

Heavy Vehicle National Law and Other Legislation Amendment (Postponement) 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* (HRA), I, Mark Bailey MP, Minister for Transport and Main Roads, provide this human rights certificate with respect to the *Heavy Vehicle National Law and Other Legislation Amendment (Postponement) Regulation 2020* (Regulation) made under the *Acts Interpretation Act 1954* and the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* (Amendment Act).

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

Overview of the Subordinate Legislation

The purpose of the Regulation is to postpone the automatic commencement of sections 10 and 11 of the Amendment Act to enable a legislative solution to be developed.

Sections 10 and 11 of the Amendment Act amend sections 96 (Compliance with mass requirements) and 102 (Compliance with dimension requirements) of the *Heavy Vehicle National Law Act 2012* (HVNL Act), respectively.

In accordance with the *Acts Interpretation Act 1954*, section 15DA, sections 10 and 11 will automatically commence on 27 September 2020 if not otherwise postponed.

The intended effect of sections 10 and 11 of the Amendment Act 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. The rationale for the Amendments was to better align the enforcement outcomes and the penalties for off route PBS vehicles with other off route heavy vehicles.

However, the amendments will cause unintended and inconsistent mass and dimension enforcement outcomes and inconsistencies for PBS vehicles detected off route compared to other non-PBS 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 have exacerbated existing anomalies and inconsistencies within the current HVNL Act. This is mainly due to the way PBS and other restricted access vehicles are dealt with in the HVNL Act and MDL Regulation.

The National Heavy Vehicle Regulator has confirmed that no operational remedies are available and further legislative changes are likely to be required to address 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 commencement of sections 10 and 11 be postponed by 12 months to 27 September 2021 to allow sufficient time for an appropriate 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.

Human Rights Issues

The Regulation does not affect or engage a human right.

Conclusion

I consider that the Regulation is compatible with the HRA because it does not raise a human rights issue.

Honourable Mark Bailey MP
Minister for Transport and Main Roads