

South Australia

# **Heavy Vehicle National Law (South Australia) (Amendment of Law) Regulations 2020**

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 2019* 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) Regulations 2020*.

## 2—Commencement

- (1) Subject to this regulation, these regulations come into operation on the day on which section 7 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* of Queensland comes into operation.
- (2) Part 2 Division 1 comes into operation on the day on which section 15 of the *Road Vehicle Standards Act 2018* of the Commonwealth comes into operation.
- (3) Regulation 11 comes into operation on the day on which section 10 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* of Queensland comes into operation.
- (4) Regulation 12 comes into operation on the day on which section 11 of the *Heavy Vehicle National Law and Other Legislation Amendment Act 2019* of Queensland comes into operation.

## 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)

## Division 1—Amendments commencing on commencement of section 15 of *Road Vehicle Standards Act 2018* of the Commonwealth

### 5—Amendment of section 5—Definitions

- (1) Section 5, definition of *ADR*—delete the definition and substitute:

*ADR* means—

  - (a) a third edition ADR; or
  - (b) a second edition ADR;
- (2) Section 5, definition of *identification plate*—delete the definition and substitute:

*identification plate* means a plate approved to be placed on a vehicle, or taken to have been placed on a vehicle, under the *Motor Vehicle Standards Act 1989*;
- (3) Section 5—after the definition of *motor vehicle* insert:

*Motor Vehicle Standards Act 1989* means the repealed *Motor Vehicle Standards Act 1989* of the Commonwealth as in force before its repeal;
- (4) Section 5—after the definition of *road transport* insert:

*Road Vehicle Standards Act 2018* means the *Road Vehicle Standards Act 2018* of the Commonwealth;

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- (5) Section 5—after the definition of *scheduler* insert:

*second edition ADR* means an ADR incorporated in the document described as the "Australian Design Rules for Motor Vehicle Safety, Second Edition" originally published by the former Commonwealth Department of Transport;

- (6) Section 5—after the definition of *the State* insert:

*third edition ADR* means—

- (a) a national standard under section 7 of the *Motor Vehicle Standards Act 1989*; or
- (b) a national road vehicle standard under section 12 of the *Road Vehicle Standards Act 2018*;

- (7) Section 5, definition of *VIN (vehicle identification number)*—delete the definition and substitute:

*VIN* (vehicle identification number), for a heavy vehicle, means—

- (a) for a heavy vehicle built before 1 January 1989 that has an identification plate, the number quoted on the vehicle's identification plate that—
  - (i) uniquely identifies the vehicle and sets it apart from similar vehicles; and
  - (ii) corresponds to the identification number of the vehicle that is permanently recorded elsewhere on the vehicle; or
- (b) for a heavy vehicle built on or after 1 January 1989 that was given an approval under the *Motor Vehicle Standards Act 1989* or is given an approval under the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* of the Commonwealth, the unique vehicle identification number assigned to the vehicle—
  - (i) at the time the vehicle was manufactured, in accordance with a third edition ADR; or
  - (ii) by the department of government of the Commonwealth in which the *Motor Vehicle Standards Act 1989* was previously administered; or
- (c) otherwise, the unique number assigned to the heavy vehicle—
  - (i) at the time the vehicle was manufactured, in accordance with an ADR that is a national road vehicle standard under section 12 of the *Road Vehicle Standards Act 2018*; or
  - (ii) by the department of government of the Commonwealth in which the *Road Vehicle Standards Act 2018* is administered;

## 6—Insertion of section 14

After section 13 insert:

### 14—References to particular ADR versions

A reference in this Law to an ADR followed by a number is a reference to—

- (a) if the reference is to a second edition ADR—the ADR of that number in the "Australian Design Rules for Motor Vehicle Safety, Second Edition"; or
- (b) otherwise—the ADR of that number referenced in the relevant standard.

