

1st Draft – 16/12/10

Model Law on Performance Based Standards for Heavy Vehicles

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Model Law on Performance Based Standards for Heavy Vehicles

The following provisions are intended to provide the basis for nationally consistent transport laws on the topics with which they deal. They do not, of themselves, have any legal effect.

Although the following provisions are set out as a model law in their own right, it is intended that they will form the basis for provisions dealing with Performance Based Standards for heavy vehicles in the National Heavy Vehicle Law that is expected to come into operation in 2013. This model law embodies new policy, and it is presented in this form to enable that policy to be scrutinised on its own.

Part 1 – General matters

1. Name

This is the Model Law on Performance Based Standards for Heavy Vehicles.

2. Purpose

The main purpose of this Law is to provide for the extended operation of heavy vehicles that meet certain performance based standards ("PBS vehicles").

3. Outline

PBS vehicles that meet a specified performance level will be able to operate as of right (unless otherwise specified by the Minister) on roads in the PBS network that are authorised to be used by PBS vehicles that meet or exceed that performance level.

This model law provides for a process by which a PBS vehicle can obtain access to roads that are not in the PBS network, and to roads that are in that network, but that are specified as roads that have a performance level that is higher than that specified for the vehicle.

4. Approval

This Law was approved by the Australian Transport Council on xx xxxx 2011.

5. Examples

- (1) Examples are part of this Act.
- (2) An example of the operation of a provision of this Act –
 - (a) is not exhaustive; and
 - (b) may extend the meaning of the provision; and
 - (c) does not limit the meaning of the provision, unless the contrary intention appears.

6. Notes

- (1) Notes that are at the foot of a provision are part of this Act.
- (2) Marginal notes, footnotes at the bottom of a page and endnotes are not part of this Act.

7. Definitions

In this Act –

non-standard access has the meaning set out in section 11;

PBS approval means an approval issued in respect of a vehicle by the PBS Review Panel under the PBS Business Rules for the vehicle to participate in the PBS Scheme;

PBS Business Rules means the *Performance Based Standards Scheme Review Panel Business Rules* made by the National Transport Commission on 30 July 2007, and approved by the Australian Transport Council on 3 October 2007, as amended from time to time;

PBS Review Panel means the Performance Based Standards Review Panel established by the PBS Business Rules;

PBS road network means all roads that are specified as being roads suitable for one or more types of PBS vehicles in the PBS maps published by the National Transport Commission on its website;

Note

The address of the Commission's website is www.ntc.gov.au

PBS vehicle means a vehicle that is the subject of a current PBS approval.

Part 2 – Additional provisions concerning PBS vehicles

Division 1 – Restriction on use of PBS vehicles

8. Minister to be given notice of PBS design approval

Once a vehicle design has received design approval under the PBS Business Rules, the Regulator must give the Minister written notice of the approval, together with a description of any significant features of the design.

9. Minister may forbid or restrict use of vehicles built to PBS design approval

- (1) The Minister may notify the Regulator in writing that any vehicle built to a design approved under the PBS Business Rules –
 - (a) is not to be permitted to operate in this jurisdiction; or
 - (b) is only to be permitted to operate in this jurisdiction subject to specified restrictions or conditions.
- (2) A notice is not valid for the purposes of this Part if it does not set out reasons for why it has been issued.
- (3) On receiving a notice under this section, the Regulator must give a copy of the notice to the person who was given the design approval.

10. Regulator must give effect to Ministerial notice

- (1) If a person applies to register a PBS vehicle built to a design that is the subject of a notice under section 9(1)(a), and the Regulator intends to register the vehicle, in issuing the registration the Regulator must ensure that it is stated as a condition of registration that the vehicle is not to be used in this jurisdiction.
- (2) If a person applies to register a PBS vehicle built to a design that is the subject of a notice under section 9(1)(b), and the Regulator intends to register the vehicle, in issuing the registration the Regulator must ensure that it is stated as a condition of registration that the vehicle is not to be used in this jurisdiction unless it complies with the restrictions or conditions specified in the notice.
- (3) The restrictions or conditions referred to in subsection (2) must be set out in the registration document (rather than be simply referred to by reference to the notice).

