

South Australia

Heavy Vehicle National Law (South Australia) (Amendment of Law No 5) Regulations 2018

under section 5 of the *Heavy Vehicle National Law (South Australia) Act 2013*

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Preamble

- 1 Section 5 of the *Heavy Vehicle National Law (South Australia) Act 2013* provides that if—
- (a) the Parliament of Queensland enacts an amendment to the *Heavy Vehicle National Law* set out in the Schedule to the *Heavy Vehicle National Law Act 2012* of Queensland (the *Queensland Act*); and
 - (b) the Governor is satisfied that an amendment that corresponds, or substantially corresponds, to the amendment made by the Parliament of Queensland should be made to the *Heavy Vehicle National Law (South Australia)*,
- the Governor may, by regulation, amend the South Australian Heavy Vehicle National Law text.
- 2 The Parliament of Queensland has enacted the *Heavy Vehicle National Law and Other Legislation Amendment Act 2018* to, among other things, amend the Queensland Act and the Governor is satisfied that the amendments corresponding to the Queensland amendments set out in Part 2 of these regulations should be made to the South Australian Heavy Vehicle National Law text.
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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Heavy Vehicle National Law (South Australia) (Amendment of Law No 5) Regulations 2018*.

2—Commencement

- (1) Subject to subregulation (2), these regulations will be taken to have come into operation on 1 July 2018.
- (2) Regulations 8, 11 to 15, 24 to 26, 34 and 35 will come into operation immediately after the commencement of the *Heavy Vehicle National Law (South Australia) (Amendment of Law No 4) Regulations 2017*.

3—Interpretation

In these regulations—

Act means the *Heavy Vehicle National Law (South Australia) Act 2013*.

4—Amendment provision

Pursuant to section 5 of the Act, the Heavy Vehicle National Law (South Australia) is amended as specified in Part 2 of these regulations.

Part 2—Amendment of Heavy Vehicle National Law (South Australia)

5—Amendment of section 4—Regulatory framework to achieve object

Section 4(b)—delete paragraph (b) and substitute:

- (b) provides for a database of heavy vehicles; and

6—Amendment of section 5—Definitions

- (1) Section 5, definition of *conditionally registered*—delete the definition
- (2) Section 5, after the definition of *daily sheet* insert:

database of heavy vehicles means the database of heavy vehicles kept under section 686A;
- (3) Section 5, definition of *GCM*, (a)—delete paragraph (a) and substitute:
 - (a) if the registration authority has specified the total maximum loaded mass of the motor vehicle and any vehicles it may lawfully tow at any given time—specified by the registration authority; or
- (4) Section 5, definition of *GVM*, (a)—delete paragraph (a) and substitute:
 - (a) if the registration authority has specified the vehicle’s maximum loaded mass—specified by the registration authority; or
- (5) Section 5, definition of *insurer*—delete the definition
- (6) Section 5, definition of *registered operator*—delete the definition and substitute:

registered operator, of a heavy vehicle, means the person recorded on a vehicle register as the person responsible for the vehicle, however named, kept under another Australian road law;
- (7) Section 5, definition of *registration*—delete the definition and substitute:

registration, of a heavy vehicle, means registration of the vehicle under an Australian road law;
- (8) Section 5, definition of *registration authority*—delete the definition and substitute:

registration authority, for a heavy vehicle, means the authority responsible for the registration of the vehicle under an Australian road law;
- (9) Section 5, definition of *registration exemption*—delete the definition

- (10) Section 5, definition of *registration item*—delete the definition and substitute:
registration item means a document, number plate, label or other thing relating to the registration or purported registration of a heavy vehicle;
- (11) Section 5, definition of *registration number*—delete the definition and substitute:
registration number, for a heavy vehicle, means the identifying registration number, however described, given to the vehicle under an Australian road law;
- (12) Section 5, definition of *unregistered heavy vehicle permit*—delete the definition and substitute:
unregistered heavy vehicle permit means a permit granted or issued under an Australian road law authorising the use of an unregistered heavy vehicle on a road;
- (13) Section 5, definition of *vehicle register*—delete the definition
- (14) Section 5, definition of *vehicle registration duty*—delete the definition
- (15) Section 5, definition of *vehicle registration duty legislation*—delete the definition
- (16) Section 5, definition of *wrecked*—delete the definition
- (17) Section 5, definition of *written-off*—delete the definition

