

HEAVY VEHICLE NATIONAL LAW (TASMANIA) BILL 2013

CLAUSE NOTES

PART 1 – PRELIMINARY

Clause 1 - Short title

Clause 2 - Commencement

This clause provides for the commencement of the provisions of the Bill. The Bill will come into operation on a day or days to be proclaimed. As a national scheme, the Heavy Vehicle National Law relies on each jurisdiction passing its application laws before the agreed commencement date. To allow for any contingencies that may occur in other jurisdictions passing their application laws, no default commencement date is set. It is planned to commence the Heavy Vehicle National Law in all participating jurisdictions on a common agreed date.

Clause 3 – Interpretation

This clause defines certain terms for the purposes of the Bill.

PART 2 – ADOPTION OF HEAVY VEHICLE NATIONAL LAW

Clause 4 - Application of Heavy Vehicle National Law

This clause formally applies the Heavy Vehicle National Law, which exists in a Schedule to the Queensland Act, as a law of Tasmania.

Clause 5 - Application of national regulations

This clause states that the national regulations will apply as regulations in force for the purposes of the Heavy Vehicle National Law (Tasmania).

Clause 6 - Exclusion of legislation of this jurisdiction

This clause excludes a number of oversight laws of Tasmania from the Heavy Vehicle National Law (Tasmania) or to instruments under that law. The Heavy Vehicle National Law and the National Heavy Vehicle Regulator are hosted in Queensland. Therefore the oversight laws of Queensland will apply. Interpretation

provisions are also included in Schedule 1 of the HVNL. Clause 6 (3) ensures Tasmania's oversight laws apply to a State entity or an employee of a State entity exercising a function under the Heavy Vehicle National Law (Tasmania). For example under a service agreement.

Clause 7 - Amendments to Heavy Vehicle National Law (Tasmania)

This clause specifies that any amendments to the Heavy Vehicle National Law will be tabled in each House of the Tasmanian Parliament within 10 sitting days from the date on which the amendment receives the Royal Assent in Queensland. This clause does not affect the operation of the amendment.

Clause 8 - Procedure in relation to national regulations

This clause specifies that for the purposes of the Heavy Vehicle National Law (Tasmania), New South Wales is designated to publish the national regulations. This clause also provides that the national regulations will be notified in the Gazette and laid before each House of the Tasmanian Parliament. If either House of Parliament passes a resolution to disallow a regulation, the regulation does not cease to have effect in this jurisdiction unless it is disallowed in a majority of participating jurisdictions.

Clause 9 - Interpretation of certain expressions

This clause defines certain terms used in the Heavy Vehicle National Law in order to give them particular meaning in this jurisdiction.

Clause 10 - Declaration about industrial relations status of Regulator

This clause applies for the purposes of industrial relations and to clarify the policy intent to establish the Regulator as a single national entity and national employer for the purpose of the *Fair Work Act 2009*.

Clause 11 - Particular law

This clause declares the WHS law for Tasmania and the applicable road rules.

Clause 12 - Local Government authority

This clause defines that a 'council' under the Local Government Act is a 'local government' for the purposes of the Heavy Vehicle National Law (Tasmania).

Clause 13 - Relevant tribunal or court

This clause declares the term 'relevant tribunal or court' in the Heavy Vehicle National Law (Tasmania) means for the purposes of chapter 11 (review and appeals) the Magistrates Court (Administrative Appeals Division) and for the purposes of all other chapters of the law the Magistrates Court.

Clause 14 - Responsible Minister

This clause specifies the term 'responsible Minister' in the Heavy Vehicle National Law (Tasmania) means the Minister responsible for administering the Bill.

Clause 15 - Road authority

This clause specifies that the term 'road authority' in the Heavy Vehicle National Law (Tasmania) means the Registrar of Motor Vehicles for the purposes of s712 paragraphs (a), (b) and (c) and the Minister administering the *Roads and Jetties Act 1935* for all other provisions.

Clause 16 - Road Manager

This clause lists the relevant road managers in Tasmania for the purposes of the Heavy Vehicle National Law (Tasmania).

