

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

[2013-42]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Passenger Transport Act 2014 No 46](#) (amended by [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 No 34](#)) (not commenced)
  - [Statute Law \(Miscellaneous Provisions\) Act 2016 No 27](#) (not commenced — to commence on 8.7.2016)

### Authorisation

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



New South Wales

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



New South Wales

An Act to make provision for a national scheme for facilitating and regulating the use of heavy vehicles on roads; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Heavy Vehicle (Adoption of National Law) Act 2013*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the *Heavy Vehicle National Law (NSW)*.

### 3 Definitions

- (1) In this Act:

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Heavy Vehicle National Law (NSW)** means the provisions applying in this jurisdiction because of section 4.

**Heavy Vehicle National Regulations (NSW)** means the provisions applying in this jurisdiction because of section 5.

**local regulations**—see section 28.

**modification** includes addition, exception, omission or substitution.

**national regulations** means the regulations, as amended from time to time, under the Heavy Vehicle National Law set out in the Schedule to the Queensland Act.

**Queensland Act** means the *Heavy Vehicle National Law Act 2012* of Queensland.

**RMS** means Roads and Maritime Services constituted under the *Transport Administration Act 1988*.

**road transport legislation** has the same meaning as in the *Road Transport Act 2013*.

- (2) Terms used in this Act and also in the Heavy Vehicle National Law set out in the Schedule to the Queensland Act have the same meanings in this Act as they have in that Law.
- (3) Notes included in this Act (other than in Schedules 1 and 2) do not form part of this Act.

## **Part 2 Application of Heavy Vehicle National Law and National Regulations**

### **4 Application of Heavy Vehicle National Law**

The Heavy Vehicle National Law, as amended from time to time, set out in the Schedule to the Queensland Act:

- (a) applies as a law of this jurisdiction, subject to the modifications set out in Schedule 1, and
- (b) as so applying may be referred to as the *Heavy Vehicle National Law (NSW)*, and
- (c) so applies as if it were an Act.

### **5 Application of regulations under Heavy Vehicle National Law**

Each of the national regulations:

- (a) applies as a regulation in force for the purposes of the *Heavy Vehicle National Law (NSW)*, subject to the modifications (if any) set out in Schedule 2 for that regulation, and
- (b) as so applying may be referred to by its citation with “(NSW)” added at the end of that citation.

### **6 Exclusion of legislation of this jurisdiction**

- (1) The following Acts of this jurisdiction do not apply to the *Heavy Vehicle National Law (NSW)* or to instruments made under that Law:
  - (a) the *Government Information (Information Commissioner) Act 2009*,
  - (b) the *Government Information (Public Access) Act 2009*,
  - (c) the *Interpretation Act 1987*, except:

- (i) Part 6A, and
  - (ii) sections 40 and 41, as applying under section 8 of this Act, and
  - (iii) provisions prescribed by the local regulations,
- (d) the *Subordinate Legislation Act 1989*,
- (e) the *State Records Act 1998*.
- (2) However, the Acts referred to in subsection (1) (so far as they are relevant) apply to a government sector agency or a government sector employee exercising a function under the *Heavy Vehicle National Law (NSW)*.
- (3) The *Public Finance and Audit Act 1983* does not apply to the *Heavy Vehicle National Law (NSW)* or to instruments made under that Law, except to the extent that that Law and those instruments apply to:
- (a) a government sector agency and the employees, decisions, actions and records of the government sector agency in carrying out a function, or
  - (b) the Auditor-General in carrying out an audit as required by a national regulation made under section 693 (3) (b) of the *Heavy Vehicle National Law (NSW)*.
- (4) To avoid doubt, this section does not limit the application of:
- (a) the *Interpretation Act 1987* to a provision of this Act, or
  - (b) the *Subordinate Legislation Act 1989* to local regulations.
- (5) In this section:

**government sector agency** means:

- (a) the Public Service or any other service of the Crown, or
- (b) a NSW Government agency, or
- (c) an entity constituted by or under an Act or exercising public functions (such as a State owned corporation), being an entity that is prescribed by the local regulations for the purposes of this definition,

but does not include the Regulator.

**government sector employee** means a person employed on any basis, or on secondment, in a government sector agency.

## 7 Application of *Ombudsman Act 1974*

The *Ombudsman Act 1974* applies to functions of the Regulator exercisable in relation to

this jurisdiction as if the Regulator were a public authority under that Act.

## 8 Scrutiny and disallowance of national regulations

- (1) Sections 40 and 41 of the *Interpretation Act 1987* and the provisions of the *Legislation Review Act 1987* apply to a national regulation in the same way as they apply to a statutory rule.
- (2) However, if a national regulation is disallowed in this jurisdiction, the regulation does not cease to have effect in this jurisdiction unless the regulation is disallowed in a majority of the participating jurisdictions (and, in such a case, the regulation ceases to have effect on the date of its disallowance in the last of the jurisdictions forming the majority).
- (3) In this section:

**national regulation** includes a provision of a national regulation.

## 8A Declaration about industrial relations status of Regulator

- (1) For the avoidance of doubt, it is declared that:
  - (a) the Regulator is not an employer of State public sector employees for the purposes of the *Industrial Relations (Commonwealth Powers) Act 2009*, and
  - (b) it is the intention of the Parliament that the Regulator be a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth.
- (2) Nothing in any Act (whether enacted before or after the commencement of this section) is to be taken to prevent the Regulator from being a national system employer for the purposes of the *Fair Work Act 2009* of the Commonwealth.

## Part 3 Meaning of terms for Heavy Vehicle National Law (NSW) and National Regulations (NSW)

### 9 Interpretation of certain expressions

In the *Heavy Vehicle National Law (NSW)* and the regulations in force for the purposes of that Law:

**police officer** means a police officer within the meaning of the *Interpretation Act 1987*.

**this jurisdiction** means New South Wales.

### 10 Police officers who are authorised officers

Every police officer is declared to be an **authorised officer** for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**



See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **authorised officer**.

### 11 Authorised warrant official

A Magistrate is declared to be an **authorised warrant official** for this jurisdiction for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**

See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **authorised warrant official**.

### 12 Infringement notices

- (1) The following are declared to be the **Infringement Notice Offences Law** for the purposes of the *Heavy Vehicle National Law (NSW)*:
  - (a) the other provisions of this section and any local regulations made for the purposes of this section, and
  - (b) the *Fines Act 1996*.
- (2) An infringement notice issued under section 591 of the *Heavy Vehicle National Law (NSW)*:
  - (a) may be called and issued as a penalty notice rather than as an infringement notice, and
  - (b) is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (3) An infringement notice may be served personally or by post.
- (4) If the amount of penalty prescribed for an alleged offence is paid in respect of an infringement notice, no person is liable to any further proceedings for the alleged offence.
- (5) Payment of an amount in respect of an infringement notice is not to be regarded as an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The local regulations may:
  - (a) prescribe an offence for the purposes of section 591 of the *Heavy Vehicle National Law (NSW)* by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for the offence if dealt with under that section, and
  - (c) prescribe different amounts of penalties for different offences or classes of offences, and

(d) prescribe different amounts of penalties for the same kind of offence or class of offence committed in specified circumstances.

