



New South Wales

Heavy Vehicle Legislation Amendment (National Regulator) Act 2021 No 9

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Heavy Vehicle (Adoption of National Law) Act 2013 No 42	3
Schedule 2	Amendment of Transport Administration Act 1988 No 109	6
Schedule 3	Other consequential amendments	10



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Heavy Vehicle Legislation Amendment (National Regulator) Act 2021 No 9

Act No 9, 2021

An Act to give effect to the transfer of certain functions under the *Heavy Vehicle National Law (NSW)* from Transport for NSW to the National Heavy Vehicle Regulator; and for related purposes. [Assented to 14 May 2021]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Heavy Vehicle Legislation Amendment (National Regulator) Act 2021*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by this section.
- (2) Schedules 1–3 commence on a day or days to be appointed by proclamation.

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

[1] Section 6 Exclusion of legislation of this jurisdiction

Insert after section 6(1)(c)—

- (c1) the *Privacy and Personal Information Protection Act 1998*,

[2] Section 12 Infringement notices

Omit section 12(3).

[3] Section 25

Omit the section. Insert instead—

25 General power for TfNSW to obtain, provide and use information

- (1) Despite this Act or another law, TfNSW may, on its own initiative or at the request of the Regulator, provide the Regulator with assistance, advice or the following information, as is reasonably required by the Regulator to exercise its functions under this Act, the *Heavy Vehicle National Law (NSW)* or another law—
- (a) information, including information given in confidence, in the possession or control of TfNSW,
 - (b) information, including personal information, kept in a register maintained by TfNSW under the road transport legislation,
 - (c) other information prescribed by the regulations.
- (2) Despite this Act or another law, the Regulator may, at the request of TfNSW, disclose information to TfNSW, as is reasonably required by TfNSW to exercise its functions under this Act, the *Heavy Vehicle National Law (NSW)* or another law.
- (3) TfNSW may use information disclosed under this section for a purpose relating to the exercise of its functions, including its delegated functions, under this Act, the *Heavy Vehicle National Law (NSW)* or another law.
- (4) Nothing done, or authorised to be done, under this section—
- (a) constitutes a breach of, or default under, an Act or another law, or
 - (b) constitutes a breach of, or default under, a contract, agreement, understanding or undertaking, or
 - (c) constitutes a breach of duty of confidence, whether arising by contract, in equity, by custom or otherwise, or
 - (d) constitutes a civil or criminal wrong, or
 - (e) terminates an agreement or obligation or fulfils a condition that allows a person to terminate an agreement or obligation, or gives rise to another right or remedy, or
 - (f) releases a surety or another obligee wholly or in part from an obligation.
- (5) In this section—
- personal information* has the same meaning as in the *Privacy and Personal Information Protection Act 1998*, section 4.

[4] Sections 27, 27B(b) and 27C

Omit the provisions.

[5] Section 27B Persons who may commence proceedings for offences

Omit “or TfNSW” from section 27B(c).

[6] Section 27E

Omit the section. Insert instead—

27E Evidence of speed or vehicle dimension

- (1) Evidence of speed or vehicle dimension obtained under the *Road Transport Act 2013*, Part 5.3 may be given in proceedings for a speeding offence or a dimension offence against the *Heavy Vehicle National Law (NSW)*, or the regulations in force for the purposes of that Law in accordance with the provisions of the Part, in the same way as for speeding offences or dimension offences against the road transport legislation.

Note— The *Road Transport Act 2013*, Part 5.3 provides for the use of evidence obtained under the Part in connection with proceedings for speeding offences and dimension offences.

- (2) To avoid doubt, if a heavy vehicle being towed is attached to a heavy vehicle, both vehicles are taken to be travelling at the same speed for the purposes of proceedings for a speeding offence or dimension offence involving the vehicles.
- (3) Nothing in the *Road Transport Act 2013*, Part 5.3 or this section derogates from another mode of proof of the speed or vehicle dimension of a heavy vehicle for the purposes of the *Heavy Vehicle National Law (NSW)*.
- (4) In this section—

dimension offence has the same meaning as in the *Road Transport Act 2013*, Part 5.3, Division 5.

speeding offence has the same meaning as in the *Road Transport Act 2013*, Part 5.3.

