

State Penalties Enforcement (Heavy Vehicle National Law) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 20

made under the

State Penalties Enforcement Act 1999

General Outline

Short title

State Penalties Enforcement (Heavy Vehicle National Law) Amendment Regulation 2020.

Authorising law

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

Policy objectives and the reasons for them

To support the existing framework of the national law, offences under the *Heavy Vehicle National Law Act 2012* (HVNL) were reviewed to identify diversionary options and ticketing for lesser offences. As a result, four existing offences under the HVNL were deemed suitable for consideration as ticketed or infringeable offences.

These offences relate to a driver's work and rest hours where the breach is either reducing a major rest break or increasing a driving period by 30 minutes or less. Drivers of these vehicles are aware of their work and rest obligations and the requirement to complete a heavy vehicle work diary showing their driving and rest periods. These offences have been considered appropriate for infringement, because:

- there are a large number of these offences being detected which is placing a strain on the court system
- it is relatively easy to see if there has been a breach which will not be aided by examination in a court
- the risk to safety of these offences is relatively minor.

The proposed amendments were sent to the Transport and Infrastructure Council (Council) for consideration. Council is responsible for overseeing national heavy vehicle reform and is chaired by the Deputy Prime Minister and Minister for Infrastructure and Regional Development, and comprises each state and territories' transport and infrastructure portfolio Ministers.

Queensland members to the Council are the Honourable Mark Bailey MP, Minister for Transport and Main Roads and the Honourable Cameron Dick MP, Minister for State Development, Manufacturing, Infrastructure and Planning. A ‘one vote per jurisdiction’ principle applies to all matters decided by Council.

Following national consultation, Ministers at the 2 August 2019 Council meeting endorsed making the four existing matters infringeable and approved consequential changes to the *Heavy Vehicle National Law Schedule of Infringement Penalties and Demerit Points* (Schedule).

The Schedule is an administrative document managed by the National Transport Commission that outlines the offences in the HVNL that attract an infringement penalty. It is used by participating states and territories to inform amendments to local laws. The Schedule lists the offences that must be heard by a court and offences that could be dealt with by issuing a ticket, known as an infringeable offence. It gives the person issued the notice (ticket) the option of either paying the fine or electing to have the matter dealt with by a court. There is a total of 330 offences in the HVNL, with 144 that are deemed infringeable and 186 that are to be heard by a court.

The changes to the Schedule will allow the four matters that must currently be heard by a court to be made an infringeable offence that can be dealt with by a fine. These proposed changes affect only offences relating to a driver’s work and rest hours where the breach is either reducing a major rest break or increasing a driving period by 30 minutes or less. This *does not change* the penalties for critical risk breaches which are generally greater than 30 minutes.

The proposed *State Penalties Enforcement (Heavy Vehicle National Law) Amendment Regulation 2020* (Amendment Regulation) will amend the *State Penalties Enforcement Regulation 2014* (SPER) by inserting the following into Schedule 1, Heavy Vehicle National Law (Queensland), Column 1 ‘Infringement notice offence’:

- S250(1): a penalty unit amount of \$1000 for a severe risk breach where the driver is operating as a solo driver under standard hours
- S251(1): a penalty unit amount of \$1000 for a severe risk breach where the driver is operating as a two-up driver under Basic Fatigue Management hours
- S254(1): a penalty unit amount of \$1000 for a severe risk breach where the driver is operating in a solo driving arrangement under standard hours
- S256(1): a penalty unit amount of \$1000 for a severe risk breach where the driver is operating in a two-up driving arrangement under Basic Fatigue Management hours.

The ‘minor’ and ‘substantial’ risk breach categories under these offences allow for infringement penalties. The difference between a substantial risk breach and a severe risk breach is very small; in most cases just 15 minutes, or up to 30 minutes.

More serious breaches of sections 250(1), 251(1), 254(1) and 256(1) are covered by the critical risk breach category, which may only be prosecuted in Court. The ability to refer matters to Court where a serious pattern of behaviour is identified through multiple breaches of the severe, substantial, or minor risk categories will remain.

Council Ministers also approved Schedule changes that reflect section 531A self-clearing defect notices and section 531B requirements about self-clearing defect notices are being omitted from the HVNL. The matters provided for in these sections have been materially incorporated into sections 526, 527 and 529 of the HVNL.

As a result, sections 529 and 531A(4) and (5) are to be omitted from SPER Schedule 1 Heavy Vehicle National Law (Queensland).

Achievement of policy objectives

The policy objective is achieved by the effective implementation of the Amendment Regulation.

To facilitate the effective implementation of the amendments, and to provide a common commencement date in all participating jurisdictions, the Amendment Regulation must commence on 28 February 2020.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the *State Penalties Enforcement Act 1999*.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Any costs for Queensland will be met within the Department of Transport and Main Roads' existing budget allocation.

There are approximately 120 severe risk breach offences per annum that must be dealt with by the court system that relate to a driver's work and rest hours where the breach is either reducing a major rest break or increasing a driving period by 30 minutes or less.

The amendments will allow the four matters that must currently be heard by a court to be made an infringeable offence that can be dealt with by a fine. These amendments benefit the court system by better managing demand in the criminal courts in Queensland, while recognising the need for offenders to be held fully responsible for their conduct.

These amendments will also benefit operators and drivers by providing the option of paying the fine or electing to have the matter heard in court. This will reduce inconvenience for drivers and operators having to attend court and as a result will increase industry productivity.

Consistency with fundamental legislative principles

The Amendment Regulation does not breach any fundamental legislative principles.

Consultation

In accordance with the *Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted about this amendment 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 in nature.

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