

Heavy Vehicle National Law Amendment Bill 2019

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Mark Bailey MP, Minister for Transport and Main Roads

Title of the Bill

Heavy Vehicle National Law Amendment Bill 2019

Objectives of the Amendments

The objectives of the amendments to the Heavy Vehicle National Law Amendment Bill 2019 (the Bill) are as follows:

- To amend the commencement of Part 2 of the Bill as a result of the Commonwealth Government postponing the commencement of the new *Road Vehicle Standards Act 2018* (Cwlth) (RVSA). The RVSA will replace the existing *Motor Vehicle Standards Act 1989* (Cwlth) (MVSA) and modernise the regulation of the initial supply of road vehicles to the Australian market. Commencement of the RVSA is being delayed to provide more time for government and industry to prepare for the changes.
- To amend the *Motor Dealers and Chattel Auctioneers Act 2014* (MDCAA), the *National Environment Protection Council (Queensland) Act 1994* (NEPCA) and the *Transport Operations (Road Use Management) Act 1995* (TORUMA) consequent to repeal of the MVSA and commencement of the RVSA.
- To amend the MDCAA to make the definition of *restorable vehicle* clearer by defining the vehicle's age in relation to its built date, and to amend the definition of *used imported vehicle* so that it does not inadvertently capture new vehicles.
- To validate the operation in Queensland of national regulations that have been made under the Rail Safety National Law. The Rail Safety National Law is contained in the *Rail Safety National Law (South Australia) Act 2012* (SA) and is given force in Queensland by the *Rail Safety National Law (Queensland) Act 2017* (RSNL-Q). Queensland's participation in the national rail safety legislative scheme commenced on 30 June 2017. Under section 14 of the RSNL-Q, national regulations made under the

Rail Safety National Law must be tabled in the Queensland Parliament within 14 sitting days of being published or they cease to have effect. Due to administrative oversight, a number of national regulations have not been tabled in the Queensland Parliament.

Achievement of the Objectives

The objectives will be achieved through:

- amending the commencement date for part 2 of the Bill to align it with the commencement date of a relevant provision in the RVSA;
- amending the MDCAA, the NEPCA and TORUMA consequent to repeal of the MVSA and commencement of the RVSA;
- amending the MDCAA to improve legislative clarity; and
- amending the RSNL-Q to validate the operation in Queensland of national rail safety regulations that were not tabled in accordance with the RSNL-Q.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives other than by legislative amendment.

Estimated Cost for Government Implementation

There are no administrative costs to government associated with implementing the proposed amendments.

Consistency with Fundamental Legislative Principles

The amendments to the RSNL-Q, which validate the operation in Queensland of national regulations made under the Rail Safety National Law, may raise the fundamental legislative principle in section 4(3)(g) of the *Legislative Standards Act 1992* which relates to legislation not adversely affecting rights and liberties, or imposing obligations, retrospectively.

The validation of the regulations is necessary to ensure that the national scheme legislation for rail safety operates as intended in Queensland and is consistently applied across all Australian states and territories. The Office of the National Rail Safety Regulator (ONRSR) undertakes industry consultation during the development of national regulations which are then approved by the Ministerial Transport and Infrastructure Council. ONRSR informs rail operators about changes to national regulations, including through the publication of factsheets on its website. Due to the relatively small nature of the rail industry, with around 160 rail operators across Australia, and ongoing reporting requirements built into the rail regulatory scheme, ONRSR is in regular communication with rail operators and rail operators are made aware of the regulatory requirements set out in the national regulations.

Generally, the national regulations deal with relatively minor matters and with scheduled fee increases. In 2017, however, the *Rail Safety National Law National Regulations (Miscellaneous) Variation Regulations 2017* implemented a significant cost-recovery model for the rail industry. In relation to stakeholder consultation on that model, in its document titled “ONRSR Fact Sheet, About the Cost Recovery Model, June 2017” ONRSR has stated that ‘*ONRSR’s cost recovery model was subject to a three year review, which was completed in 2016 following extensive consultation with industry and governments*’. As a result, industry was aware of the changes and

has been complying with them since their introduction. It is therefore believed that the validation of the regulations does not unduly infringe the fundamental legislative principles.