[7] Section 31

Insert after section 30—

31 Minister may enter agreement with Regulator

The Minister for Transport and Roads may enter into an agreement with the Regulator in relation to a statement of expectations.

[8] Schedule 1 Modification of Heavy Vehicle National Law as applying in New South Wales

Omit Schedule 1.1[2] and [3]. Insert instead—

[2] Section 711 Evidence by certificate by Regulator and TfNSW generally

Insert after section 711(1)—

- (1A) A certificate purporting to be issued by TfNSW and stating the following, at a stated time or during a stated period, is evidence of the matter—
- (a) a stated vehicle was or was not registered on the basis it is a heavy vehicle,
- (b) a stated vehicle was or was not registered as a heavy vehicle of a stated category,

- (c) a stated person was or was not the registered operator of a stated registered vehicle,
- (d) a stated registration was or was not amended, suspended or cancelled.

Note— This subsection is inserted for New South Wales.

[9] Schedule 1.2[5]

Insert “passenger” before “service contract” in section 222A(3)(b).

[10] Schedule 1.2[5]

Omit section 222A(4). Insert instead—

(4) In this section—

accredited service operator has the same meaning as in the *Passenger Transport Act 1990* of New South Wales.

passenger service contract has the same meaning as in the *Passenger Transport Act 2014* of New South Wales.

regular bus service has the same meaning as in the *Passenger Transport Act 1990* of New South Wales.

[11] Schedule 1.2[5]

Omit “private” wherever occurring in section 222B.

[12] Schedule 1.2[6]

Omit “service contract entered into under Part 3 of the *Passenger Transport Act 1990*”.

Insert instead “passenger service contract entered into under the *Passenger Transport Act 2014*”.

[13] Schedule 1.2[20] and [21]

Insert after Schedule 1.2[19]—

[20] Section 659 Functions of Regulator

Insert “or another Act, including a delegation or authorisation made under another Act” after “Law” in section 659(2)(n).

[21] Section 659(2), note

Insert at the end of the subsection—

Note— Subsection (2)(n) is amended for New South Wales by inserting “or another Act, including a delegation or authorisation made under another Act” after “Law”.

Schedule 2 Amendment of Transport Administration Act 1988 No 109

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

National Heavy Vehicle Regulator means the National Heavy Vehicle Regulator established under the *Heavy Vehicle National Law (NSW)*, section 656.

[2] Section 105A

Insert after section 105—

105A Transfer of assets, rights and liabilities to National Heavy Vehicle Regulator

- (1) The Minister may, by written order, direct that the assets, rights or liabilities of TfNSW be transferred to the National Heavy Vehicle Regulator.
- (2) The Minister may, by written order, further direct the transfer of assets, rights or liabilities previously transferred under this section.
- (3) An order under this section may be subject to specified terms and conditions.
- (4) Schedule 4 applies to the transfer of assets, rights and liabilities under this section.
- (5) Words and expressions used in this section have the same meanings as they have in Schedule 4.
- (6) The power to transfer an asset by means of an order under this section includes the power to transfer an interest in the asset.
- (7) The transfer of an interest in an asset operates to create the interest in the terms specified in the order if the interest does not already exist as a separate interest.

