

PBS Scheme – Vehicle Certification Rules Schedule of Changes

| PBS Scheme – Vehicle Certification Rules October 2017 | PBS Scheme – Vehicle Certification Rules draft March 2019 |
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| <p>1 Purpose of these Rules 2 Definitions 3 Authority</p> | <p>i. All unchanged</p> |
| <p>4 Eligibility requirements for certifiers</p> <p>(1) To be eligible to be appointed as a certifier for the purposes of the PBS Scheme,</p> <p>(a) a person must be recommended for appointment by a jurisdiction; and</p> <p>(b) must –</p> <p>(i) have at least 5 years practical experience that is recent and relevant in heavy vehicle design, inspection, maintenance or modification, or in a mixture of activities covering a broad range of heavy vehicle activities; and</p> <p>(ii) have good mathematical and reasoning skills; and</p> <p>(iii) have good written communication skills.</p> <p>(2) However, a person is not eligible to be appointed as a certifier if they –</p> <p>(a) have been found guilty of an offence of dishonesty within the last 10 years; or</p> <p>(b) are bankrupt or subject to a bankruptcy law; or</p> <p>(c) are prevented by any illness or mental or physical disability from properly performing the functions of a certifier; or</p> <p>(d) have had their authorisation as a certifier, engineering signatory, test facility or similar authorisation in any State or Territory or for the Commonwealth suspended or cancelled and, in a jurisdiction’s opinion, the circumstances or actions that led to the suspension or cancellation are continuing or</p> | <p>ii. Requirements for qualification have been added that were previously in NHVR policy so that this is now explicit and publicly available.</p> <p>iii. Disclosure of criminal history now 5 years not 10 to align with normal disclosure requirements.</p> <p>iv. Criminal history check replaces the requirement for applicant to be recommended by a jurisdiction.</p> <p>4 Eligibility requirements for certifiers</p> <p>(1) To be eligible to be appointed as a Certifier for the purposes of the PBS Scheme must have:</p> <p>(a) at minimum the following qualifications in a field that is acceptable to the Regulator for heavy vehicle certification:</p> <p>(i) a recognised engineering trade; or</p> <p>(ii) an engineering qualifications eligible for associate membership of the Institution of Engineers Australia.</p> <p>(b) practical experience that is recent and relevant in heavy vehicle design, inspection, maintenance or modification, or in a mixture of activities covering a broad range of heavy vehicle activities of not less than:</p> <p>(i) in the case of an engineer who is eligible for professional membership of the Institution of Engineers Australia, 3 years;</p> <p>(ii) otherwise 5 years.</p> <p>(c) good mathematical and reasoning skills; and</p> <p>(d) good written communication skills.</p> <p>(2) However, a person is not eligible to be appointed as a Certifier if they –</p> <p>(a) have been found guilty of an offence of dishonesty within the last 5 years; or</p> <p>(b) have not provided a current Criminal History Check in the form requested by the Regulator in support of their statement about sub-rule (2)(a); or</p> <p>(c) are bankrupt or subject to a bankruptcy</p> |

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| <p>are likely to re-occur if the person were to be appointed or re-appointed to such a position.</p> <p>(3) In addition to any other ground the Regulator may refuse the appointment of a person as a certifier, if the person –</p> <p>(a) has failed, in the opinion of the Regulator to properly perform the obligations of a certifier, engineering signatory or similar role, if ever so engaged or appointed in any Australian jurisdiction; or</p> <p>(b) has had their authorisation as a certifier, engineering signatory or similar authorisation in any Australian jurisdiction suspended or cancelled and, in the opinion of the Regulator, the circumstances or actions that led to the suspension or cancellation are continuing or are likely to re-occur if the person were to be appointed or re-appointed to such a position.</p> | <p>law; or</p> <p>(d) are prevented by any illness or mental or physical disability from properly performing the functions of a Certifier; or</p> <p>(e) have had their authorisation as a Certifier, or inspection or testing authorisation in any State or Territory or for the Commonwealth suspended or cancelled and, in a jurisdiction’s opinion, the circumstances or actions that led to the suspension or cancellation are continuing or are likely to re-occur if the person were to be appointed or re-appointed to such a position.</p> <p>(3) In addition to any other ground the Regulator may refuse the appointment of a person as a Certifier, if the person –</p> <p>(a) has failed, in the opinion of the Regulator to properly perform the obligations of a Certifier, engineering signatory or similar role, if ever so engaged or appointed in any Australian jurisdiction; or</p> <p>(b) has had their authorisation as a Certifier, accredited inspection, testing or similar role in any Australian jurisdiction suspended or cancelled and, in the opinion of the Regulator, the circumstances or actions that led to the suspension or cancellation are continuing or are likely to re-occur if the person were to be appointed or re-appointed to such a position.</p> |
| <p>5 Becoming an Certifier</p> <p>(1) A person may apply to the Regulator to be appointed as a Certifier.</p> <p>(2) The application must be made in the form and manner specified by the Regulator.</p> <p>(3) In considering an application by a person for appointment, the Regulator may require the person to do one or more of the following:</p> <p>(a) to attend an interview with a nominee of the Regulator;</p> <p>(b) to provide references as to their competence</p> | <p><i>v. Minor editorial changes only.</i></p> <p>5 Becoming an Certifier</p> <p>(1) A person may apply to the Regulator to be appointed as a Certifier.</p> <p>(2) The application must be made in the form and manner specified by the Regulator.</p> <p>(3) In considering an application by a person for appointment, the Regulator may require the person to do one or more of the following:</p> <p>(a) to attend an interview with a nominee of the Regulator;</p> <p>(b) to provide references as to their</p> |