(7) The amount of a penalty prescribed by the local regulations under this section for an offence is not to exceed 10 percent of the maximum amount of penalty that could be imposed for the offence by a court.

(8) This section and section 591 of the *Heavy Vehicle National Law (NSW)* do not limit the operation of any other provision of, or made under, this Act or the Law or any other Act relating to proceedings that may be taken in respect of offences.

### 13 Local government authority

A council within the meaning of the *Local Government Act 1993* is declared to be a **local government authority** for this jurisdiction for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**

See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **local government authority**.

### 14 Relevant tribunal or court

The Local Court is declared to be the **relevant tribunal or court** for this jurisdiction for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**

See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **relevant tribunal or court**.

### 15 Responsible Minister

The Minister responsible for administering this Act is nominated as the **responsible Minister** for this jurisdiction for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**

See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **responsible Minister**.

### 16 Road authority

RMS is declared to be the **road authority** for this jurisdiction for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**

See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **road authority**.

### 17 Road manager

(1) Except as provided by subsection (2), the following are declared to be the **road manager** for a road in this jurisdiction for the purposes of the *Heavy Vehicle National Law (NSW)*:

(a) for a public road—the roads authority for the road under the *Roads Act 1993*,

(b) for a private road—the owner of the road.

**Note—**

See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **road manager**.

- (2) RMS is declared to be the **road manager** for each of the following roads (regardless of whether it is the roads authority under the *Roads Act 1993* for the road or the owner of the road):
- (a) a road in respect of which RMS performs under that Act some or all of the functions of the roads authority instead of the authority (whether under an agreement or otherwise),
  - (b) a road that is a tollway or transitway.
- (3) To avoid doubt, a reference in this section to a roads authority is not affected by section 16 (which declares RMS to be the road authority for the purposes of the *Heavy Vehicle National Law (NSW)*).
- (4) A term used in this section that is defined for the purposes of the *Roads Act 1993* has the same meaning as in that Act.

## 18 Road Rules

The *Road Rules 2014* (or any rules made under the *Road Transport Act 2013* that replace those Rules) are declared to be the **Road Rules** for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**

See section 5 of the *Heavy Vehicle National Law (NSW)* for the definition of **Road Rules**.

## 19 Meaning of road and road-related area

- (1) If a declaration in an order made under section 18 of the *Road Transport Act 2013* is in force to the effect that the road transport legislation (within the meaning of that Act) applies to a specified area, the area to which the declaration relates is declared to be a road-related area for the purposes of the *Heavy Vehicle National Law (NSW)*.

**Note—**

Section 8 (3) of the *Heavy Vehicle National Law (NSW)* provides for the declaration of an area to be a road or road-related area for the purposes of that Law.

- (2) If a declaration in an order made under section 18 of the *Road Transport Act 2013* is in force to the effect that the road transport legislation (within the meaning of that Act) does not apply to a specified road, the road to which the declaration relates is taken not to be a road or road-related area (as the case requires) for the purposes of the *Heavy Vehicle National Law (NSW)*.

## 20 Meaning of convicts and convicted of an offence

To avoid doubt, section 9 of the *Heavy Vehicle National Law (NSW)* applies only for the purposes of that Law and offences under that Law and not for the purposes of any other law of this jurisdiction.

## 21 Primary WHS Law

The *Work Health and Safety Act 2011* and the regulations under that Act are declared to be the **primary WHS Law** for the purposes of the *Heavy Vehicle National Law (NSW)*.

### Note—

See section 18 (4) of the *Heavy Vehicle National Law (NSW)* for the definition of **primary WHS Law**.

## 22 Meaning of relevant law

The following Acts are specified for the purposes of the definition of **relevant law** in section 727 (1) of the *Heavy Vehicle National Law (NSW)*:

- (a) the *Roads Act 1993*,
- (b) the road transport legislation,
- (c) the *Transport Administration Act 1988*,
- (d) the *Ombudsman Act 1974*,
- (e) the *Photo Card Act 2005*,
- (f) any other Act or statutory rule prescribed by the local regulations.

## Part 4 Authorisations

### 23 Authority to use force

- (1) An authorised officer who is a police officer is authorised to use force against a person in the exercise, or purported exercise, of a function under the *Heavy Vehicle National Law (NSW)*.

### Note—

See section 491 (Use of force against persons) of the *Heavy Vehicle National Law (NSW)*.

- (2) An authorised officer is authorised to use force against property for the purposes of a power referred to in section 492 (1) of the *Heavy Vehicle National Law (NSW)*.
- (3) For the avoidance of doubt, the force that may be used by an authorised officer is such force as would be reasonably necessary in the circumstances for the exercise of the power concerned.

## **24 Authority to seize heavy vehicles or things**

Section 552 (1) of the *Heavy Vehicle National Law (NSW)* does not apply to an authorised officer who is a police officer impounding or seizing a heavy vehicle or thing under an Act or other law of this jurisdiction.

### **Note—**

See section 552 (2) of the *Heavy Vehicle National Law (NSW)*.

## **25 RMS authorised to provide information and assistance to Regulator**

- (1) Despite any other Act or law, RMS is authorised, on RMS's own initiative or at the request of the Regulator:
  - (a) to provide the Regulator with such information (including information given in confidence) in the possession or control of RMS that is reasonably required by the Regulator for the purposes of this Act or the *Heavy Vehicle National Law (NSW)*, and
  - (b) to provide the Regulator with such other assistance as is reasonably required by the Regulator to perform or exercise a function or power under this Act or the *Heavy Vehicle National Law (NSW)*.
- (2) Despite any other Act or law, RMS may authorise the Regulator to disclose information provided under subsection (1) even if the information was given to RMS in confidence.
- (3) Nothing done, or authorised to be done, by RMS in acting under subsection (1) or (2):
  - (a) constitutes a breach of, or default under, an Act or other 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 or by custom) or in any other way, or
  - (d) constitutes a civil or criminal wrong, or
  - (e) terminates an agreement or obligation or fulfils any condition that allows a person to terminate an agreement or obligation, or gives rise to any other right or remedy, or
  - (f) releases a surety or any other obligee wholly or in part from an obligation.