## 7—Amendment of section 84—Definition for Chapter 3 Part 3

Section 84, definition of *modification*—delete "the *Motor Vehicle Standards Act 1989* of the Commonwealth" and substitute:

the *Road Vehicle Standards Act 2018*, item 16(2) of Schedule 3 to the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* of the Commonwealth or the *Motor Vehicle Standards Act 1989* before the repeal of that Act

## Division 2—Other amendments

### 8—Amendment of section 5—Definitions

- (1) Section 5—before the definition of *AFM accreditation* insert:

*advice purposes* means providing advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations;

- (2) Section 5, definition of *major defect notice*—delete the definition and substitute:

*major defect notice* means a notice complying with the requirements for a major defect notice under section 527;

- (3) Section 5, definition of *minor defect notice*—delete the definition and substitute:

*minor defect notice* means a notice complying with the requirements for a minor defect notice under section 527;

- (4) Section 5—before the definition of *self-employed driver* insert:

*self-clearing defect notice* means a notice complying with the requirements for a self-clearing defect notice under section 527;

- (5) Section 5, definition of *vehicle defect notice*—delete the definition and substitute:

*vehicle defect notice* means a major defect notice, minor defect notice or self-clearing defect notice;

## 9—Amendment of section 73—Permit for vehicle standards exemption (permit) etc

Section 73(1)(b)—delete paragraph (b) and substitute:

- (b) if the Regulator’s decision to grant the exemption for a period or impose a condition on the exemption is a reviewable decision—a notice stating the review and appeal information for the decision.

**Note—**

Under section 641(6)(a), this notice must also state particular information about obtaining a statement of reasons for the decision.

## 10—Amendment of section 85—Modifying heavy vehicle requires approval

Section 85—after subsection (3) insert:

- (4) A modification is taken to have been approved by an approved vehicle examiner under section 86 if—
  - (a) the modification has been authorised under an Australian road law of a non-participating jurisdiction; and
  - (b) a modification plate or label is fitted or affixed to a conspicuous part of the vehicle; and
  - (c) the modification plate or label indicates that the modification complies with a code of practice prescribed by the national regulations for the purposes of section 86.

- (5) In this section—

*authorised* includes approved and permitted;

*modification plate or label* means a plate or label that is stamped, engraved or marked so as to display information that relates to a modification;

*non-participating jurisdiction* has the meaning given by section 221.

## 11—Amendment of section 96—Compliance with mass requirements

Section 96—after subsection (4) insert:

- (4A) However, if a PBS vehicle is driven on a road other than in accordance with a class 2 heavy vehicle authorisation—
  - (a) subsection (4) does not apply to the vehicle; and
  - (b) the mass limit that would otherwise apply to the vehicle under a prescribed mass requirement applies to the vehicle.

## 12—Amendment of section 102—Compliance with dimension requirements

Section 102—after subsection (4) insert:

- (5) However, if a PBS vehicle is driven on a road other than in accordance with a class 2 heavy vehicle authorisation—
  - (a) subsection (4) does not apply to the vehicle; and

- (b) the dimension limit that would otherwise apply to the vehicle under a prescribed dimension requirement applies to the vehicle.

### **13—Amendment of section 127—Permit for mass or dimension exemption (permit) etc**

Section 127(1)(b), including the note—delete paragraph (b), including the note, and substitute:

- (b) a notice stating the review and appeal information for any of the following decisions that is a reviewable decision—
  - (i) the Regulator’s decision to grant the exemption for a period or impose a condition on the exemption;
  - (ii) a relevant road manager’s decision to consent to the grant of the exemption subject to a condition that a road condition or travel condition be imposed on the exemption.

**Note—**

Under section 641(6)(a), this notice must also state particular information about obtaining a statement of reasons for the decision.

### **14—Amendment of section 148—Permit for class 2 heavy vehicle authorisation (permit) etc**

Section 148(1)(b), including the note—delete paragraph (b), including the note, and substitute:

- (b) a notice stating the review and appeal information for any of the following decisions that is a reviewable decision—
  - (i) the Regulator’s decision to grant the authorisation for a period or impose a condition on the authorisation;
  - (ii) a relevant road manager’s decision to consent to the grant of the authorisation subject to a condition that a road condition or travel condition be imposed on the authorisation.

