



New South Wales

# Heavy Vehicle (Adoption of National Law) Amendment Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Heavy Vehicle (Adoption of National Law) Act 2013*:
  - (i) to make further provision to facilitate the adoption of the Heavy Vehicle National Law set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland (the *National Law*) as a law of New South Wales and its enforcement (including by making provision for savings and transitional matters), and
  - (ii) to make modifications to the National Law in its application to New South Wales to preserve existing registration laws for heavy vehicles pending the anticipated commencement of national registration under the National Law in 2015, and
  - (iii) to make modifications to the National Law, Heavy Vehicle (Fatigue Management) National Regulation and Heavy Vehicle (Vehicle Standards) National Regulation in their application to New South Wales to preserve the operation of certain existing local productivity initiatives and enforcement provisions, and
- (b) to set out the terms of the proposed *Heavy Vehicle (Adoption of National Law) Regulation 2013*, which will be taken to be a Regulation made under the *Heavy Vehicle (Adoption of National Law) Act 2013*, and
- (c) to make consequential and other related amendments to the road transport legislation and certain other legislation.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act. Schedules 1, 2.2 [29], 2.4 [10] and 2.6 will commence on the date of assent to the proposed Act. The other provisions of the proposed Act will commence when section 4 (Application of Heavy Vehicle National Law) of the *Heavy Vehicle (Adoption of National Law) Act 2013* commences.

**Clause 3** recognises that clause 10 of Schedule 3 (Savings, transitional and other provisions) to the *Heavy Vehicle (Adoption of National Law) Act 2013* (as inserted by the proposed Act) provides for the proposed *Heavy Vehicle (Adoption of National Law) Regulation 2013* set out in Schedule 4 to the proposed Act to be taken to be a Regulation made under the *Heavy Vehicle (Adoption of National Law) Act 2013*.

**Clause 4** provides for:

- (a) the repeal of the *Road Transport (Vehicle and Driver Management) Act 2005* and the *Road Transport (Vehicle and Driver Management) Regulation 2005*, and
- (b) recognises that clause 47 of Schedule 4 to the *Road Transport Act 2013* (as inserted by the proposed Act) provides for the *Road Transport (Mass, Loading and Access) Regulation 2005*, as amended by the proposed Act, to have effect as a Regulation under the *Road Transport Act 2013*.

**Clause 5** provides for the automatic repeal of the proposed Act by section 30C of the *Interpretation Act 1987* once all of its provisions have commenced.

## Schedule 1 Amendment of Heavy Vehicle (Adoption of National Law) Act 2013 No 42

### Provisions to facilitate National Law coming into force

**Schedule 1** amends the *Heavy Vehicle (Adoption of National Law) Act 2013* (the *principal Act*):

- (a) to provide for definitions of terms to be used in provisions to be inserted by the proposed Act (see **Schedule 1 [1] and [2]**), and
- (b) to provide for the National Law and the regulations under that Law (the *national regulations*) to apply in New South Wales subject to certain modifications (See **Schedule 1 [4] and [5]**), and
- (c) to make certain declarations and provide for certain authorisations in connection with the application of the National Law in New South Wales (see **Schedule 1 [7], [16], [17] and [19]–[21]**), and
- (d) to provide for the regulations under the principal Act (the *local regulations*) to prescribe offences for which an infringement notice (also called a penalty notice) may be issued under the National Law (see **Schedule 1 [11] and [27]**), and
- (e) to make amendments in the nature of statute law revision or that are consequential on other amendments (see **Schedule 1 [3], [6], [8]–[10], [12]–[15], [18], [23]–[25] and [29]–[31]**).

