

THIS PUBLIC BILL has this day been read a Third time and passed

The Clerk of the Parliament.

*Legislative Assembly Chamber,
Brisbane, September 2019*



Queensland

**No.
A BILL for**

An Act to amend the Heavy Vehicle National Law Act 2012, the Motor Dealers and Chattel Auctioneers Act 2014, the National Environment Protection Council (Queensland) Act 1994, the Rail Safety National Law (Queensland) Act 2017 and the Transport Operations (Road Use Management) Act 1995 for particular purposes



Queensland

Heavy Vehicle National Law and Other Legislation Amendment Bill 2019

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2019

A Bill

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An Act to amend the Heavy Vehicle National Law Act 2012, the Motor Dealers and Chattel Auctioneers Act 2014, the National Environment Protection Council (Queensland) Act 1994, the Rail Safety National Law (Queensland) Act 2017 and the Transport Operations (Road Use Management) Act 1995 for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019*.

2 Commencement

- (1) Part 2 commences on the commencement of the *Road Vehicle Standards Act 2018* (Cwlth), section 15.
- (2) Part 3 commences on a day to be fixed by proclamation.
- (3) The *Acts Interpretation Act 1954*, section 15DA does not apply to part 2.

Part 1A Amendments commencing on assent

2A Act amended

This part amends the *Rail Safety National Law (Queensland) Act 2017*.

2B Amendment of pt 6, hdg (Repeal and transitional provisions)

Part 6, heading, ‘and transitional provisions’—
omit, insert—

, transitional and validation provisions

2C Amendment of pt 6, div 2, hdg (Transitional provisions)

Part 6, division 2, heading, after ‘provisions’—

insert—

for Act No. 4 of 2017

2D Insertion of new pt 6, div 3

Part 6—

insert—

Division 3 Validation provision

134 Validation provision for particular national regulations

- (1) This section applies to a national regulation made before the commencement of this section if a requirement under section 14 in relation to the national regulation has not been complied with.
- (2) It is declared that—
 - (a) the national regulation did not cease to have effect, and is taken to have never ceased to have effect, and does not cease to have effect on or after the commencement of this section, because of the non-compliance; and
 - (b) the national regulation is taken to be, and to always have been, as valid as it would have been if the requirement under section 14 had been complied with; and
 - (c) anything done or purportedly done under the national regulation, before or after the commencement of this section, is as valid as it would have been or would be if the requirement under section 14 had been complied with.

Part 2 **Amendments commencing on commencement of Road Vehicle Standards Act 2018 (Cwlth), section 15**

Division 1 **Amendment of Heavy Vehicle National Law**

3 **Law amended**

This division amends the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012*.

4 **Amendment of s 5 (Definitions)**

- (1) Section 5, definitions *ADR*, *identification plate* and *VIN*—
omit.
- (2) Section 5, in alphabetical order—
insert—

ADR means—

- (a) a third edition ADR; or
- (b) a second edition ADR.

identification plate means a plate approved to be placed on a vehicle, or taken to have been placed on a vehicle, under the *Motor Vehicle Standards Act 1989*.

Motor Vehicle Standards Act 1989 means the repealed *Motor Vehicle Standards Act 1989* of the Commonwealth as in force before its repeal.

Road Vehicle Standards Act 2018 means the *Road Vehicle Standards Act 2018* of the Commonwealth.

second edition ADR means an ADR incorporated in the document described as the ‘Australian Design Rules for Motor Vehicle Safety, Second Edition’ originally published by the former Commonwealth Department of Transport.

third edition ADR means—

- (a) a national standard under section 7 of the *Motor Vehicle Standards Act 1989*; or
- (b) a national road vehicle standard under section 12 of the *Road Vehicle Standards Act 2018*.