**Note—**

Under section 641(6)(a), this notice must also state particular information about obtaining a statement of reasons for the decision.

### **15—Amendment of section 153A—Using restricted access vehicle**

- (1) Section 153A(2)—after the definition of *restricted access vehicle* insert:

*specified semitrailer* means a semitrailer that—

- (a) is not a PBS vehicle; and
- (b) has an air suspension system with effective dampers fitted; and
- (c) has a deck height not higher than 1.2m for at least 50% of its deck length; and
- (d) if in a combination—the combination—

- (i) consists only of—
  - (A) a prime mover towing a single semitrailer attached to the prime mover by a fifth wheel coupling; or
  - (B) a B-double; or
  - (C) a B-triple; and
- (ii) has a mass not more than 90% of the prescribed mass requirements for the combination.

**Note—**

Although this section does not apply to certain combinations, a combination that is a class 2 heavy vehicle will still need to have a class 2 heavy vehicle authorisation (see section 137).

- (2) Section 153A(3)(b)—delete "section 136(2)." and substitute:  
section 136(2); or
- (3) Section 153A(3)—after paragraph (b), including the note, insert:
  - (c) a specified semitrailer.

## **16—Repeal of sections 164 and 165**

Sections 164 and 165—delete the sections

## **17—Amendment of section 172—Requirements for statement explaining adverse decision of road manager**

Section 172(2)—delete subsection (2) and substitute:

- (2) The written statement complies with this section if it sets out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the road manager's decision.

## **18—Amendment of section 479—Functions of authorised officers**

Section 479—after its present contents (now to be designated as subsection (1)) insert:

- (2) Also, an authorised officer who is not a police officer has the function under this Law to provide advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations.

## **19—Insertion of Chapter 9 Part 2 Division 1A**

Chapter 9, Part 2—after Division 1 insert:

### **Division 1A—Entry of relevant places for advice purposes**

#### **494A—Non-application to police officers**

This Division does not apply to an authorised officer who is a police officer.

### **494B—Power to enter relevant place**

An authorised officer may, for advice purposes, enter a relevant place if—

- (a) an occupier of the place consents under Division 4 to the entry and section 503 has been complied with for the occupier; or
- (b) the place is not a residence and is—
  - (i) open for carrying on a business; or
  - (ii) otherwise open for entry; or
  - (iii) required to be open for inspection under this Law.

### **494C—Power after entering relevant place**

If an authorised officer enters a relevant place under this Division, the officer may, for advice purposes, provide advice, information and education.

## **20—Amendment of section 496—General powers after entering relevant place**

Section 496—after subsection (6) insert:

- (6A) If the authorised officer is not a police officer, the officer may, for advice purposes, provide advice, information and education.

## **21—Amendment of section 500—General powers after entering a place**

Section 500—after subsection (10) insert:

- (11) If the authorised officer is not a police officer, the officer may, for advice purposes, provide advice, information and education.

## **22—Amendment of section 501—Application of Division 4**

Section 501—after "section" insert:

494B(a),

## **23—Amendment of section 525—Definitions for Division 6**

Section 525, definition of *defective vehicle label*, (a)—delete "vehicle defect notice" and substitute:

major defect notice or minor defect notice

## **24—Amendment of section 526—Issue of vehicle defect notice**

- (1) Section 526(1) and (2)—delete subsections (1) and (2) and substitute:

- (1) This section applies if an authorised officer who has inspected a heavy vehicle under this Law reasonably believes—
  - (a) the vehicle is a defective heavy vehicle; or
  - (b) a number plate of the vehicle is wholly or partly obscured, defaced or otherwise not legible.