Division 2 – Obtaining non-standard access

11. Meaning of *non-standard access*

- (1) *Non-standard access* means the use of a PBS vehicle –
 - (a) on a road that is not part of the PBS road network; or
 - (b) on a road that is part of the PBS road network, but that has a level number that is lower than the PBS performance level number specified in the vehicle's PBS approval; or
 - (c) on a road that is part of the PBS road network in a way that is contrary to any conditions that apply to the use of PBS vehicles of the same performance level number as the PBS vehicle.
- (2) For the purposes of subsection (1), if a level number includes a letter of the alphabet, the letters become higher the further they are from the letter "a" when listed in alphabetical order.

Example

The PBS approval for a vehicle specifies that the vehicle meets the level 3c performance level. Standard access for the vehicle is level 3c, 4a or 4b roads in the PBS road network. The vehicle cannot be used on level 1, 2 or 3a roads unless it has obtained a non-standard access permit.

12. By when action must be taken

Any requirement imposed by this Division on a person must be complied with as soon as is practicable after the requirement is imposed, unless a contrary intention appears.

13. Initiation of process to obtain non-standard access

- (1) This section applies if –
 - (a) the Regulator registers a PBS vehicle and the PBS approval for the vehicle, or any subsequent information provided by the person who registered the vehicle, indicates that non-standard access is sought for the vehicle; or
 - (b) a person who wishes to have non-standard access for a PBS vehicle applies to the Regulator for assistance under this section.
- (2) The Regulator must identify –
 - (a) the roads in respect of which non-standard access is sought; and
 - (b) all the road managers who manage those roads; and
 - (c) any bridges that will need to be assessed to enable the non-standard access that is sought; and
 - (d) if there are bridges that will need to be assessed, the owners of those bridges.
- (3) The Regulator must then notify –
 - (a) each road manager identified under subsection (2)(b) that non-standard access is sought in relation to a road managed by the road manager; and
 - (b) each bridge owner identified under subsection (2)(d) that non-standard access is sought in relation to the bridge.
- (4) The notice must provide details of the non-standard access sought, including details of any aspects of the PBS vehicle that are relevant to the access.

14. Estimate of processing time to be given

- (1) On receiving a notice under subsection (4), the road manager or bridge owner must give the Regulator a written estimate of by when the manager or owner can make a decision in relation to the non-standard access sought.

- (2) If, in the opinion of the road manager or bridge owner, it will not be possible to make a decision in the absence of a physical survey of, or other assessment or work in relation to, the road or bridge, the estimate must also include a description of what additional work will be required, together with an estimate of the cost of that additional work.

15. Processing if no additional work needed

- (1) If no additional work will be required, the road manager or bridge owner must determine whether or not to agree to allow the non-standard access sought, and must notify the Regulator in writing of the decision once it has been made.
- (2) If the road manager or bridge owner determines not to agree to allow the non-standard access sought, the notification given to the Regulator of the decision must include reasons for why the access has not been allowed.

16. Processing if additional work needed

- (1) If additional work will be required, the Regulator may seek all or part of the amount estimated as the cost of the additional work in the estimate provided under section 14 from the person who is seeking the non-standard access.
- (2) If the Regulator seeks a payment under subsection (1), neither the Regulator nor the road manager or bridge owner (as the case may be) needs to take any further action in relation to the request for the non-standard access until the Regulator receives the payment requested.
- (3) On receiving a payment requested under subsection (1), the Regulator must advise the road manager or bridge owner (as the case may be), and the road manager or bridge owner –
 - (a) must commission the additional work; and
 - (b) on receiving the results of the additional work, must decide whether or not to agree to allow the request for the non-standard access, and must notify the Regulator of the decision once it has been made.
- (4) If the road manager or bridge owner determines not to agree to allow the non-standard access sought, the notification given to the Regulator of the decision must include reasons for why the access has not been allowed.