## **25A Authorisation for section 688 of Heavy Vehicle National Law (NSW) (Payments into Fund)**

For the purposes of section 688 of the *Heavy Vehicle National Law (NSW)*, an amount equal to any regulatory component that may be prescribed by the national regulations for

the purposes of the definition of **road use component** in section 688 (3) of that Law, is authorised to be paid into the National Heavy Vehicle Regulator Fund until Chapter 2 of that Law comes into force in New South Wales.

## **Part 5 Enforcement of Heavy Vehicle National Law (NSW)**

### **Division 1 Powers of authorised officers**

#### **26 Requirement for driver of heavy motor vehicle to produce Australian driver licence**

- (1) An authorised officer may, for compliance purposes, require the driver of a heavy motor vehicle to produce the driver's relevant Australian driver licence.
- (2) A person must not refuse to comply with a requirement of an authorised officer under subsection (1).

Maximum penalty: 20 penalty units.

- (3) Nothing in this section limits the power conferred on authorised officers under the [Road Transport Act 2013](#) by section 175 of that Act.

- (4) In this section:

**driver** has the same meaning as in section 175 of the [Road Transport Act 2013](#).

**relevant Australian driver licence** has the same meaning as in the [Road Transport Act 2013](#).

#### **27 RMS may exercise powers of authorised officer**

- (1) Despite anything to the contrary in the [Heavy Vehicle National Law \(NSW\)](#), RMS may exercise any power conferred by or under that Law on an authorised officer (other than a power that requires the physical presence of an authorised officer).
- (2) The exercise by RMS of such a power has effect for the purposes of the [Heavy Vehicle National Law \(NSW\)](#) as if it had been exercised by an authorised officer under that Law.

#### **27A Exercise of powers under other law enforcement legislation**

- (1) This section applies if an authorised officer under the [Heavy Vehicle National Law \(NSW\)](#) is also:
  - (a) an authorised officer under the [Road Transport Act 2013](#), or
  - (b) a police officer.
- (2) For the avoidance of doubt, an authorised officer to whom this section applies may, on the same occasion, exercise the various powers conferred on the officer by or under law enforcement legislation as well as the powers conferred on the officer by or under

this Act or the *Heavy Vehicle National Law (NSW)* if the circumstances permit the exercise of both sets of powers on that occasion.

(3) In this section:

**law enforcement legislation** means:

- (a) the road transport legislation, or
- (b) the *Law Enforcement (Powers and Responsibilities) Act 2002* or any other Act or statutory rule that confers or imposes law enforcement functions on police officers.

## **Division 2 Offences and legal proceedings**

### **27B Persons who may commence proceedings for offences**

Proceedings for an offence against the *Heavy Vehicle National Law (NSW)* or the regulations in force for the purposes of that Law may be commenced by:

- (a) the Regulator, or
- (b) RMS, or
- (c) a person who is authorised in writing to do so either generally or in any particular case by the Regulator or RMS, or
- (d) a police officer.

### **27C Double jeopardy**

A person who has been punished for an act or omission or circumstances constituting an offence against the road transport legislation cannot be punished for an offence against the *Heavy Vehicle National Law (NSW)* or the regulations in force for the purposes of that Law arising from the same act or omission or circumstances.

**Note—**

See 634 (2) of the *Heavy Vehicle National Law (NSW)* in relation to the punishment of an offender for offences under that Law in circumstances where the offender has already been punished under the Heavy Vehicle National Law applying in another participating jurisdiction.

### **27D Offences for which mistake of fact defence unavailable**

The effect of a provision to which section 14 of the *Heavy Vehicle National Law (NSW)* applies is that it is not a defence to the offence concerned for the person charged with the offence to prove that, at or before the time of the act or omission or circumstances constituting the offence, the person was under a mistaken but honest and reasonable belief about facts which, had they existed, would have meant that the act or omission or circumstances would not have constituted an offence.

**Note—**

Section 14 of the *Heavy Vehicle National Law (NSW)* provides that the effect of a provision of that Law that states that a person charged with an offence does not have the benefit of the mistake of fact defence for an offence is the effect specified by a law of the jurisdiction.

## 27E Evidence of speed

- (1) Part 5.3 (Traffic control and monitoring) of the *Road Transport Act 2013* provides for the use of evidence obtained under that Part in connection with proceedings for speeding offences.
- (2) Section 121 of the *Road Transport Act 2013* defines a **speeding offence** to include an offence against the *Heavy Vehicle National Law (NSW)* or the regulations in force for the purposes of that Law where the speed at which a heavy vehicle has travelled is relevant for the purpose of establishing that the offence has been committed.
- (3) Accordingly, evidence of speed obtained under Part 5.3 of the *Road Transport Act 2013* may be given in proceedings for such an 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 that Part in the same way as for speeding offences under the road transport legislation.
- (4) For the avoidance of doubt, if a heavy vehicle that is being towed is attached to a heavy vehicle, the heavy vehicle and the towing heavy vehicle are to be taken to be travelling at the same speed for the purposes of proceedings for such a speeding offence involving the vehicles.
- (5) Neither Part 5.3 of the *Road Transport Act 2013* nor this section derogate from any other mode of proof of the speed of the heavy vehicle for the purposes of the *Heavy Vehicle National Law (NSW)*.

## 27F Section 10 of *Crimes (Sentencing Procedure) Act 1999* not applicable in certain circumstances

- (1) Section 10 of the *Crimes (Sentencing Procedure) Act 1999* does not apply if a person is charged before a court with an applicable heavy vehicle offence if, at the time of or during the period of 5 years immediately before the court's determination in respect of the charge, that section is or has been applied to or in respect of the person in respect of a charge for another applicable heavy vehicle offence (whether of the same or a different kind).
- (2) Each of the following is an **applicable heavy vehicle offence** for the purposes of subsection (1):
  - (a) an offence against the *Heavy Vehicle National Law (NSW)* that involves a severe risk breach of a mass, dimension or load restraint requirement under that Law,
  - (b) an offence against Chapter 5 (Vehicle operations—speeding) of the *Heavy Vehicle National Law (NSW)*,



- (c) an offence against Chapter 6 (Vehicle operations—driver fatigue) of the *Heavy Vehicle National Law (NSW)*,
- (d) an offence referred to in section 203 (2) (e) or (f) of the *Road Transport Act 2013* (as in force immediately before its amendment by the *Heavy Vehicle (Adoption of National Law) Amendment Act 2013*) or a former corresponding offence,
- (e) an offence of aiding, abetting, counselling or procuring the commission of an offence referred to in paragraph (a), (b), (c) or (d).