7—Amendment of section 6—Meaning of heavy vehicle

Section 6(2)—delete "other than in relation to registration under this Law"

8—Amendment of section 26D—Duty of executive of legal entity

- (1) Section 26D(1)—delete "a duty under section 26C" and substitute:
a safety duty
- (2) Section 26D(1) and (2)—delete "the duty" and substitute in each case:
the safety duty
- (3) Section 26D—after subsection (2) insert:
(2A) Subsection (1) does not apply to an executive of the legal entity acting on a voluntary basis, whether or not the executive is reimbursed for the expenses incurred by the executive for carrying out activities for the legal entity.
- (4) Section 26D(3), definition of *due diligence*, (d)(iii)—delete "duty under section 26C" and substitute:
safety duties
- (5) Section 26D(3)—after the definition of *legal entity* insert:
safety duty means a duty imposed under any of the following provisions:
(a) section 26C;
(b) section 26E(1) or (2);
(c) section 89(1);

- (d) section 93(1), (2) or (3);
- (e) section 129(1), (2) or (3);
- (f) section 137;
- (g) section 150(1);
- (h) section 153A(1);
- (i) section 186(2), (3), (4) or (5);
- (j) section 187(2) or (3);
- (k) section 335(1);
- (l) section 336(1);
- (m) section 337(2);
- (n) section 454(1) or (2);
- (o) section 467;
- (p) section 470(2), (3) or (4);
- (q) section 604;
- (r) section 610.

9—Repeal of Chapter 2

Chapter 2—delete the Chapter

10—Amendment of section 60—Compliance with heavy vehicle standards

- (1) Section 60(3)—delete "Regulator when the vehicle was registered under the national regulations" and substitute:

registration authority for the heavy vehicle at the time the registration authority registered the vehicle under an Australian road law
- (2) Section 60(4)—delete subsection (4) and substitute:
 - (4) For the purposes of subsection (3), the registration authority is taken to have known of the heavy vehicle's noncompliance with a heavy vehicle standard at the time the registration authority registered the vehicle if the noncompliance was mentioned in—
 - (a) an operations plate that was installed on the vehicle at the time it was registered; or
 - (b) a certificate of approved operations issued for the vehicle and in force at the time the vehicle was registered; or
 - (c) a document obtained by the registration authority under an Australian road law in connection with the registering of the vehicle.
- (3) Section 60(5)—delete "registration" and substitute:

heavy vehicle's registration under an Australian road law

11—Amendment of section 105—Minor risk breach

Section 105—delete "if the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement." and substitute:

if—

- (a) the dimension requirement relates to the vehicle's ground clearance;
or
- (b) for a contravention of any other dimension requirement—the subject matter of the contravention is less than the substantial risk breach lower limit for the requirement.

12—Amendment of section 116—Class 1 heavy vehicles and class 3 heavy vehicles

Section 116(4), definition of *special purpose vehicle*, (a)—delete "carrying goods" and substitute:

transporting goods by road

13—Amendment of section 192A—Form of information in container weight declaration

Section 192A(2)(b)—delete paragraph (b) and substitute:

- (b) examining documents made available to the authorised officer on an electronic device or otherwise in electronic form.

14—Amendment of section 319—Records record keeper must have

- (1) Section 319(a)(vii)—delete "and" second occurring
- (2) Section 319(1)(a)—after subparagraph (vii) insert:
 - (viii) the location of the driver's base;
 - (ix) if the location of the driver's base changes—the date on which the location changes; and

15—Insertion of section 319A

After section 319 insert:

319A—General requirements about driver recording and giving information to record keeper

- (1) This section applies if the driver's record keeper on a relevant day is a person other than the driver.
- (2) The driver must, unless the driver has a reasonable excuse—
 - (a) within 24 hours after the driver stops working on the relevant day, record the information mentioned in section 319(1)(a)(iii) to (vi) for that day; and

- (b) within 21 days after the relevant day, give the information mentioned in section 319(1) for that day to the driver's record keeper.

