

State Penalties Enforcement (Heavy Vehicle National Law) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 205

made under the

State Penalties Enforcement Act 1999

General Outline

Short title

State Penalties Enforcement (Heavy Vehicle National Law) Amendment Regulation 2018.

Authorising law

Section 165 of the *State Penalties Enforcement Act 1999*.

Policy objectives and the reasons for them

Operational provisions of the *Heavy Vehicle National Law Act 2012* (the Act) commenced on 10 February 2014. The Act provides a single national law for the consistent regulation of heavy vehicle operations across all states and territories excluding Western Australia and the Northern Territory Australia, and establishes the National Heavy Vehicle Regulator (NHVR) to administer the Heavy Vehicle National Law (HVNL) contained in the Schedule to the Act.

As host jurisdiction, Queensland must first pass HVNL amendments before they can be applied nationally by other participating jurisdictions.

The *Heavy Vehicle National Law Amendment Act 2018* (Amendment Act) amended the HVNL to implement national reforms agreed by responsible Ministers at the 10 November 2017 Transport and Infrastructure Council meeting.

The Amendment Act includes two new penalties for heavy vehicle offences, which were included in the *Schedule of Heavy Vehicle National Law Infringement Penalties and Demerit Points* (the Schedule).

The Schedule is an administrative document that sets out offences under the HVNL that should attract infringement penalties, and/or demerit points. It is used by participating jurisdictions to inform amendments to local laws. The new offences must be reflected in the *State Penalties Enforcement Regulation 2014* (SPER) to provide for infringement notices to be issued for offences committed in Queensland against the HVNL.

On 9 November 2018, amendments to the Schedule were approved by responsible Ministers at the Transport and Infrastructure Council meeting.

The amendments included two new offences that concern requirements for the driver of a Performance Based Standards (PBS) vehicle to keep a copy of the PBS vehicle approval in the driver's possession while driving the PBS vehicle.

In conjunction with Ministers approving two new infringements in the Schedule, an audit was undertaken that compared the Schedule with existing HVNL infringements contained within SPER.

Queensland has passed three HVNL Amendment Acts in the last two years, with some provisions only commencing on 1 October 2018. Due to the fact that amendments were made to previous amendment Acts, and in some cases amendments have commenced out of sequence, a comparison audit of the Schedule with SPER uncovered anomalies that require updating.

The proposed amendments to SPER, which are to commence on 30 November 2018, reflect penalty amendment provisions made to the HVNL and the *Heavy Vehicle (Fatigue Management) National Regulation*.

Achievement of policy objectives

Proposed amendments to the *State Penalties Enforcement Regulation 2014* provide for two new infringement notices to be issued for offences committed against the HVNL in Queensland. Based on an audit of HVNL penalty infringements, additional amendments are also required in order to align current HVNL penalty infringements with SPER.

Two new offences approved by Council Ministers on 9 November 2018 are listed in the following table:

Offence prescribed / to be prescribed	Maximum Penalty	Infringement Penalty
25A (1) Keeping copy of PBS vehicle approval while driving – The driver of a PBS vehicle must keep a copy of the PBS vehicle approval in the driver's possession while driving the PBS vehicle.	3000	300

Offence prescribed / to be prescribed	Maximum Penalty	Infringement Penalty
25A (2) Keeping copy of PBS vehicle approval while driving – Each relevant party for a driver mentioned in subsection (1) must ensure the driver complies with subsection (1), unless the relevant party has a reasonable excuse.	3000	300

Amendments to SPER based on the audit of HVNL infringement penalties are detailed in the following table:

Section	Action	Comments
Heavy Vehicle National Law		
130(3)	Remove from SPER	This offence requires an investigation, so an infringement penalty has been deemed unsuitable for this offence.
153(1)	Remove from SPER	This section has been repealed and is no longer in the HVNL
153(2)	Remove from SPER	This section has been repealed and is no longer in the HVNL
183(2)	Remove from SPER	This section has been repealed and is no longer in the HVNL
219(1)	Remove from SPER	This section has been repealed and is no longer in the HVNL
321(2)	Remove from SPER	This section has been repealed and is no longer in the HVNL
321(3)	Include/Add	This amendment was contained in the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2016</i> , which was assented to on 9 December 2016, but the provision did not commence until 1 October 2018
324(2)	Include/Add	This amendment was contained in the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2016</i> , which was assented to on 9 December 2016, but the provision did not commence until 1 October 2018

Section	Action	Comments
341(5)	Include/Add	This amendment was contained in the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2016</i> , which was assented to on 9 December 2016, but the provision did not commence until 1 October 2018
Heavy Vehicle (Fatigue Management) National Regulation		
18A(1)	Include/Add	This amendment was contained in the <i>Heavy Vehicle National Law Amendment Regulation 2015</i> , which was made by the Governor in Council on 17 December 2015

Consistency with policy objectives of authorising law

The amendment regulation remains consistent with the main objectives of the *State Penalties Enforcement Act 1999*.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

There are no financial benefits nor costs associated with this amendment.

Consistency with fundamental legislative principles

The amendment regulation is generally consistent with fundamental legislative principles. However, there could be a view that new penalty infringements under sections 324(2) and 341(5) may potentially raise an issue with fundamental legislative principles as these infringements may require the exercise of personal discretion in determining whether an offence has occurred.

Under 324(2), if the driver stops using an Electronic Work Diary (EWD), the driver's record keeper must immediately give the driver, in a way that makes the information readily available to the driver, the information recorded in the work diary for each day on which the driver was using the EWD, unless the record keeper has a reasonable excuse.

It is considered that the infringement penalty under section 324(2) is justified, as what constitutes 'readily available' is well understood by industry and authorised officers. Requirements surrounding the recording and production of information is well documented in the NHVR's EWD Compliance Policy and the EWD Guideline for Record Keepers.

Under 341(5), the record keeper must, unless the record keeper has a reasonable excuse, keep the records in a way that ensures it is readable, is reasonably capable of being understood, and is also capable of being used as evidence. The following example is provided within the HVNL:

- To ensure a record kept in a storage facility does not become unreadable, for example, by degrading, the record keeper could scan the hard copy of the record and keep it in an electronic format that is readable.

It is considered that the infringement penalty under section 341(5) is justified, as keeping records in a way that ensures their future use and readability is well understood by industry participants and determining whether the method chosen is successful in providing a readable evidence-worthy copy is not subjective, but is supported by the records themselves.

Consultation

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 on the basis of Category A – Regulatory proposals that make consequential amendments, and Category G – Regulatory proposals that are of machinery nature.