(3) In this section:

**former corresponding offence** means an offence against a provision of an Act or statutory rule that is a former corresponding provision within the meaning of the *Road Transport Act 2013* in relation to a provision referred to in section 203 (2) (e) or (f) of that Act (as in force immediately before its amendment by the *Heavy Vehicle (Adoption of National Law) Amendment Act 2013*).

## Part 6 Miscellaneous

### 28 Local regulations

- (1) The Governor may make regulations (**local regulations**), not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The power to make local regulations includes the power to make such regulations as are contemplated by the *Heavy Vehicle National Law (NSW)* as being made under this Act.
- (3) Without limitation, the local regulations may:
  - (a) amend Schedules 1 and 2 to insert, vary or omit modifications to the Heavy Vehicle National Law set out in the Schedule to the Queensland Act, or to the national regulations, for the purpose of altering their application in New South Wales to heavy vehicles and to persons and bodies in connection with heavy vehicles, and
  - (b), (c) (Repealed)
  - (d) provide that a provision of a law of another participating jurisdiction is to have effect (generally or in particular circumstances, and with or without modifications, as provided in the local regulations) as if the provision formed part of the Heavy Vehicle National Law set out in the Schedule to the Queensland Act or that Law as applied in a participating jurisdiction.

(3A) Without limiting subsection (3) (a), local regulations that amend Schedule 2 may

amend that Schedule so as to insert, vary or omit modifications to any national regulations (including any national regulations that were not included in Schedule 2 when it first commenced).

- (4) The local regulations may create offences punishable by a penalty not exceeding 100 penalty units.
- (5) (Repealed)

## **29 Proceedings for offences against this Act and the local regulations**

Proceedings for an offence against this Act or the local regulations are to be dealt with summarily before the Local Court.

### **Note—**

Section 195 of the [Road Transport Act 2013](#) enables an authorised officer to issue penalty notices for offences against this Act or the local regulations that are prescribed as a penalty notice offence by the statutory rules for the purposes of that section.

## **30 Effect of amendment, repeal or expiry of modification**

- (1) Part 6 of Schedule 1 to the [Heavy Vehicle National Law \(NSW\)](#) applies to the amendment, repeal or expiry of a modification set out in Schedule 1 or 2 to this Act in the same way as it applies to the amendment, repeal or expiry of a provision of that Law.
- (2) However, the repeal or expiry of a modification has the effect of reviving the modified provision to its unmodified state except to the extent (if any) that the local regulations otherwise provide, whether expressly or by implication.

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

(Section 4 (a))

### **Note—**

The Heavy Vehicle National Law applies in this jurisdiction with the modifications set out in this Schedule.

### **1.1 Modifications relating to registration**

#### **[1] Section 4 Regulatory framework to achieve object**

Omit section 4 (b).

#### **[2] Section 4**

Insert at the end of the section:

### **Note—**

Paragraph (b) is omitted for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

### [3] Section 5 Definitions

Omit the definitions of ***conditionally registered***, ***GCM***, ***GVM***, ***registration***, ***registration exemption***, ***registration number***, ***unregistered heavy vehicle***, ***unregistered heavy vehicle permit*** and ***vehicle register***.

Insert in alphabetical order:

***Australian registration law*** means—

- (a) Chapter 4 (Vehicle registration) of the [Road Transport Act 2013](#) of New South Wales and any statutory rules made for the purposes of that Chapter (within the meaning of that Act); or
- (b) a law of another jurisdiction that substantially corresponds to the legislation referred to in paragraph (a).

**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. See, in particular, the [Road Transport \(Vehicle Registration\) Regulation 2007](#) of New South Wales for a statutory rule made for the purposes of Chapter 4 of the [Road Transport Act 2013](#) of New South Wales.

***certificate of registration***, for a heavy motor vehicle, means a certificate relating to the registration of the vehicle under an Australian registration law.

**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.

***conditionally registered***, for a heavy motor vehicle, means the vehicle is registered under an Australian registration law subject to conditions.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

***GCM*** (gross combination mass), of a motor vehicle, means the vehicle's GCM as defined in section 4 (1) of the [Road Transport Act 2013](#) of New South Wales.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

***GVM*** (gross vehicle mass), of a vehicle, means the vehicle's GVM as defined in section 4 (1) of the [Road Transport Act 2013](#) of New South Wales.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**registration**, of a heavy vehicle, means registration in Australia of the vehicle as defined in section 7 (2) of the [Road Transport Act 2013](#) of New South Wales.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**registration exemption** means an exemption under an Australian registration law from the requirement for a heavy vehicle to be registered under the registration law.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**registration number**, for a heavy vehicle, means the identifying number, however described, given to the vehicle in connection with the registration of the vehicle under an Australian registration law.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**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.

**unregistered heavy vehicle** means a heavy vehicle that is not registered in a vehicle register.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**unregistered heavy vehicle permit** means a permit issued under an Australian registration law authorising the use of an unregistered heavy vehicle on a road.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**vehicle register** means an Australian registrable vehicles register as defined in section 4 (1) of the [Road Transport Act 2013](#) of New South Wales.

**Note—**

This is a substituted definition for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**[4] Section 6 Meaning of heavy vehicle**

Omit “other than in relation to registration under this Law” from section 6 (2).

**[5] Section 6 (2)**

Insert at the end of the subsection:

**Note—**

Subsection 6 (2) is amended for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law by omitting “other than in relation to registration under this Law”.

**[6] Chapter 2**

Omit the Chapter. Insert instead:

## **Chapter 2 Registration**

**Note—**

Chapter 2 is omitted for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law. Heavy vehicles will continue to be registered under the local law of each participating jurisdiction until that commencement. For New South Wales, see the [Road Transport Act 2013](#).

**[7] Section 60 Compliance with heavy vehicle standards**

Omit section 60 (3)–(5). Insert instead:

- (3) A person does not commit an offence against subsection (1) in relation to a heavy vehicle’s noncompliance with a heavy vehicle standard if, and to the extent, the noncompliance relates to a noncompliance—
  - (a) if the vehicle is registered under the [Road Transport Act 2013](#) of New South Wales—known to RMS; or
  - (b) if the vehicle is registered under another Australian registration law—known to the government entity of the jurisdiction responsible for administering the registration law when the vehicle was registered under that registration law.
- (4) For the purposes of subsection (3), RMS, or the jurisdiction’s government entity, is taken to know of a heavy vehicle’s noncompliance with a heavy vehicle standard when the vehicle was registered under an Australian registration law if the noncompliance is mentioned in—

- (a) an operations plate that was installed on the vehicle when it was registered; or
  - (b) a certificate of approved operations issued for the vehicle and in force when the vehicle was registered; or
  - (c) a document obtained by RMS or the government entity under an Australian registration law in connection with the registration of the vehicle.
- (5) Subsection (3) applies only if the heavy vehicle, and its use on a road, complies with the conditions of the registration.