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| <p>or experience;</p> <p>(c) to provide additional information to assist the Regulator to determine the eligibility of the person to be appointed, including proof of employment by a suitable organisation.</p> <p>(4) The Regulator may appoint a person as a Certifier if it is satisfied that the person meets all of requirements listed in rule 4, and is otherwise eligible to be appointed.</p> <p>(5) On the Regulator being satisfied that a person is eligible to be appointed, it must advise the person of that fact in writing.</p> <p>(6) The Regulator may only appoint a person who is eligible to be appointed if:</p> <p>(a) the person, and in the case of a person who will operate as an employee, their employer, signs an Agreement in the form of Schedule A; and</p> <p>(b) the person produces evidence that they (or their employer) have complied with the insurance requirements of clauses 20 and 21 of the Agreement.</p> <p>(7) Despite subrule (6), if a person is a public servant and will, if appointed, only carry out certifications as a public servant, it is not necessary for the Agreement to provide for the person to be insured, and subrule (6)(b) does not apply.</p> <p>(8) If the Regulator is not satisfied that a person is eligible to be appointed, it must notify the person of that fact in writing within 5 business days after reaching that conclusion, and must include in that notification its reasons for reaching that conclusion.</p> | <p>competence or experience;</p> <p>(c) to provide any additional information required by the Regulator, including but not limited to, proof of employment by a suitable organisation.</p> <p>(4) The Regulator may appoint a person as a Certifier if satisfied that the person meets all of requirements listed in rule 4, and is otherwise eligible to be appointed.</p> <p>(5) On the Regulator being satisfied that a person is eligible to be appointed, it must advise the person of that fact in writing.</p> <p>(6) The Regulator may only appoint a person who is eligible to be appointed if:</p> <p>(a) the person, and in the case of a person who will operate as an employee, their employer, signs an Agreement in the form of Schedule A; and</p> <p>(b) the person produces evidence that they (or their employer) have complied with the insurance requirements of clauses 20 and 20 of the Agreement.</p> <p>(7) Despite subrule (6), if a person is a public servant and will, if appointed, only carry out certifications as a public servant, it is not necessary for the Agreement to provide for the person to be insured, and subrule (6)(b) does not apply.</p> <p>(8) If the Regulator is not satisfied that a person is eligible to be appointed, it must notify the person of that fact in writing within 5 business days after reaching that conclusion, and must include in that notification its reasons for reaching that conclusion.</p> |
| <p>6 Regulator to keep and publish list of certifiers</p> | <p><i>vi. Unchanged</i></p> |
| <p>7 Renewal of appointment</p> | <p><i>vii. Unchanged.</i></p> |
| | <p><i>viii. The Immediate suspension rule becomes Suspension by the regulator and moved from rule 11 to 8 and has been completely rewritten.</i></p> <p><i>ix. Immediate suspension grounds related to termination remain unchanged.</i></p> <p><i>x. New grounds for temporary suspension have been added that allow for disciplinary suspension and</i></p> |