VIN (vehicle identification number), for a heavy vehicle, means—

- (a) for a heavy vehicle built before 1 January 1989 that has an identification plate, the number quoted on the vehicle’s identification plate that—
 - (i) uniquely identifies the vehicle and sets it apart from similar vehicles; and
 - (ii) corresponds to the identification number of the vehicle that is permanently recorded elsewhere on the vehicle; or
- (b) for a heavy vehicle built on or after 1 January 1989 that was given an approval under the *Motor Vehicle Standards Act 1989* or is given an approval under the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* of the Commonwealth, the unique vehicle identification number assigned to the vehicle—
 - (i) at the time the vehicle was manufactured, in accordance with a third edition ADR; or

[s 5]

- (ii) by the department of government of the Commonwealth in which the *Motor Vehicle Standards Act 1989* was previously administered; or
- (c) otherwise, the unique number assigned to the heavy vehicle—
 - (i) at the time the vehicle was manufactured, in accordance with an ADR that is a national road vehicle standard under section 12 of the *Road Vehicle Standards Act 2018*; or
 - (ii) by the department of government of the Commonwealth in which the *Road Vehicle Standards Act 2018* is administered.

5 Insertion of new s 14

After section 13—

insert—

14 References to particular ADR versions

A reference in this Law to an ADR followed by a number is a reference to—

- (a) if the reference is to a second edition ADR—the ADR of that number in the ‘Australian Design Rules for Motor Vehicle Safety, Second Edition’; or
- (b) otherwise—the ADR of that number referenced in the relevant standard.

6 Amendment of s 84 (Definition for Pt 3.3)

Section 84, definition *modification*, ‘the *Motor Vehicle Standards Act 1989* of the Commonwealth’—

omit, insert—

the *Road Vehicle Standards Act 2018*, item 16(2) of Schedule 3 to the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* of the Commonwealth or the *Motor Vehicle Standards Act 1989* before the repeal of that Act

Division 2 Amendment of Motor Dealers and Chattel Auctioneers Act 2014

6A Act amended

This division amends the *Motor Dealers and Chattel Auctioneers Act 2014*.

6B Amendment of sch 1, s 3C (Meaning of *built date*)

Schedule 1, section 3C(1)—

insert—

- (c) if neither paragraph (a) or (b) applies—the date of manufacture of the vehicle entered for the vehicle in the register of approved vehicles under the *Road Vehicle Standards Act 2018* (Cwlth).

6C Amendment of sch 1, s 3C (Meaning of *built date*)

Schedule 1, section 3C(2), ‘or (b)’—

omit, insert—

- , (b) or (c)

6D Amendment of sch 1, s 3C (Meaning of *built date*)

Schedule 1, section 3C(3), definition *identification plate*, after ‘by the’—

insert—

repealed

6E Amendment of sch 3 (Dictionary)

Schedule 3—

insert—

new motor vehicle means a motor vehicle that has not been used in transport on a public road in Australia or outside Australia, other than—

- (a) to have work done on it; or
- (b) to protect it; or
- (c) to store it; or
- (d) if the motor vehicle has been imported—to transport it to the importer; or
- (e) if the motor vehicle has been exported—to transport it to the exporter.

6F Amendment of sch 3 (Dictionary)

Schedule 3, definition *restorable vehicle*, from ‘more’ to ‘restoration’—

omit, insert—

for sale for restoration and has a built date of more than 20 years before the day of its sale.

6G Amendment of sch 3 (Dictionary)

Schedule 3, definition *used imported vehicle*—

omit, insert—

used imported vehicle means—

- (a) a motor vehicle, other than a new motor vehicle, imported into Australia under—

- (i) the repealed *Motor Vehicle Standards Act 1989* (Cwlth); or
 - (ii) an approval given under the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* (Cwlth), schedule 3, section 11(2), 13(2), 16(2) or 17(2); or
- (b) a motor vehicle, other than a new motor vehicle, imported into Australia under the *Road Vehicle Standards Act 2018* (Cwlth).

Division 3

Amendment of National Environment Protection Council (Queensland) Act 1994

6H Act amended

This division amends the *National Environment Protection Council (Queensland) Act 1994*.

6I Amendment of s 14 (Council may make national environment protection measures)

Section 14(2)(b), '*Motor Vehicle Standards Act 1989* (Cwlth)'—

omit, insert—

Road Vehicle Standards Act 2018 (Cwlth)

[s 6J]

Division 4 Amendment of Transport Operations (Road Use Management) Act 1995

6J Act amended

This division amends the *Transport Operations (Road Use Management) Act 1995*.

