National Law* allows the amendment of the penalty amounts in accordance with this Regulation. Pecuniary penalties are expressed in dollar values rather than penalty units. Therefore it is necessary to prescribe a mechanism in the Regulation to increase penalty amounts.

The indexation mechanism set out in s 64 of the Regulation is derived from inflation indexes published by the Australian Bureau of Statistics. The note in s 737(2) of the *Heavy Vehicle National Law* recognises that the application of the index may result in no increase in a given year. In addition to the ordinary requirement of a unanimous recommendation required for regulations made under the *Heavy Vehicle National Law* (see s 730), a regulation establishing the index referred to in s 737(2) requires responsible Ministers to be satisfied that the method generally accords with increases in relevant inflation indexes or similar indexes. These safeguards ensure appropriate checks and balances to avoid injustice through the delegation of this rule making power.

The institution of Parliament

Appointment, renewal, suspension and termination of PBS assessors and certifiers and handling of complaints about PBS assessors and certifiers by the Regulator

The Regulation allows the Regulator to appoint, renew, suspend and terminate PBS assessors and certifiers, and deal with complaints about assessors and certifiers, under the 'Assessor Accreditation Rules' and the 'Vehicle Certification Rules' (the Rules). The Regulator has worked collaboratively with the National Transport Commission (NTC) in delivery of regulatory functions and the rules are documents prepared by the NTC and are not subject to parliamentary scrutiny.

The inclusion of these powers raises the issue of whether the legislation has sufficient regard to the institution of Parliament by allowing the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons as provided for in s 4(5)(e) of the *Legislative Standards Act 1992* (Qld).

The Rules form part of the current PBS scheme that is preserved under the *Heavy Vehicle National Law* and applied with necessary modifications to reflect the Regulator's new administrative role with respect to PBS vehicles. The Rules outline important matters that affect individuals because they impact on the appointment, renewal, suspension and termination of PBS assessors and certifiers and the handling of complaints about PBS assessors and certifiers by the Regulator.

Amendments to the Rules are the responsibility of the NTC, however, the rules do not provide any power to the NTC. While the NTC is responsible for administering changes to the Rules, such changes can only be made with the approval of relevant Transport Ministers. The sub-delegation of powers is considered justified due to the requirement for Ministerial approval.

In addition, elevation of the core aspects of the PBS scheme into the Regulation provides greater transparency and certainty than exists under the current scheme where these issues are managed administratively and outside the legislative framework. This arrangement is intended to be an interim measure that only covers a total of approximately 20-30 individual assessors and certifiers. The assessors and certifiers who are currently operating under the guidelines are familiar with the procedures they establish for appointment, renewal, suspension and termination, so there will be no change for them.

There is a need to develop a comprehensive set of regulations governing the accreditation of other professions associated with regulatory requirements under the *Heavy Vehicle National Law*. Given the similarities between the PBS related functions and the functions performed by other professions, it would be preferable to implement them as part of the same package.

Henry VIII clause

The Regulation amends Acts, namely the *Information Privacy Act 2009*, *Public Records Act 2002* and *Right to Information Act 2009* for the purpose of applying them across jurisdictions to the activities of the Regulator. The modification of the Acts is authorised by section 696(3) of the *Heavy Vehicle National Law*, a Henry VIII clause.

The modifications are procedural and technical in nature and are made to ensure the Acts apply appropriately to the National Heavy Vehicle Regulator and consistently in all jurisdictions. It is important to recognise that these Acts were drafted to apply only to the Queensland public sector and related entities. Therefore, their application under national scheme legislation requires some modification.

Consultation

Ongoing consultation has been undertaken with state, territory and industry stakeholders through the Project Implementation Board (PIB). Industry stakeholders have been involved in the development and review of draft versions of the Regulation and are generally supportive of this reform.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the National Heavy Vehicle Regulator.