**Note—**

Subsections (3)–(5) are substituted provisions for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**[8] Section 458 Regulator’s power to grant heavy vehicle accreditation**

Omit “under this Law” from section 458 (a).

**[9] Section 458**

Insert at the end of the section:

**Note—**

Section 458 (a) is amended for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law by omitting “under this Law”.

**[10] Section 520 Power to enter and inspect heavy vehicles for monitoring purposes**

Insert “or an Australian registration law” after “this Law” in section 520 (2) (b).

**[11] Section 520 (2)**

Insert at the end of the subsection:

**Note—**

Subsection (2) (b) is amended for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law by inserting “or an Australian registration law” after “this Law”.

**[12] Section 521 Power to enter and search heavy vehicle involved, or suspected to be involved, in an offence etc.**

Insert “or an Australian registration law” after “this Law” in section 521 (3) (c).

**[13] Section 521 (3)**

Insert at the end of the subsection:

**Note—**

Subsection (3) (c) is amended for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law by inserting “or an Australian registration law” after “this Law”.

**[14] Section 527 Requirements about vehicle defect notice**

Omit section 527 (1) (i). Insert instead:

- (i) that, if the notice is not cleared by the Regulator under section 530, the vehicle’s registration in the NSW registrable vehicles register under the [Road Transport Act 2013](#) of New South Wales may be suspended or cancelled under that Act;

**Note—**

This paragraph is substituted for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**[15] Section 598 Power to cancel or suspend vehicle registration**

Omit “the Regulator is” from section 598 (5).

Insert instead “the Regulator and RMS are”.

**[16] Section 598 (5)**

Insert at the end of the subsection:

**Note—**

This subsection is amended for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law by replacing “the Regulator is” with “the Regulator and RMS are”.

**[17] Section 598 (6)**

Insert after section 598 (5):

- (6) In this section—

**registration** means registration in the NSW registrable vehicles register under the [Road Transport Act 2013](#) of New South Wales.

**Note—**

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

**[18] Section 659 Functions of Regulator**

Omit section 659 (2) (a) (i).

**[19] Section 659 (2)**

Insert at the end of the subsection:

**Note—**

Paragraph (a) (i) is omitted for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law.

**[20] Section 711 Evidence by certificate by Regulator and RMS generally**

Omit “registered under this Law” wherever occurring in section 711 (1) (a), (b), (c) and (d).

Insert instead “registered”.

**[21] Section 711 (1) (h)**

Omit the paragraph. Insert instead:

(h) a stated registration was or was not amended, suspended or cancelled or a stated heavy vehicle accreditation, exemption, authorisation, permit or other authority under this Law was or was not amended, suspended or cancelled under this Law; or

**[22] Section 711 (1)**

Insert at the end of the subsection:

**Note—**

This subsection is amended for New South Wales pending the commencement of the national scheme for the registration of heavy vehicles under this Law by replacing “registered under this Law” with “registered”. Paragraph (h) is also substituted for New South Wales.

**[23] 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) and (h), at a stated time or during a stated period, is evidence of the matter.

**Note—**

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



## 1.2 Modifications relating to other matters

### [1A] Section 2

Omit the section. Insert instead:

#### 2 Commencement

- (1) This Law commences in this jurisdiction on 10 February 2014, except as provided by subsection (2).
- (2) Section 84 of this Law commences in this jurisdiction on the day on which section 84 of the *Heavy Vehicle National Law (Queensland)* commences in Queensland.

**Note—**

This section is substituted for New South Wales.

### [1] Section 5 Definitions

Insert in alphabetical order:

**private hire vehicle** means a private hire vehicle within the meaning of the *Passenger Transport Act 1990* 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.

### [2] Section 93 Person must not tamper with speed limiter fitted to heavy vehicle

Insert after section 93 (8):

(8A) Nothing in this section limits the application of Part 6.2 (Speed limiting of heavy vehicles) of the *Road Transport Act 2013* of New South Wales to a heavy vehicle to which that Part applies.

**Note—**

This subsection is inserted for New South Wales. Part 6.2 of the *Road Transport Act 2013* of New South Wales provides that the responsible person for a vehicle to which that Part applies is guilty of an offence unless the vehicle is speed limiter compliant (within the meaning of that Part) when the vehicle is being driven on a road.

**[3] Section 93A**

Insert after section 93:

**93A Monitoring of heavy vehicles and vehicles carrying dangerous goods [NSW]**

- (1) Part 6.1 of the *Road Transport Act 2013* of New South Wales makes provision for the monitoring of the journeys on roads of certain heavy vehicles with GVMs or GCMs exceeding 13.9 tonnes and vehicles carrying dangerous goods.
- (2) The requirements of that Part are in addition to, and do not limit the effect of, any other provisions of this Law concerning the use of monitoring devices or equipment (such as intelligent transport systems) and the keeping of journey documentation or other records for a heavy vehicle.

**Note—**

This section is inserted for New South Wales.

**[4] Sections 203A and 203B**

Insert after section 203:

**203A Exemptions for emergency services [NSW]**

- (1) A person who is an officer, member or member of staff of an emergency service is exempt from the provisions of this Chapter, but only in relation to the driving of a heavy vehicle in the course of undertaking work for an emergency service.
- (2) 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) 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.

**203B Exemptions for buses and private hire vehicles [NSW]**

- (1) A person is exempt from the requirements of this Chapter (other than those of sections 205 and 206) in relation to the driving of a heavy vehicle that is a private hire vehicle or a bus.
- (2) 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.

**[5] Sections 222A and 222B**

Insert after section 222:

**222A Exemptions for accredited service operators and their drivers [NSW]**

- (1) Section 459 (3) and (4) do not apply in relation to an accredited service operator.
- (2) The BFM standards and AFM standards relating to assessing a driver's health to determine his or her fitness to drive do not apply in relation to an accredited service operator to the extent that those standards are relevant for the purposes of sections 459 and 467.
- (3) Section 468 does not apply to the driver of a bus that is a fatigue-regulated heavy vehicle when the driver is driving the bus for an accredited service operator if—
  - (a) the bus is on a journey that is less than 100 kilometres from the driver's base; or
  - (b) the bus is being used to provide a regular bus service under a service

contract (regardless of the distance travelled).

(4) In this section—

**accredited service operator, regular bus service** and **service contract** have the same meanings as in the [Passenger Transport Act 1990](#) of New South Wales.

**Note—**

This section is inserted for New South Wales.