### Enforcement of National Law

**Schedule 1 [22]** includes provisions:

- (a) to enable an authorised officer under the National Law to require the driver of a heavy motor vehicle to produce the driver's Australian driver licence for compliance purposes within the meaning of that Law, and
- (b) to enable Roads and Maritime Services to exercise the powers of an authorised officer under the National Law, and

- (c) to enable an authorised officer to exercise powers under both certain law enforcement legislation and the proposed Act and National Law where appropriate in relation to the same occasion, and
- (d) to provide for who may commence proceedings for offences, and
- (e) to preclude double jeopardy in respect of an act, omission or circumstances that give rise to both an offence under the road transport legislation and the National Law, and
- (f) to provide for what it means when the National Law provides that the defence of mistake of fact is unavailable for an offence, and
- (g) to recognise that evidence of speed collected in accordance with Part 5.3 (Traffic control and monitoring) of the *Road Transport Act 2013* can be used in proving offences against the National Law where the speed of a heavy vehicle is relevant to establishing whether the offence has been committed, and
- (h) to provide for section 10 of the *Crimes (Sentencing Procedure) Act 1999* not to apply in relation to certain heavy vehicle offences under the National Law in a manner consistent with existing provisions in the *Road Transport Act 2013*.

### **Modification of National Law and certain national regulations**

**Schedule 1 [32]** inserts a new **Schedule 1** in the principal Act containing modifications to the National Law in its application to New South Wales. The new Schedule makes provision as follows:

- (a) **Schedule 1.1** makes modifications to the National Law to preserve existing registration laws for heavy vehicles pending the anticipated commencement of national registration under the National Law in 2015,
- (b) **Schedule 1.2** makes modifications to the National Law to preserve certain exemptions and other modifications currently applicable in relation to:
  - (i) the driver fatigue and heavy vehicle speeding compliance provisions of the *Road Transport (Vehicle and Driver Management) Regulation 2005* (see clauses 58A, 58B, 60 (5), 72, 115, 115A, 115B, 167A, 167B of that Regulation and the *Ministerial Exemption (Bus Operator Fatigue Management Accreditation Requirements) Order 2009*), and
  - (ii) the enforcement of the *Road Transport (Vehicle and Driver Management) Act 2005*.

**Schedule 1 [32]** also inserts a new **Schedule 2** in the principal Act containing:

- (a) modifications to the Heavy Vehicle (Fatigue Management) National Regulation under the National Law to preserve the operation of existing risk category for contraventions of AFM hours for the driver fatigue provisions of the *Road Transport (Vehicle and Driver Management) Regulation 2005* (see proposed **Schedule 2.1**), and
- (b) modifications to the Heavy Vehicle (Vehicle Standards) National Regulation under the National Law to preserve the operation of existing provisions in New South Wales concerning the use of warning lights and signs on school buses and the use of lights and reflectors on vehicles (see proposed **Schedule 2.2**).

**Schedule 1 [26] and [28]** confer a general power for the local regulations to amend each of these new Schedules so as to insert, vary or omit modifications to the National Law and national regulations in their application to New South Wales.

### **Savings and transitional provisions**

**Schedule 1 [32]** inserts a new **Schedule 3** in the principal Act in substitution for the current Schedule 1 to that Act. The new Schedule includes provisions of a savings and transitional nature consequent on the enactment of the principal Act and the proposed Act and the National Law coming into force.

## **Schedule 2     Amendment of road transport legislation**

### **Schedule 2:**

- (a) provides for the *Road Transport (Mass, Loading and Access) Regulation 2005* (which is currently a Regulation under the *Road Transport (Vehicle and Driver Management) Act 2005*) to have effect as a Regulation under the *Road Transport Act 2013* and makes amendments to the Regulation generally to confine its operation to light vehicles, and
- (b) makes other amendments to the road transport legislation that are consequential on, or related to, the National Law coming into force in New South Wales.

## **Schedule 3     Amendment of other legislation**

**Schedule 3** makes amendments to certain other Acts and statutory rules that are consequential on, or related to, the National Law coming into force in New South Wales.

## **Schedule 4     Heavy Vehicle (Adoption of National Law) Regulation 2013**

**Schedule 4** sets out the terms of the proposed *Heavy Vehicle (Adoption of National Law) Regulation 2013*, which will be taken to be a Regulation made under the *Heavy Vehicle (Adoption of National Law) Act 2013*. The proposed Regulation will prescribe offences against the National Law and the Heavy Vehicle (Mass, Dimension and Loading) Regulation in their application to New South Wales for which an infringement notice (also called a penalty notice) may be issued under the National Law.