6K Amendment of sch 4 (Dictionary)

Schedule 4, definition *compliance plate*, from ‘under’—
omit, insert—

under—

- (a) the repealed *Motor Vehicle Standards Act 1989* (Cwlth); or
- (b) the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* (Cwlth), schedule 3, part 3, division 1.

Part 3 Amendments commencing by proclamation

6L Law amended

This part amends the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012*.

7 Amendment of s 5 (Definitions)

- (1) Section 5, definitions *major defect notice*, *minor defect notice* and *vehicle defect notice*—
omit.
- (2) Section 5, in alphabetical order—

insert—

advice purposes means providing advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations.

major defect notice means a notice complying with the requirements for a major defect notice under section 527.

minor defect notice means a notice complying with the requirements for a minor defect notice under section 527.

self-clearing defect notice means a notice complying with the requirements for a self-clearing defect notice under section 527.

vehicle defect notice means a major defect notice, minor defect notice or self-clearing defect notice.

8 Amendment of s 73 (Permit for vehicle standards exemption (permit) etc.)

Section 73(1)(b)—

omit, insert—

- (b) if the Regulator's decision to grant the exemption for a period or impose a condition on the exemption is a reviewable decision—a notice stating the review and appeal information for the decision.

Note—

Under section 641(6)(a), this notice must also state particular information about obtaining a statement of reasons for the decision.

9 Amendment of s 85 (Modifying heavy vehicle requires approval)

Section 85, after subsection (3)—

[s 10]

insert—

- (4) A modification is taken to have been approved by an approved vehicle examiner under section 86 if—
- (a) the modification has been authorised under an Australian road law of a non-participating jurisdiction; and
 - (b) a modification plate or label is fitted or affixed to a conspicuous part of the vehicle; and
 - (c) the modification plate or label indicates that the modification complies with a code of practice prescribed by the national regulations for the purposes of section 86.
- (5) In this section—

authorised includes approved and permitted.

modification plate or label means a plate or label that is stamped, engraved or marked so as to display information that relates to a modification.

non-participating jurisdiction has the meaning given by section 221.

10 Amendment of s 96 (Compliance with mass requirements)

Section 96, after subsection (4)—

insert—

- (4A) However, if a PBS vehicle is driven on a road other than in accordance with a class 2 heavy vehicle authorisation—
- (a) subsection (4) does not apply to the vehicle; and

- (b) the mass limit that would otherwise apply to the vehicle under a prescribed mass requirement applies to the vehicle.

11 Amendment of s 102 (Compliance with dimension requirements)

Section 102, after subsection (4)—

insert—

- (5) However, if a PBS vehicle is driven on a road other than in accordance with a class 2 heavy vehicle authorisation—
 - (a) subsection (4) does not apply to the vehicle; and
 - (b) the dimension limit that would otherwise apply to the vehicle under a prescribed dimension requirement applies to the vehicle.

12 Amendment of s 127 (Permit for mass or dimension exemption (permit) etc.)

Section 127(1)(b) and note—

omit, insert—

- (b) a notice stating the review and appeal information for any of the following decisions that is a reviewable decision—
 - (i) the Regulator’s decision to grant the exemption for a period or impose a condition on the exemption;
 - (ii) a relevant road manager’s decision to consent to the grant of the exemption subject to a condition that a road condition or travel condition be imposed on the exemption.

[s 13]

Note—

Under section 641(6)(a), this notice must also state particular information about obtaining a statement of reasons for the decision.

13 Amendment of s 148 (Permit for class 2 heavy vehicle authorisation (permit) etc.)

Section 148(1)(b) and note—

omit, insert—

- (b) a notice stating the review and appeal information for any of the following decisions that is a reviewable decision—
 - (i) the Regulator’s decision to grant the authorisation for a period or impose a condition on the authorisation;
 - (ii) a relevant road manager’s decision to consent to the grant of the authorisation subject to a condition that a road condition or travel condition be imposed on the authorisation.