**222B Exemptions for certain buses and private hire vehicles [NSW]**

- (1) A person is exempt from the requirements of this Chapter (other than those of Division 2 of Part 6.2) in relation to the driving of a private hire vehicle, or the driving of a bus, that is a fatigue-regulated heavy vehicle.
- (2) 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.

**[6] Section 246 Counting periods of less than 15 minutes**

Insert at the end of the section:

- (5) This section does not apply to the work time and rest time of a driver of a fatigue-regulated heavy vehicle that is a bus on a journey undertaken in accordance with a service contract entered into under Part 3 of the [Passenger Transport Act 1990](#) of New South Wales.

**Note—**

Subsection (5) is inserted for New South Wales.

**[7] Sections 248A and 248B**

Insert after section 248:

**248A Occupying driver's seat to count as rest time in certain circumstances [NSW]**

- (1) A period during which the driver of a fatigue-regulated heavy vehicle occupies

the driver's seat of the vehicle while its engine is running counts as rest time rather than work time if—

- (a) the vehicle is stationary during that period; and
- (b) the driver is not subject to work demands during that period; and
- (c) the period is at least 15 minutes or forms part of a period of rest time of at least 15 minutes.

**Note—**

Section 246 provides for the manner in which periods of rest time are to be calculated.

- (2) This section has effect despite paragraph (d) of the definition of **work** in section 221.

**Note—**

This section is inserted for New South Wales.

**248B Certain personal activities may be counted as part of rest time [NSW]**

- (1) A rest period of at least 24 continuous hours of stationary rest time that is required to be taken by a driver of a fatigue-regulated heavy vehicle under this Chapter may include a period of up to one continuous hour of permitted personal activity that is to be treated as part of that rest time, but only if—
  - (a) the permitted personal activity is not done at the direction of the driver's employer or for fee or reward; and
  - (b) the beginning of the period of permitted personal activity occurs at least 3 hours after the beginning of the 24-hour rest period; and
  - (c) the end of the period of permitted personal activity occurs at least 3 hours before the end of the 24-hour rest period.
- (2) A **permitted personal activity** means any of the following—
  - (a) cleaning or refuelling a fatigue-regulated heavy vehicle;
  - (b) driving a fatigue-regulated heavy vehicle.
- (3) This section has effect despite the definitions of **rest** and **work** in section 221.

**Note—**

This section is inserted for New South Wales.

**[8] Sections 265 and 265A**

Omit section 265. Insert instead:

## 265 Exemptions for emergency services [NSW]

- (1) A person who is an officer, member or member of staff of an emergency service is exempt from the provisions of this Chapter, but only in relation to the driving of a fatigue-regulated heavy vehicle in the course of undertaking work for an emergency service.
- (2) 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) 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.
- (3) The exemption provided by this section is in addition to, and does not limit the effect of, the exemption provided by section 265A.

### Note—

This section is substituted for New South Wales.

## 265A Exemptions in relation to emergencies [NSW]

- (1) A person who is attending an emergency and who is undertaking activities with respect to the control of the emergency in the course of his or her employment or usual business activities is exempt from compliance with this Part in relation to the driving of a fatigue-regulated heavy vehicle to and from the emergency so long as subsection (2) is complied with.
- (2) Any record that would be required to be made under this Chapter if the

exemption under subsection (1) were not available—

- (a) must be made as soon as practicable after the journey from the emergency is completed; and
- (b) must include a record of the following—
  - (i) the time, date, location and nature of the emergency;
  - (ii) if the person was asked by another person to attend the emergency, the name and contact details of that other person.

(3) In this section, **emergency** means an event (or an anticipated event) that—

- (a) endangers, or may endanger, life, property or the environment; or
- (b) has disrupted, or may disrupt, communications, energy, water supply or sewerage services; or
- (c) is declared to be an emergency or disaster by—
  - (i) the Commonwealth or a State or Territory; or
  - (ii) a Commonwealth, State or Territory authority responsible for managing responses to emergencies or disasters.

**Note—**

This section is inserted for New South Wales.

**[9] Section 462A**

Insert after section 462:

**462A Conditions imposed on AFM accreditations by responsible Minister**

- (1) Apart from the conditions referred to in section 462, an AFM accreditation is also subject to any conditions that may be imposed by the responsible Minister for this jurisdiction under this section.
- (2) The responsible Minister for this jurisdiction may, by notice given to the holder, impose either or both of the following kinds of conditions on an AFM accreditation—
  - (a) conditions specifying different AFM hours to those that would otherwise apply to drivers of heavy vehicles while operating under the accreditation in this jurisdiction;
  - (b) conditions that require compliance with different or additional standards or business rules (or both) to the AFM standards and business rules in relation

to heavy vehicles while operating under the accreditation in this jurisdiction.

- (3) A condition imposed under this section has effect (and must be complied with) despite anything to the contrary in any of the following—
- (a) the AFM accreditation (including any conditions referred to in section 462 to which the accreditation is subject);
  - (b) the AFM standards and business rules;
  - (c) Chapter 6 (particularly, section 257) and this Chapter;
  - (d) an exemption, notice or permit issued or granted under Division 8 of Part 6.3.
- (4) The responsible Minister for this jurisdiction may, by further notice given to the holder, revoke a condition that has been imposed under this section.
- (5) The responsible Minister for this jurisdiction must, as soon as practicable, notify the Regulator, in writing, of any condition imposed or revoked under this section.

**Note—**

This section is inserted for New South Wales.

**[10] Section 464 Accreditation certificate for heavy vehicle accreditation etc.**

Insert “or by the responsible Minister for this jurisdiction under section 462A” after “the Regulator” in section 464 (2) (c).

**[11] Section 464 (2)**

Insert at the end of the subsection:

**Note—**

Subsection (2) (c) is amended for New South Wales by inserting “or by the responsible Minister for this jurisdiction under section 462A” after “the Regulator”.

**[12] Section 464 (2A)**

Insert after section 464 (2):

- (2A) If an AFM accreditation certificate inaccurately states the conditions applicable to the accreditation because of the imposition or revocation of a condition under section 462A, the Regulator is to issue a replacement certificate to the holder as soon as practicable after the Regulator is informed by the responsible Minister for this jurisdiction of the imposition or revocation of the condition.

**Note—**



Subsection (2A) is inserted for New South Wales.

**[13] Section 497 General power to enter places**

Omit section 497 (8). Insert instead:

(8) An authorised officer may use force that is reasonably necessary for exercising a power under this section.

**Note—**

This subsection is substituted for New South Wales.

**[14] Section 498 Power to enter a place if evidence suspected to be at the place**

Omit section 498 (6) and (7). Insert instead:

(6) An authorised officer may use force that is reasonably necessary for gaining entry to a place under this section.