[3] Schedule 1 Functions of Transport for NSW

Omit clause 8H(1)(d). Insert instead—

- (d) engage, by delegation or otherwise, the National Heavy Vehicle Regulator to carry out activities or exercise functions under this Act or another Act on its behalf, and

[4] Schedule 4 Transfer of assets, rights and liabilities

Insert after clause 2(1)(b)—

- (c) an order under section 105A transferring assets, rights or liabilities of TfNSW to the National Heavy Vehicle Regulator,

[5] Schedule 7 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on transfer of functions to National Heavy Vehicle Regulator

Relevant employees

In this Part—

relevant employee means a member of staff of TfNSW who is employed in a role with functions relating, or giving effect, to the functions of TfNSW under

the following legislation, and includes a member of staff so employed immediately before their employment was transferred under this Part to the National Heavy Vehicle Regulator—

- (a) the *Heavy Vehicle National Law (NSW)*,
- (b) the road transport legislation, within the meaning of the *Road Transport Act 2013*, relating to heavy vehicle inspections.

Transfer of employees to National Heavy Vehicle Regulator

- (1) The Minister may, by written order, transfer the employment of a relevant employee (a ***transferred employee***) to the employment of the National Heavy Vehicle Regulator.
- (2) A transfer of employment under this clause does not require the consent of the transferred employee.
- (3) The terms and conditions of employment of a transferred employee with the National Heavy Vehicle Regulator are—
 - (a) for a contract employee—the terms and conditions determined by the Minister and specified in the order that transfers the employee’s employment, or
 - (b) otherwise—the terms and conditions that applied to the employee under a State industrial instrument, including under local arrangements, if any, approved in accordance with the industrial instrument, as a relevant employee immediately before the transfer of employment.
- (4) The terms and conditions cannot be varied during an employment guarantee period for the transferred employee except—
 - (a) by agreement entered into by or on behalf of a majority of the transferred employees, or
 - (b) in accordance with the industrial instrument or the terms of local arrangements, if any, approved in accordance with the industrial instrument.
- (5) The employment of a transferred employee with the National Heavy Vehicle Regulator cannot be terminated by the National Heavy Vehicle Regulator during an employment guarantee period for the transferred employee, except—
 - (a) for serious misconduct, or
 - (b) as a result of the proper application of reasonable disciplinary procedures, or
 - (c) by agreement with the employee.
- (6) There is an ***employment guarantee period*** for transferred employees who are permanent or temporary employees, as follows—
 - (a) for permanent employees—the employment guarantee period is 2 years after the transfer date,
 - (b) for temporary employees—the employment guarantee period is the shorter of the following periods—
 - (i) the remainder of the employee’s current term of employment, as specified in the arrangements under which the employee was engaged as a temporary employee, immediately before the transfer date,
 - (ii) the period of 2 years after the transfer date.

Note— There is no employment guarantee period for contract employees or casual employees. The employment of a transferred employee who is a contract employee remains governed by the contract of employment.

(7) In this clause—

casual employee means an employee whose employment is in a category of employment that is described in or classified under a State industrial instrument as casual employment or who is otherwise engaged as a casual employee.

contract employee means an employee whose terms and conditions of employment are provided by an individual contract and not by a State industrial instrument.

permanent employee means an employee whose employment is of indefinite duration and who is not a casual employee, temporary employee or contract employee.

temporary employee means an employee, other than a casual employee or contract employee, whose employment is in a category of employment that is described in or classified under a State industrial instrument as temporary employment or whose employment is, under the terms of the person's employment, for a limited period.

transfer date means the date on which the employment of a transferred employee is transferred under this clause to the National Heavy Vehicle Regulator.