17. If non-standard access to road approved

- (1) This section applies if, after processing a request for non-standard access, a road manager decides that any road that was the subject of the request is suitable for access by particular PBS vehicles (whether with or without conditions).
- (2) The Regulator must, after receiving notice of the decision –
 - (a) update the PBS road network to reflect the decision; and
 - (b) advise the person who made the request for non-standard access of the decision.

18. If non-standard access to bridge approved

- (1) This section applies if, after processing a request for non-standard access, a bridge owner decides that a bridge that was the subject of the request is suitable for access by particular PBS vehicles (whether with or without conditions).
- (2) The Regulator must, after receiving notice of the decision –
 - (a) update the PBS road network to reflect the decision; and
 - (b) advise the person who made the request for non-standard access of the decision.

19. Regulator must pass on copy of adverse decisions

If a road manager or a bridge owner decides that a request for non-standard access will not be granted, the Regulator must, after receiving notice of the decision, give a copy of the notice to the person who made the request for non-standard access.

Division 3 – Review rights

20. When this Division applies

This Division applies if a road manager or a bridge owner –

- (a) refuses a request for non-standard access; or
- (b) agrees to allow non-standard access subject to restrictions or conditions.

21. Application for internal review

- (1) The person who made the request, or on whose behalf the request was made, may apply to the road manager or bridge owner in writing for an internal review of –

- (a) the decision to not allow access; or
 - (b) the decision to impose a particular restriction or condition.
- (2) The application must be made within 28 days after the person is notified of the decision.
- (3) After receiving an application, the road manager or bridge owner must arrange for the decision to be reviewed by a person other than the person who made it.
- (4) After a review has been conducted, the road manager or bridge owner must –
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) revoke the decision.
- (5) The road manager or bridge owner must notify the person who applied for the review in writing of its decision within 28 days after the request for the review is received by it.
- (6) If a person who applies for the review of a decision does not receive a written notice affirming, varying or revoking the decision within 28 days after lodging the application with the road manager or bridge owner, the decision is to be taken to be affirmed by the road manager or bridge owner.

22. Regulator to ensure notification of review rights

- (1) If a person is eligible to apply for a review of a decision under section 21, the Regulator must notify the person of the person's right to apply for a review of the decision under that section.
- (2) Despite anything to the contrary in section 21, the time periods specified in section 21(2) do not start until the person is notified of his, her or its relevant rights, as required by subsection (1).

Division 4 – Miscellaneous matters

23. PBS Scheme to be an approved road transport compliance scheme

- (1) In this section *PBS Scheme* means the Performance Based Standards Scheme that is referred to in the PBS Rules.

- (2) The PBS Scheme is prescribed for the purposes of the definition of ***approved road transport compliance scheme*** in section xx [the equivalent in the National Heavy Vehicle Law of section 6(1) of the *Road Transport Reform (Compliance and Enforcement) Bill 2003*].

Note

The purpose of this section is to ensure that the compliance and enforcement powers of the National Law can be used to monitor and enforce compliance with the requirements of the PBS Scheme.

Part 3 – Amendments to the Registration provisions

24. Provisions being amended by this Part

The references to specific regulations in this Part are to regulations in the *Road Transport Reform (Heavy Vehicles Registration) Regulations*. It is recommended that when the substance of those Regulations is replicated in the National Heavy Vehicle Law, that the amendments set out in this Part be made to them.

Note

The *Road Transport Reform (Heavy Vehicles Registration) Regulations* are set out in Schedule 1 of the *National Transport Commission (Road Transport Legislation – Heavy Vehicles Registration Regulations) Regulations 2006*.

25. Compliance with Vehicle Standards

After regulation 8(2) insert –

- "(3) If a PBS vehicle is exempt from any of the provisions of the Vehicle Standards, but it otherwise complies with those Standards, for the purposes of these Regulations it is to be regarded as complying with those Standards."

