

# Heavy Vehicle National Law and Other Legislation Amendment (Postponement) Regulation 2020

Explanatory notes for SL 2020 No. 135

made under the

*Heavy Vehicle National Law and Other Legislation Amendment Act 2019*

## General Outline

### Short title

*The Heavy Vehicle National Law and Other Legislation Amendment (Postponement) Regulation 2020.*

### Authorising law

Section 15DA of the *Acts Interpretation Act 1954*  
Section 2 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019*

### Policy objectives and the reasons for them

The *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* (Amendment Act) made a range of amendments to the *Heavy Vehicle National Law Act 2012* (HVNL Act) that addressed a number of operational, minor and technical drafting issues that will improve roadside enforcement, reduce the compliance burden for industry and reduce the administrative burden for the National Heavy Vehicle Regulator (NHVR).

The Amendment Act was assented to on 26 September 2019. To facilitate the effective implementation of the amendments and to provide a common commencement date in all HVNL Act participating jurisdictions, Part 3 of the Amendment Act was proclaimed on 28 February 2020, other than sections 10 and 11.

Sections 10 and 11 of the Amendment Act amend sections 96 (Compliance with mass requirements) and 102 (Compliance with dimension requirements) of the HVNL Act, respectively.

The intended effect of sections 10 and 11 is that a Performance Based Standards (PBS) vehicle detected operating off-route will lose its PBS Vehicle Approval mass and dimension limits. The prescribed mass and dimension limits under the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* (MDL Regulation) will apply to the vehicle instead of the PBS Vehicle Approval mass and dimension limits.

Currently, PBS mass and dimension limits apply to PBS vehicles detected operating off-route, which means that it can only be breached for being off-route (section 137) not for being over mass (section 96) or over dimension (section 102). The penalty for being off-route is considerably lower than for being over mass or over dimension.

The rationale for amending sections 96 and 102 of the HVNL Act was to better align the enforcement outcomes and penalties for off-route PBS vehicles with off-route Class 1 and 3 vehicles.

However, commencement of sections 10 and 11 will cause unintended and inconsistent mass and dimension enforcement outcomes for PBS vehicles detected off-route compared to other Class 2 vehicles and when compared to Class 1 and Class 3 vehicles. This may include the initiation of court proceedings instead of the issue of a penalty infringement notice, or the use of additional enforcement powers such as a direction not to move the vehicle until the breach has been rectified or to move it to a safe location.

The unintended consequences and issues identified are not solely the result of sections 10 and 11, but have exacerbated existing anomalies and inconsistencies within the current HVNL Act. This is mainly due to the way PBS vehicles are dealt with in the HVNL Act and MDL Regulation compared to Class 1 and 3 vehicles and other Class 2 vehicles.

PBS vehicles have unique designs that do not necessarily correspond to defined vehicle types under the MDL Regulation but deliver better performance and safety outcomes. The 'reversion' to prescribed mass and dimension limits under sections 10 and 11 will unfairly penalise PBS vehicles compared with traditional vehicles that do not perform as well as the PBS vehicle.

The NHVR has confirmed that there is no apparent operational solution to these unintended outcomes.

As remedies are likely to require further legislative amendments which cannot be achieved before 27 September 2020, it was agreed by responsible Ministers at the Transport and Infrastructure Council on 5 June 2020 that the commencement of sections 10 and 11 be postponed by 12 months to 27 September 2021 to allow a solution to be developed.

This approach will retain the status quo in relation to PBS vehicles detected operating off-route until 27 September 2021 and provide time for a legislative strategy to be developed and implemented.

## **Achievement of policy objectives**

The policy objective will be achieved by postponing the automatic commencement of sections 10 and 11 of the Amendment Act to enable a legislative solution to be developed.

The postponement regulation must be made prior to the automatic commencement of sections 10 and 11 on 27 September 2020.

## **Consistency with policy objectives of authorising law**

The postponement regulation remains consistent with the main objectives of the Amendment Act. The regulation only postpones the commencement of un-commenced provisions within the Amendment Act.

## **Inconsistency with policy objectives of other legislation**

The regulation is consistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

There are no costs associated with postponing commencement of sections 10 and 11 of the Amendment Act.

By postponing commencement of these sections, any unintended and inconsistent mass and dimension enforcement outcomes for PBS vehicles detected off-route will be avoided. The status quo will apply until 27 September 2021, benefitting industry with a consistent approach to mass and dimension enforcement.

Jurisdictions will also benefit from the additional time provided to develop and implement a legislative strategy to resolve the issue.

## **Consistency with fundamental legislative principles**

The 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 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).