Note—

Under section 641(6)(a), this notice must also state particular information about obtaining a statement of reasons for the decision.

14 Amendment of s 153A (Using restricted access vehicle)

(1) Section 153A(2), in alphabetical order—

insert—

specified semitrailer means a semitrailer that—

- (a) is not a PBS vehicle; and
- (b) has an air suspension system with effective dampers fitted; and

- (c) has a deck height not higher than 1.2m for at least 50% of its deck length; and
- (d) if in a combination—the combination—
 - (i) consists only of—
 - (A) a prime mover towing a single semitrailer attached to the prime mover by a fifth wheel coupling; or
 - (B) a B-double; or
 - (C) a B-triple; and
 - (ii) has a mass not more than 90% of the prescribed mass requirements for the combination.

Note—

Although this section does not apply to certain combinations, a combination that is a class 2 heavy vehicle will still need to have a class 2 heavy vehicle authorisation (see s 137).

- (2) Section 153A(3)(b), ‘.’—

omit, insert—

; or

- (3) Section 153A(3), after the note—

insert—

- (c) a specified semitrailer.

15 Omission of ss 164 and 165

Sections 164 and 165—

omit.

[s 16]

16 Amendment of s 172 (Requirements for statement explaining adverse decision of road manager)

Section 172(2)—

omit, insert—

- (2) The written statement complies with this section if it sets out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the road manager's decision.

17 Amendment of s 319 (Records record keeper must have)

Section 319(1)(a)(vii), ‘; and’—

omit, insert—

;

18 Amendment of s 479 (Functions of authorised officers)

- (1) Section 479, before ‘An’—

insert—

(1)

- (2) Section 479—

insert—

- (2) Also, an authorised officer who is not a police officer has the function under this Law to provide advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations.

19 Insertion of new Pt 9.2, Div 1A

Part 9.2, after section 494—

insert—

Division 1A Entry of relevant places for advice purposes

494A Non-application to police officers

This Division does not apply to an authorised officer who is a police officer.

494B Power to enter relevant place

An authorised officer may, for advice purposes, enter a relevant place if—

- (a) an occupier of the place consents under Division 4 to the entry and section 503 has been complied with for the occupier; or
- (b) the place is not a residence and is—
 - (i) open for carrying on a business; or
 - (ii) otherwise open for entry; or
 - (iii) required to be open for inspection under this Law.

494C Power after entering relevant place

If an authorised officer enters a relevant place under this Division, the officer may, for advice purposes, provide advice, information and education.

20 Amendment of s 496 (General powers after entering relevant place)

Section 496, after subsection (6)—

insert—

- (6A) If the authorised officer is not a police officer, the officer may, for advice purposes, provide advice,

[s 21]

information and education.

21 Amendment of s 500 (General powers after entering a place)

Section 500, after subsection (10)—

insert—

- (11) If the authorised officer is not a police officer, the officer may, for advice purposes, provide advice, information and education.

22 Amendment of s 501 (Application of Div 4)

Section 501, after ‘section’—

insert—

494B(a),

23 Amendment of s 525 (Definitions for Div 6)

Section 525, definition *defective vehicle label*, paragraph (a), ‘vehicle defect notice’—

omit, insert—

major defect notice or minor defect notice

24 Amendment of s 526 (Issue of vehicle defect notice)

- (1) Section 526(1) and (2)—

omit, insert—

- (1) This section applies if an authorised officer who has inspected a heavy vehicle under this Law reasonably believes—
- (a) the vehicle is a defective heavy vehicle; or

- (b) a number plate of the vehicle is wholly or partly obscured, defaced or otherwise not legible.
- (2) The authorised officer may issue the following vehicle defect notice in relation to the heavy vehicle, in the way mentioned in subsection (3)—
 - (a) if the officer reasonably believes the vehicle is a defective heavy vehicle and use of the vehicle on a road poses an imminent and serious safety risk—a major defect notice;
 - (b) if the officer reasonably believes the vehicle is a defective heavy vehicle and use of the vehicle on a road poses a safety risk other than an imminent and serious safety risk—a minor defect notice;
 - (c) if the officer reasonably believes that use of the vehicle on a road does not pose a safety risk or subsection (1)(b) applies—a self-clearing defect notice.
- (2) Section 526(4)—
omit, insert—
 - (4) If the driver of a heavy vehicle for which a vehicle defect notice is issued under this section is not the operator of the vehicle, the driver must give the notice to the operator as soon as practicable, but not more than 14 days, after the notice is issued.
Maximum penalty—\$3000.