All the other amendments are generally consistent with fundamental legislative principles.

Consultation

The Commonwealth Department of Infrastructure, Transport, Cities and Regional Development undertook consultation with vehicle manufacturers and importers about postponing commencement of the RVSA and the amendments were supported by industry.

National regulations are made following consultation with the rail industry by the ONRSR and are approved by the Ministerial Transport and Infrastructure Council.

Due to the minor and consequential nature of the remaining amendments, no further consultation has been undertaken.

NOTES ON PROVISIONS

Clause 1 amends the short title to reflect that legislation other than the HVNL is being amended.

Clause 2 amends clause 2(1) of the Bill to have part 2 of the Bill commence when section 15 of the RVSA commences. This is being changed from 10 December 2019 due to the Commonwealth Government's postponement of the commencement of the RVSA.

Clause 3 amends clause 2(3) of the Bill so that section 15DA of the *Acts Interpretation Act 1954* does not apply to part 2 of the Bill. This avoids automatic commencement of part 2, so that it can commence when the relevant provision in the RVSA commence.

Clause 4 omits clause 3 of the Bill to reflect restructuring of the Bill.

Clause 5 amends the Bill to insert Part 1A, which includes clauses 2A to 2D, that commence on assent. Clause 2A provides that Part 1A amends the RSNL-Q. Clause 2B amends the heading of part 6 in the RSNL-Q to extend it to cover validation provisions. Clause 2C amends the heading of part 6, division 2 of the RSNL-Q to reflect restructuring of part 6. Clause 2D inserts division 3 into part 6 of the RSNL-Q which includes a new section 134 that validates particular national regulations that have not been tabled with the Queensland Parliament.

Clause 6 replaces the heading to part 2 of the Bill to reflect that part 2 includes amendments that commence on commencement of section 15 of the RVSA.

Clause 7 inserts division 1 into part 2 and inserts clause 3 which provides that the division amends the *Heavy Vehicle National Law Act 2012*.

Clause 8 inserts new Divisions 2, 3 and 4 into Part 2 of the Bill to amend the MDCAA, the NEPCA and the TORUMA respectively. New Division 2 will insert new clauses 6A to 6G to provide as follows:

- *Clause 6A* provides that division 2 amends the MDCAA.
- *Clauses 6B to 6D* amend the meaning of *built date* in the MDCAA to reflect the changes to the Commonwealth legislation related to the RVSA and repeal of the MVSA.
- *Clause 6E* inserts a definition for *new motor vehicle* into the MDCAA, which mirrors the definition of *new vehicle* in the *Road Vehicle Standards Rules 2018* (Cwlth), and

better ensures that the amended definition of *used imported vehicle* does not inadvertently capture new vehicles.

- *Clause 6F* amends the definition of *restorable vehicle* in the MDCAA to clarify that the *built date* is used in working out a vehicle's age.
- *Clause 6G* amends the definition of *used imported vehicle* to reflect the changes to the Commonwealth legislation related to the RVSA and repeal of the MVSA. The amended definition makes reference to *new motor vehicle*.

New Division 3 inserts the following new clauses:

- *Section 6H* provides that Division 3 amends the NEPCA.
- *Section 6I* amends section 14 of the NEPCA to reflect changes to Commonwealth legislation related to the RVSA.

New Division 4 inserts the following new clauses:

- *Section 6J* provides that division 4 amends the TORUMA.
- *Section 6K* amends the definition of *compliance plate* to reflect changes to Commonwealth Legislation related to the RVSA.

Clause 9 inserts clause 6L into the Bill to provide that Part 3 amends the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012 (HVNL)*.

Clause 10 amends the long title to reflect the legislation that is being amended by the Bill.