Maximum penalty: \$3 000.

- (3) The requirement imposed on the driver by subsection (2)(a) is taken to be satisfied if the record keeper records the information within the period mentioned in the provision.
- (4) The requirement imposed on the driver by subsection (2)(b) is taken to be satisfied if the record keeper obtains the information within the period mentioned in the provision in any way, including, for example, because the information is recorded—
 - (a) in an electronic work diary used by the driver, the information in which is maintained by the record keeper; or
 - (b) by the record keeper.
- (5) The record keeper must, so far as is reasonably practicable, ensure the driver complies with subsection (2)(b).

Maximum penalty: \$3 000.

- (6) If the record keeper has engaged another person under a contract for services to comply with subsection (5) for the record keeper—
 - (a) the record keeper remains liable for an offence against subsection (5); and
 - (b) the other person is also liable for an offence against subsection (5) as if the other person were the record keeper mentioned in the subsection.
- (7) In this section—

relevant day means a day on which the driver drives a fatigue-regulated heavy vehicle on a road.

16—Amendment of section 520—Power to enter and inspect heavy vehicles for monitoring purposes

Section 520(2)(b)—delete paragraph (b) and substitute:

- (b) without limiting paragraph (a), look for, check the details of, or film a registration item, label or other thing required to be displayed on the heavy vehicle under an Australian road law; and

17—Amendment of section 521—Power to enter and search heavy vehicle involved, or suspected to be involved, in an offence etc

Section 521(3)(c)—delete paragraph (c) and substitute:

- (c) without limiting paragraph (b), look for, check the details of, or film a registration item, label or other thing required to be displayed on the heavy vehicle under an Australian road law; and

18—Amendment of section 522—Power to order presentation of heavy vehicles for inspection

Section 522(6)—delete subsection (6)

19—Amendment of section 525—Definitions for Division 6

Section 525, definition of *registration authority*—delete the definition

20—Amendment of section 527—Requirements about vehicle defect notice

Section 527(1)(i)—delete "under this Law" and substitute:

by a registration authority under an Australian road law

21—Amendment of section 551—Seizure of number plates

- (1) Section 551(2)—delete "this Law or any other applicable law" wherever occurring and substitute in each case:

an Australian road law

- (2) Section 551(4)(a)—delete "this Law or any other applicable law" and substitute:

an Australian road law

22—Amendment of section 569—Power to require production of documents etc generally

Section 569(1)(f)—delete paragraph (f) and substitute:

- (f) a document in the person's possession or under the person's control showing that a heavy vehicle's garage address recorded on a vehicle register, however named, kept under another Australian road law is or is not the vehicle's actual garage address.

23—Amendment of section 598—Power to cancel or suspend vehicle registration

Section 598(5)—delete "Regulator" and substitute:

registration authority for the heavy vehicle

24—Amendment of section 636—Liability of executive officers of corporation

- (1) Section 636(1)—after subsection (1) (and the penalty provision) insert:

Note—

See also section 26D for the duty of an executive officer of a corporation to exercise due diligence to ensure the corporation complies with its safety duties under this Law.

- (2) Section 636(2) and (3)—delete subsections (2) and (3)

25—Amendment of section 637—Treatment of unincorporated partnerships

- (1) Section 637(5) and (6)—delete subsections (5) and (6)

- (2) Section 637(8)—delete "Subsections (4) and (5) do" and substitute:

Subsection (4) does

26—Amendment of section 638—Treatment of other unincorporated bodies

- (1) Section 638(5) and (6)—delete subsections (5) and (6)
- (2) Section 638(8)—delete "Subsections (4) and (5) do" and substitute:

Subsection (4) does

27—Amendment of section 653—Approved guidelines for exemptions, authorisations, permits and other authorities

Section 653(1)(a)—delete paragraph (a)

28—Amendment of section 658—General powers of Regulator

Section 658(2)(b)—delete paragraph (b) and substitute:

- (b) the Regulator to provide services to the State or Territory relating to the functions of the Regulator under this Law.