- (2) The authorised officer may issue the following vehicle defect notice in relation to the heavy vehicle, in the way mentioned in subsection (3)—
  - (a) if the officer reasonably believes the vehicle is a defective heavy vehicle and use of the vehicle on a road poses an imminent and serious safety risk—a major defect notice;
  - (b) if the officer reasonably believes the vehicle is a defective heavy vehicle and use of the vehicle on a road poses a safety risk other than an imminent and serious safety risk—a minor defect notice;
  - (c) if the officer reasonably believes that use of the vehicle on a road does not pose a safety risk or subsection (1)(b) applies—a self-clearing defect notice.
- (2) Section 526(4)—delete subsection (4) and substitute:
  - (4) If the driver of a heavy vehicle for which a vehicle defect notice is issued under this section is not the operator of the vehicle, the driver must give the notice to the operator as soon as practicable, but not more than 14 days, after the notice is issued.  
Maximum penalty: \$3 000.

## **25—Amendment of section 527—Requirements about vehicle defect notice**

- (1) Section 527(1)(a)—delete paragraph (a) and substitute:
  - (a) that the notice is a major defect notice, minor defect notice or self-clearing defect notice;
  - (aa) that—
    - (i) the vehicle is a defective heavy vehicle; or
    - (ii) a number plate of the vehicle is wholly or partly obscured, defaced or otherwise not legible;
  - (ab) if the vehicle is a defective heavy vehicle—details of how the vehicle is a defective heavy vehicle;
- (2) Section 527(1)(b)—delete "notice given in circumstances mentioned in section 526(2)(a)" and substitute:  
major defect notice
- (3) Section 527(1)(c)—delete paragraph (c) and substitute:
  - (c) for a minor defect notice—
    - (i) that corrective action must be taken by a stated time (the *due time*); and
    - (ii) that, after the due time, the vehicle must not be used on a road unless corrective action has been taken;
  - (ca) for a self-clearing defect notice—
    - (i) that corrective action must be taken by a stated day (the *due day*) not more than 28 days after the notice is issued; and

- (ii) that, after the due day, the vehicle must not be used on a road unless corrective action has been taken;
- (4) Section 527(1)(i) and (j)—delete paragraphs (i) and (j) and substitute:
  - (i) the day and time the notice was issued;
  - (j) for a major defect notice or minor defect notice—
    - (i) that, if the notice is not cleared by the Regulator under section 530, the vehicle's registration may be suspended and subsequently cancelled by a registration authority under an Australian road law; and
    - (ii) any conditions imposed under subsection (2).
- (5) Section 527(2)—delete "vehicle defect notice" and substitute:  
major defect notice or minor defect notice
- (6) Section 527—after subsection (3) insert:
  - (4) In this section—  
*corrective action*, for a vehicle, means action that stops—
    - (a) the vehicle from being a defective heavy vehicle; or
    - (b) a number plate of the vehicle being wholly or partly obscured, defaced or otherwise not legible.

## **26—Amendment of section 529—Using heavy vehicles contrary to vehicle defect notice**

Section 529, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a major defect notice or minor defect notice—\$6 000; or
- (b) for a self-clearing defect notice—\$3 000.

## **27—Insertion of section 529AA**

After section 529 insert:

### **529AA—Permission to use vehicle the subject of a self-clearing defect notice**

- (1) An authorised officer may, on request made by the operator of a heavy vehicle that is the subject of a self-clearing defect notice, give written permission for the vehicle to be used on a road during a period stated in the permission.
- (2) The permission is subject to the condition that the vehicle will be used only for the purpose of driving the vehicle to and from a place where repairs are to be carried out.
- (3) The use of the vehicle under the permission, in accordance with the condition, is not a contravention of the self-clearing defect notice.

## 28—Substitution of section 529A

Section 529A—delete the section and substitute:

### **529A—Permission to use vehicle the subject of a major or minor defect notice**

- (1) An authorised officer may, on request made by the operator of a heavy vehicle that is the subject of a major defect notice or minor defect notice, give written permission for the vehicle to be used on a road during a period stated in the permission.
- (2) The authorised officer may give the permission only if—
  - (a) the officer is satisfied—
    - (i) the vehicle will be used only for the purpose of driving the vehicle to and from a place where repairs are to be carried out; and
    - (ii) the use of the vehicle will not pose an imminent and serious safety risk; and
    - (iii) the request is necessary and reasonable; or
  - (b) the officer is satisfied—
    - (i) the relevant repairs have been carried out and the vehicle will be taken within the stated period to be inspected for the purpose of enabling the vehicle defect notice to be cleared under section 530; and
    - (ii) the use of the vehicle will not pose a safety risk; and
    - (iii) the request is necessary and reasonable.
- (3) For the purpose of subsection (2)(a)(ii) or (b)(ii), an authorised officer may require evidence of adequate repairs or other measures.
- (4) The permission is subject to conditions that—
  - (a) the use of the vehicle will be as mentioned in subsection (2)(a)(i) or (b)(i); and
  - (b) in relation to the use of the vehicle mentioned in subsection (2)(a)(i)—the vehicle will not be used to carry goods or passengers.
- (5) The authorised officer may also impose other reasonable conditions on the permission.
- (6) The use of the vehicle under the permission is not a contravention of the vehicle defect notice.
- (7) The use of a vehicle in contravention of a condition under subsection (4) or (5) is a contravention of the vehicle defect notice.

**29—Amendment of section 529B—Permitted use of vehicle the subject of a major or minor defect notice without permission of authorised officer**

Section 529B(1)—delete "vehicle defect notice" and substitute:  
major defect notice or minor defect notice

**30—Amendment of section 530—Clearance of major or minor defect notices**

- (1) Section 530(1)—delete "vehicle defect notice" and substitute:  
major defect notice or minor defect notice
- (2) Section 530(2)—delete "vehicle defect notice" and substitute:  
major defect notice or minor defect notice

**31—Repeal of sections 531A and 531B**

Sections 531A and 531B—delete the sections

**32—Amendment of section 641—Applying for internal review**

- (1) Section 641(2)(b)—delete paragraph (b) and substitute:
  - (b) if a provision of this Law requires that the person be given a statement of reasons for the decision—the day the statement is given to the person.
- (2) Section 641(5)—delete "original" and substitute:  
reviewable
- (3) Section 641(6)—delete subsection (6) and substitute:
  - (6) If the person is given a decision notice, but not an information notice, for the reviewable decision—
    - (a) the decision notice must state that, within 28 days after the notice is given to the person, the person may ask the Regulator for a statement of reasons for the decision; and
    - (b) the person may, within 28 days after a decision notice complying with paragraph (a) is given to the person, ask the Regulator for a statement of reasons for the decision.
  - (6A) Within 28 days after the request is made under subsection (6)(b), the Regulator must give the person a statement of reasons.
- (4) Section 641(8)—before the definition of *dissatisfied person* insert:  
*decision notice*, for a decision, means a notice stating—
  - (a) the decision; or
  - (b) the review and appeal information for the decision.

### 33—Amendment of section 659—Functions of Regulator

Section 659(2)—after paragraph (k) insert:

- (ka) to provide advice, information and education to persons with duties or obligations under this Law about compliance with the duties or obligations;

### 34—Insertion of section 698A

After section 698 insert:

#### 698A—No liability, right etc arising from particular functions of authorised officer or Regulator

- (1) This section applies in relation to anything done by the Regulator or a protected person in the exercise of—
  - (a) a function of an authorised officer under section 479(2); or
  - (b) a function of the Regulator under section 659(2)(ka).
- (2) The doing of the thing does not, of itself, give rise to—
  - (a) a civil liability of the Regulator or protected person; or
  - (b) a right, expectation, duty or obligation that would not otherwise be conferred or imposed on a person in relation to whom the thing was done; or
  - (c) a defence that would not otherwise be available to a person in relation to whom the thing was done.
- (3) However, subsection (2)(a) applies only to a thing done by the Regulator or a protected person in good faith.

**Note—**

See also section 698 in relation to civil liability for a thing done in good faith.

- (4) A reference in this section to doing a thing includes a reference to omitting to do a thing.
- (5) In this section—  
*protected person* —see section 698(3).

### 35—Amendment of Schedule 4—Liability provisions

- (1) Schedule 4, table, item relating to section 85, column 2—delete "85(1),"
- (2) Schedule 4, table, item relating to section 531A—delete the item

**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 20 February 2020

No 12 of 2020