25 Amendment of s 527 (Requirements about vehicle defect notice)

- (1) Section 527(1)(a)—
omit, insert—

[s 25]

- (a) that the notice is a major defect notice, minor defect notice or self-clearing defect notice;
 - (aa) that—
 - (i) the vehicle is a defective heavy vehicle; or
 - (ii) a number plate of the vehicle is wholly or partly obscured, defaced or otherwise not legible;
 - (ab) if the vehicle is a defective heavy vehicle—details of how the vehicle is a defective heavy vehicle;
- (2) Section 527(1)(b), ‘notice given in circumstances mentioned in section 526(2)(a)’—
omit, insert—
major defect notice
- (3) Section 527(1)(c)—
omit, insert—
- (c) for a minor defect notice—
 - (i) that corrective action must be taken by a stated time (the *due time*); and
 - (ii) that, after the due time, the vehicle must not be used on a road unless corrective action has been taken;
 - (ca) for a self-clearing defect notice—
 - (i) that corrective action must be taken by a stated day (the *due day*) not more than 28 days after the notice is issued; and
 - (ii) that, after the due day, the vehicle must not be used on a road unless corrective action has been taken;

(4) Section 527(1)(i) and (j)—

omit, insert—

- (i) the day and time the notice was issued;
- (j) for a major defect notice or minor defect notice—
 - (i) that, if the notice is not cleared by the Regulator under section 530, the vehicle's registration may be suspended and subsequently cancelled by a registration authority under an Australian road law; and
 - (ii) any conditions imposed under subsection (2).

(5) Section 527(2), 'vehicle defect notice'—

omit, insert—

major defect notice or minor defect notice

(6) Section 527, after subsection (3)—

insert—

(4) In this section—

corrective action, for a vehicle, means action that stops—

- (a) the vehicle from being a defective heavy vehicle; or
- (b) a number plate of the vehicle being wholly or partly obscured, defaced or otherwise not legible.

26 Amendment of s 529 (Using defective heavy vehicles contrary to vehicle defect notice)

(1) Section 529, heading, 'defective'—

omit.

[s 27]

(2) Section 529, penalty—

omit, insert—

Maximum penalty—

- (a) for a major defect notice or minor defect notice—\$6000; or
- (b) for a self-clearing defect notice—\$3000.

27 Insertion of new s 529AA

After section 529—

insert—

529AA Permission to use vehicle the subject of a self-clearing defect notice

- (1) An authorised officer may, on request made by the operator of a heavy vehicle that is the subject of a self-clearing defect notice, give written permission for the vehicle to be used on a road during a period stated in the permission.
- (2) The permission is subject to the condition that the vehicle will be used only for the purpose of driving the vehicle to and from a place where repairs are to be carried out.
- (3) The use of the vehicle under the permission, in accordance with the condition, is not a contravention of the self-clearing defect notice.

28 Replacement of s 529A (Permission by authorised officer to use vehicle the subject of a vehicle defect notice)

Section 529A—

omit, insert—

529A Permission to use vehicle the subject of a major or minor defect notice

- (1) An authorised officer may, on request made by

the operator of a heavy vehicle that is the subject of a major defect notice or minor defect notice, give written permission for the vehicle to be used on a road during a period stated in the permission.