26. Supporting evidence

- (1) In regulation 13, for ""The" substitute "(1) The".
- (2) At the end of regulation 13 insert –
- "(2) Subregulation (1)(e) does not apply in the case of a PBS vehicle."

27. Issue of defect notices and formal warnings

After regulation 40(7) insert –

"(8) This regulation does not authorise a member of the police force or the registration authority to issue a vehicle defect notice, or a formal warning, in relation to any aspect of a vehicle that has not changed since the vehicle was registered."

Part 4 – Amendments to the Mass And Loading provisions

The reference to regulation 5 in this Part is to regulation 5 in the *Road Transport Reform (Heavy Vehicles Registration) Regulations*. It is recommended that when the substance of those Regulations is replicated in the National Heavy Vehicle Law, that the amendment set out in this Part be made to them.

Note

The *Road Transport Reform (Mass and Loading) Regulations* are set out in Schedule 1 of the *National Transport Commission (Road Transport Legislation – Mass and Loading Regulations) Regulations 2006*.

28. Insertion of regulation 5A

After regulation 5 insert –

"5A. PBS mass and dimension limits have precedence over the normal limits

If a PBS vehicle is authorised by its PBS approval to have a mass or dimension that exceeds a mass or dimension limit that would otherwise apply to the vehicle under [*this Part/Division*], the authorised mass or dimension is deemed to be the mass or dimension limit for the purposes of [*this Part/Division*]."

Part 5 – Amendments to the Oversize And Overmass Vehicles provisions

The reference to regulation 5 in this Part is to regulation 5 in the *Road Transport Reform (Oversize and Overmass Vehicles) Regulations*. It is recommended that when the substance of those Regulations is replicated in the National Heavy Vehicle Law, that the amendment set out in this Part be made to them.

Note

The *Road Transport Reform (Oversize and Overmass) Regulations* are set out in Schedule 1 of the *National Transport Commission (Road Transport Legislation – Oversize and Overmass Vehicles Regulations) Regulations 2006*.

29. Provisions not to apply to PBS vehicles

After regulation 5(3)(b) insert –

"(ba) that is –

- (i) a PBS vehicle that is currently registered; or
- (ii) that is being driven or operated under a restricted access vehicle notice or permit; or

Note

A *restricted access vehicle notice or permit* will be defined as being a notice or permit issued under the provisions of the National Heavy Vehicle Law that replicate the *Road Transport Reform (Restricted Access Vehicles) Regulations*.

Part 6 – Amendments to the Vehicle Standards provisions

The reference to Part 4 in this Part is to Part 4 in the *Road Transport Reform (Vehicle Standards) Regulations*. It is recommended that when the substance of those Regulations is replicated in the National Heavy Vehicle Law, that the amendment set out in this Part be made to them.

Note

The *Road Transport Reform (Vehicle Standards) Regulations* are set out in Schedule 1 of the *National Transport Commission (Road Transport Legislation – Vehicle Standards) Regulations 2006*.

30. Insertion of Division 4 into Part 4

In Part 4, after Division 3 insert –

"Division 4 PBS exemptions

39A. PBS vehicles exempt from certain Vehicle Standards

A PBS vehicle is exempt from any of the following Vehicle Standards that are listed in its PBS approval as provisions that are incompatible with its design as a PBS vehicle:

- (a) regulation 64 (Axle configuration);
- (b) regulation 65 (Relation between axles in a group);
- (c) regulation 66 (Width);
- (d) regulation 67 (Length of single motor vehicles);
- (e) regulation 68 (Length of single trailers);
- (f) regulation 69 (Length of combinations);
- (g) regulation 70 (Rear overhang);
- (h) regulation 71 (Trailer drawbar length);
- (i) regulation 72 (Height);
- (j) regulations 169(b) and 169(c) (Attachment of couplings and drawbar eyes on long road trains);
- (k) regulation 171 (Tow coupling overhang on long road trains)."