**Note—**

This subsection is substituted for New South Wales and subsection (7) is omitted for New South Wales.

**[15] Section 499 Power to enter particular places if incident involving death, injury or damage**

Omit section 499 (7). Insert instead:

(7) An authorised officer may use force that is reasonably necessary for exercising a power under this section.

**Note—**

This subsection is substituted for New South Wales.

**[16] Section 500 General powers after entering a place**

Omit “section 497 (1) (c)” from section 500 (2) (c).

Insert instead “section 497, 498 or 499”.

**[17] Section 500 (2)**

Insert at the end of the subsection:

**Note—**

Subsection (2) (c) is amended for New South Wales by replacing “section 497 (1) (c)” with “section 497, 498 or 499”.

**[18] Section 521 Power to enter and search heavy vehicle involved, or suspected to be**

**involved, in an offence etc.**

Omit section 521 (6).

**[19] Section 521**

Insert at the end of the section:

**Note—**

Section 521 (6) is omitted for New South Wales.

**[20] Section 567 Power to require name, address and date of birth**

Insert at the end of the section:

**Note—**

See also section 26 (Requirement for driver of heavy motor vehicle to produce Australian driver licence) of the Application Act of this jurisdiction. This note is inserted for New South Wales.

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

(Section 5 (a))

**Note—**

The national regulations referred to in this Schedule apply in this jurisdiction with the modifications set out in this Schedule.

**2.1 Heavy Vehicle (Vehicle Standards) National Regulation**

**[1] Schedule 2 Other vehicle standards applying to single heavy vehicles**

Omit Division 16 of Part 6. Insert instead:

**Division 16 Warning lights and signs on buses carrying children**

**Note—**

Division 16 is omitted for New South Wales. For the use of warning lights and signs on school buses in New South Wales, see rules 221-1, 222-2 and 300-4 of the [Road Rules 2014](#) and clauses 24 and 25 of the [Road Transport \(General\) Regulation 2013](#).

**[2] Schedule 2, section 79 Other lights and reflectors**

Insert after section 79 (7):

(7A) Despite anything to the contrary in this section or a third edition ADR, a heavy

vehicle must not be fitted with a light or reflector if the light or reflector is fitted in a manner or in circumstances that would be prohibited by clause 124 of Schedule 2 to the *Road Transport (Vehicle Registration) Regulation 2007* of New South Wales in relation to a light vehicle being used for the same purpose as the heavy vehicle.

**Note—**

This subsection is inserted for New South Wales.

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The local regulations may contain provisions of a savings or transitional nature consequent on any of the following:
  - (a) the enactment of this Act or any Act that amends this Act,
  - (b) the enactment of any Act of Queensland that amends the Heavy Vehicle National Law set out in the Schedule to the Queensland Act,
  - (c) the amendment of Schedule 1 or 2 by the local regulations.
- (2) If the local regulations so provide, any such provision may:
  - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule) or the *Heavy Vehicle National Law (NSW)*, and
  - (b) in the case of a provision consequent on the enactment of an Act (whether of this State or Queensland)—take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Local regulations made for the purposes of this clause may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## Part 2 Provisions consequent on enactment of this Act and the [Heavy Vehicle \(Adoption of National Law\) Amendment Act 2013](#)

### Division 1 Definitions

#### 2 Definitions

In this Part:

**amending Act** means the [Heavy Vehicle \(Adoption of National Law\) Amendment Act 2013](#).

**former legislation**—see clause 4.

**general savings and transitional provision** means section 748 of the Law.

**participation day** means the day on which section 4 (Application of Heavy Vehicle National Law) of the [Heavy Vehicle \(Adoption of National Law\) Act 2013](#) commences.

**the Law** means the [Heavy Vehicle National Law \(NSW\)](#).

### Division 2 Operation of general savings and transitional provision

#### 3 Operation of general savings and transitional provision

The general savings and transitional provision has effect according to its terms except to the extent to which this Division makes contrary provision.

#### 4 Declaration of former legislation

Despite Part 14.2 of the Law, the following are declared to be the **former legislation** for the purposes of Part 14.2 of the Law and this Part:

- (a) the road transport legislation within the meaning of the [Road Transport Act 2013](#) as in force immediately before the participation day,
- (b) the former road transport legislation (as defined in clause 2 of Schedule 4 to the [Road Transport Act 2013](#)) to the extent that it continued in force under Part 2 of that Schedule immediately before the participation day.

**Note—**

Section 6 of the [Road Transport Act 2013](#), as in force immediately before the participation day, defined **road transport legislation** to mean the following:

- (a) the *Road Transport Act 2013* and the statutory rules under that Act,
- (b) the *Road Transport (Vehicle and Driver Management) Act 2005* and the regulations under that Act,
- (c) the *Motor Vehicles Taxation Act 1988* and the regulations under that Act,
- (d) any other Act or statutory rule made under any other Act (or any provision of such an Act or statutory rule) that is prescribed by the statutory rules under the *Road Transport Act 2013*.

## 5 Investigation and enforcement of offences committed before participation day

- (1) For the avoidance of doubt, it is declared that the general savings and transitional provision does not affect the operation of section 30 of the *Interpretation Act 1987* in relation to a relevant offence.
- (2) The former legislation, as in force before the participation day, continues to apply for the purposes of a relevant offence:
  - (a) as if the Law was not in force, and
  - (b) if any of the former legislation was amended on that day—as if it had not been amended on that day.
- (3) Without limiting subclauses (1) and (2):
  - (a) the former legislation, as in force before the participation day, continues to have effect for all matters arising, whether before, on or after the participation day:
    - (i) in the investigation of the relevant offence, or
    - (ii) in the enforcement of any of the former legislation in relation to the relevant offence, and
  - (b) proceedings for the relevant offence or an associated offence may be commenced under any of the former legislation as in force before the participation day, and
  - (c) the *Fines Act 1996*, as in force before the participation day, applies to the relevant offence and any associated offence.
- (4) Section 748 (5) of the Law applies to a relevant prosecution as if it were a prosecution referred to in section 748 (3) (c) of the Law.
- (5) In this clause:

**associated offence** means any offence arising out of any investigation or enforcement as mentioned in subclause (3) (a).

**relevant offence** means an offence committed or suspected to have been committed under the former legislation before the participation day.

**relevant prosecution** means the prosecution of:

- (a) a relevant offence, and
- (b) any other offence that, under this clause, is dealt with as an offence under any of the former legislation.