Continuity of entitlements of transferred employees

- (1) On the transfer of a person's employment from TfNSW to the National Heavy Vehicle Regulator by order under this Part, the following provisions have effect—
- (a) the person is entitled to continue as a contributor, member or employee for the purposes of a superannuation scheme in respect of which the person was a contributor, member or employee, as a member of staff of TfNSW, immediately before the transfer of employment and remains entitled subject to a variation to that entitlement made either by agreement or otherwise in accordance with law,
 - (b) the National Heavy Vehicle Regulator is taken to be an employer for the purposes of a superannuation scheme in respect of which the person continues as a contributor, member or employee in relation to an entitlement under this clause,
 - (c) the continuity of the person's employment is taken not to have been broken by the transfer of employment, and service of the person with TfNSW, including service deemed to be service with TfNSW, that is continuous service up to the time of transfer is deemed to be service with the National Heavy Vehicle Regulator,
 - (d) the person is entitled to elect to be paid the monetary value of all or part of the annual leave accrued, but not taken, by the person immediately before the transfer of employment,
 - (e) if, immediately before the transfer of employment, the person has at least 7 years of continuous service with TfNSW, including service deemed to be service with TfNSW, the person is entitled to elect to be paid the monetary value of all or part of the extended leave accrued, but not taken, by the person immediately before the transfer,
 - (f) the person retains their rights to annual leave, extended leave, family and community service leave and sick leave accrued, but not taken, by

the person immediately before the transfer of employment, except accrued leave for which the person has, under paragraph (d) or (e), been paid the monetary value.

- (2) The Minister may, in connection with the operation of this Part, give a written certificate about the extent of the accrued rights to annual leave, extended leave, family and community service leave or sick leave that are retained by a person under this Part, and the certificate is evidence of the matters certified.
- (3) A person is not entitled, in respect of the same period of service, to claim a benefit under this Act and another law or instrument.

Operation of other laws and entitlements

- (1) The following provisions apply in relation to the transfer of a person's employment under this Part—
 - (a) the transfer has effect despite another law, a contract or an instrument under a law,
 - (b) the transfer does not constitute a retrenchment, redundancy or termination of employment at the initiative of the Crown or TfNSW,
 - (c) the person transferred is not entitled to a payment or other benefit by reason only of having ceased to be a member of staff of TfNSW as a result of the transfer of employment,
 - (d) TfNSW is not required to make a payment to the transferred person in relation to the transferred person's accrued rights in respect of annual leave, extended leave, family and community service leave or sick leave, otherwise than in accordance with this Part.
- (2) Part 29 of this Schedule does not prevent or limit anything that can be done by or under this Part.
- (3) Without limiting subclause (2)—
 - (a) this Part prevails over Part 29 of this Schedule to the extent of any inconsistency, and
 - (b) a transferred employee in regional NSW, within the meaning of clause 220 of this Schedule, is taken not to be included in the sum referred to in that clause.

Operation of Commonwealth law

A provision of this Act, including a provision to the extent that it imposes or continues a term or condition of employment, has no effect to the extent of an inconsistency with a provision of the *Fair Work Act 2009* of the Commonwealth or of an instrument under that Act.

Schedule 3 Other consequential amendments

3.1 Fines Act 1996 No 99

Section 3 Definitions

Insert after section 3(1), definition of *law enforcement officer*, paragraph (h)—

- (h1) an employee or officer of the National Heavy Vehicle Regulator established under section 656 of the *Heavy Vehicle National Law (NSW)*,

3.2 Passenger Transport Act 2014 No 46

[1] Schedule 4 Amendment of Acts

Omit Schedule 4.4[5] and [6]. Insert instead—

[5] Schedule 1.2 [5]

Omit “regular bus service under a passenger service contract”.

Insert instead “service conducted according to regular routes and timetables under a passenger service contract”.

[6] Schedule 1.2 [5]

Omit section 222A(4). Insert instead—

- (4) In this section—

accredited has the same meaning as in the *Passenger Transport Act 2014*.

operate has the same meaning as in the *Passenger Transport Act 2014*.

passenger service contract has the same meaning as in the *Passenger Transport Act 2014*.

public passenger service has the same meaning as in the *Passenger Transport Act 2014*.

[2] Schedule 4.4[8]

Omit the item.

3.3 Road Transport Act 2013 No 18

Section 149 Definitions

Insert after section 149(1), definition of *prescribed officer*, subparagraph (ii)—

- (iia) by the National Heavy Vehicle Regulator established under the *Heavy Vehicle National Law (NSW)*, section 656, or

[Second reading speech made in—

Legislative Assembly on 24 March 2021

Legislative Council on 6 May 2021]