Clause 17 - Police officers who are authorised officers

This clause declares that for the purposes of the Heavy Vehicle National Law (Tasmania) all police officers are authorised officers.

Clause 18 - Authorised warrant official

This clause specifies that for the purposes of the Heavy Vehicle National Law (Tasmania) the term authorised warrant official means a magistrate within the meaning of the *Magistrates Court Act 1987*.

Clause 19 - Offences for which persons charged do not have benefit of mistake of fact defence

This clause declares that a person charged with an offence under the Heavy Vehicle National Law (Tasmania) does not have the benefit of mistake of fact defence where it is specified in the National Law.

The clause also defines what the mistake of fact defence means in Tasmania.

Clause 20 - Authorised use of protected information

This clause provides that for the purposes of the Heavy Vehicle National Law (Tasmania) the term 'relevant law' refers to the laws specified in this clause.

PART 3 – PROVISIONS SPECIFIC TO THIS JURISDICTION

Clause 21 - Authority to use force

This clause specifies that in the undertaking of a function under the Heavy Vehicle National Law (Tasmania) a police officer may use force against a person and an authorised officer may use force against property.

Clause 22 - Amendment or withdrawal of vehicle defect notices

This clause provides that for the purposes of the Heavy Vehicle National Law (Tasmania) a police officer from another jurisdiction may amend or withdraw a vehicle defect notice that has been issued in Tasmania by a police officer.

Clause 23 - Infringement notices

This clause specifies that the *Monetary Penalties Enforcement Act 2005* is the infringement notice offences law for Tasmania and procedures for dealing with infringement notices under this law will apply for Tasmania.

The clause also provides that the infringement penalty is 10% of the maximum penalty for the offence.

Clause 24 - Determination of wheel load, single axle load, axle group load or aggregate axle load

This clause empowers authorised officers to determine, in accordance with regulations, the wheel load, single axle load, axle group load or aggregate load of a heavy vehicle or combination for the purposes of the Heavy Vehicle National Law (Tasmania).

This clause also provides a power to make regulations relating to determining mass, issuing certificates and methods for testing instruments.

Clause 25 - Contravening condition of mass or dimension exemption relating to escort vehicle

This clause disapplies the Heavy Vehicle National Law (Tasmania) in the situation where, for public safety reasons only, an authorised officer driving an escort vehicle reasonably believes that a breach of the conditions of the permit in relation to the positioning of the escort vehicle or distance is necessary.

Clause 26 - Fees for vehicle inspections

This clause allows for the identified persons to charge fees for vehicle inspections.

Clause 27- Fees for route assessments

This clause allows for the road manager to charge for supplying a route assessment.

Clause 28 - No double jeopardy

This clause provides that where an offence has been committed and punished under the law of a participating jurisdiction and the offence is also an offence under the Heavy Vehicle National Law (Tasmania), the offender cannot be punished again for that same offence under the Heavy Vehicle National Law (Tasmania).

PART 4 – SAVINGS AND TRANSITIONAL PROVISIONS

Clause 29 - Application of Division

This clause provides that the savings and transitional arrangements for fatigue management will apply for the period between the initial proclamation date of the Application Bill and the commencement of the Heavy Vehicle National Law fatigue provisions in Tasmania six months later.

Clause 30 - Non-application of fatigue management provisions of Heavy Vehicle National Law

This clause specifies that during the transitional period the fatigue management provisions of the Heavy Vehicle National Law will not apply in Tasmania.

Clause 31 - Repeal of Division

This clause will repeal the application of transitional arrangements for fatigue management provisions of the Heavy Vehicle National Law (Tasmania). This clause will not be proclaimed until the six month transitional period is complete.

Clause 32 - Application of Division

This clause provides that the savings and transitional arrangements for registration of heavy vehicles will apply for the period between the initial proclamation date of the Application Bill and the commencement of Chapter 2 of the Heavy Vehicle National Law (Tasmania).