- (2) The authorised officer may give the permission only if—
 - (a) the officer is satisfied—
 - (i) the vehicle will be used only for the purpose of driving the vehicle to and from a place where repairs are to be carried out; and
 - (ii) the use of the vehicle will not pose an imminent and serious safety risk; and
 - (iii) the request is necessary and reasonable; or
 - (b) the officer is satisfied—
 - (i) the relevant repairs have been carried out and the vehicle will be taken within the stated period to be inspected for the purpose of enabling the vehicle defect notice to be cleared under section 530; and
 - (ii) the use of the vehicle will not pose a safety risk; and
 - (iii) the request is necessary and reasonable.
- (3) For the purpose of subsection (2)(a)(ii) or (b)(ii), an authorised officer may require evidence of adequate repairs or other measures.
- (4) The permission is subject to conditions that—
 - (a) the use of the vehicle will be as mentioned in subsection (2)(a)(i) or (b)(i); and
 - (b) in relation to the use of the vehicle mentioned in subsection (2)(a)(i)—the

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vehicle will not be used to carry goods or passengers.

- (5) The authorised officer may also impose other reasonable conditions on the permission.
- (6) The use of the vehicle under the permission is not a contravention of the vehicle defect notice.
- (7) The use of a vehicle in contravention of a condition under subsection (4) or (5) is a contravention of the vehicle defect notice.

29 Amendment of s 529B (Permitted use of vehicle the subject of a vehicle defect notice without permission of authorised officer)

- (1) Section 529B, heading, ‘vehicle defect’—

omit, insert—

major or minor defect

- (2) Section 529B(1), ‘vehicle defect notice’—

omit, insert—

major defect notice or minor defect notice

30 Amendment of s 530 (Clearance of vehicle defect notices)

- (1) Section 530, heading, ‘vehicle’—

omit, insert—

major or minor

- (2) Section 530, ‘vehicle defect notice’—

omit, insert—

major defect notice or minor defect notice

31 Omission of ss 531A and 531B

Sections 531A and 531B—

omit.

32 Amendment of s 641 (Applying for internal review)

(1) Section 641(2)(b)—

omit, insert—

(b) if a provision of this Law requires that the person be given a statement of reasons for the decision—the day the statement is given to the person.

(2) Section 641(5), ‘original’—

omit, insert—

reviewable

(3) Section 641(6)—

omit, insert—

(6) If the person is given a decision notice, but not an information notice, for the reviewable decision—

(a) the decision notice must state that, within 28 days after the notice is given to the person, the person may ask the Regulator for a statement of reasons for the decision; and

(b) the person may, within 28 days after a decision notice complying with paragraph (a) is given to the person, ask the Regulator for a statement of reasons for the decision.

(6A) Within 28 days after the request is made under subsection (6)(b), the Regulator must give the person a statement of reasons.

(4) Section 641(8), in alphabetical order—

insert—

decision notice, for a decision, means a notice stating—

(a) the decision; or

[s 33]

- (b) the review and appeal information for the decision.

33 Amendment of s 659 (Functions of Regulator)

Section 659(2), after paragraph (k)—

insert—

- (ka) to provide advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations;

34 Insertion of new s 698A

After section 698—

insert—

698A No liability, right etc. arising from particular functions of authorised officer or Regulator

- (1) This section applies in relation to anything done by the Regulator or a protected person in the exercise of—
 - (a) a function of an authorised officer under section 479(2); or
 - (b) a function of the Regulator under section 659(2)(ka).
- (2) The doing of the thing does not, of itself, give rise to—
 - (a) a civil liability of the Regulator or protected person; or
 - (b) a right, expectation, duty or obligation that would not otherwise be conferred or imposed on a person in relation to whom the thing was done; or

- (c) a defence that would not otherwise be available to a person in relation to whom the thing was done.
- (3) However, subsection (2)(a) applies only to a thing done by the Regulator or a protected person in good faith.
- Note—*
- See also section 698 in relation to civil liability for a thing done in good faith.
- (4) A reference in this section to doing a thing includes a reference to omitting to do a thing.
- (5) In this section—
- protected person* see section 698(3).

35 Amendment of Sch 4 (Liability provisions)

- (1) Schedule 4, column 2, '85(1),'—
omit.
- (2) Schedule 4, entry for section 531A—
omit.

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