



New South Wales

# Heavy Vehicle (Adoption of National Law) Amendment Regulation 2018

under the

Heavy Vehicle (Adoption of National Law) Act 2013

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Heavy Vehicle (Adoption of National Law) Act 2013*.

MELINDA PAVEY, MP  
Minister for Roads, Maritime and Freight

## Explanatory note

The object of this Regulation is to reflect in New South Wales law the following changes made to the Heavy Vehicle National Law, which is set out in the *Heavy Vehicle National Law Act 2012* of Queensland:

- (a) the introduction of a general primary duty on parties in the chain of responsibility to ensure that their transport activities are safe, the repeal of some existing obligations on parties in the chain of responsibility (because they are covered by the new primary duty) and the amendment of others (so that they are instead positive obligations on the relevant party to manage relevant risks) (see the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* (Qld)),
- (b) the repeal of uncommenced provisions of the Heavy Vehicle National Law dealing with registration and the proposed establishment of a new Registration Database (see the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* (Qld)).

The Heavy Vehicle National Law, as amended from time to time, applies as a law of New South Wales by virtue of the *Heavy Vehicle (Adoption of National Law) Act 2013*. Schedule 1 to that Act includes modifications to the Heavy Vehicle National Law that apply only in New South Wales. Several of the existing NSW-specific modifications have now been enacted as amendments to the Heavy Vehicle National Law. Since those amendments automatically flow through to the *Heavy Vehicle National Law (NSW)*, those NSW-specific modifications are no longer required.

This Regulation omits the modifications that are no longer required and makes a minor amendment to the NSW-specific modifications to the Heavy Vehicle (Vehicle Standards) National Regulation, set out in Schedule 2.1 to the New South Wales Act, so as to correct a cross-reference.

This Regulation is made under the *Heavy Vehicle (Adoption of National Law) Act 2013*, including section 28 (the local regulation-making power).

## **Heavy Vehicle (Adoption of National Law) Amendment Regulation 2018**

under the

Heavy Vehicle (Adoption of National Law) Act 2013

### **1 Name of Regulation**

This Regulation is the *Heavy Vehicle (Adoption of National Law) Amendment Regulation 2018*.

### **2 Commencement**

- (1) Except as provided by this clause, this Regulation commences on 1 July 2018 and is required to be published on the NSW legislation website.
- (2) Schedule 1 [2]–[5] commence on the date of commencement of Chapter 2 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2016* of Queensland.

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

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

Omit Schedule 1.1 [1]–[23]. Insert instead:

#### [1] Section 5 Definitions

Insert in alphabetical order:

**RMS** means Roads and Maritime Services constituted under the *Transport Administration Act 1988* of New South Wales.

**Note**— This definition is inserted for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

#### [2] Section 711 Evidence by certificate by Regulator and RMS generally

Insert before section 711 (1) (e):

- (a) a stated vehicle was or was not registered on the basis it is a heavy vehicle; or
- (b) a stated vehicle registered was or was not registered as a heavy vehicle of a stated category; or
- (c) a stated person was or was not the registered operator of a stated registered vehicle; or
- (d) a stated registration was or was not amended, suspended or cancelled; or

#### [3] Section 711 (1A)

Insert after section 711 (1):

- (1A) Without limiting section 712, a certificate purporting to be issued by RMS and stating a matter referred to in section 711 (1) (a)–(d) or (h) at a stated time, or during a stated period, is evidence of the matter.

**Note**— This subsection is inserted for New South Wales. It was initially inserted pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

### [2] Schedule 1.2 [1B] and [1C]

Omit Schedule 1.2 [1]. Insert instead:

#### [1B] Section 5 Definitions

Insert in alphabetical order:

**hire vehicle** means a hire vehicle within the meaning of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* of New South Wales.

**Note**— This definition is inserted for New South Wales.

**public passenger service** means a public passenger service within the meaning of the *Passenger Transport Act 1990* of New South Wales.

**Note**— This definition is inserted for New South Wales.

**[1C] Chapter 1A, Part 1A.4**

Insert after Part 1A.3:

## **Part 1A.4 Exemptions**

### **26I Exemptions for emergency services [NSW]**

- (1) A person who is an officer, member or member of staff of an emergency service is exempt from section 26C, but only—
  - (a) in so far as the offending relates to speed or fatigue; and
  - (b) in relation to the driving of a heavy vehicle—in the course of undertaking work for an emergency service.
- (2) The exemption provided by this section is in addition to, and does not limit the effect of, the exemption provided by section 265A.
- (3) An *emergency service* is any of the following—
  - (a) the NSW State Emergency Service established under the *State Emergency Service Act 1989* of New South Wales;
  - (b) Fire and Rescue NSW and any permanent fire brigade or volunteer fire brigade within the meaning of the *Fire Brigades Act 1989* of New South Wales;
  - (c) the NSW Rural Fire Service established by the *Rural Fires Act 1997* of New South Wales;
  - (d) the Ambulance Service of NSW within the meaning of the *Health Services Act 1997* of New South Wales;
  - (e) the NSW Police Force established by the *Police Act 1990* of New South Wales;
  - (f) the New South Wales Volunteer Rescue Association Inc;
  - (g) a government agency of another jurisdiction, or a body authorised under the law of another jurisdiction, that has corresponding functions to the bodies referred to in any of the above paragraphs.

**Note**— This section is inserted for New South Wales.

### **26J Exemptions for hire vehicles and buses [NSW]**

- (1) A person is exempt from sections 26C and 26E (1) (a) and (2) (a) in relation to the driving of a heavy vehicle that is a hire vehicle or a bus, but only in so far as the offending relates to speed or fatigue.
- (2) However, a person is not exempted by subsection (1) in so far as the duty relates to—
  - (a) an employer or prime contractor ensuring (so far as is reasonably practicable) that the employer's or contractor's business practices will not cause the driver of a vehicle to exceed a speed limit applying to the driver; or
  - (b) an employer or prime contractor being reasonably satisfied that each scheduler for the vehicle has complied with its duty under section 26C to ensure that a schedule will not cause a driver to—
    - (i) exceed a speed limit applying to the driver; or
    - (ii) breach the work rest times applying to the driver; or

(c) any party in the chain of responsibility preventing a driver from driving when fatigued.

(3) Subsection (1) does not apply to the driving of a bus for the purpose of providing a public passenger service.

**Note**— Persons carrying on public passenger services by means of a bus are required to be accredited under the *Passenger Transport Act 1990* of New South Wales.

**Note**— This section is inserted for New South Wales.

**[3] Schedule 1.2 [2]**

Omit “after section 93 (8)”. Insert instead “before section 93 (9)”.

**[4] Schedule 1.2 [4]**

Omit the item.

**[5] Schedule 1.2 [5]**

Omit “those of Division 2 of Part 6.2” from section 222B (1).

Insert instead “the requirement imposed by section 228”.

**[6] Schedule 2 Modification of national regulations as applying in New South Wales**

Omit “rules 221–1” from the note in Schedule 2.1 [1]. Insert instead “rules 222–1”.