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| <p>11 Immediate suspension</p> <p>(1) If the Regulator believes that there are grounds to terminate an certifier's appointment and:</p> <ul style="list-style-type: none"> (a) that the certifier has acted in a fraudulent or dishonest manner; or (b) that a person may be placed in danger or may suffer financial loss if the certifier continues to carry out certifications – <p>the Regulator may, by giving notice in writing to the certifier, immediately suspend the appointment.</p> <p>(2) The appointment remains suspended until the first of the following events occurs:</p> <ul style="list-style-type: none"> (a) the appointment is terminated under rule 10; (b) the end of 60 business days after the notice was given to the certifier; (c) the suspension is lifted by the Regulator by written notice to the certifier. <p>(3) If the Regulator suspends a certifier's appointment, the Regulator must remove the certifier's name from the list of certifiers referred to in Rule 6.</p> <p>(4) If the Regulator suspends a certifier's appointment, the notice of suspension may be given at the same time as the notice the Regulator gives the certifier proposing to terminate their appointment referred to in Rule</p> | <p><i>suspension in the public interest where termination is not warranted. The suspensions related to:</i></p> <ul style="list-style-type: none"> a. Audits b. Investigations c. Work quality <p>xi. <i>In addition, 3 disciplinary suspensions in a 5 year appointment period may result in initiation of the termination process.</i></p> <p>8 Suspension by the Regulator</p> <p>(1) The Regulator may suspend the appointment of a Certifier in the following circumstances:</p> <ul style="list-style-type: none"> (a) Where the Regulator believes, on reasonable grounds, that a person may be placed in danger or may suffer financial loss if the Certifier continues to carry out certifications; (b) Pending the outcome of a show cause notice issued by the Regulator to terminate an appointment under rule 11; (c) Where the Regulator is investigating a complaint against the Certifier and the continuing receipt of applications from the Certifier would interfere with the investigation, or would create a conflict of interest or the appearance of a conflict of interest; (d) Where the Certifier is in the process of correcting issues identified in an investigation or audit and the continuing receipt of applications from the Certifier would create an unacceptable risk, a conflict of interest, a perceived conflict of interest or would impose an unacceptable burden on the Regulator; or (e) Where material submitted by the Certifier contains repeated errors and places an unacceptable administrative burden on the Regulator. <p>(2) The Regulator must advise the Certifier of the suspension by notice in writing stating</p> <ul style="list-style-type: none"> (a) the reason for the suspension; (b) the effect of the suspension; (c) that the suspension takes effect: <ul style="list-style-type: none"> (i) in the case of a suspension based on subrule (1)(a) or (b), immediately; or (ii) for a suspension for any other grounds, on a nominated date no |
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| | <p>fewer than five business days after the notice is received;</p> <p>(d) details of any corrective actions required of the Certifier before the suspension is lifted and the time in which those corrections must be completed;</p> <p>(e) that if the Regulator becomes aware of a ground for termination under rule 11 it may issue a show cause notice to the Certifier after their appointment has been suspended;</p> <p>(f) that a suspension continues until the Regulator gives the Certifier written notice either:</p> <p style="padding-left: 40px;">(i) that the appointment is terminated under rule 11, or</p> <p style="padding-left: 40px;">(ii) that the suspension is lifted; and</p> <p>(g) contact details for the Regulator.</p> <p>(3) If the Regulator suspends a Certifier's appointment, the Regulator must remove the Certifier's name from the list of Certifier's referred to in rule 1.</p> <p>(4) The Regulator must use its best efforts to finalise a suspension as soon as possible.</p> <p>(5) If a Certifier has completed all the required actions within the time requested in a notice of suspension, and no show cause notice has been issued, the Regulator must lift the suspension.</p> <p>(6) Where a Certifier has previously been suspended twice and any of the grounds in subrule (1) arises within 5 years of the date of the first notice of suspension, the Regulator may commence termination proceedings under rule 10 and 11.</p> |
| <p>8 Termination by the Certifier</p> | <p><i>xii. Changed place in the rules from 8 to 9.</i></p> <p><i>xiii. Otherwise unchanged.</i></p> <p>9 Termination by the Certifier</p> |
| <p>10 Termination by the Regulator The Regulator may terminate a certifier's appointment if the certifier:</p> <p>(a) ceases, in the opinion of the Regulator, to meet the criteria specified in rule 4; or</p> | <p><i>xiv. Changed place in the rules from 9 to 10.</i></p> <p><i>xv. In addition, 3 disciplinary suspensions in a 5 year appointment period may result in initiation of the termination process.</i></p> <p>11 Termination by the Regulator The Regulator may terminate a Certifier's appointment if the Certifier:</p> <p>(i) ceases, in the opinion of the Regulator, to</p> |