Clause 33 - Non-application of registration provisions of Heavy Vehicle National Law

This clause specifies that during the transitional period the registration provisions of the Heavy Vehicle National Law (Tasmania), Chapter 2, will not apply in Tasmania.

Clause 34 - Meaning of GCM and GVM

This clause provides that the meaning of GCM and GVM for the purposes of the Heavy Vehicle National Law (Tasmania) will have the same meanings as in the *Vehicle and Traffic Act 1999*. Since the national registration system is being deferred and therefore Chapter 2 of the Heavy Vehicle National Law (Tasmania) will not apply, a slightly alternative definition of GCM and GVM is needed.

Clause 35 - Registration

This clause provides references for a number of terms in relation to registration during the transitional period. Since the national registration system is being deferred, and therefore Chapter 2 of the Heavy Vehicle National Law (Tasmania) will not apply, an alternative definition of registration (for where the word occurs in other

parts of the Heavy Vehicle National Law) is needed. This means registration under the current system in Tasmania will continue to apply.

Clause 36 - Requirements about vehicle defect notices

This clause provides that a reference to section 527(1)(i) of the Heavy Vehicle National Law (Tasmania) should be read as a reference to the *Vehicle and Traffic Act 1999*.

Clause 37 - Power to cancel or suspend vehicle registration

This clause provides that a reference to section 598(5) of the Heavy Vehicle National Law (Tasmania) should be read as a reference to the Registrar of Motor Vehicles appointed under section 5 of the *Vehicle and Traffic Act 1999* or a corresponding authority.

Clause 38 - Repeal of Division

This clause will repeal the application of transitional arrangements for registration provisions of the Heavy Vehicle National Law.

This clause will not be proclaimed until there is national agreement by participating jurisdictions to switch on Chapter 2 of the National Heavy Vehicle Law (Tasmania) that deals with Registration.

Clause 39 - Accreditation

This clause provides savings and transitional provisions for mass management and maintenance management accreditations made under the *Traffic Act 1925* to continue under the Heavy Vehicle National Law (Tasmania).

Clause 40 - Provision of information and assistance by Registrar

This clause provides for the provision of information and assistance by the Registrar to the Regulator even if information is given to the Registrar in confidence.

Clause 41 - Validation of instruments and decisions by Regulator

This clause validates instruments and decisions made by the Regulator if it was made under the *Heavy Vehicle National Law Act 2012* but before the commencement of the Heavy Vehicle National Law (Tasmania).

Clause 42 - Provisions relating to Part 14.2 of the Heavy Vehicle National Law

This clause identifies the *Vehicle and Traffic Act 1999* as the former legislation for the purposes of Part 14.2 of the Heavy Vehicle National Law.

The clause also identifies permits, notices and exemptions currently made under the *Vehicle and Traffic Act 1999* and their corresponding sections of the Heavy Vehicle

National Law (Tasmania) and provides savings and transitional provisions for them to remain in place until they expire.

The clause also identifies that due to the introduction of national law fatigue requirements, following the Tasmanian six month delay, those exemptions currently granted for fatigue (primarily an exemption from keeping a driving hour record) will expire as they no longer relate to the national law.

PART 5 – MISCELLANEOUS

Clause 43 - Regulations

This clause provides a power for the making of regulations for the purposes of the local application provisions.

Clause 44 - Consequential amendment of order does not prevent subsequent amendment

This clause is a standard Office of Parliamentary Counsel clause for the avoidance of doubt. Where an order, such as a statutory rule has been amended by an Act it is not prevented from being amended or rescinded by a subsequent order.

Clause 45 - Administration of Act

This clause provides that the administration of this Act is assigned to the Minister for Infrastructure and the department responsible to that Minister in relation to administration of this Act is the Department of Infrastructure, Energy and Resources.

Clause 46 - Consequential Amendments

This clause specifies that consequential amendments are set out in Schedule 1.

Clause 47 - Legislation repealed

This clause specifies that legislation to be repealed is set out in Schedule 2.

Clause 48 - Legislation revoked

This clause specifies that legislation to be revoked is set out in Schedule 3.