

Heavy Vehicle National Legislation Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Heavy Vehicle National Legislation Amendment Regulation 2020* (the Regulation) made under the *Heavy Vehicle National Law Act 2012* (HVNL).

In my opinion, the Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 18 May 2018, responsible ministers of the Transport and Infrastructure Council (Council) endorsed an amendment to the HVNL and *Heavy Vehicle (Mass, Dimension and Loading) National Regulation* (MDL Regulation) that would increase the allowed volume on certain heavy vehicles where mass is not the constraint by allowing specified semi-trailers to operate at 4.6m high under the HVNL without the need for a notice or individual permit.

This amendment will extend the current 4.3 metre height limit for specified semi-trailers to a 4.6 metre height limit for any semi-trailer combination that:

- is not a Performance Based Standards scheme vehicle
- has an air suspension system with effective dampers fitted
- has a deck height not higher than 1.2m for at least half of its deck length
- has a mass of no more than 90 per cent of the prescribed mass limit for the combination.

The amendment also provides that a specified semi-trailer is not a restricted access vehicle.

The purpose of this amendment is to allow specified semi-trailers to operate at 4.6m high under the HVNL without the need for a notice or individual permit. This amendment will reduce administrative burden for industry, the National Heavy Vehicle Regulator (NHVR) and road managers.

The MDL Regulation amendment is tied to section 14 of Part 3 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019*, which inserts the definition of specified semi-trailer into the HVNL. Section 14 is to commence by proclamation on 28 February 2020. As a result, the term specified semi-trailer is being inserted into the MDL Regulation to reflect that specified semi-trailer has the same meaning as it will have in the HVNL, and that specified semi-trailers can operate at 4.6m in height.

On 22 November 2019, Council endorsed amendments to better align HVNL regulations with the Australian Design Rules (ADRs), clarify requirements and terminology, and introduce safety improvements.

The MDL Regulation is being amended so that the fitment of a front safety blind spot mirror is not included in the measurement of the length of a heavy vehicle, unless the mirror projects more than 150mm beyond the body of the heavy vehicle.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Upon analysis, the subordinate legislation will engage the human right of freedom of movement under s19 of the *Human Rights Act 2009*. This human right provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live.

The Regulation interacts with a person's freedom of movement by removing operational constraints on specified semi-trailers to increase the height of the vehicle moving within Queensland, without the need for a notice or individual permit.

On one view, the scope of these rights is unlikely to be limited by the Regulation. Individuals retain the capacity to move freely within Queensland via an alternative means of Transport that is not a specified semi-trailer.

However, in the alternative, if the rights are limited, any potential limit is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Further detail supporting this conclusion is set out below.

Consideration of reasonable limitations on the right to freedom of movement (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The right to freedom of movement protects a person's ability to move freely within Queensland, and to enter and leave it and facilitates that ability for a person to choose where to live.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of this Regulation is to allow specified semi-trailers to operate at 4.6m high under the HVNL without the need for a notice or individual permit. This amendment will reduce the administrative burden for industry, the NHVR and road managers.

This Regulation does not reasonably restrict a person's freedom of movement in semi-trailers who do not satisfy the prescribed requirements to operate under 4.6 metres as a person can still operate at the lower height of 4.3m or apply for a notice or individual permit.

- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

There is a rational relationship between a potential limitation and the purpose of the Regulation. There is a requirement to regulate the movement of specified heavy vehicles for public safety, road infrastructure and public amenity purposes.

- (d) whether there are any less restrictive and reasonably available ways to achieve the purpose

No other less restrictive or reasonably available way of achieving the purpose has been identified.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Regulation does not represent a total restriction on an individual's freedom of movement through a public space, as individuals retain the capacity to move through the area of public space by other means. For example, this Regulation does not restrict the general movement of a person in a light vehicle or other means of transportation.

The Regulation has a direct safety and regulatory benefit to operators and drivers that will improve industry productivity and efficiency in the road transport of goods and passengers by heavy vehicles. The Regulation will aid in regulating the movement of specified heavy vehicles for public safety, road infrastructure and public amenity purposes.

On balance, it is considered that the importance of regulating heavy vehicles for public safety, road infrastructure and public amenity purposes outweighs any potential limitations imposed on the right to freedom of movement.

Conclusion

I consider that the *Heavy Vehicle National Legislation Amendment Regulation 2020* is compatible with the human rights under the *Human Rights Act 2019* because to the extent that it imposes any limitation on a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The Honourable Mark Bailey MP
Minister for Transport and Main Roads