

Heavy Vehicle National Law and Other Legislation Amendment Act 2018

Explanatory notes for SL 2018 No. 143

made under the

Heavy Vehicle National Law and Other Legislation Amendment Act 2018

General Outline

Short title

Proclamation to commence provisions of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018*.

Authorising law

Section 2 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (the Amendment Act).

Policy objectives and the reasons for them

The objective of the proclamation is to commence uncommenced provisions of the Amendment Act that are not in force, on 1 October 2018, with the exception of section 47, which will commence at a later date. The Amendment Act received assent on 18 June 2018. The uncommenced provisions are of a machinery nature and their proclamation is a simple administrative process.

In November 2015, the Transport and Infrastructure Council (the Council) approved detailed policy recommendations and a three-phased approach to reform chain of responsibility (CoR) and executive officer liability (EOL) provisions within the *Heavy Vehicle National Law Act 2012* (HVNL). In May 2016, Council agreed that these reforms would commence as one package in mid-2018.

Following consultation between industry associations, jurisdictions, the National Transport Commission (NTC) and the National Heavy Vehicle Regulator (NHVR), the Queensland Minister for Transport and Main Roads determined that 1 October 2018 was the preferred date for commencement of all three phases of CoR and EOL reforms.

The second phase of amendments are included within the Amendment Act, along with a range of minor maintenance amendments.

The Amendment Act amends the HVNL to implement a key heavy vehicle policy initiative relating to extending positive executive officer due diligence obligations to all major safety related duties in the HVNL, as endorsed by Council. These amendments will:

- bring executive officer liability under the HVNL more in line with the officers' duty provisions under the *Work Health and Safety Act 2011* by focussing the obligation of executive officers on safety related matters;
- encourage a more proactive approach to addressing heavy vehicle safety risks;
- reduce regulatory complexity and compliance costs associated with having two different approaches to executive officer liability in the WHSA and the HVNL;
- limit the obligations on executive officers to those that have a direct safety link
- cover all major safety duties in the HVNL; and
- not increase the range of parties covered or the scope of executive liability.

The Amendment Act also includes several minor and technical amendments to:

- reduce administrative or regulatory burden for the NHVR and/or the heavy vehicle industry;
- clarify existing requirements to aid interpretation of the HVNL;
- improve the enforceability of the HVNL; and
- address technical drafting issues.

Section 47 of the Amendment Act inserts new section 77AAA in the *Transport Operations (Road Use Management) Act 1995*. This new section provides for registered operators to be advised of offences committed in their vehicle. This provision will be proclaimed and implemented at a later date.

Achievement of policy objectives

The policy objective is achieved by the proclamation commencing uncommenced provisions of the Amendment Act on 1 October 2018, with the exception of section 47, which will commence at a later date

The policy objective of extending positive executive officer due diligence obligations to all major safety related duties in the HVNL is primarily achieved by amending section 26D to include a definition of safety duty. This definition includes the existing primary duties under section 26C for which an executive officer has a due diligence obligation as well as the other major safety duties imposed under other sections of the HVNL.

The Amendment Act addresses several operational, minor or technical drafting issues that will improve roadside enforcement, reduce compliance burden for industry and reduce the administrative burden for the NHVR, including:

- clarifying what is a minor risk breach in relation to vehicle ground clearance requirements;
- allowing operators to make certain documents available electronically;
- clarifying certain record keeping requirements for drivers and their record keepers;
- clarifying information sharing provisions; and
- providing that new penalties in the HVNL are indexed in the same manner as existing penalties.

Consistency with policy objectives of authorising law

The proclamation is consistent with the policy objectives of the Amendment Act.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

The reform of the executive officer liability for safety and related obligations under the HVNL will require the development of reference material and training for authorised officers as well as education and compliance guidelines for the heavy vehicle industry.

Implementation costs of all reforms in the Amendment Act will be met within existing budget allocations of the NHVR and state and territory agencies.

Executive officer liability amendments will benefit industry by making CoR requirements clearer, will provide a proactive approach to managing transport activity risks, and will lower costs for compliance as CoR provisions will be closely aligned to existing Work Health and Safety obligations.

Consistency with fundamental legislative principles

The proclamation is consistent with fundamental legislative principles.

Consultation

Following consultation between industry associations, jurisdictions, and the NTC and NHVR, the Honourable Mark Bailey MP, Minister for Transport and Main Roads, determined that 1 October 2018 was the preferred date for commencement of all three phases of CoR and EOL reforms.

In accordance with *The Queensland Government Guide to Better Regulation*, the Department of Transport and Main Roads applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category G – Regulatory proposals that are of a machinery nature).