## 6 Corresponding provision declaration of certain existing accreditation schemes

- (1) This clause applies in relation to each of the following schemes (an **existing accreditation scheme**):
  - (a) the Hire Trailer Maintenance Management Accreditation Scheme referred to in clause 72 of the *Road Transport (Vehicle Registration) Regulation 2007* (as in force immediately before its repeal by the amending Act),
  - (b) the NSW Livestock Loading Scheme approved for the purposes of paragraph (b) of the definition of **Mass Management Accreditation Scheme** in the Dictionary of the *Road Transport (Mass, Loading and Access) Regulation 2005* (as in force immediately before the participation day).

### Note—

See also the *Ministerial Declaration (NSW Livestock Loading Scheme) Order 2012* originally made under section 16 of the former *Road Transport (General) Act 2005*.

- (2) It is declared that accreditation under an existing accreditation scheme has effect, on and from the participation day, for the purposes of the Law as if:
  - (a) the Law had been in force when the accreditation was granted, and
  - (b) the accreditation were the accreditation to which it corresponds under section 458 of the Law, and
  - (c) the accreditation had been granted under the Law on the participation day for the period of:
    - (i) in the case of the Hire Trailer Maintenance Management Accreditation Scheme—3 years, or
    - (ii) in the case of the NSW Livestock Loading Scheme—5 years.
- (3) RMS is to exercise all of the functions of the Regulator under the National Law instead of the Regulator in relation to the NSW Livestock Loading Scheme as if RMS were the Regulator.
- (4) Without limiting subclause (3), the functions of the Regulator that RMS may exercise in relation to the NSW Livestock Loading Scheme instead of the Regulator because of that subclause include (but are not limited to) the following:
  - (a) the charging of fees,

- (b) the issuing of business rules,
  - (c) the setting of conditions and requirements,
  - (d) the issuing of forms and labels.
- (5) Without limiting subclauses (3) and (4), the local regulations may make provision for or with respect to the modification of the provisions of Chapter 8 of the Law in their application to the NSW Livestock Loading Scheme (including in relation to the business rules applicable to the Scheme and the admission of new participants to the Scheme).
- (6) Nothing in this clause limits the application of the general savings and transitional provision or section 61 (Accreditations not granted under former legislation) of the *Heavy Vehicle (General) National Regulation (NSW)* to accreditation under any other accreditation scheme in operation in New South Wales before the participation day.

## **7 Authorised officers**

Despite section 748 (3) (a) of the Law, a person who, immediately before the participation day, was an authorised officer appointed (or taken to have been appointed) under section 166 of the *Road Transport Act 2013* is taken, on and from that day, to be an authorised officer for the purposes of the Law as if he or she had been appointed by the Regulator under section 481 of the Law.

## **8 Approved vehicle examiners**

Despite Part 14.2 of the Law, a person who was a licensed certifier within the meaning of Part 5A (Certification of vehicles) of the *Road Transport (Vehicle Registration) Regulation 2007* immediately before the participation day is taken, on and from that day, to be an approved vehicle examiner for the purposes of Part 3.3 of the Law as if he or she had been approved as a vehicle examiner under the national regulations (as referred to in section 731 of the Law) for this purpose.

## **9 Declaratory regulation-making power for general savings and transitional provision**

- (1) The local regulations may make provision of a declaratory nature (a **declaratory provision**), as provided for in subclause (2), in relation to the operation of the general savings and transitional provision.
- (2) A declaratory provision may, in relation to a particular thing done under the former legislation before the participation day:
- (a) declare that the general savings and transitional provision applies to it, or
  - (b) declare how the general savings and transitional provision applies to it, or
  - (c) declare that the general savings and transitional provision does not apply to it,

and provide how the thing must otherwise be dealt with.

- (3) A declaratory provision has effect according to its terms.
- (4) The operation of the general savings and transitional provision is not limited by the making of a declaratory provision other than to the extent provided for in the provision.
- (5) To the extent to which a declaratory provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (6) Any local regulation making provision as provided for in clause 1 is not limited by this clause.
- (7) A declaratory provision must declare that it is a declaratory provision.

### **Division 3 Miscellaneous**

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

- (1) Schedule 4 to the amending Act is taken to be and has effect as a local regulation under this Act.
- (2) Part 2 of the *Subordinate Legislation Act 1989* does not apply to the regulation set out in Schedule 4 to the amending Act (but applies to any amendment or repeal of the regulation).
- (3) For the purposes of section 10 of the *Subordinate Legislation Act 1989*, the regulation set out in Schedule 4 to the amending Act is taken to have been published on the participation day.
- (4) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in Schedule 4 to the amending Act (but apply to any amendment or repeal of the regulation).

**Note—**

The continued effect of the regulation set out in Schedule 4 to the amending Act is unaffected by the repeal of that Schedule. See section 30 of the *Interpretation Act 1987*.



## 11 Updating of references to former legislation in connection with heavy vehicles

- (1) Subclauses (2)–(4) apply to references in any other Act or in any instrument made under any other Act other than:
  - (a) a reference in the *Road Transport Act 2013* or an instrument made under that Act, or
  - (b) a reference in the amending Act, or
  - (c) a reference in a provision of another Act or statutory rule made under another Act that is a reference that was inserted or substituted by, or retained despite, an amendment made to the provision by the amending Act, or
  - (d) a reference in a provision of another Act or statutory rule made under another Act (as amended, substituted or inserted by the amending Act), or
  - (e) such references as may be prescribed by the local regulations.
- (2) Subject to subclause (3), a reference to the former *Road Transport (Vehicle and Driver Management) Act 2005* or *Road Transport (Vehicle and Driver Management) Regulation 2005* is to be read, on and from the participation day, as a reference to the Law.
- (3) A reference to a provision of the former *Road Transport (Vehicle and Driver Management) Act 2005* or *Road Transport (Vehicle and Driver Management) Regulation 2005* is to be read, on and from the participation day, as a reference to the corresponding provision (if any) of the Law or the regulations in force for the purposes of the Law.
- (4) A reference to a repealed provision of the former legislation (other than the former *Road Transport (Vehicle and Driver Management) Act 2005* or *Road Transport (Vehicle and Driver Management) Regulation 2005*) for which there is a corresponding provision in the Law or the regulations in force for the purposes of the Law is to be read, on and after the participation day, as a reference to the corresponding provision.
- (5) The local regulations may make provision for or with respect to the updating of:
  - (a) references to which subclauses (2)–(4) do not apply, and
  - (b) references in any other documents to which this clause does not apply.
- (6) In this clause:

**corresponding provision**, in relation to the Law or the regulations in force for the purposes of the Law, means a provision of the Law or the regulations that corresponds, or substantially corresponds, to the provision of the former legislation concerned.

***repealed provision*** of the former legislation means a provision of that legislation that was repealed by the amending Act.