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| <p>(b) fraudulently or falsely issues a certifier's certificate; or</p> <p>(c) commits an offence of dishonesty; or</p> <p>(d) fails to carry out an acceptable certification inspection; or</p> <p>(e) has an employer who is a party to the Agreement required by rule 5(6), and the certifier ceases to be employed by the employer; or</p> <p>(f) fails, in the opinion of the Regulator, to carry out the obligations of a certifier in a competent or professional manner or at all; or</p> <p>(g) fails to comply with a written direction of the Regulator, or a person authorised by the Regulator, that is issued under these Rules or under the Agreement required by rule 5 (6); or</p> <p>(h) otherwise breaches these Rules or the Agreement.</p> | <p>meet the criteria specified in rule 4; or</p> <p>(j) fraudulently or falsely issues a Certifier's certificate; or</p> <p>(k) commits an offence of dishonesty; or</p> <p>(l) fails to carry out an acceptable certification inspection; or</p> <p>(m) has an employer who is a party to the Agreement required by rule 5(6), and the Certifier ceases to be employed by the employer; or</p> <p>(n) fails, in the opinion of the Regulator, to carry out the obligations of a Certifier in a competent or professional manner or at all; or</p> <p>(o) fails to comply with a written direction of the Regulator, or a person authorised by the Regulator, that is issued under these Rules or under the Agreement required by rule 5(6); or</p> <p>(p) has been previously suspended twice and any of the grounds in sub-rule 8 (1) arises within 5 years of the date of the first notice of suspension; or</p> <p>(q) otherwise breaches these Rules or the Agreement.</p> |
| <p>10 Termination procedure</p> | <p><i>xvi. Changed place in the rules from 10 to 11.</i></p> <p><i>xvii. Otherwise unchanged.</i></p> <p>11 Termination procedure</p> |
| <p>12 Only certifiers may carry out certifications</p> | <p><i>xviii. Unchanged</i></p> |
| <p>13 Only completed vehicles may be inspected for certification</p> | <p><i>xix. Unchanged</i></p> |
| <p>14 How certifications are to be initiated</p> | <p><i>xx. Unchanged</i></p> |
| <p>15 Where certifications are to occur</p> | <p><i>xxi. Unchanged</i></p> |
| <p>16 How certification inspections are to be carried out</p> | <p><i>xxii. Unchanged</i></p> |
| <p>17 Use of third party evidence</p> | <p><i>xxiii. Unchanged</i></p> |
| <p>18 Multiple identical vehicles</p> | <p><i>xxiv. Unchanged</i></p> |
| <p>19 Issue of the Certifier's certificate</p> | <p><i>xxv. Unchanged</i></p> |
| <p>20 Non-compliance</p> | <p><i>xxvi. Unchanged</i></p> |
| <p>21 Manufacturer's certification</p> | <p><i>xxvii. Unchanged</i></p> |
| <p>22 Forms for vehicle certification</p> | <p><i>xxviii. Unchanged</i></p> |
| <p>23 Amendment of these Rules</p> | <p><i>xxix. Unchanged</i></p> |

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| <p>Certifier Agreement</p> | <p>xxx. <i>Unchanged except clause 6 and 7.</i></p> |
| <p>Clause 6</p> <p>6. A certifier must not certify a vehicle for the purposes of the PBS Scheme if–</p> <ul style="list-style-type: none"> a. the Certifier has been involved in the development of the proposal for the vehicle, the design of the vehicle or the manufacture or modification of the vehicle to enable it to be eligible to participate in the PBS Scheme; or b. the person who commissioned the certification inspection, or any intended operator of the vehicle, is someone with whom the Certifier has any employment, remuneration or contractual arrangement other than that directly related to certifying the vehicle; or c. the certifier has any other conflict of interest. | <p>xxxi. <i>Clarifies that the certifier’s employer cannot be involved in the manufacture or modification of the vehicle to enable it to be eligible to participate in the PBS Scheme.</i></p> <p>Clause 6</p> <p>6. A Certifier must not certify a vehicle for the purposes of the PBS Scheme if–</p> <ul style="list-style-type: none"> a. the Certifier has been involved in the development of the proposal for the vehicle, the design of the vehicle or the manufacture or modification of the vehicle to enable it to be eligible to participate in the PBS Scheme; b. the Certifier’s employer has been involved in the manufacture or modification of the vehicle to enable it to be eligible to participate in the PBS Scheme; c. the person who commissioned the certification inspection, or any intended operator of the vehicle, is someone with whom the Certifier has any employment, or commercial arrangement other than that directly related to certifying the vehicle; or d. the Certifier has any other conflict of interest. |
| <p>Clause 7</p> <p>7. Subject to compliance with clause 6, the Certifier may carry out other work related to the development of proposals and the design, manufacture or modification of vehicles to enable them to be eligible to participate in the PBS Scheme.</p> | <p>xxxii. <i>Clarifies that the certifiers and assessors may operate</i></p> <p>xxxiii. <i>Clarifies how change of employment affects conflict of interest.</i></p> <p>Clause 7</p> <p>7. Subject to compliance with clause 6:</p> <ul style="list-style-type: none"> a. the Certifier may carry out other work related to the development of proposals and the design or modification of vehicles that is not related to eligible to participate in the PBS Scheme; or b. the Certifier may carry out certification where another person employed in their organisation does not meet the requirement of clause 0 as they have been the design engineer, the Assessor or they have performed other work that |

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| | <p>does not involve the manufacture or modification of the vehicle to enable it to be eligible to participate in the PBS Scheme.</p> <p>c. the Certifier may carry out certification where a change of employment extinguishes a previous conflict of interest and a period of 1 years has elapsed form this change.</p> |
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