29—Amendment of section 659—Functions of Regulator

Section 659(2)(a)—delete paragraph (a) and insert:

- (a) to provide the necessary administrative services for the operation of this Law, including, for example, collecting fees, charges and other amounts payable under this Law;
- (aa) to keep the database of heavy vehicles;

30—Amendment of section 660—Cooperation with participating jurisdictions and Commonwealth

- (1) Section 660(2)—after paragraph (b) insert:

and

- (c) give information to a government agency of a participating jurisdiction or the Commonwealth that the agency requires to exercise its functions under a law of the participating jurisdiction or the Commonwealth.

- (2) Section 660—after subsection 660(3) insert:

- (4) A government agency that receives information under this section from the Regulator is authorised to use the information only to exercise its functions mentioned in subsection (2)(c).

31—Insertion of Chapter 12 Part 2A

After section 686 insert:

Part 2A—Database of heavy vehicles

686A—Database of heavy vehicles

- (1) The Regulator must keep a database of heavy vehicles that enables the identification of a heavy vehicle registered under a law of a participating jurisdiction and the registered operator of the vehicle.

- (2) The database of heavy vehicles must—
 - (a) be kept in the way prescribed by the national regulations;
and
 - (b) contain the information prescribed by the national regulations.
- (3) The Regulator may include in the database of heavy vehicles other information the Regulator considers relevant to the objects of this Law, including information given by another Australian jurisdiction to the Regulator.
- (4) The Regulator may require a registration authority that registers a heavy vehicle under a law of a participating jurisdiction to give the Regulator the information prescribed under subsection (2)(b) as soon as reasonably practicable after the registration authority receives the information.
- (5) If the registration authority becomes aware of a change to the information given to the Regulator under subsection (4), the registration authority must, as soon as reasonably practicable after becoming aware of the change, notify the Regulator of the change.

686B—Regulator may share information in database of heavy vehicles

The Regulator may give information included in the database of heavy vehicles to—

- (a) a registration authority for a participating jurisdiction or another Australian jurisdiction; or
- (b) a police force or police service for a participating jurisdiction or another Australian jurisdiction.

32—Amendment of section 688—Payments into Fund

Section 688(2) and (3)—delete subsections (2) and (3) and substitute:

- (2) Money that is received by the Regulator under an agreement mentioned in section 658(2)(b) and that is payable to another entity under the agreement is not payable into the Fund.

33—Amendment of section 711—Evidence by certificate by Regulator generally

- (1) Section 711(1)(a) to (d)—delete paragraphs (a) to (d) (inclusive)
- (2) Section 711(1)(h)—delete "registration,"

34—Insertion of section 737A

After section 737 insert:

737A—Application of section 737 to new penalties

- (1) The enactment of a new penalty includes the enactment of an increase in the amount of penalty applying under section 737, to take effect when the new penalty commences.
- (2) For applying section 737 under subsection (1) to a new penalty, the amount of penalty applying under section 737 is to be calculated as if—
 - (a) the new penalty had commenced before 1 July 2014; and
 - (b) the amount of penalty applying had been increased under section 737(2) on 1 July 2014 and any later 1 July happening before the new penalty actually commences.
- (3) In this section—

new penalty means a penalty amount stated at the end of a provision for an offence inserted into this Law by an amending Act.

35—Amendment of Schedule 4—Liability provisions

- (1) Schedule 4—delete "The provisions specified in column 3 of the table are specified for the purposes of section 636(2), 637(5) and 638(5)."
- (2) Schedule 4, table, column 3—delete column 3 of the table

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 16 August 2018

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